

Mapping Power in Poultry Processing Plants in Gainesville, Georgia

July 2020

Report Authors

Cynthia Ahmed¹

Michael Bass, Alex Lancey, and Mileika Lovick²

John Fossum³

Understanding the COVID-19 Outbreak

Across the United States, the COVID-19 outbreak highlighted the significant inequalities already embedded in the fabric of work in America. In the meat and poultry processing industry, in particular, more than 16,000 workers were infected with COVID-19 in April and May alone.⁴ Furthermore, the Center for Disease Control and Prevention (CDC) reported that 87 percent of those cases were among racial or ethnic minorities. Since May, these cases have increased, with some reports putting the total as of July 17 at around 40,000 workers nationwide.⁵

In order to better understand the landscape of the COVID-19 crisis in the meat and poultry processing industry, we focused on Gainesville, GA, a city recognized as the “Poultry Capital of the World.”⁶ Gainesville produces 31 million pounds of chicken and 7 million eggs daily.⁷ Gainesville’s poultry plants have also experienced some of the highest prevalence of COVID-19 in the state, with workers working and living in close quarters, often without proper personal protective equipment (PPE). Census records report that 40 percent of Gainesville’s residents are Hispanic, and 25 percent of the population is foreign born.⁸ Recent Pew data suggests that 12 percent of Gainesville’s total population is made up of undocumented immigrants, the highest in the nation.⁹ As of May 2020, 56 percent of total COVID-19 cases in Gainesville were among the

¹ J.D. Candidate at Harvard Law School.

² J.D. Candidates at Northeastern School of Law.

³ Master of Public Affairs Candidate at the LBJ School of Public Affairs at the University of Texas at Austin.

⁴ Michelle A. Waltenburg et al. “Update: COVID-19 Among Workers in Meat and Poultry Processing Facilities - United States, April-May 2020,” *CDC Morbidity and Mortality Weekly Report* 69, no. 27 (10 July 2020).

⁵ Leah Douglas, “Mapping COVID-19 Outbreaks in the Food System,” Food & Environment Reporting Network, accessed September 27, 2020, <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/amp/>. The data collected by FERN relies on CDC reporting, but also relies on state and local information to obtain the most accurate count.

⁶ See Waltenburg et al, “Update: Covid Among Workers.” The CDC recognizes that there are certain “distinctive factors that increase meat and poultry processing workers’ risk for exposure,” such as extended periods of close contact with co-workers over long shifts and shared workspaces at the actual facilities.

⁷ Waltenburg et al., “Update: Covid Among Workers,” 887.

⁸ Hispanic is the category deployed in census data, though for our purposes we will use the term “Latinx” to describe people of Latin American origin or descent.

⁹ DataUSA, “Gainesville, GA,” accessed September 27, 2020, datausa.io/profile/geo/gainesville-ga-metro-area.

Latinx population.¹⁰ Hall County, in which Gainesville is located, has twice the infection rate of neighboring Gwinnet County.¹¹

Despite the high incidence of COVID-19 cases in the US in general and in poultry processing facilities in the city specifically, Gainesville's poultry industry never shut down. In fact operations hardly slowed down at all. The first COVID-19 deaths were reported in Georgia on March 12, 2020, and Governor Brian Kemp declared a Public Health State of Emergency on March 14, 2020. Shortly thereafter, the Gainesville City Council held the first of several special meetings aimed at adopting resolutions encouraging adherence to CDC guidelines. Even after the Occupational Health and Safety Administration (OSHA) released interim guidance with the CDC to protect workers specifically in meatpacking and processing industries in late April, Gainesville's plants stayed open and kept operating at their usual capacity. Throughout May and June local politicians and worker advocates continued to sound the alarm about unsafe conditions and the high rates of exposure to COVID-19 in poultry plants. Yet, the plants stayed open and continued to require workers to come to the site.

We first set out to understand the broader configurations of decision-making players and authority at key points during the COVID-19 pandemic in the U.S., focusing in particular on government-level, corporate-level, and worker/community-level actors. After understanding who holds power at each of these levels and the source of their authority, we identified three key areas of analysis, or sources of legal power, to address the following research questions:

1. What legal and economic justifications were deployed to keep poultry processing plants in Gainesville open, and how are employers incentivized and empowered to continue to put workers at risk?
2. Why do workers at poultry plants keep going to work risking both exposure to the virus and exposing others when someone in their homes may be sick?
3. How can power/resources can be leveraged, and what avenues for reform might be available to workers?

By mapping key stakeholders and identifying the social and economic tools used to shape worker decisions during the COVID-19 crisis, we sought to contextualize the crisis response by placing it within a larger history of power struggles in the region. We sought to connect the damaging effects of crisis-response policy with the reality and legacy of inequality facing American food workers and workers of color who disproportionately supply labor in the food industry.

¹⁰ DataUSA, "Gainesville, GA."

¹¹ See Waltenburg et al., "Update: Covid Among Workers"; DataUSA, "Gainesville, GA." In addition to workplace-based factors, the CDC has recognized that shared transportation to and from the workplace, shared housing, and frequent community contact with fellow workers make food processing workers and their communities particularly vulnerable to the spread of COVID-19.

Case Study Sites: Pilgrim's Pride and Mar-Jac Poultry

In order to further understand the corporate stakeholders in Gainesville and try to better understand why all of these poultry processing sites stayed open during the global pandemic, we focused our research on two key corporate players. We examine first, the locally headquartered Mar-Jac Poultry, and second, a prominent Pilgrim's Pride facility – examples of both a domestic corporation and an international corporation. Pilgrim's Pride is the biggest international firm in Gainesville and is a part of JBS, a Brazilian owned world-wide meat producing company, whereas Mar-Jac is a U.S. based company headquartered in Gainesville. Despite these differences, our research revealed that Pilgrim's Pride and Mar-Jac have much in common. Both of these corporate players have large operations in Gainesville. Pilgrim's Pride is the third largest employer in the region, employing 1,760 people while Mar-Jac is the ninth largest regional employer, employing about 1,280 people.¹² Both of these companies are vertically integrated from egg to table and both process over one million birds a week. It is also important to note that neither of these sites are unionized. The most astounding similarity between these companies, in fact all poultry processors in Gainesville, is that none of these companies shut or slowed down their operations during the COVID-19 pandemic. We endeavored to understand why.

Power Analysis: Public Governance

At the governance level, there are several critical stakeholders that play a role in the decision-making process and have various levels of authority in determining if, when, and how Gainesville's poultry processing plants remain open during the COVID-19 pandemic. These actors operate at both the federal and state level. The hierarchy is outlined below:

Federal Executive Level

- President Trump
 - United States Department of Agriculture (USDA)
 - USDA Secretary Sonny Perdue (appointed by the President)
 - United States Department of Labor (DOL)
 - DOL Secretary Eugene Scalia (appointed by the President)
 - Assistant Secretary for Occupational Health and Safety (currently vacant)
 - Principal Deputy Assistant Secretary Loren Sweatt
 - Deputy Assistant Secretary Amanda Edens
 - Regional Director of Region 4 (based in Atlanta)
Kurt Petermeyer

¹² Pilgrim's Pride, "About: Pilgrim's Global," Accessed September 27, 2020, www.pilgrims.com/.

State Executive Level

- Governor Kemp
 - Georgia Department of Public Health
 - Commissioner Kathleen Toomey
 - Occupational Health and Safety Surveillance Program
 - Georgia Department of Agriculture
 - Commissioner Gary Ward Black, Sr.
 - Director of Meat Inspection Aaron Knighton
 - Rules and Regulations - Food Safety Division, Rules promulgated by Commissioner
 - Georgia Department of Economic Development

Local Level (Executive and Legislative)

- Mayor Danny Dunagan
- Gainesville City Council

Power Analysis: Poultry Processing Corporations

Five out of the top ten employers in Gainesville are poultry system intermediaries such as slaughterhouses and processing centers.¹³ The majority of the other top ten employers are public sector and care organizations. Our research confirmed our suspicions that the poultry industry is a large enough employer and financial contributor to Gainesville that poultry corporate players hold significant power over the city's residents. The size of the immigrant population together with the power of poultry processing players in Gainesville likely skews the power dynamics even further in favor of corporate players.

Pilgrim's Pride originates from humble roots, starting as a feed store in 1946 in Texas by the Pilgrim brothers.¹⁴ Pilgrim's Pride expanded into a vertically integrated poultry producer and has internal divisions for every stage of processing from "egg to table." Pilgrim's Pride supplies KFC, Walmart, Publix, Wendy's, Costco (exclusive supplier for rotisserie chicken), and numerous other companies. In 2010, JBS USA, a subsidiary of the international JBS SA, acquired 64 percent of Pilgrim's Pride. JBS USA currently owns about 75 percent of Pilgrim's Pride. JBS's purchase of ownership in Pilgrim's Pride made JBS a major player in the poultry industry. As a result of the acquisition, Pilgrim's Pride closed its former corporate offices in Texas and Georgia and moved its headquarters to Greeley, Colorado where they remain headquartered at this time. JBS SA is headquartered in Brazil and is the largest meat processing company, by sales, in the world. JBS SA had an annual net income of \$138 million in 2017.

¹³ Shelley Davis, "Gainesville-Hall County Top Employers 2018," Greater Hall Chamber of Commerce, <https://www.ghcc.com/wp-content/uploads/2018/09/Top-Employers-Gainesville-Hall-County-2018.pdf>.

¹⁴ Pilgrim's Pride, "About: Pilgrim's Global."

Pilgrim's Pride is currently a multinational corporation, based in Brazil, and employs about 1,380 employees in its Gainesville operations and JBS SA employs about 36,000 people worldwide.¹⁵ Pilgrim's also owns Moy Park, a leading poultry and prepared foods company in the U.K. and Europe, as well as Tulip Limited, a leading pork and prepared foods company in the U.K. As of 2020, it is the third largest employer in Gainesville and is the largest international firm employer in Gainesville.

In contrast to Pilgrim's Pride's international presence, Mar-Jac Poultry is a locally owned poultry processing plant headquartered in Gainesville. Mar-Jac began its operations in Gainesville and expanded regionally to Alabama and Mississippi.¹⁶ Mar-Jac is the fifth largest employer among poultry producers.¹⁷ Mar-Jac produces about 15.88 million pounds of chicken per week, and is the fifteenth largest poultry production in the country.¹⁸ Each of the three states that Mar-Jac operates in have one hatchery, one feed mill, one slaughtering facility, and one processing facility.¹⁹ Mar-Jac's operations in Georgia are completely vertically integrated, with hatcheries in Lula, GA, 200 contracted poultry farms in Northeast Georgia, a feed processing facility in Maysville, GA, and a main poultry processing plant in Gainesville.²⁰

Power Analysis: Poultry Workers and Community Partners

Poultry farm owners have been reluctant to provide proper safeguards for workers in Gainesville. Workers and their families have had to rely heavily on community activists and various organizations to gain access to testing and equipment to stay afloat. After being deemed essential workers, poultry plant employees have maintained a pre-COVID-19 level of production with little to no assistance from their employers. Workers are major stakeholders in this ecosystem but have been unable to harness the strength of this power. Owners and governmental officials continue to boast about their high production levels.²¹ Workers who make the decision to stay home when sick or in order to protect their families are forced to return to work with threats of termination. Those who show up to work despite the risks, are forced to work at dangerously fast speeds. It is theoretically possible for workers to band together and decide to go on strike, but for many the long-term benefits of this is not worth the temporary loss of income.

Despite being the backbone of the poultry industry, workers hold the least amount of power among any stakeholders. This can be explained by several factors. First, there are no poultry worker unions in Gainesville, exacerbated by a long history of worker intimidation and anti-union violence in plants in the region. As a result, plant workers had few options to dispute this industry

¹⁵ Pilgrim's Pride, "About: Pilgrim's Global."

¹⁶ USDA Food Safety and Inspection Service, "Meat, Poultry and Egg Product Inspection Directory," September 21, 2020, https://www.fsis.usda.gov/wps/wcm/connect/bf8d9766-9767-4e0c-a9f1-efea0b2a42bc/MPI_Directory_by_Establishment_Name.pdf?MOD=AJPERES.

¹⁷ Davis, "Gainesville-Hall County Top Employers 2018."

¹⁸ Watt AgNet, "Top Companies: Top US chicken producers grow production, plan expansion," *Watt Poultry USA Magazine* 21, no. 3 (March 2020) <https://www.wattpoultryusa-digital.com/wattpoultryusa/march2020/MobilePagedReplica.action?pm=2&folio=Cover#pg1>.

¹⁹ Watt AgNet, "Top Companies."

²⁰ Marjac Poultry, "MarJac Poultry Process," accessed September 17, 2020, www.marjacpoultry.com/process/.

²¹ Sky Chadde and Kyle Bagenstose, "USDA let poultry plants put workers close together even as they got sick from coronavirus," *Gainesville Sun*, 24 April 2020, <https://www.gainesville.com/zz/news/20200424/usda-let-poultry-plants-put-workers-close-together-even-as-they-got-sick-from-coronavirus>.

wide decision to stay open. Second, workers are expected to show up for work despite being given little to no PPE, in a work environment where workers are not able to enjoy personal space and social distancing. If workers decide to put their health first and protect themselves from this novel virus, they risk going weeks without pay or being fired for failing to show up.²²

Workers are expected to sustain an industry that supplies meat for highly profitable national and international markets, while denied basic protections or even adequate remuneration for their work. Ultimately, after significant delays, some protective measures were taken by employers, but these too were inadequate. To combat the spread of the virus, some employers required that employees dip their hands in sanitizing liquid, submit to temperature checks, and to wear face masks at all times.²³ Not all workers were guaranteed paid sick leave or overall job security, even though many either expressed concern for their health or actually contracted the virus and needed to stay home. Although owners and their representatives claimed to be open to providing employees with leniency and support, very few people were actually able to enjoy these benefits.²⁴

Importantly, our work uncovered that community-based organizations and local organizations play an important role in the life of poultry plant workers. Gainesville poultry workers have been forced to rely on community actors to gain access to information and resources to survive the pandemic. With the help of these community organizers, poultry workers were able to gain access to vital PPE, testing, and other inclusive resources related to the crisis in their native language. These organizations continue to support workers and the general Latino community during this crisis. Below are a few examples:

- Hispanic Alliance Georgia organized a Facebook Live event with Spanish Speaking group physician Dr. Antonio Rios who answered questions from community members. The organization widely distributes information on places hosting food drives and dispensing important health guidance;
- Northeast Georgia Latino Chamber of Commerce organized testing and an informational day for both the Latino community and poultry producers, and spearheaded a Gainesville Against Covid-19 task force;
- An individual poultry worker collected donations to distribute to other employees who continued to work without being given PPE.

Key Legal Regimes

²² Doug Richards, “Industry: Georgia chicken plant production unabated by COVID-19,” *11Alive*, 27 April 2020, <https://www.11alive.com/article/news/health/coronavirus/poultry-industry-covid19/85-76a95ff2-4668-419e-ae48-e069de380f80>.

²³ Emily Green, “Coronavirus Takes Toll On Poultry Workers In North Georgia, Threatens Industry’s Well-Being,” *WABE NPR*, 19 May 2020, <https://www.wabe.org/poultry-plants-in-north-georgia-coronavirus-takes-toll-on-workers-threatens-industrys-well-being/>.

²⁴ Green, “Coronavirus Takes Toll on Poultry Workers.”

After we analyzed which stakeholders played a key role in driving the decision-making efforts that have kept poultry plants open in Gainesville, we endeavored to understand what sources of power and authority each of these stakeholder groups were drawing on. We chose to highlight executive power and corporate liability regimes.

Executive Power and the Role of Administrative Agencies

The authority of the Executive Branch of government at both the federal and state levels has been a key driving force behind establishing guidelines, protocols, and systems for addressing working conditions in poultry processing plants. However, at the federal level, the lack of enforcement mechanisms, oversight, and a clear understanding of local decision making procedures makes the implementation of CDC, USDA, and DOL/OSHA guidance difficult.

There is no evidence that these guidelines are being implemented in plants in Gainesville, nor is it clear what role state-level agencies have played in overseeing poultry processing plants since the COVID-19 outbreak began in early 2020. In fact, at the state level, Governor Kemp's ability and eagerness to override federal and local level requirements is clear. In a visit to a poultry processing plant in May, Governor Kemp reiterated his desire to keep poultry plants open and promoted the use of the Defense Production Act (DPA) as justification for doing so. Thus, the lack of clear federal enforcement allows state-level executives to use federal guidance when it serves their interests, and to simply ignore it when it does not. Furthermore, the lack of federal enforcement mechanisms means that local governments, mayors, and city councils have difficulty enforcing local regulations and orders based on these federal guidelines.

Invocation of the Defense Production Act

COVID-19 has ravaged parts of America's food system and the people that make it possible, as evidenced by over twenty worker deaths and the closure of at least twenty-two meatpacking facilities by late April.²⁵ This was also advertised by Tyson in an April 26 series of full page announcements that part of that food supply chain was "breaking."²⁶ Just two days later, President Trump invoked the DPA to recognize meatpacking plants as critical national infrastructure and meat and poultry as "scarce and critical material essential to the national defense."²⁷ The order also

²⁵ Liz Crampton and Gabby Orr, "Trump orders meat plants to stay open as worker deaths rise," *Politico*, April 28, 2020, <https://www.politico.com/news/2020/04/28/trump-to-order-meat-plants-to-stay-open-215555>.

²⁶ John Tyson, "Feeding the Nation and Keeping Our Team Members Healthy," *Tyson Foods, The Feed Blog*, April 26, 2020, <https://thefeed.blog/2020/04/26/feeding-the-nation-and-keeping-our-employees-healthy/>; Steve Davies, "Indictment shines spotlight on meat industry consolidation," *Agri-Pulse*, June 17, 2020, <https://www.agri-pulse.com/articles/13904-indictment-shines-spotlight-on-meat-industry-consolidation>; Tom Polansek, "Tyson Foods wants China to lift ban on U.S. plant with COVID-19 cases," *Reuters*, August 3, 2020, <https://www.reuters.com/article/tyson-foods-results-coronavirus-idUSL1N2F51CV>.

²⁷ White House, "Executive Order on Delegating Authority Under the DPA with Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19," Executive Orders, Land & Agriculture, April 28, 2020, <https://www.whitehouse.gov/presidential-actions/executive-order-delegating-authority-dpa-respect-food-supply-chain-resources-national-emergency-caused-outbreak-covid-19/>.

delegates authority to Secretary of Agriculture Sonny Perdue, who was charged with taking all appropriate actions to make certain that “meat and poultry processors continue operations” generally and as consistent with joint CDC/OSHA guidance. Those delegated presidential powers allow Secretary Perdue to prioritize selective contracts, for instance requiring that the Marines receive their chicken order before general grocery market partners. More discretely, Secretary Perdue is empowered to “allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.”²⁸ While this wording is ambiguous about the scope and scale of such allocations, forced reopenings would be a tenuous articulation of authority that would not itself compel operations or negate liability for outbreaks.²⁹ Such an attempt could result in an aggrieved facility bringing a suit against the Secretary, and the action would be subject to judicial review.³⁰

Perceptions of authority and power can often be more influential than the actual writ of the law. Managers were still legally authorized to make the final decision about plant closures. Yet significant media coverage took the state’s power to force operations for granted, which had a powerful normalizing effect.³¹ Administrative interpretation in the joint CDC/OSHA guidance and official comments seemed to signal relaxed enforcement procedures and deprive local and state authorities of their power to order facilities closed.³² The practical effects of this guidance have

²⁸ 50 U.S.C. §4511(a); Section 101(b) of the DPA, see Federal Emergency Management Agency (FEMA), “The Defense Production Act of 1950, As Amended,” https://www.fema.gov/media-library-data/20130726-1650-20490-5258/final_defense_production_act_091030.pdf.

²⁹ FEMA, “The Defense Production Act”; Daniel Hemel, “No, Trump didn’t order meat-processing plants to reopen,” *Washington Post*, May 4, 2020, <https://www.washingtonpost.com/outlook/2020/05/04/trump-meat-processing-order/>. The *Washington Post* article asserted that Trump’s executive order “does not actually order meat-processing plants to reopen. Indeed, it does not order the meat-processing plants to do anything.”

³⁰ Legal Information Institute, “50 U.S. Code §4556 Jurisdiction of courts; injunctions; venue; process; effect of termination of provisions,” accessed 27th September, 2020, <https://www.law.cornell.edu/uscode/text/50/4556>.

³¹ See for example Jill Colvin, “Trump orders meat processing plants to remain open,” *Associated Press*, April 4, 2020, <https://apnews.com/67cb4bad7ffe500beabdf8e7e7efea5d>; Taylor Telford, Kimberly Kindy, and Jacob Bogage, “Trump orders meat plants to stay open in pandemic,” *Washington Post*, April 29, 2020, <https://www.washingtonpost.com/business/2020/04/28/trump-meat-plants-dpa/>; Sarah Westwood, “Despite Trump executive order, meat-processing plants struggle to stay open,” *CNN*, May 1, 2020, <https://www.cnn.com/2020/05/01/politics/executive-order-meat-processing-plants-open/index.html>.

³² Amy Forliti, “Little enforcement in place to protect meatpacking workers from coronavirus; new OSHA, CDC guidance isn't mandatory,” *Des Moines Register*, May 21, 2020, <https://www.desmoinesregister.com/story/news/politics/2020/05/21/osha-cdc-meatpacking-safety-recommendations-largely-unenforceable/5239950002/>; CDC, “Meat & Poultry Processors Workers and Employers,” July 9, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>; Department of Labor (DOL), “Statement of Enforcement Policy by Solicitor of Labor Kate O’Scannlain and Principal Deputy Assistant Secretary for OSHA Loren Sweatt regarding Meat and Poultry Processing Facilities,” News Release, April 28, 2020, <https://www.dol.gov/newsroom/releases/osha/osha20200428-1>; Fatima Hussein, “Smithfield Says It Must Follow Trump Meatpacking-Plant Order,” *Bloomberg Law*, April 30, 2020, <https://news.bloomberglaw.com/safety/smithfield-says-it-must-follow-trump-meatpacking-plant-order>. According to the CDC source “Meat and poultry processing facilities are a component of the critical infrastructure within the Food and Agriculture Sector. CDC’s Critical Infrastructure Guidance advises that critical infrastructure workers may be permitted to continue work following potential exposure to COVID-19, provided they remain asymptomatic and additional precautions are implemented to protect them and the community. In regards to this issue the DOL states “. . . because of the President’s invocation of the DPA, no part of the Joint Meat Processing Guidance should be construed to indicate that state and local authorities may direct a meat and poultry processing facility to close, to remain closed, or to operate in accordance with procedures other than those provided for in this Guidance” [emphasis added].

been given neither clarity nor consolation in navigating the confusion and chaos of continuing operations amid COVID-19.³³ The crucial matters of corporate consolidation,³⁴ conflicting interests,³⁵ and empowering workers³⁶ have been left by the wayside. When President Trump makes an assertion of power with little foundation in legal authority, our responses are critical, because we may actualize and accelerate abuse of authority by not speaking up and drawing attention to these gaps. Workers feeding America deserve to be protected, compensated, and supported through this crisis, not silenced and sacrificed through federal enabling.

Preemption

Preemption occurs when a higher level of government supersedes a lower authority. Preemption at the federal level comes from the Supremacy Clause of the Constitution. It is also a doctrine of state law that holds that a state law displaces a local law or regulation that is in the same field and is in conflict with or inconsistent with the state law.³⁷ Each state decides for itself how much power it will delegate to cities and municipalities. The existing framework, capacity, and will to flex state

³³ Michael Grabell, “What Happened When Health Officials Wanted to Close a Meatpacking Plant, but the Governor Said No,” *ProPublica*, May 7, 2020, <https://www.propublica.org/article/what-happened-when-health-officials-wanted-to-close-a-meatpacking-plant-but-the-governor-said-no>; Michael Grabell and Bernice Yeung Perlman, “Emails Reveal Chaos as Meatpacking Companies Fought Health Agencies Over COVID-19 Outbreaks in Their Plants,” *Pro Publica*, June 12, 2020, <https://www.propublica.org/article/emails-reveal-chaos-as-meatpacking-companies-fought-health-agencies-over-covid-19-outbreaks-in-their-plants>; Deborah Berkowitz, “Many Say OSHA Not Protecting Workers During COVID-19 Pandemic,” interview by Scott Simon, *Weekend Edition*, NPR, July 4, 2020, audio, <https://www.npr.org/2020/07/04/887239204/many-say-osha-not-protecting-workers-during-covid-19-pandemic>; Jeremy Redmon and John Perry, “Coronavirus pandemic disproportionately affects Hispanics in Georgia,” *Atlanta Journal-Constitution*, August 7, 2020, <https://www.ajc.com/news/coronavirus-pandemic-disproportionately-affects-hispanics-in-georgia/NTPFSOZ5FBAOPF7GHFUMWTLIOE/>.

³⁴ Jen Skerit, “Tyson Foods Helped Create the Meat Crisis It Warns Against,” *Bloomberg*, April 28, 2020, <https://www.bloomberg.com/news/articles/2020-04-29/tyson-foods-helped-create-the-meat-crisis-it-now-warns-against>; Leah Douglas and Christopher Leonard, “Is the US chicken industry cheating its farmers?” *Guardian*, August 2, 2020, <https://www.theguardian.com/environment/2019/aug/03/is-the-us-chicken-industry-cheating-its-farmers>; National Chicken Council, “Vertical Integration: What it is - and why it’s good for the chicken industry... and you,” Vertical Integration, <https://www.nationalchickencouncil.org/industry-issues/vertical-integration/>; The Guardian reports “In 2015, just five companies – Tyson Foods, Pilgrim’s Pride, Perdue, Sanderson Farms, and Koch Foods – controlled about 60 percent of the entire chicken market. The companies own and operate all the means of production, including the feed mills, slaughterhouses, trucking lines and even the hatcheries that develop the best strains of chickens.”

³⁵ Jane Mayer, “How Trump is Helping Tycoons Exploit the Pandemic,” *New Yorker*, July 20, 2020, <https://www.newyorker.com/magazine/2020/07/20/how-trump-is-helping-tycoons-exploit-the-pandemic>; Kimberly Kindy, “This foreign meat company got U.S. tax money. Now it wants to conquer America,” *Washington Post*, November 7, 2019, https://www.washingtonpost.com/politics/this-foreign-meat-company-got-us-tax-money-now-it-wants-to-conquer-america/2019/11/04/854836ae-eae5-11e9-9306-47cb0324fd44_story.html; Tamar Hallerman, “Georgia’s giant poultry industry licks chops after China trade thaw,” *Atlanta Journal Constitution*, November 15, 2020, <https://www.ajc.com/news/breaking-news/georgia-giant-poultry-industry-licks-chops-after-china-trade-thaw/EtboRcHh1IOkKsfiGIZ5bL/>.

³⁶ Anna Stansbury and Lawrence H. Summers, “The Declining Worker Power Hypothesis: An explanation for the Recent Evolution of the American Economy,” NBER Working Paper No. 27193, May 2020, <https://www.nber.org/papers/w27193>.

³⁷ ChangeLab Solutions, “Fundamentals of Preemption,” September, 2013, accessed 27 September, 2020, http://www.changelabsolutions.org/sites/default/files/Fundamentals_Preemption_FS_FINAL_20130911.pdf, 2.

power depends on the state and the set of issues, interests, and the degree of actual or de facto regulatory capture.³⁸

- Vacuum preemption occurs when a state legislature uses their preemption authority to create regulatory vacuums where cities are forbidden from regulating in a policy space without the state setting the standards.³⁹
- Floor preemption can be observed when the state creates a minimum regulatory standard that acts as a lowest common denominator, while states retain the discretion to enact their own self-determined supplemental policies and protections.⁴⁰
- Ceiling preemption is where a state bars cities from enacting any additional or varying requirements beyond a certain policy mandate.⁴¹
- States can also use preemption punitively by using their authority to set distribution of state resources through the budget, as well as fining authority, thereby coercing dissenting or divergent municipal policies.
- Preemption can be expressed or implied to matters as broad as entire regulatory fields and as small as single issues.⁴²

In Georgia, Governor Brian Kemp has steadfastly avoided enacting a state face mask mandate.⁴³ State level indecision, dispute, and delay – enabled through executive power – resulted in a de facto situation of vacuum preemption. Cities facing increasing infections were and are forced to take affirmative steps to address local needs.⁴⁴ When local authorities in at least 14 municipalities across the state of Georgia required face masks to be worn in public and began enforcing that ordinance, the Governor acted to clarify his previous Emergency Order with another

³⁸ ChangeLab Solutions, “Fundamentals of Preemption,” 2; Clayton P. Gillette, “Preemption and Entrenchment of the State/Local Divide,” NYU Law and Economics Research Paper No. 20-41, April 19, 2020; Richard Briffault, “The Challenge of the New Preemption,” *Columbia Public Law Research Paper* 70, no. 14-580 (2018): 1995; Erin Adele Scharff, “Hyper Preemption: A Reordering of the State-Local Relationship,” *Georgetown Law Journal* 106, (2018): 1469; Richard Briffault, “Punitive Preemption: An Unprecedented Attack on Local Democracy,” Local Solutions Support Center, White Paper, July 2018, <https://www.abetterbalance.org/resources/punitive-preemption-white-paper/>.

³⁹ ChangeLab Solutions, “Fundamentals of Preemption,” 3.

⁴⁰ ChangeLab Solutions, “Fundamentals of Preemption,” 2.

⁴¹ ChangeLab Solutions, “Fundamentals of Preemption,” 3.

⁴² ChangeLab Solutions, “Fundamentals of Preemption,” 4.

⁴³ See Greg Bluestein, “Kemp rules out statewide order requiring masks at Georgia schools,” *Atlanta Journal-Constitution*, August 8, 2020, <https://www.ajc.com/politics/politics-blog/georgia-governor-rules-out-requiring-masks-at-public-schools/2ONUNZ3FJJAP7KYIJDPLVT3ZE/>.

⁴⁴ Greg Bluestein and Ben Brasch, “A Growing Number of Georgia Cities Require Masks over Kemp’s Objection,” *Atlanta Journal-Constitution*, July 7, 2020, <https://www.ajc.com/news/state--regional-govt--politics/growing-number-georgia-cities-require-masks-over-kemp-objection/rLK5RODzq1EVJiybeIi2H/>; See also Georgia Department of Economic Development, “Gov. Kemp Launches “Safety Promise” Campaign to Urge Georgians to Heed Public Health Guidance,” July 6, 2020, <https://www.georgia.org/newsroom/press-releases/gov-kemp-launches-safety-promise-campaign-urge-georgians-heed-public-health>. Note the belated push for business and public mask usage.

executive order on the 17th of July.⁴⁵ The order sought to preempt municipal authorities from enforcing the local mandate in two ways.

Generally, the order asserted that “orders, rules, and regulations promulgated by the county and municipal governments may be no more or less restrictive” than the terms of the executive order, and may in no way be inconsistent.⁴⁶ Specifically, the order explicitly suspended any and all rules and regulations requiring people to wear face masks in public any more restrictive than the executive order’s “strong encouragement as practicable” standard.⁴⁷ The order as written could even prohibit local authorities from requiring masks at the Atlanta airport, one of the busiest airports in the world. This was despite the fact that Georgia law provides that the “political subdivisions of the state...are empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency management purposes and to supplement the carrying out of [the emergency management chapter of the Georgia Code], but not inconsistent with any orders, rules, or regulations, promulgated by the Governor.”⁴⁸ This textualist reading can only lead to an obtuse conclusion – how can cities and counties be explicitly enabled to supplement policy, yet do so “in no way inconsistent” (i.e. more or less stringent) with these orders? Given that the Governor has strongly encouraged masks, would not the exercise of the supplementation authority under O.C.G.A. §38-3-28(a) be consistent with the goal of mask usage and understanding?⁴⁹

Still, the Governor doubled down on that assertion of authority by filing suit against the mayor of Atlanta personally.⁵⁰ By enacting and enforcing rules more restrictive than those imposed by the state, Atlanta Mayor Keisha Bottoms had allegedly exceeded her authority.⁵¹ The mayor responded by asserting that the local order would stand and remain in force as an urging rather than a requirement.⁵² While the Governor’s new order is an invocation of ceiling preemption, his suit is punitive, diverting administrative resources when time and talent are of the essence in

⁴⁵ Office of the Governor, Georgia, “Providing additional guidance for Empowering a Healthy Georgia in response to COVID-19,” Executive Orders, July 15th, 2020, <https://gov.georgia.gov/executive-action/executive-orders/2020-executive-orders>.

⁴⁶ Office of the Governor, Georgia, “Providing additional guidance,” 32.

⁴⁷ Office of the Governor, Georgia, “Providing additional guidance,” 32.

⁴⁸ O.C.G.A. §38-3-28(a).

⁴⁹ See GA. Exec. Order Nos. 05.12.20.02 (pg. 2); 05.28.20.02 (pg. 2); 06.11.20.01 (pg. 2); 06.29.20.02 (pg. 2); 07.15.20.01 (pg. 2).

⁵⁰ Vanessa Romo, “Georgia Gov. Brian Kemp Sues Atlanta Mayor Keisha Lance Bottoms Over Face Mask Order,” *NPR*, July 16, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/07/16/892109883/georgia-gov-brian-kemp-sues-atlanta-mayor-keisha-lance-bottoms-over-face-mask-or>. The relevant specific powers granted to the Governor can be found in paragraphs (c) and (d) of O.C.G.A. §38-3-51, but none of those emergency powers wielded by the Governor allow him to preempt local governments as asserted in GA. Exec. Order No. 07.15.20.01. O.C.G.A. §38-3-51(c)(4) is a catch-all subject to *promoting* health and safety, which lesser restrictions do not advance when his own words encourage the action, O.C.G.A. §38-3-51(d)(1) explicitly enables emergency suspension authority only as it applies to “state business” and “state agencies.”

⁵¹ Romo, “Georgia Gov. Brian Kemp Sues Atlanta.” See *City of Atlanta v. Associated Builders & Contractors of Georgia, Inc.*, 240 Ga. 655, 657, 242 S.E.2d 139, 141 (1978). The Georgia Supreme Court has previously held that the “courts can not strike down legislation, whether State or municipal, unless it plainly and palpably violates some provision of the Federal or State constitution, or municipal ordinances unless enacted without power of the city to pass them, or in contravention of State statutes or public policy.”

⁵² Romo, “Georgia Gov. Brian Kemp Sues Atlanta.”

engaging with the crisis. After two judges recused themselves from presiding over the governor's requested emergency hearing, both parties were ordered to mediation.⁵³

Cities and counties wield certain rights of self-determination through home rule powers consistent with the Georgia Constitution.⁵⁴ Attempting to control what municipalities can require on their "public property" would be an abrogation of the home rule authority and a violation of the city's power enabled by that authority.⁵⁵ Preemption is a tool to resolve conflict whose power demands responsibility and reasonability. Preemption is legitimate when based on legislative acts and intent, not through an executive usurpation of that legislature and the localities it empowers.⁵⁶ There should be a heightened burden on the state when displacing local democratically elected power, and greater organized engagement in response.

Corporate Liability Regimes

After identifying the corporate actors and the legal ambiguity around who can enforce safety standards in the wake of the pandemic, the remaining question was *how* corporate actors could legally justify continued operation of processing facilities during the pandemic. Remaining open and operating at "pre-COVID levels" posed a risk to workers' health and safety, steering our research towards understanding the corporate liability framework and investigating the legal precedent for worker protections.⁵⁷ Our research revealed a history of worker health and safety violations, legal cases involving safety inspections and workplace discrimination, and the granting of legal waivers to facilities. Together these factors suggest that poultry industry leaders have calculated that the price of protecting processing workers is higher than the price of paying violation fees, litigating accountability standards, and stonewalling safety inspections. Furthermore, corporations work in tandem with federal agencies to undermine agency safety standards through waiver programs. This behavior directly contributed to the crisis that emerged during the COVID-19 pandemic.

Records from the OSHA database reveal that Pilgrim's Pride and Mar-Jac Poultry are serial workplace safety violators. Mar-Jac Poultry's Gainesville processing facility first appeared in the OSHA online records in 1992, and since then OSHA identified 136 safety violations and fined the corporation \$505,000 at the site. Pilgrim's Pride however, only has three violations on-site violations in the OSHA database, despite incurring a combined \$328,000 in OSHA fines for in 2016 alone.⁵⁸ One has to be critical of taking these statistics for Pilgrim's Pride at face value. One explanation for the discrepancy is that Pilgrim's Pride, as a subsidiary of JBS and itself a

⁵³ Angelina Velasquez, "Gov. Kemp withdraws emergency lawsuit hearing against Mayor Bottoms, Atlanta City Council," *CBS 46*, July 27, 2020, https://www.cbs46.com/news/gov-kemp-withdraws-emergency-lawsuit-hearing-against-mayor-bottoms-atlanta-city-council/article_c08feb60-d079-11ea-9c3d-0f05e7a44489.html.

⁵⁴ Georgia State Senate, "Constitution of the State of Georgia," amended January 1, 2017, <http://www.senate.ga.gov/Documents/gaconstitution.pdf>. See specifically GA. Const. art. IX, § 2, Paras. I, II.

⁵⁵ Atlanta, Georgia, Municipal Charter §1-102(c)(14).

⁵⁶ Gillette, "Preemption and Entrenchment of the State/Local Divide."

⁵⁷ Richards, "Industry: Georgia chicken plant production unabated."

⁵⁸ Occupational Safety and Health Administration, "Establishment Search," US Department of Labor, accessed July 2020, <https://www.osha.gov/pls/imis/establishment.html>. OSHA violation totals for Mar-Jac Poultry and Pilgrim's Pride in Gainesville were retrieved through a search query on OSHA's online database.

nationwide American conglomerate, is able to shield its individual record through attribution to JBS international, JBS USA, or other Pilgrim's Pride national actors.

A similar pattern emerges from our investigation into the legal history of the two worksites. Mar-Jac Poultry in Gainesville settled two major legal cases in 2018 alone. The corporation settled a workplace discrimination case in which they agreed to provide back-pay to their immigrant workers.⁵⁹ They also won a case against OSHA in the 11th Circuit U.S. Court of Appeals. In that case, Mar-Jac successfully defended their decision to refuse to allow an inspector to walk through their facility and inspect a burn victim's work station, unless the inspector wore a box on her head.⁶⁰ The precedent set by this case may limit OSHA's ability to expand workplace investigations even when violations are observed in plain sight.⁶¹ Notably, Mar-Jac headquarters are located in Gainesville and the city's worksite is its flagship processing center, while the same is not true of Pilgrim's Pride.

While Pilgrim's Pride faces similar legal battles elsewhere, the low profile of its Gainesville worksite suggests another common theme: workplace fines as operating expenses. As the larger firm, Pilgrim's Pride and its parent companies may be able to absorb fines without pursuing protracted legal battles and notably, without making substantive changes to the way they treat or protect workers. Instead, major firms may lead political action to eliminate the underlying rules. One clear example of this strategy that relates directly to the COVID-19 pandemic is the USDA Food Safety and Inspection Service's line speed waiver program.⁶²

Poultry processing lines rank as the sixth most dangerous workplace according to OSHA statistics, and workers cite the intense rate of production as the primary cause.⁶³ Despite the obvious risk to workers, intensifying production is the final remaining solution for a saturated poultry industry seeking to maximize profit margins.⁶⁴ The USDA line speed waiver program allows poultry processing facilities to increase production from 145 birds per minute (BPM) to 170 BPM. Worksites that increase line speeds place workers even closer together on the processing line, already often two feet apart and facing another worker.⁶⁵ While the waiver program was auspiciously created for well-behaved corporations to pursue new best practices, the reality is that profit-driven corporations pursuing the waivers are the same serial safety offenders. All fifteen of the waivers issued in 2020 went to worksites with records of severe injuries, and eight had documented COVID-19 outbreaks prior to issuance.⁶⁶ Mar-Jac Poultry and Pilgrim's Pride in

⁵⁹ US Department of Justice, "Justice Department Settles Immigration-Related Discrimination Claim Against Georgia Poultry Processing Company," Office of Public Affairs, October 9, 2018, <https://www.justice.gov/opa/pr/justice-department-settles-immigration-related-discrimination-claim-against-georgia-poultry>.

⁶⁰ Matt Kempner, "OSHA court case shows limits on safety inspections," *Atlanta Journal-Constitution*, 23 October 2018, <https://www.ajc.com/business/georgia-case-shows-limits-workplace-safety-inspections/>.

⁶¹ Kempner, "OSHA court case shows limits."

⁶² USDA Food Safety and Inspection Service, "Salmonella Initiative Program (SIP) Participants Table," last updated June 2020, https://www.fsis.usda.gov/wps/wcm/connect/188bf583-45c9-4837-9205-37e0eb1ba243/Waiver_Table.pdf?MOD=AJPERES.

⁶³ Nicole Erwin, "Too Fast For Safety? Poultry Industry Wants To Speed Up The Slaughter Line," *NPR*, October 23, 2017, <https://www.wkms.org/post/speedy-decision-are-poultry-processors-pushing-safety-limits#stream/0>.

⁶⁴ Jane Mayer, "How Trump is helping tycoons exploit the pandemic," *New Yorker*, 13 July 2020, <https://www.newyorker.com/magazine/2020/07/20/how-trump-is-helping-tycoons-exploit-the-pandemic>.

⁶⁵ Mayer, "How Trump is helping tycoons."

⁶⁶ Shayla Thompson and Deborah Berkowitz, "USDA Allows Poultry Plants to Raise Line Speeds, Exacerbating Risk of COVID-19 Outbreaks and Injury," *National Employment Law Project*, June 17, 2020,

Gainesville both have waivers, issued or renewed in 2019, within months of violations previously cited in the OSHA database.

Our research led us to believe that the poultry industry in Gainesville is pursuing marginal profits in chicken processing without regard to, and often despite, issues with worker safety. It is therefore no surprise that not a single poultry processing facility in the city was reported to have shut down thus far in 2020. At the height of the first wave of COVID-19, in April 2020, Mike Giles of the George Poultry Federation stated that production levels remained “comparable to pre COVID-19 levels.”⁶⁷ Meanwhile, Mar-Jac Poultry (the 15th largest poultry producer in the country) reportedly received \$5-10 million in small business support from the CARES Act Paycheck Protection Program.⁶⁸

Our research furthermore concluded that federal agencies are not effectively protecting poultry industry workers through existing accountability regimes. Alternative legal standards may be one path for legal recourse for workers in the short-term. The Food Chain Workers Alliance, among a contingency of worker rights organizations, have filed a complaint to the USDA claiming that poultry processing corporations are in violation of the Title VI of the Civil Rights Act of 1964.⁶⁹ The complaint is an indictment of the industry as a whole, but specifically cites Pilgrim’s Pride and Tyson Foods. The workers groups argue that continued operation, along with the failure to implement CDC guidelines for social distancing (and citing line speeds as the incentive), placed workers at risk who are disproportionately Black, Indigenous, people of color, as well as immigrant populations.⁷⁰

Conclusion: Possible Pathways for Intervention

In thinking about the most likely areas for intervention and reform to address the power imbalances we have identified at various levels, we considered both traditional and novel approaches recommended by current activists and scholars in the field. Traditional approaches tend to emphasize oversight at the administrative level (i.e., from OSHA and the USDA, or state-equivalent agencies). Traditional approaches also focus on labor laws such as changing “right-to-work” policies that undermine union organizing and improving worker conditions, sick pay, and other benefits. To increase worker rights and power there needs to be a shift in the legislation being passed related to the poultry industry. Owner friendly legislation stifles worker rights, power, and safety, and lessens the level of liability felt by owners who are abusing their power and not being held accountable.

<https://www.nelp.org/publication/usda-allows-poultry-plants-raise-line-speeds-exacerbating-risk-covid-19-outbreaks-injury/>.

⁶⁷ Richards, “Industry: Georgia chicken plant production unabated.”

⁶⁸ Johnny Edwards, “Georgia companies accused of federal violations got COVID relief loans,” *Atlanta Journal-Constitution*. July 8, 2020, <https://www.ajc.com/news/national-govt--politics/georgia-companies-accused-federal-violations-got-covid-relief-loans/NURlJBgiuJxZJIghFkqu2M/>.

⁶⁹ Food Chain Workers Alliance, “FCWA joins civil rights complaint challenging meat processing corporation,” July 14, 2020, <http://foodchainworkers.org/2020/07/fcwa-joins-civil-rights-complaint-challenging-meat-processing-corporations/>.

⁷⁰ Food Chain Workers Alliance, “FCWA joins civil rights complaint.”

We believe these to be important elements in fixing many of the workplace conditions that continue to keep poultry processing workers at work despite the growing outbreaks of COVID-19 in plants across the country. However, these traditional approaches tend to rely on systems that have already failed to address systemic issues – issues that have been further highlighted by the effects of the COVID-19 pandemic. In fact, many of these systems are designed and perpetuated to keep workers in a position of vulnerability. Thus, we propose potential pathways in two categories: 1) plant and community-level reform; and 2) systemic reform.

Plant and Community Level Reforms

At the plant and community-level, both immediate and long-term interventions need to take place that can hold corporations accountable and encourage federal enforcement. These proposed reforms include:

- Establish a comprehensive Emergency Temporary Standard that:
 - Ends line speed waivers;
 - Enforces PPE standards by OSHA;
 - Enforces hazard pay;
 - Includes undocumented workers;
 - Enables workers to leave or call in sick.
- Expand scope of corporate legal liability to include:
 - Legal presumption that workers who contract COVID-19 were exposed at work;
 - Protections for family and household members;
 - Title VI claims for disparate impacts of keeping poultry plants open on immigrant workers and workers of color.
- Emphasize local power over setting baselines for poultry plants and making decisions over whether plants stay open and under what conditions:
 - Demand Georgia Governor Brian Kemp desist in exercising ceiling preemption and instead use floor preemption. This would allow local authorities the flexibility they need to respond to local conditions with supplemental policies as entitled under state law;
 - Lobby and litigate against the use of coercive punitive preemption.
- Share food worker stories to inform consumers of labor abuses and the human cost of food.

Systemic Reforms

In addition to more pressing measures to ensure the health and safety of poultry processing workers in the COVID-19 pandemic, longer-term, systemic reforms are required to remedy the vast inequalities among workers that have been further highlighted by this crisis. Proposed reforms include:

- Litigation Priorities:
 - Breaking down large market shares, target vertically integrated supply chains in poultry industry using antitrust law;
 - Discrimination and disparate impact cases;
 - Labor intimidation and retaliation for labor organizing.

- State and Local Policy Priorities:
 - Sanctuary policies for undocumented workers in high-exploitation markets;
 - Public investment in communities facing monopsonistic labor markets;
 - Food procurement systems that certify fair labor practices;
 - Subsidize local small and medium production and processing of meat and poultry.