

Flexible Workers, Fissured Workplaces:  
Cultural Exchange for Hire in an Era of Precarious Labor

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## Abstract

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Flexible Workers, Fissured Workplaces: Cultural Exchange for Hire in an Era of Precarious Labor

Thesis directed by Associate Professor Jennifer Bair

Since the mid-1990s, the J-1 Summer Work Travel (SWT) program, a once obscure U.S. cultural exchange visa category, has quadrupled in size. While many J-1 visa holders are in the United States to study or conduct research, the primary activity of SWT participants is low-wage labor. In recent years the program has come under attack for alleged labor abuses and unchecked growth. My dissertation bridges scholarly discourse on immigration, labor studies, and citizenship to closely examine the SWT program's ascendancy and attendant controversy. Specifically, I ask: why has the program grown so precipitously in a little over two decades? And, what—if anything—is the relationship between the proliferation of the SWT program and broader trends in immigration policy? To answer these questions, I employed a mix-methods approach of archival research, ethnography, and quantitative analysis of demographic and labor market information for more than 94,000 SWT participants.

Contrary to most media portrayals, my archival research exposes persistent concerns dating back decades about whether SWT participants' labor market participation violated the SWT program's cultural intent and harmed workers—concerns that remain unresolved today. My dissertation likewise reveals how the SWT program articulates workplace fissuring, i.e. the changing organization of work toward more contingent, arms-length employer-employee relations. I empirically document SWT participants' predominant placement in industries like

hotels and restaurants where fissuring is prevalent. Moreover, I argue that the SWT program further attenuates fissuring by placing cultural sponsors between workers and their employers, an arrangement that eliminates employers' typical obligations to temporary foreign workers and discourages participants from exercising their labor rights. Because of these conditions, SWT participants embody a privileged yet vulnerable class of migrants: while their socio-economic position as middle-class students affords them benefits of working and traveling abroad, they simultaneously face a variety of hardships due to their insecure immigration status and lack of worker protections. The novel contribution of this dissertation is to argue that outmoded workplace laws *and* the manipulation of quasi-official immigration categories act in concert to deprive workers of their rights. Based on my findings, I call for a more expansive theory of global citizenship, one which takes into account the subjectivities of a sizable group of temporary foreign workers who have been rendered largely invisible at a time when immigration reform represents a hot-button issue.

*Dedication*

This dissertation is dedicated to Elizabeth Mauldin, whose kindness and passionate defense of migrant worker rights will be sorely missed.

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## CHAPTER ONE

### INTRODUCTION

#### **I. Introduction**

On August 17, 2011, nearly two hundred foreign cultural exchange students working for the summer at a Hershey packing plant in Pennsylvania walked off the job in protest. One of the protesters, Harika Ozer, a medical student from Istanbul, reflected on her situation, “We are supposed to be here for cultural exchange and education, but we are just cheap laborers” (Preston 2011). Harika and other striking cultural exchange students had come to the United States as part of the J-1 Summer Work Travel (SWT) program. The SWT program originated under the 1961 U.S. Mutual Educational and Cultural Exchange Act (MECEA), also known as the Fulbright-Hays Act. It was originally conceived to offer international participants a chance to experience U.S. culture while offsetting travel and basic living expenses with short-term, incidental employment.

Instead, the Hershey workers claimed that they were being subjected to back-breaking work at a packing facility that was a subcontractor to the iconic candy company. They complained of fraud in recruitment, abusive working conditions, and interference with the right to freely choose their workplace (Breslin 2011). Several students interviewed by reporters and human rights monitors said that when they reached out to their cultural sponsor to report problems on the job and price gouging on their rent, their calls were ignored. Or, they were told by their sponsor that there would be consequences for complaining about their SWT experiences (Breslin 2011).

Until the Hershey incident, the SWT program scarcely registered in the popular imagination. But in the years since, it has become fodder among politicians like Senator Bernie Sanders and President Donald Trump, who claim the program undermines young American workers by flooding the labor market with international youth who compete for the same jobs (Sanders 2013; Associated Press 2016). Presidential candidate Trump vowed that, if elected, he would end employment-based J-1 cultural exchange programs like the SWT visa. On the campaign trail, he proposed that the “J-1 visa jobs program for foreign youth” be terminated and “replaced with a résumé bank for inner city youth provided to all corporate subscribers to the J-1 visa program” (Associated Press 2016). Journalists noted the irony that, despite Trump’s professed opposition to the SWT visa, Trump hotels and resorts routinely use the program to staff low-wage positions. When pressed by a reporter, Trump replied that a businessman’s goal is to “be more profitable than your competitors who will seek every advantage in labor costs, overhead and taxes. The job of a president is to represent every single working American. We shouldn’t have [the J-1 visa]. Very, very bad for workers.”

Days after Trump’s inauguration, a draft executive order entitled “Protecting American Jobs and Workers” was leaked to the *Washington Post* (Hauslohner and Ross 2017). In it, the Trump administration declared it would prioritize the jobs, wages, and well-being of American workers by taking a series of steps to critically assess, reform, and—where appropriate—eliminate six specific categories of temporary visas, including the J-1 SWT program (Bremberg 2017). The draft order made explicit reference to the SWT employment-based cultural exchange category while neglecting to address the controversial H-2B program. The H-2B program is a formally recognized visa category used by employers to fill service sector and other manual labor jobs. In response, J-1 employers sent more than 100,000 messages to Congress defending

the program. This resulted in an amendment to the appropriations bill for the government's 2018 spending that includes bipartisan-supported language that any changes to the SWT program must be authorized by Congress (Shuman: 2018).

Unlike the J-1 SWT, the H-2A and H-2B visas are formally constituted as temporary worker programs for agricultural and non-agricultural laborers respectively.<sup>1</sup> They are administered by the Department of Labor (DoL). Employers must directly petition the DoL for permission to hire each of their H-2A and H-2B workers only after proving that they have attempted to recruit U.S. workers first. The H-2A and H-2B were both established in 1986 by the Immigration Reform Control Act.

In contrast, the J-1 SWT program is a United States government-sponsored cultural exchange visa managed by the Department of State (DoS). Over time, the work aspect of the SWT program has transformed from an incidental feature to an essential component—especially from the perspective of employers. Likewise, the SWT program has experienced remarkable growth during the past two decades, increasing from fewer than 20,000 foreign college student participants in 1996 to a record level of 150,000 participants in 2008 (see Figure 3.2). As its popularity has grown, so too has the debate surrounding it. A growing chorus of immigrant advocates and protectionists contend that not only does the SWT program lack a meaningful cultural component, it produces a pool of inexpensive migrant labor that hurts foreign and domestic workers alike (Kammer 2011; International Labor Recruitment Working Group 2011).

My dissertation examines the relationships between the SWT program's recent ascendancy and transformation, changes in U.S. policies of managed migration, and the

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<sup>1</sup> The J-1, H-2A, and H-2B visas have been assigned an alphabetical letter based on their placement in the temporary, "non-immigrant" visa section of the Immigration Nationality Act.

changing social contract between employers and workers. My aim is to demonstrate how labor-market restructuring and fundamental alterations in the world of work drive demand for, and stir controversy around, temporary migrant workers. I will argue that the SWT program, as it operates today, both reflects broader trends in managed migration and embodies the model of flexible migrant labor many employers now demand.

Through an in-depth study of the J-1 SWT program, I both draw from and contribute to scholarship in the areas of migration, the sociology of work/labor market studies, and citizenship. Both labor and migration studies suggest an implicit relationship between labor market restructuring and the increase in demand for temporary migrant labor. The SWT case study crystallizes this connection by empirically documenting the sorts of new, flexible work structures into which J-1s can be slotted, thereby illuminating the increasingly incoherent and employer-influenced nature of U.S. non-immigrant migration policy in the context of changing workplace organization.

## **II. Overview of the SWT Program**

The initial purpose of the Fulbright-Hays legislation that created the SWT program was to establish a cohesive people-to-people diplomacy policy in the context of the Cold War. A key mechanism for achieving this U.S. government goal was the creation of the J-1 Exchange Visitor Visa Program as a means to facilitate a variety of cultural exchanges. Examples of J-1 visa categories include the Fulbright program for young scholars and the high school exchange program. Whereas the beginning of the program emphasized scholarship, cultural enrichment, and reciprocal exchanges between nations, over time the balance has shifted toward employment-based changes. In recent years, the SWT accounted for 40% of all J-1 visa holders (Costa 2011:11).



Today there are thirteen categories of the J-1. Five of those categories—the SWT, au pair, camp counselor, intern, and trainee— are employment-based and primarily involve lower-skilled labor activities. These employment-based categories fall under the purview of the DoS’s Bureau of Educational and Cultural Affairs’ (ECA) office of Private Sector Exchange. To qualify for the SWT visa, an applicant must be enrolled full-time in an accredited foreign post-secondary educational institution, have completed one semester of study, and be proficient in English. SWT participants may stay in the United States for up to four months during their “summer” recess from studies. While the DoS does not make labor market information regarding the SWT program publicly available, data I obtained through a Freedom of Information Act request confirm that participants work primarily in hotels, amusement parks, restaurants, grocery stores, and other retail outlets (I provide an in-depth analysis of SWT worksites in Chapter 5).

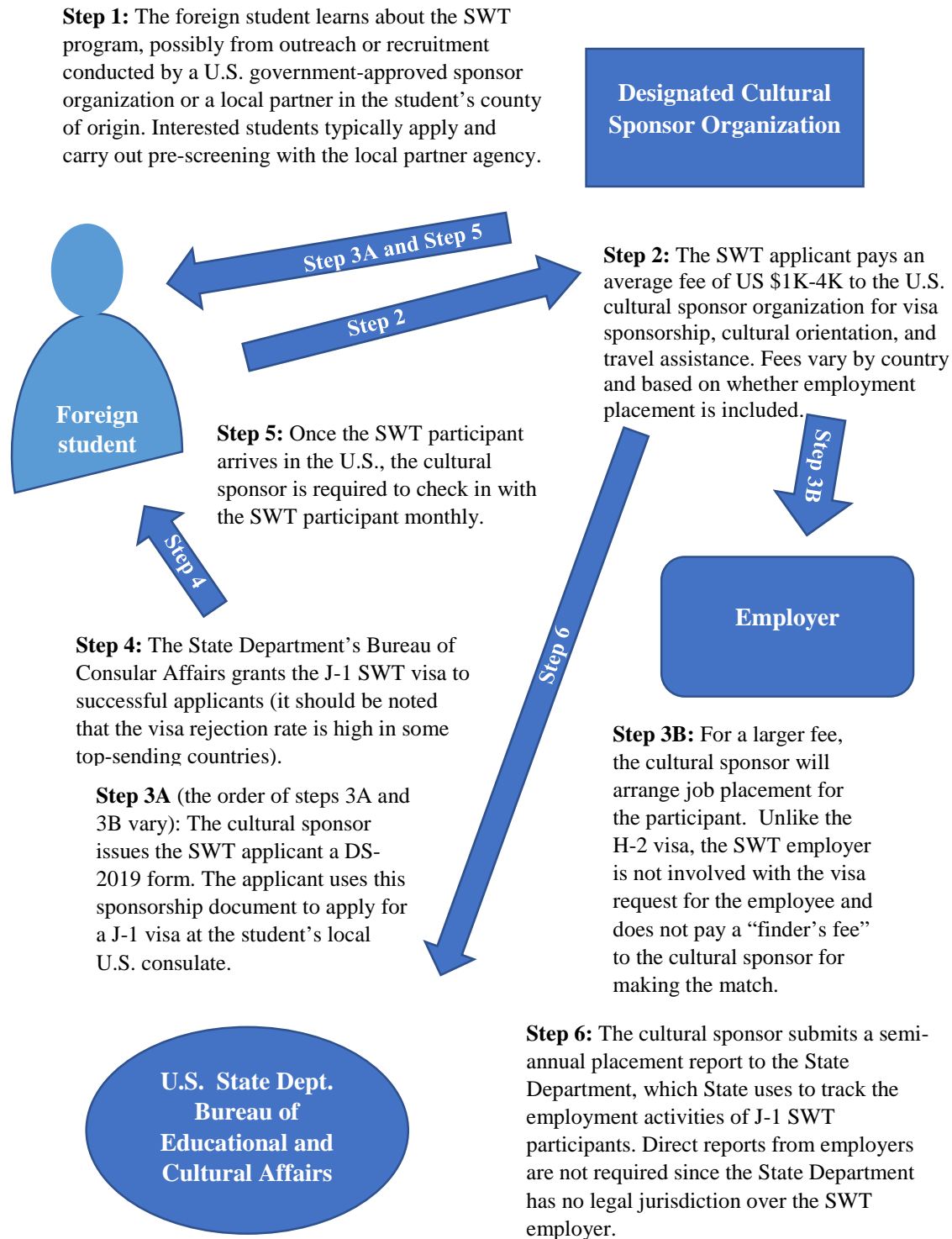
International college students typically learn about the SWT program on the internet or through local, third-party recruiting agencies that work on behalf of DoS-designated cultural sponsor organizations. International youth keen to travel abroad often begin by contracting with local, third-party companies who heavily recruit participants in their home country, especially in their university campus settings. Those who decide to make the investment pay fees to these on-the-ground business partners of U.S. based cultural-sponsor organizations to obtain a one-page immigration document called as DS-2019. Third party, SWT foreign recruiter agencies are not directly regulated by the DoS but instead are monitored indirectly by U.S.-based cultural sponsors. With the DS-2019 immigration document in hand, participants need only successfully pass their Consular appointment interview to obtain the highly coveted J-1 visa.

Of the 30 participants I interviewed, the average investment in the SWT experience before arriving to the United States (including cultural sponsor charges, consular fees, and plane ticket) was \$2,500.00, but fees ranged widely: Thai participants I spoke to paid roughly \$4,000 while Eastern European SWT participants from places like Russia and Poland often paid between \$1,600 and \$2,000.<sup>2</sup> Such fees represent approximately 6%, 16% and 21% of the annual gross national per capita income in the top three sending countries: Ireland, Bulgaria, and China respectively. Figure 1.1 provides a flowchart of the SWT recruitment process and the key stakeholders involved in the program.

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<sup>2</sup> The average SWT participant expense per person I calculated based on my interviews is close to the estimate provided by the research group, Eureka Facts, which was contracted by the cultural exchange industry to carry out an analysis of labor market impacts and customer satisfaction of the SWT program. Eureka Facts collected cultural sponsor data on 2,800 participants who took part in the program between the program years of 2012 and 2016. Their estimate of average fees paid by SWT participants is \$2,700 per student, including all fees and air tickets.

**Figure 1.1: SWT Participant Recruitment and Placement Flowchart**



While charging students significant fees for the SWT experience, U.S.-based cultural sponsors do not typically charge employers for whom they supply an SWT workforce. On the contrary, many U.S. sponsors foster business relationships with employers with large job orders by paying for their travel abroad to select SWT workers at job fairs, a practice that sponsors and employers I spoke with confirmed (Kammer 2011). Moreover, SWT employers bear little to no responsibility for the travel or maintenance costs of participants who work for them while in the United States. What is more, as the DoS clearly states in its regulations, it has no direct jurisdiction over SWT employers (DoS 2012: 27,594).

For much of the SWT program's history, most participants came from Western Europe. After the collapse of the Soviet bloc in the early 1990s, there was a pronounced shift towards Central and Eastern European participants. However, a sizable number of SWT participants today come from developing countries including China, Thailand, and Peru (see Table 1.1). Moreover, a greater share of women than men participate in the program (55% compared to 45%), while participants included in the 2015 cohort reportedly range in age from roughly 17 to 29, with an average age of 21.2.<sup>3</sup>

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<sup>3</sup>Data I obtained for program year 2015 does include participants as young as 16 and as old as 57.

<b>Table 1.1: 2015 Top Ten SWT Countries of Origin</b>	
<b>Country</b>	<b>Number of SWT Participants</b>
Ireland	7,001
Bulgaria	5,974
China	5,797
Romania	5,371
Ukraine	5,348
Jamaica	5,324
Turkey	4,874
Peru	4,871
Philippines	3,810
Thailand	3,783

*Source: U.S. Department of State, derived from data I obtained through a Freedom of Information Act (FOIA) request.*

By and large, SWT participants differ demographically from those entering the United States under the formal temporary migrant H-2 program. While the DoL does not publicly release data on the age and gender of H-2A and H-2B workers, Justice in Motion, a non-profit migrant worker advocacy organization, obtained government data indicating that, in 2010, 96% of H-2A visa holders and 86% of H-2B holders were male. The average age of H-2 workers was 32. And, according to 2015 DoS data on the nationality of H-2 visa holders, Mexico supplied 94% of H-2A workers and 73% of H-2B workers, while Jamaica was the second top- sending country for H-2Bs, accounting for 10% of the H-2B workforce. In short, while the demographic profile of the SWT program has shifted in recent years, participants are on average whiter, more educated, and more likely to be female than their H-2 counterparts. Moreover, the legal framework of the cultural exchange-based SWT visa yields SWT workers cheaper and less bureaucratically

burdensome for employers to recruit and employ than H-2 workers—a reality I explore in more depth in Chapter 5.

### **III. The Theoretical Relevance of the J-1 SWT Program**

My research on the J-1 SWT program is situated theoretically at the intersection of the sociology of work/labor market studies and immigration, specifically temporary- managed migration. I draw parallels between changes in the SWT program and managed migration by bringing together the literatures on migration with the sociology of work and labor market studies. In so doing, I am able to show how changes to the SWT program and managed labor migration more broadly are collectively shaped by labor market restructuring. I also incorporate studies of cultural exchange workers and citizenship theory to evaluate the lived experiences of SWT participants. I suggest that citizenship scholars can gain insights from this underexplored group of temporary transnationals whose claims to basic worker rights are inextricably linked to larger structural forces, such as political struggles over temporary migrant labor policy and pressures to minimize labor costs. Through my research I find that as global citizens, many SWT participants experience vulnerability despite their privilege as upwardly-mobile, university students who possess the assets to travel abroad.

#### *Scholarship on Managed Migration*

I engage with the literature on the origins, ebbs and flows of temporary migrant labor policy over the past century to underscore how the SWT program's evolution fits within a broader story of immigration policy change (Castles 2006, Martin 2006, Smart 2014). Specifically, scholarship that compares current temporary migration policy with previous eras of guestworker programs helps explain the growth of employer reliance on flexible temporary labor visas over the past two decades. It likewise lends critical insights into the timing and form of

the SWT visa's transformation over time, whether it was originally intended for addressing temporary migrant labor needs or not.

Temporary migrant labor scholars cite interrelated influences on labor markets as responsible for advanced economies' return to and increased reliance upon guest worker programs: 1) growing and widespread use of temporary and subcontracted workers; 2) "contradictory state positions toward labor unions and other worker rights initiatives and toward employers, fluctuating within political regimes and from one regime to the next"; and, 3) "the penetration of global economic processes into local production settings" (Griffith 2014: xvi). My research points to similar factors animating the growth of the SWT program.

Furthermore, migration scholars have delineated the latest resurgence of temporary migrant labor policies, in part, by tracing and theorizing the phases of managed migration that have come before it. There have been approximately three generations of such policies: the first generation commenced at the end of the 19<sup>th</sup> century and ended with the Great Depression. According to the historian Cindy Hahamovitch, this generation was the first modern form of migrant labor; it can be distinguished from other forms of labor migration, such as indentured servants and migrant contract laborers, based on the formalization of the state's role. Whereas before the mid-19<sup>th</sup> century there were minimal immigration restrictions and employers primarily facilitated the migration of their workers, by century's end the state was in the "business of recruiting *and* policing immigrants" (emphasis hers) (2011: 34). As Hahamovitch explains, the first generation of modern migrant labor schemes marked the beginning of "state-brokered compromises between employers' demand for labor and nativists' demands for restriction" (2011: 30). This period was also characterized by liberal nations' imposition of strict limits on the length of guestworker stays and state measures to distinguish the rights and privileges of

migrant laborers in comparison to citizens (2011: 34-38). This first phase is significant because it is during this period that the state institutionalized a clear dichotomy between citizens and migrant laborers, with an emphasis on enforcing migrant workers' *impermanency* and imposing clear restrictions on their claim to rights and benefits.

The second generation began after World War II and concluded by the end of the 1960s. This era was characterized by large-scale, state-managed programs with a unitary legal framework within a limited set of industries, namely agriculture and industrial trades (Castles 1984; Calavita 1992; Ngai 2004). By the 1960s and 1970s, the second generation guestworker policies fell out of favor as the world economy began to falter and policymakers acknowledged several unintended consequences of the second-era U.S. Bracero and the German *Gastarbeiter* guestworker programs, including wanton abuse of migrant workers, unanticipated long-term settlement, and entrenchment of social networks producing unauthorized migrant flows (Zatz 1993; Massey, Durand, Malone: 2002). Thus, the second generation of migrant worker programs is typified by unwieldy, state-managed programs in key industries that proved to be too large and ultimately too politically contentious to manage (Calavita 1992).

The third generation emerged in the early 1990s and continues today (Castles 2006; Martin 2006; Hahamovitch 2011). Researchers note that in the current era of managed migration policy, there has been a proliferation of small-scale programs for a growing array of industries with disparate structures and regulations. Third-generation guestworker programs have also brought an increase in employer involvement in the creation and modification of temporary migrant labor policy and a shift in day-to-day management of temporary, managed migration policy from the state to the private sector. Overall, the factors that distinguish today's managed migration from earlier eras include the highly fractured nature of contemporary



schemes and the extensive privatization of migrant labor administration. While employers enjoyed a similar control over the flow of migrant laborers in the era of contract laborers and “coolies” in the 19<sup>th</sup> century, sweeping changes in global production toward on-demand, flexible accumulation are responsible for the retrenchment of employer influence in contemporary migration policy across a broad spectrum of industries that involve workers of varying skill levels (Hanauer and Rolf 2015).

What is largely absent from the literature, however, is a consideration of how the rise of *cultural exchange labor* relates to the broader transformations in temporary, managed migration policy. Especially relevant are the changes that may directly relate to labor market restructuring and attendant workplace relations. Though recent scholarship contemplates the proliferation and employer appropriation of diplomatic visa categories to meet specific labor market niches, such as for childcare and tourism (Johnson 2011; Chuang 2013; Robertson 2013), fewer studies compare the trends of contemporary official migrant labor programs to those of cultural exchange schemes (Sukthankar 2012, ILRWG 2013). Anthropologist David Griffith and other migration scholars contend that contemporary managed migration policy is highly privatized and de-regulated in several advanced economies, with legal parameters that are increasingly drawn by employers versus the state or unions (Griffith 2014). I posit that cultural exchange programs offer data to test the durability of such arguments. Through the lens of scholarship on managed migration, I show that the SWT visa program mirrors and has become enmeshed with broader discussions about the role of temporary migrant labor in today’s economy. Political infighting and recurrent warnings about the weakened position of workers under the current temporary migration framework underscore debates around the SWT and H-2 programs alike.

*Labor Market Studies/Sociology of Work*

My dissertation research also incorporates labor market studies, which explore the causes and consequences of labor market restructuring in the United States. I likewise rely on studies from the sociology of work that consider the contemporary organization of work and its impacts on today's workforce, including the increased precarity of workers and the loss of basic benefits and protections for an increasing proportion of the working population. It is through the lens of these literatures that I evaluate the growing demand for temporary migrant workers in general and SWT workers in particular. By utilizing key theoretical insights from labor market studies and the sociology of work, I show how labor market restructuring has driven an increase in precarious employment across a growing range of industries and worker profiles, including in the case of an unsuspecting group of international students in the United States for a summer cultural exchange opportunity.

Scholars typically agree that, in both the U.S. and Europe, many workers witnessed unprecedented prosperity and important legal gains during the twentieth century. Especially in the decades immediately following World War II, employers and employees experienced a strong attachment, and the passage of robust labor and social legislation—such as the Fair Labor Standards Act and the Social Security Act in the United States—further bolstered the position of workers (Harrison 1994). By the mid-1970s, however, corporations' stance toward their workforces began to change. As the global economic crisis of the 1970s unfolded, corporations and their institutional investors deemed the large-scale assembly-line production typical of Fordism both unprofitable and unsustainable. Firms strove to become more “flexible” and to streamline productive activities by keeping in-house only those labor activities considered part of

their core competencies, shedding the rest to external networks of suppliers and subcontractors (Harrison 1994: 40; Cappelli 1995).

The corporate restructuring that occurred during the 1970s and 1980s resulted not only in “leaner and meaner” workplaces (Harrison 1994), but also a shift in the composition of jobs toward a service-oriented economy (Wyatt and Hecker 2006; Green 2006)—events which have contributed to the displacement of millions of factory workers. Service sector jobs in today’s economy tend to be characterized by lower wages and fewer job protections. In many service industries, union density is very low. The overall decline in union representation that began in the 1970s in many U.S. labor sectors has progressively tipped the scale of power in the contemporary workplace toward management and away from workers (Edwards 1979; Cappelli 1995; Osterman 1999).<sup>4</sup>

Another set of scholars, while acknowledging the broader economic forces that have given rise to job deterioration, place special emphasis on changes in the *organization* of business activities wrought by global economic restructuring (Davis-Blake and Broschak 2009; Weil 2014). In the current era of flexible accumulation (e.g. the increasingly flexible strategies that corporations use to accumulate profits in an era of globalization), corporate moves such as subcontracting and outsourcing are ubiquitous practices across a range of industries (Bernhardt 2016). External suppliers now perform many of the productive activities that were once carried out in-house by a single firm’s workforce. Businesses increasingly compete for corporate

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<sup>4</sup> Kalleberg (2011) offers a typology of “good” versus “bad” jobs, noting that good jobs involve not only good wages, but benefits like health insurance and retirement accounts, intrinsic rewards/job satisfaction, flexibility to deal with non-work issues and a reasonable amount of job security; “bad” jobs, in contrast, lack many of these rewards and are precarious in nature, e.g. hourly jobs increasingly replace salaried ones and even white collar workers face the frequent threat of layoff and loss of key benefits like pensions (9). Through robust longitudinal quantitative analysis, Kalleberg provides compelling evidence of the growth in bad jobs in the twenty-first century.

contracts to provide labor—anything from janitorial services to the packing and distribution of consumable goods (Cranford 2005). Weil (2014) refers to these various production arrangements, such as outsourcing and franchising, as “fissuring.” Fissuring refers to the process whereby companies increasingly contract out work to independent firms, which, together, constitute a market of suppliers and service providers. Competition within this market of suppliers, in turn, drives the firms vying for these contracts to cut corners on everything from wages to health protections for their employees (Schneider 2014). According to Weil, the consequences of fissuring include downward pressure on wages and a greater incidence of indirect and legally ambiguous employment relationships and workforce violations (2014:84).

Weil and others argue that government efforts to enforce labor standards are behind the times: enforcement mechanisms should focus at the top of corporate structures from which labor decisions stem, instead of at the bottom where they are currently focused. This is because worker-level enforcement rarely results in sanctions of the companies at the top, whose outsourcing and/or franchising agreements have the effect of putting the squeeze on labor costs. Additionally, workers at the bottom of labor structures have few incentives to report violations and often face job loss and retaliation when they do (Anner, Bair & Blasi 2013; Ruckhelshaus & Muñoz 2015). Consequently, sociology of work scholars underscore the organizational dimension of labor restructuring and the challenges it poses for workers. Nonetheless, while scholars of work acknowledge that migrant workers figure prominently in today’s fissured workplaces, scholarship on labor market restructuring and the sociology of work often overlooks the role that immigration policy plays in responding to and shaping immigrant labor markets (Hondagneu-Sotelo 2012). Too often labor studies overlook the unique role that migrant labor

retention has in facilitating and even accentuating conditions such as workplace fissuring (Rodriguez 2004).

My research seeks to fill this void in the literature by featuring a case study of the SWT program, a migrant labor category that exhibits evidence of workplace fissuring at two levels. At a primary level, I evaluate into which industries SWTs are most commonly placed, employer motivations for utilizing the SWT program, and SWT worker characterizations of their labor experiences. At a secondary level, I examine the role that cultural sponsors play during both the recruitment and employment placement phases to mediate the relationship between SWT employers and their workers. My findings reveal that SWTs are brought in to address labor shortages, scarcities that are driven in part by the overall lack of benefits and protections afforded to U.S. workers. Furthermore, the public-private business model of the SWT cultural sponsor intermediary creates a social distance between employers and participants that often serves to disadvantage SWT workers in their labor contract negotiations and/or when they experience problems on the job.

### *Theories on Citizenship*

Finally, scholarship on citizenship contemplates the experiences of the growing ranks of transnational migrants, including how they derive rights and a sense of belonging across time and space (Ong 1999; Bloomraad 2006). My research intervenes in a variant of this literature, which considers the rights and agency of “middling transnationals”, e.g. migrants who possess upwardly mobile human capital assets but occupy precarious immigration and employment statuses (Chuang 2013; Robertson 2014; Parutis 2014). The J-1 case study affords a window into the experiences of a group of international workers who as college students are upwardly

mobile but who temporarily occupy low-wage labor roles with few worker protections while they are in the United States.

Scholars have noted the renewed interest in citizenship theory, stemming from changes in the welfare state in several advanced countries, the resurgence of nationalist movements in Eastern Europe, and an overall increase in migratory movements worldwide (Kymlicka & Norman 1994). Such factors have prompted social thinkers to question how capable traditional theories of citizenship are for capturing the experiences of the growing number of people worldwide who traverse national borders and occupy multiple social fields in their pursuit of political freedom and economic opportunity (Bloemraad, et al. 2008).

One group of academics posits that there is a clear hierarchy of migrants, which is shaped primarily by geopolitical influences that permeate global economic activities, structure migratory movement, and determine the level of legal entitlements among migrants abroad (Sassen 1996; Ong 1999; Salazar Parreñas 2001). Ong (1999) argues that at the dawn of the twenty-first century, a small group of business elites hold multiple passports, enjoy unfettered international movement, and otherwise exercise flexible citizenship by their participation at the highest levels of the global economy. In contrast, those without capital mobility are severely limited in their movement, effectively trapped in their countries of origin, where economic opportunities are limited and highly exploitative labor regimes have tended to flourish (Salzinger 2003; Lee 1998). Another group of scholars explores how the law constructs and orders migrants, often producing legal gradations of citizens based on either the need to define citizenship in territorial terms or, alternatively, by the extent to which an individual is deemed to “fit” within the social and political fabric of the community (Walzer 1983; Coutin 2000; Bosniak 2006; Nakano Glenn 2011; Motomura 2014).

More recently, the migration literature has broadened its focus to test similar theories of contemporary citizenship among a new cast of migrants who have been minimally researched (Clarke 2005; Gordon 2007; Robertson 2013; Tan & Lester 2012). In Robertson's (2013) study of transnational student migrants in Australia, she identifies a specific type of migration journey and class positioning she refers to as "middling transnationals" (135). Robertson explains that the international youth who travel to Australia as graduate students and working holiday makers (WHMs) occupy a social stratum between unskilled laborers, who are highly vulnerable to abuse on the one hand, and upwardly mobile, elite sojourners on the other hand. As she notes, "for while they [holiday makers] have resources to seek out transnationally mobile education and career options for themselves and their families, these aspirations often involve considerable risk and considerable financial and emotional investment" (2013: 161). As Robertson observes, the long-relied upon theoretical binaries of "student/worker, tourist/worker, skilled/unskilled, legal/illegal, alien/citizen, and temporary/permanent" prove increasingly fragile, given today's patterns of migration, especially among young transnationals (2014:1929).

In considering this literature on middling transnationals, I aim to use the SWT case study to explore how its legal construction shapes migrant experiences. SWT participants enjoy a degree of privilege as university students who possess the resources to travel abroad during their summer recess. Yet they also experience vulnerability in the United States as foreign nationals who are required to work in temporary, low-wage jobs under visa terms that constrain their rights as workers and consumers. By examining their subjectivities as SWT participants, I seek to inform current theories of migration and citizenship.

#### IV. Overview of Chapters

The organization of my dissertation is as follows. Chapter 2 discusses how I selected my topic and describes the methods I used to answer my core research questions. In Chapter 3, I conduct a historical analysis of the J-1 SWT program from its inception during the Cold War through to the present. Specifically, I address the following research questions: 1) *When did the disjuncture between the cultural exchange versus work-based nature of the SWT program emerge?* And, 2) *How does the historical tension between the rhetoric of cultural exchange and practice of migrant labor management inform current debates about the SWT program?*

I explore these questions through archival research and qualitative interviews to provide an abridged history of the SWT program from its inception through the first two decades of the 2000s. The history reveals that there has long been concern inside and outside of government about the risks of J-1 employment-based categories to foreign and domestic workers. Yet, for nearly as long, the U.S. government has wrestled with the role of the private sector in cultural exchange as a means to fund people-to-people diplomacy. I show that this unresolved tension between the quasi-public, quasi-private nature of the SWT category plagued it then as now—albeit with labor market pressures today that have only further exploited and exacerbated the tension.

In Chapter 4, I examine the political economy of the contemporary J-1 SWT industry and address the following two research questions: *Does the SWT program in its contemporary form represent an exercise in diplomacy or a money-making enterprise? And, how does the public-private SWT program model prefigure broader trends in managed migration policy toward deregulation and a larger role for the private sector?* I rely on data collected through interviews with SWT participants and SWT cultural sponsors to address this question. I complement



primary data collected through interviews with analysis of the contemporary political economy of cultural exchange offered by NGO and government reporting.

I begin Chapter 4 by reviewing literature on the origins and evolution of managed migration and draw on the parallels between the growth and privatization of temporary-migration policy broadly and changes the SWT program has undergone during the same period. I then describe the SWT program's business model and demonstrate how cultural sponsor organizations, employers, and DoS officials friendly to their interests work together to formulate J-1 policy, and in turn, seek to influence managed migration policy more broadly. My findings reveal that DoS and the cultural exchange industry collectively seek to preserve the privatized management of cultural exchange policy, joining forces to resist state and national legislation aimed at increasing migrant worker protections. In this way, the cultural exchange industry has emerged as an unsuspecting political force seeking to preserve its status by opposing (and/or exempting itself from) key legislative measures designed to protect migrant workers.

Chapter 5 examines SWT employer motivations for using the program. Specifically, I address the following research questions: 1) *What benefits and incentives come with hiring SWT workers?* 2) *In which industries do SWT participants work?* 3) *How does the SWT program reflect and/or perpetuate workplace fissuring?* I open with a review of literature in the sociology of work, with attention paid to the rise of precarious, contingent labor and the fissured workplace. I also consider research on the relationship between immigrants and labor market restructuring, including how the SWT case study supports previous research and where it provides new insights. I then present three sets of empirical findings. First, I share results from my interviews with employers, sponsors, participants, and immigrant-labor advocates about employers' reasons for participating in the program. I provide findings from my comprehensive

analysis of SWT employment data, which suggests pervasive hiring of SWT participants in fissured industries. Finally, I offer a legal comparison of the SWT, H-2A and H-2B visas. Through this comparison, I show how, in addition to SWT participants' presence in fissured industries, the structure of the visa creates an additional form of fissuring through its legal distancing of employers and SWT participants.

In Chapter 6, I shift from macro to subject-level analysis by exploring the experiences of SWT participants and how they make sense of their status as cultural sojourners and temporary workers. I address my final two research questions: *1) How does the legal construction of the SWT visa impact participant experiences as temporary migrants in the United States?* and *2) How do J-1 SWT participants interpret and make sense of their status as both cultural sojourners and low-wage workers?* I draw from in-depth qualitative interviews with participants from a range of countries working at multiple sites across the United States to consider how participants perceive and make sense of their living and working conditions in the United States. I also examine whether their U.S. experiences depend more on individual characteristics or on the organization of the workplace and nature of their employer relations. Drawing from citizenship theory and recent studies mapping the trajectories of temporary migrants operating under rapidly changing immigration regimes in many developed countries, I argue that SWT participants are, overall, a privileged class compared to their workplace counterparts when considering factors such as class, race, and educational background. Yet they are made vulnerable, based on their immigration status and the employment relations at their SWT worksites.

In Chapter 7, I conclude with reflections on what the SWT program case study suggests about the future of managed migration policy, the fissured workplace, and the subjectivities of

transnational migrants impacted by changes in managed migration policy and the organization of work.

## CHAPTER TWO

### METHODS

#### **I. Introduction**

For this study, I conducted mixed-methods data collection and analysis. Specifically, my research engaged several qualitative methods including semi-structured interviews and a combination of archival and secondary data analysis. I relied on interviews to obtain a detailed, first-hand account of the Summer Work Travel (SWT) program from a variety of perspectives. I reviewed archival and secondary data to capture the historical dimensions of the program. Archival and secondary data also helped me to collect information I was unable to obtain through interviews with cultural sponsors, given their reluctance to be interviewed. To complement my qualitative data, I sought and obtained comprehensive descriptive data on Summer Work Travel (SWT) participants for program years 2010, 2011 and 2015 through multiple Freedom of Information Act (FOIA) requests. By obtaining comprehensive demographic and employment placement data for SWT participants, I was able to systematically evaluate characteristics of workers and confirm the industries in which they work; this helped to make my findings more generalizable than qualitative data alone would have permitted.

The core of my qualitative data is drawn from interviews I conducted in 2015 and 2016 with SWT participants, their employers, and a limited number of SWT cultural sponsors. I also interviewed representatives of federal agencies, U.S. Congressional staff members with a stake in the J-1 SWT Program, and non-governmental organization staff whose work includes advocacy and/or direct representation of J-1 workers, including SWT participants. In this chapter, I first explain my personal background vis-à-vis this research topic, provide a detailed

account of the participants, and describe my recruitment process for informants and research sites. Additionally, I discuss the specific methodologies employed to collect and analyze the data. In the final pages of the chapter I offer reflections on positionality and the limitations of my methodological approach.

## **II. My Entrée to the J-1 Summer Work Travel Research Project**

Before entering the Ph.D. program, I spent several years working as a case manager at a human trafficking social service program in Queens, New York. Later, I served as a paralegal and an outreach worker in the immigrant division of a Colorado legal aid organization. As a case manager in Queens, I assisted a handful of J-1 student workers—including one Eastern European female who came to the United States on the J-1 SWT program to work as a server in Virginia Beach but instead was forced to work at a strip club in Detroit, Michigan—without truly understanding the legal nuances of the cultural exchange visa that brought them to the United States.<sup>5</sup> My focus was attending to their social service needs as newly identified crime victims.

In 2010, the legal aid office I worked for in Colorado was contacted by thirteen Chinese SWT participants who found themselves working many fewer hours than promised and paying exorbitant amounts for rent in a small town experiencing high levels of unemployment at the time. My job in this context was to determine what, if any, protections the Chinese SWT participants had as workers under their J-1 SWT visa status. As our office discovered, while the

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<sup>5</sup> My client's case constituted human trafficking because she was defrauded by her prospective employer about the type of work she would be doing. Indeed, stripping is a forbidden form of labor per J-1 rules. Additionally, her employer-trafficker was armed and exercised nearly total control over her activities in the U.S. When she initially arrived to the U.S. via Dulles airport, her trafficker put her on a bus to Detroit, Michigan and later told her that if she did not strip at the designated club there, she would be "resold" to pay off debt and her family in Eastern Europe would be harmed. Her trafficker reinforced these threats with actual violence, including repeated sexual assaults. Her trafficker was later convicted in 2006 on federal charges of involuntary servitude, alien smuggling conspiracy, and money laundering. He was sentenced to 14 years in prison and ordered to pay \$1.5 million in restitution. See *U.S. vs. Maksimenko* for case details.

students had been promised nearly 40 hours of weekly work per a contract they signed with the recruitment company in their home country, they often only picked up 20 to 25 hours at a local fast food restaurant—too few to cover their basic expenses. Our office also confirmed that the housing management company was charging the international students significantly more than the market rate for housing in their community. The employer worked with the housing provider to pressure the workers to pay the overpriced rent by threatening them with punitive consequences if they did not. The workers also explained that their initial placement was in a more bustling community. They claimed that this arrangement was abruptly changed by the cultural sponsor the week before their scheduled travel. They were told by the cultural sponsor that they would lose the several thousand-dollar deposit each had paid and their sought-after immigration status if they did not agree to their new placement in an isolated Colorado town.

Our office was to advocate on their behalf with their employer, their housing provider, and with the State Department, in efforts to recoup housing expenses and lost wages. My supervisor and I quickly became aware that the U.S. government's construction of the visa as cultural- versus labor-based precluded these SWT visa holders from accessing those legal rights that are (at least in principle) available to international workers with formal migrant worker visas. We wanted to understand when and how this visa came to be. As we strove to learn more, we were struck by the fact that we were among only a handful of immigrant advocate colleagues in dialogue about the SWT program. In this sense, my research topic began as "opportunistic" because I stumbled upon it in my daily work (Lofland et al. 2006). It was at this point in my career that I began to question this obscure visa and to wonder why it was written with so few labor protections.

Yet, after commencing my doctoral studies in sociology, I determined that I could examine and more deeply understand the SWT program's growth and transformation through the theoretical lenses of migration, the sociology of work/labor market studies, and citizenship. Thus, what started as a practical interest in the SWT program became a scholarly commitment as I developed a research project that uses the SWT program's transformation and expansion to address scholarly concerns at the intersection of several sociological subfields.

### **III. Research Questions and Methodological Design**

The purpose of my study is to examine the proliferation and deregulation of the J-1 Summer Work Travel program over the past two decades. It is also to test what, if any, relationship exists between the transformation of the program and broader changes in managed migration on one hand and the organization of work toward evermore contingent, fissured workplaces on the other. To tackle these themes, I organized my research questions around three sets of stakeholders—and correspondingly—three levels of analysis: the state and its private sector partners, SWT employers, and student workers.

#### *Research Questions and Methods Addressing the State*

The SWT program is one that is viewed in a vastly different light depending on whom you talk to about it. In fact, a key finding from my years of research is that U.S. State Department (DoS) officials, along with its cultural sponsor counterparts, are engaged in a fierce discursive struggle to define the true nature of the program. Their rhetorical struggle is primarily with immigrant-labor advocates and immigration restrictionists, who insist the program has critical weaknesses where the DoS and cultural exchange industry finds invaluable merits. Consequently, I realized early into the project that I needed to elicit a variety of perspectives and to strive for balance through my data collection methods.

To address my research questions comprehensively, I relied upon a combination of qualitative, semi-structured interviews and archival/secondary data analysis. I interviewed stakeholders on both sides of the discursive debate, i.e. cultural sponsors, Congressional staff members, representatives of federal executive agencies, and legal advocates and policy experts in the non-governmental organizational (NGO) field. Through interviews, I could elicit the voices of actors in a less-structured format that often allowed me to gather rich, candid data. For example, the interview setting allowed me to politely yet assertively challenge participants, including high-level government officials, on what I perceived as scripted responses (*see* Ostrander, 1993 for a discussion of strategies for conducting social analysis on elite subjects). It also provided me the flexibility to question government and non-government representatives about how they would interpret or critique another stakeholder's perspective.

Aside from qualitative interviews, I also carried out historical and secondary data analysis. Between May and August of 2013, I carried out an extensive review of hundreds of pages of digitally archived U.S. government documents including 1) congressional testimony on cultural exchange legislation and related appropriation hearings and 2) Federal Register announcements containing policy statements and updates on administrative rulemaking processes related to the SWT and/or the overarching J-1 Exchange Visitor Program. I also reviewed annual reports of the Department of State and the United States Information Agency's (a now defunct federal agency responsible for educational and cultural exchanges from 1978-1999) J-1 Exchange Visitor Program activities as well as internal and independent audits of the J-1 Program completed by the Government Accountability Office (GAO) and the State Department's Office of the Inspector General. Similarly, I reviewed several recent non-



governmental organization policy reports on the SWT and broader J-1 Program. Table 2.1 provides a summary of the various government and non-governmental documents I consulted.

<b>Table 2.1: Type and Number of Archival/Secondary Documents</b>	
<b>Document Type</b>	<b>Number of Documents</b>
Federal Register Policy Statements/Proposed and Final Rule Making on the J-1 Exchange Visitor Program	24
U.S. legislation and transcripts of Congressional hearings that references the J-1 Exchange Visitor Program, including the SWT category	8
State Department/ United States Information Agency, various annual reports	6
Interagency Working Group on U.S. Government-Sponsored International Exchanges and Training, annual reports 2001-2014	14
Government Reports that address J-1 SWT program (Government Accountability Office, U.S. State Department Office of the Inspector General, Congressional Research Service)	6
Federal Register Policy Statements/Proposed and Final Rule Making on the H-2 programs	25
NGO Advocacy Reports on the J-1 SWT Program	7
<b>TOTAL</b>	<b>90</b>

With archival and secondary data, I could triangulate my analysis by not relying solely on contemporary stakeholders' recollection of past SWT policy decisions. Rather, I was able to compare interviewee recall of events with official documentation of key moments in SWT policy

formation/reform. Such documents also permitted me to verify a central hypothesis of my research, e.g. that the SWT program had not always operated on a large, deregulated scale. This became evident as I identified the moments of the SWT program's expansion and privatization through my review of three decades of program regulations. I was similarly able to draw important links between the timing and substance of key changes in the SWT program's administration and other phenomena. For example, by considering the SWT program longitudinally, I detected overlap in the timing of its growth, and the expansion and heightened privatization of other formal temporary migrant labor categories. These patterns and the overall integral significance of administrative law in the SWT program's administration would not have been apparent without a preliminary grounding in its historical dimensions.

Overall, my decision to combine archival and secondary analysis with qualitative interviews was influenced by the work of socio-legal scholars like Calavita (1992), Ngai (2004) and Hahamovitch (1997 and 2011). To varying extents, all three scholars are concerned with the highly politicized interplay between state bureaucracies' negotiation of immigration policies and the corresponding impact they have for their subjects, namely the migrants who weather the vicissitudes of such policies. As Ngai points out, historical analysis of the state's handling of migrant and immigrant policy allows us to more fully appreciate the social contingencies often involved (2004: 6). It also permits the evaluation of laws and administrative policies not merely for their official meaning, but also for how they shape and normalize social relations over time (2004:12).

Moreover, as Calavita and Hahamovitch demonstrate, the pairing of historical analysis with in-depth interviews permits a more fine-spun consideration of theories of the state as they pertain to migrant labor policy-making. For example, Calavita's multi-method approach leads

her to conclude that the state is not monolithic in its articulation of migrant labor policy (1992: 187). Despite official policy claims, her review of unofficial records and conversations with former government officials suggest tensions between federal agencies like the Immigration Naturalization Service and the Department of Labor (1992). Her nuanced methodological approach likewise reveals that while the state was relatively autonomous from individual capitalists in the context of the Bracero program, it was “not autonomous from the structural requirements of the political economy within which it operate[d] and which it...worked to preserve” (1992: 187). My ability to triangulate my research methods reveals similar political and economic forces acting on and reflected through the operation of the SWT program.

#### *Research Questions and Methods Addressing Employers*

A second set of my research questions pertain to SWT *employers'* motivation for using the SWT program and whether and how the SWT program exhibits or perpetuates what labor scholar David Weil refers to as “fissuring” in the workplace. I conducted qualitative interviews with SWT employers and workers, since they provide a primary, vital source of information about their individual reasons for utilizing the SWT program. My interviews with cultural sponsors similarly shed light on how employers work collaboratively with sponsors to recruit and manage SWT participants while they are in the United States.

To fully assess the hiring practices of employers and their considerations when hiring and managing SWT workers (and their cultural sponsor intermediaries) as well as student workers' perspectives on their employers, interviews provided certain advantages over other methods like surveys. First, employers and sponsors often expressed reticence to participate in research on the SWT program. Had I used a survey approach, I likely would have received very few responses from employers and sponsors given the relative ease of ignoring or declining to participate in a

survey (Singleton and Straits 2010:227). Those employers and sponsors who did agree to speak with me often told me they were eager to address misconceptions about the program, an opportunity more readily explored in the open format of semi-structured interviews (Rubin and Rubin 2005: 95). Indeed, the sociological field is replete with studies that incorporate qualitative interviewing to successfully unearth employers' complex motivations for hiring migrant workers and their decisions about where, how, and why they place migrant workers within the occupational structure of the workplace (McDowell, Batnitzky and Dyer 2008; Sallaz 2010; Harrison and Lloyd 2012).

To complement my qualitative interviews, I obtained and evaluated SWT demographic information on the over 200,000 individuals who participated in the program in the years 2010, 2011, and 2015. I also evaluated employer placement information for SWT program year 2015. I obtained these data through two FOIA requests made in 2013 and 2015, respectively. To my knowledge, I am the first researcher, journalist, or advocate to obtain such wide-scale comprehensive employment information on the SWT population.

Indeed, obtaining my FOIA requests was hard-fought: it took 18 months for me to obtain the comprehensive SWT employment data I sought from DoS. Additionally, my first request for employment information for SWT participants was denied 14 months after filing my initial request. A DoS official responsible for processing it informed me that there was no precedent for releasing such extensive employer information, and that the department was scarcely set up to extract and release the data I requested. After filing an appeal with DoS, the same official reached out again a month later to ask me to limit my request to one SWT program year. She reached out again within ten days to inform me that my request had spurred internal discussions

about how to modernize data systems at DoS to fulfill data queries like mine, and that my request represented a “pilot test program developed by our IT professionals.”<sup>6</sup>

When my data on 2015 SWT demographic and employment placement finally arrived on a compact disk (CD) via certified mail, it came in the form of a scanned 2,639-page Adobe Portable Document Format (PDF). I would spend the next year and a half working to identify text recognition software capable of converting the PDF into Microsoft Excel format. Utilizing funds that I was awarded for out-of-pocket dissertation expenses, I then hired a research assistant and undertook a painstaking process to code and evaluate the FOIA data I obtained.

With the comprehensive demographic and employer information I gained, I could make definitive statements regarding who SWT workers are—thus, who employers are hiring—in terms of their countries of origin, age, and gender attributes. With this data, I also gained critical insights into SWT employers themselves, the industries they represent, and the extent to which participants are concentrated in industries with high levels of contingent workers, including the percentage of SWT participants working in industries characterized by workplace fissuring. Demographic and labor market information has commonly been employed in studies of migrant and immigrant workers to characterize their varying roles and impact on the United States labor market (Waldinger and Lichter 2003; Hahamovitch 2011; Apgar 2015).

### *Research Questions and Methods Addressing SWT Participant Experiences*

My third set of research questions addresses the characteristics and experiences of *SWT workers* themselves. I relied on interviews with 30 current and former SWT participants. As other social researchers have found, semi-structured qualitative interviews represent an ideal

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<sup>6</sup> I have retained my email correspondences with DoS staff about my FOIA requests, and they are available upon request.

format to elicit the nuanced perspectives and candid experiences of migrant workers, capturing what surveys and census data alone cannot (Salazar Parreñas 2001; Sahathy and Casanova 2008; Robertson 2014).

#### **IV. Description of SWT Participant Sample, Research Sites, and Recruitment**

##### **Approach**

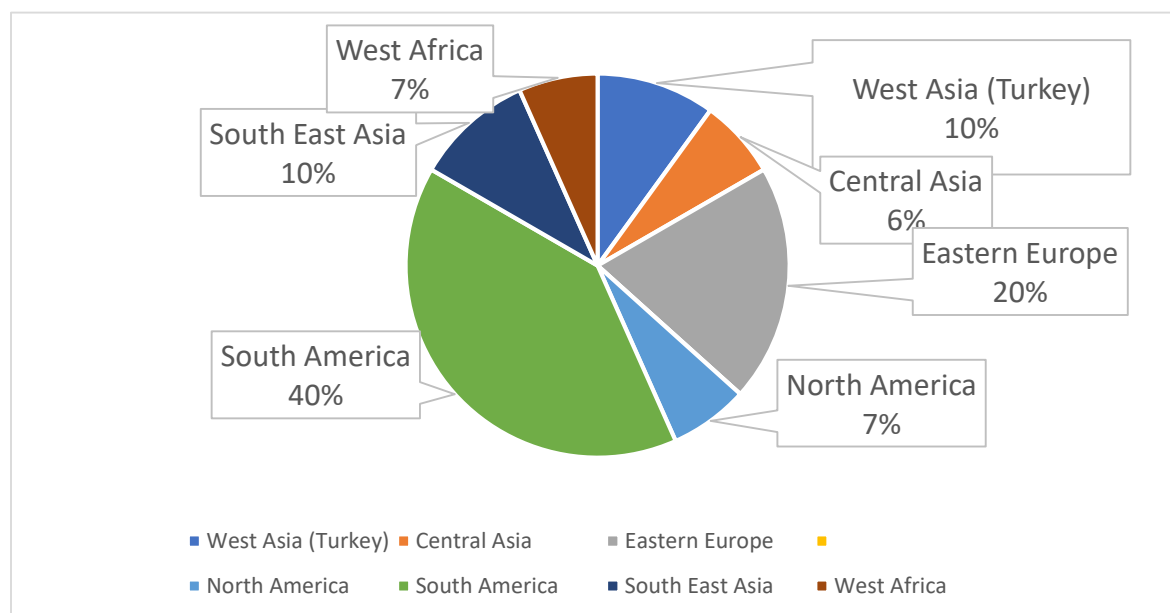
Since my research questions address three levels of analysis, participants in my sample fell into three broad categories: SWT participants, SWT employers, and informants with insights on SWT policy and program administration. First, I provide a description of the largest portion of my sample—SWT participants—and my process for recruiting them, including my approach to participant site selection.

##### *SWT Participant Profile*

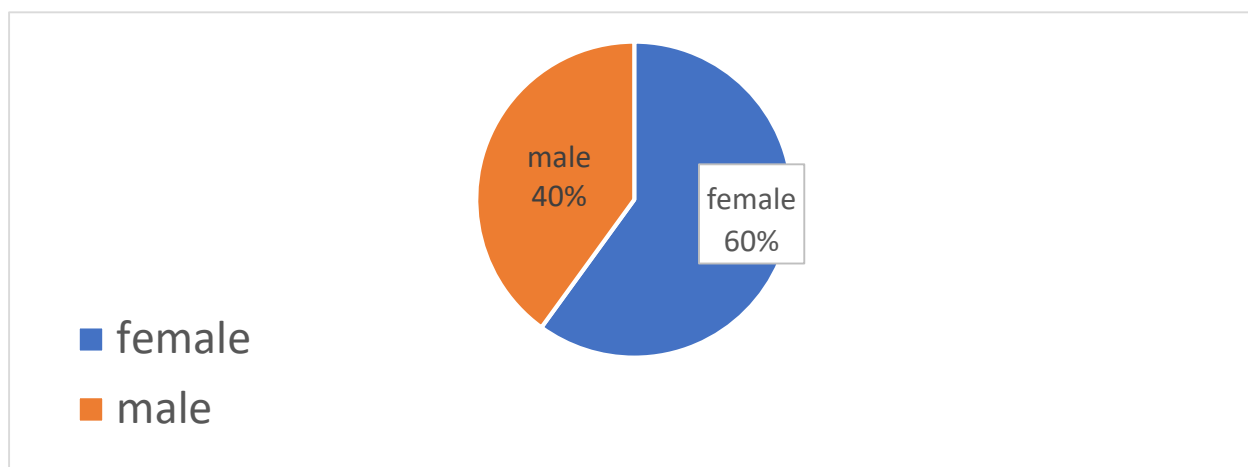
SWT participants represent a demographically diverse group of young people from all over the world. The largest proportion of my sample originated from South America. This was partly attributable to the fact that I carried out most interviews in the Mountain West region of the U.S. during the winter season, when most South Americans are on their “summer” break from collegiate studies (I address research sites below). The breakdown by country of my sample appears in Table 2.2.

<b>Table 2.2: SWT Sample by Country of Origin</b>	
<b>SWT Qualitative Sample Countries of Origin</b>	<b>Number of SWT Participants</b>
Peru	7
Thailand	3
Russia	3
Turkey	3
Argentina	3
Jamaica	2
Colombia	2
Kazakhstan	2
Poland	2
Nigeria	2
Moldova	1
<b>Total</b>	<b>30</b>

While my sample does not mirror the 2015 top ten sending countries (see Table 1.1, introduction chapter), it nonetheless achieved a fairly robust cross-section of world regions as demonstrated by Figure 2.2 below.

**Figure 2.2: SWT Sample Participants by Region of Origin**

As Figure 2.3 shows, the gender split of SWT participants in my sample was 60% female and 40% male. The breakdown of the total number of 2015 SWT participants was roughly the same, with 55% females and 45% males.

**Figure 2.3: SWT Sample Participants by Gender**



Likewise, considering that to be eligible to participate in the SWT program an individual must be in a university degree program in his or her home country, as Figure 2.4 illustrates, my sample represented a range of student ages typical for those seeking a bachelor's degree; nonetheless, the average age trended on the younger side at 20.9. As with gender, my sample in terms of age paralleled the average age of SWT participants in the 2015 age cohort, considering that the average age was 21.2 and the median age was 21.

**Figure 2.4: SWT Sample Participants by Age**

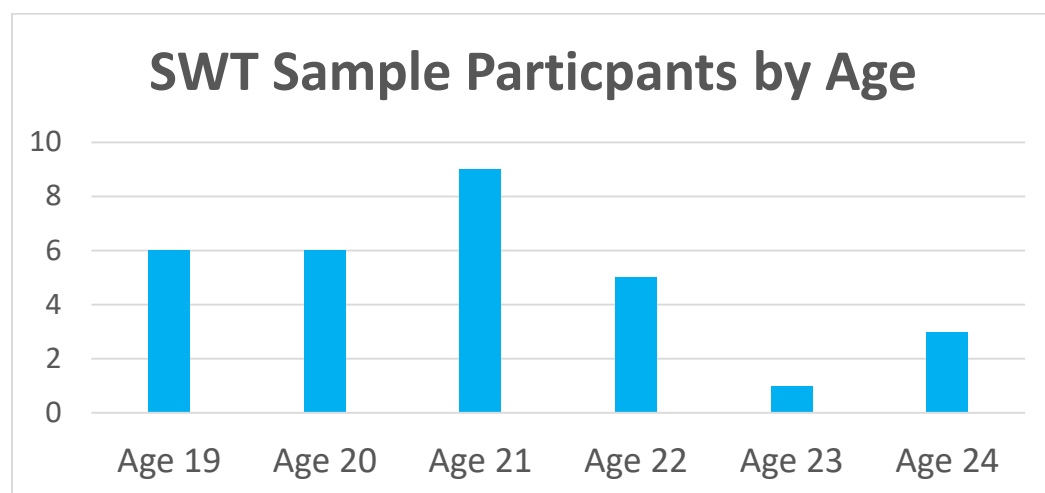
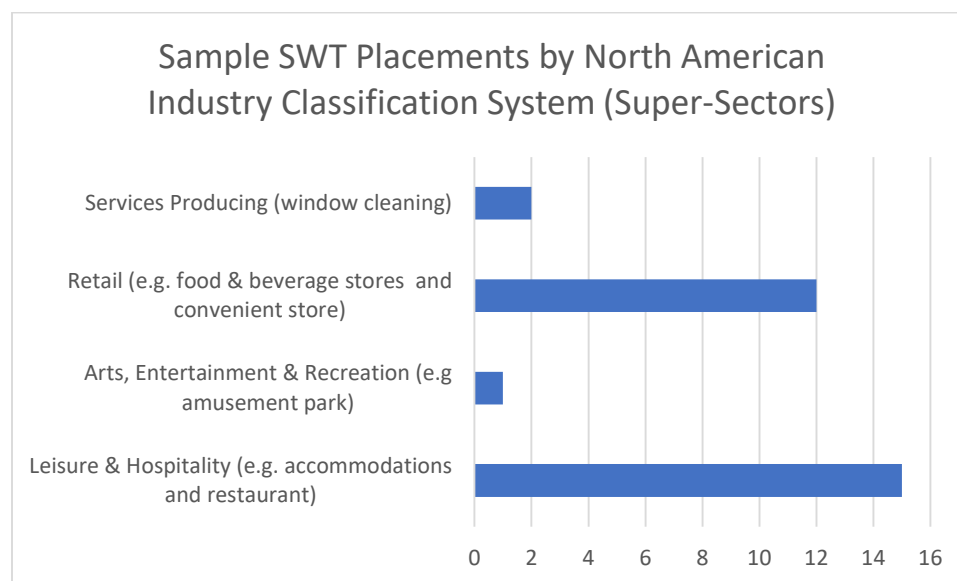


Figure 2.5 shows the breakdown of my sample by SWT participants' employment placement. I used the North American Industry Classification System (NAICS) to categorize participants by the NAICS super sector they fall into.

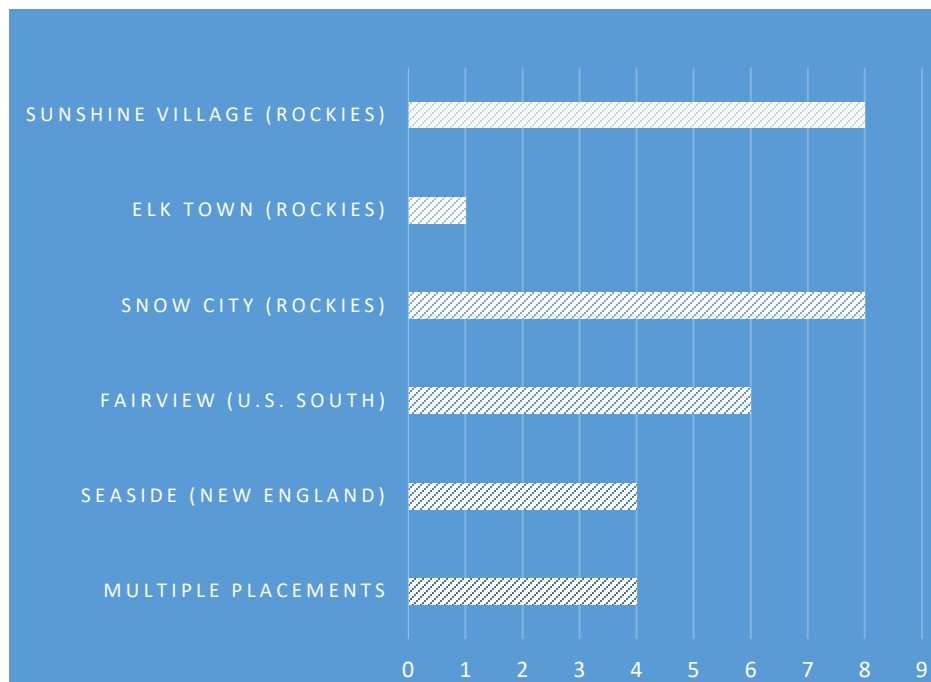
**Figure 2.5: SWT Sample Participants by Employment Placements**

My sample matched closely the proportion of participants in the Leisure and Hospitality NAICS super sector at roughly 50%, but was under-representative of the Arts, Entertainment and Recreation super sectors and Retail super-sectors (see Figure 5.1, for a breakdown of employment placements among the entire 2015 SWT participant cohort). Within the Leisure and Hospitality super-sector, 10 out of 15 participants worked as housekeepers and five worked within the Food Service and Beverage industry. Within the Retail super-sector, 11 participants worked in Food & Beverage (i.e. grocery) stores, while one participant worked at a convenient store along a major highway. One student I interviewed worked at an amusement park. For participants who held more than one job or for the two students who participated multiple summers, I recorded their primary job (i.e. the primary job listed on their DS-2019 form) and/or the job they did first.

### *SWT Participant Site Selection and Recruitment Approach*

I carried out SWT participant interviews in three resort towns in the Mountain West (Snow City, Elk Town, and Sunshine Village), one seaside community in New England (Seaside), and another small city in the U.S. South (Fairview), as featured in Figure 2.6. I also carried out three interviews with participants whose placements didn't correspond to my three primary research sites, which helped me to further diversify my sample. These outlier SWT workers were placed in tourist towns, including one student who participated in the Mid-Atlantic, another in the coastal Southeast, and a third who participated three times in the program—one summer in the upper Midwest, another summer in the Mid-Atlantic, and her final summer in Elk Town.

**Figure 2.6: SWT Participants by U.S. Research Site Region**



It was important to me to vary my sample not only according to SWT participants' countries of origin, but also by where they worked in the United States. I was concerned that by

only recruiting SWT participants in the West, my research might be limited in terms of occupational placements and even demographic attributes. Indeed, I found that my Mountain West sample was concentrated in one mountain west community, Sunshine Village, and that participants there often originated from South America and tended to work for the same major employer in one capacity or another.

With respect to my recruitment approach, I adopted different strategies depending on the region of the United States. In the case of the Mountain West, I recruited most of my participants through Craigslist. By recruiting my participants online, I was able to reach a larger audience geographically. I could also confirm that my ad was not removed, as occurred in the case of physical flyers I placed in one Mountain West community (Snow City). It is possible that the Craigslist respondents were among the most ambitious and self-starting of their peers (and slightly overrepresented in my sample), since they likely visited Craigslist to secure a new job or secondary employment. But, the initial Craigslist recruitment led me to non-Craigslist SWT participants through snowball sampling (Lofland and Lofland 1995). Craigslist likewise represented a safe place to recruit, since participants visited the site and responded to my recruitment offer without concern about their employers finding out about their participation in my study.

Approximately one third of the SWT participants I spoke to in the Mountain West were recruited using a snowball sampling approach. In some cases, informants offered to place my flyer in their housing complex to get the word out to other SWT participants about the study, an action I could not easily take without trespassing. In other instances, participants told me about SWT co-workers they knew personally and referred to me.

A chance to expand my worksite sample came when a colleague with a well-regarded human rights organization offered to let me accompany a J-1 worker outreach trip in a Southeast tourist destination called “Fairview.” This short, three-and-a-half-day trip was not without its discomforts. The colleague who invited me on the trip was not present, so I was a complete stranger to her organization’s outreach workers. Additionally, unlike the other research sites, in Fairview I had no pre-established knowledge of where SWTs could be found, and because I did not have advanced notice of where the outreach trip would take place, I was unable to recruit through Craigslist. In fact, the outreach team—consisting of two law student interns and two outreach paralegals—had no previous outreach experience in Fairview either. On my first day, there (after an overnight flight), we went door-to-door to local shops in town looking for SWT workers without encountering a single participant.

During my time in Fairview, I likewise found that my research goals diverged from the advocacy and direct representation aims of my hosts. They were in Fairview to gather information on J-1 SWT working conditions, but they were also there to disseminate information about their organization’s services and to probe for the most egregious working situations that might warrant legal representation. I, on the other hand, wanted to gain a somewhat broader view of how the SWT program operated, including the diversity of workplace and participant experiences. My “pitch” was also more involved because I was asking for an hour of the SWT participants’ time and offering to pay for their participation in the research interview, the details of which I discuss below. Given our differing goals, the outreach team leader and I soon realized (without explicitly voicing it) that our approach when engaging with SWT participants often clashed. This fact became obvious when the outreach leader directed the group to split up on our second day, and she discreetly suggested that I go on my own. As Adler and Adler (1994) point

out, qualitative researchers can have multiple roles in the field, each with their own ethical and logistical dilemmas.

Thankfully, by the beginning of the second day the outreach team leaders received invaluable intelligence from a local reporter that scores of SWT participants were housed at a rundown hotel directly off the main street of Fairview. The team also passed on the contact information of a gregarious SWT participant from Thailand whom they met while conducting outreach. With these two leads, I decided to rent a car and navigate the unfamiliar community of Fairview independently.

Previous social breaching exercises in my qualitative methods class proved useful in Fairview (Garfinkel 1967). I staked out the rundown hotel only to awkwardly attempt small talk with J-1 workers averaging twenty years my junior who were on their way home from work. I had a friendly but nerve-wracking exchange with the general manager of an iconic Fairview restaurant who noticed me striking up small talk with SWT participants (his employees) while they busied themselves disposing of customers' half-eaten hamburgers and hush puppies. I wasn't seeking to interview him but rather to recruit potential SWT participants over dinner. He seemed generally surprised that a customer was knowledgeable about and interested in talking to J-1s. By the end of my three-and-a-half-day trip I had carried out eight interviews, two with J-1 trainees and six with SWT participants. I also took home vital firsthand observations of worksite, housing, and transportation conditions of several SWT participants in my study.

In the town of Seaside, I arranged all my interviews in advance of my trip using Craigslist. I visited Seaside on two separate summer weekdays. I carried out three interviews in person and two by Skype since one of my participants referred me to co-workers only after I had returned to Colorado. Despite the short visits to Seaside, I nonetheless got a feel for the

community and, based on my in-person interviews, was able to appreciate the local transportation challenges and housing shortages there that SWTs described to me. Regardless of research site, I paid SWT participants either \$20 (2015 rate) or \$25 (2016 rate) to participate in an approximately one-hour interview. I also had each participant sign an informed consent form per Institutional Review Board (IRB) regulations.

## **V. SWT Employer Sample, Site Selection, and Recruitment Approach**

### *SWT Employer Site Selection*

My sample of SWT employers is depicted in Table 2.3. As with SWT participants, I sought to interview SWT employers across multiple geographical contexts and industries. As other researchers of migrant workers have found, multi-site research allows analysts to distinguish employer relations and working conditions that might be unique to the site from those that characterize workers' experiences across multiple locales (Salazar Parreñas 2001; Sahathy Casanova 2008; McDowell, Batnitzky and Dyer 2008). Moreover, I strove to include a cross-section of workplaces in order to explore how employer motivations and workplace organization varied depending on whether they were considered "fissured workplaces" or not (Weil 2014).

The employers I interviewed did not necessarily correspond with employers of SWT participants in my sample, in part because of the challenges of recruiting employers as I describe below. I interviewed two employers in Elk Town, two employers in and around Snow City, and two employers in Seaside. I also interviewed a National Park concessioner at a separate worksite in the U.S. West (Red Valley) and another employer in the Mountain West city of Metropolis. When possible, I carried out interviews in person, but I also relied on phone interviews due to scheduling and logistical challenges. As noted in Table 2.2, my employer sample did vary somewhat from the overall profile of top SWT employers. However, there is significant overlap

between my sample and the top 2015 SWT employers based on my inclusion of resorts, fast-food retailers, and one amusement park employer.

**Table 2.3: SWT Employer Sample by Research Site**

Industry	Research Site	No. of Employers
Restaurant ( <i>up-scale casual dining</i> )	Elk Town, Seaside	2
Commercial Linen Service	Seaside	1
Family-friendly Resort	Elk Town	1
Ski Resort	Multiple sites	1
National Park Concessioner	Red Valley	1
Restaurant ( <i>Fast food franchise</i> )	Multiple sites	2
Amusement Park	Metropolis	1
<b>Total</b>		<b>9</b>

### *SWT Employer Recruitment*

One of the greatest challenges I confronted when attempting to recruit SWT employers is that there is no definitive employer registry. Consequently, I lacked a comprehensive understanding of the range and scale of SWT employer industries and was unsure how to go about identifying and recruiting SWT employers. At the outset of my project, I identified employers based on my personal experience of visiting an establishment and happening to encounter SWT workers. I reached out to a few of these businesses and successfully scheduled



interviews. But that approach did not always work, as some employers declined my request for an interview. For example, one employer I interviewed confided in me that her cultural sponsor partner encouraged her not to participate in interviews about the program.

After interviewing a few SWT participants, I realized that they themselves were an important source of information about SWT employers. I had originally stipulated in my IRB that I would refrain from interviewing participants and employers from the same business to prevent employers from knowing about or retaliating against SWT participants who participated in my study. Based on the various challenges, I decided to amend my IRB by agreeing to only recruit employers after the SWT participant I interviewed had left for the season. This allowed me to utilize employer information obtained from SWT participants for recruitment without risk of complicating or disrupting an employer-employee relationship.

In addition to these methods, I also searched online for news stories that featured SWT employers by name. Admittedly, regional newspapers tended to profile those employers who were willing to comment on topics such as their love of J-1 workers or how they were addressing SWT housing shortages. In this sense, many of the SWT employers featured in the news are “model” employers. As such, I knew I needed to balance this portion of my sample with employers I found through less conspicuous means, like references from the SWT participants they had employed. Given the IRB’s rules about confidentiality, I did not reveal to employers at the time of recruitment how I knew they hired J-1 workers; instead, I approached them on the premise that they did hire these workers.

A significant breakthrough in employer recruitment came when my successful 2015 FOIA request enabled me to access a full list of SWT employers, since this source of data gave me information on thousands of SWT employers located across the country. As with SWT

participants, I was able take advantage of pre-planned travel to the Northeast to interview employers outside of the Mountain West region. Despite my breakthrough of obtaining comprehensive SWT employer information, several employers either declined to speak with me or failed to return my calls and emails requesting an interview. As one employer explained to me, she was acutely aware that hiring SWT participants and other foreign workers was politically unpopular in some circles. I took employer unwillingness to speak with me as a possible indication that employers did not want to expose themselves to unwanted publicity even when promised anonymity through IRB protocol.

## **VI. Governmental, Non-Governmental and Cultural Exchange Industry Stakeholders**

I also elicited a range of perspectives on the SWT program beyond participants and employers. Table 2.4 provides a breakdown of the type and number of other stakeholders I interviewed.

**Table 2.4: Other Participant Stakeholders**

Stakeholder	Sub-category	Number of Participants
<b>Non-Governmental Advocacy Organizations</b>	Immigrant worker advocacy	4
	Worker rights/union	2
	Limited immigration	1
	Academic J-1 subject matter expert/human rights fact-finding	1
<i>NGO subtotal 8</i>		
<b>Government</b>	Executive regulatory agencies	2
	Congressional members	4
<i>Government subtotal 6</i>		
<b>Cultural Sponsors</b>	Representatives of the SWT cultural exchange industry	4*
<i>Cultural Sponsor subtotal 4</i>		
<b>TOTAL 18</b>		

\* While I conducted four interviews, one sponsor withdrew from the study one week after I conducted our interview after consulting with her supervisor.

### *NGO Informants*

Perhaps my single most important asset throughout the project on the J-1 SWT program has been my long-standing presence in the anti-trafficking field. It proved extremely helpful to be identified as a former staff member with two organizations known for their work to support the rights and well-being of immigrants. Because anti-trafficking organizations were among the

first to document and organize advocacy efforts in response to labor violations affecting a host of temporary visa holders, and because I had established relationships with several individuals representing those organizations, I benefited from what sociologist Robert Merton refers to as an “insider status” (1972). As a former case manager and paralegal in the immigrant rights field, I enjoyed “privileged access” to immigrant-labor advocates that might have been denied to me if I had been an outsider to these advocate and policy circles (Merton 1972; Adler and Adler 1987; Dwyer 2009).

For example, I was granted early access to a private, J-1 listserve established in 2011 for immigrant-labor advocates. Advocates utilize the listserve to circulate J-1 news and to elicit advice and resources to better support and advocate on behalf of aggrieved J-1 workers. It is also a place where members keep each other apprised of political developments surrounding the program, including Congressional activity, lawsuits, and proposed rules about the SWT and other J-1 categories. On occasion, NGO members of the listserve hosted virtual brown bag discussions and in-person conferences that I was invited to attend. By having access to a professional group of people who were willing and comfortable sharing sensitive political information with me, I was able to gain a better, more in-depth understanding of the dynamics of the J-1 program than I would have without their candid insights.

To maintain the trust of my anti-trafficking colleagues, I decided early on to not simply be an observer on the J-1 listserve. Based on Adler and Adler’s (1987) characterization of researcher roles, mine most closely equated an “active member” researcher, in that I became involved with the central activities of NGO groups without fully committing to their values and goals. For example, I offered to review and help draft model comments for proposed J-1 regulations on two occasions. I also brokered an agreement to share the SWT data I obtained

through my FOIA request. These gestures produced vital reciprocity. One NGO invited me on the outreach trip to Fairview. The organization also provided free legal assistance to appeal the initial denial of my FOIA request for SWT data. My willingness to collaborate and to share FOIA data with NGO participants also made them more willing to vouch for me among other NGO professionals and government representatives. Their endorsements led to interviews with high-ranking federal government employees and Congressional staffers I would not have otherwise had access to or even known about.

My embeddedness with immigrant-labor advocates made it difficult, however, to remain objective and to distinguish my role from theirs at times. For example, in the process of working collaboratively to obtain FOIA data, NGO representatives and I had differing ideas about how the data could be shared and used. Whereas NGO participants were eager to use the J-1 FOIA data I obtained for advocacy efforts, I was not interested in being associated publicly with this information. In fact, I was concerned that circulation of J-1 SWT employer information obtained through my FOIA request might potentially conflict with my IRB obligations to minimize harm to prospective SWT employer informants. In these limited situations, I reminded NGO informants of my responsibilities as a scholar and negotiated a solution to information sharing that would not compromise my values as a researcher.

### *Cultural Sponsors*

Despite this insider status among NGOs, I did not enjoy an insider status when it came to cultural sponsors. I did learn from one of my NGO informants—who had a formidable knack for getting unlikely actors to talk to him—about two individuals representing the cultural exchange industry. But beyond these two contacts, I was seen largely as an outsider. One cultural sponsor I interviewed agreed to inquire with colleagues who might be willing to

participate in an interview. But, he later told me that his colleagues were not interested in speaking to the media or social researchers, entities they viewed as adversarial to their business interests.

In attempts to overcome this obstacle, I utilized the U.S. State Department's online registry of SWT cultural sponsors or found the names of cultural sponsor representatives on a cultural sponsor association website. This recruitment effort was largely unsuccessful. The sponsors I contacted by email either did not respond or declined my requests for an interview. Among the four sponsors who did agree to an interview, one participant asked that our conversation not be recorded. Another sponsor participated, only to withdraw from the study a week later. While a setback for my data collection, I ultimately treated the reticence and unwillingness of most cultural sponsors to grant me an interview as a valuable data point in and of itself. The controversy and debates surrounding the program as described by the media and NGO informants contributed to sponsors' reticence to be interviewed and were referenced more than once by sponsors who declined to participate in (or in one case, requested to be removed from) my study.

#### *Government informants*

To recruit federal government representatives, I sought interviews with agencies directly responsible for either administering the program, for enforcing workplace and worker protections, or for auditing federal government programs and policies. In the case of Congressional members, I relied almost exclusively on recommendations of NGO leaders who gave me information about sponsors of J-1 related legislation, and in one case, a member of Congress whose activities were in support of a cultural exchange sponsor located in his state. As with sponsors and employers, obtaining interviews with representatives of executive agencies

was not always possible based on the controversy surrounding the SWT program, both before and after the 2017 Presidential administration change. Repeated requests for interviews with government officials were not returned in some cases.

## **VII. Qualitative Data Analysis**

Once collected, I analyzed interview data using qualitative analysis methods. Given the fact that I went into my interviews with a pre-existing set of research questions, my approach did not constitute a true Grounded Theory approach. I nonetheless took a phased approach to analysis (Charmaz 1995). I likewise made minor alterations in my interview guides during the data collection process as I detected themes that my original interview guides did not capture.

My phased approach started by my reading of all transcribed interviews and circling phrases and noting possible emergent themes in the margins. I then utilized the qualitative analysis software, Nvivo, to re-read interviews, transfer hand-written notes, and to digitally organize key themes and associated data. I then reviewed my data a third time to establish a hierarchy of themes and to scan for contradictory data. I also utilized the third review to identify examples of the data I wanted to include in my data chapters and to determine the connection between themes I had identified in earlier reviews.

## **VIII. Limitations of the Methodological Approach**

It is important to note some of the limitations of the current study. First, given the controversial nature of the SWT program, it is possible that my data suffer from a certain sampling bias. Indeed, employers and cultural sponsors self-selected to participate in my research, and it may be that those with better business practices and treatment of SWT participants more readily consented to speak about the program than those with less stellar records. Similarly, in many cases it was smaller businesses or those that lacked a corporate

structure and/or a legal department that more readily granted me a research interview. This reality necessarily limited my ability to interview large-scale employers who hire hundreds of SWTs each year, and as such, are highly motivated to use the program and arguably possess valuable insights.

Likewise, my findings are not statistically generalizable to all SWT participants, employers, etc. In attempting to achieve breadth through my research design by interviewing a range of stakeholders involved in the SWT program, I forfeited depth by only interviewing a limited number of individuals in each category. My analysis was also limited by the quality of my data sources. Prior to the 2000s, the U.S. government did not keep comprehensive records of the SWT program. For example, when I requested SWT participant information for the years of 1985 and 1986 through a Freedom of Information Act request, I was told my request could not be granted because such data did not exist. Therefore, to some extent, my historical and contemporary analysis reflects and is constrained by this poor record keeping, an observation similarly made by Calavita (1992) in her assessment of government documents related to the Bracero Program.

Finally, my claims about the unique recruitment, living, and working conditions of SWT participants would potentially have been strengthened by including international workers on comparable temporary worker visas, such as H-1B or H-2B workers. Despite my efforts to recruit comparable workers over the course of several months using flyers and Craigslist, only two H-2B workers responded. This lack of response prevented me from conducting a comparative worker analysis.



## CHAPTER THREE

### A GENEALOGY OF THE J-1 SUMMER WORK TRAVEL PROGRAM

#### I. Introduction

On September 21, 1961, the Mutual Educational and Cultural Exchange Act (MECEA)—also known as the Fulbright Hays Act—was passed, a historic piece of legislation aimed at consolidating various international exchange programs and fortifying a cohesive public diplomacy framework in the face of the Cold War.<sup>7</sup> The Act resulted in the creation of the J-1 Exchange Visitor Program, and, under its auspices, the Summer Work Travel (SWT) program. According to its authors, the purpose of the law was to:

increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world; to promote international cooperation for educational and cultural advancement; and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.

As the ambitious rhetoric suggests, the original aims of MECEA were unequivocally diplomatic. In contrast, critics of the SWT program paint this J-1 visa category as little more than a vehicle for importing cheap, exploitable labor—one that is far removed from the geopolitical and diplomatic considerations that drove the original legislation authorizing international exchanges. Interestingly, many opponents of the SWT program tend to treat as novel the incongruence between the program's premise and its use as a *de facto* temporary work visa. Recent advocacy

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<sup>7</sup> Some of the findings I include in the current chapter also appeared in a 2017 *Labor History* journal article “From Cultural Sojourner to Guestworker? The Historical Transformation and Contemporary Significance of the J-1 Summer Work Travel Program” (Bowman and Bair 2017).

reports by the Southern Poverty Law Center and the Center for Immigration Studies, along with media coverage by the *New York Times* and the Associated Press, offer few historical details and primarily focus on recent problems and the controversy associated with the program since the mid-2000s (Holbrook et al. 2010; Preston 2011; Kammer 2011; SPLC 2014).

Yet, historical analysis of the employment-based J-1 visa categories reveals persistent anxieties inside and outside of government—dating back decades—about the low-wage work versus cultural exchange nature of such programs. For example, government regulators worried that the SWT program activities didn't fit under the cultural exchange rubric. Given this reality, those responsible for the program questioned their legal authority to operate it. Officials also expressed concern over the SWT program's emphasis on open labor market employment and regulation of what amounted to labor activities within the context of a cultural exchange visa. Similarly, law makers and regulators debated the role that the private sector and the market should play in dictating the scope and form that J-1 visa activities take.

Concretely, these apprehensions would manifest in discussions about the SWT program's *lack of reciprocity* (i.e. strong inflows of foreigners without equivalent outflows of American participants). Without reciprocity, there was doubt about whether cultural exchange was occurring as part of the SWT program. Additionally, critics wondered if, in the absence of reciprocity, U.S. youth job seekers faced unfair competition from SWT participants. These labor market concerns would also result in temporary freezes on private, cultural sponsor expansion; government regulators acknowledged in policy statements that sponsors were likely not doing enough to oversee the labor market activities of the students for which they were responsible. Yet, government officials also openly credited the private sector for bolstering people-to-people diplomacy goals when the appetite for such public expenditures was waning.

While these concerns surfaced early and often in the program's tenure, they were never fully resolved, and, in fact, continue to drive debates about the program today.

In this chapter, I pose my first research question: *when did the disjuncture between the cultural exchange versus work-based nature of the SWT program emerge, and how does this historical tension between rhetoric and practice inform current debates about the SWT program?* I provide a brief history of the SWT program including a review of the key stakeholders responsible for its creation and expansion. By situating the SWT program and its changes in historical context, I address a topic largely neglected by scholars: the origins and key developments of an employment-based visa program that most Americans scarcely knew existed until the 2010s.

I also shed light on how and why the SWT program has become embroiled in current debates about the United States' immigrant labor policy. As recently as 2012, the SWT program was described by its own Office of the Inspector General as “essentially a work program masquerading as cultural activities” (State Department OIG 2012). This historical perspective reveals, however, that the criticisms of internal auditors as well as the grievances of President Trump and Senator Sanders are not novel, but rather a continued expression of ambivalence about SWT's designation as cultural exchange. Moreover, with historical insight, one is better able to appreciate the forces that originally shaped and continue to influence the political economy of the SWT program in the twenty-first century.

## **II. The Early Years of the SWT Program**

It is difficult to paint a clear historical picture of cultural exchanges for primarily employment-based activities prior to the 1980s, since many of the relevant J-1 visa categories—SWT, camp counselor and trainee programs—were not specifically mentioned in the Code of

Federal Regulations (C.F.R.) until 1983. Thus, between the official creation of the SWT program under the purview of the J-1 visa in 1965 and its inclusion in the C.F.R. (detailed below), the SWT program operated without a clear regulatory framework. Not until 1999 did the SWT program become its own distinct category of the J-1 visa.

While early information on the SWT program is rare, Senator J. William Fulbright, a co-sponsor of the MECEA, hinted at the rationale for the SWT program in a 1991 letter to Congress. Fulbright's purpose was to recommend Henry Catto to lead the now defunct United States Information Agency (USIA), which once had the responsibility of managing the J-1 Exchange Visitor Program. Senator Fulbright provided his views not only as a co-sponsor of the MECEA but also as an honorary chairman of the Council on International and Educational Exchanges (CIEE), one of the largest U.S. cultural sponsor organizations in existence.

As part of his endorsement of Mr. Catto, he took the occasion to counter the GAO's criticism of the SWT visa in its 1990 report titled *Inappropriate Uses of Educational and Cultural Visas*. The GAO's report claimed that the SWT, au pair, and international camp counselor categories of the J-1 were inconsistent with legislative intent (GAO 1990: 2). Fulbright insisted that MECEA was "intended to cover a broad spectrum of educational and cultural activities" and the "summer work/travel program is an excellent example of the type of exchange authorized by the 'other educational activities' provision contained in Section 102(a)(1)(i) of the Act." Fulbright emphasized this view again when he went before the U.S. House of Representatives' Committee on Foreign Relations at a 1992 hearing entitled "International Exchanges in a Changing World," this time on behalf of the Liaison Group. The Liaison Group was a collection of 24 non-profit cultural sponsor organizations representing the cultural exchange industry collectively. He maintained that the MECEA "contemplated a very

flexible visa able to serve a broad range of programs for students, scholars, trainees, and others” (Fulbright 1992:9).

According to the late Senator, foreign students had entered the United States and participated in similar summer-based work programs under other visas prior to 1965. But, after the Immigration Reform Act of 1965, those visas were no longer available—thus giving rise to the J-1 SWT program as an unofficial stream of the J-1. In his 1991 remarks, he explained that the program afforded participants “the opportunity to support themselves while at the same time learning about the foreign society in which they are working” (Fulbright 1991). In other words, while not explicitly outlined in the statute, he insisted that the legislation as it was written did apply to foreign students who wanted to experience U.S. culture while offsetting their short-term stay with incidental employment.

Senator Fulbright’s testimony also referenced a watershed moment early in the 1970s. Fulbright explained that in 1972 the principle of *reciprocity* was introduced to the SWT program, a provision he insisted set it apart from an ordinary migrant work program. As he saw it, reciprocity would ensure that the SWT program functioned as a cultural “exchange,” ensuring a two-way flow of foreigners into the United States and American college students travel abroad for short-term employment. He asserted, “Beginning in 1972, the Department of State modified the summer work/travel [SWT] program to require sponsors of the program to create reciprocal opportunities for U.S. students to work and travel abroad in a similar manner.”<sup>8</sup> Thus, the reciprocity requirement has been an integral part of the program for the past 19 years” (Fulbright 1991).

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<sup>8</sup> Despite a thorough search in Congressional records, annual reports, and the Federal Register, I found no mention of this reform in 1972.

Since no records have been kept about the early SWT streams of J-1 visa holders, it is hard to know if the reciprocity provision achieved its aim beyond Fulbright's assertion that it had. While the late senator would not live to witness the program's transformation into a \$100 million per annum private-sector industry, his testimonies provide rare insight into the program's beginnings. Beyond Senator Fulbright's statements, rule-making documents issued by the International Communications Agency (ICA)—which was later renamed the United States Information Agency (USIA)—also provide a window into the early days of the SWT program. In 1981, the ICA proposed new regulations to effectively codify the SWT program into the Code of Federal Regulations (C.F.R) along with two, similarly situated employment-based programs: the J-1 trainee and camp counselor programs. Under the proposal, these programs would be defined for the first time in separate paragraphs in the C.F.R. As the ICA explained, "The proposed amendment to the present regulations is expected to provide organizations with effective guidelines and criteria with which to administer practical training use of the J-1 visa" (ICA1981: 63322). The description of the programs as practical use signaled that for the agency charged with overseeing them, there was a need to distinguish the employment-based uses of the J-1 visa from its more strictly academic and cultural forms.

The proposed amendments likewise acknowledged that additional rules were necessary to manage work activities under the SWT and related practical use programs. Importantly, they represented an effort to guard against adverse labor market effects, namely the possibility that an influx of foreign job seekers might take jobs from Americans. The ICA recommended: 1) a policy of *reciprocity*, in order to ensure that the inflow of SWT participants was balanced by an equivalent outflow of Americans seeking temporary work abroad, codifying for the first time under the C.F.R. the 1972 policy referenced by Fulbright; 2) *delayed arrival* for SWT

participants without pre-arranged employment, which would create an “uncompetitive environment” of two to four weeks for American students looking for summer jobs; 3) *geographical distribution* of participants to avoid regional “clustering” of J-1 workers in regional labor markets; and, 4) in the case of camp counselors, *limits on the number of “international” staff* at any one worksite (1981: 63222-5). Each of these measures represented a deliberate attempt to shield U.S. workers from SWT participant competition for jobs in the labor market, whether by allowing U.S. workers to get a head start in their job search or to prevent a flooding of SWT applicants in any given regional labor market.

Additionally, the proposed regulations outlined special requirements on the part of employment-based cultural sponsors. For example, sponsors of trainee visa participants were required to comply with U.S. wage and hour laws and to disclose the costs participants would incur. This measure was intended to avoid violations of J-1 workers’ rights. But, it was also designed to prevent the undercutting of U.S. worker wages and conditions. Furthermore, certain work under the “practical use” programs was prohibited (1981: 63322-5). SWT participants were limited to a “commercial or industrial capacity.” Employment as “servants, mother’s helper, au pair or other jobs of a domestic nature in private homes” was expressly prohibited (1981: 63324).

With very few modifications, the 1981 proposed regulations became final in 1983. Overall, these reforms recognized that the “practical use” versions of the J-1 could generate labor abuses of the sort that had occurred in the past under official temporary immigrant labor programs like the Bracero program (Zatz 1993). They also made clear that concerns about the SWT and similarly construed low-wage employment-based J-1 programs had existed as far back

as 1972—signaling then, as now, the tension between the principled rhetoric of cultural exchange legislation and its practical applications.

### **III. 1990s: The Resuscitation of the SWT Program in the Aftermath of the Cold War**

Ultimately, the safeguards added in the 1980s did not protect the SWT program and its employment-based counterpart programs from future scrutiny and criticism. In 1988, Congress ordered a GAO review of the J-1 Exchange Visitor Program. This action stemmed from USIA's concern about the then-pilot au pair program and whether the agency had the legal authority to operate a domestic childcare program (U.S. Senate 1988). The 1990 GAO report found fault with the J-1 visa program on various levels. It concluded that the SWT, camp counselor, au pair, and trainee categories were “not clearly for educational and cultural purposes,” and, as such, “dilute[d] the integrity of the J visa and obscure[d] the distinction between the J visa and other visas granted for work purposes” (GAO 1990:3).

The GAO went as far as to suggest that other temporary nonimmigrant labor visas such as the H-2 visa (for agricultural and non-agricultural low-wage workers), L visa, (for intra-company transfers of skilled workers) and M visa (for vocational students) were likely more appropriate for the employment-based activities carried out under the J-1 programs (1990: 9). Furthermore, the report found the J-1's regulations “too vague and general” to ensure compliance (1990: 14).<sup>9</sup> Finally, the GAO sharply criticized the program's day-to-day management, citing “major problems and internal control weaknesses.” Specifically, the GAO pointed to USIA's data management program, which was unable to track active J-visa program sponsor organizations or the exact number of J-1 visa holders entering and leaving the country, a finding

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<sup>9</sup> This GAO finding merely echoed the USIA's own findings, which were revealed in its 1987 Federal Managers' Financial Integrity Act Report, but which remained unaddressed until three years later when the GAO report was released.



underscored by my own challenges in accessing any SWT participant information prior to 1986 (1990: 26).

The GAO's stern critique set in motion a flurry of USIA activity. In 1990, the agency established the Task Force on Regulatory Reform of the Exchange Visitor Program, which was charged with carrying out a massive review of several J-1 programs. This task force also temporarily placed moratoria on the expansion of the SWT, camp counselor and trainee programs (USIA 1990: 32907) to allow it time to investigate the problems raised with the J-1 Exchange Visitor Program. Less than a year after the task force issued the moratoria, however, the USIA reversed this restriction on the camp counselor and trainee programs, arguing:

During this period [of the moratoria] vast political and economic changes have taken place in the Soviet Union and in the former Eastern Bloc countries. A number of new foreign policy initiatives, such as the Support for Eastern European Democracies (SEED) program, the President's Eastern European Initiative, as well as many *private sector initiatives*, have demonstrated the need for expanding exchange activities involving those regions. At the same time, the Agency has been reluctant to designate new programs or allow the expansion of existing programs while it is in the midst of a total regulatory reform effort....Nonetheless, foreign policy considerations override this concern and the Agency has determined that it is in the foreign policy interests of the United States to lift the moratoria on the expansion of currently-designated exchange visitor training and camp counselor programs (emphasis added) (USIA, 1991: 65991).

The announcement of the USIA's reversal, while having no explicit bearing on the SWT program at the time, acknowledged the need for more regulation of these employment-based J-1 categories while simultaneously authorizing an expansion of the same programs to accommodate growing interest on the part of foreign students, U.S. employers, and a burgeoning industry in private cultural exchange. The USIA's comments regarding the new opportunities made possible by the end of the Cold War foreshadowed the growth of the SWT program and the shift in participants from Western to Eastern Europe that would occur over the next two decades (1991: 65991). Furthermore, while officially citing "foreign policy interests", the statement laid

bare the government's newfound market-based interests in the J-1 program. The USIA, and later the State Department, would continue to reference the private sector as fundamental to its cultural exchange programming.

In a separate announcement the same year, the USIA pledged to analyze whether the SWT program should be continued in light of the GAO's findings (USIA 1990: 32906). Fewer than two years later, the USIA described the agency's predicament with the SWT program at the agency's February 18, 1992 testimony during an appropriations hearing before the House of Representatives,

The Agency [USIA] has, for the past eighteen months, engaged in a comprehensive policy review and revision of the regulations governing the Exchange Visitor Program. Such reform is necessitated by the Agency's concern that the J visa is being inappropriately utilized to circumvent U.S. labor and immigration laws" (House of Representatives 1992: 1427).

At a hearing entitled "International Exchanges in a Changing World" held later that year on July 9, 1992, Deputy Director of the USIA's Bureau of Educational and Cultural Affairs, Dr. Barry Fulton, explained that the GAO had recently issued its legal determination that the USIA "was without legal authority to conduct three categorical programs operating under the Exchange Visitor Program umbrella—the au pair, summer work/travel, and camp counselor programs" (House of Representatives 1992: 85). Congressional members pointedly asked in an on-the-record question and answer exchange whether the USIA agreed with Fulbright's assertion that the MECEA should be interpreted broadly, and, if so, why there was a legal problem with the SWT program. In its prepared response, the USIA noted,

Although Summer Work Travel participants meet the statutory requirement regarding participant status—student—they do not meet the requirement regarding *activity*. These participants enter the country to pursue *open labor market employment*. USIA lacks, as a matter of law, authority to permit *open labor market employment* as such authorization is

within the sole jurisdiction of the Immigration and Naturalization Service” [emphasis mine] (House of Representatives 1992: 84)

In a separate question, Congressional members plainly asked the USIA what Congress could do with respect to funding its activities. To this, the USIA replied:

[T]he one specific area where new legislative authority would be helpful is with the summer work/travel...we do not believe we have the legislative authority to conduct this program, but we are of the opinion that—as a policy matter—these valuable and successful exchanges should be continued within the Exchange Visitor Program umbrella. Enabling legislation will be part of the Agency’s FY 94-95 package” (U.S. House of Representatives 1992: 75).

Five months after this testimony, the USIA formally issued the results of its review of the J-1 in the Federal Register. In summarizing the agency’s findings its authors acknowledged, “[t]he Agency believes that the principal activity of participants in existing summer student travel/work programs, for the most part, is working full-time for pay in a job which has no formal educational or cultural component, except as a product of chance...[T]his is the reverse of what Congress envisioned” (USIA 1992: 46676). Consequently, the USIA announced that it would propose a reform of the MECEA (Fulbright Hays Act) to accommodate the SWT program under the J-1 Exchange Visitor Program—though it is not clear from historical documents exactly how or what USIA officials believed they could change about the legislation to achieve this goal (1992: 46676).

Nonetheless, the USIA would not formally revisit the SWT program until a March 28, 1996 Statement of Policy. The USIA again conceded it lacked statutory authority to run the SWT program by reiterating the GAO’s finding that SWT participant activities were not conceived of in either the MECEA or the Immigration Nationality Act. In the same statement, the USIA addressed two original bedrocks of the SWT program: reciprocity and a preference for

students “lacking sufficient funds to enter the United States as tourists” (1996: 13761). These requirements sought to minimize adverse effects on U.S. workers on one hand, while privileging those foreign students who could least afford to travel to the United States. The USIA acknowledged that these principles had been “seriously eroded with the passage of time” yet offered no suggested changes (1996: 13761).

Moreover, despite its own legal determination that it lacked authority to oversee the program, the USIA announced in the 1996 statement that it was lifting its moratorium on the SWT program by allowing four out of five SWT cultural sponsors—the American Institute for Foreign Study, the YMCA, Interexchange, and Camp Counselors USA—to “expand both their number of program participants and the countries from which they are selected” (1996:13760). The fifth sponsor, the Council on International Educational Exchange (CIEE), which hosted 75% of all SWTs, would be allowed to maintain operations, but not expand—in part because it had left participants to “their own devices in securing both employment and accommodation” (1996: 13760).<sup>10</sup> The USIA’s seemingly illogical decision to expand the SWT programming was based on a change of legal reasoning and strategy about what constituted a cultural *activity*. Instead of considering the activity of the *SWT participant*, (i.e. open labor market employment), the USIA reasoned that the legality of the program turned on the activity of the *cultural sponsor*. As the 1996 statement put it, “selection, screening, orientation, placement, monitoring, and the promotion of mutual understanding define what an exchange activity is and whether one is actually occurring” (USIA 1996: 13760). The USIA likewise declared that it would put off until

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<sup>10</sup> While in its 1996 Announcement, the USIA referenced only the four organizations that would be permitted to expand under the SWT program, I determined that the CIEE was the censured sponsor based on Fulbright’s 1991 letter in which he explained his role of Honorary Chairman of CIEE, which he claimed at the time was “by far the largest U.S. sponsor of the Summer Work/Travel program.”

1998 a determination on pre-placement requirements, so that it could consult with the Department of Labor (DoL) to assess possible domestic labor market impact due to “the lack of preplacement” (1996: 13762).

Meanwhile, five months later, on June 25, 1996, USIA officials appeared before the House of Representatives’ Committee on International Relations (at a hearing entitled “International Exchanges”) to make its case for retaining a budget for cultural exchange. USIA officials underscored the need for international exchange programming after the fall of the Iron Curtain. In the hearing’s opening remarks, U.S. Representative Christopher Smith insisted that public diplomacy was indeed necessary even with a thawing in relations between the United States and nations of the former Soviet Republic. But, he reasoned that the U.S. government should “avoid simply giving free trips to people who could probably find a way to visit the United States even if there were no USIA exchanges” and should vigorously cut “programs which duplicate other programs which spend too much on overhead or whose relationship to freedom and democracy is too attenuated to justify the expense” (U.S. House of Representatives 1996: 1-2).

Anticipating an uphill fiscal battle in a post-Cold War context, the USIA came to Congress to plead its case *not* to cut its budget for a fourth consecutive year. It emphasized its increased reliance on public-private partnerships as one of many steps it was taking to achieve vital foreign policy goals, while saving the American tax payers money. Offering a neoliberal logic characteristic of the late nineties, the then-Deputy Director for the USIA’s Bureau of Educational and Cultural Affairs, John Loiello, described the value of public-partnerships in the realm of cultural exchange: “[S]ociety is well served when government, the NGOs and

corporations synergistically serve the interests of each other” (U.S. House of Representatives 1996: 11; Peck and Tickell 2002; Centeno and Cohen 2012).

To that end, the Alliance for International Exchange also testified about the critical role that exchanges plays in foreign policy in the wake of the Cold War. The Alliance represents a 1998 merger of the Liaison Group and International Exchange Association, two key international and cultural exchange advocacy groups who consolidated to streamline resources and lobbying activities. It argued on Capitol Hill that educational and cultural exchange experiences were responsible for nurturing the education and worldviews of elite technocrats from East Asia and Latin America who presided over “an unprecedented opening of markets, burgeoning trade, and in many cases, democratic reform” (U.S. House of Representatives 1996: 82). The Alliance also argued that in an era of lean budgets, “privately funded programs run by American non-profits extend[ed] the Agency’s reach and efficacy, and support[ed] its mission without the expenditure of federal funds” (U.S. House of Representatives 1996: 83). Of the SWT program, the Alliance representative noted that his association’s members would “continue to work with the USIA to encourage the right balance between necessary regulation and *empowering the private sector* to advance the goals of the Agency and the Fulbright Hays Act” (U.S. House of Representatives 1996: 83; emphasis mine).

Congressional members apparently accepted these arguments and embraced the notion of private sector management of public diplomacy. In 1998, Congress granted the USIA the legal authority to administer the program it previously lacked.”<sup>11</sup> The Senate’s Committee on Foreign

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<sup>11</sup> Congress granted the USIA to “administer Summer Travel and Work programs without regard to preplacement requirements” via two pieces of 1998 legislation: Pub. L. No. 105-277, an omnibus appropriations bill and Pub. L. No. 105-244, a Higher Education Act Reauthorization Act (Costa 2011: 5). The USIA’s legal authority to administer the SWT program is codified at 22 U.S.C. § 1474.

Relations' justification for the legislative measure was that the "program is self-financing and requires no U.S. funding" and that it had been operating since the mid-1960s, allowing "students of average means to enter the U.S. on J-1 visas and to work for three months."<sup>12</sup> Following this authorization, the USIA promulgated regulations in April 1999 that established the SWT program as its own J-1 visa category (1999: 17974).

Thus, the 1990s produced yet more consternation about the proper role and home for the SWT program. The USIA never managed to convincingly repair the conceptual disjuncture between the program's diplomatic premise and its application as a vehicle for importing temporary migrant labor. In reality, the USIA's series of contradictory statements and actions in the 1990s further exposed this tension. Ultimately, rather than asking Congress to reinterpret the original intent of MECIA—or to shutter the SWT program since it fell outside of the parameters of the Act—it simply asked Congress for the power to administer the program through administrative fiat. Such a move is consistent with a broader trend toward transferring policymaking to the executive branch. As Kitty Calavita points out, this kind of delegation is "concentrated in controversial or problematic policy areas that present Congress with no-win political dilemmas" (1992:41).

Furthermore, the 1990s marked a significant rise in the influence of the private sector to set the SWT program's course in the decades that followed. Instead of addressing concerns about the adverse labor market impacts of the SWT program head-on, the U.S. government shed the safeguards of reciprocity and pre-placement as a concession to the private sector.

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<sup>12</sup> U.S. Congress. Senate, Committee, *Foreign Affairs Reform Act*, 38-39. The SWT program is self-financing insofar as almost the entirety of the budget for the Office of Private Sector Exchanges—the office within the DoS's Bureau of Educational and Cultural Affairs (ECA) that manages the SWT—is generated through the fees that cultural sponsor organizations pay to DoS for SWT administration privileges.

Consequently, this opening for increased private sector involvement in determining regulations and aspects of the everyday management of a temporary cultural visa would result in a dramatic expansion of the exchange industry and induce a wave of controversy and scandals over the next decade.

#### **IV. The 2000s: Unchecked SWT Program Growth Amid Growing Scrutiny**

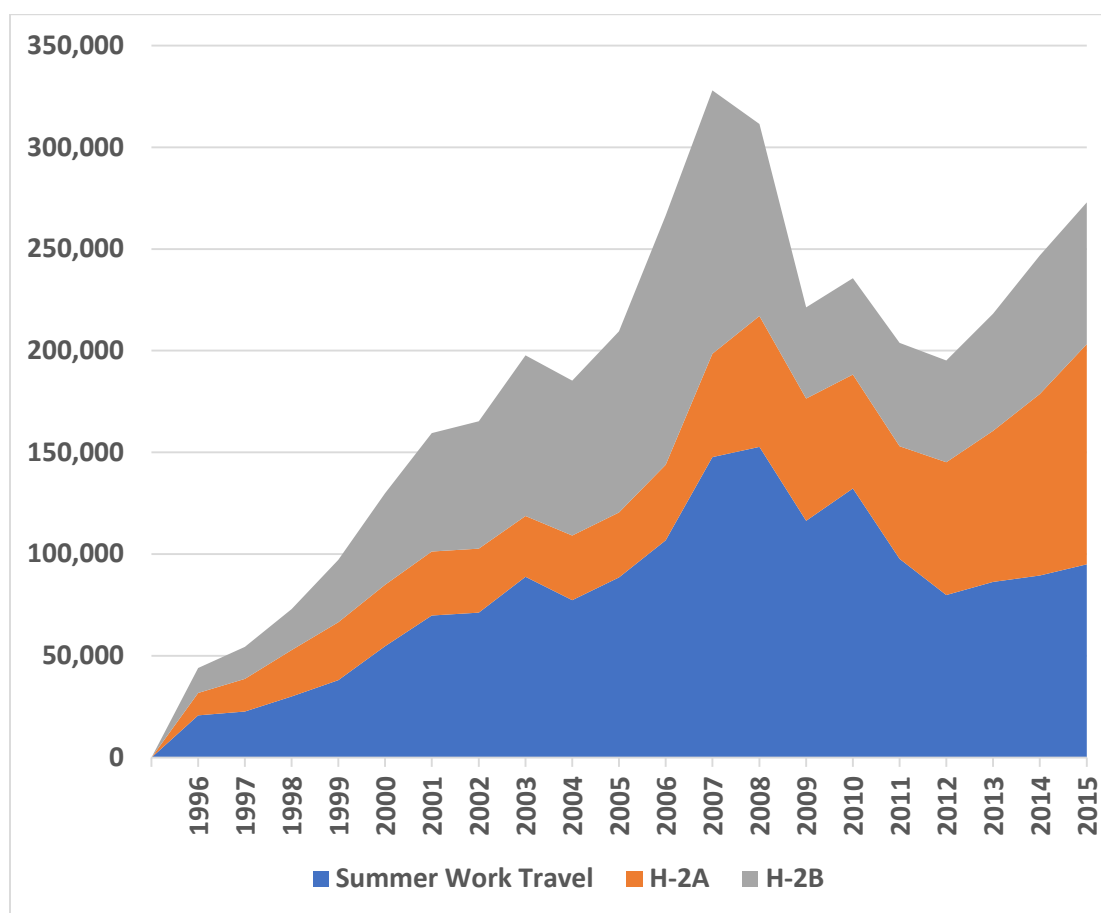
The actions of Congress and the USIA between 1996 and 1999 transformed the program from a little-known, modestly utilized stream of the J-1 Exchange Visitor Program to the most widely used category of the J-1. In 2002, the SWT category accounted for 25 percent of all J-1s; by 2010, it was 43 percent (Costa 2011: 9-11). Similarly, the number of SWT cultural sponsors went from four in 1996 to 39 in 2018 (USIA 1996: 13761).<sup>13</sup> The SWT program's unchecked growth throughout the first decade of the 2000s likewise allowed it to discreetly but consistently exceed the visa issuance of both the H-2A and H-2B, two official non-immigrant visa programs for temporary low-wage workers (Figure 3.1).

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<sup>13</sup> The USIA claimed in its 1996 policy statement that five cultural sponsors were administering the SWT program in 1996. The J-1 visa information section of the State Department website listed 39 SWT cultural sponsors as of December 2018.



**Figure 3.1: J-1 SWT, H-2A and H-2B Annual Visas Granted, 1996-2015**



Source: H-2A and H-2B data (DoS 2017a); J-1SWT data 1996-2001(DoS PowerPoint presentation on file with first author); J-1 SWT Data 2002-2014 (IAWG “Annual Reports”, multiple years); J-1 SWT 2015 (J-1 Visa Basics page of DoS website)

While Congress’s decision to grant the USIA the legal authority it previously lacked insulated it from the legal controversy and limelight it garnered for much of the 1990s, the program did not fully escape the public’s attention. In 2002, the *Hartford Courant*, a regional New Hampshire newspaper featuring Western Massachusetts and New Hampshire-relevant news, published an article on SWT participants working at a Springfield, MA Six Flags. Workers complained that they were routinely over-worked, often having to cover double shifts with no breaks. Marcin Karbowniczek, a Polish student, told reporters that “[t]he only thing

‘work-and-travel’ about the program is working long hours and traveling back and forth to work” (Tantraphol and Bowser 2002). Reporters also interviewed Andrew Schoenholtz, a legal expert with the Georgetown Law School who bluntly characterized the USIA’s maneuvering. Of the 1998 law change Mr. Schoenholtz remarked, “rather than change their policy to conform to the legislative intent, they’ve changed the legislative intent (Tantraphol and Bowser 2002).”

Moreover, even after U.S. Congress gave the executive branch explicit authority to privatize and expand the Program, the government issued several reports citing the program’s weaknesses. For example, the DoS’s Office of the Inspector General published a report in 2000 citing inadequate monitoring of many J-1 program categories, a lack of reciprocal exchanges for U.S. youth and scholars going abroad, and concerns about the increased profit-making activities of SWT and trainee sponsors and their third-party agents (DoS 2000). Likewise, in a 2005 follow-up to its 1990 report, the GAO echoed the Inspector General’s finding that the State Department needed to improve compliance and data collection efforts to prevent J-1 SWT and trainee worker exploitation.

At the close of the 2000s, the SWT program became the subject of a December 2010 Associated Press investigation. Reporters claimed that their investigation found students “forced to work in strip clubs instead of restaurants, others reporting take-home pay of \$1 an hour or less, and students made to eat off floors” (Holbrook, Baker Weiss 2010). The AP investigation and a walkout of SWT participants at the Hershey subcontracted facility (previously mentioned in Chapter 1) less than a year later would lead several immigrant and worker groups to engage in a sustained campaign to raise awareness about what they see as the many problems with the SWT program—an effort that continues today.

In 2011, the DoS issued regulations that increased pre-employment placement requirements for SWTs prior to their arrival in the United States, called for sponsors to fully vet third parties (foreign recruiting entities and U.S. employers) and SWT job offers, and required sponsors to contact SWT participants on a monthly basis (DOS 2011a: 23,178). The DoS also issued an SWT cap of 109,000 participants annually (DOS 2011b: 68,808). In May 2012, it issued a second set of regulations that prohibited SWT placements in workplaces associated with dangerous working conditions and human trafficking and required sponsors to ensure that participants were exposed to legitimate cultural offerings (DOS 2012b: 25,597). Yet, in 2012, the DoS Inspector General published a report reiterating longstanding concerns with the SWT program, and pointedly questioned the appropriateness of allowing “what are essentially work programs to masquerade as cultural exchange activities” (2012a: 25.)

In 2015, the GAO issued a third report that acknowledged significant improvements in program monitoring as a result of 2011 and 2012 reforms but noted a continued lack of transparency regarding fees and the inability to verify participants’ cultural exposure (GAO 2015). In 2017, the DoS issued another set of proposed SWT reforms. The 2017 proposed rule changes acknowledged the need to implement further safeguards such as a minimum age for participants, maximum weekly hours, greater housing protections and increased sponsor monitoring of employers (DoS 2017b). But, organizations like the American Federation of Labor-Congress of Industrial Organizations and the Southern Poverty Law Center (SPLC) insist that the rules continue to fall short of addressing the program’s most problematic elements. These elements include the sponsor-based enforcement and monitoring structure, high student recruitment fees, the lack of publicly available labor market information on the program, and the continued placement of SWTs in manual labor hospitality roles—placements they argue have no

discernible cultural value and likely reflect employers' demands to address labor shortages.<sup>14</sup> In short, while taking several steps to address the most egregious abuses, DoS officials continue to defend the SWT program's value as a cultural exchange initiative.

## V. Conclusion

As my review of the SWT program's storied past shows, since its earliest days government officials as well as critics outside of government have grappled with how to square the "practical use" categories of the J-1 visa with the larger public diplomacy premise of the MECEA. Almost as long as the program has been in operation, government regulators have questioned the appropriateness of a cultural exchange visa that permits "open labor market employment" as well as regulations that seem insufficient to uphold its original tenet. While the sheer scale of the program has more readily exposed these seeming deficiencies and contradictions, historical analysis confirms that these tensions have long been present. In reality, my archival review shows that as the DoS/USIA has ceded more authority to (and further blurred the lines between itself and) the private sector, concerns about the SWT have steadily mounted. Thus, the history of the SWT program not only reveals that its tensions have been longstanding, but also that the relationship between DoS/USIA and the private sector—dating back to Senator J. William Fulbright himself—has served to cast further doubt on the SWT's cultural premise.

In the following chapter, I evaluate the current political economy of the SWT program. Through a review of the literature on managed migration and interviews with a range of stakeholders—from members of Congress and immigrant-labor advocates to SWT participants—

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<sup>14</sup> SPLC and AFL-CIO comments submitted in response to Public Notice 9522. The J-1 Exchange Visitor Program—Summer Work Travel Proposed Rule, Fed. Reg. 82(8)4120, can be found on the DOS website. Retrieved from [www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=DOS-2016-0034](http://www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=DOS-2016-0034) (accessed January 15, 2018).

I examine how the program's highly privatized management fuels controversy about the program today and, in the process, has become intertwined with debates about immigration policy. As I will argue, the developments of the 1990s paved the way for the SWT category of the J-1 visa to operate in the current economy as an employer's idealized version of flexible temporary migrant labor policy.

## CHAPTER FOUR

### THE POLITICAL ECONOMY OF THE CONTEMPORARY

#### J-1 SUMMER WORK TRAVEL PROGRAM

“Host companies benefit from an educated, multi-lingual, multi-cultural, and enthusiastic boost to their workforces. Participants have the opportunity to experience life in the United States covering seasonal demand or in longer-term structured training placements.”

Dynamic Global Exchange website (SWT program sponsor)

“We work with companies to develop a clear understanding of hiring needs, while our expert international offices and partners recruit qualified participants for each industry.”

Intrax website (SWT program sponsor)

#### **I. Introduction**

The SWT program model involves a public-private partnership between the U.S. Department of State (DoS) and the cultural exchange industry. Under this arrangement, the DoS designates private cultural sponsor organizations to recruit, select, place (in most cases) international students in temporary jobs, and otherwise take primary responsibility for them while they are on summer recess from university studies in their home countries. Cultural sponsor organizations, which provide their bona fides and pay a biennial designation fee of \$3,892 to the DoS, in turn report to the DoS on an annual basis about their activities, including student and employer complaints and how they have been resolved.

Detractors of the SWT program insist that the public-private partnership between DoS and cultural sponsors affords cultural sponsor organizations broad autonomy to court participants and employers for business and business partnerships. At the same time, they maintain that the cultural sponsors' role of overseeing international students and employers poses an inherent conflict of interest that disadvantages SWT workers and insulates employers from legal liability for problems that may occur. As the epigraphs above show, sponsors navigate dual roles as both low-wage headhunters and private intermediaries between SWT hopefuls and employers. The tension between economic and cultural objectives is clear: sponsors position themselves as international labor brokers for cost-conscious employers, while also promising international students an unforgettable cultural experience.

Under increasing scrutiny since the 2010s, the DoS and sponsors have responded to these concerns (Mohr, Baker & Weiss 2010; Preston 2011). DoS officials reformed program rules in 2011 and 2012, and, in 2017, proposed another set of reforms to expand sponsors' oversight duties and more broadly prevent the exploitation of SWT participants (DoS 2011a; DoS 2011b; DoS 2012; DoS 2017b). Additionally, several cultural sponsor organizations have formed international student outreach partnerships (ISOPs) with organizations in the local communities where they work to promote student cultural exchange activities and to counter the perception that sponsors put the interests of employers ahead of J-1 participants. While these outreach initiatives have had a positive impact on international cultural exchange visa holders in targeted communities, the outreach efforts are primarily limited to high J-1 density sites, such as Cape Cod, Massachusetts, and Ocean City, Maryland. (Terry 2018). Overall, critics of the SWT program claim that none of the reforms have managed to meaningfully disrupt the power or profits of the cultural exchange industry (SPLC 2017; AFL-CIO 2017).

In the following chapter, I address two research questions: *Does the SWT program in its contemporary form represent an exercise in diplomacy or a money-making enterprise? And, how does the public-private SWT program model prefigure broader trends in managed migration policy toward deregulation and a larger role for the private sector?*

Before addressing these research questions, I will first review the literature on managed migration and cultural exchange. As my review demonstrates, managed migration policy—even in its earliest forms—has long been used to distinguish the scant privileges of temporary migrant workers from those of U.S. citizens. Yet, migrant labor policy has evolved from its post-World War II second generation form as mostly large-scale bilateral agreements in agriculture and manufacturing, to its current form, which involves a dizzying array of visa carve-out programs supplying labor to a range of industries. The contemporary generation of guestworker programs is also characterized by heightened privatization and employer control in the United States and other western nations. Relatedly, literature on cultural exchange highlights how the social construction of people-to-people diplomacy visas, such as the SWT category, conceal the significant low-wage labor activities often associated with them. In the process, cultural exchange participants (and their co-workers) are often deprived of their rights as employees.

I then shift to an analysis of the political economy of the SWT program, which includes my qualitative data findings and my examination of the financials of the SWT industry. As I show, the profit-seeking potential of the program compromises its cultural aims. Similarly, the discretion that cultural sponsors have under the public-private partnership serves to weaken SWT program oversight. I conclude the chapter with my reflections on the significance of the program to U.S. temporary managed migration policy. I discuss how, given the cultural exchange industry's long held control over a niche in the temporary visa market, it has become a powerful



(if unexpected) political force blocking state and federal legislative proposals which aim to achieve greater transparency and protections for temporary foreign workers.

## **II. Scholarship on Temporary Managed Migration and Cultural Exchange**

### *Managed Migration through the Years*

Anthropologist David Griffith defines so-called managed migration as the “arranging, legally, for the immigration of foreign nationals into domestic labor markets to perform designated economic services” (Griffith 2014: xii). As alluded to briefly in Chapter 1, migration scholars identify approximately three generations of managed migration in Europe, North America, and the Middle East (Castles 1984; Castles, Booth & Wallace 1984). The first emerged out of race-based immigrant restrictions, beginning with the Chinese Exclusion Act of 1882 and a later ban on contract laborers and Chinese migrants; before this era, immigration law was practically non-existent (Hahamovitch 2011:13; Ngai 2004). These early race-based restrictions were in response to global migration brought about by capitalist development which stirred nationalism (and concomitant concerns about foreign arrivals) in many countries at the end of the 19th century, especially in young nations such as South Africa, Australia, and Germany (Hahamovitch 2011:16).

The so-called first generation of temporary migrant labor programs also saw the introduction of guestworker programs as state-sanctioned compromises between employers who demanded migrant labor and nativists who opposed immigration (Hahamovitch 2011:14). During this period, liberal states also imposed strict limits on the length of guestworker stays and promulgated measures to distinguish the rights and privileges of migrant laborers from citizens (2011: 34-38). It was at the turn of the twentieth century that many nation-states institutionalized a clear dichotomy between citizens and migrant laborers, with an emphasis on enforcing migrant

workers' *impermanency* and imposing clear restrictions on their claim to rights and benefits.

This first era of guestworker programs lasted until the Great Depression when countries began expelling laborers as unemployment and poverty grew.

The second generation of guestworker programs dated from World War II and included the U.S. Bracero Program, a bilateral agreement between the United States and Mexico that encouraged Mexican men to work on farms in the United States, initially to address a wartime labor shortage in California agriculture. There was also Germany's *Gastarbeiter* regime, which recruited laborers from southern and eastern Europe, and eventually Turkey, for post-war reconstruction (Calavita 1992; Castles 1984). Germany's program was Europe's largest, but similar policies could be found in the United Kingdom, France, and Switzerland, among other countries (Castles 2006; Hahamovitch 2011: 22). By the 1960s and 1970s, guestworker policies again fell out of favor after policymakers acknowledged several unintended consequences, including wanton abuse of migrant workers, unanticipated long-term settlement, and the entrenchment of social networks producing undocumented migrant flows (Massey, Durand & Malone 2002; Zatz 1993). Thus, the second generation of migrant worker policy is typified by unwieldy, state-managed programs in key industries that proved to be too large and ultimately too politically contentious to manage (Calavita 1992).

By the early 1990s, several European and North American countries ushered in another generation of temporary migrant labor schemes. While previous era programs had a unitary legal framework and serviced a limited set of industries, the third era (current) programs consist of a patchwork of carved-out temporary migrant labor programs for a broadly expanded set of industries (Sukthankar 2012). For example, labor economist Josephine Smart observes that, in the case of Canada, the current approach is highly segmented. Although this structure "reflects

the historical legacy of preexisting temporary foreign worker programs, lesser-regulated, competing schemes have been layered on haphazardly” (Smart 2014: 65). Similarly, both Germany and England's temporary international employment schemes involve multiple tiers of permits.

Likewise, scholars emphasize employers’ influence in setting temporary migrant labor policy in the contemporary era of third generation guestworker programs. Agriculture and migration expert Phillip Martin concludes that “[i]n most [industrialized] countries, employers but not unions are involved in developing program rules, and some countries allow employers to open the border gate to guestworkers with minimal government oversight” (Martin 2006: 2). Martin notes that many "current programs rely primarily on administrative rules that in effect say to employers—try to find local workers and, if you fail, you will receive permission to employ migrants” (Martin 2006: 37). Josephine Smart similarly characterizes Canada’s scheme as “an employer-driven program, reflecting the increasing privatization of immigration policy across North America” (2014: 66). This piecemeal approach enables employers to shop and swap visas to skirt program caps, worker obligations, or heightened scrutiny when a particular visa becomes embroiled in controversy (Sukthankar 2012: 34).

Likewise, scholars have noted that governments now transfer much of the daily management of temporary migration to the private sector. The private sector encompasses a diffuse collection of actors: industry associations, partnerships between employers and contractors, and labor recruiters located around the globe who operate at various scales and levels of legality (Griffith 2014: xiv). Sociologist Kerry Preibisch argues that this broad-scale transfer of responsibility in Canada's agri-food industry played out via the creation of the Pilot Program for agricultural workers, which employers have used to undermine the older Seasonal

Agricultural Workers Program (SAWP) (Preibisch 2010). SAWP, established in 1966, relies on bilateral agreements between Canada and a limited set of nations to broker the terms of guestworker importation. In contrast, the Pilot Program, established in 2002, deems workers from any country potentially eligible, requires no special status among Canadian employers to participate (other than a stated labor shortage), and affords no formal governance role to sending nations (2010: 410). Canada's deregulation, consistent with employer demands, introduces more competition into local labor markets, erodes workers' bargaining positions, and entails fewer state-provided social protections (2010: 423).

The U.S. has followed a similar course. As Martin suggests, whereas bilateral government agreements governed the Bracero and British West Indies schemes, the current H-2A program for low-skilled agricultural workers represents a single policy that shifts daily management to employers and private recruiters (Martin 2014).<sup>15</sup> This privatization has given rise to an exceedingly lucrative recruitment system for temporary labor visas involving international agents who reside comfortably out of reach of U.S. enforcement. Migrant labor experts insist that this situation not only affects low-skilled visas but rather extends to programs like the H-2B for non-agricultural low-wage workers and the H-1 visa for higher-skilled, technology workers.<sup>16</sup>

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<sup>15</sup> It is worth noting that the presence of bilateral agreements as part of managed migration policy by no means precluded employer influence. As Hahamovitch underscores in *No Man's Land*, even with the presence of bilateral agreements sending nations proved feeble stewards of their worker's rights in the mid-century, as the case of the U.S. British West Indies illustrates (Hahamovitch 2011). She suggests that a 'myth of managed migration' has long existed but has certainly intensified under globalization, making sending states even weaker administrators of their nations' workers than they were at the end of World War II.

<sup>16</sup> In 2015, the New York Times ran two front-page stories documenting the use of the H-1 workers by Toys 'R' Us and Disney's use of outsourcing companies to replace long-term U.S. company accountants and technology workers. See Preston, Julia 2015. "Toys 'R' Us Brings Temporary Foreign Workers to the U.S. to Move Jobs Overseas." *New York Times*, September 29. Retrieved on February 17, 2018 from: <https://www.nytimes.com/2015/09/30/us/toys-r-us-brings-temporary-foreign-workers-to-us-to-move-jobs-overseas.html?rref=collection%2Ftimestopic%2FToys%20&action=click&contentCollection=business&region=stre>

Thus, the current policy environment diverges from the immediate post-World War II era of temporary migrant labor programs in form, level of employer control, and scale of privatization, with the potential for even greater detrimental effects on workers. While the SWT program has received little scholarly attention, the same trends of privatization and deregulation permeate the SWT program's legal framework and daily management—a point I return to in Section III.

### *Literature on Cultural Exchange*

A second, smaller body of work focuses on cultural exchange programs that cater to international youth looking to cultivate cultural and linguistic skills by spending time abroad in short-term jobs. A handful of legal scholars and sociologists have documented how the private sector—and mix of employer and cultural sponsor groups—mobilize cultural exchange programs to meet their financial ends. Legal scholar Kit Johnson offers a uniquely detailed account of Walt Disney's use of cultural exchange visas to secure unfettered access to a highly specific pool of temporary foreign labor (Johnson 2011). Consistent with Douglas Massey's assertion that "labor migration policies are generally determined bureaucratically by economic interest groups who interact outside the public eye," Johnson documents how Disney convinced the DoS to create a special "cultural ambassador" J-visa category and later a separate, the new "Q" visa in 1990 to fulfill the company's labor needs (Johnson 2011; Massey 1999: 313).

Johnson shows that these policy adaptations, carried out through administrative rule-making instead of legislation, allow companies to have a heavy hand in crafting migration policy while filling positions with employees meeting certain desired ethnic criteria. Although the

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am&module=stream\_unit&version=latest&contentPlacement=2&pgtype=collection and Preston, Julia 2015. "Pink Slips at Disney. But First, Training Foreign Replacements." *New York Times*, June 3. Retrieved on February 17, 2018 from <https://www.nytimes.com/2015/06/04/us/last-task-after-layoff-at-disney-train-foreign-replacements.html?action=click&contentCollection=U.S.&module=RelatedCoverage&region=Marginalia&pgtype=article>.

company insists that such criteria enable it to deliver “culturally authentic” performances for its various “World Showcase Pavilions,” Disney workers have sued, alleging that the criteria represent employment discrimination. Specifically, in 2005, an Asian-American Disney employee claimed that Disney excluded him from employment at one of the park's highest paying restaurants, the Norwegian-themed Akershus Royal Banquet Hall (Johnson 2011: 933-34). As Johnson points out, Disney’s pervasive hiring of “cultural exchange” labor potentially allows the company to engage in practices that otherwise might be construed as discriminatory under U.S. civil rights law.

Scholars have also examined a group of cultural exchange workers in Australia identified as working holiday makers (WHMs). Although the ostensible purpose of the WHM program, like the J-1 visa, is “to promote international understanding,” scholars contend it has increasingly come to fill geographical and industry-based niches while placing spatial and temporal constraints on visa holders (Clarke 2005: 309; Tan & Lester 2012; Robertson 2013,2014). Geographer Nick Clarke and sociologist Shanthi Robertson observe that the status of WHMs is rendered ambiguous by the Australian government’s legal treatment of this group. As the scholars emphasize, foreign youth in Australia occupy a middle ground between economic migrants and tourist. Their in-between immigration and social status affords personal and professional opportunities for this population but likewise produces risks and challenges they must overcome (Clarke 2005; Robertson 2014: 16). In this chapter, I take up this theoretical concept, in part, to address the role of the state and private sector. But I return to this theory in Chapter 6 when I consider the experiences and subjectivities of SWT participants.

Research on au pairs, who like SWT participants, occupy low-wage roles, likewise highlights how the rhetoric of cultural exchange operates to obscure the substantial labor

expenditures and monetary enrichment of cultural sponsors that these exchanges often involve. Such studies are particularly relevant to understanding the social construction of SWT participants since, in the case of the United States, foreign au pairs enter the country under another category of the same J-1 cultural exchange visa used by SWT participants.

Anthropologist Sabine Hess and historian Annette Puckhaber, in their analysis of au pairs in the United States, and sociologists Carrie Yodanis and Sean Lauer, in their comparative review of au pairs in the U.S., U.K., and Australia, describe how au pairs are made vulnerable by the labels of “family member” and “cultural exchange participant,” respectively. As the authors point out, such labels emphasize the paternal role of employers and au pairs themselves as beneficiaries of cultural goodwill yet downplay the au pairs’ role as employees with claims to workplace rights (Hess & Puckhaber 2004; Yodanis & Lauer 2005). Legal scholar Janie Chuang suggests that “cultural exchange” acts as a subterfuge that “conceptually and structurally” removes au pairs from the protections of U.S. labor laws (given that the au pair program, as other categories of the J-1 visa, is not formally regulated by the Department of Labor (DoL)).

More recently, a coalition of immigrant advocates—the International Labor Recruitment Working Group—published a scathing report cataloguing a litany of abuses that allegedly occur under the au pair program and include excerpts from dozens of interviews with current and former au pairs (ILRWG 2018). This report was published on the heels of an unprecedented federal law suit filed by a group of U.S. au pairs. In *Beltran v. Interexchange, et. al*, all 15

designated cultural sponsors have been named as defendants for alleged wage-and-hour abuses and anti-trust violations based on au-pair sponsors' practice of holding wages to one rate.<sup>17</sup>

While the academic literature on cultural exchange is smaller than that on guestworkers, it is particularly relevant to an analysis of the SWT program because it suggests that foreign labor is made available to employers via the discursive and regulatory construction of work as a primarily cultural, as opposed to economic, activity. Although SWT participants do not work in homes like au pairs, sponsor organizations and DoS officials similarly defend the SWT visa as a cultural exchange initiative having more to do with public diplomacy than labor importation. Indeed, in a 2017 study commissioned by the Alliance for International Exchange, an association representing the business and legislative interests of the cultural exchange industry, its authors tout SWT participants' high level of satisfaction with the program (as reported on cultural sponsor-issued surveys) and minimize the impact of SWT student workers on the U.S. labor market (Eureka Facts 2017: 24-29, 51-56).

Up to now, this discursive construction of the SWT program has gone largely unchallenged by scholars, with minor exceptions (Medige & Bowman 2012; Bowman & Bair 2017; Terry 2018; Bowman 2018). Yet, since 2011, immigrant-labor advocates and anti-human trafficking service providers—and even proponents for limited immigration—have issued reports documenting their many concerns about employment-based J-1 programs. For example, in a 2011 Economic Policy Institute Briefing Paper, immigration labor expert Daniel Costa diagnoses four critical flaws of the program: its lack of protections for U.S. workers, including prevailing wage protections and non-discrimination in hiring; the unrestricted and overly broad authority of

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<sup>17</sup> The au pair plaintiffs in the case alleged fraud, wage-and-hour infractions, and a violation of the U.S. Sherman Anti-Trust Act for colluding to keep their wages artificially low—in some cases below state minimum wage levels (Eidelson 2018). A finding in the case has not been reached.



DoS's to create new guestworker programs; the inappropriate "financial incentives" for J-1 sponsors that often preclude meaningful reform of the program; and, the highly flawed system of management, data collection, oversight, compliance, and enforcement of several J-1 programs (Costa 2011: 36-37).

In a report published the same year, the Center for Immigration Studies (CIS) similarly decries the SWT program for delivering handsome profits for U.S. DoS-designated sponsors while depriving American youth of summer jobs. The author of the CIS report, Jerry Kammer, estimates that revenues from the SWT industry top \$100 million annually. He notes that in addition to what students pay to cultural sponsors, foreign youth pay many millions more in visa fees to the DoS and in travel expenses to and from the United States.

Similarly, in *Culture Shock: The Exploitation of J-1 Workers*, the Southern Poverty Law Center's evaluation of the J-1 SWT, Trainee and Intern categories, the report's author, Meredith Stewart, chronicles several abuses suffered by J-1 student workers. Basing her assessment on hundreds of interviews given by SPLC outreach workers with J-1 student workers, she claims that many incur significant debt to participate in the J-1 program—debt that she insists students often cannot recoup during their stay. She also describes the difficult working and housing conditions for J-1s that goes largely unaddressed by DoS and their partner sponsors (SPLC 2014: 17, 21, 29-30).

Altogether, the scholarship on managed migration places the rise of cultural exchange labor into temporal context by demonstrating a pronounced shift toward deregulation, privatization, and an overall proliferation of categories upon which employers increasingly rely to import migrant labor. Likewise, the literature on cultural exchange provides vital insights into the legal and social construction of cultural exchange. For example, the literature highlights

recent calls for greater recognition of the labor rights of those whose status is concealed by the cultural-diplomatic label of their visa. Taking into account the interconnectedness of these literatures and their relevance to the contemporary operation of the SWT program, I next explore debates about employment-based cultural exchange to make sense of the diverging viewpoints between the DoS/ cultural sponsor community and their critics. Through conversations with SWT program stakeholders and a review of cultural sponsor tax documents, I evaluate whether, in fact, the contemporary SWT program model is driven more by U.S. public diplomacy goals or by profit considerations. I also determine what, if any, relationship exists between the SWT program as it operates today and a bigger political contest at play to shape U.S. immigration policy in the twenty-first century.

### **III. The Contemporary SWT Program: A Public-Private Cultural Exchange Model**

The J-1 Summer Work Travel program falls under the purview of the DoS's Bureau of Educational and Cultural Affairs (ECA), a subset of its Public Diplomacy and Public Affairs branch. The ECA's office of Private Sector Exchange oversees the SWT, au pair, camp counselor, intern/trainee, and secondary school (high school) exchanges. Through secondary analysis of government and advocacy reports and interviews with a range of stakeholders, one flashpoint I identified concerns the quasi-public, quasi-private nature of many J-1 visa categories. Regardless of different stakeholders' assessment of this public-private arrangement, most describe it as a defining characteristic of the employment-based categories of the J-1 program. Depending on which philosophical side of the debate one is on, this public-private model is viewed as either a boon to the government or an assault on policies intended to protect temporary migrant workers.

As noted in the preceding chapter, DoS traditionally designated a handful of cultural exchange sponsors as private partners each year. This number began to grow during the second half of the 1990s, however. With the program's deregulation and expansion, the number of SWT cultural sponsors has swelled from four in 1996 to 39 in 2018. In 2015, over 94,000 international students participated in the SWT program. Given the average fee of \$2,500 USD per SWT student times the nearly one hundred thousand participants in the program, the question arises whether—since its deregulation and the vast expansion of the DoS public-private program model in the late 1990s—the program is more responsive to private markets than to diplomatic interests. Based on my conversations with several SWT stakeholders, along with a review of cultural sponsor financial documents, I found that private markets tend to overshadow the program's diplomatic aims.

*The Economics of Operating as a DoS-Designated Cultural Sponsor: “It’s a License to Make Money!”*

In my conversations with cultural exchange industry representatives, they insisted that the public-private partnership is a sound model and that participant fees strengthen SWT program safeguards. Fees go toward 24-hour “customer service” (the industry’s phrase, not mine) to support participants, health insurance coverage, and in many cases, job placement services. Moreover, sponsors’ fees help to offset the cost of vetting and validating employers and of conducting monthly monitoring of SWT participants, typically via an online check-in system. Roger, a representative of a cultural exchange industry trade association, explained to me:

In this field what the fee does, the fee actually makes the student safer because, sponsors, this is where they get revenue to run the programs. So when the sponsor is required to do all kinds of things by the State Department. For SWTs, they have to do monthly monitoring, 24/7 hotlines, they have to do screening and orientation, and have people ready to go and get out there and deal with crises. And that all costs money. Without it, it just wouldn’t be safe.

Moreover, sponsors view their fees as reasonable for the type of services they render. Scott, a congressional staff member, admitted to me in our interview that his office decided to drop the J-1 visa from an amendment to the proposed Border Security, Economic Opportunity, and Immigration Modernization legislation (2013) (referred to hereafter as U.S. Senate Bill 744) that would have prohibited international labor recruiter fees. While other visas remained in the amendment, cultural exchange industry leaders insisted that the J-1 visa should not be included because of its cultural nature. He explained the disagreement between his office and cultural industry representatives on the student fee issue: “Even when we weren’t far apart with some of the J-1 visa folks [SWT cultural sponsors] on substance, we had this pretty serious philosophical disagreement that they saw this as a vacation program, and of course [from the industry’s perspective] you would charge fees if you were setting up someone’s vacation.” Scott and other congressional staffers concluded that the industry was not going to budge on this point given the potential financial losses involved to their industry. He and colleagues reasoned that the industry would have sought to defeat the entire amendment if J-1 visa programs were not exempted.

From Lucile’s perspective, an official I spoke with at the Educational and Cultural Affairs’ Office of Private Sector Exchange within DoS, the public-private partnership between DoS and private cultural sponsors allows cultural programming to happen without government subsidies—a logic that harkens back to government officials’ justification of the program in the early nineties as was discussed in Chapter 3. As she put it,

[T]he fact of the matter is if the US government had to pay for everything, it just wouldn’t be happening. And who wants the US government to pay for everything? There is already a lot of US government-funded exchange programming, and they are excellent. This is another means to do these programs. And I think that is pretty much widely appreciated and accepted that that has happened.

For Lucile, programs like the SWT program surely would not operate if they weren't underwritten by the private sector. In her view, private sector exchange programs represent a win-win: U.S. taxpayers do not shoulder the tax bill, yet cultural programming still occurs. Likewise, sponsors pointed to the benefit of market-driven programming, and sponsors' built-in incentives to police themselves and the employers they work with to ensure they live up to the mission of fostering cultural exchange. As Doug, a private (for-profit) cultural sponsor representative, explained to me in our interview:

We sell out of [DS-2019 immigration] forms every year because we have the jobs. We turn back employers every year, because every year we upgrade our portfolio of good jobs, in our minds, good jobs in the desired places. And I think that would be the sponsor's hope in every place, that you get better and better employers every year and better and better locations. I guess what I mean by better would be: hoped for by the participants and smiled upon by the Department of State... We're able to keep our bar relatively high for the J-1 program, ultimately. Because we want to look good in our eyes, and pass our own smell test.

In Doug's assessment, market forces operated to make the SWT program lucrative while also yielding a portfolio of jobs that are "good", e.g., located in prime geographical locations and ostensibly involving types of work and working conditions deemed desirable by SWTs.

But, the sponsor community's perspective of the SWT program model notwithstanding, my research brings to light a public-private model that very often privileges the money-making activities of sponsors and employers, and which perpetuates conflicts of interest that ultimately subvert meaningful program oversight. Sponsors have benefited greatly from their relationship with DoS, but as several of those I interviewed insisted, the DoS has failed to hold sponsors accountable for the mistreatment of SWT workers. According to Mark, an immigration

researcher I interviewed who wrote a report critical of the SWT program, it is the market—not diplomatic considerations—that determined the scale and composition of the SWT program.

I think a much more modestly sized program is appropriate. When [SWT program] is growing as much as it has, and it is concentrated in certain areas like the Slavic states. I mean, good grief, how many people from the Belarus and Russia do you want to bring over? Why not have a broader geographic and cultural distribution of J-1 workers rather than these heavy concentrations, which reflect the business interests of the sponsors.

Joseph, a Department of Homeland Security official expresses a similar view.<sup>18</sup> He likened a DoS designation among private organizations to facilitate SWT exchanges to getting a taxi license: “It’s like getting a New York City taxi medallion, it’s a license to make money! They get their approval from State [DoS], and then they charge these poor people [SWT participants], what, thousands and thousands of dollars to get into the sponsorship, and the profit margin is enormous.” In Joseph’s view, becoming designated as a cultural sponsor gives organizations permission to monetarily exploit international students eager for a work and travel experience.

### *The Financials of the SWT Industry*

Joseph’s openly reproachful view of sponsors notwithstanding, there has been little inquiry into the financials of the cultural exchange industry. After the walkout at a Hershey subcontractor facility in Pennsylvania in August of 2011, a human rights delegation consisting of labor and employment law experts from Villanova Law School, City of New York University, and the University of Pennsylvania called for further investigation into the tax-exempt status of CET-USA, the cultural sponsor responsible for placing the SWT students into the subcontracted

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<sup>18</sup> I had the opportunity of interviewing him based on his detail to a U.S. Congress member, an arrangement which allows members of Congress to bring subject matter experts on discrete policy projects.

Hershey facility. Yet, despite their calls, there have been no comprehensive published findings on the financials of the cultural exchange industry.

Given the lack of available research, I sought the input of Brendan, a tax specialist on public charities who had led an initial inquiry into non-profit cultural exchange tax documents. I also carried out my own analysis of SWT sponsors for whom tax documents were available.<sup>19</sup> By obtaining the names of all 39 active SWT cultural sponsors from the DoS website, I confirmed that 12 of them, or 30%, claim a 501(c)3 public charity status—a legal designation that lowers an organization’s tax burden based on its public interest mission. Cultural exchange organizations that claim a non-profit status are required to make their revenues, expenditures, and salary information available to the public. This legal requirement made it possible for me to evaluate the annual revenue of several SWT cultural sponsors and to assess whether their financial practices generally conform with or diverge from public charity organization norms. Table 4.1 provides a summary of the total annual revenue of each of the non-profit SWT cultural sponsors, the percentage of the total revenue that is generated by student fees, the annual compensation of each organization’s highest-ranking employee, and whether CEO pay exceeds the mean and median pay according to the non-profit organization’s revenue range.

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<sup>19</sup> A law clinic affiliated with one of the authors of the Delegation report conducted a tax analysis of J-1 non-profit cultural sponsors, but to date has not published the results of that analysis—in part due to the graduation of law students working on the project. Nonetheless, I was able to interview Brendan, the primary student researcher responsible for carrying out the tax analysis. I feature excerpts from our interview and his legal observations in the current chapter.

**Table 4.1 Non-Profit SWT Cultural Sponsors: Annual Revenue and CEO Earnings as Reported on 2016 Tax Returns (Internal Revenue Service Form 990)**

Cultural Sponsor Organization with 501(c)3 Status	Annual Organizational Revenue	% of Total Revenue Derived from Student Fees	Reported Annual Compensation of Highest Paid Employee	Exceed Annual Mean/Median Charity CEO Pay? <sup>20</sup>
ASSE International Student Exchange Program	\$17,789,570	81	\$264,980	No/Yes
Greenheart International	\$21,001,045	92	\$188,149	No/No
Cultural Exchange Network	\$1,326,683	92	\$63,000	No/No
Council on International Educational Exchange, CIEE Inc.	\$143,336,213	97	\$793,964	Yes/Yes
Cultural Homestay International	\$12,814,889	99	\$283,991	No/Yes
Educational Resource Development Trust	\$4,197,252	99	\$115,000	Yes/Yes
Greenwood Lake Gaelic Cultural Society, Inc.	\$217,057	50	Unpaid	No/No
InterExchange, Inc.	\$12,901,504	95	\$221,495	No/Yes
International Cultural Exchange Organization Inc.	\$2,595,715	100	\$174,925	Yes/Yes

<sup>20</sup> I evaluated SWT non-profit cultural sponsor CEO pay relative to mean and median of charity CEO pay as calculated by economists Chris Chasteen and Linda Lampkin of the Economic Research Institute in their 2015 report entitled *Pay for Charity Executives: What Changed Between 2009 and 2012?* The authors' calculations are featured in Table 4.2.



Cultural Sponsor Organization with 501(c)3 Status	Annual Organizational Revenue	% of Total Revenue Derived from Student Fees	Reported Annual Compensation of Highest Paid Employee	Exceed Annual Mean/Median Charity CEO Pay? <sup>20</sup>
Ireland Institute of Pittsburgh	\$179,224	59	\$58,875	Yes/Yes
The Foundation for Worldwide International Student Exchange (WISE)	\$5,448,005	99	\$350,369	Yes/Yes
United Studies, Inc	\$985,692	99	\$113,241	Yes/Yes

I feature the percentage of revenue generated by student fees because this practice departs significantly from public charity organizational fund raising in which NGOs typically rely on a diverse portfolio of sources to fund operations.

According to Brendan's initial analysis of over 300 non-profit cultural sponsors (responsible for au pairs, SWT, intern/trainee and secondary exchanges), several aspects of cultural sponsor tax filings raised questions for him about whether sponsors' activities were charitable versus profit-driven in nature. Among them are the high salaries of non-profit employees relative to the organizations' annual revenue. He noted, "[I was] finding organizations with a budget of a \$1 million who were paying their top 2 people \$250,000 each. That wasn't an uncommon [compensation practice]. What are they doing as far as their mission at that point? Are they just making money? And should that be a non-profit?"

In my analysis of the 2016 tax returns of SWT non-profit sponsors, the average compensation of the highest ranked employee is \$212,350, and the median salary is \$179,896

(see Table 4.1). While the compensation of the highest ranked executives at SWT cultural sponsor organizations did not approach 25 percent of the organization's total revenue (as Brendan found in his wider-ranging study of J-1 sponsors), half of the twelve SWT cultural sponsor chief executives' pay exceeded the national average CEO pay within their organization's total revenue range, and 75 percent exceeded the median salary (Table 4.2). What's more, the Council on International Educational Exchange (CIEE)—the organization that held 75% of the SWT market in the late nineties (as was discussed in Chapter 3)—reports a staggering annual revenue and CEO compensation rate. CIEE's reported revenue is 615% greater than CCI Greenheart's, the next largest reported revenue, and the CEO executive pay is more than double that of the Foundation for Worldwide International Student Exchange (WISE), the next highest reported CEO pay.

**Table 4.2: Charity CEO Salaries by Revenue Range, 2012<sup>21</sup>**

Revenue Range	501(c) 3 Organizations with Compensation	Average	Median	Standard Deviation
\$100K to \$500K	17,181	\$56,075	\$50,230	\$49,384
\$500K to \$1M	12,864	\$72,233	\$65,665	\$38,201
\$1M to \$5M	22,596	\$104,136	\$90,461	\$64,055
\$5 to \$10M	6,370	\$148,361	\$127,367	\$101,482
\$10M +	11,004	\$312,842	\$204,577	\$419,605

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<sup>21</sup> Economic Research Institute economists Chris Chasteen and Linda Lampkin calculated the average and median pay of non-profit CEO executives as reported on the 2012 tax returns of 70,015 U.S. charitable organizations that offer employee compensation and for whom tax information was available.

Another area of concern is the singular source of organizational revenue. While it is customary for non-profits to raise funds from multiple sources to cover programming and operational costs, non-profit J-1 cultural sponsors' revenue is derived almost exclusively from foreign student fees, raising questions about whether the sponsor operates with a revenue base like a for-profit business, only without the tax burden. My analysis of non-profit SWT sponsors confirmed this practice—on average 89% of non-profit SWT organizational revenue derives from fees paid by students. While a deeper financial analysis of cultural sponsor financials is beyond the scope of my study, my assessment raises similar concerns as Brendan's about whether their mission is technically charitable, and about the economic versus diplomatic motivations of the industry more broadly.

#### *What SWT Participants Pay for Under the SWT Program*

A related critique of the public-private model is that SWT cultural sponsors have broad autonomy to set their fees and to generate organizational revenue, yet there is little transparency or scrutiny about what the SWT participants get in return. Sponsors of the SWT program and the DoS have argued that the fee-for-service structure is integral to their survival. As previously noted, this debate played out in 2013 during negotiation of U.S. Senate Bill 744, and in the negotiation of two state bills to regulate foreign labor recruiters, California's Senate Bill 477 in 2014 and Maryland's Senate Bill 526 during its 2018 session (Cal. Bus. Prof. Code 2014). In all three proposed bills, international recruiter fees for a wide range of non-immigrant (temporary) labor visa categories would have been prohibited, including the J-1 category, had the cultural exchange industry not intervened.

The cultural exchange industry came out in strong opposition to such legislation—and in the case of U.S. Senate Bill 744 and California's Senate Bill 477—the industry successfully

lobbied to have the J-1 exempted from the proposal; Maryland's 2018 legislative season ended before the bill could make its way through the legislative process. Roger, the cultural exchange industry trade association representative, articulated his opposition to this kind of J-1 fee prohibition:

The whole model is a fee for service kind of activity so that you can get the big numbers. It is market driven. The [student] fees—but for a few outliers—are pretty reasonable. But, [a prohibition of fees] would have put those people [cultural sponsors] out of business because they couldn't collect fees, and we thought, again, it was a fundamental misunderstanding of how the model works. The fee—you probably know all of this—makes anti-trafficking people crazy; that it creates a sort of a debt servitude vulnerability.

Roger's position was that the fee-for-service made it worthwhile for sponsors to essentially contract with the U.S. government to facilitate cultural exchange. By prohibiting sponsors to charge a fee for programs like the SWT program, sponsor organizations would have lacked sufficient revenue to operate, whether on a for- or non-profit basis. Roger insisted that, in anti-trafficking organization representatives' efforts to defend worker rights, they misconstrued the purpose and the centrality of the fee-for-service model that makes U.S. cultural exchange programming possible.

Similarly, Andrew, a U.S. congressional aide representing a state where a well-known cultural sponsor operates, described his boss's efforts to exempt J-1s from the fee prohibition requirement: "They [the immigrant labor and anti-trafficking advocates] were sort of blind to...how the impacts were going to play out across the field...[the recruiter fee prohibition] would have easily shut down how they [cultural sponsors] operate by not allowing their foreign affiliates to charge any sort of fee." Andrew, like Roger, expressed the view that immigrant-labor advocates were unreasonably expecting cultural sponsors to forgo the revenue stream that program student fees represent. To do so, in their view, would be self-defeating.

Yet, several individuals that I interviewed questioned the legitimacy and purpose of charging students sponsor fees. As Joseph, the Homeland Security official insisted to me, “They [SWT sponsors] don’t have any real costs, except the four or five people that man their offices, and just match them [SWT participants] up with employers. They make a hell of a lot of money.” From Joseph’s perspective, what students pay in fees exceeds the actual costs of running the SWT program. He further elaborated on the economics of cultural programming:

They [cultural sponsors] see [that] their entire livelihood, I should say their extraordinary profitability, would evaporate, if for example, they had to hire more people to go...if there were more adults and greater enforcement, and there were actual controls, that they had to check on workers—the cost would go through the roof for them, and their profitability would diminish. They don't like that. I think it's all about the money. This is not just [true of] the Summer Work Travel; it is also the au pair people, they make an enormous amount of money setting up the au pairs with families, and they just step away.

In Joseph’s view, SWT sponsors gained significant autonomy through their designation to set up a cultural exchange business with a low overhead, eschewing a larger staff and thereby limiting their own enforcement capacity. Gretchen, an immigrant worker advocate made a similar observation,

From what I can tell, you know, they charge J-1s generally over a thousand dollars each just in placement fees that go straight to the sponsor. And the sponsor’s overhead appears to be very low...and they have, it seems to be, they have one office, usually nowhere near where the J-1s are located. They communicate with them via email once a month. I mean, by and large, it’s a relatively easy operation, so I always assumed that it would be very profitable for them, which is maybe why so many have gotten into the business.

SWT participants themselves voiced differing opinions about the role of the sponsor and the value of the fees they charge. Loretta, a Colombian SWT participant placed in a 24-hour convenience store located in a mid-Atlantic community, opined that in the post-9/11 context, what the student is paying for is the relatively hassle-free immigration paperwork: “I think they

[sponsors] monopolize this [avenue to a short-term visa] in the sense that after 9/11, you just couldn't...because I had friends before 9/11 come in, and they just registered in schools, they went to a school, right? I feel like when the U.S. government started to have stricter requirements of the DS-2019 [the J-1 immigration paperwork the SWT receives from the cultural sponsor upon acceptance into the program] ...these companies basically, they are selling you *that*."

When asked what the sponsor had done to assist her, Ilana, a Russian SWT participant working as a housekeeper in Sunshine Village in the U.S. Mountain West suggested that the sponsor was more helpful *prior* to arriving in the United States than once she was at her worksite, "I'm really grateful to them that they help us a lot with the [immigration] documents. But we don't have contact with them here [in the United States] ...We just do their month's survey, and that's all." Svetlana, a Polish SWT participant placed as a housekeeper at a mountain resort in Snow City, also in the U.S. Mountain West, reported that her cultural sponsor required her to check in online monthly. Although the sponsor sent her cultural opportunities, most activities were located neither in her city or even state of placement.

Similarly, Arturo, a Peruvian SWT student located in Sunshine Village, voiced regret about the lack of cultural services offered by the sponsor: "I think there is a disadvantage that the sponsor has, they don't organize activities to make a cultural exchange. No, they don't organize that, but they should—they should organize [things.]" In contrast, Rebeca, another Peruvian student placed in Sunshine Village, expressed satisfaction with her sponsor's monthly check-in process. After reporting a problem about too few work hours, she recalled that the sponsor followed up by contacting her employer via email: "They [the sponsor] go ask [the employer] because it is not just me [who reported too few work hours to pay their bills]. They said, "Okay, I'm going to see how you're doing guys and try to talk to the employer."

Overall, conversations with SWT students affirm that with the DoS 2012 rule changes, sponsors have implemented monthly check-ins and now consistently notify students about cultural offerings. However, in most cases, sponsors do not host or financially sponsor such opportunities, except for international student outreach partnerships (ISOP) events, in which sponsors pair up with model employers, local chamber of commerce representatives, and local charities, such as church groups, and in a handful of cities, host community-building events. Unlike sponsors who directly partner with DoS, and, as such, gain license to charge SWTs fees for their services, most on-the-ground church and community group partners assume a variety of activities to provide hospitality and resources to J-1s as a community service. Their activities include assistance with housing, meals from the local soup kitchen, and special events to enrich the J-1 student's cultural experience and connection to the host community.

Barbara, a non-profit employee working with an ethnic-based resource center in the Northeast, described to me her efforts to develop a program where J-1s can drop in for employment and housing leads, and even attend an orientation about the local community:

The fact that we are on the ground is a great help to these students. It's the face, it's the name, it's the warm body, again, that we can provide assistance. If someone walks in and they're like "I have no idea where to go. Can you tell me about housing locations?" We can offer guidance because we are on the ground. We can make connections with potential landlords. For example, this summer I saw there was a J-1 Facebook page, somebody was saying, "I'm getting an apartment in this area." I was like, oh, that is not the best area to go to, so I private messaged 'em—may have overstepped my boundaries—but I felt that they were not gonna be safe in that neighborhood. I offered 'em advice without clearly stating, so I said, "Here's the Crime Stopper website, you might want to check it out before you come into the apartment."

Cultural sponsors I spoke with mentioned the efforts of such organizations—and the ISOP overall—as evidence of a positive, culturally rich J-1 experience. Barbara agreed that she gained value from the collaborative relationship she has with sponsors:

Thankfully I'm able to reach out to [sponsor representatives] directly, though I can't give the [sponsor's direct phone] numbers to the students. I have a student, they're really panicked, 'Can you help me with this information for the health insurance?' Sure, there's the policy [I can say]."

Barbara's admission that her sponsor contact did not give out her direct phone line—and Barbara's own willingness to step in and comfort and help SWT participants with pressing problems—was telling of the limits of sponsor services and the outsourcing of their stewardship activities to local charities at no cost to the sponsor.

In fact, all the non-profit community and advocacy organizations I interviewed that provide direct legal representation, social assistance, or general J-1 student advocacy do so without receiving financial support from cultural sponsors. In this sense, they underwrite on-the-ground J-1 sponsor services when DoS-designated sponsors fall short. These organizations do so either as a community service or pursuant to their mission of civil and economic justice. Overall, my findings cast doubt on sponsors' insistence that market dynamics of the SWT program ensure self-policing and adequate checks on employers and sponsors alike. If anything, the majority of those I spoke with pointed to the limits and variability in what SWT participants can expect from the SWT experience, especially on the part of sponsors. Furthermore, because sponsor fees are not standardized it is entirely unclear whether those SWT participants who pay more necessarily get a better service or have a better experience.

### *The SWT Program: Myriad Conflicts of Interest*

Beyond the questions that the SWT model raises about the U.S. government's ability to oversee the burgeoning cultural exchange industry itself, through interviews I identified multiple layers of conflicting interests which impede effective regulation of SWT workers and their employers.



## Cultural Sponsors and Employers

Because cultural sponsors must both ensure SWTs are in safe, legitimate employment placements, and simultaneously court employers to build a comprehensive list of student employment options as part of their business model, this arrangement encourages lax sponsor oversight. This is particularly relevant since the DoS claims that it has no jurisdiction over participating employers, leaving sponsors primarily responsible for employer oversight (DoS 2012: 27,594). While the DoL has the jurisdiction to enforce laws such as the Fair Labor Standards Act in SWT workplaces, it does not field employer requests for SWT workers or certify that employers have met the criteria for hiring foreign workers. In an Economic Policy Institute (EPI) written public comment during DoS's 2012 rulemaking process, EPI analysts Daniel Costa and Ross Eisenbrey articulated their concern about cultural sponsors' conflict of interest, and the DoS's interpretation of its role as public regulator of the SWT program:

We were surprised by the State Department's unambiguous statement that it has no jurisdiction over employers participating in the program. However, the State Department has broad authority to exercise jurisdiction over employers by establishing who may or may not participate in the program. The Department has instead put its faith in nongovernmental companies – the sponsors – in the hopes that sponsors will be able to convince employers to act in good faith and comply with the rules, even though a troublesome conflict of interest arises by employers and sponsors being de facto business partners.<sup>22</sup>

Leonard, a chief of staff for a Congress member who has sharply criticized the SWT program in public hearings on Capitol Hill, likewise articulated to me in our interview his boss's concerns about the program, "These third-party contractors [SWT cultural sponsors] want

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<sup>22</sup> The Economic Policy Institute's full response to Public Notice 7875. Interim Final Rule: Exchange VisitorProgram – Summer Work Travel; 77 Fed. Reg. 27593 (May 11, 2012) may be found at <http://www.regulations.gov#!docketDetail;dct=PS%252BFR;rpp=100;so=DESC;sb=docId;po=0;D=DOS-2012-0033> (last accessed November 4, 2018).

employers to hire workers, and they bend over backwards to try to make sure they do this because, obviously, this will increase their profits, the more workers they are able to get...to employ [program participants].” Margaret, a migrant worker advocate ardently observed, “You cannot be a recruiter [cultural sponsor] and protect your worker at the same time. You’d be an exceptional recruiter. There is too much conflict of interest to do it. You are not going to upset the [J-1 employer] and have them go to a competing agency.” According to Leonard and Margaret, the sponsors prioritize the ongoing relationship they have with employers *vis-à-vis* individual student participants with whom they have a limited, temporary contract of much smaller monetary value. In fact, sponsors pay employers with large job orders to travel abroad for SWT recruitment fairs, an arrangement which the sponsors and employers I interviewed confirmed. Sponsors claimed that such trips limit exploitation, since SWT participant hopefuls have a chance to interview their employer while also being interviewed. But, critics insisted to me that the practice amounts to an employer kickback whereby employers select the ideal job candidate outside of the reach of U.S. employment discrimination laws.

Despite critics and sponsors’ differing viewpoints about the merits or improprieties of paying employers’ SWT labor recruitment expenses, several of those I interviewed suggested to me that, on the whole, the business relationship sponsors and employers enjoy jeopardizes sponsors’ objectivity when it comes to ensuring SWT participants’ well-being, especially if it is the employer who has allegedly mistreated a SWT participant(s). In an October 16, 2011 *New York Times* article entitled “Pleas Unheeded as Students’ U.S. Jobs Soured,” a former SWT participant who walked out in protest of his treatment at Hershey subcontractor distribution center, Tudor Ureche, said that he felt “mistreated and ignored by my sponsor” and that a CET-USA representative told him that if he reported the problems he was having on the job to DoS

officials, DoS “would immediately cancel” his visa. Beyond the Hershey scandal, the immigrant-labor advocates and participants I interviewed similarly claimed that cultural sponsors were either non-responsive or had the habit of deferring to employers during disputes—a subject I explore in more depth in Chapter 6.

### The DoS and Cultural Sponsors

Most of the immigrant-labor advocates and members of Congress I interviewed for the project described a related conflict of interest inherent in the relationship between DoS and cultural sponsors. Cultural sponsors steadfastly disputed this view and insisted to me that the industry generally invited strong DoS regulation. For example, Roger, the cultural exchange industry trade association representative told me he welcomed the 2011 and 2012 rules:

Overall, we have been very supportive of the State Department’s efforts to strengthen the regs because we think good regs help good sponsors. And one of the things I say to the folks at State all the time in one form or another is “enforce your rules” because people shouldn’t be able to cut corners and get away with it.

If anything, he and other sponsors claim that problems in the public-private model more commonly arise when the DoS guidance is unclear.

An example of DoS’s seeming failure to effectively communicate its rules to sponsors came to light in the previously mentioned federal class action suit *Beltran vs. Interexchange et al*, involving sponsors of au pairs, another J-1 employment-based visa category. The au pair plaintiffs in the case alleged fraud, wage-and-hour infractions, and a violation of the U.S. Sherman Anti-Trust Act for colluding to keep their wages artificially low—in some cases below state minimum wage levels (Eidelson 2018). While the au pair sponsors in the case claimed that they were acting at the direction of a 2007 DoS memo to set au pair weekly wages at \$195, both the DoS and a federal judge rejected this argument. In a 2015 statement to the *Washington Post*,

DoS explained that in addition to the Department's rules, the sponsors "must also comply with all other applicable federal, state, and local laws, including any state minimum wage requirements" (DePillis 2015). While the case admittedly constitutes an extreme instance of a breakdown in DoS-sponsor relations, it nonetheless illustrates sponsors' frustrations over what they consider DoS's ambiguous rulemaking and enforcement practices. It remains to be seen whether a plaintiff victory in the au pair case might spill over into sponsors' SWT oversight practices.

Moreover, the immigrant-labor advocates I interviewed maintained that the problem of the DoS sponsor oversight runs much deeper than the ambiguity of DoS regulations. This is because DoS's primary mechanism for overseeing sponsors is through an annual self-reporting process (22 C.F.R. § 62.15). Coupled with that weakness is DoS's longstanding practice of informally consulting with sponsors to set program rules. Before Margaret, the immigrant advocate, began an effort to band advocates together to push for reform of the J-1 program, she implied to me that there was little way to influence the SWT policy:

What was obvious to people close to the system was that they [DoS officials] have these informal discussions with sponsors and employers and that is it. And that is basically the process to influence regulatory change, to talk to them. They were not reaching out to other stakeholders at all, and the regulatory process was not a meaningful process because they were exempting themselves--we think incorrectly--from the Administrative Procedures Act (APA).<sup>23</sup>

Margaret believed that because organizations like hers have begun submitting comments to DoS (albeit under its less transparent rulemaking process), DoS and sponsors were finally on notice

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<sup>23</sup> The Administrative Procedures Act (1946) governs the way in which U.S. federal administrative agencies may propose and establish regulations. DoS claims it has an exemption from the rulemaking and adjudications provisions of the Administrative Procedures Act (APA) (DoS 2011). DoS continuously claimed in the 2011 and 2012 rulemaking process that, based on its foreign policy activities, it may exclude consideration of the public, including immigrant and worker advocate organizations who serve as J-1 program watchdogs. See DoS 2011 and Dos 2012 at pages X and X respectively for its interpretation of the APA.

about the program's shortcomings. Several advocates and Congressional staffers stated that the privileged relationship that sponsors enjoy *vis-à-vis* the DoS persists. For example, Scott, a U.S. Congressional staffer, recalled:

I've heard that the State Department is far better in terms of trying to regulate the J-1 visa program than they have been in the past. That seems true, but we had situations where we would call [DoS] for technical advice, which is supposed to be confidential, and we'd get a callback from the J-1 lobby.<sup>24</sup> It was just, you know, the J-1 sponsor who had clearly just received information that they [sic] were not supposed to receive from the State Department [who] would then make the case to us that the State Department was effectively regulating them and we should just butt out, which, they did not find any irony in that.

In Scott's experience, the DoS cultural-sponsor relationship was so close-knit that DoS employees violated privacy law intended to protect constituent information that Congressional members provide to administrative agencies. As Scott pointed out, sponsors' efforts to prove to him that the DoS was properly regulating its activities instead exposed the collective failure of DoS and sponsors to observe related government standards.<sup>25</sup>

Gretchen, another worker advocate I spoke to, similarly offered her view about why, despite DoS efforts to strengthen sponsor regulations, these have fallen short. In her view, the implicit trust that DoS has in sponsors amounts to an abdication of crucial oversight duties:

It seems like the State Department has not fully embraced its role on the regulations to enforce the regulations and to make sure that they're being complied with. So even if we believe that a lot of the regulations do give the State Department power to ... I mean there's definitely sanction power on the violations from the State Department, but we think that the State Department could exercise that authority in a rigorous way and just chooses not to, and if violations come to its attention, [DoS] just kind of punts to the sponsor and asks the sponsor to solve the problem without really pushing the sponsor to

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<sup>24</sup> As was described to me in several interviews, the 'J-1 lobby' refers to the alliance of pro-J-1 interests—a mix of cultural sponsors and employers in industries ranging from the fishing industry and apparel to tourism.

<sup>25</sup> The Privacy Act of 1974, 5 U.S.C. § 552a, establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies.

make the worker whole or to make long-lasting or major substantive changes to the way it's running the program.

Indeed, to my knowledge, since 2011 only CET-USA has been permanently expelled from the SWT program, though it continues to be designated to sponsor J-1 interns, trainees and high school exchange students. Admittedly, however, I have not been able to fully evaluate DoS's sponsor sanction efforts because DoS ceased publishing its sponsor sanctions after 2014, a move that only adds fuel to the criticisms that DoS-sponsor relations are shrouded in secrecy (ILRWG 2018: 7).

In summary, the SWT public-private model has exploded, since the late 1990s, into a largescale, immigration category managed by the diplomatic arm of the U.S. executive branch. While proponents of the public-private structure credit it for saving U.S. taxpayers' money and for creating opportunities for international students that are safe and culturally enriching, my research makes plain that these benefits come with significant drawbacks. Among them is the evolution of the SWT program into a visa category that feeds a thriving, lucrative private sector exchange market that is highly resistant to regulation and that sidesteps DoL regulation.

#### **IV. SWT Program Politics: A Battle Ground to Shape Migrant Labor Policy**

A frequent theme running through my conversations with lawmakers, immigrant-labor advocates, and the cultural exchange industry is the inextricable links between the SWT program and larger debates about temporary migrant labor policy. Precisely because the SWT program operates under the legal rubric of cultural exchange and involves a public-private DoS-cultural sponsor model, its critics believe employers use it as an alternative to other visa categories more readily recognized as publicly administered temporary migrant labor programs. In fact, several of those I interviewed became involved in SWT worker advocacy as part of a broad effort to

address problems they found with U.S. managed migration policy. Melissa, a migrant worker advocate, recalled that her organization began working on the SWT program during the Obama administration, when groups like hers were waiting for a judicial decision about whether the administration's H-2B rulemaking would be invalidated:

We were waiting on implementation of H-2B rules that would regulate the program. One problem that we see across the visa programs generally is the visa shopping by employers and recruiters, so that when one program becomes better regulated, which the H-2B program did, as of April of last year, when that program became quite regulated, what we expected to see was employers and recruiters sort of jump[ing] to another program where perhaps the protections weren't as strong.

Rachel, another immigrant-advocate, explained a similar nexus between her work on the SWT program and other temporary labor visa categories:

As part of our more routine work, we do outreach to immigrant communities across the South, and communities where we're going to find a number of guest workers. So, in the course of that outreach, we're doing outreach primarily the H-2A and H-2B guest workers. Over the years we've started to notice more and more J-1 workers, [occupying the jobs that] H-2B workers used to have. As we started doing more outreach, we started seeing more problems with J-1 workers, and we started identifying problems in this program that became ... then we realized it was a systemic issue. Some were being abused, and so then we decided to take on more J-1 worker cases and look into reforming the program.

Moreover, Ron, an immigration policy expert underscored the centrality of the SWT program to debates over U.S. temporary migrant labor policy when recalling his conversations with U.S. legislators about how they might vote on U.S. Senate Bill 744:

[The senator's] staff was basically telling us he was going to withhold his vote on immigration reform. Why? Because of a few hundred ice cream shops in [his state] that couldn't get J-1 workers. And we had this surreal argument with him [laughter]. And I was like, "They should be getting H-2B workers." And he was like, "Well, the H-2B worker program is broken. We can't use it." I was like, "Probably because you don't want to pay the fees and your labor certifications are paid with minimum wage." So, he says, "You don't understand. We can't find people to do these jobs." It's like, come on! [It is our organization's view] that the J-1 is especially scandalous because it's run by the

wrong agency that doesn't have any expertise in labor market issues, and it's also bigger than the H-2B program, which it, sort of, acts as an H-2B program without any rules."

As these quotes demonstrate, many advocates viewed their involvement in efforts to reform the J-1 program as essential to address exploited loopholes in the U.S. migrant labor system, which they view as unwieldy and fractured. Consequently, several of experts and advocates I spoke with favored the program's transfer to the DoL, and/or other measures to legally treat the SWT program more like official guestworker programs that have arguably stronger worker protections.

What becomes clear from my interviews with several SWT stakeholders is that the labeling of visa categories (like the SWT) as cultural exchange presents the biggest obstacle to reform and thwarts efforts to strengthen migrant worker safeguards. Joseph, the Homeland Security official I interviewed observed,

the Department of Labor really doesn't like the fact that a lot of employers are using the Summer Work Travel people as defacto H-2B workers. The H-2B is the seasonal migrant labor program where you do have prevailing wages and recruitment [oversight] and all of that stuff...[DoS officials] will fight to the death to stop any change to this. It is their view, and worldview, that all these programs are good. They all contribute to the overall mission of international diplomacy, and that there are little kinks and things, and those are easily worked out. They will always think that all these programs are good.

Given the DoS's ownership and outwardly firm commitment to retaining control over the SWT program, Joseph concluded that the visa category remains intact with little threat to its survival:

There have been cases just starting in 2009-2010, when the press really started to focus on it, of full-on sexual trafficking, with the mafia, in New York City, and then the Russian gangs, and a lot of these, some SWT people were used as cyber mules, money mules, by cyber scams, and European gangs. None of that affected them [the DoS]. You would think even one of those things would have killed, even one, would have killed any other visa program, but this thing doesn't have nine lives, it has like 9,000 lives. [Take] the H-1B program, a proper visa program, specifically enacted by Congress, there have been some scandals over the last few years, most recently, like these American workers get laid off, and replaced by H-1Bs. That has caused an enormous ruckus and has caused legislation to be drafted, and internal discussions, and the program's kind of teetering. That's tiny compared to full-on sexual trafficking, and the workers going on strike and



everything. It's kind of weird that the program is off on its own, SWT that is, off on its own, and something that would have killed any other visa program just seems to bounce off of them.

What is more, the cultural exchange industry has become a powerful political force opposing stronger protections for guest workers. Margaret described the level of organization of cultural exchange lobbyists in responding to a press conference on Capitol Hill announcing a federal bill that would require the annual collection and public release of employment placement and wage information for a range of temporary migrant workers in the United States. Margaret told me:

It takes your breath away, the level of this, the level of [bill] monitoring. Au pairs were not mentioned, the J-1 was not mentioned, in the press conference. No visas are delineated in this thing. They're all nonimmigrant visas that allow for work....[the J-1 lobby's] level of sophistication and monitoring is beyond!

As the quote suggests, Margaret was surprised to learn about the level of political and material resources the cultural exchange industry expends to quash managed migration policy measures at odds with the industry's business model.

Melissa, another migrant worker advocate, described the J-1 lobby's efforts to organize J-1 employers in response to proposed legislation in California and Maryland to create a state registry for all labor contractors who supply employers with temporary migrant workers, irrespective of visa type: "It is my understanding that the [cultural exchange industry] ended up calling all the other industries that use temporary migrant workers so it became a sort of a small business outcry, who was contacting state offices of Congress members—that effort was *led* by the J-1 lobby." According to Melissa, purveyors of cultural exchange have entered the political fray of migrant labor policy, and in so doing, have joined forces with employer groups to advance their cause.

Margaret and Melissa's recounting of the industry's legislative maneuvering exposes one of the most novel findings from my analysis: the public-private model has, in fact, played a significant role in the cultural exchange industry's decision to lobby for the continued deregulation and privatization of temporary migrant labor policy. Cultural sponsors' relative autonomy to operate as a hassle-free alternative to other guest worker programs has made the J-1 lobby a key adversary in advocates' efforts to strengthen migrant labor protections. Despite the insistence of cultural sponsors that they welcome greater regulation, when anti-trafficking advocates have called for an overhaul of the public-private model itself as an integral regulatory reform measure, the industry's response has been swift and forceful opposition.

## **V. Conclusion**

NGO and Congressional staff reflections on the politics surrounding the SWT program paint a picture of a cultural visa category that has increasingly been swept up in a larger contest to relax the rules of temporary labor importation. Because of the SWT's legal framework as cultural exchange, it lacks critical worker protections—not least of which is an outright prohibition on international labor recruiter fees. Moreover, the public-private partnership governing employment-based categories of cultural exchange categories have not been subject to Congressional oversight as the H-2A and H-2B have. This has allowed programs like the SWT to operate informally when compared to other guest worker categories, which results in what critics consider a misclassified visa program that skirts the tighter regulations of official guest worker visa categories. In many respects, categories like the SWT have come to serve as a release valve in the highly politically contested climate of temporary migrant labor policy. More interesting still, the cultural exchange industry has emerged as a primary adversary of legislative

efforts aimed at strengthening migrant labor protections and increasing transparency of the temporary migrant labor system.

Even so, the SWT program's course has not only been shaped by political fights over immigration. I argue that it has also been impacted by fundamental changes in production and the organization of contemporary work. Next, I explore employer motivations for using the SWT program. Specifically, I examine the relationship between the SWT program's popularity among U.S. employers and an overall growing trend of workplace fissuring in a range of industries—a theoretical concept and phenomena I explore in detail in Chapter 5.

## CHAPTER FIVE

### THE SUMMER WORK TRAVEL PROGRAM:

#### “A POSTER CHILD OF THE FISSURED WORKPLACE”?

#### **I. Introduction**

David Weil, a public policy scholar and the former U.S. Department of Labor (DoL) Wage and Hour Administrator, characterized the SWT Hershey case as “the poster child of the fissured workplace” in his 2014 book on the subject.<sup>26</sup> The “fissured workplace,” an analytical construct developed by Weil, refers to the practice by which companies shed what were once in-house labor activities to independent firms that bid for service contracts or invest in franchise licenses to carry out many of the operational functions outsourced by lead firms.

This shedding of labor activities allows companies to concentrate on the essential, profit-rich activities of the firm, while offloading many of the costs and liabilities once associated with running a large company. The result, as Weil describes, is a fundamental restructuring of work: what once would have been a direct employment relationship between a worker and her employer has been replaced with myriad forms of arms-length employment arrangements. Weil uses the Hershey case to illustrate how fissuring works in the context of the manufacturing sector. He notes,

Ten years earlier [in 2001 and before], Hershey would have directly employed unionized workers to pack its products and load them into trucks for customers during the summer peak period. Now, although chocolates packed in the facility bore the Hershey label, the plant itself was operated by a contractor hired by Hershey to manage operations at the

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<sup>26</sup> In 2014, David Weil authored *The Fissured Workplace*, which details the factors that have given rise to domestic outsourcing in a growing number of industries. He provides several case studies to illustrate this process, including a discussion of the 2011 walkout of 200 summer work travel participants (SWT) at a sub-contractor Hershey processing plant.

facility that in turn hired a staffing subcontractor, which served as the employer of record for the [SWT] students. (2014: 114)

As Weil points out, the work that SWT participants were doing at Hershey's was seasonal—work of a seasonal or temporary nature is a requirement of labor activities under the SWT cultural exchange program rules.<sup>27</sup> But as Weil insists, the demands of seasonal labor at Hershey's would have been the domain of union workers only ten years earlier, and the terms of those work cycles would have been negotiated with Hershey management instead of outsourced to the lowest bidder. Today, Hershey relies on its contractor Exel, a major logistics provider, to package and ship chocolates. In turn, Exel relies upon SHS Onsite Solutions, the official employer for the 400 SWT participants, to provide staffing services. In the case of the Hershey SWT debacle, SHS Onsite Solutions utilized the services of the Council for Education Travel U.S.A. (CET-USA), a Department of State (DoS)-designated cultural sponsor, to recruit and handle the immigration logistics of its temporary, foreign workforce.

Although Weil asks why CET-USA, a non-profit organization “created to facilitate international cultural exchange,” came to place foreign students in such adverse working conditions, he does not pursue more fully in his book how the J-1 SWT program relates to the fissured workplace (2014: 113-18). Yet his exploration of what happened at the Pennsylvania chocolate packing facility raises important questions I seek to answer about what motivates employers to hire SWT participants, aside from their touted cultural benefits.<sup>28</sup> In the current chapter, I address three central questions:

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<sup>27</sup> According to SWT program rules codified under 8 Code of Federal Regulation (C.F.R.) § 62.32, “employment is of a temporary nature when an employer's need for the duties to be performed is a one-time occurrence, a peak load need, or an intermittent need. It is the nature of employers' needs, not the nature of the duties that is controlling.”

<sup>28</sup> Much of the DoS information found on its website, and the informational resources on the websites of cultural exchange industry representatives emphasize cultural benefits as the centerpiece of the SWT program. For

*1) What benefits and incentives come with hiring SWT workers?*

*2) In which industries do SWT participants work?*

*3) How does the SWT program reflect and/or perpetuate workplace fissuring?*

To answer these questions, I present three key sets of data. First, I feature the results of qualitative interviews with SWT participants, immigrant/labor advocates, cultural sponsors, and employers about the reasons employers participate in the SWT program (in Section III). My findings reveal a tension between what employers say motivates them to participate and what participants and immigrant/labor advocates insist are their reasons. Employers and sponsors, on one hand, describe SWT participants as meeting seasonal labor demands (Piore 1979; 1986). They also describe SWT participants as representing the right *kind* of worker, a sentiment reminiscent of what sociologists Roger Waldinger & Michael Lichter (2003) and Cameron Macdonald (2011) identify in their respective studies of the immigrant and ethnic preferences of U.S. employers. Students and immigrant/labor advocates, on the other-hand, more often report that it is the drive for cheap labor that makes SWT workers particularly attractive to employers.

Second, in an attempt to reconcile the varying justifications that employers and SWT participants give for hiring SWT participants, I present results from my comprehensive analysis of 2015 SWT employment placement information in Section IV. Careful coding and evaluation of this extensive dataset suggest a high demand for SWT workers among employers situated in fissured industries—namely in the accommodation, fast food, and amusement sectors (Weil 2014; Bernhardt et al. 2016). These patterns of placement suggest that, beyond the reasons employers and sponsors might cite for hiring SWT participants, SWT workers are

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an example of rhetoric emphasizing the cultural rewards of international exchange, *see* <https://j1visa.state.gov/programs/summer-work-travel> and <https://j1visa.state.gov/routej1/>

disproportionately placed in industries where labor-intensive activities are commonly outsourced to business entities that are one, two, or even three steps removed from the lead company. While employers don't explicitly reference the pressures of fissuring, my data reveals that they compete in industries where labor's bottom line has been squeezed. I refer to this reality as first-order fissuring within the SWT program.

Third, I offer a comparative analysis of the regulations governing the SWT, H-2A category for agricultural workers, and the H-2B for non-agricultural low-wage workers in Section V. I build on Weil's theory of fissuring by arguing that the SWT program introduces an *additional* crack in the relationship between employers and workers. Because cultural sponsors operate as de facto labor recruiters and assume direct legal responsibility for SWT participants under DoS program rules, employers eschew obligations normally assigned to them, such as the travel costs and recruitment fees they would otherwise pay under the H-2 program rules. Likewise, employers avoid paying certain payroll taxes (Medicaid, Social Security and federal unemployment insurance) when they hire SWT participants.

Overall, by participating in the program, employers achieve many of the same cost savings and legal shelter accomplished through domestic forms of outsourcing. I refer to this as second order fissuring. I put further empirical meat on these bones in Chapter 6 by sharing SWT participant accounts of their working and living conditions, and the impact that second order fissuring has on their experiences, including how they make sense of what I deem their privileged yet vulnerable status as temporary cultural sojourners and workers. Before presenting my empirical findings in the current chapter, I review scholarship on labor and the sociology of work in Section II.

## **II. Scholarship on Labor Market Restructuring and the Social Organization of Immigrant Labor**

Several scholars explore the causes and consequences of labor market restructuring in the United States. Additionally, researchers—especially in the field of sociology—evaluate why and how the contemporary organization of work differs from the post-World war II era, and the impacts of these organizational changes on today’s workforce. Among the effects documented in the literature are an increase in precarity and the loss of basic benefits and protections for a growing number of workers, and a pattern in many industries whereby companies outsource to external entities what used to be in-house labor operations. Additionally, I consider literature that focuses on the roles that immigrants and immigration policy play in the social organization of labor. It is through the lens of these literatures that I evaluate the growing demand for the once obscure SWT cultural exchange program.

### *The Great U-Turn and the Rise of Labor Precarity and the Fissured Workplace*

Scholars typically agree that the U.S. and Europe witnessed unprecedented prosperity and important legal gains for resident workers in the twentieth century (Harrison and Bluestone 1988; Hatton 2011; Kalleberg 2011; Gleeson 2016). The first half of the twentieth century brought advances in transportation and communications and major changes in the financing of industrial activities, a set of developments that together led to the creation of the modern business firm and a period of sustained global economic expansion in the years following World War II (Weil 2014: 34). During this period, employers and employees experienced a strong attachment in the form of direct employment, robust internal career ladders and good benefits (Hatton 2011). Moreover, U.S. lawmakers' passage of protective labor and social legislation,



such as the Fair Labor Standards Act and the Social Security Act, further bolstered the position of workers.

By the mid-1970s, however, corporations' stance toward their workforce began to change. Due to a convergence of factors—from declining U.S. demand for consumer durables to a global shortage of raw materials—many companies implemented “lean and mean” restructuring strategies to shore up lost profits, such as streamlining product offerings and laying off non-essential employees (Harrison 1994). As the global economic crisis of the 1970s unfolded, corporations and their institutional investors deemed the large-scale assembly line production typical under Fordism both unprofitable and unsustainable (Harrison 1994). Firms strove to become more “flexible” and to streamline productive activities by keeping in-house only those considered part of their core competencies while shedding the rest to external networks of suppliers and subcontractors (Cappelli 1995; Harrison 1994: 40).

In the wake of corporate losses at the outset of the 1970s and the reactive restructuring of production by many firms, the manufacturing-based economy that had previously spurred so much U.S. prosperity gave way to a service-oriented one (Wyatt and Hecker 2006; Green 2006). This shift toward a service-oriented economy prompted the displacement of millions of factory workers. It has also contributed to a loss of wages and job protections, given the comparatively low labor union density in many parts of the service sector as compared to manufacturing. This loss of workers' standing was compounded by anti-union legislation passed during the Reagan and subsequent administrations (Harrison and Bluestone 1988). The overall loss of union representation in many U.S. industries tipped the scale of power toward management and away from workers, a set of cumulative factors that have reversed many of the gains workers had made in the U.S. during the mid-20<sup>th</sup> century (Edwards 1979; Cappelli 1995; Osterman 1999).

Labor studies suggest that these changes have brought about an overall increase in precarious employment across an expanding set of industries and worker profiles, including low-wage and immigrant workers (Kalleberg 2011; Standing 2011). Sociologist Arne Kalleberg (2011) offers a typology of “good” versus “bad” jobs, noting that good jobs involve not only good wages, but benefits like health insurance and retirement accounts, intrinsic rewards/job satisfaction, flexibility to deal with non-work issues and a reasonable amount of job security. “Bad” jobs, in contrast, lack many of these rewards and are precarious in nature, e.g. hourly jobs increasingly replace salaried ones, and even white-collar workers face the frequent threat of layoff and loss of key benefits like pensions. Through robust longitudinal quantitative analysis of nearly four decades of survey data, Kalleberg provides compelling evidence of the proliferation of bad jobs in the twenty-first century, beginning in the 1970s and continuing through the 2000s.

One theory put forth by labor scholars to explain the proliferation of bad jobs relates to employers’ deliberate and growing default on business’s *social contract* with its workers, a contract that once buttressed the American dream (Harrison and Bluestone 1988: 37; Osterman 1999; Hatton 2011). As part of an overall strategy to compete globally, U.S. companies begin in the early 1970s—and continue ever more vigorously today—to eliminate payroll obligations by laying off middle managers and by implementing nimbler, peer management structures (Osterman 1999; Green 2006). They also shed many costs associated with employee training, opting instead to transfer those costs to workers (Cappelli 1995).

Thus, today’s workforce possesses fewer opportunities to climb internal career ladders, especially those that provide a bridge from the secondary to the primary labor market. These various corporate moves, aimed at shedding middle management and cutting labor costs,

generally spelled the end of the asset model of employment, a post-World War II social contract made and typically kept between employers and their (mostly male) workforce (Reskin and Roos 1990; Hatton 2011). This asset model of employment has been gradually replaced by a liability model of employment, in which the overall risks of employment are borne by the worker (Hatton 2011: 82-85).

While acknowledging the broader economic forces that have given rise to job deterioration, another set of scholars place special emphasis on changes in the *organization* of business activities wrought from global economic restructuring (Davis-Blake and Broschak 2009; Weil 2014; Goldschmidt and Schneider 2017). In the current era of flexible accumulation, subcontracting and outsourcing are ubiquitous practices across a range of industries. A 2008 U.S. Bureau of Economic Analysis-based study estimates that the percentage of the gross domestic product accounted for by U.S. providers of outsourcing services increased from seven percent to twelve percent between 1982 and 2006 (Yuskavage, Strassner, and Medeiros 2008). Sociologist Annette Bernhardt and colleagues note that while neither the government nor scholars have provided a complete and nuanced picture of the scale and scope of domestic outsourcing, it is nonetheless clear that this practice is becoming increasingly prevalent (Bernhardt et al. 2016:24-28).

As Weil's notion of the fissured workplace suggests, external suppliers now perform many of the productive activities that were once carried out in-house by a single firm's workforce. The increasingly fragmented and decentralized organization of business activities gives rise to complex matrices of arms-length worker and employer relationships. As Hanauer and Rolf claim, the collapse of the traditional employment relationship between a firm and those who labor on its behalf "...threatens to undermine the very foundation upon which middle class

America was built” (2015: 7). What for corporations (and governments) was once an issue of wage determination is now one of price setting. Under the new realities of production cycles, which are keyed in real time to fluctuating consumer demand for goods and services, businesses increasingly compete for corporate contracts to provide labor—anything from janitorial services to the packing and distribution of consumable goods (Cranford 2005). Weil’s (2014) account of fissuring emphasizes that when companies contract out work, potential suppliers competing for their business often cut corners on everything from wages to health protections to win competitive bids.

According to Weil and others, under this new paradigm, competition for the business of client firms leads to a greater incidence of indirect and legally ambiguous employment relationships and workplace violations, including wage theft (2014:84; Goldschmidt and Schneider 2017). As labor advocates point out, the Fair Labor Standards Act (FLSA) and related worker legislation were written with a single, direct employer in mind—even though, as some argue, an opening for joint employer legal liability exists and should be more forcefully pursued (Anner, Bair & Blasi 2013; Ruckhelshaus & Muñoz 2015). Consequently, government efforts to enforce labor standards are behind the times (Bernhardt 2014; Weil 2014).

Enforcement activities seldom focus at the top of these structures, where competitive pressures stem from decisions taken by corporate management and investors. Instead, regulatory efforts target the bottom of these fissured workplaces, where there are few incentives to report violations on the part of workers, and intense pressure among small-scale employers to keep labor cheap and flexible (Weil 2014: 155). The perspective that emerges from this work is one that underscores the organizational dimension of labor restructuring and the challenges it poses for workers.

*The Nexus of Immigration and Labor Studies*

A subset of labor and immigration scholars explore the relationship of immigrant workers to the labor market. Economist Michael Piore broke ground and theoretical convention by emphasizing the structural and social (pull) factors that drive labor migration over the decision-making rationale (push) factors of individual migrants (1979; Piore 1986). Piore argues that industrial economies generate ‘good’ jobs in the primary labor market and menial ‘bad’ jobs in the secondary sector, both of which employers look to fill. Considering the menial nature and insecurity of secondary labor market jobs, Piore claims that only those “whose labor force commitment is marginal and who have other defining social roles” typically come to accept such jobs (1986: 24). When native workers willing to take such jobs are unavailable, employers are motivated to hire migrant workers. Piore maintains that, for their part, migrants are undeterred by this arrangement, since the earning potential is significant compared to wages in their home country; they are also more likely to accept such work because they view their tenure in low status jobs as temporary, and thus not as a social status-defining activity (1986: 24).

While Piore’s conception of macro-economic labor market dynamics has enduring theoretical relevance today, the thrust of his argument was intended to address industrial modes of production. His theory did not anticipate the current age of flexible accumulation nor the political developments that have impeded circular migration, including the enactment of the 1986 Immigration Reform and Control Act (Fine and Milkman 2016: 776). More recent sociological work, however, has striven to address the interplay of changes in capitalist production modes and the demand for immigrant workers in the post-industrial era (Waldinger and Lichter 2003; Kandel and Parrado 2005; Cranford 2005; Milkman 2006; Harrison and Lloyd 2012; Gleeson 2016). Sociologists Waldinger and Lichter (2003), for example, apply an

updated version of Piore's theory of segmented labor markets in the context of the technological advances sweeping major U.S. metropolitan areas in the early 2000s. The authors find that the demand for the low-wage labor of recently-arrived migrant workers has remained strong despite economic predictions that such demand would largely ebb in a post-industrial, high-tech economy.

Through their conversations with over two-hundred employers in metropolitan Los Angeles, Waldinger and Lichter find that employers hire immigrant newcomers because they regard them as subservient and possessing the "right attitude." The authors describe employers as having a cognitive map that leads them to "associate ethnic and national traits with the qualities that make for subordination" (2003:40). Other sociologists reach similar conclusions in their examination of immigrant hiring decisions and ethnic stratification in non-urban labor markets, such as in the contemporary meatpacking and dairy farming industries (2003:40; Kendel & Parrado 2005; Harrison & Lloyd 2012). While not an analysis of labor market restructuring, sociologist Cameron Macdonald's (2011) study of contemporary motherhood and the complex social dynamics between professional women (employers) and their nannies (workers) finds an "ethnic logic" akin to Waldinger & Lichter's cognitive map, which attaches desired characteristics to specific immigrant/ethnic backgrounds, although the precise logics vary from employer to employer (Macdonald 2011: 70-71).

While labor scholars acknowledge that migrant workers figure prominently in today's labor markets, researchers often overlook the part that immigration policy plays in responding to and shaping immigrant labor markets (Hondagneu-Sotelo 2012). Labor studies tend to overlook, for example, the critical role of employers in the social incorporation of migrant labor and the ways that governments directly and indirectly facilitate their demand for migrant labor

(Rodriguez 2004). Similarly, relatively few studies pay attention to how managed migration itself shapes employer-employee relations, especially in the U.S. context (Walsh 2008; Preibisch 2010; Landolt & Goldring 2013). In Section III and Section IV, I seek to update scholarship at the nexus of labor and immigration by evaluating the changes in the organization of work within the context of the SWT program and by demonstrating the multiple ways that workplace fissuring has become a defining characteristic and driving force behind this employment-based cultural exchange visa.

### **III. Employer Motivations for Hiring SWT Participants**

I initially predicted that the employers and sponsors I spoke with would cite cultural benefits as employers' primary reason for bringing SWT participants to the United States to work for them. After all, cultural exchange is touted as the centerpiece of the SWT program while employment is portrayed as almost incidental to the experience. This was not the case. Instead, employers most often claimed the problem of labor shortages as their motivation for hiring SWT participants. Moreover, SWT participants' eagerness and reliability registered as a close third to the cultural benefits they offered to employers (see Table 5.1).

**Table 5.1: Why Employers Hire SWT Participants<sup>29</sup>**

	<b>Cultural Benefits (%)</b>	<b>Cost Savings (%)</b>	<b>Labor Shortages (%)</b>	<b>Eagerness/reliability/obedience (%)</b>	<b>Class-based assets (%)</b>	<b>American worker disinterest/indolence (%)</b>	<b>Alternative to H-2B (%)</b>
Employer/ Sponsor (N=13)	9 (69%)	0	11(85%)	8(61%)	2(15%)	2(15%)	2(15%)
Immigrant/ labor advocates (N=6)	1(17%)	4(67%)	1(17%)	0	0	1(17%)	4(67%)
SWT participants (N=27)	4(15%)	17(63%)	4(15%)	7(26%)	3(11%)	7(26%)	0

### *Labor Shortages and Seasonal Labor Demands*

A shortage of workers came up repeatedly among employers and sponsors with whom I spoke. They often referenced the challenge of finding workers in tourist communities, in remote or expensive regional labor markets, and/or at specific times a year. Doug, a cultural sponsor I interviewed, works for a for-profit firm that recruits and matches employers with both H-2B and the SWT visa holders. As he explained to me, the fact that SWT participants bring a readymade labor force to many of his employer clients—who primarily operate in a sparsely populated state—is paramount:

There is moaning among some on the big labor side that employers use the [SWT program] as cheap labor...But I guarantee that the attitude of employers that need a workforce, they could not care less about the savings. The savings, ok, that's great. But

<sup>29</sup> Employers, sponsors, immigrant/labor advocates, and SWT participants commonly offered multiple reasons for why employers hire SWT participants. I did not ask interviewees to rank or limit their response to one factor. As a result, the total numbers and percentages represented in Table 5.1 do not equal 100%. Furthermore, because I did not incorporate a question about employer motivations for hiring SWT participants until mid-way through my project, two immigrant-labor advocates and three SWT participants did not address this question and thus were excluded from the total N reported here.



even if the savings weren't there, the benefit of actually having a workforce versus not having a workforce was the most important thing [for my clients].

It was apparent in my conversation with Doug that he recognized the mounting critique among labor advocates that employers use the SWT program to secure cheap labor. But in his view, the bigger problem was finding workers, period. For Doug, his employers' desperation for workers contradicts labor advocates' insistence that employers use the program simply to access cheaper labor.

When I asked Deborah, the hiring manger for a franchise owner of a popular fast food chain in the Mountain West, why she used the SWT program, she bluntly responded, "The couple of restaurants where we utilize the J-1 program, they are in the mountain resort area. That would be the reason we would use the J-1 program a couple of times a year." In fact, in my conversation with Deborah, cultural benefits and considerations did not come up at all. Instead, she offered her take on why mountain resort areas face hiring challenges: "The reason would be that we are in the higher cost of living, mountain communities. When our numbers increase due to sales increases there's not generally enough local employees [to cover our labor demand]." Deborah wasn't the only employer to cite the high cost of living in mountain communities as the reason J-1s are attractive. Robin, one of the few small business owners I spoke to, characterized her efforts to staff her two restaurants in Elk City (a pseudonym for a tourist town in the U.S. Mountain West) this way,

We have a serious housing problem up here. There's a real disparity between wages, especially minimum wage jobs, and what it costs even to have a really terrible apartment. There isn't much in the way of low-income housing, and what low-income housing there is, you know, when the ad says, 'Lots of light' you have to watch out that it's missing a roof...I think a lot of our employment issue is a housing problem.

Robin was the only employer I spoke to who openly acknowledged the difficult cost benefit analysis that local workers must consider when applying for jobs in tourist communities like Elk City.

Related to employers' stated challenges of addressing labor shortages was their ability to hire SWT participants in bulk, a luxury that employers told me that they didn't have when relying on a tight local labor market. Doug, the for-profit cultural sponsor representative, recalled when he first learned about the SWT program and its potential for labor recruiters like him, "I heard of a woman who was using the [SWT] program and said [to me], 'Yeah, geez, you're down a 100 people? I can find you a 100 Russians, just like this!' And that was amazing and novel thinking back in 1998. My God, you could find 100 people for me just like that!" Doug recounted his discovery of the SWT program as a watershed moment for solving his challenge of filling big job orders.

Daniel, the owner of a company specializing in linen services for area hotels and restaurants in the northeast tourist community of Seaside, offered a very similar view,

The advantage is we get a good number of workers at the same time whereas there aren't enough workers to hire in our local market. For our summer spots, it's much more difficult. You could go [abroad, on international job fairs hosted by the cultural sponsor] and interview all 100 people that you need over a three or four-day period, and they issue the visa, they throw out the paperwork and they get their visas right away and then you know they're coming. So you know you have the employees."

In Daniel's estimation, the SWT program not only solved a (hiring) problem of scale for him, but also represented a hassle-free immigration process—a sort of two-for-one advantage. For Kelly, a Sunshine Village-based director of housekeeping operations at a major ski resort, past problems with the H-2B program similarly led her to invest more in the SWT labor recruitment process. She explained to me,

There were several things that happened [with the H-2B program]. One year they had a [program enrollment] cap for a whole year and they pretty much all got used up in the winter and there was nothing left in the summer, so you would have to do an extension... [My]company started looking at [the H-2B] program—like this is too risky, and then the next year they cut us off.

While Kelly expressed her concern that future SWT rule changes might cause a similar problem to that of the H-2B program, she reasoned that, overall, the SWT program offered a more reliable and easier way to recruit workers. Because the SWT program is less bureaucratic than the H-2B, and is less politically sensitive due to its lower profile, it had become her company's go-to for peak season hiring needs.

Related to the theme of labor shortages, many employers maintained that SWT workers' schedules better coincided with their needs than those of U.S. teens and college students. As Annette noted, "Because all of our American staff leave in the middle of August, and then [SWT participants] can stay until September 30<sup>th</sup>, that's a great help." Similarly, Robin, the Elk City restaurant owner told me, "From a business standpoint, really, to be completely blunt, it's just that they're still here in the fall [when we still need workers]." Donna, an HR professional who relies on SWTs to operate the Wind Cave Inn in Red Valley, observed: "J-1s can come as early as May 10<sup>th</sup>. Their country allows them to come over that early and then leave the Tuesday after Labor Day. So, they have a real good season. [Labor Day] is a big weekend for us, and then they can take off [to travel]." For Donna, Annette and Robin, one value of SWT participants is that they cover high season in tourist areas. This advantage of timing suggests the flexibility of SWT workers' schedules as compared to U.S. youth, whose academic or extracurricular schedules conflict with employers' needs for seasonal workers.

*SWT Participants: A Reliable, Eager, and Willing Workforce*

Employers and sponsors I spoke to likewise suggested that SWT participants offered advantages of convenience, reliability, and a greater willingness to do low-wage jobs than U.S. workers.<sup>30</sup> Mark, an immigration analyst and author of a report critical of the SWT program, conceded that certain concerns among employers about finding workers were legitimate. He explained, “There are cases where you can really see that employers have a difficult time finding American kids. With those kids who go back to school in August, yet these resorts want to stay open through September is a real problem.” But he adds, “I [also] kept hearing employers degrading the work ethic of young Americans. I haven’t reached any conclusion [about U.S. kids’ work ethic] myself.” In contrast, others I spoke to address this concern openly. Doug, the for-profit cultural sponsor, lamented a sense of entitlement that he believed many young, U.S. workers now have. He told me,

I’ll be at a U.S. university career fair...People will come up to me, 18 to 22-year olds, and they will see whatever genre of job that I might be offering that day. They will look at me and say, ‘Do you have any management positions?’ And, I’m like, Son, you’re 19-years old with no work experience. Why would I have a management position for you? There’s a sense of entitlement by so many people in the newer generation that are seeking management positions without experiences. This [entitlement] is making it very hard to employ [U.S.] young people right now, because of an attitude that is not congruent with the needs of employers.

For Doug, this sense of entitlement among U.S. youth made them unlikely to take the jobs that SWT participants occupy.

Kelly, the housekeeping operations director at a ski resort, reflected on why U.S. workers were such a challenge in her experience, albeit in a less critical way: “They [U.S.] workers can

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<sup>30</sup> For purposes of clarity, I categorized references to the disinterest or stated inadequacies of American workers as its own category. But, from the perspective of employers and SWT participants alike, this factor contributed to a sense that SWT workers were needed to overcome these factors.

kind of hold you hostage as well, like ‘Oh I’ll work these days and I will not work on Sunday’, which is when we need people.” In making this observation, she contrasts local employees with SWT participants, whom she selected at international job fairs only after underscoring her need for workers who will cover weekend shifts. Deborah, the fast-food franchise hiring manager, described SWT workers’ work ethic this way, “They are consistent, they show up when they are scheduled to be there. They will work hard, and they’ll work whatever it is that they’re asked to work.” Deborah, while not necessarily downplaying the work ethic of U.S. workers, described a distinct reliability and flexibility among her SWT workforce.

Jim, also in the fast food franchise business, made a comparable observation, “That’s what is so nice about hiring [SWT workers]. When we are in the peak season, if we’re in a bind, usually I can get a hold of one and they’ll be here.” Jim’s reflections point to another advantage of SWT workers: because of their status as foreigners with few local connections, they do not have the local social obligations that might limit their time outside of scheduled shifts to the same extent that comparable local workers with families and other ties might.

Daniel, the owner of the Seaside-based linen company, characterized the benefits of SWT workers in terms of a relative lack of economic opportunity in their own countries,

They [SWT participants] are reliable because a lot of them have never worked before, and they’re so eager to make money and learn about America. These folks, a lot of them working a lot of overtime for us and making \$700 USD a week when their parents are used to making \$600 USD a month in Russia or Ukraine. It’s a huge cultural difference, and that’s what my argument always was about the program. Now, *that’s* cultural! (Emphasis his)

In Daniel’s view, the value of a U.S. job opportunity—and the differential earning potential for SWT participants—contributed to their eagerness and enhanced their work ethic to the mutual

benefit of participants and employers alike. For Daniel, their relative hunger for U.S. work and wages *was* the cultural dimension that most benefits his operations.<sup>31</sup>

### *The Cultural Benefits of the SWT Workforce*

The fact that cultural benefits did not register as the primary motivation for utilizing the SWT program is not to suggest that employers and sponsors didn't reference cultural benefits at all. For example, Barbara, a non-profit professional who orients SWT participants as part of her community outreach duties, remarked: "[Ours] is a very Irish town. I think tourists come into [our community] to hear Irish accents. That's one of the benefits of hiring an Irish student. I think historically that we're hard workers. Irish students are hard workers, very friendly, patient, and I think they just want to have a good time and make sure other people have a good time." In her assessment, hiring Irish SWT participants lent a culturally authentic experience to patrons.

Similarly, as Tina, a Human Resources (HR) professional in the amusement park industry told me, "[the SWT program] is a perfect match—we get seasonal assistance, plus we bring in a diverse group [of SWT workers] that our American employees get an opportunity to experience." Tina credited SWT participants with meeting her company's peak labor needs to be sure, but also for offering a cultural enrichment to her staff. She quickly followed up on her cultural observation by noting, "In addition to that, we can provide the jobs and we're not displacing any potential American workers." As discussed in previous chapters, while Tina and two cultural sponsors I spoke to insisted that Americans do not want to do the work SWT participants are hired to do, SWT employers are, in fact, not required to advertise job openings to U.S. workers

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<sup>31</sup> It should be noted that while Daniel deemed his reason for hiring SWT participants as cultural, based on the definitions of employer motivations I established, I categorized what he described as eagerness and reliability as opposed to cultural benefits.

or to submit paperwork to certify a labor shortage (see Table 5.2 for a comparison of worker protections under the SWT, H-2A, and H-2B visas). In short, there is no formal mechanism or formal requirement to assess whether the SWT program displaces U.S. workers.<sup>32</sup> Additionally, the SWT program requirement that jobs must be seasonal or *temporary* in nature adopts an outmoded notion of employment relations. As Weil points out in the Hershey case, jobs that are temporary in nature may indeed displace U.S. workers if the work in question is contracted or outsourced by a lead firm and replaces labor once done by direct employees of the lead firm—another possible definition of temporary that the SWT program seemingly overlooks (Weil 2014: 114).

Annette, an HR professional for a popular family lodging and recreation facility explained her investment in SWT workers in the following terms, “I do like to focus a lot on diversity [in making hiring decisions].” Like Tina, Annette believed that SWTs add cultural value and enrichment to the benefit of her entire workforce and client base. Interestingly enough, Barbara, Tina and Annette focused on the cultural benefits that SWT participants bring to U.S. customers and co-workers *rather than* the cultural enrichment they (or their U.S. counterparts) impart to SWT participants.

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<sup>32</sup> The impact of the SWT program on U.S. workers is the subject of considerable debate, and one that I address in a (2019) book chapter, “The Rise of the J-1 Summer Work Travel Program and its Rhetorical Links to US Youth Unemployment” in *The Crisis of Youth Global Unemployment*, edited by Tamar Mayer, Sujata Moorti and Jamie K. McCallum. Jerry Kammer, with the Center for Immigration Studies, argues that the program disadvantages inner city youth, a group particularly hard hit by the 2008 global recession and its aftermath. For more on Kammer’s argument, see his August 20, 2012 blog post titled “PBS NewsHour Takes a Look at the Summer Work Travel Program. Last retrieved on October 9, 2018. (<https://cis.org/Kammer/PBS-NewsHour-Takes-Look-Summer-Work-Travel>). Alternatively, the cultural exchange industry commissioned Eureka Facts to evaluate potential effects of hiring SWT workers on the U.S. labor market. Relying on SWT employment placement data and U.S. Department of Labor Bureau of Labor Statistics information on regional labor markets, they find little to no impact. For a discussion of Eureka Facts’ methodology and findings, see their full report published on August 22, 2017, *Summer Work Travel Program Review* (<https://www.eurekafacts.com/phocadownload/SWT%20Impact%20Evaluation%20Final%20Report.pdf>). Last retrieved on October 9, 2018.

*The Perspective of SWT Workers: “It’s a Good Deal” for Employers*

Perhaps most notable in my interviews were the more cynical views among SWT participants and advocates—but especially among participants—about U.S. employer motivations for using the SWT program. In nearly all my interviews with participants, I asked them why they thought their employer had recruited them for the job. Seventeen out of 27, or 63% of the SWT workers I spoke to, cited the cost savings they provide to employers. For Victor, a participant from Uzbekistan who was employed for the summer in Seaside to wash windows, it boiled down to economics, “They need some young people to grow up the economy. They can pay, you know, not too much money for us, and they grow the economy. I think that is the main reason.” By economy, Victor was referring to the generation of revenue and profit, ostensibly for the company’s bottom line, but perhaps also for the community in which he was employed.

Loretta, a Colombian SWT participant, responded to my question by saying, “I think it is a good deal for them. Because we go there [to their worksite], we do whatever they want us to do, they pay us whatever they want to pay us, they give us the hours they want, the shifts that they want, because we have no seniority.” Loretta, not unlike Deborah and Jim, the two fast food restaurant employers, suggested that it was their willingness to conform to the demands of employers—in addition to their low cost—that made SWT workers especially attractive. In several conversations with SWT participants, they contrasted their obedience and willingness to work hard for minimum (or near minimum) wages to that of American workers—whom they viewed as unwilling to work for so little pay.

Esmira, a Russian SWT participant working in housekeeping in Sunshine Village responded to my question by saying simply: “Because we are cheaper than any other workforce.”



I asked Esmira what she thought her employer would have said if he or she had been present for our interview. She replied, “They would say something about the multicultural environment and how their company is open to new things.” While Esmira anticipated what her employer’s response might be, she herself doubted this was the actual reason.

It wasn’t just students who held a more cynical view of the motivations for SWT employers. According to Lisa, a migrant advocate, employers turned to the SWT visa when Obama-era rules strengthened the worker protections under the H-2B program and it became more expensive and time-consuming to use. She explained, “When in April of 2015, the H-2B program rules went into effect and [the H-2B] became better regulated, what we expected to see were employers and recruiters jumping to another program where perhaps the [worker] protections weren’t as strong.” In her view, many U.S. employers began using the SWT program because of their frustration with H-2B program rules, a concern consistent with the views expressed by Kelly, the mountain resort operations director. Mark, the immigration analyst, opined,

[There] is tendency among [SWT employers] to follow the path of least resistance. And when a program relieves you of one of your bothersome duties, recruitment, it is difficult to think, ‘Well, what am I doing to encourage employment among American youth?’ And when you add to that the disenchantment that some employers have with American kids. Add to that, they go back to school when some J-1 countries are eager for work, you can see the incentives are multiple.

As Marks’s quote implies, the advantages of outsourcing labor recruitment, coupled with SWT workers’ greater reliability and availability, represented mutually reinforcing cost and time savings for employers. From his perspective, the motivations for hiring SWT were multilayered—some of which he accepted and others he questioned. As he summarized it for me, the SWT program is “an interesting story of complexity and ambiguity.”

Perhaps more than anyone, Ron, an expert on several non-immigrant labor visa categories, identified a rhetorical question relevant to nearly all of my conversations with employers and sponsors: what do employers really mean when they claim a labor shortage? This is a question that I did not address systematically in my interviews. In characterizing this problem of definition, Ron explains,

I think they [employers] claim [labor shortages] in every single one of these [non-immigrant, short-term worker] visa programs. And they claim it in just the general workforce. They never have enough workers. But, whenever you hear, ‘We can’t find enough workers,’ you must add a part to that sentence, which is, ‘We can’t find enough workers *at the rate we want to pay*.

Through this reflection, Ron implied that employers speak in coded ways about the role that cost containment plays in their decision to hire temporary migrant workers. He insisted that employers claiming a labor shortage were, in reality, signaling their reluctance to increase wages and benefits to the level of a living wage, especially in tourist communities where the cost of living is significantly higher. Certainly, Robin alluded to the plight of minimum wage workers in her observations of the labor shortage in Elk City. But, apart from Robin’s observation—and Deborah’s passing comments about the high cost of living in the mountains—the employers I spoke to were largely silent about the pressures they likely face to contain labor costs.

Based on employer and sponsor responses, there are definite parallels between SWT employers’ stated reasons for hiring SWTs and those outlined in the literature on secondary sector jobs and the segmented labor market. The jobs that SWT participants occupy, by definition, constitute secondary sector jobs based on their “low wages, menial social status and employment instability” (Piore 1986:24). Moreover, in explaining scheduling concerns, employers suggest that SWTs replace and complement U.S. high school and college students—a group Piore claims are often found in the secondary sector (1986: 24). Similarly, when

employers insist that SWT participants are ideal because they will eagerly do work that residents, especially U.S. youth, will not, they invoke a rationale used by the employers profiled by Waldinger and Lichter about recently arrived migrants.

Yet, SWT participants differ from the newly-arrived low-wage immigrant workers profiled in Waldinger and Lichter's study who hail primarily from Latin America and more often lack the human capital assets SWT participants enjoy (a topic I explore in greater depth in Chapter 6). Moreover, when looking beyond my interview data to SWT employment placement information, I find that SWT participants are disproportionately placed in industries characterized by workplace fissuring. Theoretically, workforce fissuring represents a structural reality of labor markets Piore did not foresee and which was not yet in clear empirical focus in Waldinger and Lichter's study of Los Angeles's segmented labor market. I explore the 2015 SWT labor market data and first-order fissuring within the SWT program in the following section.

#### **IV. First-Order Fissuring in the SWT Program**

Until recently, the public had, at most, an anecdotal understanding of which industries utilize the SWT program, since the DoS is not required to release annual data on participating employer and wage information. In contrast, the Department of Labor (DoL) releases a range of employment-related data for the programs it administers, such as the H-2A, H-2B, and H-1B visa programs. To my knowledge, my FOIA request for comprehensive SWT employer information were the first of this kind released to a member of the public.

To comprehensively evaluate 2015 SWT participant employer information, I relied on the National Industry Based Classification System (NAICS). I coded each student's employer information by both the over-arching NAICS industry (officially referred to as the super-sector)

and by sub-sector, which is a more granular level of the industry sector (e.g. Accommodations is a sub-sector of the Leisure and Hospitality super-sector).<sup>33</sup> During this process, I faced multiple industry coding challenges. For example, there were many instances when the employer's name did not clearly point to an industry. For example, companies with the name "hospitality" in them could service rental properties (and be coded under the sub-sector of Property Managers/Contractors within the super-sector of Real Estate), or could be hotel management companies, which most often are coded under Accommodations per NAICS guidelines.

I made every effort to overcome this lack of information by searching for such companies on the internet. When their advertised services listed hotel management, I coded them under Accommodations. In other cases, when the company described its work as residential property management, I coded it under Property Managers/Contractors. For example, I initially coded companies that offer swimming pool services (which can include life guard staff, routine pool maintenance and repair) under the sub-sector of Amusement, Gambling and Recreation (AGR), which is part of the Arts, Entertainment and Recreation super-sector. After realizing that a range of business types—from Home Owner Associations (HOAs) to hotel brands—hire such companies to manage a portion of their property operations, I opted to categorize them under Property Managers/Contractors. Alternatively, when the company seemed most involved with servicing a public recreation area with lifeguards, e.g. at a local beach, I used the AGR code.

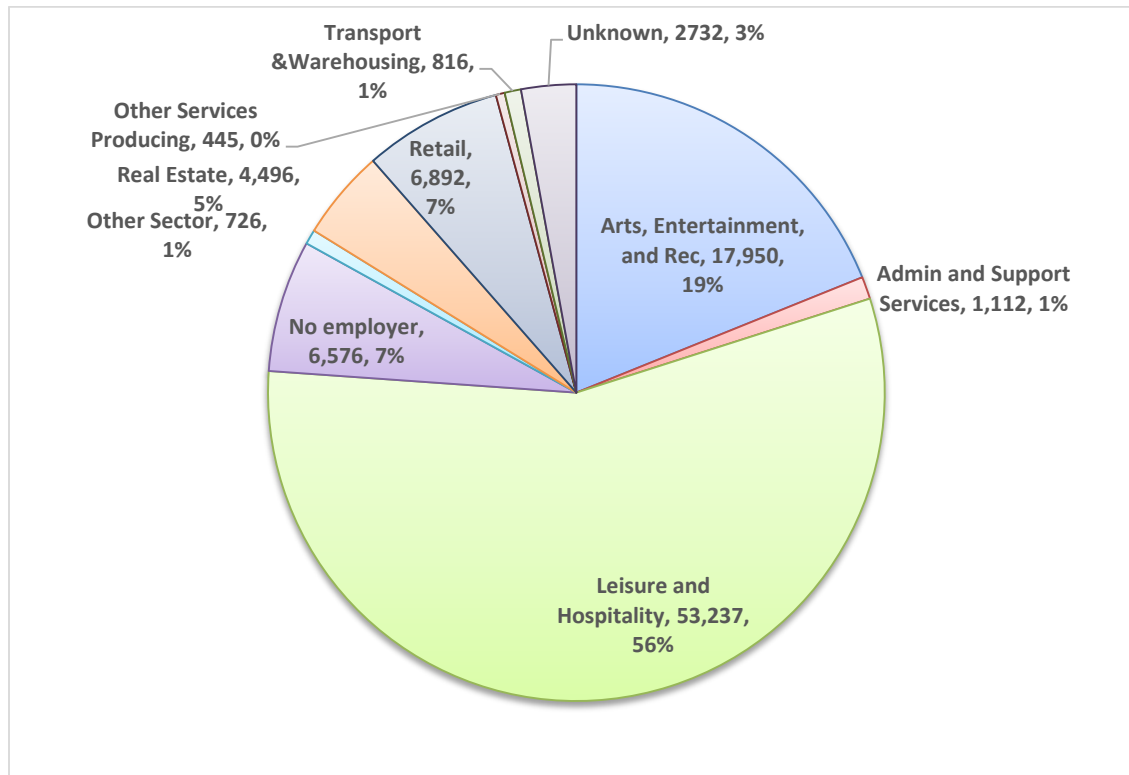
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<sup>33</sup> I used Visual Basic, a programming language in Microsoft Excel, to write a function to automate my search in the employer field of all 94,982 lines of employer placement data (one field per student) for key words that would help me to code each participant's employer information by the appropriate NAICS industry. I designated terms like "resort", "inn", "hotel", "motel" as proxies for the accommodation sub-sector, and terms like "burger", "restaurant", "pub" as proxies for the food service and drinking places sub-sector. When the function identified a match, I programed it to populate two adjacent Excel columns by the corresponding NAICS super-sector and sub-sector. When the function failed to turn up a keyword match, it generated blank fields where an industry code would otherwise go. With the help of a research assistant, I then manually coded participants whose employer name either resulted in multiple codes or blank fields. In all but 2,732 SWT placements, or 3% of the 2015 SWT cohort, I was able to assign a NAICS super sector and sub-sector using this process.

To avoid excessive categories, I coded remaining employers with 50 SWT placements or fewer into an “other” category, e.g. jewelers, professional photographers, car wash facilities, and municipalities. I coded the SWT participant’s employer as unknown in instances when the employer field contained an incomplete address or a person’s name, or otherwise offered few clues to industry. Ultimately, I faced limitations of time and resources in terms of investigating each employer using internet search engines or in the respective secretary of state-business databases. I also found that in multiple instances, 2015 SWT employer businesses had closed permanently—an indication that some businesses were likely no longer traceable. A full list of the NAICS codes I used and examples of the sub-sectors and business types that fall under each industry can be found in Appendix 2.

As Figure 5.1 shows, 56% of SWT participants fall into the NAICS super-sector of Leisure and Hospitality, which includes the sub-sectors of Accommodations, Food Service (e.g. food service contractors like Aramark and Sodexo), along with fast food restaurant chains and drinking places.

**Figure 5.1: 2015 SWT Participants by North American Industry Classification System (NAICS) Super (Aggregate) Sector**



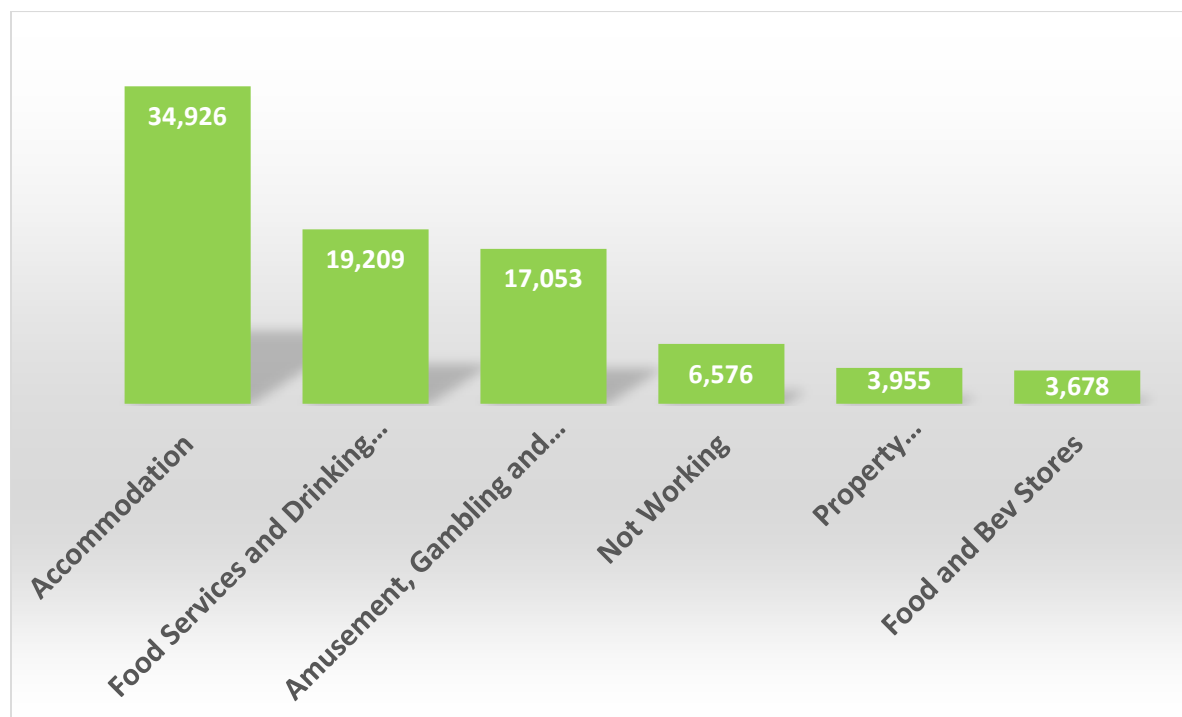
The next most common SWT placement is the Arts, Entertainment, and Recreation super-sector, representing 19% of all placements. This includes the sub-sectors of AGR, sports, and the performing arts. The third biggest share of SWT participants fall under the Retail sector (e.g. grocery stores, general merchandise stores, pharmacies, gift shops, and clothing stores), representing 7% of all placements, followed by 5% of participants in the Real Estate super sector, which as previously mentioned, includes Property Managers/Contractors and Rental and Leasing Services (e.g. beach rentals, ski rental shops, etc.).

Additionally, for 6,576 SWT participants (or 7%), there is no employer listed.<sup>34</sup> In 818 of the 6,576 instances, the sponsors indicate that a student was “on travel.” Otherwise, the employer field contained the phrases “seeking employment” or “exempt from pre-placement”—signaling that the student was unemployed versus traveling. The remainder of 2015 SWT placements falls into the categories of Administrative and Support, and Waste Management and Remediation Services (staffing agencies); Transportation and Warehousing (sightseeing companies and movers), and Other-Service Producing, a category that includes labor activities such as laundry services.

Apart from coding SWT participants based on the sector where they work, I further categorized their placements by sub-sectors (Figure 5.2). The high number of placements in accommodations and food service and drinking places drives the popularity of SWT workers in the Leisure and Hospitality industry overall, while AGR employers represent a close third to food services and drinking places. Property managers/contractors represent the fourth most popular SWT sub-sector, and food and beverage stores (i.e. grocery) the fifth most common.

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<sup>34</sup> The unemployed category is not to be confused with the 2,732 that I could not classify because I lacked sufficient information in the employer field. Rather, these are participants that sponsors specifically noted were doing something other than working, e.g. looking for a job or on travel.

**Figure 5.2: Top 5 SWT Placements by NAICS Sub-Sector**

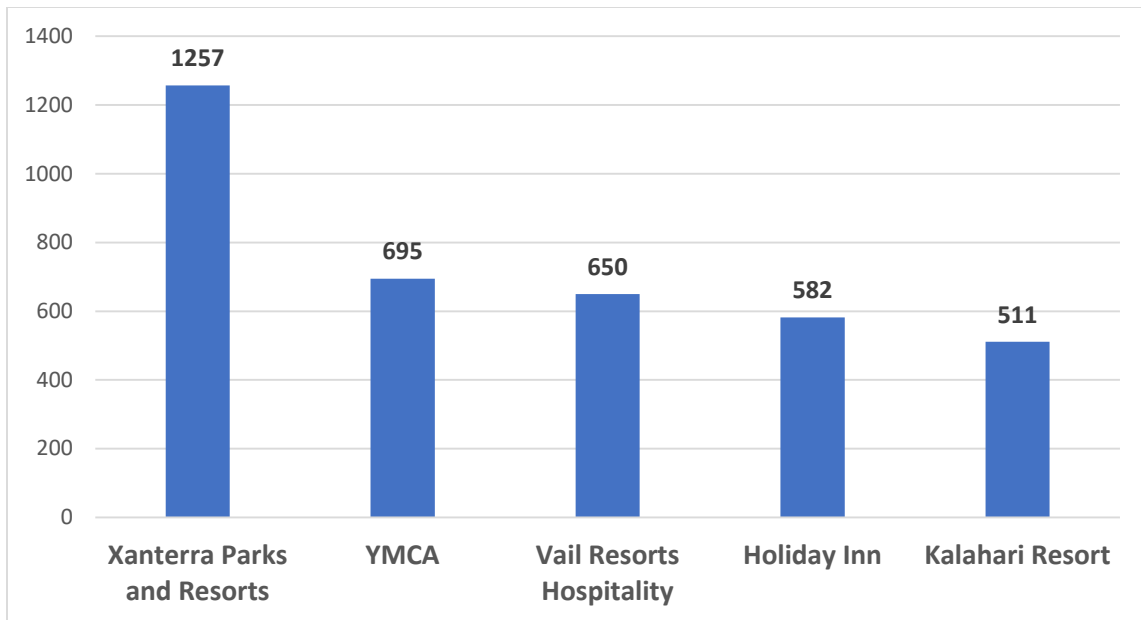
### *SWT Participants in the Accommodations Sector*

Figure 5. 3 provides a breakdown of the top five employers in the Accommodation sub-sector.<sup>35</sup> To make sense of the fissuring conditions in the accommodations sector, Weil's description of the hotel industry is instructive.

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<sup>35</sup>The largest employer in this category by far is Xanterra Parks and Resorts. According to its website ([xanterra.com/who-we-are](http://xanterra.com/who-we-are)), Xanterra is "the largest national and state park concessioner in the United States." Xanterra owns numerous hotels and lodges in federal parks based on its acquisition of competitive bids with the U.S. National Park Services. The Young Men's Christian Association (YMCA) is a historic hostel and recreation center that operates worldwide. Vail Resorts, the third largest SWT employer in the industry, is a sprawling mountain resort company that operates ski facilities throughout the United States, as well as in Canada and Australia. Vail Hospitality represents a division of Vail Resorts, and according to its website ([vailresorts.com/info/lodging.aspx](http://vailresorts.com/info/lodging.aspx)), "...owns and operates hotels, condos and private residences located in proximity to nine world class mountain resorts..." Holiday Inn is a major hotel chain owned by InterContinental Hotels Group. The fifth largest SWT accommodation employer is Kalahari Resort, a full-service vacation destination with locations in Pennsylvania, Ohio, and Wisconsin.



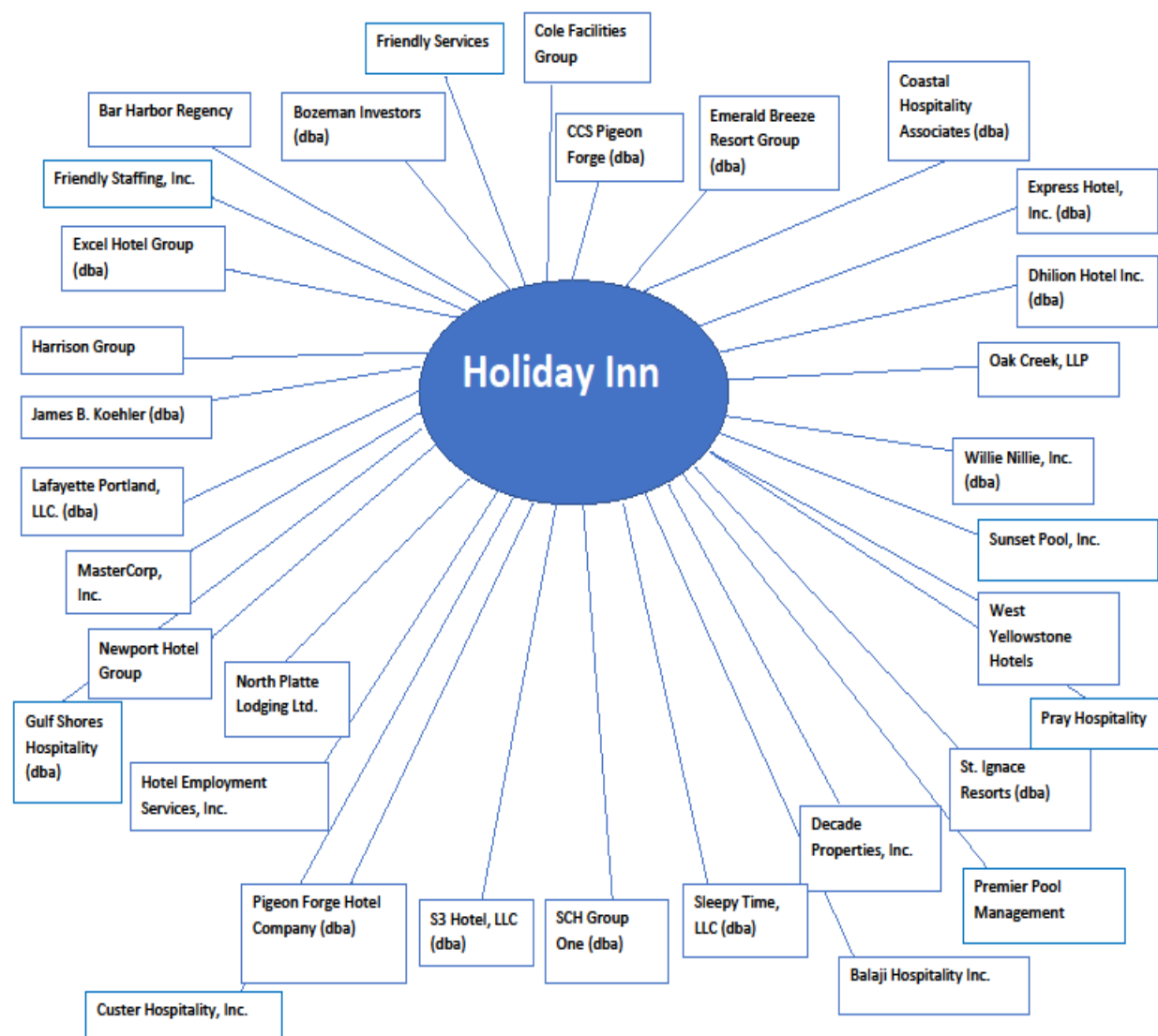
**Figure 5.3: Top Five SWT Accommodation Employers**

Weil characterizes the hotel industry as one where hybrid-fissuring has taken hold; companies rely on a combination of franchising agreements and outsourcing contracts to maximize company profits (2014: 143). The hotel industry is characterized by a small group of parent companies that control the lion's share of the market. Especially in the case of branded parent companies like Wyndham and Hilton Worldwide, most have ceased to own and manage their properties, opting instead for franchise agreements (2014: 146). In his discussion of franchising, Weil points out that it is an old form of business organization, but one that has become widespread and increasingly tapped as a "method of preserving the benefits of a strong brand while controlling labor costs; this is particularly important for service businesses, where labor represents a significant share of costs" (2014: 122). Franchising offers several advantages to companies, including a way to reap the multiple streams of revenues from upfront franchise fees and ongoing payments based on the franchisees' sales. He traces a fundamental shift in hotels

from company to franchise ownership back to the late 1980s and 1990s, a trend that has continued to accelerate in the last twenty years (2014:146).

As Weil notes, fissuring in the accommodations industry extends beyond franchising. Independent operating companies, otherwise known as management companies or third-party management companies, have emerged to handle the marketing plans, food and beverage management, accounting, and forecasting aspects of the accommodation business (2014: 151). Layered onto this level of fissuring is the outsourcing of housekeeping, janitorial, and food and beverage functions to yet other firms (152). While an exhaustive analysis of every accommodation brand, hospitality management, and staffing company—and the relationships among them—is beyond the scope of the current chapter, I provide an example of the types of fissuring I found by randomly selecting a popular hotel brand, in this case, the Holiday Inn.

Figure 5.4: Fissuring within the Holiday Inn Brand



As Figure 5.4 demonstrates, 33 different companies related to Holiday Inn collectively employ 582 SWT participants. I found SWT employers who operate at multiple levels of the Holiday Inn brand. The businesses in Figure 5.4 with the initials dba, for “doing business as” represent the franchisee and/or management companies that in some cases own a stake in the properties they manage. Additionally, several businesses bear names that suggest their role as third-party hospitality management firms, while others reference their role as staffing agencies, such as Friendly Staffing, Inc. and Hotel Employment Services, Inc. While I did not visually map fissuring for all of the major hotel brands, I identified a similar practice of fissuring at multiple levels across the top ten major hotel companies (e.g. Wyndham Worldwide Corp, Hilton Worldwide, Marriott International Inc., Global Hyatt Corp., etc.) and their respective brands. In all, I identified over 3,500 SWT participants placed with an employer whose name obviously referenced one of these major hotel brands.

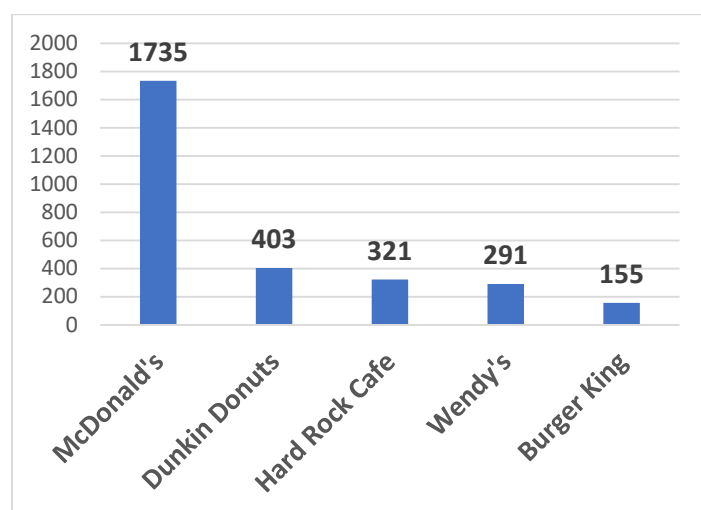
I selected a well-known hotel brand, in part, because the sponsor responsible for inputting data into the U.S. government’s Student and Exchange Visitor Information System (SEVIS) often included brand references such as “Holiday Inn” alongside the name of the franchisee and/or subcontractor. While conjectural, I believe that sponsors thought that they were offering more complete information in SEVIS by including the name ‘Holiday Inn’ alongside the name of the direct employer. From a data analysis standpoint, the inclusion of these brands made it easier for me to detect fissuring, since otherwise I might not have been able to determine relationships among lead companies—some of which themselves hire SWTs—and their second- and third-level contractors who are the official employers of record of other SWT participants. For example, I lacked the additional information and/or insider knowledge required to fully map the

relationships between Xanterra, Vail Resorts, and Kalahari and the businesses they likely contract with to manage aspects of their staffing or operational activities.

### *The SWT Program and Fissuring in the Fast Food and Amusement Park Industries*

Also evident in my data is the role that fast food employment plays in the SWT program, an industry Weil likewise highlights in his analysis of workplace fissuring. Figure 5.5 provides a breakdown of the top 5 SWT employers within the Food Services and Drinking Places sub-sector. Four of five constitute “fast food” employers and all five represent franchised brands.

**Figure 5.5: Top Five SWT Food Services and Drinking Places Employers**



Weil and other labor market analysts characterize fast food restaurants, like hotels, as sites where franchisees operate under particularly tight profit margins. In the fast food sector, a comparatively higher share of profits flow to the franchiser than in other industries (Weil 2014: 127-128; Bernhardt et al. 2016: 7). It comes as little surprise, then, that the rate of workplace violations is as much as 50% higher among franchisee versus company-owned fast food outlets (Ji and Weil 2012).

Of note is the prominent use of the SWT program among McDonald's franchisees (whose franchisees collectively employ 1,735 SWT participants), a brand Weil refers to as "the grandfather of fast-food franchising." Weil notes that McDonald's imposes on franchisees some of the highest brand compliance standards and royalty payments of any fast food franchisor. These requirements of franchisors arguably heighten pressure among franchisees to cut corners when it comes to workplace conditions. Moreover, it was revealed in 2018 that three fast-food SWT employers, Dunkin Donuts, Wendy's and Burger King, were engaged in "no poaching" agreements. Under such agreements, companies bar or restrict managers from hiring workers at other stores in the same chain, a practice that has been linked to fissured workplaces (Seligman 2018).<sup>36</sup>

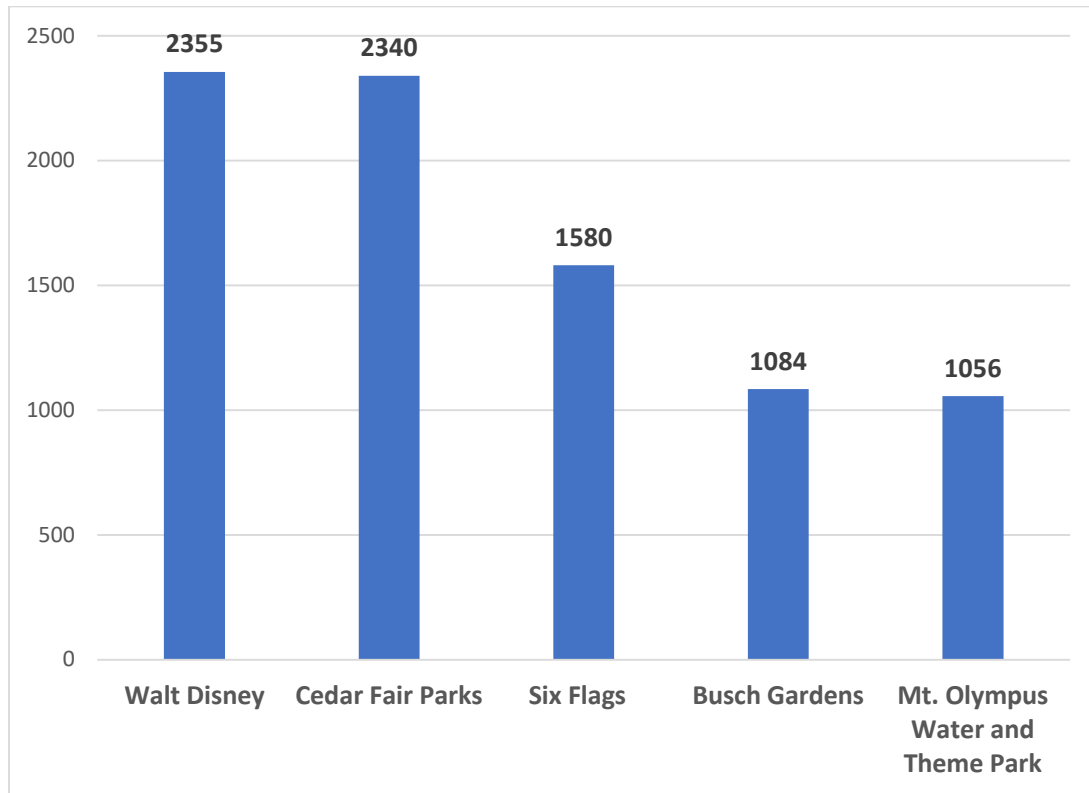
According to David Seligman, director of Towards Justice, the worker advocacy organization representing au pairs in their current suit against au pair sponsors for anti-trust violations, businesses within fissured workplaces "often strive to limit competition among workers" (2018: 2). It is a practice he insists amounts to having one's cake and eating it too: fast food brands shift labor-related responsibilities to franchisees while simultaneously seeking to control low-wage workers by not allowing them to seek out better wages and working conditions inter-brand. Thus, the pervasive hiring of SWT participants by fast food franchisees provides further evidence of fissuring within the program. It also suggests that SWT labor recruitment is one among various strategies to contain labor costs.

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<sup>36</sup> For details on the efforts of the Massachusetts Attorney General's Office, in coordination with nine other states' attorney generals and the District of Columbia legal officials, to curtail this practice see [https://www.washingtonpost.com/news/wonk/wp/2018/07/09/11-states-launch-investigation-targeting-fast-food-hiring-practices/?noredirect=on&utm\\_term=.b99cb4cf4bae](https://www.washingtonpost.com/news/wonk/wp/2018/07/09/11-states-launch-investigation-targeting-fast-food-hiring-practices/?noredirect=on&utm_term=.b99cb4cf4bae)

Less well-documented is the connection between workplace fissuring and the amusement park industry, another sector that recruits SWT participants en masse (Figure 5.6).

**Figure 5.6: Top 5 SWT Amusement, Gambling and Recreation Sub-Sector Employers**



Yet, data from my interviews with SWT employers suggest a similar trend of fissuring may apply. As Donna, the HR representative in the amusement park industry described her employer, “the property itself is owned by a local company, Fun Times (a pseudonym for an amusement park located in a major metropolitan area in the Mountain West), but all the employees and the operations are run by a management company. So Fun Times employees are actually hired by a management company who also operates 16 other properties throughout the United States and Canada.” Based on Donna’s description, amusement park companies, like hotels, contract with firms to manage the parks’ operations.

Moreover, the 2015 SWT employment placement information I obtained indicates that the same amusement park companies enlist multiple vendors—from food concessioners to photo imaging companies, like DigiPhoto—who in turn hire SWT participants. Again, Donna the HR representative, confirmed this practice:

We actually do have some outside companies that come in and work on selected things during the summer months. For example, last year we had an antique photo company coming in. Those are vendors, as well as vendors that we utilize for other resources, such as our J-1 sponsor companies. Those would also be one of our vendors.

Apart from the management company hired to run the facility owned by another company, Donna's company brings in "vendors" to carry out discrete services, representing another level of fissuring at her worksite. A closer examination of the amusement park industry is no doubt needed to make definitive statements about SWT placements and fissuring, but this evidence suggests that fissuring applies in the AGR sub-sector as well.

As my analysis of 2015 SWT placements shows, Weil's observations about the fissuring within the Hershey case extend to a range of SWT employer industries. The data reveal a substantial trend of participant placements in industries where workplace fissuring is common. While not exhaustive, my analysis nonetheless offers initial evidence that supports SWT participants' assertions. Indeed, their belief that their employers hire them as a way to contain their labor costs takes on additional relevance when considering the reality of fissuring within industries that most heavily rely on the SWT program.

Beyond this trend, I argue that the SWT program itself creates a legal distance between SWT workers and their employers. Unlike formal temporary labor visas where the employer petitions directly to the DoL to bring in workers, under the SWT program model it is the cultural sponsor who serves as the SWT visa holder's immigration sponsor and as the party primarily (legally)



responsible for SWT worker well-being. As I will discuss in the next section, this arrangement absolves employers of much of the financial and legal accountability they would otherwise have towards either (official) temporary migrant labor visa holders or domestic workers. As a result, SWT workers' ability to redress problems on the job or with related housing and transportation is weakened by the intermediary role that sponsors play.

## **V. Second Order Fissuring: The Arm's Length Model of the SWT Program**

### *The SWT Program: Regulatory Fractures*

As was mentioned in Chapter 4, the DoS announced in 2012 that it has no legal authority over SWT employers (DoS 2012:27, 594). This acknowledgement reflects program rules emphasizing the roles and responsibilities of two primary parties: cultural sponsors and SWT participants.<sup>37</sup> The SWT program regulations make clear that cultural sponsors (and their in-country, third-party partners) operate as private partners of the U.S. government. In this capacity, they—and not the employers with which the SWT participants will be placed—are responsible for: 1) screening and selecting eligible international students to participate in the SWT program; 2) providing program orientation to selected participants; 3) assisting with placement, such as helping students to secure employment, affordable housing, and transportation; 4) informing SWT participants of their workplace rights, including their entitlement to applicable federal or state minimum wages, and—in some cases—workers' compensation; 5) monitoring SWT participants while in the United States; 6) internal auditing and vetting of participating employers and third-party businesses with whom they outsource in-country recruitment and screening duties; and, 7) regularly reporting their activities to DoS.

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<sup>37</sup> SWT program rules that outline the rules and responsibilities can be found at 22 Code of Federal Regulations (C.F.R) § 62.32.

Additionally, SWT participants' obligations are enumerated in 22 C.F.R. § 62.32(e)(5),(6), and (9). These regulations require participants to notify the cultural sponsor within 10 days of participants' arrival to the United States and provide valid contact information; report all their employment so that cultural sponsors can vet the employer; and respond to the monthly sponsor outreach. The rules *imply* SWT employer obligations under the program, but those are framed indirectly under 22 C.F.R. § 62.32(n)(2) and (3); rather, it is the duty of sponsors to properly vet "domestic third parties." For example, sponsors should have direct, in-person or phone contact with employers, determine if they are legitimate businesses in good standing, and verify that participating employers' hiring of SWT visa holders will not displace U.S. workers or otherwise thwart union walkouts or strikes.

In practice, however, it is not clear how or if sponsors monitor whether employers' use of SWT workers displaces workers or affects union activities. As Lucile, a DoS spokesperson, explained to me in 2013, "Sometimes we can open up communication between [different] sponsor organizations so they are not all placing people in the same areas and flooding the market. But [overall] that is a question we are seriously looking at and trying to get our heads around for this upcoming rule." At the time of our conversation, DoS had announced it would be making updates to SWT rules in addition to the 2011 and 2012 rule reforms. In our conversation, Lucile indicated her support for procedures to ensure displacement of U.S. workers does not occur but acknowledged doubts about how sponsors would go about complying with this measure. As noted in Chapter 3, the long-awaited proposed rules to which Lucile referred were not issued until January 2017 and, to date, have not gone into effect. Nevertheless, the 2017 rules make no mention of a mechanism for preventing the displacement of U.S. workers.

In contrast, under the H-2B Program—the visa that is most often used interchangeably with the SWT program—the DoL stipulates that the employer is the primary legal party responsible for petitioning foreign workers and certifying that s/he has exhausted efforts to hire U.S. workers as a pre-condition of foreign labor recruitment (20 C.F.R. § 655.18(b)(1)-(9)). Similarly, the DoL sets clear guidelines prohibiting employers from improperly passing the cost of labor recruitment or work tools on to H-2B workers, as well as requiring employers to pay expenses related to workers’ travel to and from their home country and ensuring that H-2B workers earn three-fourths of the labor contract hours promised to them.<sup>38</sup> As I noted previously, employers have no such responsibility for paying SWT participant travel and employment placement fees; participants assume these expenses as customers of a cultural exchange service. And, as with H-2A and H-2B visa holders, SWT employers do not have social security, Medicare or federal unemployment tax obligations for participants. Table 5.2 provides a summary comparison of the employer obligations under the SWT, H-2A, and H-2B visas.

<b>Table 5.2 A Comparison of the H-2 and J-1 SWT Regulations</b>			
	<b>H-2A</b>	<b>H-2B</b>	<b>SWT</b>
Labor certification	yes	yes	no
Labor market testing	yes	yes	no
Prevailing wage requirements	yes	yes	no
Enforceable contract	yes	yes	no
Transportation costs provided	yes	yes	no
Fee prohibition for labor recruitment/employment placement	yes	yes	no
Visa fees covered	yes	yes	no

Sources: H-2A (generally 20 C.F.R. § 655 and 29 C.F.R. § 501); H-2B (generally 20 C.F.R. § 655 and 29 C.F.R. § 503) and J-1 SWT (generally 22 C.F.R. 62.32)

<sup>38</sup> See 20 C.F.R. § 655.20(o) pertaining to labor recruitment fees; § 655.18(b)(16) addressing improper deductions; § 655.18(b)(12)-(14) on who assumes burden of paying travel costs and 20 C.F.R. § 655.20(f) regarding the three-fourths guarantee).

Thus, given the legal placement of the SWT program under the rubric of cultural exchange, a rubric which privileges the role of sponsors and obviates typical obligations of employers, the SWT program has the effect of creating an arms-length legal distance between employers and workers *apriori*. By participating in the SWT program, employers subcontract the obligations and costs of labor. In this sense, not only are many SWT participants hired by management companies and service providers who are contracted to perform labor activities for lead firms, but SWT participants also experience fissuring because direct employers, in effect, have farmed out fundamental aspects of the employment relationship to the cultural sponsors who are legally responsible for them. Indeed, the very structure of the SWT program is premised on this kind of “second order fissuring.”

## **VI. Conclusion**

In this chapter, I have explored the reasons that employers use the SWT program. Specifically, I have provided evidence of two avenues of workplace fissuring within the SWT program: the concentration of SWT participants in industries characterized by pervasive domestic outsourcing, and the design of the SWT program framework, which allows the employer to outsource the recruitment and management of foreign temporary workers to a third party—the cultural sponsor organization. In this way, the SWT program represents a case study of a migration scheme that is influenced by trends in the labor market *and* further accentuates those trends.

In the following chapter, I examine how SWT participants make sense of what I refer to as their “privileged yet vulnerable” status. In many respects, their ambivalent social position is a byproduct of the complex political and economic forces undergirding the SWT program. I highlight the experiences that leave workers feeling rightfully privileged in some moments and

degraded in others. I explore how participants make sense of and rationalize these dueling statuses. By highlighting their unique migrant experience, I show that SWT participants do not fit neatly into either the categories of legal, skilled, and permanent, or illegal, unskilled and temporary. Instead, they straddle a structural space that lies somewhere in between.

## CHAPTER SIX

### SUMMER WORK TRAVEL PARTICIPANT EXPERIENCES: STORIES OF PRIVILEGE AND VULNERABILITY

#### **I. Introduction**

So far in my dissertation I have explored how, dating back nearly four decades, there have been persistent anxieties inside and outside of government about the low-wage work versus cultural exchange nature of the SWT program (Chapter 3). Additionally, I have argued that the U.S. government's decision to enlist private industry to underwrite large portions of its public diplomacy programming in the aftermath of the Cold War gave rise to the contemporary political economy of cultural exchange model, a public-private arrangement that is animated as much (or more) by private market forces as by the imperatives of public diplomacy. As it has flourished and become more entrenched, the cultural exchange industry has increasingly joined forces with employer groups to influence managed migration policymaking and to resist those measures that would lead to increased regulation of J-1 cultural sponsors or otherwise erode the public-private model on which the current SWT program is premised (Chapter 4).

I have also considered the relevance of labor market restructuring to the SWT program and how it is influenced by workplace fissuring. My argument here is two-fold. First, the SWT program articulates well with the rise of fissuring, as more and more work is organized via short-term, temporary employment. Second, the SWT program further accentuates this trend towards fissuring by legally constructing the sponsor as a no-hassle labor recruiter to whom the employer can shift its primary obligations for worker oversight (Chapter 5). One key final piece remains: to fully examine how these political, economic, and legal dynamics impact the student

participants themselves. Whereas my focus on the state and the labor market have allowed for an analysis of macro-structural and institutional forces acting on the program, in the current chapter I evaluate how the legal construction of the SWT produces situations of privilege and vulnerability for SWT participants.

As I have previously explained, SWT participants are positioned as ‘privileged’ from the outset of their migration owing to program requirements that they be enrolled full-time at an accredited university in their country of origin. In addition, participants must generally be in the socio-economic position to invest, on average, \$2,500 USD for the SWT experience. Yet, the employment that SWT participants are hired to do involves low-wage, often physically demanding tasks. Moreover, their status as temporary migrants who are primarily overseen by private cultural sponsor organizations makes SWT participants vulnerable to labor abuse and other indignities while in the United States. Considering the complexities of SWT participant subjectivities, in this chapter I ask:

- 1) *How does the legal construction of the SWT visa impact participant experiences as temporary migrants in the United States?*
- 2) *How do J-1 SWT participants interpret and make sense of their status as both cultural sojourners and low-wage workers?*

I answer these questions by conducting a subject-level analysis of SWT participants to explore their ambiguous status straddling the legal and social space of cultural sojourners and low-wage workers (Robertson 2014: 1916). As sociologist Rhacel Salazar Parreñas acknowledges in her multi-year study of transnational Filipina domestic workers living in Rome and Los Angeles, the theoretical conception of the migrant *subject* is different from that of the *individual* (2001: 3). It assumes that SWT participants do not act solely based on “free will”, but

instead as sociologist Joan Scott notes, “through the situations and statuses conferred upon them” (1992: 34). In other words, my focus in the current chapter is on evaluating SWT participants as they navigate what it means to be in the United States on a temporary status that carries with it both unique benefits and certain liabilities.

In *Servants of Globalization*, Salazar-Parreñas describes the ‘dislocations’ that Filipina domestic workers must navigate. Dislocations are the challenges or stumbling blocks that transnational workers face as a result of their structural location in the migration process. For example, despite the differing contexts of reception in Los Angeles, the women she met in both locations experience contradictory class mobility and partial citizenship, in addition to the pain of family separation and non-belonging in the host country. Contradictory class mobility refers to Filipina domestic workers’ “simultaneous experience of upward and downward mobility in migration” (2001: 150), considering that over half of them hold college degrees yet work as nannies, house cleaners, and live-in care takers of the elderly.

In my many conversations with SWT participants, some described to me what amounted to as the dislocation of partial citizenship.<sup>39</sup> I argue that the dislocation of partial citizenship, in the case of SWT participants, is a manifestation of the second-order fissuring I outlined in Chapter 5. Owing to the SWT visa’s legal construction as cultural exchange, the program rules afford cultural sponsors significant discretion and control in their sponsorship of participants, while absolving employers of the liabilities and social obligations normally assigned to them. The result, from the perspective of several SWT participants I interviewed, is a lack of recourse

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<sup>39</sup> Other scholars entertain theories similar to partial citizenship. For example, in sociologist Shanthi Robertson’s study of international students living and working in Australia on temporary visas, she describes their ‘differential inclusion,’ referring to vulnerabilities and contracted access to workplace and other rights pursuant to the terms of their visa. Like partial citizenship, Robertson notes that differential inclusion involves the state’s right to control and expel persons present on temporary labor visas (2014: 1925).



and significant limits to exercising their basic rights when problems arise on the job and/or with housing or transportation. Problems with housing and transportation are part and parcel of second order fissuring because, as the previous chapter's legal comparison shows, while transportation is the financial responsibility of employers under the H-2A and H-2B programs, they have no such responsibilities under the SWT regime. This is the case even though sponsors and participants—and even some employers—suggested to me that employers *should* bear (some or all) responsibility for providing affordable and suitable housing.

Additionally, SWT participants described incidences of contradictory class mobility: while SWT participants enjoy the status of university students with the means to travel abroad, they nonetheless occupy low-wage jobs doing work they would not likely do in their home country and which they deem degrading. They recalled their frustration, and in some cases, marginalization, based on the work they performed as SWT participants.

Despite these dislocations, or vulnerabilities, most SWT visa holders characterized their overall experience as valuable and understood their opportunity as a product of their privilege, especially relative to young people in their home country who could not afford to participate in the SWT program. For example, even while admitting their unmet expectations as consumers of the SWT experience and the humiliations of their low-wage work, participants cited multiple social and professional benefits of their SWT status. More interesting still, in my conversations with SWT participants, they tended to personalize and reframe the indignities and rights violations they endured as narratives of overcoming adversity and of establishing themselves as independent, mature adults. Through these narratives, SWT participants retain a sense of dignity and agency that their dislocations might otherwise place in jeopardy (Gubrium & Holstein 2009).

I argue, however, that the narrative re-framing work that participants do to rationalize adverse situations simultaneously shifts emphasis away from sponsor and employer transgressions, thus perpetuating the inequalities that the SWT program's legal model produces. For example, cultural sponsors cite the high levels of satisfaction among participants as evidence of strong program management and a justification for maintaining the program's status quo (Eureka Facts 2017).

I begin Chapter 6 by situating my analysis of SWT participant experiences within the scholarly literature on citizenship and transnationalism. I then present findings from my interviews with SWT participants. As I will show, some of the SWT participants I interviewed described situations in which their rights as workers, tenants, and consumers were violated with little means of redress. Others considered the work they were hired to do abroad as socially demeaning. Somewhat unexpectedly, several SWT participants portrayed these injurious situations as moments that test, and ultimately affirm, their inner strength and maturity. Participants told me they deemed the SWT experience valuable, in part, because it affirmed their ability to endure adversity, often with minimal help from sponsors and without the knowledge of their loved ones. I argue that while these stories recast participants as agentic and independent, they serve to minimize and leave largely unchallenged the structural inequities of the program.

## **II. Studies of Citizenship and Transnationalism**

There has been renewed interest in citizenship theory stemming from changes in the welfare state in several advanced countries, the resurgence of nationalist movements in Eastern Europe, and an overall increase in migratory movement worldwide (Kymlicka & Norman 1994). Such factors have prompted scholars to question how capable traditional theories of citizenship are for capturing the experiences of the growing number of people who traverse national borders

and occupy multiple social fields in their pursuit of political freedom and economic opportunity (Bloemraad, et al. 2008).

As mentioned in Chapter 1 (pp. 18), One group of academics posits that there is a clear hierarchy of migrants shaped primarily by geopolitical influences (Sassen 1996; Ong 1999; Salazar Parreñas 2001). In contrast, those without capital mobility are severely limited in their movement, often effectively trapped in poverty and exploitative labor regimes with little opportunity to freely cross borders in search of better economic opportunities and upward socio-economic mobility (Lee 1998; Salzinger 2003).

Another group of scholars emphasizes how the law constructs and orders migrants, producing gradations of citizens per the fluctuating need to define citizenship in territorial terms or, alternatively, by the extent to which an individual is deemed to “fit” within the social and political fabric of the community (Walzer 1983; Coutin 2000; Bosniak 2006; Nakano Glenn 2011; Motomura 2014). Theorists of liminality, for example, suggest that U.S. immigration law is manipulated to confer a more ambiguous, temporary protective status for those displaced by a political conflict on the “wrong side” of U.S. foreign policy as compared with those on the “right side,” who find the pathway to citizenship more hospitable (Coutin 2000; Mountz et al. 2002: 336). In observation of this practice, Mountz et al. argue that “what appears more superficially as a patchwork strategy of immigration laws and asylum practices may be theorized more deeply as a set of flexible responses by the state that turn on identity construction at different scales and that aim to mediate transnational relations” (2002: 336).

Implicit in such analyses is the role that race and nationality play in shaping migrant experiences and the level of legal protections migrants enjoy. Steinberg (1971), Ngai (2004), Zolberg (2006) and Telles and Ortiz (2008) underscore how considerations of race and ethnicity

affect the legal treatment, and subsequently the social and economic prospects, of different groups of migrants throughout American history up to the present.

As previously mentioned in Chapter 4 on pp. 85, the migration literature has broadened its focus to test similar theories of contemporary citizenship as they pertain to new and growing ranks of transnationals, including “middling transnationals.” (Clarke 2005; Gordon 2007; Robertson 2013; Tan & Lester 2012). As noted by scholars, these young migrants must exist under an ambiguous social status: they experience downward mobility as educated workers slotted in low wage roles, while also attempting to maintain social ties at home and in the receiving country with varying degrees of success.

Economist Binod Khadria (2001) makes a similar observation of Indian youth migrants he refers to as “half-finished human capital.” The Indian students he profiles, most specializing in information technology fields, benefit from travel abroad for education and training. But despite their human capital credentials and mobility, young human capital-endowed migrants are not assured of permanence, e.g. a career abroad and the attendant citizenship rights. Khadria notes,

There has been a major paradigm shift—the scale tilting from entry of foreign professionals as permanent immigrants to entry with the status of temporary visitors or guestworkers (like students), for example, on “nonimmigrant visa” of the H-1B category in the case of the U.S.<sup>40</sup> The distinction between permanent and temporary residency, which once separated the two specific categories of migration (professionals and students) has lost its prominence (2001: 47-48).

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<sup>40</sup> The H-1B, like the H-2A and H-2B, is codified in the non-immigrant section of the Immigration Nationality Act. Unlike the H-2A and H-2B that do not require post-secondary education, H-1B visa holders are considered specialized workers and must either possess a bachelor’s degree or higher. As with the H-2 program, the Department of Labor (DoL) retains oversight of key labor recruitment provisions but does not require employers to certify a labor shortage. Rather, employers must take ‘good faith’ steps to retain U.S. workers before utilizing the program. H-1B program rules can be found at 20 Code of Federal Regulations (C.F.R) § 655(H) and (I).

Hence, as Robertson (2014) correctly observes, the long-relied upon theoretical binaries of “student/worker, tourist/worker, skilled/unskilled, legal/illegal, alien/citizen, and temporary/permanent” are increasingly inadequate, given contemporary patterns of migration, especially among young transnationals who exhibit privilege in their mobility but vulnerability in their immigration status and placement as incidental workers and/or global apprentices (16). Furthermore, as she and sociologist James Walsh observe, the ranks of the Australian Working Holiday Makers (WHMs) and Graduate Student Workers (GSW) have swelled as the nation has begun moving away from policies that embrace migrants as permanent settlers and future citizens and toward merit-based, temporary or staggered immigration policies (Robertson 2014: 1916; Walsh 2014: 584). In the U.S. context, the proliferation of the SWT program alongside an array of other temporary labor schemes that confer varying work rights and social benefits suggests that previous conceptions of migrant subjectivities and trajectories are indeed in flux (Sukthankar 2012).

Through my analysis of SWT participant experiences, I answer Salazar Parreñas and Robertson’s call for research that considers “how temporal restrictions qualitatively shape migrant experiences” (Salazar Parreñas 2010: 319; Robertson 2014: 1917). Like Chuang (2013) and Robertson (2013; 2014), my aim is to build on the theoretical construct of middling transnationals by shedding light on the experiences of migrants whose statuses are largely concealed by visa categories not commonly associated with labor migration. Doing so allows scholars of transnational migration to more fully account for the different forms that temporary migration takes, including those forms that are masked by their cultural exchange label. Additionally, my research offers insights into the impacts of ‘temporariness’ on those who seemingly possess many of the attributes of desirable migrants, but whom the state renders

largely bereft of rights by construing them as impermanent cultural travelers (Walzer 1983; Coutin 2000; Nakano Glenn 2011; Robertson 2014:1925). In this way, subject-level analysis of SWT participants offers a tangible example of the unexpected ways that migrant ‘othering’ manifests in the current managed migration policy landscape (Robertson 2014: 1929).

### **III. The Privileged Social Class Status of SWT Participants**

In assessing the subjectivities of SWT participants, I first set out to gauge their socio-economic status, and relatedly, how economically feasible they viewed the SWT opportunity. Participants conveyed their social class to me in several ways. First, we discussed directly and indirectly the economic markers of their class position, such as their parents’ professions and the story of how they paid for the SWT program. Additionally, participants talked about previous work experience or the lack thereof. I asked participants to describe what their parents or guardians did for a living, which served as a proxy of their socio-economic class.

While a somewhat subjective categorization, I considered both their parents/guardians’ professions as well as whether the SWT participants’ parents were currently working. Of the 30 SWT participants I interviewed, I categorized four (13%) as working class, 22 (73%) as middle class, and four (13%) as upper middle class or affluent. I assigned these social class categories in the following way: if participants told me that their parents worked in business or as high-ranking government officers (as some did), I categorized their status as upper-middle class or affluent. For participants who told me that their parents were teachers (many), medical technicians, or small business owners, I ranked them as middle-class. While I did not ask about class status directly, in a few instances participants plainly told their family’s socio-economic status. This was particularly true for participants who characterized their parents (or a single parent) as financially strapped.

I also asked participants whether a lot of people they know participate in these sorts of work-exchanges. This question was intended to gauge the attainability of the SWT experience for young people in their country more generally (see Appendix 1: SWT Participant Interview Guide). Most SWT participants explained that the program was not economically feasible for most of their peers, even for their fellow college students. As Svetlana, a Polish housekeeper placed in Snow City explained, “I think it is difficult to invest so much money. Maybe that’s the reason I’m the only one person from Poland here [in Snow City].” Vivian, a Nigerian participant who came over three different summers between 2012 and 2015 to work in food service and housekeeping at amusement parks and a hotel, concurred that the experience was elusive for most in her home country, though she believed the SWT program was not for the richest in her country either:

Well, I would say not much. Maybe not up to 10% because most of them probably cannot afford it. And those that can, probably do not—at least from the few people that I spoke to, they did not embrace the idea of working, of having to spend that much and then going to work because apparently, they were from rich homes and they're kind of lazy.

From Vivian’s perspective, middle class Nigerian college students were the most likely to make the investment in the SWT program since many could simply not afford it, and for richer Nigerians, this outlay of money was not worth if it involved paying to work.

Furthermore, while participants told me they considered themselves generally advantaged to take part in the experience, they believed there was considerable variability in the socio-economic status of fellow visa holders. As Maria Jose, a Peruvian participant working as a Housekeeper in Sunshine village, put it: “There’s people [from Peru] that come here without needing the money so much, but there's people that really need the money. They'll like, invest one year for this trip, and they don't want to party here. They don't want additional [cultural]

activities, they just want the job. Save money, save money, save money.” Similarly, Joaquin, an Argentine working as a dishwasher in Sunshine Village reflected on the workload of his SWT roommate who held two jobs; his roommate sought a second job of his own volition to earn extra money. Joaquin explained that he had talked to his roommate about the possibility of participating in my research,

The thing is that he [the SWT roommate] usually works all the time and he barely breathes, he barely speaks. He ends up getting home at 11pm, and he's like, "No, I'm not going to the party tomorrow. I have to work the whole day." I told him about this [interview opportunity] but he was like, "Okay, let me see my schedule this day," and he didn't end up telling me because I barely see him. I see him like 20 minutes per day, I cannot imagine [working that much].

While also a SWT visa holder, Joaquin worked only one job for an average of 45 hours per week. Thus, by comparison, his roommate's schedule was punishing.

On average, the SWT participants I interviewed worked approximately 45 hours a week, though it ranged by person from 30 hours per week to 70, hours depending on how many jobs the participant held. Seventeen SWT participants (56%) worked at least one, if not two jobs, in addition to the primary job listed on their DS-2019 immigration document. The practice of working second jobs is pervasive in the program, and according to the SWT participants I spoke to, most sought second jobs to finance travel around the United States once their work requirements have been completed, or to compensate for the fewer-than-promised hours provided by their initial employer. Almost all the SWT participants in my study borrowed money from their parents and other relatives to enroll in the program, and only one participant expected to bring home enough money to cover her upfront investment in the program.

Aside from economic measures of social status, many participants told me they had no previous work experience or had mostly carried out clerical roles or internships in more



professional settings. Only two participants recounted prior experience in menial labor roles. Martín, a Colombian working in housekeeping in Sunshine Village, laughed as he told me his mom's reaction to finding out he would be cleaning hotel rooms: "When I told my Mom, 'I'm going to be housekeeping,' She was laughing. 'You? Cleaning? Oh my God, you are going to be the worst! I mean, the worst!'" One could assume that Martín's mother was reacting, in part, to the thought of her son doing housecleaning since it is activity more often ascribed to females. But Martín believed her reaction was mostly due to his lack of experience doing menial labor. Like Martín, Rebeca, a Peruvian who also worked in housekeeping in Sunshine Village, said her parents teased her about her work assignment: "He [my Dad] was like, "Are you sure—housekeeping? My parents didn't have much hope for me."

Loretta, a Colombian, who was employed at a convenience store in Douglas, a small town located in a mid-Atlantic state, offered a poignant reflection on her fortunate social position as compared to her U.S. co-workers. In recalling an incident in which employees were accused of food poisoning, she noted:

I had a problem where I was working the last week, and I had to do sandwiches in this gas station and fried chicken, and I don't know, somebody reported that they got food poisoning because we didn't fry their chicken the way we were supposed to. I remember they called us and they made us sign these, like, commitments that we wouldn't poison people. Something very stupid because the manager was awful. I just left the meeting and I was like, "Fuck you," you know, "I don't give a fuck about you." Like, "I will sign whatever you want." And then the co-workers which I became friends with them, and we were really good friends when I was there, they were like, 'Well you have this attitude because this is not your life, right, because you are going back to college and you don't care, and your life is awesome. But this is our life. So, for us, it's very harmful that we get these warnings.'

As Loretta explained, the fleeting nature of her SWT work experience made her more likely to put up with poor workplace treatment because she could look forward to its ending. She acknowledged that what for her was a temporary annoyance was a persistent condition of work

for her U.S. friends. Loretta explained to me that for a time, anyway, she didn't mind frying chicken because it was a skill she would not have otherwise gained. She insisted, "I was glad to do it. I was like, 'I really hope that life will be nice and gentle to me and I will never have to live this life.'" As with the food poisoning incident, Loretta seemed aware that her privileged socio-economic status mostly spared her the physically demanding and degrading nature of the kind of conditions she experienced during her short-term SWT employment stint.

Igor, a Russian window cleaner placed in Seaside, expressed the benefits of the SWT program as a current and future global citizen. When I asked him how the SWT experience would benefit him, he explained:

First it helped me improve my English because in Russian if you know English, it opens more gates for you in your life. Second, it's meeting people [from around the world]. Now I have other friends. I know I can just get on Facebook and say, "Okay, I will go to Germany tomorrow. You want to meet me? It's great because I like networking, you know? I like building [networks with] some nice people. I think if you build some networks, it's going to bring success in your life.

Igor vividly describes how, as an upwardly mobile young person, he anticipates the SWT experience as the beginning of a lifetime of travel and international friendships. He also notes the professional importance of these international networks and equates having them with success. Despite expressions of SWT participant privilege, like Igor's, I nonetheless identified multiple dislocations, or vulnerabilities, that flowed from participants' status as SWT visa holders. In particular, I describe SWT participant experiences of partial citizenship and contradictory class mobility in the following two sections.

#### **IV. Second Order Fissuring and Partial Citizenship under the SWT Program**

In Chapter 5, I provided a review of the SWT program regulations as they compare to the H-2A and H-2B visas, two non-immigrant categories readily associated with low-wage labor. I

explored how, by administering the program through the DoS and conferring legal responsibility for SWT participants to sponsors instead of employers, the arrangement produces a fracture in employer-SWT participant relations—what I refer to as ‘second-order fissuring.’ Through my interviews with participants, I found that the phenomenon of second-order fissuring complicated SWT participants’ efforts to exercise their rights even though, in many respects, they are entitled to many of the same workplace and housing rights as U.S. citizens.<sup>41</sup> Participants and immigrant/labor advocates recounted to me a ‘who’s the boss?’ problem when it came to approaching their sponsor and employer about problems they faced related to their work, housing, or daily transportation. In this way, like the Filipina domestic workers in Salazar-Parreñas’ study, SWT participants experienced partial citizenship in addition to contradictory class mobility. In total, 10 (33%) of SWT participants I interviewed reported situations that constituted potentially egregious violations of their workplace or consumer rights (as tenants and customers of a regional shuttle service). Several others described challenging workplace situations that, while they perhaps did not amount to legal infractions, caused participants significant distress and made them feel exploited.

Specifically, participants and immigrant-labor advocates reported constraints when attempting to communicate employment, housing, or transportation problems. Participants told me that sponsors underscored the risk of program termination (and loss of immigration status) if they did not maintain gainful employment or failed to update or otherwise report their

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<sup>41</sup> SWT regulations make clear that the Fair Labor Standards Act (FLSA) applies to them, including minimum wage and overtime provisions. Moreover, in my work as a human trafficking paralegal, I represented a group of Chinese SWT participants who were overcharged for rent. Based on the inclusion of national origin as a protected class, our office issued a demand letter to the housing provider outlining their violation of the Fair Housing Act. Through this action, we were able to successfully recoup several hundred dollars each on behalf of the SWT tenants. It should be noted that this sort of intervention is rare since the Legal Services Corporation (federally funded legal aid offices) is only legally authorized to assist SWT participants in cases of suspected human trafficking since only specific groups of non-citizens are eligible for LSC legal services.

employment and residence details monthly. For example, Gina, a Thai participant working at a grocery store in Fairview, a tourist destination located in the U.S. South, told me she thought SWT participants made for easily exploitable employees. As she put it, “We keep doing everything [according to the] rules. Nobody wants to get in trouble. So, we keep following the rules.” When I asked Gina why she thought SWT workers didn’t want to get in trouble, she replied to me, “Because we don’t want to be sent back to Thailand.” As Gina described it, she and others knew of SWT participants who were fired and later deported for showing up to work late, a worst possible outcome for Gina, and as she reasoned, the sort of leverage employers were conscious they had with SWT employees.

At the same time, SWT participants indicated to me that sponsors were not particularly responsive when they took steps to report grievances to them. Only Rebeca, the Peruvian housekeeper in Sunshine City, referred to an instance where the cultural sponsor intervened on her behalf—to advocate for an increase in her weekly work hours. While SWT participants expressed frustration about adverse situations they found themselves in, most SWT participants were reluctant to challenge their conditions for fear of losing their immigration status. Participants also reasoned that their time in the United States was likely too brief to resolve most problems they faced with employment or related matters.

Several SWT participants described adverse working conditions at their jobs. In discussing their experiences, I asked SWT participants how they navigated these situations, and specifically, what assistance their sponsor offered them. Vladimir, an ethnic Armenian from Russia, told me about his experience of working in a meat locker in the basement of a grocery store chain in Seaside. He expressed the challenges of his work and the lack of equity between being given the role of cashier and meat department associate:

So I need to work in, like in a cold place, in a basement, in a freezer, so I need to clean that whole room. So it's much harder [to clean blades, the walls and floors] than to be like a cashier at the same salary. It was very bad for my health...the temperature and the things for cleaning [made me feel sick]. Because you're cleaning a basement, it's like cold and you clean it with hot water. When you turn on the [hot water hose] to clean, it makes a big cloud [of liquid vapor mixed with cleaning chemicals].

When I asked him what, if anything, he did to improve his working conditions, he said he tried to talk to his supervisors but was told that there weren't openings in the other departments. As Vladimir explained it, he ended up sticking with his grocery store job through the end of the season to remain in compliance with his visa. This is despite ranking the conditions of his job as a one out of five (one being the worst, five being the best). When I asked him how his sponsor was involved if at all, he said that the only contact he had was via an online monthly check-in and when providing his sponsor with the required paperwork for approval of a second job he sought at the time. Vladimir reasoned that honoring the terms of his job as outlined in his DS-2019—the immigration form constituting a written agreement of sorts between him, his sponsor, and the U.S. government—outweighed his concerns about his health while working for the sponsor-matched employer.

Esmira, the housekeeper in Sunshine Village, took a more direct approach with her sponsor to address problems with her primary employment (she, like Vladimir, also worked two jobs):

I didn't like housekeeping from the very first day. Back in Russia, I thought, maybe I'll get used to it. But here, when I came to training, when I started, I was like, "Goodness, what have I done?" Like, a huge mistake. So I would start to look for a third job, because [my second job] they would only give me like two days in June, so I thought that if I found something else, that was every night, it would be better. I found a room service position but it was full-time. The manager called me back and said that they can hire me full-time, but I need to leave housekeeping. So they told me, "Can you talk to your manager and if they agree to it, transfer you to this position." So I talked to my manager, and he said, "If I do this, it will probably help out that department - the restaurant - but it will do bad to this housekeeping department. In a couple of weeks, it's going to be super

busy, and I need you all, so [the answer is] no. Then, I tried to talk to [my sponsor] and all they told me was “You’ve got to respect your contract.”

Interestingly, Esmira recounted her efforts to secure an inter-company transfer from one job type that she disliked to another that she preferred. Despite Esmira’s interest in transferring job units instead of leaving her employer altogether, her sponsor opted not to intervene, which meant she felt compelled to remain in a job she told me she hastily accepted only after several jobs she wanted more did not materialize.

Jennifer, a Jamaican SWT participant placed at grocery store chain in Seaside, told me about improper deductions from her paycheck. She believed that her employer knowingly took advantage of SWT participants with little regard for their rights. She explained,

They do whatever they want. The J-1's [SWTs] aren't supposed to pay, are only supposed [to have] two taxes [withheld]. We're not supposed to pay the Medicare and the other one. Shop Adventure knows that because it is not the first time they're doing it. It's not the first, second, third, fourth year they're doing the J-1 Program. They're withdrawing the taxes out of our paycheck every single week. Fine, you ask them [management] about it and they say, "Well, it just takes a while for that to clear up," or whatever. It's been two months now and we've yet to see those returns and we've been constantly communicating with the hiring manager and she never knows anything. Every time we ask her a question, even outside of the taxes, anything at all its "I don't know. I don't know." If you don't know, go and find out and when we come back to you give us an answer. You go back to her, "I still don't know. I don't know." She has a kind of an attitude. It is a lot of [SWT] students, it is so many at Shop Adventure! That's why I wanted to put a sign up and stuff in the break room. There's so many J-1s there I'm sure a lot of them have problems.

Both Jennifer and her roommate—also included in my study and employed by ‘Shop Adventure’—provided similar accounts of improper deductions from their paycheck. As Jennifer rightly pointed out, the grocery chain was well known to other participants and employers I spoke to as an SWT employer. As such, the problems she described raise legitimate concerns about an employer who routinely partners with DoS-designated sponsors to recruit

SWT participants. At the time of our interview, neither Jennifer nor her roommate had recovered the couple hundred dollars owed to each of them.

Similarly, Loretta, the Colombian employed at a 24-hour convenience store, described to me what she referred to as the “shady” practices of her employer. She recounted that her employer did not provide transportation to and from her employment site located along a U.S. Route 50, major east-west highway. She managed her commute by walking along the shoulder of the highway. If she walked at night, she told me she wore a white coat so that cars would see her. Despite her inadequate transportation, her employer scheduled her for staggered shifts on the same day. She said,

They made me go from 8 to 10, and then the manager came and she was like, and you need to clock out. I was like, “Why?” She's like, “because you're coming back at 1.” I was like, “yeah, but my house is so far away that I'm not going to my house and then coming back.” So I just have to hang around in the common area, and then I came and I was like, “Either you let me cook now, or I'm leaving.” They were like, “Oh.” what I'm trying to say is they were always pushing the limits with us [SWT participants]. They were very shady, they were very tricky, you know?

It did not occur to Loretta that she could appeal to her sponsor for help at the time of her SWT experience, even though she said she was keenly aware of the situations that could lead to her program termination, such as pregnancy. As with the food poisoning scare, Loretta reasoned that she simply put up with her unsafe commute and her manager's practices because, as she put it, “It's a very short term experience, you are willing to do all these sacrifices, and to pay whatever they ask you, because you are like, I mean, it's three months.”

Roxana, a Turkish SWT participant placed at a grocery store chain in Fairview told me she and two other Turkish SWT participants complained to their cultural sponsor about Palm Tree Express, the transportation provider she paid nearly \$650 for her summer transportation.

Despite the steep fee they paid for shuttle service between their housing and worksite, scheduled busses would often not show or would arrive several minutes late. I estimated that the bus company brought in approximately \$30,000 in one summer from the 40-50 SWT participants who relied on the shuttle to come and go from work at two grocery store chains located in Fairview. Nearly all the SWT participants I spoke to in Fairview had complained to the shuttle company and reached out to their sponsor about the poor transportation service, but at the time of my fieldwork, no action had been taken to either reimburse students or rectify the transportation problems. Ardash, a Turkish SWT participant and co-worker of Roxana, said of their transportation problems, “It’s like they’re robbing us.”

Roxana explained to me how her efforts to get help from her sponsor were largely ignored: “We sent a lot of email [to the sponsor] but they didn’t respond to me. They didn’t answer it. Sometimes we send an email about something else, they answer us. But about transportation, they didn’t answer to us. If we have big problems, they didn’t answer to us. We always send an email but we cannot wait.” Like the other SWT participants I spoke to in the Mountain West, Northeast and the U.S. South who had workplace and housing concerns, Roxana reported that her sponsor was unhelpful when it came to workplace and related concerns. For her, the transportation problems only compounded Roxana’s sense that she had been cheated out of the broader promise of a cultural experience. She explained, “I cannot go anywhere because of transportations. It’s so bad for me. Sometimes I am so bored. I want to go somewhere. I want to meet someone. When we go back our country, we want to tell something about here [in the United States]. But we don’t know anything in here. It’s so bad. We came here a long distance, and we want to see something!”



Certainly not all the SWT participants I interviewed had experiences as bad as those described above. To the contrary, almost half of the SWT participants I spoke to did not encounter major problems and reported having supervisors who treated them well. For Vivian, a Nigerian employed at an amusement park-based food concessioner, her relationship with her employer was integral with her favorable cultural experience. As she explained,

“We had close relationship with our bosses, and they kind of made us feel appreciated. [T]hey were constantly, constantly appreciating our work and trying to help us improve, and they kind of got to know us. Got really, really, really close to us. One time, I had my boss come over to my apartment. She said she wanted to try Nigerian food. Yeah, so at the end of the day, it didn't really matter that we were paid little because we enjoyed. We got compensated in far more important ways.

Similarly, at two of the three research sites I visited in the U.S. Mountain West, SWT participants reported that transportation was free and easy to use. Moreover, I was struck by the efforts taken by some employers I interviewed to provide benefits not required under the SWT program. For example, Mike, a manager at a fast food restraint in Snow City, told me that his company rents apartment units year-round to ensure he can offer an affordable housing option to his employees. He explained,

We have to rent them for the entire year so we, we lose money six months out of the year when we don't have J-1s but compared to what other businesses face like Ruby's [a pseudonym for another fast food restaurant in Snow City] has some J-1s that they don't give more than 30 hours a week to but their rent is \$2000 a month.”

Another restaurant employer I interviewed in Seaside similarly took steps to provide housing to SWT participants he hired for summer work. Of this practice, he opined:

I think that we need to improve the conditions that we put the employees in. We should be a little bit more responsible in getting them the housing, [helping] them with the housing. Tell them what to expect. But I think too many [SWT employers] just say, "Well, you're on your own." But they don't give them any basics. They don't tell them what the conditions are going to be. I feel that that's a lack in the [SWT] program.

All in all, second-order fissuring resulted in *uneven* SWT experiences. Unless employers took voluntary steps to forge a social contract with their SWT employees, participants were more prone to experience the dislocation of partial citizenship. This is because SWT participants' efforts to enlist assistance from sponsors, the party primarily legally responsible for them, were mostly fruitless. As the SWT participants' accounts demonstrate, the role of the sponsor was often ineffectual or served to privilege the judgement and decisions of the employer: participants described a dead-end communication loop between themselves, the sponsor, and the employer that amounted to a collective deflection of their concerns and a weakening of their position as workers and consumers.

## **V. Contradictory Class Mobility as a Function of Employment-Based Cultural Exchange**

Participants also conveyed the challenges of contradictory class mobility. Several I spoke to said they struggled with doing work, however short-lived, that belied their privileged social status. Ilana, placed in Sunshine Village as a housekeeper, relayed her impressions of her SWT-placement: "Well, it's a pretty hard job. I didn't expect it in the beginning. I think it's kind of moral thing because when you see those toilets with all these things and for example bathrooms when people throw up there. It's like, I cannot do this, but I have to. Anyway, it's job so we get money for this. We should do this. We have to." Ilana, a 19-year old English and German double major, came to her SWT role with prior waitressing and teaching experience. While waitressing was similarly a low-wage menial labor role, she found the housekeeping work she was hired to do especially demoralizing. She wasn't alone. Rebeca, also a housekeeper in

Sunshine Village, told me that some of her friends paid for the SWT program, only to later forfeit their financial investment after working for a brief time as housekeepers:

I remember the first week that they gave me the vacuum and make me carry the vacuum. And I'm walking in the snow and my back. The first time that I did that, I cried. It's why I came, to clean this? You know, it was really frustrating. But then, I'm not going back [to Peru] and say I couldn't make it. But there are some friends that say, "No, it's not for me. I'm not going to—clean...It is kind of frustrating that I come here to clean up." Maybe this sounds rude, but I have friends who said to me, "I didn't come here to clean American shit."

Like Ilana and Rebeca, Martín told me that it wasn't simply that housekeeping was physically grueling work, but also that it was demeaning. Yet, he admitted that despite its stigmatizing nature, he could make better wages working as a housekeeper in the United States than he could in Colombia, "I hate to clean. I don't know. It is something about my pride, maybe, because it is unprofessional. I could be doing something really interesting in Colombia, but now I'm cleaning toilets here." But it's funny because I am earning more than in Colombia, a lot more!" For Martín, his work made him feel devalued, both because he deemed it as 'unprofessional' but also because his role as a housekeeper masked his privileged education and class-status. He explained,

I don't know how to say in English. Like they don't value. Because for Americans, we are just like J-1s and housekeeping. Because, for example, between J-1 [SWT participants], you're, "Oh, you're a psychology major. Wow, incredible! Wow! You're architecture. Yeah, good." So they give the value because we know we are in the same [academic] programs. But for Americans, for our boss, for our guests, we are just housekeeping. That's all.

Even though Martín told me his supervisor was a likable guy who often complimented him on his work, he nonetheless found his contradictory class mobility to be an unpleasant aspect of the SWT experience. Similarly, Margot, a Nigerian who initially worked in food service in Snow City, told me she did not plan to reference her time as an SWT participant on her résumé, "I

can't because, I mean, any employer in Nigeria...this [work] is kind of demeaning, I couldn't do this in Nigeria. Never ever. I pray I don't ever have to. It's not what people want to be. An employer would say, 'Why would you go to America to do what you do?'"

Not all SWT participants shared Margot's view that the SWT work experience would be read negatively employers. Some participants I spoke to, for example, believed that simply having *any* international work experience would make them attractive to employers in their home country. Despite the recognition that traveling and working abroad would likely be viewed favorably by employers (and even U.S. graduate admission staff) and was a manifestation of their privilege, the degrading and unfulfilling nature of work under the SWT program emerged as a central theme and perpetual source of frustration, and for some, shame.

## **VI. Making Sense of Their Privileged, Yet Vulnerable Status**

One of the counter-intuitive findings from my study was the high level of satisfaction SWT participants reported of their overall experience after recounting significant disappointments with the program, including some disturbing accounts of mistreatment. When I asked participants to rank their employment experiences, the average rank was 3.5 out of 5. In contrast, only one participant rated her overall SWT experience below 3 while the rest of the participants rated their overall experiences as 4 or higher. Nonetheless, in reviewing my many conversations with SWT participants, they employed a common auto-narrative strategy that helped to clarify this apparent contradiction between the challenges to their rights and well-being and their overall impressions of the SWT experience.

Very few SWT participants I spoke to cited the structural factors that led to eventual problems with their employment, housing or transportation. Margot, the Nigerian working in food service in Snow City, was a rare exception. Toward the end of our interview, I asked her if

there was anything else I should know as a researcher on the topic of the SWT program. She directed her comments at the role of the sponsor by saying,

If you want to do something, do it and do it well. Nobody made you a sponsor, nobody forced you to be a sponsor. So if you decide to be a sponsor, aside just sending emails, checking up, make sure the employers do what they should do. Make sure, I know it's hard. So it's two things: don't spread the J-1s to so many parts of America so you can't control it, or don't take so many J-1s so you can't control it. But putting people in different parts of America, and you can't even see what's happening, some people are so poorly treated by their employers. Employers don't even care about the cultural experiences. And some actually make sure they give you the cultural experience. I mean, what's happening, we paid the same program fee. So these sponsors should make sure that. They should probably ... I don't know how they could get honest reviews from students. And when you get bad reviews a particular employer pull that employer from your list.

Unlike most SWT participants I interviewed, Margot made sense of her negative experiences by situating herself within the larger framework of the SWT program. She deftly articulated how the outsized role and uneven administrative performance of the sponsor disadvantages SWT participants, especially those placed with exploitative employers and/or in far-flung locations.

Far more commonly, however, SWT participants reframed their negative SWT experiences as situations that tested their character and affirmed their self-reliance. For example, Vladimir, the ethnic Armenian from Russia who worked cleaning the meat locker of the Seaside grocery store, summed up his impressions of the SWT experience by saying, “So it's very good experience for life. It's a new experience. I don't know, it's a lot of things. When you live here for a half a year long, you became, you can do everything alone, without support of anybody.” In his reflection, Vladimir didn't mention his employer's unwillingness to grant his request to be moved to another department. Rather, he interpreted the lack of support he received as an experience that made him feel more resilient, especially in the absence of outside assistance.

Similarly, when I asked Ilana, a Sunshine City-based housekeeper from Russia, if she had any overall positive or negative impressions of her SWT experience, she responded:

I'm really happy that I came here because it's been an experience I cannot compare to something, because you have to do so many things on your own, and it's like, new country, new cultural environment. and as for negatively? I think just-- no, actually, it's a good experience all the way because it's, kind of, a very hard job. Housekeeping, I mean, bad. At the same time, it will be a good motivation for me to finish my university, to finish my studies.

Ilana had spent several minutes of our interview describing how she felt her sponsor had limited her initial employment choices to housekeeping despite her interest in a job interacting with the public. As previously mentioned, she also explained that she found work as a housekeeper morally degrading. Even so, Ilana reasoned that her experience had been worthwhile for teaching her hard work. She, like Loretta, characterized the SWT experience as a valuable reminder of the importance of education for the professional opportunities it affords.

Roxana, the Turkish SWT participant working at a grocery store in Fairview, similarly sought to make sense of the multiple indignities she suffered by focusing on what she learned about herself and her ability to persevere in the face of adversity. She told me,

I think I was a weak person in Turkey, I was so quiet, and I didn't say anything about my problems when I am in my country. But right now, I feel so stronger in here, because I learn a lot of things in here. For example, I came here from Washington, because I was together with my friends in the Washington, and I came here maybe 2 A.M., and the hotel is closed. And I have to sleep in front of the hotel. Yeah, I was alone and a lot of cars stopped near me, and the man say something to me. It's terrible. And also in Washington, I stayed with my friends. My friends, [also SWT participants] right now - they are lifeguards - and they had to go some training about lifeguards. And I was alone in their room, and the man came to my room - like this - and say something to us, "If you want to make money with me", like this. I live a lot of things like this in here. I am so much stronger right now.

In effect, Roxana revealed through her comments two separate instances where she was sexually harassed, including by a stranger who offered to pay her for sex. This was in addition to her

significant transportation troubles, which among other things, left her and fellow SWT participants feeling deprived of an authentic U.S. cultural experience. Nevertheless, she offered what amounted to an optimistic assessment of her experience because she rationalized that her travails had made her a stronger person.

## **VII. Conclusion**

This chapter has provided unique insights into the SWT program by shedding light on the subjectivities of participants themselves. My findings reveal that—in the case of the SWT participants I interviewed—most come from middle-class households. In conformance with the theoretical construct of middling transnationals, a combination of social class privilege and youth afford SWT participants the opportunity to traverse international borders and gain relatively easy access to the U.S. labor market.

Nonetheless, participants described various challenges of their short-term migrant status, including the dislocations of contradictory class mobility and partial citizenship. In the case of SWT participants, their partial citizenship derived from their limited recourse to exercising their rights as workers and consumers. As I have shown, second-order fissuring, e.g. the outsourcing of employer obligations to the cultural sponsor, effectively weakened their position vis-à-vis their employer, since sponsors rarely intervened as advocates on behalf of participants. Additionally, SWT participant concerns about their program termination coupled with the fleeting nature of the program, served to temper their efforts to challenge potentially unlawful conduct

Overall, my analysis reveals that temporariness under the SWT program is a double-edged sword. Several SWT participants I spoke to tended to downplay the program's inequities by framing their dislocations as short-lived, and as moments of personal endurance and growth.

Nevertheless, SWT participants' propensity to reframe their labor violations and related injuries as moments of growth might have waned had they been made to endure them indefinitely. At the same time, employers (and their housing and transportation surrogates) seemingly exploited the temporary nature of SWT participants' status with little consequence. In effect, SWT participants' temporal status makes them vulnerable to abuses commonly associated with the migrant categories of undocumented and uneducated. In this way, my findings complicate what it means to be marginalized—especially for those whose human capital attributes would predict a more favorable position in the social hierarchy of migration.



## CHAPTER SEVEN

### CONCLUSION

#### **I. Summary**

In the preceding chapters, I took an exhaustive look at the J-1 Summer Work Travel program. In so doing, I sought to excavate its unique and little-known history and to critically assess how a once obscure cultural exchange program has come to generate front page headlines and heated debate about its proper use and overall value and drawbacks for U.S. citizens and international youth alike. By bridging scholarship on immigration, labor, and citizenship, I also strove to tell a cohesive story about what the SWT program portends for the future of managed migration policy in an era of workplace fissuring. Additionally, I aimed to provide critical new data points about how these macrostructural forces play out in the lives of SWT participants, and in the process, how the experiences and subjectivities of the growing ranks of transnational workers render the conceptual categories of migrants more fluid and variegated than once thought.

One of the original research questions that motivated my dissertation project concerns the relevance of cultural exchange programs like the SWT program in today's geopolitical climate, fifty years on from the passage of the Mutual Educational and Cultural Exchange Act (MECEA), and almost thirty years after the end of the Cold War. Relatedly, I wanted to know how the story of the SWT program's past could inform its present. My time spent in the annals of SWT history reveals a persistent anxiety within and outside of U.S. government about the labor market activities of SWT participants, and ongoing concern about whether SWT participants' labor market participation violated the letter and spirit of the MECEA. While advocates, journalists,

and lawmakers frame these concerns as novel, my review of Congressional testimony and SWT rule-making processes make clear that the tension between the cultural premise of the program, and the challenges it poses for workers, have long been present and remain unresolved.

My dissertation research likewise brought to light the longstanding role that the private sector has played in cultural exchange programming. As the U.S. Congress slashed the budget for public diplomacy in the wake of the Cold War, government officials enlisted the private sector to salvage key components of its cultural exchange programming. As a concession to the private sector, the U.S. government shed the safeguards of reciprocity and pre-(employment) placement under the SWT program—two protections intended to limit the number of SWT participants and prevent adverse labor market impacts for U.S. workers, especially U.S. youth. Consequently, the opening for increased private sector involvement to set migration policy and manage its daily implementation with limited government oversight or regulation prompted a wave of SWT program controversy and scandals in the 2000s.

In addition to scouring its past, I also undertook a mixed-methods approach to evaluate the SWT program in its current form. One of the most serious charges among contemporary critics of the SWT program is that cultural sponsors—the primary stewards of international youth participants—are motivated more by profits than by cultural and diplomatic interests. I was eager to test the validity of this claim. Moreover, recognizing the privatized nature of employment-based cultural exchange programming, I wanted to know if the rise of cultural exchange was related to broader shift in temporary migration policy toward privatization and deregulation (Martin 2006; Preibisch 2010; Smart 2010).

Through analysis of SWT sponsor tax documents and interviews with stakeholders on all sides of the debate, my findings reveal that the financial incentives for the cultural exchange

industry are indeed significant. Furthermore, my data suggests that the public-private partnership between the Department of State (DoS), the executive agency currently responsible for SWT program oversight, and the private cultural exchange industry produces multiple conflicts of interest that contribute to a weakening of program regulations. The comparably lax SWT regulations have made it a desired alternative to the H-2B program for many employers. What is more, as immigrant-labor advocates have mobilized to increase regulation of labor recruiters and to otherwise improve temporary migrant worker protections, the cultural exchange industry has emerged at state houses and the U.S. capital as a formidable foe to defend against measures that threaten to dismantle its profit-driven industry model. Thus, owing to these political-economic realities, I find that the SWT program has become enmeshed in a U.S. temporary worker visa system that is “utterly chaotic” and characterized by an array of visa categories with unique rules that target specific industries, many of which having been created at the behest of special interest and employer lobbies (Sukthankar 2012: 8).

Apart from political dynamics, my research sought to uncover what other forces may animate the SWT program’s popularity. Specifically, I wanted to know if SWT participants were placed in industries where the practice of domestic outsourcing, franchising, and other arms-length employment arrangements are common (Weil 2014). Before embarking on my study, the public had little more than an anecdotal sense of SWT employment patterns. My analysis of comprehensive SWT employment placement data points to a pervasive pattern of hiring in the accommodations and food service—both industries where franchising, out-sourcing or similar practices are widespread (Weil 2014; Bernhardt, et al. 2016). I refer to this phenomenon under the SWT program as first-order fissuring. I argue that beyond first-order fissuring, the legal construction of the visa further attenuates the social contract between

employers and workers. As compared with formal migrant labor programs, such as the H-2A and H-2B, the legal structure of the SWT program absolves employers of many of their financial and social obligations, such as covering the cost of international labor recruitment, paying prevailing wages, and providing transportation, both to and from the home country but also to and from the SWT participant's place of work. Because the SWT program's legal structure attenuates the employer's role and responsibilities vis-à-vis the employee in this way, I describe it as a mode of "second order" fissuring.

Finally, through this project I aimed to document the experiences of SWT participants and to learn about their subjectivities as a group of migrants rarely theorized about in the social science literature on migration. SWT participants possess a combination of social class privilege and youth which affords them the opportunity to traverse international borders and gain relatively easy access to the U.S. labor market. Yet, they simultaneously occupy the social position of low-wage workers via a visa category that emphasizes their participation in cultural exchange programming and obscures their labor activities. While SWT participants acknowledge and celebrate the privilege of their status as cultural sojourners, they nonetheless suffer dislocations as temporary labor migrants—namely the dislocations of partial citizenship and contradictory class mobility (Salazar-Parreñas 2001; Robertson 2014).

Under the SWT program's legal framework, the cultural sponsor serves at once as a free-of-charge labor recruiter and, oftentimes, the employer's intermediary in negotiations ranging from transportation to and from the worksite to the conditions of the work itself. Through my interviews with SWT participants, immigrant-labor advocates, and employers, I find that second-order fissuring, e.g. the outsized role of the cultural sponsor in SWT employer-worker relations, results in a collective deflection of SWT participant concerns. Second-order fissuring

compromises participants' efforts to exercise rights to which they are technically entitled, and in this way, SWT participants contend with partial citizenship.

Moreover, through my research I have found that SWT participants experience contradictory class mobility. Many of the SWT participants in my study grappled with the fortune of being educated and well-traveled while also being relegated to low-wage roles they deemed socially degrading. Participants described feeling socially invisible—or worse—enduring mistreatment at the hands of sponsors, employers, landlords, transportation providers, and others. To counter their dislocations, and to rationalize the contradictory social positions they find themselves in, several SWT participants employed narratives of independence and self-resilience. While such narratives recast participants as agentic in the face of multiple challenges, they nevertheless serve to downplay the collective failures of U.S. government regulators, sponsors, and the myriad third-party business who benefit from SWT participants in their capacity as workers, tenants, and customers.

## **II. Implications of Research on the SWT Program**

As news from the U.S. capitol and immigration scholarship make clear, a political contest is underway among employers, pro-labor groups and others to shape the future of managed migration policy, a contest which has only intensified in the last decade. Just as demand for low-wage, temporary migrant workers peaked in the mid-2000s, President Bush reformed the H-2 programs, doing away with DoL certification in favor of employer attestation, a less stringent labor market test which permits employers to affirm, without any documentation, that they have made previous efforts to hire U.S. workers (DoL 2008a; DoL 2008b).

These and other changes to the H-2 program by President Bush were intended to streamline the importation of temporary migrant workers. Such reforms generated a sharp outcry

from labor advocates, leading President Obama's DoL to issue new rules in 2010 and 2012 for the H-2A and H-2B, respectively. Obama's more migrant worker-friendly regulations became the subject of intense judicial battles over whether the DoL has the legal authority to vet employer requests for migrant workers, or to require employers to cover essential costs associated with temporary migrant worker importation, such as the cost of worker recruitment, travel, and housing.<sup>42</sup>

This struggle likewise manifested in Congressional maneuvering to strip DoL of its enforcement capacity and to sidestep the H-2B program cap. Beginning in 2011, as battles over the H-2B rules played out in court, employers took their fight to Congress by lobbying to defund the DoL's enforcement of the H-2 program.<sup>43</sup> These efforts have significantly hobbled DoL's efforts to regulate the entry of foreign workers or to ensure that employers honor their contractual obligations.

This political dynamic manifests in discussions of future guestworker policy. With the 2013 U.S. Senate Bill 744, a bipartisan group of lawmakers envisioned a dramatic expansion and deregulation of the U.S. guestworker system. Among other things, the bill envisioned both a consolidation but also a sizable expansion and deregulation of U.S. managed migration policy. The system proposed under Senate Bill 744, and exemplified through the proposed W visa categories, would have eliminated the DoL labor certification requirement in favor of establishing a Bureau of Immigration and Labor Market Research to determine industry-level worker shortages in place of individual employer certification. Moreover, the authority for the

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<sup>42</sup> For a detailed account of a federal judicial challenge of the 2012 H-2B rules see *Bayou Lawn and Landscaping Services, et al. vs. Solis* (Case No. 3:12cv183-MCR-CJK).

<sup>43</sup> The Consolidated and Further Continuing Appropriations Acts of 2013 and 2014 prohibited DoL funds from being used to implement, administer, or enforce the wage rule during those fiscal years.

administration of the W visa categories would have shifted from the DoL to DHS. While the proposals would have introduced visa portability and created a merit-based path to citizenship for temporary migrant workers – measures that migrant labor experts hail as significant improvements – they would have stripped the DoL of its central, longstanding role in balancing the needs of domestic and temporary migrant workers (Gordon 2007). An obvious benefit of the W visa, from the perspective of employers, would have been a departure from the DoL-regulated contract system. In the words of Margaret, an immigration-labor advocate who participated in my study, Senate Bill 744 represented a large-scale effort to “sideline the DoL” from the formulation and management of temporary migrant labor policy. In this sense, the SWT program epitomizes the future of labor migration that many employers hope to realize. The SWT program has thrived as a testing ground of an employer-dominated migrant labor model precisely because of its DoS-led public-private structure, a fact not lost on employers and the cultural exchange industry.

In fact, the realities of today’s fissured workforce factor into employers’ demand for a more expansive, deregulated migrant labor policy in the United States. As my research has shown, the extent of workplace fissuring may run deeper and wider than scholars like Weil have theorized when considering the misuse and re-appropriation of visas like the SWT program, which is often overlooked for the significant role it plays in migrant labor recruitment. Indeed, both immigration and labor scholars have much to gain from probing more deeply into the connections between workplace fissuring and the increasing adoption of visas which were arguably never intended as a primary labor recruitment mechanism.

Admittedly, my research merely scratches the surface of the phenomenon of second-order fissuring as it relates to quasi-official migrant labor visas like the SWT program. For example,

my analysis excludes the use of other employment-based J-1 visas, such as the intern and trainee categories. It likewise fails to explore how programs like Optional Practical Training (OPT), designated for international undergraduate and graduate students enrolled in U.S. degree programs, are utilized by employers to temporarily acquire a workforce toward which they have minimal financial and social obligations. While these categories often escape the public's attention, future research on managed migration should strive to better account for employers' increased reliance on previously obscure visa categories. As I have shown, programs like the SWT provide crucial insights about how the manipulation of antiquated workplace laws *and* outmoded immigration policy act in concert to deprive migrant workers of their rights. Additionally, by widening our scholarly focus to include migrant groups like those present on the SWT visa, we stand better positioned to confront the complex realities of migration today.



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## APPENDIX 1

## INTERVIEW GUIDES

**Interview Guide for SWT Employers**

1. Can you please describe for me:
  - a. what type of business you operate
  - b. what services do you offer
  - c. how many employees you typically have on staff?
  - d. how long have you operated this business?
  - e. is your business a franchise or chain?
  - f. if so, in what other communities does your business operate?
2. Do you sub-contract (or are you a sub-contractor) for any aspect of the business, e.g. staffing services, sub-contracting of specific labor activities?
3. How long have you worked in this community?
4. What was your employment before operating the current business?
5. Do you have peak seasons where you typically need seasonal or temporary employees?

**Participation in the J-1 Program**

6. When did you begin using J-1 SWT students and how did this come about?
7. Do you hire J-1 SWT workers directly or indirectly through a sub-contract relationship?
8. Do you also employ or host other types of J-1 workers (interns, trainees, etc.)?
9. What would you say are the advantages of employing J-1 student workers versus local workers, e.g. what convinced you to employ J-1 SWT workers from an economic perspective?
10. Do you also employ other types of foreign temporary workers? (H-2B, etc.)
11. If so, are there advantages in using one visa over another?
12. Which types of foreign workers J-1 SWT, J-1 intern, J-1 trainee, H-2B do you prefer, and why?
13. Do you work directly with the cultural sponsor(s)? If more than one, how many? In what capacity?
14. Do you receive assistance in completing J-1 paperwork? Who provides this assistance?
15. a. What type and form of training or guidance have you received in working with J-1 students?
  - b. Who provides this training?
  - c. Do you consider it to be adequate?

d. Are there things you wish you would have known about working with J-1 student workers?

16. Do you partner with J-1 student housing providers in your community?

**J-1 SWT Participants**

17. What types of skills or qualities do you typically look for in J-1 student workers? Are these skills/qualities required for carrying out the work?

18. a. How many hours do J-1 students work per shift?

b. How many shifts do J-1 student workers typically work per week?

c. When do those shifts typically occur in a 24-hour period?

19. Are J-1 students required to attend staff meetings? How often?

20. Are you aware of J-1 students having second jobs, apart from yours while in the United States?

21. Have you had any significant challenges with J-1 student worker employees? If so, could you describe these challenges?

22. Do you plan to continue employing J-1 SWT workers?



## Interview Guide for SWT Cultural Sponsors

Thank you for your time today. I thought I'd start by asking about your role with \_\_\_\_\_.

1. Can you tell me your title and your key activities?
2. How long have you worked with \_\_\_\_\_?
3. Do you know how long your organization has been a State Department-designated cultural sponsor?
4. Does your organization facilitate exchange for any of the other J-1 exchange visitor categories? If so, which ones?
5. What is your organization's status for tax purposes?

### Student recruitment/services

6. How do you initially recruit foreign students for the J-1 SWT program?
7. If you use foreign recruiters, how do you go about selecting these third-party organizations?
8. What services does your organization provide to J-1 SWT students as part of their experiences? What is your fee for services? Do they differ by country?

### J-1 Employers

9. What steps does your organization take to identify J-1 employers for the program?
10. How does this process work? (Any consideration to industry or geographical region?)
11. What is a typical SWT work assignment? What would you say are the key industries represented by the employers with whom you partner?
12. What percentage of your employers represent corporate entities (including franchises)?
13. What percentage of SWT participants work for a company that sub-contracts its services to another business?
14. How do you describe the benefits of employing J-1 student workers to prospective employers?
15. Does your organization's relationship with employers typically sporadic or consistent year to year? What is the average size of SWT employee workforce (job order) requested by employers?
- 16.
17. Does your organization provide a web-based, telephone or on-site training for J-1 employers regarding the employment of J-student workers?
18. What is your organization's standard protocol should problems arise on the worksite?
19. How does your organization monitor employers to ensure they are a good fit with the program?
20. What are the biggest benefits and challenges you face working with employers?

**J-1 SWT Participants**

21. What type of student is ideal for this experience? From your perspective, what is the ideal skills-set needed required for this experience?
22. Given English proficiency and financial requirements governing the program, what steps your organization or third-party recruiters take to verify that students both have sufficient English language skills and resources to participate?
23. In your experience, what percentage of students quit early, are terminated or lose contact with their cultural sponsor, employer or U.S. government? What do you think potential reasons for this may be?
24. What do students tell you is their main motivation for participating in the program?

## **Interview Guide for Government Stakeholders**

Thank you for your time today. I thought I would start by asking you a few general questions about your work.

1. Can you start by telling me a little about your professional training and background?
2. What is your current job title and what are your primary responsibilities? How long have you worked with \_\_\_\_\_?
3. Please describe for me the mandate of \_\_\_\_\_ and the key responsibilities of your organization?

### **Question about Agency's Work on J-1 SWT Program**

4. How and when did your office become involved in the J-1 program?
5. What were/are your specific duties with regards to the J-1 Program and specifically the SWT program? (either management, review, legislative activity, etc.?)
6. How long have you personally been involved with the management or review of this program?
7. (If primary role was in reviewing the program), what were your key findings/recommendations about the J-1 Program in general and the SWT Program in particular?
8. What do you believe are the strengths and weaknesses of the SWT program?
9. Do you know of any action being taken to alleviate or eliminate program deficiencies? To expand or build upon the program's successes?
10. Did you partner with other government and non-governmental stakeholders in your work on the program? If so, who and for what purpose?

### **Specific Questions about the J-1 SWT Program**

11. Is it your impression that law makers and government officials are more or less aware of this program then at other times in the program's history?
12. The program underwent a rapid expansion in the late 1990s and early 2000s in terms of participants. What do you think explains this rapid expansion?
13. While the SWT Program was historically utilized by students of Western Europe, in the last decade there has been a shift away from participation among students of Western Europe while participation among Asian, Eastern European and South American youth has steadily increased. Do you have any thoughts about why this transformation has taken place?

14. In response to recent allegations of J-1 SWT Worker abuse, i.e. the Hershey Case and recent McDonalds press, the State Department made changes to the SWT regulations. Do you believe these changes are necessary? And/or, do you think they are adequate?
15. What do you perceive as the advantages or disadvantages of regulating the SWT program administrative law and rule making?
16. The SWT Program operates based on a public-private partnership between the State Department's Educational and Cultural Affairs Office (ECA) and private cultural sponsors (located in the U.S. , who in turn work with partners abroad) in the management and administration of the program. What do you believe was the original impetus for this private-public partnership? Why do you think it has grown significantly since the mid-1990s?
17. Currently, very little data on the employment activities of SWTs is collected or made public in the way that the Dept. of Labor tracks and makes publicly available the activities of other temporary workers under the H visa program. Do you think this will likely change? Why or why not?

**Final Questions:**

18. Are there other aspects of the program that I did not cover that are important to understand?
19. Are there other aspects of your work, or the agency's work, on the J-1 SWT program that you would like to discuss?

## **Interview Guide for SWT Non-Governmental Organization Stakeholders**

1. Can you tell me a little about your personal background, and when you began working with \_\_\_\_\_organization?
2. What is your job title and what are your primary responsibilities?
3. Can you please describe for me the mandate of \_\_\_\_\_ and the key responsibilities of your organization?
4. What are examples of other initiatives/activities that your organization has been involved with?

### **Question about Organization's Work on J-1 SWT Program**

5. What prompted your organization's interest in the J-1 SWT Program? When?
6. What actions/efforts has your organization taken with respect to the J-1 SWT Program? What are its goals a result of its work on the J-1 SWT program?
7. How long have you personally been involved with your organization's work on J-1 SWTs?
8. What tasks have you specifically carried out with respect to your organization's work on the SWT Program?
9. What do you believe are the strengths and weaknesses of the SWT program?
10. With respect to the program's weakness, do you know of any action being taken to alleviate concerns/problems/imperfections of the program?
11. Did you partner with other government and non-governmental stakeholders in your work on the program? If so, who and for what purpose?

### **Specific Questions about the J-1 Program**

12. Do you think this program is gaining more attention than at other moments in the program's history? Why or why not?
13. The program has undergone a significant expansion in the late 1990s and early 2000s in terms of participants. What do you think explains this rapid expansion?
14. While the SWT Program was historically utilized by students of Western Europe, in the last decade there has been a shift away from participation among students of Western Europe while participation among Asian, Eastern European and South American youth has steadily increased. Do you have any thoughts about why this transformation has taken place?

15. In response to recent allegations of J-1 SWT Worker abuse, i.e. the Hershey Case and recent McDonalds press, the State Department made changes to the SWT regulations. Do you believe these changes are necessary? And/or, do you think they are adequate?
16. The SWT Program operates based on a public-private partnership between the State Department's Educational and Cultural Affairs Office (ECA) and private cultural sponsors (located in the U.S. , who in turn work with partners abroad) in the management and administration of the program. What do you believe was the original impetus for this private-public partnership, and why do you think the private sector involvement has expanded so quickly in the last two decades? Do you think the increased participants drove the expansion of the private involvement, or that the private involvement led to increased enrollement? Other forces at play?
17. What is your opinion regarding the benefits and drawbacks of private-public partnerships in the administration of the J-1 SWT Program?
18. Currently, very little data on the employment activities of SWTs is collected or made public in the way that the Dept. of Labor tracks and makes publicly available the activities of other temporary workers like H-2As and H-2Bs. Do you think this will likely change? Why or why not?

**Final Questions:**

19. Are there other aspects of the SWT program, your role and the organization's work that I did not cover that are important to highlight?

## **Interview Guide for SWT Participants**

**Thank you for your time today. I thought I'd start by asking you a few basic questions about yourself.**

1. How old are you?
2. Which country are you from?
3. How long have you been in the United States?
4. Which J-1 program have you or are you participating in?
5. How many years of college have you completed? What is your major? What college do you attend?
6. What your parents do? Tell me about the place where you grew up?
7. Have you been abroad before?

### **J-1 Program recruitment**

8. Tell me about how you became interested in the J-1 program and what the recruitment process was like in [your home country]?
9. Other than the recruiter agency, did friends/family offer advice or assistance with the process?
10. Did you consider other countries or just the U.S.?
11. How much did you pay to come on this experience, and to who?
12. Did you have to borrow money to participate? From who? Did you have to offer up collateral?
13. What agency did you work with during the application process? What services did they provide?
14. What documentation or testing did you take to demonstrate your English language proficiency?
15. How long before you arrived in the United States did you receive your program contract?
16. Did you come to the U.S. with a pre-placement, or did you find a job once in the United States? Did your program contract include a job offer(s)? Was/were the employment options similar to the ones that you were originally told were available? If not, what was different?
17. Did you choose [Hilton Head/Colorado/Massachusetts/New Hampshire] as a worksite? If so, why?
18. Do a lot of people you know participate in these sort of work-exchanges?

### **Travel**

19. Did you secure your own airline ticket, or was the flight arranged for you? What did you pay for your travel to your worksite, including air, train or any other ground transportation?

20. Where did your J-1 Program Orientation take place? If not in the same city/state as your work placement, how much did you pay for travel to attend this orientation? Were any of these expenses covered by your program fees or cultural sponsor?

### **Employment placement**

21. Tell me about your job. (hours worked per week, etc.)
22. Does your job require special skills?
23. Who pays you? (direct employer or staffing agency?) Is there more than one company involved in your employment, e.g. sub-contractor arrangement? Is this the employer you expected to work for before coming to the U.S., e.g. the business noted on your DS-2019?
24. Why do you think your employer hires J-1 students like yourself?
25. How many J-1 student workers work at your place of employment? Are there other foreign workers? How many local hires?
26. On a scale from 1 to 5 how would you rank your work experience? Explain.
27. Have you had any problems at your worksite? If you had a problem, who would you reach out to for help?
28. Since you have been working, have you had contact with your sponsor organization? Have they visited the worksite? Have you had an experience that you would consider cultural
29. Have you been able to offset program expenses with your summer earnings?

### **Housing/living**

30. Tell me about your housing situation. (cost, roommates, as depicted by sponsor, etc.)
31. How would you rank your satisfaction with it, from a scale of 1 to 5?
32. How do you get around? Is this as you expected? Is it safe?

### **General (put the future plans question here—as a wrap up)**

33. Part of the goal of the program is a cultural experience. Was this provided by sponsor or employer? Tell me about that.
34. How do you think your J-1 experience will benefit you (professionally/personally)?
35. Do you have plans of coming back to the United States again? If so, for what purpose?
36. Would you recommend this program to other students, why or why not?
37. Any aspects (recruiter in your home country, U.S. sponsor, employer, housing provider) that stood out either positively or negatively?
38. How would you rank your overall experience, 1 to 5?
39. What are your impressions of the U.S. after this experience? How do they compare with your initial expectations?
40. Anything else that you would like to comment on that we did not cover?



## APPENDIX 2

## North American Industry Classification System Codes

<b>SWT Industry sectors</b>	<b>Sub-sectors</b>	<b>Examples</b>	<b>North American Industry Classification System (NAICS)</b>
Arts, Entertainment and Recreation (71)	Amusement, Gambling and Recreation (collapses amusement with museums, sporting event facility operations)	Walt Disney World, water parks, arcades, sub-contractors who provide services related to the amusement, e.g. photo companies that capture action shots on rides, etc.	713
Leisure and Hospitality (72)	Accommodation	Hotels, resorts, camps, RV parks, etc. This list also came to include hospitality sub-contractors I could clearly associate with hotel management functions.	721
	Food Service and Drinking Places	Restaurants, bars, fast food chains, food service companies (e.g. Sodexo), concessioners who clearly provide food), Venues that rent space for catered events, etc.	722
Retail (44) (service producing sector)	Gasoline Station	Travel centers, major gasoline and convenience store operators (e.g. 7 Eleven, Exxon, Texaco, Royal Farms, etc.)	447
	Food and Beverage Stores	includes grocery store chains (Stop and Shop, Publix, Safeway, Food Lion, etc.)	445
	Clothing and Clothing Accessory Stores	Clothing stores, shoe stores, jewelry, luggage and leather good stores (women's apparel, specialty apparel, i.e. beach wear, tourism t-shirt stores, etc.)	448
	Sporting goods, hobby, book, and music stores	Souvenir shops	451
	General Merchandise Stores	Kmart, Save U More, Ben Franklin	452
	Drug Store/Pharmacy	Walgreens, CVS, etc.	
	Hardware	Home Depot	444
Transportation and Warehousing	Scenic and Sightseeing transportation	Tour companies (Cruises, city tour buses, bike tour companies, etc.)	487
	Support activities for Transportation	movers	488

(service-producing) (48)			
Other Services (service-producing) (81)	Repair/maintenance	Window cleaners	811
	Personal and laundry services	Linens, housecleaning	812
Real Estate (53)	Rental and leasing services	Rental of bikes, beach chairs etc. (532)	531, 532
	Real Estate And Rental and Leasing	Property Managers responsible for servicing vacation rentals, HOA complexes, pool management companies, etc. (531)	
Administrative and Support, and Waste and Remediation Services (56)	Administrative Support Services	Staffing agencies (related to service industry roles like housekeeping, food service, etc)	561
Direct Selling	Door to door sales	Southwestern Advantage	455