



# PICKED APART

The Hidden Struggles Of  
Migrant Worker Women  
In The Maryland Crab Industry



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In The Maryland Crab Industry



“Maryland’s crab industries need a government on their side. When they told me they didn’t have the workforce they needed this season, I was proud to fight for them. I am pleased the Department of Homeland Security responded to my requests, and released these additional visas. Today’s announcement is good news for Maryland’s watermen, Maryland’s crab industry, and Maryland’s economy.”

— Barbara A. Mikulski, U.S. Senator (D-MD), August 6, 2009

“Guestworkers need the government on their side. Every time that the men and women from Mexico go to work in the U.S., they leave their families behind in search of a better future. At these jobs in the U.S., many of them give so much more — their efforts, their health, and their lives. It is only fair that they be justly compensated and protected in return.”

— Elisa Tovar Martinez, Former H-2B Guestworker in the Maryland crab industry, March 18, 2010

# ABOUT THE AUTHORS

## AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW INTERNATIONAL HUMAN RIGHTS LAW CLINIC

The International Human Rights Law Clinic (IHRLC) is one of ten law clinics within the Clinical Program at American University Washington College of Law (WCL). The Clinical Program is designed to give students the opportunity to represent real clients with real legal problems, to handle litigation from beginning to end, to explore and address pressing legal issues with institutional clients, and to learn lawyering skills at both a practical and theoretical level. Student Attorneys enrolled in the IHRLC work in teams under the supervision of a full-time faculty member.

WCL's work on behalf of this report was undertaken primarily by students enrolled in the Immigrants' Rights Section of the IHRLC. Students Attorneys in the Immigrants' Rights Section handle a broad range of cases and projects involving immigrant communities in the D.C. metropolitan area and overseas. The docket of the Section is structured so as to develop in students the skills and values needed to be effective immigrants' rights practitioners, while also responding to the unmet legal needs of the client community. As is true of this report, many of the matters handled by the Section reside at the intersection of immigration and employment law, and have a transnational dimension. Other cases and projects handled by the Section have included: the representation of detained immigrants with criminal convictions; the representation of domestic workers seeking wage recovery and immigration relief; and advocacy work related to language access to social services in the District of Columbia.

## CENTRO DE LOS DERECHOS DEL MIGRANTE, INC.

Centro de los Derechos del Migrante, Inc. (CDM) is a transnational non-profit organization dedicated to improving the working conditions of migrant workers in the United States. Rachel Micah-Jones, an alumna of the Washington College of Law, founded CDM in 2005 based on the premise that workers should have access to justice all along the migrant stream. In order to bring rights education and legal representation to workers in their home communities and in the U.S., CDM has offices in Zacatecas, Mexico, Juchitán, Oaxaca, Mexico, and in the Washington, D.C. metropolitan area. With locations on both sides of the border, CDM has developed an innovative approach to legal advocacy and organizing that engages workers in their communities of origin, at the recruitment site, and at their places of employment in the U.S. Believing that the border should not be a barrier to justice, CDM ensures that when workers return home, they do not leave their rights behind.

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## WORKER PROFILE



*Elisa, former H-2B worker in the Maryland crab industry.*

In 2000, when Elisa was 28 years old, she left behind her children – aged two, four, six, and nine – to migrate to the U.S. for the first time. In making this decision, Elisa followed in the footsteps of her parents and her husband, all of whom, like Elisa, had sought work in the U.S. because they could no longer make ends meet. Elisa spoke to the local recruiter, a prominent individual in the community who, at the time, was placing only women in the crab-picking jobs in the U.S. After three long and expensive trips from her hometown to the U.S. consulate in Monterrey, Elisa finally got an H-2B visa. She paid for all of her bus expenses from her hometown to Monterrey, and from Monterrey to Maryland. When she finally arrived on the Eastern Shore, she lived in a temporary home that she shared with seven other women; the house had a second floor bathroom that leaked onto the first floor. When she started working, Elisa realized that the male workers, who would bring the crabs to the women, were paid more and worked longer hours. The women, on the other hand, did only crab-picking work, and feared being sent home to Mexico if they did not work quickly enough. At times, there was simply not enough work. One month, Elisa worked only one week. During that month, she sat at home, awaiting additional work. She often worried about the rent payments due to her employer, how she would pay for food to eat, and whether she could afford to send money to her family in Mexico.<sup>1</sup>



# EXECUTIVE SUMMARY

Every year, hundreds of Mexican women travel thousands of miles from their impoverished, rural home communities to work on the Eastern Shore of Maryland in the state's historic crab industry. Maryland crab companies have increasingly come to rely on these women, who enter the U.S. on temporary guestworker visas known as H-2B visas. This report describes these women's experiences as H-2B migrant workers, and is the result of over 40 formal interviews conducted in both the U.S. and Mexico since 2008. By obtaining first-hand accounts from the workers, the report documents the forces and conditions that give rise to this specific population's decision to migrate; the processes and challenges involved in the recruitment process, and in obtaining documentation to travel to the U.S.; and the experience of living in Maryland and working in the crab industry. The research underlying this report reveals numerous challenges that migrant worker women face throughout the migration experience. Many of these challenges are linked to fundamental flaws with the H-2B program.

The H-2B visa program allows U.S. employers to supplement their existing labor force with temporary foreign workers who are recruited and employed to engage in non-agricultural work.<sup>2</sup> In practice, however, H-2B employers have been able to supplant their domestic labor forces with ones consisting entirely of foreign workers. Maryland crab companies, for example, began transitioning from a workforce consisting of predominantly African-American women to a foreign workforce after the advent of the H-2 program in 1986.<sup>3</sup> In 2007, 56 percent of Maryland's crab companies relied on H-2B workers, who produced 82 percent of Maryland's crabmeat.<sup>4</sup>

The H-2B program itself has faced significant criticism for compromising the ability of workers to enforce their fundamental workplace rights. One core concern is that regulations bind H-2B guestworkers to a single employer. Therefore, if an H-2B worker is fired by her employer, or if she quits, she cannot simply seek out another employer; rather, she has a very limited amount of time to leave the country before she will lose her legal status.<sup>5</sup> These concerns relating to immigration status, and to the loss of future earnings, act to silence many workers. Through lengthy interviews, the authors of this report were able to uncover some of

the struggles faced by H-2B migrant worker women. These findings include the following:

## **Country Conditions in Mexico & The Recruitment Process**

A lack of employment opportunities in rural Mexican communities has led many women to migrate to the Eastern Shore of Maryland to perform crab-picking work. To obtain employment in the U.S. on an H-2B visa, the women must interface with powerful local recruiters, who operate with minimal oversight. As part of the recruitment process, the women typically pay hundreds of dollars and fees and expenses, before they even set foot in the U.S. In order to cover these costs, many women obtain loans, often at extraordinarily high interest rates. Specific findings relating to country conditions and recruitment include the following:

- 100 percent of the women interviewed migrated to the U.S. for greater economic opportunities. The most common reason the women articulated for needing to migrate was that of needing money to pay for their children's education.
- Almost all of the women interviewed worked through a local recruiter in order to obtain their H-2B visas. 100 percent of these women paid a fee to their recruiter, despite laws that prohibit such payments.<sup>6</sup>
- Many of the women interviewed obtained loans in order to pay the various recruitment fees and expenses. In some instances, the recruiter was the lender, charging monthly interest rates of up to 15 percent.<sup>7</sup>

## **Placement on the Eastern Shore & Housing Conditions**

During their sojourn in Maryland, most of the H-2B crab pickers reside on the Eastern Shore, home to many of Maryland's crab companies. A large number of the women migrant workers reside on Hooper's Island, a remote chain of islands fronting the Chesapeake Bay. The isolation of the workers and limited contact with outside individuals and entities breeds reliance on employers, who already wield significant power over the women. Housing conditions vary for the workers,

although most H-2B crab pickers share housing rented out by their employers. Specific findings include the following:

- Given the lack of public transportation and the isolated location of Hooper’s Island, women migrant workers must rely on their employers for transportation to town in order to purchase groceries, or even to seek medical treatment.
- 100 percent of the interviewed women rented housing from their employers. These housing units were shared by anywhere from six to 30 women.<sup>8</sup>
- A majority of the women interviewed – about 55 percent – reported serious problems with their rental housing. One group of women, for example, dealt with constant sewage back-ups and no working stove.<sup>9</sup>

### **Working Conditions & Wages**

Crab picking is tedious, labor-intensive work. For many of the women interviewed, their experiences on the job were often different than what they were originally promised by their recruiters. Low wages, erratic work hours, and paycheck deductions were the norm among the women interviewed. To wit:

- All of the women interviewed earned were paid a piece rate – typically \$2.00 or \$2.25 per pound of crabmeat picked. In order to earn the federal minimum wage of \$7.25 over the course of a 40-hour workweek, a crab picker earning \$2.00 per pound must pick 145 lbs of crabmeat per week, which requires handling over 200 crabs daily. Women who are unable to work with sufficient speed to earn the minimum wage are either sent home, or – in the case of more accommodating employers – are switched to an hourly wage rate.
- A common complaint among the women interviewed was the unpredictability of the crab harvest and, correspondingly, the highly variable work hours. Several women interviewed spent days and weeks without work when crabs were scarce. During this time, most continued to make rent payments, and struggled to send money to family back in Mexico.
- The majority of women interviewed – 54 percent – reported paycheck deductions for knives, gloves, and other basic tools and safety equipment. Many

of the workers interviewed expressed confusion about the purpose of different deductions. Few regularly received paystubs.

### **Occupational Safety & Health**

Given the low piece rates paid by employers, H-2B crab pickers on the Eastern Shore work at a very fast pace in order to maximize their wage earnings. This quick pace results in cuts and other injuries. The findings relating to health and safety include the following:

- Only a small fraction of the women interviewed – 17.1 percent – received formal training from their employers on how to perform the crab-picking work safely and effectively. The vast majority of the women received only informal training from more experienced co-workers. The more experienced workers did not receive any additional compensation for training their co-workers.
- The women interviewed universally reported experiencing cuts on their hands and arms while picking crabs with sharp knives. In some instances, the cuts allow a dangerous seaborne bacterium, *vibrio vulnificus*, to infect the skin, causing blistering or lesions.<sup>10</sup> A surprising number of women reported either having suffered from or witnessing a co-worker suffer from the disease, which has a 50 percent mortality rate once it enters the bloodstream.<sup>11</sup>

### **Communication**

Many of the women interviewed fear reporting any problems or injuries to their employers, because of the potential for retaliation. The employers rarely speak Spanish and the women rarely speak English, which only exacerbates this fear and communication difficulties. For instance:

- In most cases, the women communicate with their employers and supervisors through hand gestures.<sup>12</sup> This language barrier makes it difficult for employees to express day-to-day concerns, which can jeopardize worker safety.
- The women have a legitimate fear of employer retaliation. One woman recounted how she was not rehired after she spoke with her employer regarding how her taxes were handled.<sup>13</sup>

- Employer behavior perpetuates the women’s fear of retaliation. When one group of women reported their concerns regarding their housing, their employer did nothing.<sup>14</sup> The employer neither retaliated against the women nor fixed the problems, leaving them uncertain as to how to deal with their concerns.

### **Discrimination & Harassment**

The Maryland crab industry is distinctly segregated by gender. In general, the women interviewed understood prior to arriving on the Eastern Shore that their job would consist of picking the crabmeat, while male workers would wash and clean the crabs. These reports raise concerns about violations of Title VII of the Civil Rights Act of 1964.<sup>15</sup> Other reports suggest the need for further investigation into the prevalence of other forms of discrimination and/or sexual harassment in the industry. Findings include:

- Several women interviewed were frustrated that the men hired to wash and clean the crabs earned more per hour and were given more hours than the women picking crabmeat.<sup>16</sup>
- Women reported disparate treatment of older and younger workers. One employer reportedly completed tax returns for younger women, but not for the older women.<sup>17</sup>
- The authors were told of at least one instance of sexual violence against a woman. One former Maryland Farmworker Attorney received complaints from migrant crab pickers explaining that they were being asked to perform sexual favors as a part of continuing their job.<sup>18</sup>

### **Recommendations**

The experiences of these women demonstrate structural flaws in the H-2B program. These systemic flaws implicate local, national, and transnational conditions. To that end, the authors have made recommendations, which can begin to remedy the workplace struggles the women currently face, as well bring the H-2B program into compliance with international norms. Some of the recommendations include the following:

- Extend Maryland minimum wage and overtime protections to crab pickers and other seafood workers.
- Implement comprehensive, bilingual occupational health and safety trainings for new and returning H-2B crab workers.
- Deploy bilingual health care outreach workers to the Eastern Shore to assess, on a periodic basis, work-related injuries or other health concerns of the H-2B migrant workers.
- Educate H-2B crab workers at the beginning of each season about their basic rights as tenants in the state of Maryland.
- Regulate recruitment practices, and sanction employers who utilize recruiters that charge excessive or improper fees to workers.
- Reform guestworker visas so that workers are not tied to one employer, which will allow workers to leave abusive working conditions and still benefit from employment in the United States.
- Urge the U.S. government to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

# INTRODUCTION TO OUR STUDY

Interviews of women who have worked in the Maryland crab industry on H-2B visas have exposed many injustices that need to be addressed on the ground by employers and comprehensively by legislators.

This report stems from ongoing efforts undertaken by both CDM and the Clinic. For many years, CDM has been organizing migrant workers through its Comité de la Defensa del Migrante (Migrant Defense Committee). CDM began to conduct outreach to various migrant-sending towns when complaints arose about discrimination in recruitment. Through these efforts, CDM became familiar with the experience of migrant worker women in the Maryland crab industry. Recognizing the important work undertaken by CDM and other organizations, the International Human Rights Law Clinic at American University Washington College of Law conceived of an H-2B Outreach and Litigation Project (H-2B Project), to provide legal support to migrant workers and their advocates. The Project also seeks to understand the complexity of long-standing migration patterns between the D.C. area and communities overseas.

Through conversations about their respective efforts, the Clinic and CDM conceived of a survey-based report that would provide data and analysis about the experiences of H-2B workers, to enrich legislative debates. The Clinic and CDM (hereinafter, “the authors”) focused specifically on H-2B workers from Mexico working in the Maryland crab industry on the Eastern Shore of Maryland.



*The Maryland crab industry is one of many industries that have come to rely upon H-2B workers. Photo Courtesy of the Baltimore Sun Company, Inc., All Rights Reserved.*

# SYSTEMIC ABUSE IN THE H-2B VISA PROGRAM

The H-2B temporary work visa allows U.S. employers to recruit and employ foreign workers for seasonal jobs unfilled by the domestic labor market. As Maryland crab companies and other H-2B employers push for additional H-2B visas, the current lack of oversight has left many H-2B visa-holders overworked, underpaid, and without legal representation.

The H-2B visa program is a guestworker program that allows U.S. employers to recruit and employ foreign workers for temporary non-agricultural work.<sup>19</sup> The very structure of the H-2B visa program – and indeed, the lack of regulation – has compromised the ability of H-2B workers to enforce their fundamental workplace rights. At the heart of this problem are regulations that bind guestworkers to a single U.S. employer.<sup>20</sup> H-2B workers who are fired for complaining about workplace conditions – such as wage theft, discrimination, or health and safety risks<sup>21</sup> – or who leave when confronted with such conditions, cannot legally remain in the U.S. to work for a different employer.<sup>22</sup> Despite these shortcomings, lobbyists continue to push to expand the number of H-2B visas.<sup>23</sup>

After the 1964 demise of the Bracero Program – the country’s most significant attempt to institutionalize a guestworker program to date – U.S. policymakers continued to entertain designs for temporary visa for low-wage workers. Proposals for bilateral temporary contract labor programs resurfaced periodically until the Immigration Reform and Control Act (IRCA) of 1986 revised the use of temporary foreign labor permits known as H-2 “nonimmigrant” visas.<sup>24</sup> Under IRCA, which remains in effect today, the U.S. government issues H-2A and H-2B temporary work visas to allow U.S. employers to recruit and employ foreign workers.<sup>25</sup> In contrast to the H-2B visa, which allows U.S. employers to petition for foreign *non-agricultural*

workers, H-2A visas are restricted to *agricultural* occupations. Maryland’s crab houses typically fill their seasonal labor needs with foreign H-2B workers; other top H-2B employers include the construction, landscaping, and hospitality industries.<sup>26</sup>

Since the inception of the H-2B visa program in 1986, the U.S. government has failed to enforce guestworkers’ workplace rights and to ensure that employers comply with program regulations.<sup>27</sup> For over two decades, no specific regulatory safeguards existed to protect H-2B workers. While the controversial Save Our Small and Seasonal Businesses Act of 2005 (SOSSB Act of 2005) helped define the conditions under which H-2B visas can be granted, the number of visas that can be issued each year, and the processes by which companies apply for workers, it failed to establish strict standards for H-2B workers’ rights.<sup>28</sup> In fact, until President Bush issued regulations regarding the H-2B program in January 2009, no formal regulations existed. Instead, the U.S. Department of Labor (DOL) certified employers for H-2B visas using a process it created through internal memoranda.<sup>29</sup> Although the 2009 regulations purport to protect H-2B workers, they in fact defer to employers’ self-*attested* history of compliance, at the expense of formal government oversight of hiring and employment practices.<sup>30</sup> Moreover, the regulations undermined years of case law governing the rights of H-2B workers, including the requirement that employers reimburse certain travel, recruitment,

and visa expenses that workers incur.<sup>31</sup> In 2009, CDM joined other guestworkers advocates in litigating *Cata v. Solis*, No. 09 Civ. 240 (E.D. Pa.), which challenges the Bush administration regulations.<sup>32</sup>

Employers must first complete requirements related to recruiting local workers, in coordination with the Chicago National Processing Center (NPC) and a State Workforce Agency (SWA), typically a state-level Department of Labor, or its equivalent.<sup>33</sup> Once those requirements are fulfilled, employers must send their completed H-2B labor certification applications directly to the DOL.<sup>34</sup> Then, the DOL reviews the employer's attestation to ensure it is complete, but does not independently evaluate the employer's compliance.<sup>35</sup> The DOL has taken the position that "an attestation-based application, backed by audits, is within the Secretary's statutory discretion to implement and is an effective means to ensure that all statutory and regulatory criteria are met and all program requirements are satisfied."<sup>36</sup>

Once the DOL certifies an employer's application, the employer must file Form I-129, Petition for Nonimmigrant Worker,<sup>37</sup> with U.S. Citizenship and Immigrations Services (USCIS) of the Department of Homeland Security (DHS). The request must indicate the number of visas desired and demonstrate that the employer's need for a more substantial labor force will end in the near, definable future.<sup>38</sup> Using the DOL's definition of "temporary labor," the USCIS reviews the H-2B application and approves the number of visas allocated to the employer. Through this process, USCIS apportions the 66,000 H-2B visas that are available each year. In practice, employers are often free to overstate their need for foreign workers, which may leave guestworkers without work to do once they arrive in the U.S. Because existing H-2B regulations do not guarantee hours to workers, visa holders who travel to the U.S. to find little or no work have few options other than returning home in debt, or working for another employer without proper authorization.<sup>39</sup>

Paralleling the limited oversight over the application process in the U.S., current H-2B regulations also lack much-needed protections relating to critical phases of the hiring process that take place in the country of origin.<sup>40</sup> Between recruitment in their home communities and arrival at the consulate for their visa interviews, temporary workers risk serious abuses at the hands of

recruiters. Often the sole link between rural Mexican communities and U.S. employment opportunities, H-2B recruiters wield significant power to define the terms and conditions under which he or she may contract a worker. Throughout Mexico, recruiters are increasingly associated with fraud, nepotism, exorbitant and illegal recruitment fees, and even human trafficking.<sup>41</sup> Often, abuses in the H-2B guestworker recruitment process set the stage for further rights violations in U.S. workplaces.

Employer control over the visa is perhaps the most troubling characteristic of the H-2B visa because it severely limits guestworkers' ability to defend themselves against abuse in the workplace. All H-2B workers in the United States are bound by law to a single employer.<sup>42</sup> The employer's name appears on the worker's visa and any employee who leaves their employment early to escape workplace abuse risks deportation.<sup>43</sup> For this reason, employers can raise the issue of immigration status and threaten to deport a particular worker if she speaks out against workplace abuses.<sup>44</sup> Moreover, many workers arrive in the U.S. with the burden of recruitment debt and face economic pressure to remain in workplaces where employers mistreat them. As a result, many workers continue to endure daily mistreatment for fear that if they assert their workplace rights, the employer will send them back to their home country.<sup>45</sup> As North Carolina farm worker attorney Mary Lee Hall explained, "(T)he fundamental problem with a guestworker program is that guestworkers are not free and have no rights of membership in society."<sup>46</sup> The structure of the H-2B system and the single employer requirement allows employers to wield substantial power over workers.

The difficulties H-2B workers face in accessing basic rights is exacerbated by continued attempts to exempt H-2B workers from common worker protections. Unlike the regulated H-2A program, H-2B workers have not been afforded, among other rights, the rights to employer-subsidized housing and meals; reimbursement of transportation expenses; a guarantee to work 75 percent of the hours listed on the contract; and the right to be paid the higher of the state or federal minimum wage rate or the Adverse Effect Wage Rate.<sup>47</sup> H-2B employers are required to pay workers the Prevailing Wage Rate; however, until 2009 DOL took the position that it did not have authority to enforce this requirement because it was established as an administrative directive and not as a regulation.<sup>48</sup>

Furthermore, the information that H-2B employers submit to the government as part of the initial job order often contradicts the actual hours or dates that the employee worked, which can create obstacles for guestworkers who wish to dispute the amount of time they worked for a company.

When H-2B workers seek legal redress for common workplace violations, practical obstacles often impede their access to justice. Due to restrictive regulations, the vast majority of H-2B workers are unable to receive legal services from organizations funded by the federal Legal Services Corporation (LSC).<sup>49</sup> Moreover, many H-2B workers live and work in isolated areas where there are no bilingual advocates who can

assist them with filing complaints against employers.<sup>50</sup> Once workers leave the U.S., it becomes practically difficult for them to pursue legal claims arising out of their employment. Many courts, as well as state workers' compensation commissions, require litigants to appear in person for testimony and other purposes.

As an industry that has become heavily dependent on the H-2B program, the Maryland crab industry provides a case study of the program and the experiences of workers employed through the program.<sup>51</sup> Because of the significant economic impact of seasonal foreign labor in the region, Maryland has a clear stake in the success of the H-2B program.

# INTRODUCTION TO H-2B GUESTWORKERS IN THE MARYLAND CRAB INDUSTRY

“Maryland’s historic crab industry depends on the H-2B program... additional temporary worker visas will allow the crab picking houses on our Shore to remain strong throughout the season with the workforce they need.”

— Maryland Governor Martin O’Malley (August 9, 2009)

Every year, hundreds of Mexican women are paid as little as \$2 a pound to extract crabmeat for a seafood industry that contributes approximately \$400 million a year to the Maryland state economy.<sup>52</sup> Traveling thousands of miles from impoverished rural Mexican communities to the Eastern Shore, H-2B workers have played a significant role in the state’s historic industry since the program’s advent in 1986. In 2007 alone, 56 percent of Maryland’s seafood companies relied on the work of H-2B guestworkers to process 82 percent of Maryland’s crab harvest.<sup>53</sup>

Indeed, the industry has come to heavily rely on H-2B guestworkers. One study found that the loss of H-2B workers would result in a \$9.5 million loss in direct revenue for the crab industry, which is nearly half of the industry’s average revenues from 2003-2007.<sup>54</sup> Because of this dependence, Maryland has been at the forefront in fighting for an increase in the number of H-2B visas issued, arguing that its seafood industry will collapse without access



*The blue crab is closely identified with the State of Maryland. Each year, the crab industry contributes millions of dollars to the state economy. Photo Courtesy of the Baltimore Sun Company, Inc., All Rights Reserved.*

to guestworkers. Maryland Senator Barbara A. Mikulski, who fought for the additional visas, continues to support and bring attention to the need for workers in the Maryland seafood industry. In a recent press release, Sen. Mikulski stated, “Maryland’s crab industries need



a government on their side. When they told me they didn't have the workforce they needed this season, I was proud to fight for them."<sup>55</sup>

Historical trends indicate that Maryland crab companies have traditionally relied on marginalized communities to support their need for low-cost labor. For many years, African-American women held the vast majority of the crab picking jobs.<sup>56</sup> According to anthropologist David Griffith, crab processing plant owners in the Mid-Atlantic region recruited workers through networks of African Americans living near the plants; crab companies employed women, who used the job picking crabmeat as just one of a number of means for economic survival.<sup>57</sup> This practice continued until the late 1980s.<sup>58</sup> With the advent of the H-2 temporary guestworker visa program in 1986, crab companies saw an opportunity to access a pool of inexpensive labor in that of Mexican women hired under the H-2B visa program.

The prevailing argument crab companies have used to explain the shift from a local workforce to the use of

H-2B guestworkers centers on crab companies' inability to attract local workers. In a 2009 Baltimore Sun article, Bill Sieling, the Executive Director of the Chesapeake Bay Seafood Industries Association, explained that "(t)he younger generation doesn't want to do a seasonal job, a not-glamorous job."<sup>59</sup> This argument overlooks the fact that after the 1986 creation of the H-2 program, crab companies purposefully shifted to the use of a foreign labor force. At that time, crab companies argued that domestic workers were rejecting crab-processing work because they could receive welfare benefits instead.<sup>60</sup> However, according to Griffith, "welfare benefits served as subsidies to crab plant owners, allowing workers to accept these jobs despite that they were insufficient to lift them above the poverty line."<sup>61</sup> This tends to indicate that the companies' shift towards the use of guestworkers was premised on keeping labor costs low rather than on their inability to find people to fill the crab picking jobs.

By making the argument that domestic workers are simply unwilling to take crab-picking jobs because they are tedious, labor intensive, and seasonal, and instead employing Mexican women on H-2B visas, crab companies can further argue that even the lowest wage in dollars benefits the workers spending those dollars in Mexico. Therefore, relying on H-2B workers has only perpetuated crab companies' historic tendency to pay very low wages. It remains to be seen whether domestic workers would be more willing to pick crabmeat, if the wages actually reflected the difficulty of the job.

One might also argue that the H-2B workers' reluctance to complain about wages and working conditions - which derives from their inherent vulnerability in the workplace - makes them more attractive to employers. H-2B workers are often unaware of the rights that they enjoy under U.S. employment and labor laws. Without knowledge of these protections, workers are fearful that workplace complaints will result in deportation. Recruitment agencies have often touted the "reliability" and "productivity" of H-2B guestworkers.<sup>62</sup> While these are certainly laudable attributes, such comments often mask the vast power differences that exist between employers and workers.



*Maryland crab companies have increasingly come to rely on the labor of Mexican women recruited through the H-2B visa program.*

Because of the economic and cultural significance of the crab industry in Maryland, crab companies have been able to push the H-2B visa expansion issue to politicians, with virtually no attention paid to how the workers themselves are treated. Each year, the seafood industry contributes roughly \$400 million to the state's economy – a substantial amount of which comes from the harvesting, processing, and production of Maryland crabs and crabmeat products.<sup>63</sup> Over the years, Maryland has also secured its place as a national leader in the supply and production of crabs. Estimates indicate that roughly one-third of the nation's blue crab harvest comes from the Chesapeake Bay.<sup>64</sup> In 2007, Maryland crab fishers harvested roughly 22.5 million pounds of crabs, whose dollar value at the dock totaled approximately \$33 million.<sup>65</sup> In recent years, the Maryland crab harvest has increased, reaching 29.4 million pounds in 2008 and 28.5 million pounds in 2009.<sup>66</sup>

In addition to its economic importance, the crab has become central to some of Maryland's most celebrated traditions. Since the 19<sup>th</sup> century, commercial fishing has been vital to Maryland's economy.<sup>67</sup> Maryland communities host dozens of festivals and crab cooking contests annually to display their pride in one of the state's oldest industries.<sup>68</sup> The crab is closely associated with the state of Maryland, and is featured prominently on tourist literature and souvenirs.

Despite its importance to the state and national economies, and to the very identity of Maryland, until very recently, the crab industry had been consistently declining since the 1990s.<sup>69</sup> Over harvesting, poor water quality, habitat loss, and changing climatic conditions have reduced the area's crab population by 70 percent, according to recent studies.<sup>70</sup> The crab industry has also faced competition from overseas harvesters, particularly in Asia.<sup>71</sup> In the face of these challenges, many crab houses have argued that to stave off the extinction of this historic industry, employers must have a steady supply of H-2B guestworkers. Without these workers, they claim, the entire industry would collapse. To the degree that the industry claims to depend on guestworkers for its survival, sympathetic politicians and legislators will continue to lobby on the industry's behalf. Such claims deserve further scrutiny, given the crab industry's legacy of employing marginalized workers, paying low wages, and maintaining difficult working conditions.

The following analysis chronicles the experience of women H-2B workers who seasonally migrate to the Eastern Shore of Maryland to work in the Maryland crab industry. In doing so, it highlights the struggles the women face throughout their migration experience – from their initial recruitment in their communities of origin, to their travel to the U.S., to their experiences living and working in Maryland, and their return to Mexico.

# COUNTRY OF ORIGIN ISSUES AFFECTING MEXICAN LABOR MIGRATION

As living conditions deteriorate in rural Mexico, thousands of migrants every year are compelled to seek employment opportunities in the United States in order to support themselves and their families. As Mexican workers leave their homes to fill unoccupied H-2B jobs abroad, the cycle of seasonal migration takes its toll on family and community life.

Local Mexican economies have long been tied to involvement in U.S. seasonal industries. Although Mexican migrants have been an important presence in U.S. workplaces from the beginning of the 20th century, they began legally entering the United States for seasonal labor with “nonimmigrant” temporary work visas during a brief postwar program lasting from 1917-1921.<sup>72</sup> However, the *Bracero* Program implemented during World War II represents the most widespread and influential guestworker program in the United States to date, hosting approximately 4.6 million Mexican workers from 1942-1964.<sup>73</sup> Today, guestworkers continue to serve as a labor safety valve for low-wage employers in agribusiness and non-agricultural seasonal industries. In fact, from 1998 to 2008, low-wage employers relied on the labor of roughly 1.2 million H-2A and H-2B guestworkers.<sup>74</sup>

As participants in over a century of labor migration to the United States, Mexicans and their families have come to depend on the remittances of migrant workers. Individual families have typically relied on remittances to cover the costs of daily life, which for many includes making improvements to homes, purchasing consumer items like telephones, or paying for education and medical expenses. However, with increasing levels of migration, the Mexican national

economy has also come to rely on these remittances as a form of development. In 2009, Mexico received \$21.2 billion USD in migrant family remittances.<sup>75</sup> In some Mexican states, remittances are a leading source of income.<sup>76</sup> The struggle for the Mexican government, as well as the governments of other Latin American countries, has been in implementing social and economic policies that take these remittances into consideration.<sup>77</sup>

With 44.2 percent of the Mexican population living in poverty, for some communities, migration represents the only option to earn a viable income.<sup>78</sup> Approximately 25 percent of Mexicans live in rural areas; however, nearly half of all Mexican migrants to the U.S. are from rural areas.<sup>79</sup> Corn production remains the primary source of economic livelihood in most rural Mexican households.<sup>80</sup> However, increased free trade between the U.S. and Mexico in corn and other commodities, in addition to a drop in public investments in small scale agriculture, has led to debilitating losses for as many as 3 million rural farmers.<sup>81</sup> These losses have pushed many families towards migration, although not without heavy personal sacrifice.

Walking through one migrant-sending town provides unmistakable evidence as to the importance of the

H-2B program for this community. (For purposes of confidentiality, names of towns will be kept anonymous.) In this town, migrant workers have equipped their homes with modern appliances and furniture, while non-migrants' homes lack such basic amenities as indoor plumbing, personal telephones, and flooring. Although household improvements are important to many of the women, their children's education appears to be the primary factor motivating them to apply for H-2B visas. Several of the H-2B seafood workers from this community began migrating to the Eastern Shore of Maryland as early as the 1980s to earn desperately needed income.<sup>82</sup> In this rural town, populated by a few hundred people, infrastructure consists of little more than wide, dusty paths and telephone wires strung between homes. Located more than an hour away from the nearest large city, residents of this town find that employment opportunities are hard to come by. Apart from the money earned from working in the U.S., residents of this town engage in agriculture-related work as a source of income, but the monies earned are not enough to support a household. As workers continue to struggle with exorbitant recruitment fees and difficult work environments in the U.S., many families in this town have begun to question the economic and social costs of seasonal H-2B migration.

### Ariela

Before deciding to migrate to the U.S., Ariela worked out of her home with three other women, sewing sweaters that would later be shipped directly to the U.S. or to larger factories in Mexico. For this work, Ariela earned between \$50 and \$100 USD per month; with these meager wages she could no longer support her mother and two young daughters. She was hired by a crab company that was in the process of replacing workers who had left their jobs. Ariela traveled to the Eastern Shore and two months into her job, she too was forced to abandon her job because she was not earning enough money to buy food, repay her loans, and send money home to her mother and children.



*In their communities of origin, many migrant worker women strive to supplement their incomes with small-scale agricultural work.*

Walking down the rocky dirt roads of a second migrant-sending town, the authors encountered a number of people restlessly sitting outside of their homes in the middle of the day – looking to pass the time while waiting for children to return home from the local school. This town, until recently, relied solely on agriculture as its main form of economic subsistence. Recent climate changes have wrought havoc on this town, destroying the crops on which families have traditionally relied. As weather continues to create uncertainty for the poorest residents of this town, workers of all ages have begun migrating to the Eastern Shore of Maryland. However, this employment has proven to be just as uncertain. The workers in this town must negotiate



*Communities that send migrants to work in the Maryland crab industry are often devoid of meaningful local economic opportunities.*

with a single local contractor who relies on favoritism and personal connections when offering the limited number of visas to residents.

All across Mexico, migrant-sending communities suffer from the same lack of economic opportunity that has driven the women of the communities described above to pursue alternative employment in the annual seasonal Mexico-U.S. migration cycle. While economic struggles may be familiar to many Mexican communities, increasing militarization along the U.S.-Mexico border and the ongoing drug war have created new

challenges to migrants seeking employment in the United States. By heightening the risk of human trafficking and immigration enforcement for undocumented workers, these two factors have developed a positive feedback loop that increasingly pushes migrants to seek H-2 visa recruitment as the only means to access U.S. employment. However, these same factors make guestworkers today more vulnerable than ever to exploitation at the hands of corrupt recruiters or scofflaw employers.

# H-2B LABOR RECRUITERS

Mexican migrants seeking employment in the United States on H-2B visas must often face abusive recruiters who demand exorbitant fees and force their clients into extreme debt. As gatekeepers to U.S. employment opportunities, low-wage labor contractors operating on the ground in Mexico are increasingly associated with workers' rights violations and fraud.

In increasingly desperate economic conditions, migrant workers must often rely on H-2B labor recruiters as the sole means to obtain work in the U.S. and provide for their families. As the primary link between migrant-sending communities and U.S. employers, recruiters wield significant power over guestworkers. As a result of this relationship, recruiters often charge workers exorbitant and illegal recruitment fees with few consequences for their actions. Without proper oversight and enforcement of labor laws governing the recruitment process, H-2 recruiters throughout Mexico today are becoming increasingly associated with fraud, discrimination, and even human trafficking.<sup>83</sup>

**“My town’s local contractor told me that her friend advised her who to send and who not to send.”**

**—Julia, Former H-2B crab worker.**

H-2B employers seeking to fill their labor needs usually contract with a recruitment agency or with local recruiters to locate and hire foreign workers in their country of origin. Indeed, 99 percent of the women interviewed reported working with a local recruiter. However, in order to comply with U.S. labor laws, the employer must contractually forbid any foreign labor contractor or recruiter from seeking or receiving payments from prospective employees.<sup>84</sup> At the same time, Article 28 of Mexico’s Labor Code indicates that employers or their recruiting agents must pay all recruitment costs.<sup>85</sup> In short, under both countries’ laws, workers should not be paying recruitment

fees. Nevertheless, 100 percent of the women who reported working with a recruiter paid that recruiter a fee. Local recruiters can charge these illegal fees or otherwise behave unscrupulously because there is a lack of enforcement of existing laws. For example, an employer can overcome the provision in U.S. law by simply pleading ignorance or notifying U.S. Citizenship and Immigration Services within two days of discovering that workers were charged recruiting fees.<sup>86</sup> The DOL explicitly “recognizes that its power to enforce regulations across international borders is constrained.”<sup>87</sup> Meanwhile, at present, no cases documenting the

## **Eva**

Eva traveled to the Eastern Shore for the first time in 1996. A decade later, she returned because she could no longer support her two teenage children. She borrowed \$10,000 pesos to cover her visa, passport, and travel expenses. Compared to other women, her ten percent monthly interest rate was modest, but it still took her six months to repay her initial loan on the wages she was earning as a crab picker.

Mexican government's enforcement of Article 28 exist.<sup>88</sup>

Rarely do U.S. employers supervise how recruiters operate in Mexico, or whether they comply with U.S. labor laws.<sup>89</sup> In some instances, lack of government oversight allows employers to circumvent anti-discrimination laws by claiming that they have no knowledge of or power over recruiters' practices. Where employers do provide recruiters with job descriptions, few are held accountable for the messages delivered on the ground in Mexico and, as such, may violate U.S. anti-discrimination laws by requesting workers based on age and gender preferences.<sup>90</sup> To this end, it is evident that some U.S. H-2B employers can use the guestworker recruitment process as a means to strategically evade compliance with U.S. hiring and employment standards.<sup>91</sup>

For Mexican women seeking to work in the Maryland crab industry, dealing with the imbalance of power between recruiters and themselves is commonplace. Local recruiters are typically the sole representatives of U.S. employment opportunities in the various migrant-sending towns. As noted above, of the women interviewed for this report, 99 percent were placed in their crab picking jobs by a local recruiter.

Throughout Mexico, it is not uncommon for recruiters to live and operate in the same small communities from which they recruit. Often maintaining long-standing relationships with migrants and their families, recruiters control access to all available H-2B opportunities and are free to hire at their personal discretion. It is often the recruiter who decides who will obtain work in the U.S. and where they will be placed. Juana, a veteran H-2B crab worker, understands firsthand the limits of negotiating with a recruiter about job placement.<sup>92</sup> Tired of the harsh conditions of picking crabmeat, Juana requested that the recruiter consider her for a job in another industry.<sup>93</sup> Refusing her pleas for assistance, the recruiter told her that if she did not want to continue working for her current employer, she would lose all employment opportunities.<sup>94</sup>

Not only do the local recruiters determine where workers are employed in the U.S., they also dictate the manner in which workers pay fees associated with H-2B recruitment. Despite the fact that charging H-2B



*As part of the recruitment process, H-2B workers must appear for an interview at their nearest U.S. consulate. The consulates are often located a considerable distance from the workers' home communities. As depicted here, long queues at the consulate are the norm. Photo Courtesy of the Baltimore Sun Company, Inc., All Rights Reserved.*

workers for recruitment costs is illegal, nearly all H-2B recruiters require migrants to pay contracting service fees, a visa fee, and all travel costs and related expenses.<sup>95</sup> In fact, 100 percent of the women interviewed reported paying these pre-employment travel expenses. In total, a migrant worker in the Maryland crab industry can pay the recruiter up to 10,000 pesos, or over \$750.00, for all the fees and expenses needed to participate in the H-2B program for one season.<sup>96</sup> The recruiter rarely provides a comprehensive explanation of what these costs cover.

The various recruitment expenses are so high that many H-2B workers need to secure loans to finance their recruitment costs. Because many workers do not qualify for bank loans, they rely instead on friends or family to secure funding for their trip. When those options are unavailable, workers have little option but to take out special loans recruiters make available to them. Eva, an H-2B worker in the Maryland crab industry, explained that her recruiter financed her loan at a 15-percent monthly interest rate.<sup>97</sup> Lucero's loan of 5,000 pesos also came with a 15-percent monthly interest rate.<sup>98</sup> Susana borrowed 8,000 pesos – more than \$600.00 – from her recruiter, at a 10 percent interest rate, in order to cover all costs.<sup>99</sup> Deeply in debt from the start, female H-2B crab pickers find it difficult to repay their loans with the meager, inconsistent seasonal earnings in Maryland's crab industry. Moreover, those who incur significant debts may be loath to complain about abusive working conditions, lest they lose the very source income needed to repay these debts.

# MIGRATING TO MARYLAND

Following their recruitment, the workers must make multiple trips – first for their visa interview at a U.S. consulate, and later, a taxing, multiple-day journey by bus to Maryland.

Before migrating to Maryland, the women workers must first travel from their small, rural communities to appear for a visa interview at a U.S. consulate in larger Mexican city. The majority of the workers interviewed appeared for visa interviews in the city of Monterrey, which represents a trip of six hours or more from the workers' home communities. After completing the interview and obtaining their visas, the women return to their communities to await information from their recruiters about a specific departure date to the United States.

Once the departure date arrives, the women once again travel by bus from their home communities to a meeting point, which for many of the women interviewed was

Monterrey. At the meeting point, the workers board buses that take them to Maryland. Prior to her trip, Magdalena was told to bring dollars to purchase food on the road, although she was not provided information about the duration of the trip.<sup>100</sup> However, after having previously endured the experience, most of the interviewed workers reported that the bus trip lasts two or three days, traveling both day and night. Many women also recounted that upon their arrival in Maryland, a company manager or supervisor typically meets them at a bus station, and transports them to the housing where they will spend the crab-picking season.<sup>101</sup>



*Migrant worker women in the Maryland crab industry must travel thousands of miles by bus, from rural Mexican communities to the Eastern Shore. Photo Courtesy of the Baltimore Sun Company, Inc., All Rights Reserved.*

Some of the interviewed workers reported various other difficulties during the lengthy bus trips to Maryland, and faulted their recruiters for failing to prepare them for the journey.<sup>102</sup> For instance, purchasing food proved difficult for multiple reasons. While some women had money to purchase food, they faced language barriers, which prevented them from doing so.<sup>103</sup> Other women simply did not have the money to purchase food.<sup>104</sup> For instance, Adriana stated that she lacked money to buy food, and had to rely on other women to eat during the trip.<sup>105</sup>

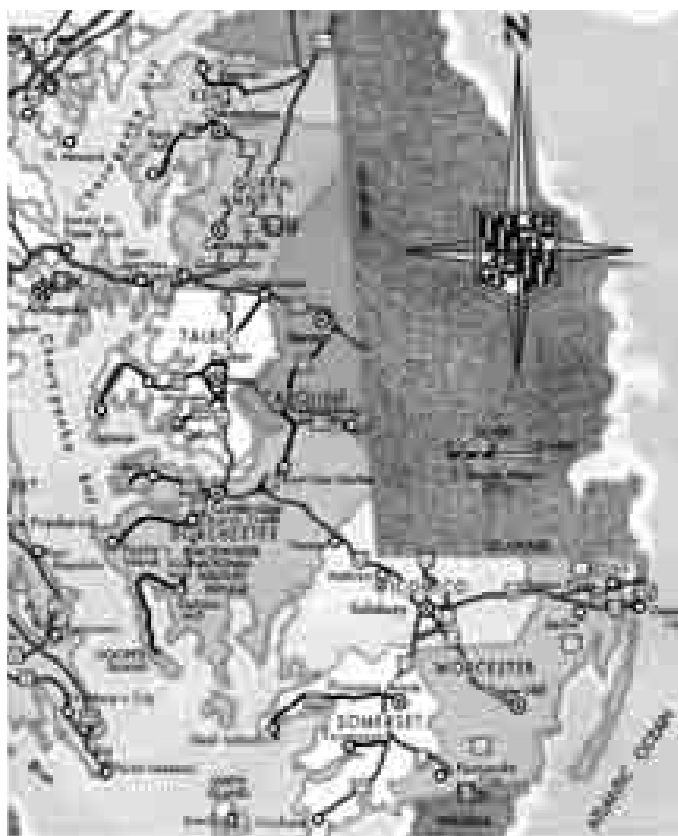


# PLACEMENT ON THE EASTERN SHORE

Crab season on the Eastern Shore of Maryland places migrant workers in remote and isolated locations. Interviewed workers described that they had little or no contact with persons outside of their employment.<sup>106</sup>

Most of the migrant workers in the Maryland crab industry live in isolated locations, where public transportation is limited or nonexistent. Consequently, workers rely upon the benevolence of their employers in order to access basic goods and services. Moreover, only a handful of outside individuals and agencies have direct contact with these women during their sojourn on the Eastern Shore. The isolation is felt most acutely by the women who live and work on Hooper's Island, a chain of islands that fronts the Chesapeake Bay in southern Dorchester County, and that is home to many of Maryland's crab houses. For those residing on Hooper's Island, the isolation is exacerbated by high tides, which sometimes make bridges and roadways impassable, and thereby foreclose access to more populated areas.

Many crab houses structure their operations so as to require workers to live in secluded locations along the Chesapeake Bay. As described more fully below, harvested crabs are brought into ports along the Chesapeake Bay in the early morning hours, and are transported to the crab houses, where they are steamed and then taken to the women migrant workers, who begin extract the crabmeat as early as 5:00AM. Most crab houses are situated in remote locations on the Eastern Shore, within striking distance of the ports where crab boats arrive. The women must live close to the crab houses, so as to facilitate their early morning work. The very limited real estate in these areas leaves few housing options apart from employer-owned apartments and homes. In fact, 100 percent of the women interviewed rented housing from their employer.



*Maryland crab houses are concentrated in Dorchester County on the Eastern Shore of the state. Hooper's Island, a remote string of islands, is home to many of the crab houses.*

Given their remote placement, the women workers generally do not have access to public transportation or cars, and instead rely heavily on employer-provided transportation. Interviewed workers reported differing company policies on the provision of transportation to workers. Some companies are more accommodating, offering rides on an ad hoc basis, or allowing their

workers to request a day to go grocery shopping.<sup>107</sup> Many other companies, however, provide weekly transportation to local stores on fixed days; due to the lack of space in the vehicles, however, only a certain number of workers can go shopping at once.<sup>108</sup> As a result, some women reported having to wait two to three weeks before they could purchase groceries.<sup>109</sup> Griselda mentioned that when she forgot an item or ran out of something that she needed, she relied on another worker to get the item as the company's grocery schedule allowed her to go shopping only once every three weeks.<sup>110</sup>

Apart from purchasing food and personal items, the isolation of the workers makes it exceedingly difficult for them to access pharmacies, medical facilities, and other essential services, most of which are 20 or more miles away from the workers. If workers need to see a physician for a personal medical matter, or if they require urgent medical attention, they must again rely upon their employers. Cecilia, who suffered an asthma attack after regular working hours, was forced to contact her employer in order to receive medical care instead of being able to seek medical attention at her own discretion.<sup>111</sup>

The workers interviewed had limited contact with persons outside of their work. For example, the authors interviewed two family members who lived and worked

a 10-minute drive apart at different crab houses on the Eastern Shore.<sup>112</sup> Due to the isolation and limited transportation provided by their respective employers, the two had not seen each other for months.<sup>113</sup> That said, a handful of local churches have welcomed the workers and provide transportation to and from religious services. Additionally, some workers had contact with a local Hispanic grocery that traveled to worker housing to sell goods and occasionally picked up workers. In addition to grocery delivery services, other entrepreneurial vendors also frequent the most isolated areas where the women work and live, providing necessities such as telephone cards. However, the workers have few other services that cater to their remote location.

Significantly, the remote location of the H-2B crab workers on the Eastern Shore makes access to any legal services difficult. The workers interviewed indicated they had no meaningful connection with, or knowledge of, any local non-profit organizations.<sup>114</sup> The Maryland Legal Aid Bureau, a federally funded entity, is one of the few organizations that provide free legal services to individuals on the Eastern Shore of Maryland. Unfortunately, existing regulations prohibit the Maryland Legal Aid Bureau from offering federally funded legal services to H-2B workers. This prohibition dramatically reduces the availability of legal services that could assist crab workers and provide basic education on their rights.<sup>115</sup>

# HOUSING

With few alternatives, and with early morning work hours, nearly all crab pickers reside in rental housing offered by their employers. While conditions vary, some of the housing is in extremely poor condition. Privacy is scarce in employer-provided housing.<sup>116</sup>

Crab companies are not legally required to provide housing to H-2B employees.<sup>117</sup> Instead, many employers manage and rent housing, both to facilitate early morning work, and because there are few rental options available near the crab houses of the Eastern Shore. The employer's control of the rental property where the women live, as well as their work, contributes to the further isolation of these workers. This type of community structure is common under the H-2B program: the employer/employee and proprietor/tenant relationship creates a power imbalance that permeates virtually every aspect of the workers' lives.

Although the housing conditions vary from company to company, interviewed workers consistently reported a lack of privacy, and many expressed concern that they were not provided a key to their housing.<sup>118</sup> Moreover, 55 percent of the workers interviewed specifically complained about serious problems concerning their rental housing. Despite these concerns relating to privacy, access, and habitability, regular rent payments to employers were the norm.

Many of the interviewed women lived in small spaces that accommodated more people than reasonable. For example, some women interviewed shared a single bedroom with three to seven other people; housing units as a whole were shared by anywhere from six to 30 women.<sup>119</sup> Inez described living in an apartment with nearly a dozen people, all sharing one stove and one bathroom.<sup>120</sup> She often waited in a long line to use the sole bathroom. Patricia described sharing beds with other women to have enough space for all of the women to sleep on a bed.<sup>121</sup> Although most housing

accommodations were segregated by sex, this was not always the case: a young man described the discomfort he felt when his employer assigned him to share a room with a number of women of varying ages.<sup>122</sup> At one company-managed home, couples were allowed to stay in the same room alone.<sup>123</sup>

Housing conditions and workers' experiences also varied with respect to proximity to the job site, and the availability of utilities. Some of the interviewed workers lived in rooms above their work area, others lived next door, and still others lived a 10- or 15-minute drive away from their work sites. The crab companies typically provided the workers with transportation to and from work if the housing was not within walking distance.<sup>124</sup> Some houses had washing machines and others did not; some houses were relatively clean and comfortable while others were in such bad condition that serious risks to health were apparent.

In Maryland, individual counties develop their own housing codes. Though these housing codes vary, every county's code prohibits houses from having broken windows, moldy walls, and roofs in disrepair—problems that the authors noticed in several of the houses rented to H-2B workers.<sup>125</sup> All of the women interviewed in Maryland lived within Dorchester County. In this county, premises and structures must have exterior walls and surfaces in good repair, and windows without cracks or holes.<sup>126</sup> The interior surfaces of the structure likewise must "be maintained in good repair and in a clean, safe and sanitary condition."<sup>127</sup> In addition, the county housing code require that roofs be free from defects and be structurally sound in order to prevent rain, rodents, and pests from entering homes.<sup>128</sup>

Several of the workers reported conditions that violate these basic habitability requirements of Dorchester County's Minimum Livability Code. The authors' direct observations confirmed the poor condition of the housing rented out by some employers. While conducting interviews, it was often easy to pick out which houses workers occupied and which belonged to others based simply on the exterior conditions and disrepair of the house. The exteriors of many of the houses inhabited by the workers clearly have not been maintained;

### **Carla**

Carla shares a house with six other women. She pays \$35 per week, which is a five-dollar increase from the previous year. Her landlord, who is also her employer, justified the increase in rent because he was increasing the workers' wages from \$2.25 to \$2.50 per pound of crabmeat picked. Because the stove did not work, Carla's employer provided the household with a two-burner hotplate. However, only one of the plates actually works. Both the shower and toilet clog. Carla and her housemates battle sewage backups. She also said she feels unsafe living in the house. There have been occasions when people have tried to break into the house. But, only her boss has a key to lock the door from outside. Carla and her co-workers can lock the door to the house only from the inside, which requires someone to stay inside the house.

the wood on the outside of these houses appeared to be rotting and needed to be painted.

Workers also confronted security concerns related to their housing. Fifty-eight percent of the women interviewed in Maryland explained that they were never provided with a key to the apartment or house rented by the employers. In some cases, the employer kept the key, locking or unlocking the doors as needed.<sup>129</sup> Otherwise, absent a key, the women in shared housing coordinated amongst themselves to ensure that at least one roommate stayed in the apartment or house at all times.<sup>130</sup> During work hours, however, when all of the women were in the crab houses, the rental units would typically remain unlocked. If the women were given a key, it was not uncommon for them to share one key amongst all the women living in the residence.<sup>131</sup> Moreover, at least one employer prohibited workers from receiving male guests in the house they rented to workers.<sup>132</sup> These security-related measures arguably contributed to the further isolation of workers, and raise significant concerns about the level of control employers have over the workers.

Despite all of these concerns relating to the housing, the interviewed workers made regular rent payments throughout their stay on the Eastern Shore. Interviewed workers paid \$20 to \$45 per week for housing. Susana, for example, paid \$45 a week to share a three-bedroom house with 15 other women.<sup>133</sup> Based on these rent amounts, some of the smaller employers collected around \$700 to \$800 in rent payments each month. At the same time, employers receiving payments from several dozen workers could take in well over \$2,000 per month in rental income.<sup>134</sup> Most crab companies either deducted rent directly from their employees' paychecks or accepted cash rent payments from their employees.<sup>135</sup> In most cases, workers were required to pay rent to their employers, even if there was no crab-picking work available. However, some employers deferred rent payments until the women could actually pay. When crabs were scarce, earning enough money to pay rent proved difficult. According to Magdalena, she stayed home most of the time due to the lack of promised work hours.<sup>136</sup>

# THE PROCESS OF PICKING CRABMEAT

Picking crabmeat is a tedious and labor-intensive job. The women work silently and intensely, using a sharp knife to separate the valuable jumbo lump from the backfin, taking care not to include any shell parts with the meat.



*Crab pickers work at long tables, extracting the valuable crab meat as quickly as possible. Although the Maryland crab industry now relies heavily upon H-2B migrant worker women from Mexico, some crab houses still employ African-American and white women workers.*

All of the women interviewed for this report performed work as crab pickers, extracting the valuable crabmeat so that it can be pasteurized, packaged, and sold on the market. The work of the crab pickers is extremely labor-intensive, and requires skill and precision. As described more fully below, the women workers face considerable pressure to work at a rapid rate. The sheer pace of the work renders the women vulnerable to cuts and more serious occupational hazards.

The crab pickers' work typically begins in the early mornings, after the crabs have been brought in from the Chesapeake Bay and cooked in a chlorine wash. At most crab houses, the women work in a large room where they stand or sit at long tables. Male workers (often H-2B workers themselves) place piles of cooked crabs at points along the long tables; the women then take one crab at a time to extract the meat. The women pick both male crabs (known in the industry

as “Jimmy Crabs”) as well as female crabs (known as “Sally Crabs”).<sup>137</sup>

The workers use a particular crab picking technique that is unique to each crab house. Generally, all techniques involve the following: Using a sharp knife, the women take the shell off the crab, dispose of unusable innards, take off the legs, and then remove the several types of meat that are then packaged and sold by the companies.<sup>138</sup> The workers place the jumbo lump, the most expensive meat, in piles or containers that separate it from the backfin, the less expensive meat. In extracting the meat, most of the women explained that their employers required them to be meticulous, ensuring that the meat contains no shell parts.<sup>139</sup> After filling a can or bowl, the women take the meat to a “weigher,” who is often one of the few U.S. citizens that a company employs.

While observing the crab pickers at work, the authors noted the speed and intensity of the work environment.

Because the women are predominantly paid by the pound, they must work quickly in order to ensure a decent wage for the day. Therefore, despite the numbers of co-workers present, there was very little conversation, and most workers were focused on picking the crabs as quickly as possible. How much crabmeat a worker can pick will vary depending on the size of that day’s harvest. A very experienced worker, however, can pick approximately 2.25 ounces of meat from each pound of crab, although this will vary depending on the size of the crab.<sup>140</sup> On average, a blue crab weighs between one and two pounds.<sup>141</sup> Thus, if every crab that a very experienced worker picked weighed exactly one pound, she would need to handle 142 crabs in order to reach 20 pounds – the amount many of the interviewed workers stated they could pick on an average day.<sup>142</sup> A less experienced worker will struggle to extract that amount of meat from each crab and will have to handle many more crabs to achieve the same poundage.

# WOMEN CRAB WORKERS' WAGES AND WORKING CONDITIONS

Women crab pickers in Maryland receive staggeringly low wages due to industry-wide recruitment practices, payment schemes, ambiguous deductions, and erratic work schedules.

The women interviewed were drawn to work in the U.S. based on the promise of earning money to support themselves and their families in Mexico. Having worked in the U.S. for one or more seasons, the interviewed workers expressed some disillusionment, noting a disconnect between the terms and conditions promised at the time of recruitment, and the wages actually earned in Maryland. The workers described several industry practices that adversely affect their earnings. These include: requiring workers to assume certain travel, visa, and recruitment costs; the unpredictable nature of the crab harvest, which affects the amount of work available; the method employers use to calculate hours worked and wages due; and the manner and extent to which employers make deductions from the workers' wages. Equally troublesome is the legal framework applicable to H-2B crab workers in Maryland, which provides little recourse for underpaid women crab workers.

**"It is little money. Do you believe that I earned \$100 and change, not even \$200 and with this I had to pay rent, buy food and send money to Mexico?"**

**—Macarena, Former H-2B crab worker.**

## **Recruitment and its Effect on Wages**

Employers' recruitment practices in Mexico undercut the earnings of women crab workers in Maryland. As discussed above in the description of the recruitment process, many H-2B migrants must take out loans to pay various fees and costs before they even arrive in the

U.S. This creates a situation where many migrants "pay to work," and remain in debt while they are attempting to earn a livelihood. Many of the women interviewed decided to work within this system, despite the debt they incur, based on promises regarding wages to be earned and hours of work to be performed.<sup>143</sup>

The women interviewed typically incurred four different types of expenses prior to arriving in Maryland. These include: (1) a recruitment fee paid to their local recruiter; (2) fees related to obtaining their visas; (3) costs related to obtaining or renewing their passports; and (4) travel costs to visa interviews and to the United States.

In an August 2009 memorandum, the DOL clarified that employers must reimburse workers for transportation and visa expenses in the first workweek, when those expenses are primarily for the benefit of the employer, and when they reduce the workers' earnings for that week below the federal minimum wage.<sup>144</sup> This interpretation runs in contrast to an earlier interpretation included in the preamble to the regulations promulgated by the Bush administration in January 2009.<sup>145</sup> The regulations, in turn, had sought to undo a series of court decisions, including *Arriaga, et al. v. Florida Pacific Farms*<sup>146</sup> and *Rivera, et al. v. The Brickman Group*,<sup>147</sup> which had ruled in favor of H-2A and H-2B workers respectively, and clarified that these costs are to be borne by employers.<sup>148</sup> The DOL has strongly signaled that it will be formally overturning the January 2009 regulations.<sup>149</sup> Notwithstanding these developments, many crab companies continue to require workers to cover these costs.

For example, the women crab workers participating in this study report being paid between \$200 and \$250

per week, before any type of deductions. Juliana, for instance, received approximately \$200 in her first week's paycheck, but owed \$600 in visa and recruitment costs.<sup>150</sup> After her first week in the U.S., assuming she put all of her wages towards repaying those visa and recruitment costs, she was still \$400 in debt and facing the 15 percent monthly interest rate on the loan she originally borrowed to pay those expenses.<sup>151</sup>

Another dimension of the recruitment process relating to wages is the promise made by recruiters relating to working hours and wages. Such promises are a critical factor in a migrant's decision to incur debt and make the personal sacrifice of leaving her home community and family to work in the U.S. The women interviewed had received varying information regarding how many hours they would work in Maryland and how they would be compensated for their time.<sup>152</sup> In some instances, recruiters guaranteed that they would work at least 40 hours per week.<sup>153</sup> Sofia and Yolanda, on the other hand, were promised the opportunity to work overtime hours.<sup>154</sup> Such guarantees are inherently problematic, because seasonal variations in the output of crabs will dictate how many hours of work each individual worker will receive.<sup>155</sup> Indeed, many of the interviewed workers stated that their working hours were unpredictable from week to week.<sup>156</sup> For example, when the crabs were plentiful, Eva worked from 5:00 a.m. until 5:00 p.m. including Saturdays. When the number decreased, however, she worked from 5:00 a.m. until 12:00 p.m., Monday through Friday.<sup>157</sup> At the other extreme, Adriana explained that weeks passed during which she worked only two to three hours per day, far below the hours she was promised prior to migrating.<sup>158</sup> The average number of hours that the women worked in one week also varied among the women interviewed – their schedules ranged from 2 hours per week to 72 hours per week, depending on the company and year. Many women reported that on the few occasions when they worked over 40 hours, they either did not receive overtime payments or that overtime payments were inconsistent.<sup>159</sup>

Although many of the interviewed workers signed a work contract that promised them a 40-hour workweek, few legal options exist for enforcing the contract. Notably, the DOL has taken the position that the H-2B job orders, which specify the terms and conditions of employment and often refer to "full-time" employment, "should not be construed to establish

**"The first year I went to Maryland, they wanted to send me back to Mexico because they wanted me to pick more meat. I had to start working faster because I didn't want to be sent home."  
—Macarena, Former H-2B crab worker.**

an actual obligation of the number of hours that must be guaranteed each week."<sup>160</sup> At present, few advocates have brought private lawsuits to enforce the job orders as contracts. Unfortunately, at least one of those efforts has been unsuccessful. In *Garcia v. Frog Island Seafood*, a federal district court held that work orders for H-2B workers would not be treated as enforceable contracts.<sup>161</sup> These interpretations stand in contrast to the H-2A program, where regulations guarantee that workers will receive payment for at least three-quarters of the hours stated in the work contract.<sup>162</sup>

### **Calculating Earned Wages: Hourly Rate v. Piece Rate**

Most of the women interviewed were paid for their work at a piece rate, that is, based on the number of pounds of crabmeat they picked each week. Because the interviewed workers were paid a piece

#### **Yolanda**

**When Yolanda went to the Eastern Shore for what would be her final year, she found that her wages were much different than what the recruiter promised. Yolanda was promised \$7 per hour, but earned \$5 instead. She was promised overtime, but never received it. Her employer kept her paycheck stubs, so she could never actually verify her wages. When she was able to look at them, she did not recognize the deductions from her check because they were in English.**



rate, they faced pressure to perform their work as quickly as possible, and felt discouraged from taking breaks. This pressure was fueled by minimum poundage requirements imposed by some employers, and also by the workers' own need to earn as much money as possible.<sup>163</sup> As a result, several interviewed workers stated that even though their employer provided a standard 30-minute lunch break, many did not take it, or they truncated their breaks in order to rush back to work.<sup>164</sup>

Nearly all of the interviewed workers reported a "transition period" when they first started as new employees. During this transition period, which typically lasted one or two weeks, the women were paid an hourly rate.<sup>165</sup> The wages ranged from \$5.25 to \$7.25 an hour, depending on the year worked.<sup>166</sup> As the workers gained more experience, usually as soon as a worker was able to pick 20 pounds per day, the employer would switch them to a piece rate. The piece rate ranged from \$1.00 to \$2.50 per pound, once again depending on the year worked.<sup>167</sup> Some women interviewed recalled that when workers were not picking the required poundage, they were either switched back to an hourly wage,<sup>168</sup> or were sent back to Mexico.<sup>169</sup>

Many women also expressed concern that their employers did not accurately calculate their hours or the pounds of crab they produced. For instance, "weighers" discounted the portions of meat containing pieces of shell from crab pickers' totals. This decreased the actual poundage of meat the worker picked, and, thus, adversely affected that worker's piece rate wage. Unfortunately, according to conversations the authors had with the women, most of them did not keep individual logs describing their hours or the pounds of meat they picked per day.

While concerning, most of these employer practices do not violate existing federal and state wage and



*H-2B crab pickers are paid a piece rate, based on the pounds of crab meat picked each day. "Weighers" therefore play an important role in the crab house.*

hour laws or the DOL regulations, all of which offer minimal protections for H-2B crab pickers. Until the DOL promulgated the 2009 H-2B regulations, the DOL established through administrative directive that H-2B employers must pay workers the prevailing wage rate.<sup>170</sup> Thus, crab companies must pay H-2B workers the prevailing wage, which the DOL calculates annually by examining wages for similar occupations in the same geographic area.<sup>171</sup> In recent years, the prevailing wage has closely tracked the federal minimum wage. In 2009, for example, the prevailing wage for the Maryland crab industry's H-2B crab pickers was \$6.71.<sup>172</sup> However, because the DOL took the position that it did not have the authority to enforce compliance with the requirements it established via administrative directives, H-2B employers were able to avoid that requirement.<sup>173</sup> Thus, in practice, employers could get by with paying workers only the federal minimum wage.

H-2B workers are, at a minimum, protected under minimum wage and overtime laws, and must receive the highest of the prevailing wage, the applicable federal minimum wage, the applicable state minimum wage, or the local minimum wage.<sup>174</sup> As noted above, the interviewed workers' wages were structured so as

to barely satisfy these minimal requirements. Under Maryland state law, crab pickers – who are “engage(d) in canning, freezing, packing or first processing... (of) seafood” – are exempt from minimum wage and overtime protections.<sup>175</sup> In Maryland, the state minimum wage is automatically replaced with the federal minimum wage rate if it is higher than the state minimum wage rate.<sup>176</sup> As of 2010, both the federal and Maryland minimum wage were \$7.25. However, should the Maryland General Assembly opt to increase the state minimum wage, the crab pickers would not benefit from such protections.

Federal minimum wage provisions apply regardless of whether the worker is paid an hourly rate or a piece rate. As noted above, this is significant to the crab pickers, as many are paid either way depending on their level of experience. In order to calculate the minimum wage for crab picker under the piece rate system, one must multiply the total number of pounds of crabmeat picked by the amount paid per pound. This amount of earnings is then divided by the total number of hours worked. The figure derived by this calculation is the worker’s regular rate of pay, and must equal the federal minimum wage.<sup>177</sup> The worker interviews strongly suggest that employers are aware of these minimum requirements, and closely monitor hours, wages, and productivity, so as to meet these basic standards.

### **Deductions**

In addition to their recruitment debt and low wages, approximately 54% of the women interviewed reported employer deductions from their weekly paychecks for the cost of tools and/or protective equipment.<sup>178</sup> Most common (and also most concerning to the women

interviewed) were employer deductions for the cost of knives, gloves, aprons, boots, and hairnets.<sup>179</sup> In some workplaces, the cost of these items was deducted from wages only if the worker requested the item from the employer. In other cases, the employer made blanket deductions from all employees’ wages; for example, Gabriela recalled that all of her co-workers had an amount deducted from their checks each week for gloves, regardless of the number of gloves a worker actually used.<sup>180</sup>

The legality of these deductions is questionable under both federal and state law. Under federal law, “tools of the trade” and uniforms are generally considered to be “for the benefit and convenience of the employer” and the costs may not be counted towards a worker’s minimum wage.<sup>181</sup> Under Maryland law, wage deductions are not permitted unless the worker expressly authorizes the deduction in writing, or the deduction is otherwise in accordance with an existing law or regulation.<sup>182</sup> Although some of these deductions may violate state and federal regulations, investigating these claims can be difficult, given that many employers also failed to provide their employees pay stubs, or did not clearly spell out deductions on the pay stubs provided to workers.<sup>183</sup>

Apart from these deductions for tools and protective gear, many women interviewed reported deductions for rent payments, and for taxes, insurance, and social security.<sup>184</sup> Although these deductions are generally lawful, many workers were left confused or uninformed as to precisely what the deductions were for, and whether there is a possibility to recover any of the tax-related deductions in the future.<sup>185</sup>

# OCCUPATIONAL SAFETY & HEALTH

Work-related injuries are common for many of the migrant workers in the Maryland crab industry. Use of sharp knives, contact with chemicals, lack of formal training, and the pace of work all contribute to injuries.

Several interviewed workers stated that their companies required that they pick at least 20 pounds of crabmeat per day, or risk being fired and sent home.<sup>186</sup> This creates an environment where the women are preoccupied with meeting employer poundage requirements, even if it might lead to serious injuries.<sup>187</sup>

The overwhelming majority of the women interviewed – 82.9 percent – reported receiving no formal training from their employers about how to perform their work in a proper and safe manner. Instead, more experienced co-workers train newer crab pickers, even though they themselves were never properly trained.<sup>188</sup> Workers have little time to learn how to pick the crab and perform at a speed that the companies consider acceptable. Many women interviewed recalled that they had only one week of training to learn to pick the crabmeat, which was an insufficient amount of time to learn the process safely and effectively.<sup>189</sup>

The lack of adequate training and the rushed work environment led to regular injuries. The women universally reported suffering cuts and scrapes to their hands and arms.<sup>190</sup> This can be attributed to the use of very sharp knives to extract the meat from the crabs, as well as from “20 sharp shell points” along the crabs’ outer shell.<sup>191</sup> Based on the interviews conducted, most employers do not provide the women with free gloves. If the women want them, they must pay for the gloves, thereby forcing the women to choose between the cost of the gloves versus the benefit of their protection. Although gloves do provide an important layer of protection, many women are hesitant to use them because they cannot pick the crabs as quickly or efficiently, which affects their ability to meet employer-imposed poundage requirements. As a compromise solution, some workers fashion finger gloves

that protect only their fingertips, while the rest of their hands and arms remain exposed.

In fact, cuts, scrapes, and rashes on the hands and arms of workers were so routine that many interviewed workers did not view them as actual injuries. When the authors asked, “Have you experienced any injuries at work?” many workers responded “No.”<sup>192</sup> When asked specifically about cuts, the women universally responded affirmatively.<sup>193</sup> In particular, many workers said that they injured themselves due to the sharp knives, crab claws, and the hurried pace of the work.

When the women get cuts, some employers discourage them from properly treating their injuries. For example, some workers spoke of dipping their wounds in bleach, ostensibly to sterilize the wound and prevent blood from entering the crabmeat.<sup>194</sup> Still others stated that when they were injured, they did not place bandages on their fingers because the companies enforced rules that prevented them from working with bandages, lest the bandages accidentally fall into the crabmeat.<sup>195</sup>

Improperly treating the cuts, however, can lead to dangerous bacterial infections. Although the crab companies chemically wash harvested crabs in hot chlorinated water, crabs and water contaminated with bacteria are occasionally present in the workplace, creating the risk of harmful infections.<sup>196</sup> One of the particular concerns for these workers is *Vibrio vulnificus*, a bacterium contracted by an open wound that is exposed to seawater.<sup>197</sup> *Vibrio vulnificus* can cause infections that result in blistering skin lesions and ulcerations. Upon infecting the bloodstream, it has a 50 percent fatality rate.<sup>198</sup> Although the disease is rarely reported, several of the workers knew of the disease

as they had actually been treated for it or knew of someone who had contracted the disease.<sup>199</sup>

Apart from the cuts and related infections, other women interviewed reported exposure to chemicals and allergic reactions. Specifically, some workers reported having allergic reactions or experiencing minor burns when exposed to the liquid in which the crabs are cooked. Maria Jose said that she experienced shortness of breath after being exposed to the fumes that emanated from the large steamers used to cook the crabs.<sup>200</sup> This worker nearly lost consciousness; luckily, a supervisor took her to the hospital for treatment.<sup>201</sup> Other women reported that exposure to the chemicals caused burns that reached their elbows.<sup>202</sup>

## **Maria**

**While working on the Eastern Shore, Maria contracted *Vibrio vulnificus*. While picking crabmeat, she cut her hand and salt water got inside the wound. Two boils appeared, both about the size of quarters. These boils were incredibly painful, but she nonetheless continued working, even with the pain. Maria did not seek medical attention until she was in so much pain that she could no longer work. Her employer took her to the hospital to get treatment, and she stayed there for about seven hours. Maria ended up paying for all the hospital bills and treatment, because her employer told her that in order to receive workers' compensation, she needed to have reported the injury on the same day it occurred.**

A related complaint was reactions to the latex gloves work by some workers.<sup>203</sup> Maria Jose reported that when she wore the gloves, she would sweat and reacted to the latex, making it difficult for her to work efficiently while wearing the gloves.<sup>204</sup>

Veteran crab pickers who were interviewed spoke of the long-term health effects of the physically demanding crab-picking work. Interviewed workers reported that the repetitive hand motions that they make in order to extract the crabmeat strained their bodies. Some veteran crab pickers complained that they had increasingly swollen and arthritic hands, after years of working in the industry.<sup>205</sup>

Many of the injuries sustained by these workers could, and should have been prevented by following laws related to occupational safety and health. Maryland Occupational Safety and Health (MOSH), the agency charged with workplace health and safety matters in the state, is responsible for setting and enforcing safety and health standards that Maryland employers must follow.<sup>206</sup> MOSH also undertakes education and training efforts, conducts workplace inspections, and issues citations when violations are discovered.<sup>207</sup>

In Maryland, employers are required to comply with regulations promulgated at the federal level, under the Occupational Safety and Health Act. These regulations require employers to provide workers with personal protective equipment to guard against workplace hazards.<sup>208</sup> With regard to hand protection, employers must "select and require employees to use appropriate hand protection when employees' hands are exposed to hazards such as . . . severe cuts or lacerations . . . punctures (and) chemical burns(.)"<sup>209</sup> Employers must also provide basic training to workers on the use of personal protective equipment, and also on emergency and fire preparedness.<sup>210</sup> Given that 82.9 percent of interviewed women received no formal training from their employers on safe crab picking techniques, it seems unlikely that employers trained the women on the use of personal protective equipment or emergency preparedness.

When these women do suffer injuries, under Maryland workers' compensation law, they are entitled to compensation because the types of injuries they suffer are caused by an "accidental injury that arises out of and in the course of employment."<sup>211</sup> Unfortunately, most of these workers are not aware that they may be entitled



*Experienced crab-pickers, employed in the industry for many years, often develop swollen, arthritic hands due to the repetitive nature of crab-picking work.*



*Due to their work with knives and the handling of the crabs, migrant worker women often experience cuts and bruises on their hands and arms. Some women also experience allergic reactions when exposed to crabs steamed in a chlorine wash.*

to these claims, and even if they are aware, they lack the legal resources to pursue the claim, and fear retaliation by their employers.

Even if workers choose to pursue claims, the transnational nature of their employment can make receiving actual benefits difficult. Practical difficulties arise in litigating claims once a worker complies with the terms of her visa and returns to her home country. Filing claims, attending hearings, and visiting doctors becomes exponentially more difficult for a worker interested in seeking justice for violations of her workplace rights after she has left U.S. For instance, in Maryland, if an injured crab worker wants to file a workers' compensation claim, she must either attend the hearing or demonstrate that her failure to attend was for good cause.<sup>212</sup> At present, it is unclear whether the failure of an injured crab worker to attend her hearing because she returned to Mexico in compliance with the terms of her H-2B visa would be considered a "good cause" failure to attend. Therefore, a woman injured at her employer's crab house while picking crabmeat may have a viable workers' compensation claim, but could be precluded from receiving benefits if the Maryland Workers' Compensation Commission determines that she must be present for her hearing.

# EMPLOYER-EMPLOYEE COMMUNICATION: LANGUAGE BARRIERS AND FEAR OF RETALIATION

Migrant workers in the crab industry struggle with language barriers. Fear of retaliation also makes workers hesitant to communicate with their superiors.

As most supervisors at the crab houses do not speak Spanish, and the women rarely speak English, communicating basic questions or concerns is a significant challenge. Interviewed workers explained that communication occurs primarily through the use of hand gestures, or via those women who do speak limited English.<sup>213</sup> At a few crab houses, a Hispanic manager facilitates communication between workers and their

superiors.<sup>214</sup> This language barrier makes it difficult for employees to express day-to-day concerns, creating an atmosphere of misunderstanding that can jeopardize worker safety. Employers are likewise unable to convey basic information about workplace rights and responsibilities, or to train workers to perform their jobs correctly.

## Cecilia

Cecilia first began traveling to the Eastern Shore to perform crab-picking work in 2007. At her first company, she shared a house with men as well as 12 other women. The bathtub and stove did not work, but she felt comfortable addressing these concerns with her Spanish-speaking “manager.” In 2008, she had a personal conflict with a married woman in her house. Somehow, the “manager” found out about the conflict and without discussing the situation with Cecilia, decided not to re-hire her for the 2009 season.

Lacking basic knowledge of employer expectations or their own rights, fear and misinformation abound. For instance, several women surveyed believed that since they had signed a contract, quitting their job would be “illegal.”<sup>215</sup> Fear of being fired and sent back to Mexico makes the workers hesitant to ask questions or express concerns. The isolated location of the workers means that the women have few external sources of information about their rights under labor and immigration laws. They also fear that should they speak out about working conditions, they would not be recruited in future years. These fears are often legitimate. Many workers found that complaining resulted in total inaction; their employers neither fixed the troubling situation nor retaliated against them. However, other women reported specific instances of retaliation related to worker complaints. Several women interviewed described incidents where their employer ignored communicated problems.<sup>216</sup> For example, at least two women stated that when their fellow workers complained about the poor living conditions in their employer-owned rental accommodations,

the employer did nothing.<sup>217</sup> Another woman recounted how she was not rehired after expressing concern over how the employer handled her taxes.<sup>218</sup> Susana simply stated that making a complaint meant they would be “*corridos*,” or fired.<sup>219</sup>

With such instances of inaction and retaliation, workers are left uncertain of what to think about employer behavior. As their H-2B visas are tied to their employment, many women are hesitant to speak out or complain lest they lose both their legal status and employment. Coupled with limited employer efforts by employers to communicate with or train the workers, a tenuous work environment is created, in which women are legitimately concerned about their safety and economic security.

### **Lucero**

Lucero did not feel that she could speak with her employer about the housing conditions. She lived in one room with ten other women— two women per bed. Other women slept in the living room. Her house had electricity and a kitchen, but the conditions were really difficult and afforded no privacy. Lucero and her housemates complained amongst themselves, but never to the boss. Lucero was afraid to speak with her boss because fired two women.

# DISCRIMINATION AND SEXUAL HARASSMENT

Gendered recruitment practices and disparate treatment based on age raise concerns about discrimination. Sexual harassment is another serious concern, worthy of further exploration.

The gendered nature of the Maryland crab industry – where women are typically employed as crab pickers, and men are hired to wash and clean the crabs – raises concerns regarding possible discrimination. The women interviewed confirmed the segregated nature of the industry; indeed, several women interviewed were frustrated by the fact that men washing and cleaning would earn more per hour and would be given more work hours than the female crab pickers.<sup>220</sup> These observations indicate that some female migrant workers earn less than their male counterparts in the industry, and also suggest that employers are intentionally segregating the workforce and hiring women for lower paying jobs.<sup>221</sup>

**“The bosses have so many rules for us, but they won’t take responsibility for us. They wouldn’t let us have lunch or take us to the doctor during emergencies and sometimes wouldn’t even take us to work.”**

**—Leticia, Former H-2B crab worker.**

Guestworkers who experience gender discrimination in how companies determine the women’s job duties and wages can present a colorable federal claim against their employers. The segregated nature of the crab industry and the male-dominated H-2B workforce raise clear concerns about violations of the employment discrimination prohibitions in Title VII of the Civil Rights Act of 1964,<sup>222</sup> and migrant worker advocates

have begun to challenge these gendered hiring practices in the H-2 program through litigation.<sup>223</sup> In one such case, *Olvera-Morales v. International Labor Management Corporation, et al.*, Ms. Olvera-Morales brought a class-action suit against the company that petitioned for her to work in the U.S. on an H-2B visa.<sup>224</sup> She argued that working on an H-2A visa was preferable, because it has more benefits and that she was a victim of gender discrimination, because male workers with fewer qualifications were chosen for H-2A visas over her.<sup>225</sup>

Worker interviews also indicate that age discrimination may also be an industry concern. Women cited instances of disparate treatment of older and younger workers. Inez mentioned that her boss would only complete the tax returns for the young women, but not the older ones.<sup>226</sup> Rosa mentioned that it was rumored that women over the age of 50 were not employable.<sup>227</sup> Such differential treatment based on age may trigger a violation of the Age Discrimination in Employment Act. As with gender-based preferences, advocates are exploring age discrimination claims in circumstances where recruiters “weed out” older workers who wish to obtain jobs in the U.S. on H-2B visas.<sup>228</sup>

Worker advocates have also expressed concern about the rates of sexual harassment and sexual violence directed at women in the U.S. on guestworker visas. For example, the pervasiveness of sexual harassment and sexual violence against women has been well documented in the agricultural industry.<sup>229</sup> During meetings with California farmworkers in 1995, the Equal Employment Opportunity (EEOC) learned that



thousands of women endured grabbing, taunting, sexual propositions, and were even raped by their supervisors in order to keep their jobs.<sup>230</sup> While no similar studies have been undertaken in the H-2B visa program, evidence of similar behavior has begun to surface.

Anecdotally, the authors heard reports of at least one instance of sexual violence against a woman working in the Maryland crab industry. However, the authors did not specifically ask about sexual harassment or sexual violence during interviews and were not granted permission to use the details of this particular instance in the report. Daniela Dwyer, an attorney with the Migrant Farmworker Justice Project of Florida Legal Services, Inc., however, confirmed that sexual harassment and violence exists amongst this population. While working in Maryland, Dwyer received complaints from women in the crab industry who were “being asked, or expected, to perform sexual favors as part of their continuing in their job.”<sup>231</sup>

Although the survey used by the authors did not include specific questions relating to sexual harassment or sexual violence, reports of this nature indicate that sexual harassment might be prevalent in the Maryland crab industry. Moreover, advocates in neighboring states have discovered instances of sexual harassment in their own state’s seafood industries. Thus, it seems very unlikely, as indicated by Mary Bauer, Legal Director of the Southern Poverty Law Center (SPLC), that sexual harassment “stops at the (Maryland) borders.”<sup>232</sup> Carol Brooke, a Migrant Worker Attorney at the North Carolina Justice Center, described one instance in which a woman was brought to a North Carolina oyster plant specifically to serve as the plant manager’s mistress.<sup>233</sup> Bauer further explained that, “in all of her time providing legal services to migrant workers in Virginia, no seafood worker was ever willing to file a complaint about sexual harassment.”<sup>234</sup> This unwillingness to file complaints stems, in part, from fear of retaliation.<sup>235</sup>

These fears demonstrate the inherent vulnerability of women working in the U.S. on H-2B visas. For Bauer, the “real issue is how vulnerable” the women working in H-2B reliant industries are because “given the legal structure, women are not going to assert their rights.”<sup>236</sup> Women might be verbally or emotionally abused, threatened with deportation if they do not provide



*In Maryland crab houses, tasks are typically divided along gender lines. Male workers wash the crabs, and transport them to female workers, who pick the crab meat. Photo by Monica Lopossay Photo Courtesy of the Baltimore Sun Company, Inc., All Rights Reserved.*

sexual favors or even raped by employers, supervisors or co-workers, but still feel unable to assert their rights if they are even aware of their rights to do so. Sexually harassed migrant women can file complaints with the EEOC, or in some cases, might be eligible for “U” visas.<sup>237</sup> However, many barriers, including the fact that H-2B visas are tied to their employers, the difficulty in retaining legal counsel, and cultural stigma, can prevent women from filing complaints against their harassers or abusers.

The one anecdotal report the authors received about sexual harassment coupled with the reports from other local advocates indicates that sexual harassment is potentially a serious issue in the Maryland crab industry. Because no studies exist about the levels of sexual harassment and sexual violence against women in the H-2B visa program, the authors believe that this is an area ripe for further investigation.

# THE CYCLE OF MIGRATION

Female crab workers leave behind family and communities seeking financial betterment, but often find that the recruitment process and work conditions create financial uncertainty.

Women working in the crab industry on Maryland's Eastern Shore endure challenging living and working conditions, and have even developed life-altering health problems. Back in Mexico, communities are left with absent parents and depressed economic conditions. Why then, do the women migrant workers return year after year?

Female crab pickers most often cite financial security as the primary motivating factor driving their migration to the Eastern Shore.<sup>238</sup> Other workers seek employment in the U.S. to cover specific expenses, such as a family member's surgery or their children's school fees.<sup>239</sup> With depressed economic conditions in their communities, working in the U.S. can provide families with sufficient financial resources to provide for basic necessities that would otherwise be unavailable. In community interviews, the authors observed homes of migrant families that were equipped with appliances, plumbing, telephones, and furniture. These items were often absent in non-migrant households. However, departure for U.S. employment leaves other identifiable marks on the community, as families must cope with long absences and a migration process and work conditions that can leave women in a precarious financial situation.

Beyond the dangers and hardships that temporary workers face at the crab houses on the Eastern Shore of Maryland, many of the workers must leave children to be cared for by relatives and friends. During her interview, Ariela explained how her youngest daughter suffers from anxiety and is angry with her for leaving to work in the U.S.<sup>240</sup> Susana, on the other hand, described how while she was away, her child would never come to the telephone when she called.<sup>241</sup> Obviously, it is difficult for many of the mothers interviewed to leave their

children in the care of others. Fortunately for many of the women, they left their children with trusted family members. However, not all have been as fortunate. When Carmen returned to her home, she found one of her children suffering from parasites, while the others were skinny and dirty.<sup>242</sup> These instances shed light on the difficulties the women face not only in leaving their children, but also in entrusting their children's care to another; the examples likewise highlight the children's difficulties in coping with their mothers' long absences.

**"I doubt I will ever return. I suffered so much. I felt so stupid. They took advantage of me. It is sad and it made me suffer."**

**—Carmen, Former H-2B crab worker.**

Many women first apply for H-2B visas through a recruiter in hopes of financial betterment, as they expect to make a reasonable wage while working in the U.S. However, the H-2B visa becomes less a forward-looking opportunity and more of an indentured servant's contract. As noted above, the expense of obtaining a visa and the transportation to Maryland cost hundreds of dollars for each woman, an amount that is often financed by loans to be repaid with earnings from work on the Eastern Shore.<sup>243</sup> The reason for working in the crab companies thus becomes two-fold: women work not only to earn money for their families and communities, but also to pay down the debt incurred in the process of obtaining U.S. employment. Once in the U.S., many women incur significant expenses related to food, housing, and medical costs that can significantly reduce their net earnings. A

range of paycheck deductions can further reduce income.

As Mexican communities become more reliant upon temporary employment in the U.S., local industries in Mexico that historically employed residents fall into decline, thereby reducing job opportunities.<sup>244</sup> This can create a cycle of migration where recruiters and U.S. employers gain increased leverage as workers are left without alternatives.

# REFORM RECOMMENDATIONS

The interviews conducted by the authors revealed a range of struggles experienced by H-2B crab pickers in the Maryland crab industry. These concerns, which implicate local, national, and transnational conditions and norms, can begin to be remedied by adopting the following recommendations.

## State and Local Recommendations

### **1. Extend Maryland minimum wage and overtime protections to crab pickers and other seafood workers.**

Currently, crab pickers and other seafood workers are exempted from minimum wage and overtime protections under Maryland wage and hour law. Although federal law does offer these protections to crab pickers, the Maryland exemption sends a strong, and unfortunate, message about the value of this work and the rights that should be afforded to these workers. The lack of minimum wage and overtime protections for these workers has undoubtedly contributed, over time, to the low wage rates that historically have been paid to crab pickers – wage rates that typically hover right around the federal minimum wage. Crab companies often lament the inability to recruit U.S. workers to perform the arduous task of extracting crabmeat; yet, the current state of Maryland law exacerbates this concern by contributing to the devaluation of this important work. The Maryland General Assembly should act promptly to repeal this long-standing exemption.

### **2. Ensure regular, pre-season inspections of rental housing provided by employers to H-2B crab workers in Dorchester County, Maryland.**

Many of the H-2B workers interviewed for this report complained of crowding, lack of privacy, and at times, nearly uninhabitable conditions in rental housing owned by the crab companies. The Planning and Zoning Department of the Dorchester County government should take a more active role in monitoring the conditions of rental housing offered to H-2B migrant

workers. H-2B workers are particularly vulnerable as tenants, given the dual control exercised by the crab companies, over housing and working conditions. The county government should adopt a regular practice of inspecting rental housing in the early months of the year, prior to the beginning of the crab season and the arrival of the H-2B workers.

### **3. Educate H-2B crab workers at the beginning of each season about their basic rights as tenants in the state of Maryland.**

As a complement to regular housing inspections, H-2B crab workers should receive basic rights trainings from the county government, state government, or another suitable entity, focused on their rights as tenants. Housing conditions may deteriorate, or other concerns may arise over the course of the workers' months-long stay on the Eastern Shore of Maryland. The workers may simply be unaware of their rights as tenants and the basic conditions of habitability that their landlords must maintain. Educational efforts focused on tenants' rights would serve this purpose, and could also inform the workers of possible approaches and resources for resolving landlord-tenant concerns.

### **4. Promote greater engagement by Maryland Occupational Safety & Health (MOSH) with the crab industry, through consultative programs, cooperative efforts, and unplanned inspections.**

The frequency and variety of injuries and illnesses experienced by the crab-pickers strongly signals the need for greater engagement by Maryland Occupational Safety & Health (MOSH), the state agency charged with regulating such matters. There are a range of approaches to promote greater oversight of health and safety matters, including unplanned inspections at crab houses, or collaborative partnerships between employers and MOSH. Given the unique nature of crab-picking work, and the particularized risks involved, all parties may benefit from the use of MOSH's consultative programs, which provide a holistic assessment of safety and health concerns and outlines possible improvements.

## **5. Implement comprehensive, bilingual occupational health and safety trainings for new and returning H-2B crab workers.**

At crab houses on the Eastern Shore of Maryland, formal safety training for workers is nearly universally absent. While MOSH should certainly have a more prominent oversight role, the H-2B workers themselves must be trained on how to perform their work safely and effectively, and how to handle work-related injuries and illnesses. Employers, perhaps in consultation with MOSH or other appropriate entities, should offer a comprehensive training to all crab-pickers on occupational health and safety matters. It is critical that the training be conducted in a linguistically and culturally appropriate manner.

## **6. Deploy bilingual health care outreach workers to the Eastern Shore, to assess, on a periodic basis, work-related injuries or other health concerns of the H-2B migrant workers.**

Many of the women interviewed had experienced health problems – including both work-related issues and personal health matters – during their time on the Eastern Shore of Maryland. Geographic isolation, language and cultural barriers, and the pressure to please employers all create disincentives to seeking and obtaining medical care. To combat these barriers, state agencies or not-for-profit organizations with health care personnel should perform outreach among the H-2B workers on the Eastern Shore. Conducting such outreach will yield more precise information about the types of institutions and services needed to address the health care needs of the migrant worker population in Maryland.

## **7. Support the growth of not-for-profit organizations and other entities that can conduct education and outreach, and provide legal and other services to the migrant worker population on the Eastern Shore of Maryland.**

There are scarce institutional resources on the Eastern Shore of Maryland for the significant migrant worker population, and more generally, for the growing immigrant population. Few organizations that cater exclusively to immigrants and migrants exist on the Eastern Shore. As noted above, the sole free legal service provider on the Eastern Shore, the Maryland Legal Aid Bureau, is prohibited from offering representation

to H-2B workers. Other legal service agencies are hours away in Baltimore or in the counties north of Washington, D.C. The H-2B migrant worker population desperately needs an organization that can provide basic legal rights education, ongoing support, and referrals to other service providers. Private foundations and the state government should work to enhance the capacity of organizations to serve this isolated population.

## **8. Integrate H-2B migrant worker issues into the agendas of the Maryland Governor's Commission to Study the Impact of Immigrants in Maryland, and the Maryland Council on New Americans.**

The Governor of Maryland, Martin O'Malley, has established bodies to study the experiences and contributions of immigrants to the state of Maryland. While the H-2B guestworkers are not permanent immigrants, most return year after year, and spend six months or more in Maryland during the crab season. The Governor's Commission to Study the Impact of Immigrants in Maryland, and the Maryland Council on New Americans are two bodies that could focus on the role of migrant workers in Maryland, and could issue recommendations to address some of the concerns raised in this report.

# National Recommendations

## **1. Regulate recruitment practices, and sanction employers who utilize recruiters that charge excessive or improper fees to workers.**

Recent changes to regulations governing the H-2B recruitment process prohibit recruiters from charging any fees to workers, recognizing that these costs often leave workers in a state of effective indenture.<sup>245</sup> Nonetheless, there is little enforcement of this prohibition, and employers are often able to evade any consequences of contracting with recruiters who charge such illegal fees to workers. Recruiters who charge these fees to vulnerable workers often have an incentive to fraudulently misrepresent the job opportunity offered, and to recruit workers for job opportunities that do not in fact exist.

H-2B regulations should promote transparency in the recruitment process, requiring employers to disclose

any recruiters with whom they do business and to affirmatively guarantee that those recruiters will not charge recruitment fees to workers. Regulations should further provide a private remedy to enable H-2B workers to recover any improper recruitment fees from the employers themselves. The Department of State should also implement uniform consular procedures by which workers who are fraudulently promised H-2B jobs that do not in fact exist may recover any visa expenses that they paid in reliance on these false promises.

**2. Strictly enforce the requirement that employers reimburse H-2B workers for transportation and visa expenses to the extent that these costs reduce the workers' wages below the federal minimum wage.**

Many of the workers interviewed incurred significant pre-employment costs in order to work in Maryland on H-2B visas. Pursuant to an August 21, 2009, Field Assistance Bulletin from the U.S. Department of Labor, employers may not require H-2B workers to pay visa expenses or the costs of their transportation from their home countries to their worksites in the United States to the extent that these expenses reduce wages earned during their first workweek below the federal minimum wage. This requirement should be strictly enforced by the Department of Labor. H-2B workers who are paid less than the minimum wage after accounting for these expenses should be provided with a clear remedy by which to recover these expenses from their employers, including visas that permit workers to remain in or return to the United States to pursue these claims in U.S. courts.

**3. Treat H-2B work orders as job contracts that are enforceable by workers.**

During the recruitment process, many of the interviewed workers signed contractual documents, known as work orders, which specify the wage to be paid and the hours to be worked. The H-2A regulations, applicable to agricultural guestworkers, provide that the such work orders submitted by H-2A employers to the Department of Labor are enforceable as contracts between the employer and the guestworker. H-2B regulations should similarly provide, in explicit terms, that the H-2B work orders constitute actionable contracts. H-2B workers who are not paid the wages that their employer has represented that they will pay, or who

work fewer hours than promised, should have a clear enforcement remedy.

**4. Routinely inspect H-2B employer payroll records for compliance with wage provisions.**

The H-2B workers interviewed reported a range of deductions from their paychecks for work tools and other protective equipment. These items are primarily for the benefit of the employer; consequently, any such deductions that effectively reduce the workers' wages below the required minimum are unlawful under federal law. Unauthorized deductions may likewise be unlawful under state law. The federal Fair Labor Standards Act and corresponding state laws require employers to maintain accurate payroll records. H-2B regulations should be revised to provide for more active monitoring and review of these records by the Department of Labor (or other appropriate agency) to ensure that employers reimburse their H-2B workers for any improper deductions. Employers who have been shown to violate wage requirements within the previous five years should be selected for more careful review.

**5. Make available to H-2B workers a broader range of free legal services, including services provided by Legal Services Corporation grantees.**

Many of the workers interviewed lacked information about their workplace rights, and knew of no local organizations that could provide legal advice or representation. H-2B workers are currently ineligible to receive free legal services from organizations funded by the Legal Services Corporation. This stands in contrast to H-2A workers who can, in fact, receive such services. Given the geographic placement of legal service providers in Maryland, this restriction effectively prevents H-2B crab workers from seeking legal advice and obtaining appropriate remedies for violations of regulations and other labor laws. H-2B regulations should be reformed to provide that H-2B workers will have access to appropriate legal services, including from these types of organizations.

**6. Restructure guestworker visas so that workers are not tied exclusively to one employer, which will allow workers to leave abusive working conditions and still benefit from employment in the United States.**

Because H-2B visas currently permit the visa holder to remain in the United States only to work for a specific employer, workers who suffer abusive working conditions have no choice but to remain in that situation or return to their countries of origin. Because many H-2B workers incur significant debt to simply obtain their H-2B visas, they cannot even afford to return mid-season to their home countries and are, in effect, shackled to any terms of employment that their employer unilaterally imposes. The H-2B visa process should be reformed so that visas are not linked exclusively to specific employers. H-2B workers must be allowed the opportunity to find alternative employment when they report unsafe or unfair working conditions to an appropriate agency. This flexibility would help ensure that employers who flout H-2B regulations are sanctioned. It would also ensure that worker exploitation does not remain unreported because workers are scared of losing both their jobs and their right to remain in the United States.

**7. Allow H-2B workers to access the U.S. justice system, and remove litigation barriers for workers who comply with the terms of their visa and return to their home countries.**

An H-2B worker's visa expires when the employer indicates that the need for their labor has terminated. Workers who have claims for unpaid wages, workers' compensation, or other claims against their employers are often required to leave the United States or risk deportation if they remain to pursue these claims in U.S. courts. Employers often rely on the fact that once a worker returns to her home country, litigating a claim becomes exponentially more difficult or, in some cases, completely impossible. For instance, many states require workers seeking worker's compensation to be present in person to attend worker's compensation hearings. These presence requirements are manifestly unfair to migrant workers who return to their home countries and have difficulty obtaining a visa to return to attend the required hearings.

The Department of Homeland Security should implement a policy under which H-2B visas may be extended

and deportation deferred for workers who wish to remain in the U.S. to pursue legitimate claims arising from their employment. Moreover, the Department of State should streamline its visa process for workers who must re-enter the U.S. to present testimony or appear at hearings relating to their claims. Finally, reforms to H-2B regulations should support the rights of injured migrants to testify remotely when they are unable to remain in or return to the U.S. to pursue their claims. This could be accomplished by requiring that individual courts or administrative bodies clearly establish a protocol through which workers may testify telephonically or via videoconference.

## International Recommendations

The guestworker regulations fail to adequately protect the rights of migrant workers, and have fostered widespread non-compliance with provisions designed to ensure that migrants earn decent wages under decent working conditions. The following are applicable provisions and processes of international law that may be utilized by worker advocates, lawmakers, and members of the human rights community to address concerns raised in this report.

**1. Urge the U.S. government to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.**

Advocacy groups and lawmakers should urge the United States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMW), which seeks to create an understanding of migrant workers' inalienable human rights, and to guarantee that domestic and migrant workers are treated equally. To more comprehensively protect the human rights of guestworkers employed in the U.S., the U.S. government should not only ratify the ICPRMW, but should also integrate its provisions into federal law.

**2. Hold the U.S. government accountable for violations of relevant norms in international, regional, and multilateral treaties ratified by the U.S.**

The U.S. has ratified the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to be free from forced labor, the right to liberty and freedom of movement, and the right to due process and equal access to the courts to all persons within a signatory nation's territory, regardless of their immigration or documentation status. Although courts in the United States have held that private individuals cannot directly bring claims to enforce rights provided by the ICCPR,<sup>246</sup> an international Human Rights Committee evaluates periodic reports submitted by signatory nations assessing whether those rights are generally respected. Guestworker abuses should be highlighted in these reports, with particular focus on the regulatory failure to provide visas to workers who wish to pursue legitimate claims arising from their employment in the United States in U.S. courts. This deficiency effectively deprives workers of their right of equal access to justice.

The U.S. has also ratified the Organization of American States (OAS) Charter, which requires signatories to devote their "utmost efforts" towards providing "Fair wages, employment conditions and acceptable working conditions for all."<sup>247</sup> Individuals may submit complaints about violations of rights provided by OAS governing documents directly to the Inter-American Commission on Human Rights (IACHR). Migrant worker advocates should utilize this procedure to expose both the failure of guestworker regulations to effectively

ensure that migrants are provided with fair wages or working conditions, and the systematic exploitation of migrant and immigrant labor that has been institutionalized in the United States.

Finally, the U.S. and Mexico are signatories to the North American Agreement on Labor Cooperation (NAALC), which supplemented the North American Free Trade Agreement (NAFTA). Signatories to NAALC are bound to guarantee that individuals with legally recognized interests under each nation's laws are provided with an adjudication of their claims.<sup>248</sup> Signatories to NAALC may initiate enforcement proceedings against another signatory, that may result in the imposition of sanctions on a nation that fails to resolve violations of binding NAALC provisions. The NAALC also obliges the U.S. to enforce its own health and safety laws through worksite inspections and other means.<sup>249</sup> Migrant advocates should encourage the Mexican National Administrative Office – which oversees compliance with NAALC provisions – to bring an enforcement proceeding based on the systemic failure of the U.S. guestworker program to ensure that Mexican guestworkers are provided with these essential labor protections. Further, advocates should urge federal and state agencies to ensure adequate health and safety oversight for migrant workers who are often required to live in unsanitary housing and are not provided with proper safety equipment.



# HOW YOU CAN HELP

Concerned citizens can help H-2B workers on the Eastern Shore of Maryland or in their own communities by donating time or money to organizations dedicated to assisting migrant workers.

Lawyers, law students, and individuals interested in working as outreach volunteers should contact CDM for information about working in CDM's Mexico offices in Zacatecas or Oaxaca, where they can help educate migrants about their U.S. workplace rights, inform migrants of their right to join pending class actions or claim unpaid wages pursuant to settlement distributions, and help connect migrants with U.S.-based advocates and pursue claims in U.S. courts. Lawyers, law students, and individuals with relevant backgrounds who are interested in working to improve guestworker policies should also consider volunteering in CDM's U.S. office, located in the Washington, D.C. metropolitan area, where they can help ensure that migrant workers' voices are heard and counted as legislators continue to debate whether to expand and reform guestworker visa processes, policies, and regulations.

Doctors, nurses, and other medical personnel should contact Doctors Without Borders for information on how to provide volunteer medical services to migrants who suffer medical injuries while crossing borders in search of a better life and more lucrative employment opportunities. Medical volunteers can also contact local migrant workers' rights centers to inquire about ways in which they can provide assistance to migrants who are injured on worksites in the United States. There are ways for others to get involved in assisting migrant workers, as well. Community or religious leaders and those who have ties to churches or access to large meeting halls should inquire about ways to donate these spaces for meetings at which migrants can learn about their labor and other human rights.

Anyone who speaks some Spanish can volunteer with local migrant workers' rights centers to locate migrant worksites or can volunteer to conduct outreach and education to workers, assist workers with communicating needs, requests, or concerns to their employers and supervisors, and can help identify labor rights violations and connect workers with advocates in their area. One might also contact a local migrant workers' rights center or legal services organization to discuss other innovative ways in which she can most effectively donate her time, services or money. Those who live in communities where many migrants work, and are unable to identify a local advocacy organization working to assist migrants and protect their rights, might consider starting a migrant workers' rights center in that region!

Individuals who live on the Eastern Shore of Maryland can provide much-needed help to the women crab workers and other migrants in the region. For instance, one might call her local housing authority to report possible building code violations after noticing that workers are living in substandard housing. Since many women crab workers work in smaller towns, citizens have the power to organize community campaigns to pressure crab companies to pay fair wages and treat their workers with respect.

As consumers, individuals can speak with their wallets and make conscientious choices, investigating employers and purchasing crabmeat only from companies that strive to provide their workers with fair pay, decent housing and dignified working conditions. Citizens of every state are encouraged to write and phone their elected officials to let them know that migrants' rights are important to their constituents and to urge legislators to protect workers' rights by working to enact unambiguous laws guaranteeing fair wages and fair treatment for migrants, and ensuring that those laws are effectively enforced.

## METHODOLOGY

This report is based on qualitative research conducted in Mexico and on the Eastern Shore of Maryland. The authors adopted this approach in order to acquire a deep understanding of the lives of Mexican migrant worker women who are employed in the Maryland crab industry. Specifically, the authors hoped to learn more about the forces and conditions that give rise to migration; the process of obtaining documentation and traveling to the United States; and the experience living and working on the Eastern Shore of Maryland. In devising the specific research methodology for this report, the authors placed central importance on maintaining the anonymity of the research subjects. Considerable care has gone into ensuring that the safety and livelihood of workers involved in the Maryland crab industry will not be jeopardized by this report.

The primary research component of the report consists of direct interviews with H-2B workers in the Maryland crab industry. By speaking with temporary workers directly, the authors obtained first-hand accounts of the hardships and issues prevalent in the H-2B recruitment process and during the period of employment. Throughout 2008 and 2009, the authors undertook several research trips in both Mexico and the U.S., speaking with scores of H-2B workers and collecting over 40 formal worker interviews. During these research trips, the authors interviewed current and former crab company employees, as well as community members familiar with the industry.<sup>250</sup>

During the crab industry off-season, the authors interviewed former, current, and potential workers in their hometowns in Mexico. These interviews provided particular insight into the recruitment and application process for workers seeking H-2B visas. The authors also interviewed temporary workers on the Eastern Shore of Maryland, while they were working for their H-2B employers. The women interviewed on the Eastern Shore explained in detail the type of work they performed, the working conditions at their places of employment, any hardships and difficulties they faced, and their experiences with employers and community members.

The authors anticipated that many workers would be reluctant to participate in interviews for fear of

retaliation from their employers or from other individuals involved in the migrant worker recruitment process. For this reason, the authors devised and utilized a bilingual consent form consistent with the human subjects research protocols of American University. The consent form explained the purpose of the interviews, as well as the risks and benefits of participation. The form also assured interviewees that no personal identifying information, including name and address, would be disclosed to any third party or used in any publication. Interviewers presented the consent forms in Spanish, and obtained a signature on the form before proceeding to conduct a formal interview.

After obtaining the workers' informed consent, the authors conducted interviews in Spanish.<sup>251</sup> All of the interviewers are fluent or highly proficient Spanish speakers. While the interviewers attempted to ascertain details about many aspects of the women's experiences, the surveys could not possibly capture *all* aspects of the migration experience. The surveys were offered in both long and short forms. The long-form surveys allowed participating women to provide more detailed accounts of their experiences obtaining H-2B visas and working in Maryland. Though substantial portions of the qualitative data contained in this report originate from the long-form surveys, all of the aggregate data used to explain trends come from questions common to both the short- and long-form surveys.

The authors collected interview data that provided a representative sample of workers on the Eastern Shore, considering factors such as age, years of experience, and company employment. Data analysis, particularly, was performed with PASW Statistics 18 (formerly SPSS statistics) software, and its survey population is limited to 42 of the interviews conducted by student attorneys and CDM representatives.

The authors did not provide any incentives to any of the women interviewed. All the women who participated did so voluntarily. The women represent a cross-section of the crab companies located on the Eastern Shore and represent a significant sample of the migrant women employed in the industry. The authors recognize the potential for response bias in this context. While it may have occurred in some instances, the authors believe that the most vulnerable and most isolated women were unlikely to have participated in the interviews.

Personal accounts revealed in this report remain anonymous. Consequently, when referring to the experiences of individual workers, the authors use pseudonyms. Likewise, each worker interview has been assigned a number; interviews are therefore cited by number and date, and not by worker name. A few women have given informed consent to disclose their identities along with their stories. The report also occasionally incorporates some of the first-hand observations of the authors. The primary research for this report is supplemented with research from a range of secondary sources.

# APPENDIX A: SAMPLE INTERVIEW IN ENGLISH

Name: \_\_\_\_\_

Age/Date of Birth \_\_\_\_\_

Address in Mexico (include state and region) \_\_\_\_\_

\_\_\_\_\_

Where are your co-workers from? \_\_\_\_\_

Address in the U.S.: \_\_\_\_\_

\_\_\_\_\_

Telephone number: \_\_\_\_\_

Name of the company that sponsored your visa: \_\_\_\_\_

All of the crab season(s) you have worked: \_\_\_\_\_

Type of work did you perform in the United States? \_\_\_\_\_

Do you want to come back next year (2010)? \_\_\_\_\_

How did you find out about the job with the company? \_\_\_\_\_

\_\_\_\_\_

Are any of your family members that work in the same company (or other companies)? \_\_\_\_\_

\_\_\_\_\_

What type of information did you receive before you arrived the first time? \_\_\_\_\_

\_\_\_\_\_

From whom did you receive this information? \_\_\_\_\_

What kind of transportation did you use to get to the United States? \_\_\_\_\_

\_\_\_\_\_

Will you return the same way? \_\_\_\_\_

Who paid for all the costs to come to the United States? \_\_\_\_\_

Can you list all of the housing where you have lived in the United States? \_\_\_\_\_

\_\_\_\_\_

How much and in what manner did you pay your housing in the United States? \_\_\_\_\_

\_\_\_\_\_

Describe your living conditions. \_\_\_\_\_

\_\_\_\_\_

Do you have a key to your housing in the United States? \_\_\_\_\_

Is there a difference between the description you received in Mexico and the actual work you performed? \_\_\_\_\_

How many hours did you work per day and during the week (including the time that you started working)? \_\_\_\_\_

How and in what form were you paid? \_\_\_\_\_

When you get paid (how frequently and what day of the week)? \_\_\_\_\_

Do you get paid overtime? \_\_\_\_\_

Did the company deduct anything from your wage? Taxes? Housing? Other costs? \_\_\_\_\_

Describe all of the equipment/Tools that you used to perform your job. \_\_\_\_\_

Did the company give you all of the equipment/tools or did you have to pay for the equipment/tools? \_\_\_\_\_

How did you learn to perform your job or use the equipment/tools? \_\_\_\_\_

Did you suffer any injuries while working (hands, fingers, etc.)? \_\_\_\_\_

How do you communicate with your supervisor? \_\_\_\_\_

If you had any complaints about your job or housing, are you able to talk to your supervisor? \_\_\_\_\_

Are there any differences in the work/treatment of men and women? \_\_\_\_\_

Have you hear of any retaliation against employees who have had complaints against the company? \_\_\_\_\_

Are there any other people who would be willing to speak to us? \_\_\_\_\_

## APPENDIX B: SAMPLE INTERVIEW IN SPANISH

Nombre: \_\_\_\_\_

Edad/Fecha de Nacimiento \_\_\_\_\_

Dirección en México (incluyendo estado y región) \_\_\_\_\_

¿De dónde son sus compañeros de trabajo? \_\_\_\_\_

Dirección en EE.UU.: \_\_\_\_\_

Numero de Teléfono: \_\_\_\_\_

Nombre de compañía(s) que ha(n) patrocinado la visa: \_\_\_\_\_

Todas las temporadas que trabajo: \_\_\_\_\_

Tipo de trabajo que ha realizado en los EE.UU. \_\_\_\_\_

¿Quiere volver a trabajar el año que viene (2010)? \_\_\_\_\_

¿Cómo se enteró del trabajo con la compañía? \_\_\_\_\_

¿Hay miembros de su familia/parientes que trabajan para la misma compañía (u otras compañías de jaiba)? \_\_\_\_\_

¿Que tipo de información recibió sobre el trabajo antes de llegar al trabajo la primera vez? \_\_\_\_\_

¿De quien recibió esta información esta información? \_\_\_\_\_

¿Que tipo de transporte usó para llegar a los EE.UU.? \_\_\_\_\_

¿Regresa de la misma manera? \_\_\_\_\_

¿Quien pagó los costos para llegar a los EE.UU.? \_\_\_\_\_

¿Cuanto pagó para llegar a los EE.UU.? \_\_\_\_\_

¿Puede dar una lista de todas las viviendas en los EE.UU. donde ha vivido? \_\_\_\_\_

¿Cómo y cuanto ha pagado por su vivienda aquí en los EE.UU.? \_\_\_\_\_

Describe las condiciones de su vivienda. \_\_\_\_\_

¿Tiene una llave para su vivienda en los EE.UU.? \_\_\_\_\_

¿Que diferencias hay entre la descripción del trabajo que recibió en México y su trabajo actual? \_\_\_\_\_

¿Cuantas horas por día y por semana trabaja (incluyendo la hora que comienza el trabajo)? \_\_\_\_\_

¿Cuanto y cómo fue pagado? \_\_\_\_\_

¿Cuando recibe su pago (con que frecuencia, y en que día de semana)? \_\_\_\_\_

¿Le pagan tiempo extra? \_\_\_\_\_

¿La compañía le ha descontado algo del pago? ¿Taxes/impuestos? ¿Vivienda? \_\_\_\_\_

¿Otros gastos? \_\_\_\_\_

Describe todo el equipo/herramientas que usa para realizar su trabajo. \_\_\_\_\_

¿La compañía le dio el equipo/herramientas o tiene que pagar para este equipo/herramientas? \_\_\_\_\_

¿Como aprendió realizar el trabajo y usar el equipo/herramientas? \_\_\_\_\_

¿Sufrió alguna herida en el trabajo (manos, dedos, etc.) \_\_\_\_\_

¿Como te comunicas con su supervisor? \_\_\_\_\_

¿Si tuvo una queja sobre las condiciones del trabajo o vivienda, podría hablar con su supervisor? \_\_\_\_\_

¿Que diferencias hay en el trabajo/tratamiento entre las mujeres y hombre? \_\_\_\_\_

¿Ha escuchado algo sobre represalias contra empleadores quienes han tenido quejas contra la compañía? \_\_\_\_\_

¿Hay otras personas que estarían dispuestas a hablar con nosotros? \_\_\_\_\_





# Endnotes

- <sup>1</sup> Interview 42 (Nov. 20, 2009).
- <sup>2</sup> 20 C.F.R. § 655.1 *et seq.* (2010).
- <sup>3</sup> David Griffith, *New Immigrants in an Old Industry: Mexican H-2B Workers in the Mid-Atlantic Blue Crab Processing Industry*, 3 CHANGING FACE (1997), available at [http://migration.ucdavis.edu/cf/more.php?id=148\\_0\\_2\\_0](http://migration.ucdavis.edu/cf/more.php?id=148_0_2_0).
- <sup>4</sup> See DOUGLAS W. LIPTON, AN ECONOMIC ANALYSIS OF GUESTWORKERS IN MARYLAND'S BLUE CRAB INDUSTRY (2008), [http://www.mdsg.umd.edu/members/jessica/images/Crab\\_Brief\\_2008\\_01.pdf](http://www.mdsg.umd.edu/members/jessica/images/Crab_Brief_2008_01.pdf).
- <sup>5</sup> See 20 C.F.R. § 655.35 (2009).
- <sup>6</sup> 20 C.F.R. § 655.22(g)(2) (2010).
- <sup>7</sup> Interview 8 (Feb. 7, 2009); Interview 25 (Aug. 10, 2009).
- <sup>8</sup> Interview 23 (Aug. 10, 2009); Interview 24 (Aug. 10, 2009); Interview 25 (Aug. 10, 2009); Interview 27 (Aug. 23, 2009); Interview 28 (Aug. 23, 2009); Interview 30 (Oct. 10, 2009); Interview 32 (Oct. 10, 2009).
- <sup>9</sup> Interview 33 (Oct. 9, 2009).
- <sup>10</sup> Ctr. for Disease Control & Prevention, *Vibrio Vulnificus*, <http://www.cdc.gov/nczved/divisions/dfbmd/diseases/vibriov/> (last visited May 21, 2010).
- <sup>11</sup> *Id.*
- <sup>12</sup> Interview 22 (Aug. 9, 2009); Interview 40 (Oct. 10, 2009).
- <sup>13</sup> Interview 11 (Feb. 7, 2009).
- <sup>14</sup> Interview 1 (Feb. 1, 2009); Interview 3 (Feb. 6, 2009).
- <sup>15</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (2010).
- <sup>16</sup> Interview 3 (Feb. 6, 2009); Interview 5 (Feb. 7, 2009).
- <sup>17</sup> Interview 11 (Feb. 7, 2009).
- <sup>18</sup> Interview with Daniela Dwyer, Attorney, Migrant Farmworker Justice Project, Florida Legal Services, Inc. (Apr. 28, 2010).
- <sup>19</sup> H-2B regulations provide that "(t)he temporary or permanent nature of the services or labor described on the approved temporary labor certification are subject to review by USCIS. This classification requires a temporary labor certification issued by the Secretary (of Labor) . . . prior to the filing of a petition with USCIS." 8 C.F.R. § 214.2(h)(1)(ii)(D) (2009). The determination of what constitutes temporary labor is not made on whether the industry in which the guestworkers are going to work is temporary by nature. What must be temporary is "the petitioner's need for the duties to be performed by the employee(s)." 8 C.F.R. §§ 214.2(h)(6)(ii)(A), (B) (2009). The regulations explain that, "generally, that period of time will be limited to one year or less, but in the case of a one-time event could last up to 3 years." 8 C.F.R. § 214.2(h)(6)(ii)(B) (2009).
- <sup>20</sup> 8 C.F.R. § 214.2(h)(2)(i)(D) (2009) (noting that if an employee wishes to change employers, the prospective employer must file a new petition). The employee may not begin work until the petition is approved. *Id.*
- <sup>21</sup> See, e.g., U.S. National Labor Relations Board Charge Against TexaScapes Landscaping (July 14, 2008) (on file with authors) (describing the retaliation charge leveled against employer by four H-2B workers who alleged they were threatened with discharge for participating in a protected, concerted activity). The NLRB issued a complaint against TexaScapes, which resulted in a favorable settlement for the four workers, who had united in protest against a lack of breaks while working in the summer heat. See also Victoria Gavito, Remarks at the AFL-CIO Lawyers Coordinating Committee Conference, Worker Justice Without Borders: Transnational Representation of Migrant Workers in the U.S. Workplace (May 2009) (on file with authors) (describing an NLRB charge filed on behalf of H-2B workers who experienced retaliation); David Bacon, Guestworkers Fired After Protesting 'Slave' Conditions, NEW AMERICA MEDIA, Mar. 13, 2007, [http://news.newamericamedia.org/news/view\\_article.html?article\\_id=4be58daa34f9551a19abcd88608fa0c0](http://news.newamericamedia.org/news/view_article.html?article_id=4be58daa34f9551a19abcd88608fa0c0) (describing the experience of former H-2B guestworker from India who paid \$35 per day to live in small, overcrowded barracks, and who was allegedly fired for attending an organizing meeting with other workers).
- <sup>22</sup> 8 C.F.R. § 214.2(h)(2)(i)(D) (2009). A worker may not independently change employers; she must find a new employer, at which point, her prospective employer must file a new certification describing the need for this worker and subsequently have it approved. *Id.*
- <sup>23</sup> See, e.g., H-2B Workforce Coalition, <http://www.h2bworkforcecoalition.com/index.asp> (last visited May 24, 2010). The H-2B Workforce Coalition is a "consortium of various industry organizations" including, for example, the National Fisheries Institute and the National Roofing Contractors Association, which work together to ensure that "American small and seasonal employers have access to legal short-term temporary workers during peak business periods." *Id.* The Coalition's website provides individuals with sample letters to submit to congressional representatives and to newspapers. See H-2B Workforce Coalition, <http://www.h2bworkforcecoalition.com/action.asp> (last visited May 24, 2010). See also Save Small Business, <http://www.savesmallbusiness.org/index.html> (last visited May 25, 2010) (Maryland-based organization that promotes the H-2B visa program by, among other things, creating downloadable lobbying materials for individuals interested in increasing the number of available visas); PLANET Professional Landcare Network, [Picked Apart: The Hidden Struggles Of Migrant Worker Women In The Maryland Crab Industry](http://www.</a></p></div><div data-bbox=)

landcarenetwork.org/cms/legislation/alert.html (last visited May 24, 2010). (encouraging members to participate in the network's annual Legislative Day on Capitol Hill on July 19-20, 2010, during which members will focus on the H-2B visa program as a part of Comprehensive Immigration Reform).

<sup>24</sup> Immigration Reform and Control Act (IRCA) of 1986, Pub. L. No. 99 to 603, 100 Stat. 3359 (1986) (the text of IRCA can be accessed at HYPERLINK "http://www.uscis.gov" www.uscis.gov, under "Public Laws Amending the INA")

<sup>25</sup> 8 C.F.R. § 214.2(h)(6)(i)(A) (2009).

<sup>26</sup> See Farmworker Justice, The H-2B Guestworker Program, [http://www.fwjjustice.org/Immigration\\_Labor/H-2B.htm](http://www.fwjjustice.org/Immigration_Labor/H-2B.htm) (last visited May 25, 2010); Foreign Labor Certification Data Center, Online Wage Library, <http://www.flcdatadcenter.com/CaseH2B.aspx> (last visited May, 25, 2010) (reporting that in 2009, the Department of Labor approved the labor certifications for 73 potential H-2B construction workers in Maryland).

<sup>27</sup> See, e.g., SOUTHERN POVERTY LAW CENTER, BENEATH THE PINES (2006), <http://www.splcenter.org/sites/default/files/downloads/beneaththepines.pdf> (describing various forms of abuse against H-2B forestry workers, and recommending enhanced government oversight); SOUTHERN POVERTY LAW CENTER, BROKEN LEVEES, BROKEN PROMISES (2006), <http://www.splcenter.org/sites/default/files/downloads/brokenlevees.pdf> (offering worker narratives as evidence of systemic exploitation of migrant workers in New Orleans, and calling for action by local, state, and federal government officials).

<sup>28</sup> S. 352, 109th Cong. (2005). The SOSSB Act amended the Immigration and Nationality Act by exempting from the annual cap workers granted an H-2B visa during any of the 3 years prior to the approval of the current H-2B application. *Id.* The Act divided this annual cap of 66,000 into two halves. For the first half of the fiscal year – for employment beginning October 1 and ending March 3 – 33,000 H-2B visas can be granted. *Id.* The remaining visas are granted for employment during the second half of the fiscal year – between April 1 and September 30. *Id.* The SOSSB Act of 2005 returning seasonal workers exemption "was not made permanent in the 2005 bill" and therefore requires that it be introduced each subsequent year. Press Release, Senator Barbara Mikulski, Congress to Bush: H2B Employers Need Your Help (Jan. 25, 2008), *available at* <http://mikulski.senate.gov/record.cfm?id=291215>. The 2007 Department of Defense Authorization Bill included a one-year extension, which expired on September 30, 2007. *Id.* Senators Mikulski and Specter introduced the Save Our Small and Seasonal Business Act of 2009, which includes a proposition to extend the returning seasonal worker exemption for three years. Press Release Senator Arlen Specter, Mikulski and Specter Introduce Legislation to Protect America's Small, Seasonal Businesses, (Feb. 5, 2009), *available at* [http://specter.senate.gov/public/index.cfm?FuseAction=NewsRoom.NewsReleases&ContentRecord\\_id=48636429-b83e-32e8-a77b-5066d1ca11a5](http://specter.senate.gov/public/index.cfm?FuseAction=NewsRoom.NewsReleases&ContentRecord_id=48636429-b83e-32e8-a77b-5066d1ca11a5).

<sup>29</sup> See U.S. DEPARTMENT OF LABOR, GENERAL ADMINISTRATIVE LETTER I-95 (1994), [http://wdr.doleta.gov/directives/attach/GAL1-95\\_attach.pdf](http://wdr.doleta.gov/directives/attach/GAL1-95_attach.pdf) (outlining labor certification process for H-2B workers).

<sup>30</sup> 20 C.F.R. § 655.21 (2010) (requiring employers to supply supporting evidence for temporary need, including self-attestations).

<sup>31</sup> See generally *Rivera, et al., v. The Brickman Group, Ltd.*, 2008 WL 81570, \*1 (E.D. Pa. 2008) (prohibiting travel and visa costs from reducing first week's wages below FLSA minimum); *De Leon-Granados v. Eller & Sons Trees, Inc.*, 581 F. Supp. 2d 1295 (N.D. Ga. 2008) (prohibiting travel and visa costs from reducing wages below the minimum wage due H-2B workers under the FLSA and the AWP); see also *Arriaga v. Fla. Pacific Farms, L.L.C.*, 305 F.3d 1228, 1237-44 (11th Cir. 2002) (prohibiting employer from deducting visa and transportation expenses from H-2A workers' wages, thereby reducing wages below federal minimum).

<sup>32</sup> As of the report's publication date, litigation in this case is still pending.

<sup>33</sup> See H-2B Final Rules and Regulations, 73 Fed. Reg. 78,022 (Dec. 19, 2008) (to be codified at 20 C.F.R. pt. 655) (explaining that as part of recruiting domestic workers, an employer must test the U.S. labor market appropriately by obtaining the prevailing wage for that particular industry from the Chicago National Processing Center).

<sup>34</sup> See *id.*; see also 20 C.F.R. § 655.20 (2010).

<sup>35</sup> See H-2B Final Rules and Regulations, 73 Fed. Reg. 78,022-23 (Dec. 19, 2008) (to be codified at 20 C.F.R. pt. 655) ("Consistent with the NPRM, this Final Rule requires the employer to attest to and enumerate its recruitment efforts as part of the application but does not require the employer to submit supporting documentation with its application. To ensure the integrity of the process, the Final Rule requires the employer to retain documentation of its recruitment, as well as other documentation specified in the regulations, for 3 years from the date of certification. The employer will be required to provide this documentation in response to a request for additional information by the Certifying Officer (CO) before certification or by ETA pursuant to an audit or in the course of an investigation by the Wage and Hour Division

(WHD) after a determination on the application has been issued.”)

<sup>36</sup> *Id.* at 78,035.

<sup>37</sup> 8 C.F.R. § 214.2(h)(2)(i)(A) (2009). The employer must specify the total number of employees for whom he or she is applying. In applying for a temporary guestworker visa, the nationalities of the potential temporary workers need to appear on the petitions filed by the employer. 8 C.F.R. 214.2(h)(2)(iii) (2009). While the employer needs to list only the names of the potential workers who are in the U.S., USCIS can require the names of potential foreign workers in order to determine whether they are eligible for H-2B non-immigrant status. *Id.*

<sup>38</sup> 8 C.F.R. §§ 214.2(h)(2)(iii), 214.2(h)(6)(ii)(B) (2009).

<sup>39</sup> See 20 C.F.R. § 655.35 (2009) (explaining that an H-2B worker may not remain in the U.S. beyond separation from employment, absent an extension or DHS grace period); see also 20 C.F.R. §655.22(f) (2009) (“Upon the separation from employment of H-2B worker(s) employed under the labor certification application, if such separation occurs prior to the end date of the employment specified in the application, the employer will notify the Department and DHS in writing (or any other method specified by the Department or DHS in the Federal Register or the Code of Federal Regulations) of the separation from employment not later than 2 work days after such separation is discovered by the employer.”). *But see* 8 C.F.R. § 214.2(h)(2)(i)(D) (2009) (in order for an H-2B worker to change employers, her new employer must file an I-129 and USCIS must approve the new petition). Practically speaking, the new employer must therefore establish all the requirements that the original petitioning employer did. *Id.* Until the petition is approved, the H-2B worker may not begin work. *Id.*

<sup>40</sup> At a minimum, however, the regulations clarify that recruitment expenses are to be borne by the employer. See H-2B Final Rules and Regulations, 73

Fed. Reg. 78,037 (Dec. 19, 2008) (to be codified at 20 C.F.R. pt. 655.22(g)) (“Examples of exploitation of foreign workers, who in some instances have been required to give recruiters thousands of dollars to secure a job, have been widely reported. The Department is concerned that workers who heavily indebted themselves to secure a place in the H-2B program may be subject to exploitation in ways that would adversely affect the wages and working conditions of U.S. workers by creating conditions akin to indentured servitude, driving down wages and working conditions for all workers, foreign and domestic. We believe that requiring employers to incur the costs of recruitment is reasonable, even when taking place in a foreign country.”)

<sup>41</sup> See, e.g., SOUTHERN POVERTY LAW CENTER, CLOSE TO SLAVERY: GUESTWORKER PROGRAMS IN THE UNITED STATES 9-11, 32-33 (2007), [http://www.splcenter.org/sites/default/files/downloads/Close\\_to\\_Slavery.pdf](http://www.splcenter.org/sites/default/files/downloads/Close_to_Slavery.pdf) (hereinafter CLOSE TO SLAVERY); Interview 47 (Nov. 20, 2009) (describing nepotism in the recruitment process).

<sup>42</sup> See 8 C.F.R. § 214.2(h)(2)(i)(D) (2009) (an H-2B worker may not work for another employer until the DOL approves the prospective new employer’s I-129 petition, thereby allowing a formal change of employers); 20 C.F.R. § 655.22(f) (2010) (obligating employers to report a worker’s separation from employment to the DHS within two working days).

<sup>43</sup> See 20 C.F.R. § 655.22(f) (2009); see also 8 C.F.R. § 214.2(h)(17)(iii)(C) (2009) (explaining that a worker on an “H” visa is not subject to deportation for participating in a strike or other labor dispute, but is subject to deportation if a worker remains in the country after the end of her authorization).

<sup>44</sup> See *Recinos-Recinos, et al., v. Express Forestry, Inc., et al.*, 2006 WL 2349459 (E.D. La. 2006) (granting protective order stopping defendant’s campaign of threats and intimidation and against plaintiffs’ family members in Guatemala).

<sup>45</sup> See Interview 43 (Nov. 20, 2009); CLOSE TO SLAVERY, *supra* note 41, at 16.

<sup>46</sup> See Mary Lee Hall, Essay, *Defending the Rights of H-2A Farmworkers*, 27 N.C. J. INT’L L. & COM. REG. 521, 527 (2002).

<sup>47</sup> See generally 20 C.F.R. § 655.122 (2010) (describing the baseline protections that employers must offer to H-2A workers). See also 20 C.F.R. § 655.103 (2010) (defining the adverse effect wage rate as the “the annual weighted average hourly wage for field and livestock workers (combined) in the States or regions as published annually by the U.S. Department of Agriculture (USDA) based on its quarterly wage survey”); 20 C.F.R. §655.120(a) (2010) (explaining that to comply with its obligation under §655.122(l), an employer must offer, advertise in its recruitment, and pay a wage that is the highest of the AEWR, the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment).

<sup>48</sup> See CLOSE TO SLAVERY, *supra* note 41, at 8.

<sup>49</sup> See Legal Services Corporation, What is LSC?, <http://www.lsc.gov/about/lsc.php> (last visited Mar. 15, 2010) (“Established in 1974, LSC operates as an independent 501(c)(3) nonprofit corporation that promotes equal access to justice and provides grants for high-quality civil legal assistance to low-income Americans. LSC distributes more than 95 percent of its total funding to 136 independent nonprofit legal aid programs with more than 900 offices that provide legal assistance to low-income individuals and families throughout the nation.”). See also Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504, 110 Stat. 1321, 1350 § 504(a)(11) (1996) (listing the categories of non-citizens who may receive LSC services, but not including H-2B

workers); Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, § 540, 121 Stat. 1844, 1934 § 504(a)(11)(E) (2008) (granting LSC-funded nonprofit legal aid programs the ability to assist H-2B forestry workers).

<sup>50</sup> See Interview 4 (Feb. 6, 2009), CLOSE TO SLAVERY, *supra* note 41, at 31.

<sup>51</sup> See generally LIPTON, *supra* note 4.

<sup>52</sup> Maryland at a Glance: Seafood Production, <http://www.msa.md.gov/msa/mdmanual/01glance/html/seafoodp.html> (last visited Mar. 10, 2010).

<sup>53</sup> LIPTON, *supra* note 4, at 1.

<sup>54</sup> *Id.*

<sup>55</sup> Press Release, Senator Barbara Mikulski, Mikulski Announces Visa Relief for Maryland Crab Industry (Aug. 6, 2009), available at <http://mikulski.senate.gov/record.cfm?id=316833>.

<sup>56</sup> Griffith, *supra* note 3.

<sup>57</sup> *Id.* Griffith alleges that the racism and poverty, which rendered African American communities marginalized in the rural South and the global decline in “subsistence security” has led more families in this region to rely on “multiple livelihoods.” *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Stephanie Desmon, *Shortage Of Pickers Has Crab Houses Pondering Hiring State Prisoners*, BALT. SUN, Apr. 16, 2009, at 1A.

<sup>60</sup> Griffith, *supra* note 3.

<sup>61</sup> *Id.*

<sup>62</sup> See e.g., Superior Staff Solutions, <http://www.superiorstaffsolutions.com/h2b.html> (last visited Apr. 29, 2010) (explaining that the company “will bring in the best, most productive and reliable seasonal workers possible”); Mas Labor, <http://www.maslabor.com/pages/h2Workers.html> (last visited Apr. 29, 2010) (describing an employer’s potential experience with H-2B workers as follows: “You’ll

never wonder if your workers are going to show up on Monday morning and make it through a full work week. MAS H2 workers are dedicated to their families, their work and their employers. They’ll be there, ready to work hard for you.”); USAMex Ltd., <http://www.mexican-workers.com/mexican-workers.htm> (last visited Apr. 30, 2010) (describing Mexican workers as “happy agreeable people who we like a lot”).

<sup>63</sup> Maryland at a Glance: Seafood Production, <http://www.msa.md.gov/msa/mdmanual/01glance/html/seafoodp.html> (last visited Mar. 10, 2010).

<sup>64</sup> Chesapeake Bay Program: A Watershed Partnership, Blue Crab Commercial Harvest, [http://www.chesapeakebay.net/status\\_crab-harvest.aspx?menuItem=19818](http://www.chesapeakebay.net/status_crab-harvest.aspx?menuItem=19818) (last visited May 25, 2010).

<sup>65</sup> Maryland Department of Natural Resources, InFocus: Blue Crab, [http://www.dnr.state.md.us/dnrnews/infocus/blue\\_crab.asp](http://www.dnr.state.md.us/dnrnews/infocus/blue_crab.asp) (last visited Mar. 15, 2010).

<sup>66</sup> Interview with Linn Segley, Maryland Dep’t of Natural Resources (May 18, 2010).

<sup>67</sup> See Jim Casey, *A Short History of Commercial Fishing in the Chesapeake Region*, <http://www.dnr.state.md.us/fisheries/featurestory.html>.

<sup>68</sup> Maryland Dep’t of Agriculture, Seafood and Aqua Culture: Festivals and Fee Fishing, <http://www.marylandseafood.org/festivals> (last visited Apr. 29, 2010).

<sup>69</sup> See Press Release, Governor Martin O’Malley, Governor Martin O’Malley Announces Chesapeake Bay Blue Crab Population is at its Highest Level Since 1997 (Apr. 14, 2010), available at <http://www.gov.state.md.us/press-releases/100414.asp> (applauding the coordination between Maryland and Virginia in protecting the blue crabs, and estimating the blue crab population to be approximately 658 million, the highest since 1997).

<sup>70</sup> See Chesapeake Bay Program: A Watershed Partnership, Blue Crab Harvest, <http://www.chesapeakebay.net/crabs.aspx?menuItem=14700> (last visited May 25, 2010) (reporting that the “blue crab population has fallen nearly 70 percent since 1990”); HOWARD R. ERNST, CHESAPEAKE BAY BLUE: SCIENCE, POLITICS, AND THE STRUGGLE TO SAVE THE BAY 94-96 (2003) (attributing the decline in the blue crab population to increased fishing, irregular weather patterns, and habitat loss due to poor water quality); Maryland Department of Natural Resources, InFocus: Blue Crab, [http://www.dnr.state.md.us/dnrnews/infocus/blue\\_crab.asp](http://www.dnr.state.md.us/dnrnews/infocus/blue_crab.asp) (last visited May 25, 2010) (confirming the decline in the blue crab population).

<sup>71</sup> Gady A. Epstein and Stephanie Desmon, *Crab Factory*, BALT. SUN, Apr. 30, 2006, at 1A (describing the growth of Southeast Asian crab harvesting and its effect on the Maryland crab industry).

<sup>72</sup> Phillip Martin, *Guestworkers in U.S. Agriculture*, 7 CHANGING FACE (2001) available at [http://migration.ucdavis.edu/cf/more.php?id=39\\_0\\_2\\_0](http://migration.ucdavis.edu/cf/more.php?id=39_0_2_0).

<sup>73</sup> PHILLIP L. MARTIN, PROMISE UNFULFILLED: UNIONS, IMMIGRATIONS AND THE FARM WORKERS 47 (2003).

<sup>74</sup> See Global Workers Justice Alliance, Migration Data and Labor Rights, [http://www.globalworkers.org/migrationdata\\_MX.html](http://www.globalworkers.org/migrationdata_MX.html) (last visited Mar. 15, 2010) (summarizing H-2A and H-2B visa admissions between 1998 and 2006); see also RANDALL MONGER & MACREADIE BARR, NONIMMIGRANT ADMISSIONS TO THE UNITED STATES: 2008 4(2009), [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ni\\_fr\\_2008.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ni_fr_2008.pdf) (providing data on H-2B admissions between 2006 and 2008); MACREADIE BARR, KELLY JEFFERYS, & RANDALL MONGER, NONIMMIGRANT ADMISSIONS TO THE UNITED STATES: 2007 4 (2008), [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ni\\_fr\\_2007.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ni_fr_2007.pdf) (providing data on H-2B admissions between 2005 and 2007).

<sup>75</sup> See Instituto Nacional de Estadística y Geografía, <http://dgc-nesyp.inegi.org.mx/cgi-win/bdiyecoy.exe/746?c=12665> (last visited Mar. 15, 2010). The Mexican National Institute for Statistics and Geography has produced a chart indicating income generated from remittances from information gathered by the Bank of Mexico. Remittance income is broken down per month for each year beginning in 2005. *Id.*

<sup>76</sup> Cf. *Caída de Remesas Colapsa Economía Regional*, NTR ZACATECAS, Oct. 13, 2009, available at <http://ntrzacatecas.com/noticias/mexico/2009/10/13/caida-de-remesas-colapsa-economia-regional>. The Zacatecas newspaper, NTR Zacatecas, reported that according to information gathered by the Bank of Mexico, familial remittances dropped drastically in the first quarter of 2009. It further reported that this drop principally affects states like Zacatecas, which consider familial remittances part of its GDP. *Id.*

<sup>77</sup> MAKING THE MOST OF FAMILY REMITTANCES, SECOND REPORT OF THE INTER-AMERICAN DIALOGUE TASK FORCE ON REMITTANCES 14 (2007), [http://www.thedialogue.org/PublicationFiles/family\\_remittances.pdf](http://www.thedialogue.org/PublicationFiles/family_remittances.pdf). According to the report, remittances have become an increasingly important source of investment financing, which has helped reduce the magnitude of debt in Latin America. *Id.*

<sup>78</sup> See EMBASSY OF THE UNITED STATES IN MEXICO, U.S.-MEXICO AT A GLANCE: MEXICO: POVERTY AT A GLANCE (2010), [http://www.usembassy-mexico.gov/pdf/2010\\_Poverty\\_Fact\\_Sheet.pdf](http://www.usembassy-mexico.gov/pdf/2010_Poverty_Fact_Sheet.pdf).

<sup>79</sup> JOHN BURSTEIN, U.S.-MEXICO AGRICULTURAL TRADE AND RURAL POVERTY IN MEXICO 9 (2007), [http://www.wilsoncenter.org/topics/pubs/Mexico\\_Agriculture\\_rpt\\_English1.pdf](http://www.wilsoncenter.org/topics/pubs/Mexico_Agriculture_rpt_English1.pdf).

<sup>80</sup> *Id.* at 11.

<sup>81</sup> *Id.* at 2.

<sup>82</sup> Interview 15 (Aug. 10, 2009).

<sup>83</sup> See TESTIMONY OF SAKET SONI, EXECUTIVE DIR., NEW ORLEANS WORKERS' CTR. FOR RACIAL JUSTICE, BEFORE THE HOUSE SUBCOMM. ON DOMESTIC POLICY, U.S. HOUSE OF REPRESENTATIVES 3 (2009), <http://oversight.house.gov/images/stories/documents/20090423085827.pdf> ("Louisiana real estate agent Matt Redd reinvented himself as a labor broker and went to Mexico shopping for workers. The Department of Labor certified his company, LA Labor, to bring guestworkers from Mexico. Redd recruited economically desperate workers, selling them promises of post-Katrina construction work in New Orleans. He packed our members into vans and brought them instead to a small town about four hours away called Westlake, Louisiana. He confiscated workers' passports to hold them in his employ and leased them out to car washes, garbage disposal companies, restaurants, and other small businesses across Lake Charles, Louisiana. When workers demanded the return of their passports, he repeatedly refused."). See also H-2B Final Rules and Regulations, 73 Fed. Reg. 78,037 (Dec. 19, 2008) (to be codified at 20 C.F.R. pt. 655.22(g)) ("The Department is concerned that workers who heavily indebted themselves to secure a place in the H-2B program may be subject to exploitation in ways that would adversely affect the wages and working conditions of U.S. workers by creating conditions akin to indentured servitude, driving down wages and working conditions for all workers, foreign and domestic.").

<sup>84</sup> 20 C.F.R. § 655.22(g)(2) (2010).

<sup>85</sup> Ley Federal del Trabajo (L.F.T.) (Federal Labor Law), *as amended*, Artículo 28, 1 de abril de 1970 (Mex.).

<sup>86</sup> 8 C.F.R. § 214.2(h)(6)(i)(B)(4) (2009).

<sup>87</sup> H-2B Final Rules and Regulations, 73 Fed. Reg. 78,037 (Dec. 19, 2008) (to be codified at 20 C.F.R. pt. 655.22(g)).

<sup>88</sup> Jorge Fernandez Souza, Magistrate Judge, Professor of Law, and former Dean, Universidad Autónoma

Metropolitana, Mexico, Remarks at the Binational Labor Justice Convening (Oct. 6, 2007) (on file with authors).

<sup>89</sup> Cf. Michael O'Brien, *Guest Worker Woes*, HUMAN RESOURCE EXECUTIVE, Feb. 26, 2010, available at <http://www.hreonline.com/HRE/story.jsp?storyId=341227646>. While explaining potential problems arising from recruiter tactics and promises, O'Brien quotes attorney Scott Cooper with regard to promises made by recruiters to H-2B workers recruited in India to work for Signal International in Louisiana after Hurricane Katrina. *Id.* According to Cooper, "the recruiters and hiring agencies are indeed a very real problem." *Id.* Cooper opined that "it is highly unlikely that [Signal International] would have led the workers into thinking that they were going to get green cards because these are clearly temporary positions . . . and the wait for green cards for 'skilled' workers, such as sheet-metal guys, is worse than the currently projected 20-year wait for visas for bachelor-degree holders from India." *Id.*

<sup>90</sup> Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* (2010); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (2010). See also *Olvera-Morales v. Sterling Onions, Inc.*, 322 F. Supp. 2d 211, 222 (N.D.N.Y. 2004) (denying the hiring agency's motion to dismiss worker's employment discrimination action based on gender, where agency reserved H-2A visa positions, which provide better pay and benefits, for men). *But see* *Reyes-Gaona v. North Carolina Growers' Ass'n*, 250 F.3d 861 (4th Cir. 2001) (holding that the Age Discrimination in Employment Act did not apply to a Mexican national who applied in Mexico for a job in the United States).

<sup>91</sup> See Testimony of Mary Bauer, Dir., Immigrant Justice Project Southern Poverty Law Center before the House Subcomm. on Immigration, Citizenship, Refugees, Border Sec. and Int'l Law, U.S. House of Representatives 85 (2008), <http://judiciary.house.gov/hearings/pdf/Bauer080416.pdf>

(“Many foreign recruiters have very clear rules based on age and gender for workers they will hire. One major Mexican recruiter openly declares that they will not hire anyone over the age of 40. Many other recruiters refuse to hire women for field work.”)

<sup>92</sup> Interview 18 (Aug. 10, 2009).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> See 20 C.F.R. § 655.22(g)(2) (2010); see also 29 C.F.R. §§ 531.35, 36 (2010). Under the Fair Labor Standards Act, pre-employment expenses incurred by workers that are properly business expenses of the employer and primarily for the benefit of the employers are considered “kickbacks” of wages to the employer, and are treated as deductions from the employees’ wages during the first work week. Such deductions must be reimbursed by the employer during the first work week to the extent that they effectively reduce the workers’ weekly wages below the minimum wage. 29 C.F.R. §§ 531.35, 36 (2010); see also Interview 29 (Oct. 10, 2009); Interview 30 (Oct. 10, 2009); Interview 31 (Oct. 10, 2009).

<sup>96</sup> Interview 35 (Oct. 9, 2009).

<sup>97</sup> Interview 25 (Aug. 10, 2009).

<sup>98</sup> Interview 8 (Feb. 7, 2009).

<sup>99</sup> Interview 29 (Oct. 9, 2009).

<sup>100</sup> Interview 46 (Nov. 20, 2009).

<sup>101</sup> See, e.g., Interview 1 (Feb. 1, 2009); Interview 2 (Feb. 5, 2009).

<sup>102</sup> See, e.g., Interview 1 (Feb. 1, 2009); Interview 46 (Nov. 20, 2009).

<sup>103</sup> Interview 5 (Feb. 7, 2009); Interview 10 (Feb. 7, 2009).

<sup>104</sup> *Id.*

<sup>105</sup> Interview 1 (Feb. 1, 2009).

<sup>106</sup> See, e.g., Interview 4 (Feb. 6, 2009); Interview 8 (Feb. 7, 2009).

<sup>107</sup> Interview 33 (Oct. 10, 2009).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Interview 13 (Feb. 7, 2009).

<sup>111</sup> Interview 40 (Oct. 10, 2009).

<sup>112</sup> Interview 32 (Oct. 10, 2009); Interview 33 (Oct. 10, 2009).

<sup>113</sup> *Id.*

<sup>114</sup> Interview 3 (Feb. 6, 2009); Interview 13 (Feb. 7, 2009).

<sup>115</sup> See CLOSE TO SLAVERY, *supra* note 41, at 23-24 (illustrating wage violations that often go unaddressed, in part because of the LSC restrictions).

<sup>116</sup> See, e.g., Interview 3 (Feb. 6, 2009); Interview 40 (Oct. 10, 2009); CLOSE TO SLAVERY, *supra* note 41, at 24.

<sup>117</sup> See 20 C.F.R. § 655.122(d)(1) (2010) (explaining that employers must provide H-2A workers with housing); H-2B Final Rules and Regulations, 73 Fed. Reg. 78,039 (December 19, 2008) (to be codified at 20 C.F.R. pt. 655) (explaining that DOL will still allow employers to make reasonable deductions from workers’ wages for housing expenses).

<sup>118</sup> Interview 33 (Oct. 10, 2009); Interview 40 (Oct. 10, 2009).

<sup>119</sup> Interview 23 (Aug. 10, 2009); Interview 24 (Aug. 10, 2009); Interview 25 (Aug. 10, 2009); Interview 27 (Aug. 23, 2009); Interview 28 (Aug. 23, 2009); Interview 30 (Oct. 10, 2009); Interview 32 (Oct. 10, 2009).

<sup>120</sup> Interview 11 (Feb. 7, 2009).

<sup>121</sup> Interview 23 (Aug. 10, 2009).

<sup>122</sup> Interview 10 (Feb. 7, 2009).

<sup>123</sup> Interview 3 (Feb. 6, 2009).

<sup>124</sup> Interview 21 (Aug. 9, 2009); Interview 33 (Oct. 10, 2009); Interview 35 (Oct. 9, 2009).

<sup>125</sup> DORCHESTER COUNTY, MD., CODE § 110-2 (1990) (describing the core purposes of the Dorchester County Minimum Livability Code).

<sup>126</sup> DORCHESTER COUNTY, MD., CODE §§ 110-18 (C), (E), (K) (1990).

<sup>127</sup> DORCHESTER COUNTY, MD., CODE § 110-19 (C) (1990).

<sup>128</sup> DORCHESTER COUNTY, MD., CODE §§ 110-18 (C), (F) (1990).

<sup>129</sup> Interview 33 (Oct. 10, 2009).

<sup>130</sup> Interview 40 (Oct. 10, 2009).

<sup>131</sup> Interview 32 (Oct. 10, 2009); Interview 34 (Oct. 10, 2009).

<sup>132</sup> Interview 36 (Oct. 10, 2009); Interview 40 (Oct. 10, 2009).

<sup>133</sup> Interview 35 (Oct. 9, 2009).

<sup>134</sup> Interview 24 (Aug. 10, 2009); Interview 25 (Aug. 10, 2009).

<sup>135</sup> Interview 15 (Aug. 10, 2009); Interview 17 (Aug. 10, 2009); Interview 18 (Aug. 10, 2009); Interview 21 (Aug. 9, 2009); Interview 22 (Aug. 9, 2009); Interview 24 (Aug. 10, 2009); Interview 30 (Oct. 10, 2009); Interview 31 (Oct. 10, 2009); Interview 35 (Oct. 9, 2009); Interview 39 (Oct. 10, 2009); Interview 40 (Oct. 10, 2009).

<sup>136</sup> Interview 46 (Nov. 20, 2009).

<sup>137</sup> See BlueCrab.info, Blue Crab Identification, <http://www.bluecrab.info/identification.html> (last visited Mar. 15, 2010).

<sup>138</sup> See Sea Grant Marine Advisory Program, Picking Blue Crabs, <http://web.vims.edu/adv/ed/crab/pick.html> (last visited Mar. 15, 2010).

<sup>139</sup> See M.L. Faunce, *The Whole Crab – and Nothing but the Crab*, BAY WEEKLY, Oct. 5, 2005, <http://www.bayweekly.com/year05/issuexiii39/leadxiii39.html> (reporting that industry practices demand that the women “carefully add only crab and no shell to her product”) (hereinafter Faunce); Merrill Leffler, *Treasure from Trash: Is There*

*Proffit in Crab Waste?*, 15 MARINE NOTES 1(1997), [ftp://ftp.mdsg.umd.edu/Public/MDSG/MarNotes/MN15\\_2.PDF](ftp://ftp.mdsg.umd.edu/Public/MDSG/MarNotes/MN15_2.PDF) (explaining that a blue crab's carapace consists of 20 percent chitin, 60 percent calcium carbonate, and 20 percent protein). Notably, six pounds of shell and "runny chum" are left over from every pound of crabmeat picked. *Id.*

<sup>140</sup> See BlueCrab.info, Buying Hard Shell Crabs, [http://www.bluecrab.info/buying\\_hards.htm](http://www.bluecrab.info/buying_hards.htm) (last visited Mar. 15, 2010).

<sup>141</sup> See National Geographic, Blue Crab, <http://animals.nationalgeographic.com/animals/invertebrates/blue-crab.html> (last visited Mar. 15, 2010).

<sup>142</sup> Interview 28 (Aug. 23, 2009); Interview 31 (Oct. 10, 2009); Interview 37 (Oct. 9, 2009); Interview 39 (Oct. 10, 2009).

<sup>143</sup> See Interview 1 (Feb. 1, 2009); Interview 2 (Feb. 5, 2009); Interview 7 (Feb. 6, 2009).

<sup>144</sup> U.S. Department of Labor, Field Assistance Bulletin No. 2009-2, Memorandum for Regional Administrators & District Directors, August 21, 2009, available at [http://www.dol.gov/whd/FieldBulletins/FieldAssistanceBulletin2009\\_2.htm](http://www.dol.gov/whd/FieldBulletins/FieldAssistanceBulletin2009_2.htm).

<sup>145</sup> See H-2B Final Rules and Regulations, 73 Fed. Reg. 78,039-41 (Dec. 19, 2008) (to be codified at 20 C.F.R. pt. 655.22(j)) (disagreeing with the 11th Circuit's decision in *Arriaga*, concluding that inbound transportation expenses that workers incur under the H-2A visa program are either primarily for the benefit of the employee or at least equally benefit the employer and employee, and extending that interpretation to the H-2B visa program).

<sup>146</sup> *Arriaga, et al. v. Fla. Pacific Farms, L.L.C.*, 305 F.3d 1228 (11th Cir. 2002).

<sup>147</sup> *Rivera, et al. v. The Brickman Group, Ltd.*, 2008 WL 81570 (E.D. Pa. 2008).

<sup>148</sup> See *Arriaga, et al. v. Fla. Pacific Farms, L.L.C.*, 305 F.3d 1228, 1242, 1244 (11th Cir. 2002); see also *Rivera, et al. v. The Brickman Group, Ltd.*, 2008 WL 81570, at \*12 (E.D. Pa. 2008).

<sup>149</sup> See U.S. Department of Labor, Field Assistance Bulletin No. 2009-2, Memorandum for Regional Administrators & District Directors, August 21, 2009, available at [http://www.dol.gov/whd/FieldBulletins/FieldAssistanceBulletin2009\\_2.htm](http://www.dol.gov/whd/FieldBulletins/FieldAssistanceBulletin2009_2.htm).

<sup>150</sup> Interview 7 (Feb. 6, 2009).

<sup>151</sup> *Id.*

<sup>152</sup> Interview 35 (Oct. 9, 2009); Interview 37 (Oct. 9, 2009).

<sup>153</sup> Interview 1 (Feb. 1, 2009); Interview 8 (Feb. 7, 2009).

<sup>154</sup> Interview 2 (Feb. 5, 2009); Interview 20 (Aug. 9, 2009).

<sup>155</sup> Interview 1 (Feb. 1, 2009); Interview 11 (Feb. 7, 2009); see also David Griffith, *Impacts of Nonimmigrant (H-2B) Worker Programs on Domestic Workers* 5 (U.S. Dep't of Labor, Bureau of Int'l Labor Affairs, Immigration Policy and Research, Working Paper No. 24, 1996) (hereinafter Griffith, *Impacts of Nonimmigrant Worker Programs*) ("The amount of work and hours are unpredictable, fluctuating from day to day").

<sup>156</sup> *Id.*

<sup>157</sup> Interview 25 (Aug. 10, 2009).

<sup>158</sup> Interview 1 (Feb. 1, 2009).

<sup>159</sup> Interview 5 (Feb. 7, 2009); Interview 13 (Aug. 10, 2009); Interview 18 (Aug. 10, 2009); Interview 32 (Oct. 10, 2009); Interview 33 (Oct. 10, 2009); Interview 38 (Oct. 9, 2009); Interview 40 (Oct. 10, 2009).

<sup>160</sup> H-2B Final Rules and Regulations, 73 Fed. Reg. 78,024 (Dec. 19, 2008) (to be codified at 20 C.F.R. pt. 655).

<sup>161</sup> *Garcia, et al., v. Frog Island Seafood, Inc.*, 644 F. Supp. 2d 696 (E.D.N.C. 2009).

<sup>162</sup> 20 C.F.R. § 655.122(i) (2009).

<sup>163</sup> Interview 38 (Oct. 10, 2009); see also Griffith, *Impacts of Nonimmigrant Worker Programs*, supra note 155, at 15 ("Two-thirds of the crab processing workers reported having a daily production quota, which usually translated into the amount of pounds they had to pick to earn minimum wage").

<sup>164</sup> Interview 2 (Feb. 5, 2009); Interview 3 (Feb. 6, 2009); see also Div. of Labor and Indus. Employment Standards Service -The Maryland Guide to Wage Payment and Employment Standards: Employer Discretion in the Workplace: Employment-At-Will - Breaks, Benefits and Days Off, available at <http://www.dlir.state.md.us/labor/wagepay/wpbreaks.htm>. Under Maryland state law, employers need not provide any kind of lunch break for workers 18 years of age or older. *Id.*

<sup>165</sup> Interview 2 (Feb. 5, 2009); Interview 7 (Feb. 6, 2009); Interview 11 (Feb. 7, 2009); Interview 13 (Feb. 7, 2009).

<sup>166</sup> Interview 3 (Feb. 2, 2009); Interview 30 (Oct. 10, 2009).

<sup>167</sup> Interview 31 (Oct. 10, 2009).

<sup>168</sup> Interview 5 (Feb. 5, 2009).

<sup>169</sup> Interview 1 (Feb. 1, 2009); Interview 38 (Oct. 9, 2009); see also Griffith, *Impacts of Nonimmigrant Worker Programs*, supra note 155, at 15 (describing that nearly 1/3 of the workers he interviewed believed that they would be fired or deported if they did not meet the daily poundage requirement).

<sup>170</sup> See U.S. DEPARTMENT OF LABOR, GENERAL ADMINISTRATIVE LETTER I-95 5 (1994), [http://wdr.doleta.gov/directives/attach/GAL1-95\\_attach.pdf](http://wdr.doleta.gov/directives/attach/GAL1-95_attach.pdf).

<sup>171</sup> See generally U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION: PREVAILING WAGE DETERMINATION POLICY GUIDANCE, NONAGRICULTURAL IMMIGRATION PROGRAMS, [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

<sup>172</sup> Foreign Labor Certification Data Center, Online Wage Library, <http://www.ficdatacenter.com/CaseH2B.aspx> (last visited May 25, 2010).

<sup>173</sup> H-2B Final Rules and Regulations, 73 Fed. Reg. 78,021 (Dec. 18, 2009) (to be codified at 20 C.F.R. pt. 655) (noting that prior to the promulgation of the new regulations “the Department ha(d) no enforcement authority or process to ensure H-2B workers who are admitted to the U.S. are employed in compliance with H-2B labor certification requirements”); see also *Close to Slavery*, *supra* note 41, at 8 (explaining in a 2007 report that “because the H-2B wage requirement is set forth by administrative directive and not by regulation, the DOL takes the position that it lacks authority to enforce the H-2B prevailing wage”); U.S. Department of Labor, Wage and Hour Division, H-2B Program, <http://www.dol.gov/whd/immigration/h2b.htm> (last visited May 25, 2010) (“The Wage and Hour Division has been delegated enforcement responsibility by the Department of Homeland Security effective January 18, 2009, to ensure H-2B workers are employed in compliance with H-2B labor certification requirements.”).

<sup>174</sup> See 8 C.F.R. § 214.2(h)(6)(i) (2009) (noting that the employment of H-2B workers may not adversely affect the wages and working conditions of U.S. workers); U.S. Department of Labor, Wage and Hour Division, H-2B Program, <http://www.dol.gov/whd/immigration/h2b.htm> (last visited May 25, 2010) (“The H-2B program requires the employer to attest to the Department of Labor that it will offer a wage that equals or exceeds the highest of the prevailing wage, applicable Federal minimum wage, the State minimum wage, or local minimum wage to the H-2B nonimmigrant worker for the occupation in the area of intended employment during the entire period of the approved H-2B labor certification.”).

<sup>175</sup> MD. CODE ANN., LAB. & EMPL. § 3-403(a)(10) (West 2010).

<sup>176</sup> MD. CODE ANN., LAB. & EMPL. § 3-413(b) (West 2010).

<sup>177</sup> See U.S. DEP’T OF LABOR, HANDY REFERENCE GUIDE TO THE FAIR LABOR STANDARDS ACT 12, <http://www.dol.gov/whd/regs/compliance/wh1282.pdf> (explaining how regular rate and overtime pay is calculated for piece rate workers).

<sup>178</sup> See generally Interviews.

<sup>179</sup> Interview 4 (Feb. 6, 2009); Interview 18 (Aug. 10, 2009); Interview 19 (Aug. 10, 2009).

<sup>180</sup> Interview 39 (Oct. 10, 2009).

<sup>181</sup> 29 C.F.R. §§ 531.3(d)(1), (2) (2010).

<sup>182</sup> MD. CODE ANN., LAB. & EMPL. § 3-503 (West 2010). Maryland law also allows for court-ordered deductions and deductions ordered by the Commissioner if the employee has received full consideration for that deduction. *Id.*

<sup>183</sup> Interview 9 (Oct. 7, 2009); Interview 11 (Feb. 7, 2009).

<sup>184</sup> Interview 28 (Aug. 23, 2009); Interview 29 (Oct. 10, 2009).

<sup>185</sup> While there is little official guidance on tax requirements for H-2B workers, the IRS has developed specific guidelines for H-2A agricultural workers. See Internal Revenue Service, Foreign Agricultural Workers: Withholding Tax Requirements, <http://www.irs.gov/businesses/small/international/article/0,,id=96422,00.html> (last visited Apr. 8, 2010). Workers in the U.S. on H-2A visas are exempt from U.S. Social Security and Medicare taxes. *Id.* In addition, the employer “will report the wages paid to the H-2A alien agricultural workers on form 1099-MISC if the amount paid to the H-2A alien agricultural worker during the calendar year equals or exceeds \$600. The payor will do no income tax withholding on the payment unless the payee neglects or refuses to provide a Social Security Number (SSN) or an Individual Taxpayer Identification Number (ITIN).” *Id.*

<sup>186</sup> Interview 1 (Feb. 1, 2009); Interview 38 (Oct. 9, 2009).

<sup>187</sup> See Griffith, *Impacts of Nonimmigrant Worker Programs*, *supra* note 155, at 5 (explaining that the risk for potential injury is high for crab pickers); see also Faunce, *supra* note, 139 (reporting that one Maryland crab house requires workers to pick 18 pounds of crab meat per day).

<sup>188</sup> Interview 37 (Oct. 9, 2009); Interview 29 (Oct. 9, 2009).

<sup>189</sup> Interview 37 (Oct. 9, 2009).

<sup>190</sup> Interview 7 (Feb. 6, 2009); Interview 18 (Aug. 10, 2009); Interview 19 (Aug. 10, 2009).

<sup>191</sup> See Griffith, *Impacts of Nonimmigrant Worker Programs*, *supra* note 155, at 6.

<sup>192</sup> Interview 9 (Feb. 7, 2009); Interview 27 (Oct. 23, 2009); Interview 31 (Oct. 9, 2009); Interview 32 (Oct. 10, 2009).

<sup>193</sup> See, e.g., Interview 18 (Aug. 10, 2009); Interview 19 (Aug. 10, 2009); Interview 20 (Aug. 9, 2009).

<sup>194</sup> Interview 7 (Feb. 6, 2009); Interview 29 (Oct. 9, 2009).

<sup>195</sup> See, e.g., Interview 20 (Aug. 10, 2009); Interview 23 (Aug. 9, 2009).

<sup>196</sup> See Burton L. Tinker and Robert J. Learson, *An Improved Precook Process for Crab (Callinectes sapidus)*, 13 CHESAPEAKE SCIENCE 331 (1972).

<sup>197</sup> Ctr. for Disease Control & Prevention, *Vibrio Vulnificus*, <http://www.cdc.gov/nczved/divisions/dfbmd/diseases/vibriov/#type> (last visited May 21, 2010); see also THE BLUE CRAB: CALLINECTES SAPIDUS 316 (Victor S. Kennedy & L. Eugene Cronin, eds., 2007) (“*Vibrio parahaemolyticus*, *V. vulnificus*, and *V. cholerae* have been isolated from the carapace, hemo-lymph, and digestive tract of the blue crab.”).



<sup>198</sup> Ctr. for Disease Control & Prevention, *Vibrio Vulnificus*, <http://www.cdc.gov/nczved/divisions/dfbmd/diseases/vibriov/#type> (last visited May 21, 2010).

<sup>199</sup> *Id.*

<sup>200</sup> Interview 9 (Feb. 7, 2009).

<sup>201</sup> *Id.*

<sup>202</sup> Interview 7 (Feb. 6, 2009); Interview 11 (Feb 9, 2009).

<sup>203</sup> *Id.*

<sup>204</sup> Interview 9 (Feb. 9, 2009).

<sup>205</sup> Interview 16 (Aug. 10, 2009).

<sup>206</sup> Maryland Dep't of Labor, Licensing and Regulation (DLLR), DLLR's Division of Labor and Industry, Frequently Asked Questions – Maryland Occupational Safety & Health (MOSH), <https://www.dllr.maryland.gov/labor/mosh/moshfaqs.shtml> (last visited May 23, 2010).

<sup>207</sup> *Id.*

<sup>208</sup> 29 C.F.R. § 1910.9(a) (2010).

<sup>209</sup> 29 C.F.R. §1910.138(a) (2010).

<sup>210</sup> 29 C.F.R. § 1910.9(b) (2010); *see generally* OCCUPATIONAL SAFETY & HEALTH ADMIN., U.S. DEP'T OF LABOR, TRAINING REQUIREMENTS IN OSHA STANDARDS AND TRAINING GUIDELINES (1998), <http://www.osha.gov/Publications/osh2254.pdf>.

<sup>211</sup> MD. CODE ANN., LAB. & EMPL. § 9-101(b)(1) (West 2009).

<sup>212</sup> *See* MD. CODE REGS. § 14.09.01.15 (West 2010). Many states have in-state presence requirements for workers' compensation claims. While Maryland does not specifically have an in-state presence requirement, the Workers' Compensation Commission does have the authority to decide the claim *ex parte* or dismiss the claim outright if it feels that the worker did not demonstrate good cause for failing to attend in person. *Id.*

<sup>213</sup> Interview 40 (Oct. 10, 2009); Interview 22 (Aug. 9, 2009).

<sup>214</sup> Interview 36 (Oct. 10, 2009); Interview 40 (Oct. 10, 2009).

<sup>215</sup> Interview 3 (Feb. 6, 2009).

<sup>216</sup> Interview 1 (Feb. 1, 2009); Interview 3 (Feb. 6, 2009).

<sup>217</sup> *Id.*

<sup>218</sup> Interview 11 (Feb. 7, 2009).

<sup>219</sup> Interview 35 (Oct. 9, 2009).

<sup>220</sup> Interview 3 (Feb. 6, 2009); Interview 5 (Feb. 7, 2009); *see also* Press Release, ACLU and North Carolina Justice Center, Women Guestworkers Challenge Seafood Company's Gender-Based Job Restrictions (Mar. 17, 2010), *available at* <http://www.aclu.org/womens-rights/women-guestworkers-challenge-seafood-companys-gender-based-job-restrictions> (describing allegations of gender discrimination against migrant worker women in the North Carolina seafood industry).

<sup>221</sup> *See* CLOSE TO SLAVERY, *supra* note 41, at 34 (describing instances of age and gender discrimination in the H-2 program).

<sup>222</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (2010). Title VII prohibits discrimination by employers on the basis of race, color, religion, sex, or national origin. *Id.*

<sup>223</sup> *See, e.g.,* Olvera-Morales v. Sterling Onions, Inc., et al., 322 F. Supp. 2d 211, 214 (N.D.N.Y. 2004).

<sup>224</sup> *See* Olvera-Morales v. Sterling Onions, Inc., et al., 322 F. Supp. 2d 211, 214 (N.D.N.Y. 2004); *see also* Olvera-Morales v. Int'l Labor Mgmt. Corp., Inc., et al., 246 F.R.D. 250, 259 (M.D.N.C. 2007) (granting Ms. Olvera-Morales's motion for class certification).

<sup>225</sup> Olvera-Morales v. Int'l Labor Mgmt. Corp., Inc., et al., 2008 Westlaw 506090, \*1 (M.D.N.C. Feb. 20, 2008) (reinstating Title VII claim against defendant Int'l Labor Mgmt. Corp. as the entity might be considered an 'employment agency' as defined in 42 U.S.C. 2000e(c)).

<sup>226</sup> Interview 11 (Feb. 7, 2009).

<sup>227</sup> Interview 26 (Aug. 23, 2009).

<sup>228</sup> *See, e.g.,* Reyes-Gaona v. North Carolina Growers Ass'n, 250 F.3d 861 (4th Cir. 2001).

<sup>229</sup> *See generally* Maria M. Dominguez, *Sex Discrimination & Sexual Harassment in Agricultural Labor*, 6 AM. U. J. GENDER SOC. POL'Y & L. 232 (1997).

<sup>230</sup> CLOSE TO SLAVERY, *supra* note 41, at 35 (citing William R. Tamayo, *Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law: The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, 33 U.C. DAVIS L. REV. 1075, 1080 (2000)).

<sup>231</sup> Interview with Daniela Dwyer, Attorney, Migrant Farmworker Justice Project, Florida Legal Services, Inc., (Apr. 28, 2010).

<sup>232</sup> Interview with Mary Bauer, Legal Director, Southern Poverty Law Center (Apr. 1, 2010).

<sup>233</sup> Interview with Carol Brooke, Migrant Worker Attorney, North Carolina Justice Center (Apr. 6, 2010).

<sup>234</sup> Interview with Mary Bauer, Legal Director, Southern Poverty Law Center (Apr. 1, 2010).

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *See* 8 C.F.R. § 214.14. Immigrant victims of certain qualifying crimes, including trafficking, sexual assault, abusive sexual contact, and involuntary servitude, may be eligible for this type of visa if they have suffered substantial mental or physical abuse as a

result of one of the qualifying crimes. *Id.* The crime must have occurred in the U.S. or violated U.S. laws and the victim must have information that could be helpful in a law enforcement investigation of the crime. *Id.*

<sup>238</sup> Interview 3 (Feb. 6, 2009); Interview 7 (Feb. 6, 2009).

<sup>239</sup> Interview 3 (Feb. 6, 2009); Interview 7 (Feb. 6, 2009); Interview 9 (Feb. 7, 2009).

<sup>240</sup> Interview 45 (Nov. 20, 2009).

<sup>241</sup> Interview 35 (Oct. 9, 2009).

<sup>242</sup> Interview 44 (Nov. 20, 2009).

<sup>243</sup> Interview 1 (Feb. 1, 2009); Interview 2 (Feb. 5, 2009); Interview 3 (Feb. 6, 2009).

<sup>244</sup> See e.g., RAÚL DELGADO WISE, UNIDAD ACADÉMICA EN ESTUDIOS DEL DESARROLLO, 2006-2009, CRITICAL DIMENSIONS OF MEXICO-CENTRAL AMERICA-US-CANADA MIGRATION: THE MIGRATION DEVELOPMENT NEXUS AND PUBLIC POLICIES 3 (2006), [http://estudios-deldesarrollo.net/administracion/documentos/proposal\\_McArthur\\_RIMD\\_2006.pdf](http://estudios-deldesarrollo.net/administracion/documentos/proposal_McArthur_RIMD_2006.pdf) (emphasizing the importance of local and regional development in remittance-relying countries); RODOLFO GARCÍA ZAMORA, UNIDAD ACADÉMICA EN ESTUDIOS DEL DESARROLLO, INVESTIGACION APLICADA SOBRE MIGRACION INTERNACIONAL, REMESAS, Y DESARROLLO REGIONAL EN ZACATECAS, MEXICO (2004), <http://estudios-deldesarrollo.net/administracion/documentos/2.pdf> (providing a case study of migration and local development in Zacatecas, Mexico).

<sup>245</sup> Changes to Requirements Affecting H-2B Nonimmigrants and Their Employers, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Proposed Rules, 73 Fed. Reg. 49,109, 49,112-13 (proposed Aug. 20, 2008) (to be codified at C.F.R. pt 204, 214, and 215).

<sup>246</sup> See e.g., *Hain v. Gibson*, 287 F.3d 1224, 1243 (10th Cir. 2002) (holding that the ICCPR is not self-executing and therefore not binding on United States courts); *Macharia v. United States*, 238 F. Supp. 2d 13, 29 (D.D.C. 2002) (finding no private right of action under non-self executing ICCPR).

<sup>247</sup> Organization of American States, Charter of the Organization of American States, art. 34, Dec. 13, 1951, O.A.S.T.S. No. 41, 119 U.N.T.S. 3, available at [http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm).

<sup>248</sup> North American Agreement on Labor Cooperation, U.S.-Can.-Mex., art. 4, Sept. 14, 1993, 32 I.L.M. 1499 (1993).

<sup>249</sup> *Id.* art. 3.

<sup>250</sup> The authors interviewed women from a range of towns and communities, which send women to the Eastern Shore of Maryland to work in the crab industry. The authors spoke with women who have worked every year since the late 1980s, as well as women who only worked one season or were about to embark on their first trip.

<sup>251</sup> See Appendices A and B.



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