



H-2A  
WORKERS  
& COVID-19

PAGE 6

# RIPE FOR REFORM:

Abuses of  
Agricultural  
Workers  
in the H-2A  
Visa Program

a report by



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From *In The Fields of the North*

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CENTRO DE LOS DERECHOS DEL MIGRANTE, INC. (CDM) envisions a world where migrant worker voices are respected and policies reflect their voices and experiences. CDM's innovative approach to legal advocacy and organizing accompanies workers in their hometowns, at the site of recruitment, and in their U.S. worksites through legal services, community education and leadership development and policy advocacy. CDM's Migrant Women's Project (Proyecto de Mujeres Migrantes, or "ProMuMi") promotes migrant women's leadership in advocating for just labor and immigration policies that respond to the particular challenges that women face when migrating to the U.S. for work.

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## TABLE OF CONTENTS

|    |  |
|----|--|
| 4  | <b>EXECUTIVE SUMMARY</b>   |
| 7  | <b>MAJOR FINDINGS AT A GLANCE</b>  |
| 8  | H-2A Workers and Covid-19  |
| 11 | <b>INTRODUCTION TO THE H-2A PROGRAM</b>                                  |
| 14 | HISTORY OF THE H-2A PROGRAM  |
| 16 | THE WORKERS  |
| 17 | <b>THE SURVEY RESULTS</b>  |
|    | DIAGRAM: THE SYSTEM OF ABUSES FACED BY AN H-2A WORKER                    |
| 19 | COERCION   |
| 19 | Travel Expenses  |
| 20 | Recruitment Fees and Abuses  |
| 21 | Wage Violations  |
| 23 | Lack of Freedom  |
| 24 | DISCRIMINATION AND VERBAL ABUSE  |
| 24 | Discrimination in Hiring   |
| 25 | Sexual Violence and Verbal Abuse   |
| 26 | Sexual Harassment  |
| 27 | HEALTH AND SAFETY  |
| 27 | Housing Conditions   |
| 29 | Safety on the Job  |
| 30 | Indigenous Workers   |
| 32 | <b>RECOMMENDATIONS</b>   |
| 35 | <b>CONCLUSION</b>  |
| 36 | METHODOLOGY  |
| 38 | <b>APPENDIX A: Proposal for an Alternative Model for Labor Migration</b> |
| 40 | <b>APPENDIX B: Proposed Trump Administration Regulations</b>             |

**100%**  
**OF WORKERS**  
**SUFFER AT LEAST**  
**ONE SERIOUS**  
**VIOLATION OF**  
**THEIR RIGHTS**

## EXECUTIVE SUMMARY

“Win-win” is a phrase sometimes used to describe the H-2A guestworker program, a program that allows agricultural employers to bring workers from other countries—primarily Mexico—to the U.S. to work on their farms. Workers have the chance to earn more money than they would be able to earn in their home countries, and growers get the workers they need to grow their crops. What’s not to like in such a program? As it turns out, quite a lot.

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From September 2019 to January 2020, Centro de los Derechos del Migrante, Inc. (Center for Migrants’ Rights, or “CDM”) traveled across Mexico to interview 100 individuals who had worked as H-2A workers in the U.S. within the past four years. These in-depth interviews revealed a dark side to the H-2A program. The program is rife with systemic violations of workers’ legal rights.

These surveys reveal that H-2A workers often arrive at their workplaces in debt, having paid significant recruitment fees and/or travel costs for the opportunity to work in the U.S. Many find that when they arrive in the U.S. conditions are far different from those promised. Even workers who described a generally positive experience with their employer labored in a workplace with at least one serious legal violation. Indeed, our data show that every worker interviewed, even those most satisfied with their experience, suffered at least one serious legal violation of their rights. And 94% of those surveyed experienced three or more serious legal violations. Serious legal violation was defined as violation of legal rights with a substantial impact on the wages or working conditions of the worker. Wage violations had to be more than technical, *de minimis* violations of wage and hour protections to be considered serious legal violations.<sup>1</sup>

The power imbalance between employers and workers in the H-2A guestworker program is profoundly skewed in favor of the employer. Because H-2A visas are tied to a single employer, employees can only work for one petitioning employer who holds all the bargaining power. The employer decides which workers get to come to the U.S., whether a worker may remain in the U.S., and often, whether the worker will have the opportunity to return to the U.S. in future years. When H-2A workers lose their jobs, they typically also lose their housing, their right to remain in the U.S. and the opportunity to be recruited in future seasons. Because workers are legally tied to the petitioning employer, they often have little choice but to remain in abusive working conditions.

When workers lose their jobs mid-season, it is practically impossible for workers to find another, certified H-2A employer before they are legally required to leave the U.S. Workers who leave the U.S. mid-season often return home to face insurmountable debt. Indeed, surveyed workers described the lack of economic opportunity in their home communities as the primary impetus pushing them to find a job in the U.S. In interviews, many workers also described the emotional difficulty of living apart from spouses and young children, often for many months, year after year.

<sup>1</sup> Serious legal violations included: workers paying recruitment fees; workers not receiving full travel reimbursements to or from the United States; significant wage violations; not receiving a contract or not receiving a contract in the worker’s native language; sexual harassment; verbal threats based on race, gender, or national origin or related to the use of force or deportation; the seizure of identity documents; overcrowded or seriously substandard housing; and the failure to provide essential safety equipment.

We surveyed workers who had worked in at least 25 different states, including all regions of the country, for this report. The largest numbers of worker-respondents had worked in Florida, Georgia, Washington and North Carolina, all of which are top users of the H-2A program.

Our data revealed the following:

## COERCION

The surveys demonstrate that workers are vulnerable to, and routinely experience, serious economic and other forms of coercion. Interviews reveal that far too often the H-2A program funnels workers into a system of government sanctioned human trafficking.

- **Most workers started their employment in debt** or without sufficient funds to be able to leave abusive working conditions. Employers are required to reimburse the full cost of workers' transportation to the U.S, but workers were routinely forced to absorb those costs, which often include bus or plane tickets, hotel costs, and food costs for days on the road. A large majority of workers interviewed—73%—only received a partial, or no, travel reimbursement for the costs incurred to get to the U.S. In addition, 62% of those interviewed took out loans to get the funds needed to come to the U.S. for the job. A third of those loans charged interest, sometimes at usurious interest rates, while some workers had to leave some form of collateral, such as the deed to a home, as security for the loan.
- **In addition to travel costs, another 26% of workers paid recruitment fees** simply to be selected to come to the U.S. Those fees ran as high as \$4,500. Thus, the large majority of workers started their employment in the U.S. having paid substantial out-of-pocket costs.
- **Perhaps most troubling, many of the H-2A workers surveyed experienced indicators of labor trafficking** while working in the U.S. Thirty-four percent of those interviewed described restrictions on their movement, such as not being permitted to leave the employer-provided housing or worksite. Employers seized the passports of 7 workers. And 32% of those surveyed described themselves as not feeling free to quit.
- **Fraud also frequently contributed to H-2A workers' vulnerability to economic coercion.** Forty-three percent of those surveyed stated that the salary they received was less than what they were promised when they were recruited in Mexico. Many described being paid less than the legal wage—sometimes far less, as little as \$1.25 per hour after illegal kickbacks in some instances.

## DISCRIMINATION AND HARASSMENT

Our surveys revealed that verbal abuse, violence, and sexual harassment were common.

- The overwhelming majority of workers described systemic, sex-based discrimination in hiring. In our interviews, 86% said that women were either not hired or were offered less favorable pay or less desirable jobs than men, while 67% of workers said their employers and/or recruiters explicitly prohibited the hiring of women altogether. Discrimination is deeply entrenched in the H-2A program, and recruitment ads specifying gender and age limits are common.



**SURVEY INCLUDES  
ALL REGIONS  
OF THE U.S.**

- Thirty-one percent of those interviewed said they were subjected to serious verbal abuse, including the use of racial epithets. Twelve percent of workers interviewed told us that they suffered sexual harassment. CDM's experience of working with survivors of verbal abuse and sexual violence suggests this number is likely substantially understated.

## HEALTH AND SAFETY

Health and safety violations were common in both the workplace and in employer-provided housing. The living and working conditions described by workers make workers incredibly vulnerable to Covid-19. Workers live in overcrowded housing, are transported in crowded buses, work without the ability to take breaks for handwashing, and are for all practical purposes unable to practice social distancing while living and working in the United States. They are on the frontlines of this pandemic and provided virtually no protections from the potentially deadly virus.

- Thirty-five percent of those surveyed did not have necessary safety equipment, like protective helmets and gloves. Of those who had the equipment they needed, 23% were forced to buy their own safety equipment and tools. Twenty-seven percent of those surveyed said they did not receive adequate training to work safely. Several described serious accidents at work and reported that they did not receive appropriate free medical care and subsequently lost wages as a result. One worker described himself as "disposable." After he was injured, he was sent back to Mexico, never to be called back to work in the U.S.
- Almost half of workers surveyed—45% percent—described overcrowded and unsanitary housing conditions. Some did not have functioning bathrooms or hot water. Others described rat and bed bug infestations.

## INDIGENOUS WORKERS

- Finally, we observed that indigenous language speakers were particularly vulnerable to recruitment and workplace abuses. Approximately 6% of the Mexican population speaks an indigenous language as their primary language. However, 19% of workers interviewed for our survey spoke languages other than Spanish as their primary language. Those indigenous language speakers were uniformly not provided a contract in their first language.

### **Overall, we found that the H-2A program is rife with abuse.**

In theory, substantial legal protections exist for workers, but the program is structured in such a way that workers have little to no bargaining power and limited means to enforce their legal rights. In practice, the program leads to systemic exploitation. At the conclusion of the report, we offer recommendations for reform based on these findings.

## RIPE FOR REFORM: Abuses of Agricultural Workers in the H-2A Visa Program

### MAJOR FINDINGS AT A GLANCE

| SERIOUS LEGAL VIOLATIONS             |  |
|--------------------------------------|--|
| 100%                                 | of workers experienced at least one serious legal violation  |
| 94%                                  | experienced three or more serious legal violations   |
| DISCRIMINATION AND HARASSMENT        |  |
| 86%                                  | said that women were either not hired or were offered less favorable pay or less desirable jobs than men |
| 67%                                  | said that women were prohibited from being hired at all  |
| 31%                                  | were subjected to serious verbal abuse, including the use of racial epithets                             |
| ECONOMIC AND OTHER FORMS OF COERCION |  |
| 26%                                  | paid recruitment fees  |
| 73%                                  | did not receive their full reimbursement for travel costs to and from the U.S.                           |
| 62%                                  | took out loans to get the funds to come to the U.S   |
| 32%                                  | did not feel free to quit  |
| 34%                                  | experienced restrictions on their mobility   |
| HEALTH AND SAFETY                    |  |
| 45%                                  | experienced overcrowded and/or unsanitary housing conditions   |
| 35%                                  | did not have necessary safety equipment to do the job  |
| 27%                                  | did not receive adequate training to work safely   |
| WAGE THEFT/FRAUD                     |  |
| 43%                                  | were not paid the wages they were promised   |
| TARGETING INDIGENOUS SPEAKERS        |  |
| 0%                                   | of indigenous workers received a written contract in their native language                               |

## H-2A WORKERS AND COVID-19

Overcrowded housing conditions, crowded transportation, and lack of access to handwashing facilities suggest that workers may be particularly vulnerable to exposure to viral infections, such as COVID-19. The Centers for Disease Control and Prevention currently recommends that individuals maintain at least 6 feet of distance between themselves and others in order to protect themselves<sup>1</sup>. That will be impossible under conditions H-2A workers typically experience in the United States.

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Workers interviewed for this report described overcrowded and even dangerous conditions in housing. One worker told us they slept five to a small room, three men and two women, with one person sleeping on the floor. Another said they slept four to a bedroom, with only two beds so that two people had to sleep in each bed.

And even housing that complies with federal housing regulations fails to adequately provide workers the social distancing currently recommended for protection from the virus. Housing for H-2A workers is typically dormitory style, often with bunk beds. The regulations require that there must be at least 100 square feet for each occupant. Of this at least fifty feet must be in the sleeping area, and beds can be as little as three feet apart from one another<sup>2</sup>. Thus, a 2,500 square foot residence (less than the average size of a home in the U.S.) would be permitted to house 25 people, with only 1,250 square feet in the common areas. That is simply insufficient to allow workers to maintain the recommended six feet of distance from non-family members at all times.

H-2A workers generally live in rural settings with limited access to medical care. It is unclear how workers will access medical care or be able to self-isolate if conditions require them to do so. The regulations do not currently require employers to provide health insurance, nor do they require employers to provide housing which would allow workers to be quarantined if necessary.

Federal regulations mandate that all agricultural establishments employing 11 or more workers in “hand-labor” provide handwashing facilities within a quarter mile of the worksite when possible. If this is not possible, the facilities may be even further away<sup>3</sup>. Given that distance and the lack of breaks workers generally receive during the workday, many workers will likely be unable to access handwashing facilities during the workday. Many workers interviewed for this report told us that they were not able to take regular breaks during the day. Others described feeling immense pressure not to take breaks, which were frowned upon by their supervisors.

On many farms, employers are not obligated to provide field sanitation (toilet and handwashing) facilities at all. Farms that employ ten workers or fewer are not covered by these requirements under the federal regulations. A review of the DOL’s data from 2019 showed that DOL certified

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<sup>1</sup> *How to Protect Yourself*, Centers for Disease Control and Prevention, (March 20, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

<sup>2</sup> 29 C.F.R. § 1910.142.

<sup>3</sup> 29 CFR § 1910.110 et seq.

over 10,000 employer requests for ten or fewer employees. While this is not a perfect analysis—because some employers may have domestic workers, and some may have more than one certification in a year—it is clear that many H-2A employers are exempt from the federal field sanitation regulations.

There is very little data about the percentage of farmworkers who have access to appropriate handwashing facilities. But a 2018 study found that workers who do not speak English proficiently and those from Mexico are systematically less likely to have access to field sanitation than other workers<sup>4</sup>.

We also know from our experience that workers routinely ride buses to and from the fields. They ride these buses on weekly trips to grocery stores to obtain necessary supplies. In our experience, these buses are generally crowded and do not allow for social distancing of any kind.

Indigenous workers face significant challenges in accessing appropriate information about the virus while in the U.S. While there has been little focus on conditions experienced by indigenous H-2A workers, a 2008 study found that indigenous farmworkers “were facing unsafe working conditions, based in part on the unavailability of safety information and equipment and language barriers; and workers experienced discrimination on the job, due primarily to their language and cultural differences.”<sup>5</sup> As previously mentioned, not a single indigenous worker interviewed for this report received information about the terms of employment in their native language. Given this, it seems fair to conclude that indigenous workers are likely to face substantial challenges in obtaining health information in their native language, leaving them particularly vulnerable.

Because the surveys that form the basis of this report were conducted before the COVID-19 pandemic occurred, we did not ask workers questions specifically related to this issue. But the information we obtained nonetheless is deeply troubling.

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4 Anita Alves Pena and Edward R. Teader-Posada, *Field Sanitation in U.S. Agriculture: Evidence from NAWS and Future Data Needs*, *Journal of Agromedicine*, vol. 23, no. 2, pp. 123-133, (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7050297/>.

5 Stephanie Farquhar, Julie Samples, Santiago Ventura, Shelley Davis, Michelle Abernathy, Linda McCauley, Nancy Cuilwik, and Nargess Shadbeh, *Promoting the Occupational Health of Indigenous Farmworkers*, *Journal of Immigrant and Minority Health*, vol. 10, no. 3, pp. 269-80, (2008), [http://www.adph.org/ALPHTN/assets/042309\\_promote.pdf](http://www.adph.org/ALPHTN/assets/042309_promote.pdf).



Photo © 2020 by David Bacon  
From *In The Fields of the North*

# INTRODUCTION TO THE H-2A PROGRAM

## The H-2A Program

Approximately 2.5 million farmworkers labor on U.S. farms and ranches, cultivating and harvesting crops, and raising and tending to livestock.<sup>2</sup> The Department of Labor's (DOL) recent National Agricultural Workers Survey (NAWS) report found that approximately half of agricultural workers are authorized to work in the U.S. (50% of whom, according to the report, were either U.S. citizens or permanent residents).<sup>3</sup>

The DOL certified 257,667 H-2A positions for temporary agricultural workers in FY 2019. This represents an increase from prior years and exponential growth in the program. In 2016, there were 165,741 jobs certified, a dramatic increase from a decade earlier, when only 64,100 jobs were certified.<sup>4</sup> The program has more than tripled in the past ten years.

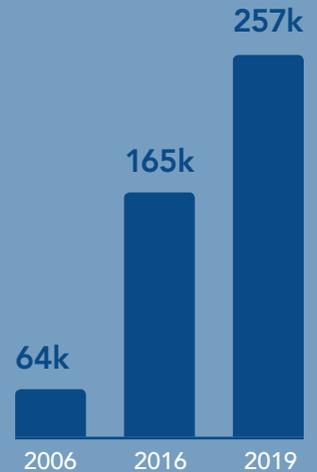
The H-2A program allows employers to hire workers from other countries to come to the U.S. to perform agricultural work of a temporary or seasonal nature. In order to be certified, the employer must certify that: 1) there are not sufficient U.S. workers who are able, willing, qualified, and available to perform work at the place and time needed; and, 2) the wages and working conditions of workers in the United States similarly employed will not be "adversely affected" by the hiring of guestworkers.<sup>5</sup>

**Regulations provide written protections for workers. The purpose of those protections is two-fold: to protect against the abuse of H-2A workers and to ensure that the jobs do not erode wages and working conditions for U.S. workers. In practice, the regulations are insufficient to protect against abuse because the very structure of the program makes the exercise of rights overwhelmingly difficult.**

Among other things, protections for workers include:

- Workers must receive at least three-fourths of the total hours promised in the contract.
- They must receive free housing in good condition for the period of the contract.
- Workers must receive workers' compensation benefits for medical costs and payment for lost time from work and for any permanent injury.
- They must receive reimbursement for the cost of travel from the worker's home to the place of employment in the U.S. If the worker stays on the job until the end of the contract, the employer must pay transportation home.
- Workers are eligible for legal services for matters related to their employment as H-2A workers (but not for other matters).

GROWTH OF H-2A  
(positions certified)



<sup>2</sup> National Agricultural Worker Survey public access data, Fiscal Years 2015-2016, [https://www.doleta.gov/naaws/research/docs/NAWS\\_Research\\_Report\\_13.pdf](https://www.doleta.gov/naaws/research/docs/NAWS_Research_Report_13.pdf).

<sup>3</sup> FN 3: Trish Hernandez & Susan Gabbard, *U.S. Dept of Labor, Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers*, 5 (January 2018).

<sup>4</sup> Philip Martin, *The H-2A Farm Guestworker Program Is Expanding Rapidly: Here Are the Numbers You Need to Know*, Economic Policy Institute, (April 3, 2017), [www.epi.org/blog/h-2a-farm-guestworker-program-expanding-rapidly/](http://www.epi.org/blog/h-2a-farm-guestworker-program-expanding-rapidly/).

<sup>5</sup> 8 U.S.C. §§ 1101(a)(15)(H)(ii), 1188(a)(1); 20 C.F.R. § 655.

As one worker noted in response to our survey, “we are disposable.”

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FLORIDA 1939:  
Migrant laborers  
cutting cabbages.  
Library of Congress.

- Workers must receive free transportation, in a safe vehicle, between their housing and the fields each day.
- Employers may not seize workers’ passports or other identity documents.
- H-2A workers must be paid wages that are the highest of: (a) the local labor market’s “prevailing wage” for a particular crop, as determined by the DOL and state agencies; (b) the state or federal minimum wage; or (c) the “adverse effect wage rate”(AEWR).<sup>6</sup> The 2020 AEWR rates range from \$11.71 to \$15.83 per hour—well above the federal minimum wage of \$7.25 per hour.

H-2A workers are not eligible for most public benefits. They are not eligible for social security benefits upon retirement, and their survivors are not eligible for benefits when they die. H-2A workers’ status is temporary, and there is no mechanism for them to become permanent residents of the U.S. If they return to work in future seasons, it is solely at the discretion of a petitioning employer. No matter how many years a worker returns to labor in the U.S., there is no path to citizenship for an H-2A worker. As one worker noted in response to our survey, “we are disposable.”

### Agricultural Exceptionalism

**The H-2A program is part of a much longer history in which agriculture has been subject to a different set of rules than other industries.** For decades, farmworkers were not entitled to the federal minimum wage because the industry was exempt from federal minimum wage laws. Farmworkers remain exempt from other federal labor protections to this day. They are not entitled to overtime wages if they work more than 40 hours in a week. And they are excluded from the National Labor Relations Act, which provides other workers protection to organize collectively for better wages and working conditions.

**The exclusion of farmworkers from so many federal labor protections was a product of Jim Crow racism.** In order to pass the New Deal reforms he sought, President Roosevelt made a compromise with Southern Congressmen: Roosevelt won major new protections for most workers, but in a way that “preserved the social and racial plantation system in the South—a system resting on the subjugation of blacks and other minorities.”<sup>7</sup> Simply put, farmworkers—who were overwhelmingly African American at that time—were intentionally left out of most New Deal protections offered to other workers.

<sup>6</sup> 20 C.F.R. § 655.1.

<sup>7</sup> Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 *Tex.L.Rev.* 1335, 1336 (1987).

The demographics of the farmworker population in the U.S. have changed in the decades since the Fair Labor Standards was passed in 1938. The farmworker population is now predominantly Latinx. In 2018, 69% of U.S. agricultural workers were born in Mexico.<sup>8</sup> The substandard wages and conditions experienced by farmworkers, however, are largely unchanged.

**Farmworkers' mean and median personal incomes are less than \$20,000, and fourteen percent of workers earned less than \$10,000.**<sup>9</sup> One-third of farmworkers had family incomes below the poverty line.<sup>10</sup>

According to the Centers for Disease Control and Prevention (CDC), agriculture remains among the most dangerous occupations in the nation.<sup>11</sup>

The H-2A program should be understood as part of the larger story of agricultural exceptionalism. Like the legal carve-outs in the New Deal, guestworker programs allow employers to benefit from a tailor-made set of rules that relax protections for a certain subset of workers.

The program was created to allow agricultural employers to circumvent the basic rules of the market economy, most often to the detriment of all workers. Historically, the agricultural industry has failed to improve working conditions for workers. Instead, growers have argued that U.S. workers simply won't do these jobs and workers must be brought in from outside the country.

Since well before World War II, when the notoriously abusive *bracero* guestworker program was created, growers have argued that their industry deserved special protections that did not apply to other industries. Legislators have responded to those concerns by excluding farmworkers from provisions other workers take for granted and by creating a series of guestworkers programs solely for agricultural employers.

Yet in the context of an industry exempt from many basic worker protections, the H-2A program is cause for special concern. Since legal and practical barriers prevent workers from bringing spouses and children to the U.S., employers benefit from a labor force that has neither childcare needs nor other familiar obligations. Furthermore, the lack of regulations and enforcement mechanisms enable employers to discriminate among workers, selecting their "ideal" demographic group of workers—male, young, and able-bodied. Employers also save money because they are not required to pay Social Security and Medicare taxes on H-2A workers' wages. Most importantly, employers benefit from a work force with limited mobility. H-2A workers are tied to one employer and can work only for that petitioning employer. Thus, for all practical purposes, once workers arrive in the U.S., they are often trapped in place.

The structure lends itself to abuse. The structure has not changed much from the structure of the old *bracero program*, a program that the government official in charge of the program in the 1960s called "legalized slavery."<sup>12</sup>

The structure has not changed much from the structure of the old *bracero program*, a program that the government official in charge of the program in the 1960s called "legalized slavery."

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8 *Agricultural Worker Demographics*, National Center for Farmworker Health, Inc., (2018), [http://www.ncfh.org/uploads/3/8/6/8/38685499/fs\\_demographics\\_2018.pdf](http://www.ncfh.org/uploads/3/8/6/8/38685499/fs_demographics_2018.pdf).

9 National Agricultural Worker Survey public access data, Fiscal Years 2015-2016, [https://www.doleta.gov/news/research/docs/NAWS\\_Research\\_Report\\_13.pdf](https://www.doleta.gov/news/research/docs/NAWS_Research_Report_13.pdf).

10 *Id.*

11 The National Institute for Occupational Safety and Health, Workplace Safety and Health Topics: Agricultural Safety, Centers for Disease Control and Prevention, (October 9, 2019), <https://www.cdc.gov/niosh/topics/aginjury/default.html>.

12 *U.S. Postwar Immigration Policy*, Council on Foreign Relations, [www.cfr.org/timeline/us-postwarimmigration-policy](http://www.cfr.org/timeline/us-postwarimmigration-policy).

In Texas, the abuse and race-based violence was so great that, on at least one occasion, Mexican officials prohibited Mexican workers from working in Texan fields for their own protection.

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## HISTORY OF THE H-2A PROGRAM

### Bracero Program

The H-2A agricultural guestworker program forms part of a history of temporary and seasonal work programs dating back to the early 1900s. During the First World War, migrant workers arrived seasonally to work in the U.S. under what has been termed the “first bracero” program.<sup>13</sup> Until the onset of the Great Depression, over 70,000 migrant workers, primarily from Mexico, immigrated. The program ended when U.S. workers returned from the war. The U.S. government then forcibly repatriated migrant workers, who were now seen as competitors for jobs.

Similarly, when World War II began, a new version of the *bracero program* developed. In August of 1943, Mexican and U.S. agencies established an official labor agreement partly to fill the labor shortages faced by the U.S. agricultural industry. Under the agreement, the Mexican government recruited migrant workers to work in the U.S. temporarily.

In 1964, more than nineteen years after the war ended, the U.S. government ended the program. In total, over 4.5 million Mexican workers participated in the *bracero program*, primarily in Texas and California.<sup>14</sup>

On paper, the program provided substantial protections to migrant workers. Under the regulations, workers were entitled to employer-provided housing, wages that

either met the prevailing or minimum wages, and employer-employee contracts highly regulated by the U.S. government.<sup>15</sup>

In reality, workers consistently faced abuse, exploitation, and racial discrimination. In Texas, the abuse and race-based violence was so great that, on at least one occasion, Mexican officials prohibited Mexican workers from working in Texan fields for their own protection.<sup>16</sup> Additionally, 10% of workers’ wages were withheld with the promise that the wages were being paid into the social security system and would eventually be returned. To this day, even after many lawsuits, workers still have yet to fully see those wages.<sup>17</sup>

### Early Versions of the H-2A Program

After the *bracero program* ended in 1964, the H-2 program provided an avenue for inexpensive migrant labor. The H-2 program had been created in 1952 under the Immigration and Nationality Act to bring temporary workers from other countries to the U.S.<sup>18</sup> At its peak, the old H-2 program issued almost 70,000 visas for migrant workers per year. For many years, the program supplied Northeastern apple growers and Florida sugar cane farms with workers from the Caribbean.<sup>19</sup> More than thirty years later, in 1986, the Immigration Reform and Control Act (IRCA) divided the program into two different visa categories: H-1A and H-2A. The law limited the H-2A visa to the agricultural industry, while the H-1A would

13 Gülcan Önel & Derek Farnsworth, *Guest workers: past, present and the future*, Citrus Industry (May 2016), [https://crec.ifas.ufl.edu/media/crecifasufledu/extension/extension-publications/2016/2016\\_May\\_guest.pdf](https://crec.ifas.ufl.edu/media/crecifasufledu/extension/extension-publications/2016/2016_May_guest.pdf).

14 American Social History Project/Center for Media and Learning, *Background Information about the Bracero Program*, HERB: Resources for Teachers, <https://herb.ashp.cuny.edu/items/show/532>. Note that there is currently a space before American.

15 Elizabeth W. Mandel, *The Bracero Program 1942-1946*, *American International Journal of Contemporary Research*, vol. 4, no. 1, pp. 171-184 (2014), [https://www.aijcrnet.com/journals/Vol\\_4\\_No\\_1\\_January\\_2014/17.pdf](https://www.aijcrnet.com/journals/Vol_4_No_1_January_2014/17.pdf).

16 Otey M. Scruggs, *Texas and the Bracero Program, 1942-1947*, *Pacific Historical Review*, vol. 32, no. 3, pp. 254 (1963), <https://www.jstor.org/stable/4492180>.

17 *The Bracero Program 1942-1964*, 177.

18 Tiffany Walker, *Historical Background of the Seasonal Agricultural Worker Program*, National Archives and Records Administration, (August 8, 2017), <https://rediscovering-black-history.blogs.archives.gov/2017/08/08/historical-background-of-the-seasonal-agricultural-worker-program/>.

19 Vernon Briggs, *The ‘Albatross’ of Immigration Reform: Temporary Worker Policy in the United States*, *The International Migration Review*, vol. 20, no. 4, pp. 995-1019, (1986), <https://www.jstor.org/stable/2545747>; *Close to Slavery: Guestworker Programs in the United States*, Southern Poverty Law Center, (February 13, 2013), <https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states>.

be open to all non-agricultural industries needing migrant workers.<sup>20</sup> The H-1A visa later became the H-2B visa for “unskilled, non-agricultural work.”<sup>21</sup>

## Modern H-2A Program

Unlike the H-2B program for non-agricultural work, the H-2A program has no limit on the number of visas the government can issue. The H-2A program has grown rapidly over the past ten years—often at rates of over 20% per year. A record 257,66 worker were certified in FY 2019.<sup>22</sup> Its numbers doubled between 2013 and 2018 and tripled in the decade between 2008 and 2018. Despite its rapid expansion, the protections afforded to H-2A workers have not grown with the program as a whole.

The top states seeking these workers have also changed significantly over time. In 2019, California, the largest agricultural producer in the nation, became the fourth largest user of H-2A workers. The other states in the top five include Florida (#1), Georgia (#2), Washington (#3), and North Carolina (#5). Those five states represent over 50% of the workers sought nationwide. Despite this heavy concentration, H-2A applications have been filed and certified for agricultural employers in every state in the nation. In FY 2019, 13,081 applications were received, and of those, only 211 were denied.<sup>23</sup>

The top crops listed include a category called “general farmworkers,” followed by berries,

tobacco, fruits and vegetables, and melons.<sup>24</sup>

The top employers included several growers’ associations, including the North Carolina Growers Association (requesting 11,223 workers) and the Washington Farm Labor Association.<sup>25</sup>

Hiring practices vary by state. In California and Florida, most H-2A workers are employed by farm labor contractors (FLCs).<sup>26</sup> Advocates have long raised concerns about H-2 petitions filed by farm labor contractors, asserting that workers employed by FLCs are more vulnerable to abuse.<sup>27</sup>

Regulations specifically permit FLCs to hire workers under the program.<sup>28</sup> Although the regulations have some additional protections for workers employed by FLCs, those protections are not sufficient to ensure that workers receive appropriate wages when labor contractors cheat workers of their wages. Although regulations require that FLCs show proof of a surety bond, that bond can only be collected by the DOL, not by workers themselves.<sup>29</sup> This means that, as a practical matter, workers whose rights are violated by FLCs have little chance of obtaining redress for violations of their rights.

20 Gülcan Önel & Derek Farnsworth, Guest workers: past, present and the future, *Citrus Industry* (May 2016), [https://crec.ifas.ufl.edu/media/crecifasufledu/extension/extension-publications/2016/2016\\_May\\_guest.pdf](https://crec.ifas.ufl.edu/media/crecifasufledu/extension/extension-publications/2016/2016_May_guest.pdf); Marjorie Zatz, *Using and Abusing Mexican Farmworkers: The Bracero Program and the INS*, *Law & Society Review*, vol. 27, no. 4, pp. 851-863, (1993), [www.jstor.org/stable/3053955](http://www.jstor.org/stable/3053955).

21 *Id.*

22 Philip Martin, *The H-2A Farm Guestworker Program Is Expanding Rapidly: Here Are the Numbers You Need to Know*, Economic Policy Institute, (April 3, 2017), [www.epi.org/blog/h-2a-farm-guestworker-program-expanding-rapidly/](http://www.epi.org/blog/h-2a-farm-guestworker-program-expanding-rapidly/).

23 Office of Foreign Labor Certification, *H-2A Temporary Agricultural Labor Certification Program - Selected Statistics*, FY 2019, U.S. Department of Labor, [https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2019/H-2A\\_Selected\\_Statistics\\_FY2019\\_Q4.pdf](https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2019/H-2A_Selected_Statistics_FY2019_Q4.pdf).

24 *Id.*

25 *Id.*

26 Philip Martin, *The H-2A Farm Guestworker Program Is Expanding Rapidly: Here Are the Numbers You Need to Know*, Economic Policy Institute, (April 3, 2017), [www.epi.org/blog/h-2a-farm-guestworker-program-expanding-rapidly/](http://www.epi.org/blog/h-2a-farm-guestworker-program-expanding-rapidly/).

27 *Close to Slavery: Guestworker Programs in the United States*, Southern Poverty Law Center, (February 13, 2013), <https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states>.

28 20 C.F.R. § 655.132.

29 29 C.F.R. § 501.9.

Despite this heavy concentration, H-2A applications have been filed and certified for agricultural employers in every state in the nation. In FY 2019, 13,081 applications were received, and of those, only 211 were denied.

## TOP FIVE STATES:

#1 Florida

#2 Georgia

#3 Washington

#4 California

#5 North Carolina

Photo © 2020 by David Bacon  
From *In The Fields of the North*



## THE WORKERS

About 90% of H-2A workers are from Mexico. Other top sending countries are Jamaica, Canada, South Africa, and Guatemala.<sup>30</sup> The U.S. government does not publish data on the communities from which workers are recruited. Our experience is that recruiters largely seek workers from rural communities, and increasingly from indigenous communities.

The overwhelming majority of visas issued under the H-2A program are issued to men. That is not an accident; in their ads for H-2A workers, employers and recruiters clearly express their exclusive preference for men. In recent years, women have constituted only about 6% of H-2A visa recipient in the U.S.<sup>31</sup> By contrast, women make up about twenty percent of the farmworker population at large.<sup>32</sup> Women are routinely told that H-2A jobs are only for men, or they are

funneled into lower-paying jobs under the H-2B non-agricultural program. Women who are hired often face sexual harassment and discrimination on the job.<sup>33</sup>

Families are rarely, if ever, able to stay together as part of the program. While the toll that such separation takes on families is outside the scope of our surveys, a number of workers spoke about the pain and sacrifice they endured being apart for so long, especially from young children. Workers shared how difficult it was to experience abuse on the job when the work had come at such a high cost to their families.

### H-2A ADMISSIONS 2018: TOTAL 298,228

Mexico: 93%  
277,340

Jamaica: 1.8%  
5,303

Canada: 1.5%  
4,415

South Africa: 1.3%  
3,663

Guatemala: 1.2%  
3,562

30 Table 32. Nonimmigrant Temporary Worker Admissions (I-94 Only) by Region and Country of Citizenship: Fiscal Year 2018, Department of Homeland Security, (January 6, 2020), [www.dhs.gov/immigration-statistics/yearbook/2018/table32](http://www.dhs.gov/immigration-statistics/yearbook/2018/table32).

31 Nonimmigrant Admissions by Selected Classes of Admission and Sex and Age, Department of Homeland Security, (June 6, 2019), [www.dhs.gov/immigration-statistics/readingroom/NI/NonimmigrantCOAsexage](http://www.dhs.gov/immigration-statistics/readingroom/NI/NonimmigrantCOAsexage).

32 Trish Hernandez & Susan Gabbard, *U.S. Dep't of Labor, Findings from the National Agricultural Workers Survey (NAWS) 2015–2016: A Demographic and Employment Profile of United States Farmworkers*, 5 (January 2018), [https://www.doleta.gov/news/research/docs/NAWS\\_Research\\_Report\\_13.pdf](https://www.doleta.gov/news/research/docs/NAWS_Research_Report_13.pdf).

33 *Engendering Exploitation*, Centro de los Derechos del Migrante, Inc., (July 6, 2018), [https://cdmigrante.org/wp-content/uploads/2018/07/Engendering-Exploitation\\_policy-brief-7-6-18.pdf](https://cdmigrante.org/wp-content/uploads/2018/07/Engendering-Exploitation_policy-brief-7-6-18.pdf).

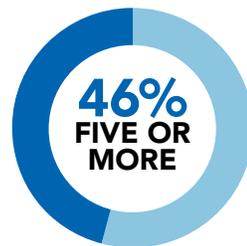
# THE SURVEY RESULTS

The interviews paint a troubling portrait of the life of an H-2A worker. From the moment workers begin seeking work until their return to Mexico, workers may be subject to serious abuse. The abuse may start at the recruitment stage, when workers face discrimination and must pay illegal recruitment fees and costs. The abuse continues in the U.S., and often follows workers back home to Mexico when they return.

## THE SYSTEM OF ABUSES FACED BY AN H-2A WORKER



## SERIOUS LEGAL VIOLATIONS



**Every single worker interviewed experienced at least one serious legal violation,<sup>34</sup> and the overwhelming majority of workers experienced multiple serious legal violations.** We found that 94% of workers experienced three or more serious legal violations, and almost half (46%) experienced five or more. These numbers suggest that abuse is deeply entrenched in the H-2A program and is not the product of a few employers. Even workers who spoke highly of their employers experienced unjust and unlawful practices at some point during their journey.

The H-2A program is governed by regulations related to employment in the U.S. However, the recruitment process is almost completely unregulated. And the regulations that do exist are poorly enforced. Workers begin their employment with substantial out-of-pocket unreimbursed expenses and then suffer a series of abuses that make them deeply vulnerable to trafficking and exploitation. Few workers experienced only one problem; rather, they experienced multiple violations with cumulative effect.

It is incredibly challenging for H-2A workers to assert their legal rights. As long as a worker's right to be in the U.S. is tied to a single employer, pervasive legal violations in the program will persist. Furthermore, the U.S. legal system is not set up to support migrant workers in achieving justice once they have returned to Mexico or elsewhere. Barriers include statutes of limitations, language barriers, a lack of access to attorneys, and a

judicial system that is not set up for indigent persons residing outside the U.S.

As we conducted the interviews, workers often expressed reservations about injustices they experienced that were not illegal. For example, workers raised substantial concerns that they were required to work very long hours, days, and weeks without overtime pay. Because agricultural workers are generally exempt from the overtime provisions of the federal wage law, we did not consider this complaint to be a legal violation.

Some workers expressed dismay that they had worked for many years for an employer but would never be entitled to Social Security or retirement benefits. Workers also shared concerns that they were not entitled to health care coverage. And they spoke movingly about the hardships imposed upon their families by the long absences, since workers are generally not able to bring spouses and children with them to their jobs in the United States. Yet while all of these concerns were valid, because they were not legal violations, they were not the focus of our survey.

The Trump Administration has proposed a rollback to some important legal rights currently afforded to workers. A description of those proposed changes is included as Appendix A. In our recommendations section, we propose a rights-based, alternative model for existing temporary work programs that recognizes workers as full members of our community who should have full access to benefits.

<sup>34</sup> Serious legal violation was defined as violation of legal rights with a substantial impact on the wages or working conditions of the worker. Wage violations had to be more than technical, de minimis violations of wage and hour protections to be considered serious legal violations. Serious legal violations included: workers paying recruitment fees; workers not receiving full travel reimbursements to or from the United States; significant wage violations; not receiving a contract or not receiving a contract in the worker's native language; sexual harassment; verbal threats based on race, gender, or national origin or related to the use of force or deportation; the seizure of identity documents; overcrowded or seriously substandard housing; and the failure to provide essential safety equipment.

## COERCION

Workers described a myriad of ways they experience economic coercion, starting from fees they are forced to pay before they start working. Starting work by paying pre-employment job-related expenses is a significant indicator in trafficking.<sup>35</sup>

Surveys conducted for this report show that, between recruitment costs and unreimbursed travel expenses, the vast majority of workers start their H-2A jobs deeply in debt or having paid significant out-of-pocket costs for the right to work. Workers also described experiencing other kinds of coercion, including feeling unable to leave housing or employment.

### Travel expenses

Most H-2A workers incur substantial debt to get their jobs and to get to the U.S. The surveys conducted by CDM for this report reveal that workers frequently start their job in debt, leaving them vulnerable to exploitation on the job. The abuses H-2A workers experience start at home in Mexico, and they continue in the U.S.

Federal law requires that workers must be reimbursed for their visa processing expenses and travel expenses incurred from their hometowns to their place of employment in the U.S.<sup>36</sup> The DOL's regulations have long required reimbursement of travel costs at the midway point of the worker's employment contract.<sup>37</sup> Additionally, employers must reimburse inbound transportation, visa, and related charges during the initial workweek if these charges reduce the employee's wages below the federal or state minimum wage.<sup>38</sup>

If workers stay until the end of the work contract, the employer must pay the full cost of their return trip to their home in Mexico. Our research reveals employers rarely pay all the required costs.

A large majority of workers interviewed—73%—said they received a partial, or no, travel reimbursement for their travel costs. This means that most workers started their employment in debt or without sufficient funds to be able to walk away from an abusive situation. And the data show that all workers surveyed experienced at least one serious legal violation as H-2A workers.

For example, a worker we interviewed for this report paid \$1,500 U.S. dollars in recruitment fees to get hired to work in Georgia as an H-2A worker. An indigenous Nahuatl speaker, he also incurred an additional \$500 or more in travel costs to get to the U.S. In Georgia, the crew leader demanded that he and his co-workers sign a document stating that they had received full travel reimbursement. In fact, they received nothing. During his five months working there, he never learned who his employer was.

A sizable majority—62% of those interviewed—had to take out loans to get the funds to work in the U.S. A third of those loans required payment of interest, often at what might be seen as usurious interest rates. Several workers had to leave some form of collateral, including the deed to a worker's home, as security for the loan. This level of indebtedness solely

**73%**  
DID NOT RECEIVE  
THEIR FULL  
REIMBURSEMENT  
FOR TRAVEL COSTS  
TO AND FROM  
THE U.S.

**62%**  
TOOK OUT LOANS  
TO GET THE FUNDS  
TO COME TO THE U.S.

35 *Recognizing Human Trafficking: Vulnerabilities & Signs of Recruitment*, Polaris, (January 15, 2020), <https://polarisproject.org/recognizing-human-trafficking-vulnerabilities-recruitment/>.

36 20 C.F.R. § 655.122(h); *Arriaga v. Fla.-Pac. Farms, LLC*, 305 F.3d 1228, 1241–42 (11th Cir. 2002); *Avila-Gonzalez v. Barajas*, No. 2:04-cv-567, 2006 WL 643297, at \*3 (M.D. Fla. March 2, 2006) (“travel from home villages to Monterrey” primarily benefits the employer); see also *Rivera-Santiago v. Wm. G. Roe & Sons, Inc.*, No. 8:07-cv-1786, 2009 WL 10671210, at \*4, \*7 (M.D. Fla. July 2, 2009).

37 20 C.F.R. § 655.122(h)(1).

38 *Arriaga v. Fla.-Pac. Farms, LLC*, 305 F.3d 1228, 1241–42 (11th Cir. 2002).

for the right to start work makes workers vulnerable and sets the stage for further abuse. Simply put, workers are paying for the right to work.

### Recruitment Fees and Abuses

Recruitment in Mexico is a highly decentralized and unregulated system. Hundreds of recruiters operate in Mexico seeking workers on behalf of employers in the U.S. for H-2A jobs. Under U.S. law, recruiters are not required to register to be part of the H-2A program. Indeed, one particularly serious problem not addressed by this report is the prevalence of fraudulent recruiters charging money for jobs that don't exist.<sup>39</sup> The process is opaque and difficult for workers—and advocates—to navigate. It is very difficult for a worker, therefore, to verify that a recruiter is recruiting

for a real job, or that the terms that will be offered in the U.S. are those that are being promised. Too often, workers only realize that they have been subject to fraud when they are in the U.S., and by then, it is often too late to do anything about it.

It is unlawful for employers or recruiters to charge recruitment fees. This prohibition, however, has been ineffective at stopping this practice. This is not surprising, considering that the penalty ultimately penalizes workers. Namely, if employers are found to have charged recruitment fees, they are likely to lose their certification to sponsor H-2A workers, potentially leaving workers jobless, without a visa, and deeply in debt.<sup>40</sup> Workers also reported that they were specifically told by recruiters to lie to consular officers about recruitment fees at the time they applied for

**“We had to pay that amount little by little every week. For me, it was a lot of money. I had taken out a loan with interest.”**

### CASE STUDY: ABEL\*

A Nahuatl speaker from Pachuca, Hidalgo, Abel heard about the opportunity to work at a California company from a few friends. Although he was excited about the opportunity at the time, Abel now recalls his first season as financially disastrous. “I went just to pay back the money I borrowed,” he shared.

Between recruitment fees, visa costs, buses, accommodations, and other travel expenses, Abel paid over \$7,000 Mexican pesos, or about \$370 USD. “First of all, I had to pay for transportation to Nuevo Laredo from Pachuca. Then, we paid for the hotel as we obtained our visa—four nights. Eight hundred pesos per night. We also had to pay for the visa.”

To pay for the recruitment costs and to leave his family with some money, Abel took out

a loan of \$10,000 pesos at a 20% interest rate. Abel's employers did not provide any reimbursement for any of his travel or other costs. Instead, they charged him and his coworkers \$1,500 USD for recruiting him. “We had to pay that amount little by little every week. For me, it was a lot of money. I had taken out a loan with interest.”

Further, his employers discounted an additional \$65 USD for housing and transportation. “They told us [the \$1,500 USD charge] was to ‘better’ our housing. The employer became rich off of us because I saw no improvements or remodeling.”

The company no longer recruits workers from his community.

\*Name and image changed to protect the identity

39 *Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment*, Centro de los Derechos del Migrante, Inc., (April 2019), <https://cdmigrante.org/fake-jobs-for-sale/>.

40 *H-2A Temporary Agricultural Workers*, U.S. Citizen and Immigration Services, (September 3, 2009), [www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers](http://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers).

H-2A visas. If they did not, they risked not even obtaining the visas for the jobs for which they had paid such high fees.

## CASE STUDIES IN BRIEF

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Luis, an H-2A worker interviewed for this report who traveled to Illinois to build farm equipment, took out a loan to pay the 23,000 peso (about \$1,200 USD) recruitment fee to be hired by an H-2A employer. In the U.S., he discovered he was paid three dollars per hour less than promised, and he also had deductions for food taken from his pay. As a result, he struggled to pay back his loan.

Our surveys revealed that 26% of workers interviewed were forced to pay recruitment fees as high as \$4,500. This practice makes workers vulnerable to abuse. Charging workers for the right to work is illegal and is a serious risk factor for human trafficking. Workers are less free to leave an abusive environment when they start the job indebted.

## Wage Violations

CDM receives more legal complaints about wage violations than any other single legal issue. And perhaps that is not surprising, given that the promise of higher wages is the very driver that sends workers far away from their families to the U.S.

Currently H-2A wages must be at least the higher of: (a) the local “prevailing wage”; (b) the state or federal minimum wage; (c) the agreed-upon collective bargaining rate; or (d) the “adverse effect wage rate” (AEWR). The AEWR is intended to ensure that the hiring of guestworkers does not adversely affect the wages for U.S. farmworkers. It is generally substantially higher than the federal or state minimum wage.

Surveys of workers undertaken for this report revealed that wage violations were common in the program in a variety of ways. First, fraud

and misrepresentation about wages were very common in recruitment. Forty-three percent of the workers interviewed for this report stated that the actual salary they received was less than what was promised to them during the recruitment in Mexico. Many described being paid less than the legal wage—sometime far less. One worker, for example, netted roughly \$1.25 per hour after illegal kickbacks. Other workers described illegal deductions from their wages that reduced workers’ net wages significantly below the legal wage.

Twenty-three percent of those surveyed were forced to buy their own safety equipment and other tools to do the job—costs that reduced their wages unlawfully. Seven percent were required to pay for housing, which is specifically prohibited by the H-2A regulations.<sup>41</sup> Six percent were required to pay for transportation from the housing to the field, which is similarly impermissible.<sup>42</sup> Other workers reported that crew leaders demanded significant kickbacks of wages paid to the worker, bringing workers’ wages well below that required by law.

## CASE STUDIES IN BRIEF

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One worker who was surveyed for this report was promised \$11.59 per hour, the required AEWR in Texas in 2017. When he arrived in the U.S., he discovered that he was being paid only \$9.00 per hour. On top of that, he was required to pay an additional \$130 per month for housing, and he was required to buy some of his own equipment for work. His effective wages, then, were more than \$3.00 per hour below what the law required. The worker traveled to the U.S. on a seven-month contract, which means that this employer illegally underpaid him by at least \$3,600 over the course of the season.<sup>43</sup> But this wage theft did not stop with him. In this interview, the worker estimated that 40 workers from his community in Mexico traveled to work for this same employer. Assuming that all workers

Charging workers for the right to work is illegal and is a serious risk factor for human trafficking.

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**26%**  
PAID RECRUITMENT  
FEES

<sup>41</sup> See 20 C.F.R. § 655.122.

<sup>42</sup> 20 C.F.R. § 655.122.

<sup>43</sup> Calculated on the basis of a 40-hour workweek over 30 weeks.

## CASE STUDY: CARLOS\*

When Carlos received a written contract to work in the United States, he was told that he had to sign the document despite not understanding it. He and five other workers from his community paid the recruiter nearly \$800 USD each to work harvesting sugar cane in Louisiana.

Upon arrival in the United States, he found working conditions far more different from what he had been promised. “They told me [the job would entail] harvesting sugar cane, and that the payment would be by the hour. It wasn’t like that. I was paid by weekly and way less than I had been promised. I also didn’t work for the company whose name was on the visa.”

He was promised \$10.69 an hour, but received less than \$100 a week for over 72 hours of work.

Carlos suspects his crew leader withheld the money.

“We were telling the employer what was going on with the checks, but he said he did pay us. He told us to figure it out with the other supervisor, but that other supervisor never showed up.”

Carlos’ employer only allowed workers days off when it rained. He was also unable to leave. “When we arrived, they took away our passports and did not want to give them back. Throughout a month, we demanded them back, saying that if the police stopped us or anything, we would need them.”

“When we arrived, they took away our passports and did not want to give them back.”

\*Name changed to protect the identity

**43%**  
**WERE NOT PAID THE  
WAGES THEY WERE  
PROMISED**

were illegally underpaid at approximately the same rate, the community was deprived of at least \$144,000 in earnings that it should have received.

Another worker brought to work in Texas was promised \$11.87 per hour, the required AEWR for 2018. However, upon his arrival, he discovered that the employer was paying him a flat \$400 per week—even though he was required to work seven days a week, for roughly 11 hours per day. That means he earned roughly \$5.19 per hour—\$6.68 per hour less than he was legally entitled to earn. He was hired on a nine-month contract but worked only five due to a work-related injury. Thus, over the course of his contract, his employer illegally underpaid him by at least \$11,000.

Thirty workers indicated that, although they were promised an hourly wage rate, when they arrived to work in the U.S., they were actually paid by a piece rate system—where workers are paid not by hour but by their production. It is not unlawful for workers to be paid on a piece rate basis, so long as workers receive at least the minimum hourly wage and so long as that system is disclosed to the workers

in advance and is approved by the DOL in the labor certification process. However, the workers surveyed reported that, in addition to learning about the piece rate system after the fact, they were paid less than the minimum hourly wage when paid by piece rate. In effect, employers did not use the piece rate to incentivize a higher production by paying workers more per hour, as is permissible, but instead used the piece rate as a way to hide that the employer was actually paying less than the legal minimum wage rate.

### CASE STUDY IN BRIEF

One worker who traveled to Florida to harvest watermelons and oranges was promised \$11.50 per hour, but he ended up being paid by the piece rate. He earned \$350 per week for 77 hours of work—about \$4.55 per hour—far less than the required Adverse Effect Wage Rate and even less than the federal minimum wage of \$7.25 per hour.

The exponential growth of the H-2A program has not been accompanied by a concomitant increase in resources for wage and hour



Photo © 2020 by David Bacon  
From *In The Fields of the North*

enforcement.<sup>44</sup> Our surveys revealed that workers rarely saw evidence of government enforcement related to pay practices. While a majority of workers (64%) indicated that they had seen evidence of some kind of inspection, it was generally limited to housing conditions. Only one individual stated that he was aware of a government inspection related to pay practices. Given the vulnerability of H-2A workers and the pervasiveness of wage issues, much more must be done to enforce the law.

### Lack of Freedom

Our surveys revealed a disturbing trend—far too many workers felt unable to walk away. Thirty-four percent of those interviewed described restrictions on their movement, such as not being able to leave the housing or worksite. Some workers stated that they needed permission to leave the housing. Others indicated they were prohibited from leaving other than to buy groceries. One worker who had worked in sugar cane in Louisiana reported: “We were not able to

leave. We did not have permission to leave. They would take us to Walmart and tell us ‘one hour,’ but that was it. We were not permitted to go elsewhere.” He was hired on a ten-month contract, and his employer was certified to bring 65 workers to Louisiana.

Thirty-two percent of workers described themselves as feeling “not free to quit.” Many worried about the ramifications of quitting and many believed that they would not be allowed to return to work in the U.S. at all if they did not complete a contract, regardless of the reason. Others told of threats made by supervisors that they would be reported to ICE or law enforcement.

One worker, who described a series of problems with his employer, said that many workers had left the job. However, supervisors told the remaining workers that those who had left had been deported. “We were all afraid, and we did not know if it was true that people had been deported.” This worker witnessed verbal abuse and threats that left him and other workers fearful even to consider

Employers seized the passports of seven workers who were surveyed so that workers could not easily leave their employ. One Louisiana worker told us plainly: “the employer took it and held it so we could not leave.”

**34%**  
EXPERIENCED  
RESTRICTIONS ON  
THEIR MOBILITY

**32%**  
WERE NOT  
FREE TO QUIT

<sup>44</sup> Marianne Levine, “Behind the Minimum Wage Fight, a Sweeping Failure to Enforce the Law,” *Politico*, (February 8, 2018), <https://www.politico.com/story/2018/02/18/minimum-wage-not-enforced-investigation-409644>.

“I lived in a chicken pen made out of thin metal material that was in bad shape, and it had bunk beds with thirty to forty other people.”

## CASE STUDY: MARIO\*

When Mario signed up to work in Wauchula, Florida during the spring of 2019, his recruiter failed to give him enough time to read the employment contract. “I just had time to sign.” Labor violations continued throughout his journey to and in the U.S., leading to the tragic death of one of his coworkers.

Originally from Oaxaca, Mexico, Mario arrived in the U.S. to work picking cranberry, blackberry, corn, and onions. In total, he paid about 40,000 Mexican pesos (more than \$2,000 USD) to travel to the United States. These costs included a hefty \$650 USD in recruitment fees. His employers did not reimburse any of these expenses.

Conditions in the U.S. were deplorable. “I lived in a chicken pen made out of thin metal material that was in bad shape, and it had bunk beds with thirty to forty other people. Anyone was able to enter.” He was charged \$1,000 USD a month to live there. His weekly wages were between \$300 and \$400 for over 80 hours of work. He worked every day and received no lunch or rest breaks.

In the fields, their supervisor verbally and emotionally abused Mario and his coworkers. They received their wages in cash but were handed payment stubs with significantly higher and inaccurate wages. “Once, a colleague took pictures of the payroll and the employers threatened to return him to Mexico. The employer also scolded us when we didn’t want to go out in the rain because our boots and feet would hurt.”

Several workers sought to flee “because they didn’t want to work there,” and the supervisor retaliated by taking their passports. “They didn’t want us to leave or go anywhere.”

It took a tragedy for workers to be able to leave. “There was an accident because a man died at work. After that, we were told we could ask for permission to leave since we were close to completing the third part of the contract.”

“He worked in cutting corn and it’s difficult work. They said that when he died, he had not had access to water. And we need to drink a lot of water.”

\*Name changed to protect the identity

leaving to return home. Yet when government inspectors came for an inspection, workers were threatened and told not to speak to the inspectors.

Employers seized the passports of seven workers who were surveyed so that workers could not easily leave their employ. One Louisiana worker told us plainly: “the employer took it and held it so we could not leave.” The same worker reported that they were not

allowed to leave the housing when not at work.

Seizing documents, restricting workers’ mobility, and threatening to contact law enforcement are key indicators of labor trafficking. The fact that so many H-2A workers feel unable to quit in the face of frequent, serious labor violations is deeply troubling. Too often, the H-2A program funnels workers into a system of government-sanctioned human trafficking.

## DISCRIMINATION AND VERBAL ABUSE

### Discrimination in Hiring

The overwhelming majority of workers surveyed for this report described systemic sex-based discrimination in hiring. In our interviews, 86% said that women were either

not hired or were hired on less favorable terms than men (lower pay or less desirable jobs), while 67% of workers said their employer or recruiters explicitly prohibited the hiring of women altogether. H-2A employers and recruiters often search out a very specific

demographic: young, able-bodied men without families in the U.S. Women, older men, and workers with disabilities have little chance of being selected for an H-2A visa. This discrimination is deeply entrenched in recruitment practices for the program, and recruitment ads specifying gender and age limits are common.

For example, an ad for strawberry pickers in Santa Maria, California by a recruiter named Aztec Foreign Labor sought workers with experience picking strawberries and noted: *“se requiere gente de estatura baja, masculina, con experiencia comprobable, y pasaporte.”* (“We need short men, with verified experience, and a passport.”)

Another ad posted by Fresh Harvest USA sought workers to pick oranges in California. *“¡Estaremos buscando hombres de 18 a 39 años con experiencia en la cosecha de la Naranja para contratos de trabajo temporal con Visa H2A en Estados Unidos.”* Translation: “We will be looking for 18 to 39-year-old men with experience in the harvesting of oranges for temporary work with an H-2A visa in the U.S.” Fresh Harvest was certified to bring in 4,812 H-2A workers in 2019, making it one of the ten largest H-2A employers in the nation.<sup>45</sup>

Since the Civil Rights Act of 1964 and the Age Discrimination Employment Act of 1967, employers in the U.S. have been forbidden to use race, color, religion, sex, national origin, and age as factors in hiring practices. However, employers routinely apply discriminatory criteria when hiring guestworkers for work in the U.S. For example, although the U.S. government no longer publishes statistics on age and gender of H-2A workers, data from their most recent year of published data shows that only 6% of H-2A admissions were women.<sup>46</sup> Furthermore, the U.S. government refuses to investigate abuses that occur during recruitment abroad, and routinely certifies and approves visas for employers who



overwhelmingly hire workers of a particular demographic.

Despite clear evidence that such discrimination exists, the U.S. DOL refuses to take action to counter discrimination that occurs during recruitment outside of the U.S.

### Sexual Violence and Verbal Abuse

Our surveys revealed that verbal abuse, violence, and sexual harassment were disturbingly common. Thirty-one percent of those interviewed said they were subjected to serious verbal abuse, including the use of racial epithets. Workers described employers who screamed at them and called them “idiots.” One worker told us of an employer who called the all-male work crew “women” and “crybabies.” Another worker told us: “they yelled and said terrible things. It was very hard on people. Sometimes it was hard to understand because it was in English. We wanted to leave but could not.” Another worker reported that “the supervisor screamed and threatened us, saying that drones were monitoring us if we stopped for even a moment.” A worker who had worked in Georgia told us that the supervisor constantly yelled at them to work faster, threatening

**86%**  
OBSERVED  
DISCRIMINATION  
AGAINST WOMEN

**67%**  
SAID THAT WOMEN  
WERE PROHIBITED  
FROM BEING  
HIRED AT ALL

**31%**  
WERE SUBJECT TO  
SERIOUS VERBAL  
ABUSE

<sup>45</sup> Office of Foreign Labor Certification, *H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, FY 2019*, U.S. Department of Labor, [https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2019/H-2A\\_Selected\\_Statistics\\_FY2019\\_Q4.pdf](https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2019/H-2A_Selected_Statistics_FY2019_Q4.pdf).

<sup>46</sup> *Nonimmigrant Admissions by Selected Classes of Admission and Sex and Age*, Department of Homeland Security, (June 6, 2019), [www.dhs.gov/immigration-statistics/readingroom/NI/NonimmigrantCOAsexage](http://www.dhs.gov/immigration-statistics/readingroom/NI/NonimmigrantCOAsexage).

**“Of course, we saw it, all the time; it happened in front of me. My supervisor sexually harassed me—One is afraid because of the fear of retaliation and of losing one’s job.”**

them and saying they would be not be able to return in the future if they did not speed up. An indigenous worker who picked fruit in Washington stated that the supervisors screamed such racially charged comments as “*Mexicanos putos, váyanse a la verga!*” (“Fucking Mexicans, go fuck yourselves!”)

Of those subjected to serious verbal abuse, more than half said they did not speak up or complain about the issue. As one man who had worked in Arizona and California told us: “people did not speak up because we were afraid—in the end there is no one to defend you.”

## **Sexual Harassment**

Twelve percent of those interviewed reported sexual harassment on the job. Our experience working with survivors of sexual violence suggests that this number grossly underreports the pervasiveness of this problem.<sup>47</sup> We know these are difficult matters to report in a survey with questions asked by a relative stranger. Indeed, our experience representing workers is that it often takes many interviews about a variety of labor rights before workers feel comfortable reporting sexual harassment. This is particularly true for male workers.

## **CASE STUDY: CARLA\***

Even though women were sought and recruited to work in Florida, Carla observed the discrimination and threats faced by migrant worker women under the H-2A program. Her Florida-based company recruited Carla to harvest romaine lettuce for a company in Florida under the H-2A program. Her brother had heard of the recruiter and informed Carla of the opportunity.

“The recruiter told me he usually didn’t take women. Usually only men,” Carla recalls.

“The work is strenuous, and they want someone who will be able to do it.” She was only allowed to come as part of the group because the recruiter knew her brother. Only three other women came through the H-2A program.

In the U.S., Carla recounts that she “felt fear because she was the only woman” in her trailer. On one occasion, someone tried to enter her bedroom through the window. She never found out who the potential intruder was, but she failed to sleep well afterwards.

Soon after this incident, she became ill, and her supervisor assigned her to clean trailers instead of doing field work. “Once, I entered one of the trailers to clean, and an intruder who was intoxicated stood there. He grabbed a knife and started chasing around to kill me...I worried that one of my cleaning days I would run into a coworker who would again assault me.”

It didn’t stop there. One night she woke up to screams from her supervisor. “Fucking woman, why did you leave these men outside?!” As the only woman in the house, Carla had made sure to lock the doors. The workers couldn’t open it from the outside.

The supervisor was visibly intoxicated and aggressively slammed the door. “He didn’t understand that as a woman, I locked the door for security reasons.”

Carla now forms part of the Migrant Defense Committee at Centro de los Derechos del Migrante, where she advocates against the discrimination and gender-based violence faced by migrant worker women in the guestworker programs.

“Enough! We need to be more informed... so they don’t take advantage of us.”

**“He grabbed a knife and started chasing around to kill me...I worried that one of my cleaning days I would run into a coworker who would again assault me.”**

\*Name changed to protect the identity

<sup>47</sup> *Engendering Exploitation*, Centro de los Derechos del Migrante, Inc., (July 6, 2018), [https://cdmigrante.org/wp-content/uploads/2018/07/Engendering-Exploitation\\_policy-brief-7-6-18.pdf](https://cdmigrante.org/wp-content/uploads/2018/07/Engendering-Exploitation_policy-brief-7-6-18.pdf).

While we are not aware of more in-depth data related to sexual harassment and H-2A workers, a 2010 study found that among 150 Mexican women and women of Mexican descent who were working the fields of California's Central Valley, 80% said they had experienced some form of sexual harassment.<sup>48</sup> Similarly, the Southern Poverty Law Center conducted in-depth interviews with approximately 150 immigrant women working in the U.S. food industry and found that virtually all of the women said sexual harassment was a serious problem, and a majority had personally experienced some form of it while working in the fields, packinghouses or processing plants.<sup>49</sup>

One male worker interviewed for this report who had worked in Arizona said: "Of course, we saw it, all the time; it happened in front of me. My supervisor sexually harassed me—One is afraid because of the fear of retaliation and of losing one's job." Not a single worker who was subject to sexual harassment said that they reported it. As another worker told us: "No one could do anything. We were all afraid"

Twenty-five percent of workers interviewed for this report knew only their direct supervisor, but not their employer. This lack of information made it all the more difficult to report abusive conduct, especially when supervisors or co-workers were the perpetrators of such conduct.

In 38 states, there is no state regulation of farmworker housing, and no dedicated agency to inspect farmworker housing... In practice, what this means is that inspections do not happen.

## HEALTH AND SAFETY

### Housing Conditions

The H-2A program mandates employers provide free housing to workers. The housing must conform to certain guidelines; be inspected prior to occupancy; and must display a government-issued permit.<sup>50</sup> However, our interviews with workers revealed that overcrowded and deplorable conditions were common, suggesting that regulations are insufficient to ensure employers comply with housing standards.

Once H-2A workers arrive in the U.S., their dependence on employers increases. Most workers live in employer-provided housing, often in isolated locations. The employer sets rules for living in the housing and can monitor workers' visitors or workers coming and going.<sup>51</sup> In surveys, workers described rules that barred any visitors, prohibited workers from drinking alcohol, and that required workers to ask permission for ordinary errands.

The law requires that housing must be

inspected prior to occupancy by workers.<sup>52</sup> However, recent data from the U.S. DOL reveals starkly that both the federal and state government have not allocated adequate resources to do even one inspection of every labor camp in a state. In 38 states, there is no state regulation of farmworker housing, and no dedicated agency to inspect farmworker housing. In those states, only the State Workforce Agency is available to inspect farmworker housing. In practice, what this means is that inspections do not happen.

State agencies charged with inspecting farmworker housing are often extremely under resourced. In Texas, for example, the Texas Department of Housing and Community Affairs (TDHCA), which enforces Texas' state law governing farmworker housing,<sup>53</sup> has a housing inspection budget of approximately \$30,000 per biennium. This budget is not sufficient to deliver quality inspections. For years, TDHCA certified housing that was not up to code. An in-depth investigation into

48 Irma Morales Waugh, *Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women*, Violence Against Women, vol. 16, no. 3, pp. 237–261 (January 2010), <https://pdfs.semanticscholar.org/60c7/1b8af21cd427d397b2baba3567fd2468a8b2.pdf>.

49 Mary Bauer and Monica Ramirez, *Injustice on Our Plates: Immigrant Women in the U.S. Food Industry*, Southern Poverty Law Center (2010), [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/publication/Injustice\\_on\\_Our\\_Plates.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Injustice_on_Our_Plates.pdf).

50 20 C.F.R. § 655.122(d).

51 *Rivero v. Montgomery County*, No. 16-cv-1186, 2017 WL 1684618 at \*1–2 (D. Md. May 3, 2017) (employer blocked legal aid workers from visiting H-2A workers in employer's camp).

52 20 C.F.R. § 655.122(d).

53 Tex. Gov. Code §§ 2306.921 et seq.; see also 10 Tex. Adm. Code § 90.2 (state housing standards).

## CASE STUDY: LUIS LOPEZ ALCALA

Until a work-related injury left him unable to work, Luis Lopez Alcala worked for an Arizona-based company cutting romaine lettuce. For four years, he suffered many rights' violations under the H-2A program.

Living in Sonora, a Mexican state bordering Arizona, he would wake up at 2 am every morning to cross into the U.S. for work. Once on the U.S. side., a supervisor would pick him and his coworkers up and take them to the work site. He returned home to Sonora in the evenings. "I paid for my own travel up until we crossed the border for four years." He also paid for his own work boots and knives, often buying several during each season.

During the 2016 season, Luis fell into a hole at work while cutting lettuce and suffered debilitating internal injuries. He wasn't given immediate medical care. Instead, his supervisors mocked and laughed at him.

"You got yourself hurt in Mexico," the supervisors would tell him, trying to suggest he should not receive workers' compensation benefits for the injury. Luis did eventually receive surgery in the U.S., but his injury came at a huge financial cost that his family struggled to pay. He received less than \$500 in wages for two months of disability, so he looked to loan sources as an alternative.

"I am indebted everywhere. It is affecting me to this day."

Since the accident, Arizona company has continued to hire Luis' coworkers, leaving Luis behind. "All I wanted was to stay on good terms so as not to lose my job. But it was the opposite...They told me that I was no longer needed. They were hiring new people."

Because of his disability, Luis fears he will struggle to find a job and support this family.

"Nobody hires you in Mexico if you've had this kind of surgery. Imagine two months without pay and having to pay for the house, electricity, water, food, and supporting the family."

**"I am indebted everywhere. It is affecting me to this day."**

**"There were rats in the house, the food was spoiled because the refrigerator did not work. Six people lived in a trailer and it was very hot."**

Texas' housing inspection system found that, among other things, TDHCA had not levied a single enforcement action against operators of migrant farmworker housing, even after those operators failed inspections, and that nine out of ten migrant farmworkers did not reside in licensed housing.<sup>54</sup>

A similar investigation into Missouri's housing inspection system revealed that their program also failed to inspect housing as a result of severe underfunding.<sup>55</sup> "Missouri's process of inspecting migrant farmworkers' housing is riddled with holes and is easily abused."<sup>56</sup> A large-scale investigation into the inspections of farmworker housing

conducted in Illinois, Indiana, Iowa, Michigan, Missouri, Texas, and Wisconsin found that states often had an inadequate number of inspectors "who have additional duties beyond inspecting migrant housing."<sup>57</sup> Iowa conducted housing inspections only when there were complaints because it had just one part-time employee to do the job. Inspection reports showed black mold, raw sewage and pest infestations, as well as broken doors and windows, and defective plumbing and electrical wiring.<sup>58</sup>

54 Jeremy Schwartz, "Unlivable: How Texas Fails Farmworkers," *MyStatesman*, (March 17, 2016), <http://specials.mystatesman.com/farmworker-housing>.

55 Sky Chadde and the Midwest Center for Investigative Reporting, "Missouri's Housing Inspections for H-2A Workers Missed Deficiencies for Years," *Stltoday.com*, (August 22, 2019), [www.stltoday.com/news/local/state-and-regional/missouri-s-housing-inspections-for-h-2a-workers-missed/article\\_6914b8ad-ebee-5740-9613-cab883cf3dad.html](http://www.stltoday.com/news/local/state-and-regional/missouri-s-housing-inspections-for-h-2a-workers-missed/article_6914b8ad-ebee-5740-9613-cab883cf3dad.html).

56 *Id.*

57 Robert Holly, Claire Everett, and the Midwest Center for Investigative Reporting, "Blighted Housing: Inspections Fail to Stem Poor Conditions for Migrant Farmworkers," *Investigate Midwest*, (November 7, 2016), [investigatemitwest.org/2016/04/13/blighted-housing-inspections-fail-to-stem-poorconditions-for-migrant-farmworkers/](http://investigatemitwest.org/2016/04/13/blighted-housing-inspections-fail-to-stem-poorconditions-for-migrant-farmworkers/).

58 *Id.*

State Workforce Agencies (SWAs) similarly lack resources to perform quality housing inspections. The Kentucky SWA is charged with inspecting in excess of 600 housing locations, yet its Fiscal Year 2019 foreign labor certification grant is a mere \$300,000.

As the H-2A program has increased from 59,000 to over 250,000, funding for housing inspections has stagnated.<sup>59</sup>

All of the workers interviewed for this report lived in employer-provided housing. Seven percent of those interviewed were charged for the housing they were provided, in clear violation of H-2A regulations. A larger number of workers—45% of those interviewed—described overcrowded and even dangerous conditions, which is also unlawful.

Workers' complaints about housing ranged in their level of seriousness. One Florida worker told us that "there were rats in the house, the food was spoiled because the refrigerator did not work. Six people lived in a trailer and it was very hot." Another worker who labored picking berries told us that they were housed in an "iron chicken coop" with bunkbeds. In addition to the squalid housing, it lacked security and was open to anyone, so workers felt very unsafe.

Twenty workers described the housing as severely overcrowded—the single largest complaint about the housing. Others complained about inadequate ventilation, oppressive heat, pests, inadequate cooking and bathroom facilities, and general squalor.

Many workers interviewed for this report—30% of those surveyed—said they saw no evidence government inspectors ever visited the workplace or housing. Of course, inspections while workers are residing in the labor camp are essential because housing that appears to be adequate prior to occupation may quickly become overcrowded, unsanitary, and unsafe once occupied.

## Safety on the Job

The National Institute for Occupational Safety and Health (NIOSH) ranks agriculture among the most dangerous industries, with workers and their families being at high risk of work-related injuries.<sup>60</sup> Common injuries include those caused by heat stress, pesticides, pollen, and accidents due to tractors and machinery.

Proper training and equipment reduce the risks of fatal or non-fatal injuries in agriculture. However, 27% of the H-2A workers interviewed told us that they were given inadequate training to do their jobs safely. Another 35% of workers stated that they did not receive adequate equipment to execute their jobs in a safe manner.

Of those workers, a large portion specified that the burden to buy proper equipment fell on the worker, despite explicit regulations requiring employers to provide all tools or supplies needed to work.<sup>61</sup> Waterproof boots, gloves, and knives were among the materials workers reported having to buy; workers were often told they had to buy these items because they were—for "personal use." By shifting this expense, employer placed workers in the positions of having to decide whether and when they could afford to purchase essential safety equipment. It also drove workers' effective wages down below the legally required wage rate.

Despite the importance of taking breaks in combating common illnesses such as heat stress, exhaustion, and dehydration,<sup>62</sup> workers did not always receive periods for rest, hydration, and shelter. On average, workers received one break lasting 25 minutes, most often only for their mealtime. Twenty-four percent of workers stated they were given only one break during the day for lunch, even during the hottest months of the year.

**45%**  
LIVED IN  
OVERCROWDED  
AND/OR  
UNSANITARY  
HOUSING  
CONDITIONS

**35%**  
DID NOT HAVE  
NECESSARY SAFETY  
EQUIPMENT

**27%**  
DID NOT RECEIVE  
ADEQUATE TRAINING

**10%**  
DID NOT RECEIVE  
BREAKS

59 *Id.*

60 The National Institute for Occupational Safety and Health, *Workplace Safety and Health Topics: Agricultural Safety*, Centers for Disease Control and Prevention, (October 9, 2019), <https://www.cdc.gov/niosh/topics/aginjury/default.html>.

61 *Employee Rights Under the H-2A Program*, U.S. Department of Labor, Wage and Hour Division, (April 2012), [https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WHD1491Eng\\_H2A.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WHD1491Eng_H2A.pdf).

62 The National Institute for Occupational Safety and Health, *Workplace Safety and Health Topics: Heat Stress*, Centers for Disease Control and Prevention, (June 6, 2018), [www.cdc.gov/niosh/topics/heatstress/default.html](http://www.cdc.gov/niosh/topics/heatstress/default.html).



Photo © 2020 by David Bacon  
From *In The Fields of the North*

**Alarmingly, about one in ten H-2A agricultural workers stated they received no break at all or were only given a break “when one of their coworkers fell ill.”**

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Alarmingly, about one in ten H-2A agricultural workers stated they received no break at all or were only given a break “when one of their coworkers fell ill.” Two workers relayed a similar sentiment: while breaks were technically available, workers were frowned upon for taking breaks. Thus, both of those workers, along with most of their coworkers, ultimately felt pressured to work through their theoretical breaks.

While the surveys did not specifically address work-related injuries, several workers volunteered information about their on-the-job accidents. For some of the workers interviewed for this report, health and safety issues led to serious accidents. Four percent of those surveyed volunteered that they had an accident on the job that resulted in their being unable to complete the season. Of those, two described receiving inadequate or no medical care and being sent back to Mexico without compensation for lost wages.

Because we did not ask questions about accidents specifically, these findings likely greatly underestimate the scope of this problem.

### **Indigenous Workers**

As the H-2A program has expanded, CDM has observed a growing trend of workers recruited from Southern Mexico and, in particular, from indigenous communities. Neither the U.S. nor Mexican governments publish data related to this trend. Language barriers, geographic location, poverty, and other factors likely increase indigenous workers’ vulnerability to labor abuses. Our findings raised significant questions about the vulnerabilities indigenous migrant workers face and the ways in which employers and recruiters fail to adequately address the needs of indigenous workers.

Nineteen of those interviewed from this report were indigenous speakers. For this report, the proficiency and knowledge of indigenous

## CASE STUDY: DAVID\*

In August of 2018, David left his wife, Isabel, and his two children in Mexico and set off to the United States, seeking to improve his family's financial resources. Five days later, Isabel received devastating news just as the family was sitting down for dinner—David had died at work.

Both from an indigenous background, Isabel and David met almost two decades earlier. Isabel spoke little Spanish, and David, who spoke primarily Nahuatl, spoke even less Spanish. For most of their marriage, David and Isabel worked as farmworkers in their rural community.

Then, Isabel suffered a sudden injury that left her in a wheelchair. The high cost of medical treatment rapidly took a toll on the family's finances and pushed David to seek work in the United States.

David's recruiter charged him \$50,000 Mexican pesos—approximately \$2,700 USD—for the opportunity to work in the

United States. Upon arrival, David would have to pay thousands of dollars more. He had no choice but to take out a loan.

Less than a week after David arrived at his worksite, David's recruiter contacted his family to ask for \$6,000 USD, saying that "David didn't want to work or was useless for working." A couple hours later, the family received one final call—David had been taken away in an ambulance.

"He had already died when they called the ambulance," states Adela, David's sister-in-law. "The hospital said he never made it there." The company never contacted David's family members to inform them of David's passing, and his family does not know the precise cause of death.

In the days and weeks following David's death, his family tried to make sense of the tragedy. From his coworkers, they learned that David had expressed feeling ill all day, but received no medical attention.

"Eventually, he didn't stand up. Nobody from the company was there—only the workers."

Adela believes David's indigenous background made him a target. The company that hired her brother-in-law often recruited indigenous workers from remote parts of Mexico. "They hire people they believe won't do anything or won't speak up."

It took months, multiple interpreters, calls and letters for Isabel and her children to receive David's body in rural Mexico. To this day, the family continues to fight a worker's compensation claim for David's workplace death.

**"They hire people they believe won't do anything or won't speak up."**

\*Name changed to protect the identity

language was used as a proxy for indigenous background. The languages spoken by indigenous H-2A workers included Nahuatl, Zapotec, and Mixtec. Indigenous workers were from several states, including Guerrero and Oaxaca. Both of these are among the states with the largest indigenous populations in Mexico.<sup>63</sup>

In general, all workers who reported receiving contracts received contracts written in either Spanish or English. None of the indigenous workers received contract or labor terms in an indigenous language. Some of the indigenous speakers interviewed for the report stated that they did not understand or understood very little what the contracts stated. Some of these workers did not read Spanish or "weren't accustomed to reading and were asked to read their own."

Findings also raised concerns about indigenous workers' susceptibility to abuse in recruitment. At least fifty percent of those indigenous workers were forced to take out a loan from family, friends, or an unregistered loan source. We know that indebtedness heightens exposure to abuse.

Many recruiters, employers, and government and advocacy organizations are ill-prepared to meet the needs of indigenous workers at this time. The growing trend of recruitment of indigenous workers raises concerns and bears much greater investigation and inquiry.

<sup>63</sup> Jonathan Fox, "Mexico's Indigenous Population," *Cultural Survival*, (March 1, 1999), [www.culturalsurvival.org/publications/cultural-survival-quarterly/mexicos-indigenous-population](http://www.culturalsurvival.org/publications/cultural-survival-quarterly/mexicos-indigenous-population).

**19%**  
OF THOSE  
INTERVIEWED  
WERE INDIGENOUS  
WORKERS

**0%**  
OF INDIGENOUS  
WORKERS RECEIVED  
A CONTRACT IN  
THEIR LANGUAGE

# RECOMMENDATIONS

The H-2A program is not a “win-win” program. In its current form, it is fatally flawed, too often a vehicle for abuse, exploitation and trafficking. The data gathered for this report reveals that the problems in the program are not the product of a few bad employers. They are, instead, the inevitable product of a program created to meet employers’ needs without taking into account the needs of workers. Too often, existing guestworker programs have been suggested as the model for some future immigration reform. Instead, guestworker programs should be completely reimagined.

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Migration that Works, a coalition of workers’ and civil rights groups and advocates, including CDM, has proposed a vision for a fair international worker program. Their alternative model is attached here as an Appendix A. We endorse this model, described by the coalition as:

A value-based model for labor migration that prioritizes the human rights of workers and their families, elevating labor standards for all workers. Through advocacy, organizing, and case work, we seek to build a future in which workers have control over the labor migration process, access to justice and a pathway to citizenship. This approach would correct current power imbalances between migrant workers and their employers, ensuring dignity, safety and justice for all internationally recruited workers.

If a temporary agricultural worker program continues to exist, it should be re-created as a program that does at least the following:

- allows workers control over the place they are employed;
- gives workers the right to change employers;
- offers workers a pathway to citizenship;
- offers workers the right to bring immediate family members with them to the U.S., and those family members should be given the right to work;
- prohibits discrimination in hiring;
- allows workers to join unions or other worker organizations; and
- provides workers the right to health care and Social Security benefits.

While we strongly believe that the H-2A program should be fundamentally reimagined if it is to continue to exist, we offer some short-term recommendations for reform to better protect migrant workers.

## Recommendations for Legislative Changes

- Congress should pass legislation regulating the recruitment of workers recruited abroad to work in the U.S. In that legislation, Congress should ban recruiters from charging workers recruitment fees, and it should hold employers strictly liable for any fees that are charged.
- Congress should explicitly prohibit discrimination in the recruitment and hiring of workers. Until the enactment of congressional legislation, federal agencies should also make clear through regulation and guidance that such discrimination is impermissible.
- Congress should ensure that workers who suffer labor rights violations either in recruitment or employment can access legal services both within and outside the U.S.

## Recommendations for federal agencies (Department of Labor, Department of State, Department of Homeland Security, Department of Justice, and Equal Employment Opportunity Commission):

- To ensure transparency and accountability throughout the temporary labor migration programs, federal agencies should collect and publish current and complete data in a manner that allows for comprehensive analysis of the systemic abuses that permeate the labor migration programs. This data should assist in identifying areas for congressional, administrative, and judicial action.
- Federal agencies should create an interagency database, available in real time and in multiple languages, that allows workers to verify the existence of a job, the entire chain of recruiters between the employer and the worker, and the terms of their employment. The database should also enable workers to review the terms of a visa, monitor the status of a visa's application, review their rights under the visa, self-petition for jobs, and avoid jobs and visa categories that would leave them vulnerable to abuses, exploitation, and human trafficking.
- The Department of Labor (DOL) should routinely inspect H-2A employer payroll records for compliance with wage provisions. The H-2A workers interviewed by CDM reported: unlawful deductions from pay; illegal kickbacks they were required to pay to supervisors, crew leaders, or others; and other wage violations. More than half the workers interviewed did not receive the travel reimbursement required by law. The federal Fair Labor Standards Act and corresponding state laws require employers to maintain accurate payroll records. There should

## H-2A Workers and Covid-19

Federal agencies should enact emergency rules to protect migrant workers during this (or any) pandemic. Those regulations should require that employers and recruiters provide clear and accurate information about COVID-19 in their native language. Federal agencies should take action to protect workers while traveling to the U.S., residing in housing in the U.S., and riding in employer-provided transportation. All workers should be provided access to handwashing facilities, regardless of the size of the farm. Workers must be covered by workers' compensation if they become ill from the virus. They must know that all costs of testing and treatment for COVID-19 will be paid. Government authorities and employers must ease workers' fears that they may be retaliated against for seeking medical treatment. All workers, regardless of the size of the employer, should be provided paid sick leave if they become ill. State and local agencies should enact appropriate worker protections if the federal government fails to take adequate and prompt action.

be substantially more active monitoring and review of these records by DOL (or other appropriate agency) to ensure that employers reimburse their H-2A 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.

- DOL should more closely vet and certify contracts for the program, it should ensure that contracts are provided in language that workers understand, and it should ensure that contract terms do not contain breach fees or other liquidated damages clauses that serve to coerce workers into remaining in abusive employment.
- Federal agencies should ensure workers have access to meaningful complaint processes. DOL and the Equal Employment Opportunity Commission (EEOC) should work with the Department of Justice to ensure access to justice for workers who experience gender-based or other discrimination in recruitment or employment, both within and outside the U.S.
- Federal Agencies should ensure that workers who acknowledge being charged recruitment fees are reimbursed and hired without delay and that they do not face retaliation for reporting recruitment charges.
- Significantly more resources should be devoted to enforcing laws by federal agencies, particularly the Department of Labor and the EEOC. Those agencies should have dedicated, highly trained staff focused on enforcement of laws as they relate to guestworkers.
- Immigration relief must be more readily available to workers who speak out against abuse and exploitation. This includes ensuring that workers in the U.S. are permitted to remain, with work authorization, while cases are pending. It also means that workers who have left the U.S. should have the ability to travel to the U.S. and access to immigration relief if appropriate to secure justice.
- DOL should significantly expand its inspections of H-2A worker housing. To the extent that DOL allows inspections to be conducted by state agencies other than State Workforce Agencies, DOL should take measures to assure that quality inspections are being delivered. DOL should also conduct compliance audits of state agency inspections to ensure that the inspections are sufficient to ensure regulatory compliance.
- Federal agencies should take steps to investigate and prohibit discrimination in hiring for the H-2A program; they should also take steps to ensure that women are not unfairly tracked into visa categories that lack access to legal services.
- DOL should withdraw its proposed changes to the H-2A regulations, which would undermine workers' rights in the program. A summary of those proposed regulations is attached as Attachment B.
- Federal agencies should designate specific resources to investigate current conditions faced by indigenous migrant workers in the H-2A program and strengthen protections.



## CONCLUSION

The interviews conducted by CDM with workers throughout Mexico revealed one fundamental truth: the H-2A program is not consistent with American ideals of fair treatment and access to justice. If it continues to exist, it should be fundamentally restructured to allow workers a say in where they will work, the right to change jobs, the right to live with their family members, and a path to citizenship should they seek it. The abuse of workers in the program is not the product of a few “bad apple” employers; rather, it is the foreseeable product of a program that makes workers vulnerable to abuse and offers workers virtually no bargaining power.

## Methodology

From September 2019 to January 2020, CDM surveyed 100 recent H-2A temporary agricultural workers from at least six different states in Mexico. The surveys were designed to collect information on the working and living conditions of H-2A workers, focusing on indicators of potential exploitation, forced labor, and trafficking. Surveys were largely conducted in-person, and a small percentage were conducted by phone. Data was analyzed through a mixed-methods approach to identify trends, vulnerable populations, and legal violations related to H-2A workers.

In order to identify indicators of trafficking and potential exploitation, the surveys included questions about recruitment and employment practices in the H-2A visa program. Workers were asked about their labor migration process from the moment they learned of a job opportunity, to their place of work, and upon their return home. The surveys included the following topics: recruitment practices, employment conditions, housing and transport, wages and hours, deductions, workplace violence, and discrimination.

The target population of the surveys was migrant workers who had worked on H-2A visas in the U.S. between 2015 and 2019.

From September to January, in-person surveys were conducted in six states in Mexico. We conducted the majority of our outreach and data collection in person. We worked in close coordination with CDM's Migrant Defense Committee (or Comité), a group of over 80 former and current migrant workers and their families who are leaders in their communities, to identify workers who had previously traveled to the U.S. as H-2A workers.

In all cases, data was collected while following a data-confidentiality protocol to protect workers before, during and after the time of their employment, and to eliminate traceability or any other risk to their safety and wellbeing. CDM called workers (and, in one case, a worker's family members) to conduct a more in-depth interview about their experiences.

We conducted a quantitative analysis of data to identify trends in legal violations experienced by workers. We also conducted a qualitative analysis of the data.

## Appendix A

# PROPOSAL FOR AN ALTERNATIVE MODEL FOR LABOR MIGRATION

BY MIGRATION THAT WORKS

**INTRODUCTION.** Migration that Works<sup>1</sup>, formerly the International Labor Recruitment Working Group, is a coalition of labor, migration, civil rights, and anti-trafficking organizations and academics advocating for labor migration that prioritizes the human rights of workers. Rather than the existing temporary labor migration programs, Migration that Works proposes an alternative model for labor migration that would obviate recruitment abuses by giving workers control over their visas and facilitating direct hiring.

**THE CURRENT SYSTEM OF TEMPORARY MIGRATION IS FUNDAMENTALLY FLAWED.**

Under the existing guestworker programs, workers are recruited in their countries of origin for temporary work by recruiters who discriminate in their selection of workers and often charge hefty fees to connect workers with employment. Workers often take out loans to pay these fees and other costs in the migration process, which leave workers vulnerable to exploitation, debt bondage, and human trafficking.

Upon arrival at the workplace, workers report abuses such as wage theft, substandard housing, harassment, discrimination in job assignment, injuries, and physical or verbal abuse. Because their visas are tied to their employers, workers face the difficult decision between remaining with an abusive employer or returning home to lost opportunities and insurmountable debt. Workers also face threats of retaliation, retaliatory firing, and non-hiring in subsequent years. Fear of losing a visa in retaliation for reporting abuses silences workers. When combined with the temporary nature of visas, the cross-border nature of migration acts as a barrier to legal complaints.

**A NEW LABOR MIGRATION MODEL IS NEEDED.** Migration that Works proposes a new framework for labor migration that shifts control over the labor migration process from employers to workers, elevates labor standards for all workers, responds to established labor market needs, respects family unity, ensures equity and access to justice, and affords migrant workers an accessible pathway to citizenship. The Migration that Works model incorporates (1) worker control over the labor migration process with (2) meaningful government oversight and (3) rigorous vetting of employers.

## WORKER CONTROL

Rather than being recruited by an informal chain of recruiters, workers would self-petition for visas and connect directly with certified employers on a multilingual, government-hosted database of available jobs. Workers would be entitled to petition for their families. The simple and accessible self-petition process would eliminate the need for recruiters and root out the abuses they perpetuate, from charging fees to discrimination to threats of retaliatory non-hiring in subsequent years. Through the government's job-matching database, workers would also be able to change employers. Workers would be able to petition for citizenship.

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<sup>1</sup> The following organizations and individuals are members of Migration that Works: AFL-CIO; American Federation of Teachers (AFT); Janie Chuang and Jayesh Rathod from the American University, Washington College of Law; Centro de los Derechos del Migrante, Inc. (CDM); Coalition to Abolish Slavery and Trafficking (CAST); Department for Professional Employees, AFL-CIO (DPE); Economic Policy Institute (EPI); Farmworker Justice; Farm Labor Organizing Committee; Friends of Farmworkers; Jennifer Gordon from Fordham University School of Law; Patricia Pittman and Susan French from George Washington University; Jobs with Justice; Justice in Motion; National Domestic Workers Alliance; National Employment Law Project; National Guestworker Alliance, New Orleans Workers' Center for Racial Justice; Polaris; Safe Horizon; Service Employees International Union; Solidarity Center; Southern Poverty Law Center; UniteHere! International Union; Jennifer Hill from the University of Miami, School of Law; Sarah Paoletti from the University of Pennsylvania Law School; and Verité.



Migration  
that Works

Migration that Works is a coalition of labor, migration, civil rights, anti-trafficking organizations and academics advancing a labor migration model that respects the human rights of workers, families and communities and reflects their voices and experiences. Founded in 2011 as the International Labor Recruitment Working Group (ILRWG), Migration that Works is the first coordinated effort to strategically address worker rights abuses across industries and visa categories.

ALTERNATIVE MODEL

## Appendix A

### EMPLOYER CERTIFICATION

Rather than subcontracting with recruiters to solicit workers, employers would apply for certification from the federal government in order to post job opportunities on the government's job-matching database. Once certified, employers would select workers through a blind process that would focus on job competencies and would eliminate discrimination based on race, age, gender, national origin, and other bases of discrimination.

### GOVERNMENT OVERSIGHT

Rather than piecemeal oversight of the current visa programs, the federal government would maintain a single database of certified employers containing a job-matching component in order to facilitate the direct hiring of migrant workers. The government would certify employers, thoroughly monitor compliance with the laws protecting all workers across all industries, and revoke certifications of noncompliant employers, fining them for violations. The government would hold employers strictly liable for abuses at all stages of the labor migration process. Additionally, the government would establish an independent commission to determine labor market need and establish prevailing wage rates. The job-matching database would post only those positions that were responsive to demonstrated shortages and offering market wages.

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**CONCLUSION.** Through this paradigmatic shift, power imbalances between migrant workers and their employers would be corrected. Fundamental flaws in the temporary labor migration programs would be stemmed. The current system would be replaced with a coherent rights-based model that restores the dignity of work to all workers.

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### COMPARISON OF EXISTING AND PROPOSED MODELS

| Rights  | Existing Model  | Proposed Model   |
|---|---|--|
| <b>Freedom of Movement</b>                      | Workers are generally tied to one employer, cannot control where they live, and often have their passports and documents confiscated.   | Workers petition for and control their work visas, choose a residence, and change jobs or industry sectors. Workers maintain control of their documents at all times.                        |
| <b>Freedom from Economic Coercion</b>           | Recruiters charge workers recruitment fees, employer contracts include breach fees, and travel and subsistence costs result in work-related debt that force workers to remain with abusive employers. | Employers pay recruitment fees and costs. Workers arrive at the job site free of recruitment and work-related debt.  |
| <b>Self-Determination and Secure Employment</b> | Work visas are time-limited, and workers must return home when their visas expire. Previously full time jobs are made insecure and temporary. Political participation is limited.                     | Workers have a pathway to citizenship, freely exercise their political views, and freely pursue economic, social, and cultural development. Work visas no longer facilitate precarious work. |

| <b>COMPARISON OF EXISTING AND PROPOSED MODELS (continued)</b>                      |   |  |
|--|---|--|
| <b>Rights</b>  | <b>Existing Model</b>   | <b>Proposed Model</b>  |
| <b>Migration as a Family</b>   | Workers generally cannot migrate with their families. Even when family members can migrate, they are not granted equal rights or work authorization.  | Workers migrate with their families. All family members have equal rights, including access to work authorization.   |
| <b>Equal Labor Protections</b>   | The law limits some workers' rights and labor protections. Workers are paid less as compared to U.S. workers, which undercuts wages and working conditions for all workers. Employers use work visas to displace existing workers.                            | Workers are guaranteed high labor standards and just and favorable working conditions, including equal pay for equal work compared to both other migrant and U.S. workers. Genuine need is established before posting job opportunities. |
| <b>Organize</b>  | Workers face barriers when they attempt to organize and join unions. Workers who do organize can face retaliation. The prevalence of staffing agencies and other third-party contractors prevents workers at the same job site from having the same employer. | Workers freely join trade unions and other worker-led organizations. Third-party employers are not eligible for certification, clarifying the employment relationship and reducing discrimination.                                       |
| <b>Non-Discrimination</b>  | Employers and recruiters hire and assign job duties based on discriminatory bases.  | Workers are free from discrimination in hiring, job placement, and re-hiring.  |
| <b>Whistleblower Protections, Personal Security, and Freedom from Intimidation</b> | Employers and recruiters retaliate against workers, threaten to blacklist workers who complain, and attack workers.   | Workers freely report abuses without retaliation, intimidation, threats, or attacks.   |
| <b>Access to Justice</b>   | The border acts as a barrier to justice. Complaint mechanisms are not accessible. Some hearings require in-person testimony, and access to visas to pursue claims is restricted. Legal services are only available to some workers.                           | All persons are equal before the courts, tribunals, and decision making bodies. Workers access fair and just processes and remedies, as well as legal services.  |
| <b>Access to Benefits and Services</b>   | Workers have difficulty accessing health care and other support services. Government benefits to which workers are entitled are difficult, if not impossible, to access across borders.   | Workers have access to health care, mental health care, child care benefits, workers' compensation, Social Security (including survivors' benefits), and retirement benefits across borders.   |

For more information, visit <http://migrationthatworks.org/>, or contact Sulma Guzmán at [sulma@cdmigrante.org](mailto:sulma@cdmigrante.org).

## Appendix B

# PROPOSED TRUMP ADMINISTRATION REGULATIONS

The H-2A program has been subject to modest regulations designed to protect both the H-2A workers and U.S. workers in agriculture. Despite these regulations, largely in place for decades, abuses of H-2A workers have been well-documented.<sup>1</sup>

The H-2A program has grown enormously in recent years, increasing from about 48,000 jobs certified by the U.S. Department of Labor in 2005 to over 242,000 in 2018 and then 257,666 workers in FY2019.<sup>2</sup> This increase has occurred without a concomitant increase in enforcement resources for the Department of Labor or legal services programs nationwide, despite the potential for abuse recognized exists in the program.

Despite the well-documented abuses that have occurred over decades, the Trump Administration proposed new regulations in July 2019 that would weaken many protections that exist for workers. These regulations proposed many changes to the program, including a new methodology for calculating workers' required wages, shifting some transportation costs to workers, expanding the program to new kinds of work, and weakening recruitment requirements for U.S. workers.<sup>3</sup>

The problem with protecting workers merely by promulgating regulations, of course, is that regulations cannot overcome the profound power imbalance between employer and worker under the H-2A program. Even with highly skilled and well-resourced advocates, guestworkers must take enormous personal risk and overcome steep obstacles to obtain justice.<sup>4</sup>

The Trump Department of Labor's proposed regulations are a step in the wrong direction; they undermine the few protections that workers currently have. The proposed regulations are long and complex, but a few of the specific proposals include:

**Transportation costs.** The current H-2A regulations require employers to reimburse their H-2A workers for the workers' travel costs from their home to their place of the employment. They also require employers to pay the return costs home at the end of the work contract. The proposed regulations would change these requirements and only require employers to pay the H-2A worker travel costs from the U.S. consulate or embassy in their home country, rather than to and from their hometown or region. Since many workers live very long distances from the nearest embassy or consulate, this difference can be very substantial for low-income workers. The U.S. Department of Labor itself estimates that this proposed rule will result in H-2A workers paying \$789.61 million more over the next 10 years than they would to travel to and from their H-2A jobs under the current rule.<sup>5</sup>

**Changes to wage rates:** The rule proposes significant changes to the wage rates required under the H-2A program. These proposed changes would result in many workers being paid a far lower wage rate. Currently H-2A wages must be at least the higher of: (a) the local "prevailing wage;" (b) the state or federal minimum wage, (c) the agreed-upon collective bargaining rate; or (d) the "adverse effect wage rate" (AEWR). The proposal includes changing the methodology for the AEWR. The AEWR

is intended to ensure that the hiring of guestworkers does not adversely affect the wages for U.S. farmworkers. The proposal also would eliminate the longstanding requirement that employers must offer a local prevailing wage if it is the highest wage.

The H-2A proposed rules would also further undermine farmworker wages by including changes to the prevailing wage requirement. Under the H-2A program, there are supposed to be surveys of the prevailing wage for U.S. workers for particular jobs in local labor markets. Under the new regulations, DOL would only require consideration of a prevailing wage rate in very limited circumstances. This would result in very substantial pay cuts to workers, particularly in certain crops.

### Eliminating housing inspections:

Despite high profile stories of dangerous and substandard housing, the proposed regulations would allow housing to be provided to farmworkers without annual inspections by government agencies. If a state workforce agency (SWA) notifies the DOL that it lacks resources to conduct timely, preoccupancy inspections of all employer-provided housing, DOL would allow housing certifications for up to 24 months. Further, following a SWA inspection, DOL would also permit employers to "self-inspect" and certify their own housing. Given the high rates of violations of the minimal housing standards that apply, it is deeply troubling that DOL could allow vulnerable H-2A workers to live in housing that has not been inspected annually by a responsible government entity.

1 See, e.g., Jessica Garrison, Ken Bensinger, and Jeremy Singer-Vine, "The New American Slavery: Invited to the U.S., Foreign Workers Find a Nightmare," BuzzFeed News, (July 24, 2015), <https://www.buzzfeednews.com/article/jessicagarrison/the-new-american-slavery-invited-to-the-us-foreign-workers-f>; *Close to Slavery: Guestworker Programs in the United States*, Southern Poverty Law Center, (February 13, 2013), <https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states>; *H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers*, GAO-15-154, U.S. Government Accountability Office, (reissued May 30, 2017), <https://www.gao.gov/products/GAO-15-154>; Maria Grazia Giammarinaro, "End of Visit Statement, United States of America (6–16 December 2016) by Maria Grazia Giammarinaro, UN Special Rapporteur in Trafficking in Persons, Especially Women and Children," United Nations Office of the High Commissioner for Human Rights, (December 19, 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21049&LangID=E>.

2 Office of Foreign Labor Certification, *OFLC Performance Data*, U.S. Department of Labor, <https://foreignlaborcert.doleta.gov/performance/cfm>.

3 Temporary Agricultural Employment of H-2A Nonimmigrants in the United States, 84 Fed. Reg. 36168 (proposed July 26, 2019) (to be codified at 20 C.F.R. § 653, 20 C.F.R. § 655, and 29 C.F.R. § 501), [www.federalregister.gov/documents/2019/07/26/2019-15307/temporary-agricultural-employment-of-h-2a-nonimmigrants-in-the-united-states](http://www.federalregister.gov/documents/2019/07/26/2019-15307/temporary-agricultural-employment-of-h-2a-nonimmigrants-in-the-united-states).

4 *Id.*

5 84 Fed. Reg. 36241.



**CONCLUSION** The interviews conducted by CDM with workers throughout Mexico revealed one fundamental truth: the H-2A program is not consistent with American ideals of fair treatment and access to justice.

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