

January 22, 2018

National Administrative Office of Mexico,
North American Agreement on Labor Cooperation
Dirección General de Asuntos Internacionales
Secretaría del Trabajo y Previsión Social
Av. Paseo de la Reforma 175 piso 15
Col. Cuauhtémoc, C.P. 06500
Ciudad de México, México

RE: SUPPLEMENT TO PETITION /PUBLIC COMMUNICATION MEX 2016-1

To Whom It May Concern:

Petitioners respectfully submit the enclosed supplement to the Public Communication MEX 2016-1 on labor matters arising in the United States submitted to the National Administrative Office (NAO) of Mexico under the North American Agreement on Labor Cooperation (NAALC). On July 15, 2016, Elisa Tovar Martínez and Adareli Ponce Hernández, two former H-2B visa-holding workers in the crawfish, chocolate, and crab-picking industries in the United States, along with supporting U.S. and Mexican nongovernmental organizations (Petitioners), submitted a petition (MEX 2016-1) on behalf of themselves, individuals in the H-2B program, and other unnamed migrant worker women. Petitioners alleged that the United States has failed to comply with its obligations under the NAALC by taking inadequate action to combat sex discrimination in recruitment, hiring, and employment practices within its H-2 temporary visa programs. As of January 22, 2018, MEX 2016-1 remains under review by the Mexican NAO. Besides confirmation that the submission met the requirements and was accepted for review, no response has been issued.

Petitioners now submit the attached report, *Engendering Exploitation: Gender Inequality in U.S. Labor Migration Programs*, as a supplement to the petition MEX 2016-1 in order to further detail the abuses and discrimination that women in temporary labor migration programs face. As the original petition alleges, and this supplement confirms, the United States government fails to protect women from discrimination under all temporary work programs and remedy the discrimination that has already occurred, violating its obligations under the NAALC. The report, produced by Centro de los Derechos del Migrante, Inc. (CDM), the Comité de Defensa del Migrante (Migrant Defense Committee, or Comité), and the University of Pennsylvania Law School’s Transnational Legal Clinic (TLC), draws on a combination of desk research and interviews with workers to highlight the continued discrimination and abuse women in the H-2 visa programs confront in their recruitment and employment in the United States, and adds to the original petition the parallel experiences of women in four other temporary visa programs: the H-1B, C-1/D, TN, and J-1 Exchange Visitor programs. The report also includes a sampling of narratives from Mexican women across visa programs, voices that have thus far been excluded or marginalized in government efforts to protect migrant worker rights.¹

The evidence in this supplement supports the petitioners’ allegations of violations under Articles 1, 3, and 4 of the NAALC, as laid out in the original petition. Under Article 1, the United States is obligated to “promote, to the maximum extent possible, the labor principles set out in Annex 1[.]” which include the elimination of employment discrimination on the basis of sex and equal pay for men and women. The U.S. government continues to enable program

¹ While the majority of women interviewed for the report are from Mexico, some are from other countries in Central and South America. The chosen narratives are representative of the experiences of many participants across visa categories.

recruiters and employers in all temporary visa categories to funnel women into lower-paying jobs and visa categories with fewer rights and benefits or to deny jobs to women entirely.² As one example, a Mexican H-2B worker reports that she and her female co-workers were given tasks in the crab industry paid at a piece rate, while her similarly-situated male co-workers were assigned different work paid at an hourly rate and earned more.³

Article 3 mandates that “[e]ach Party [] promote compliance with and effectively enforce its labor law through appropriate government action.” In addition to discrimination in hiring and pay, migrant worker women experience wage theft, an inability to access basic services, sexual harassment, and human trafficking, evidence that the U.S. government has failed to meet its obligation to promote compliance with and effective enforcement of its domestic anti-discrimination laws.⁴ In the attached report, interviewees across visa categories report experiencing or witnessing harassment, aggressive behavior by supervisors, and sexual assault in their workplaces.⁵

Finally, under Article 4, the United States is required to “ensure that persons with a legally recognized interest . . . have appropriate access to administrative, quasi-administrative, judicial or labor tribunals for the enforcement of the Party’s labor laws.” As the report describes, migrant worker women face numerous barriers to seeking justice, including explicit statutory or judicial exclusions of rights to redress and compensation. The structure of temporary visa

² See, e.g., Centro de los Derechos del Migrante, Inc. & University of Pennsylvania Law School Transnational Legal Clinic, *Engendering Exploitation: Gender Inequality in U.S. Labor Migration Programs: Policy Brief*, 5 (Sept. 2017), available at <http://www.cdmigrante.org/wp-content/uploads/2017/09/Engendered-Exploitation.pdf>.

³ *Id.* at 8.

⁴ See *id.*

⁵ *Id.* at 9.

programs as a whole also limits women workers' access to the legal system; for example, employers, sponsor agencies, and government authorities fail to inform workers of their rights, while workers labor in physical and linguistic isolation.⁶ As a result, the U.S. government disproportionately denies access to legal services to migrant worker women in violation of Article 4. As one Mexican B-1 worker notes, describing how she struggled to secure legal redress, "the lack of information about our rights and access to legal services leaves us in a vulnerable position."⁷

With this submission, petitioners renew their call for the U.S. government to comply with its obligations under the NAALC to protect migrant worker women from discrimination in all temporary visa programs. Petitioners request that the Mexican NAO consult with the U.S. government to develop an enforcement strategy to address gender discrimination in these programs at all stages of the recruitment and hiring process and to urge compliance with the NAALC. Petitioners also request a prompt reply to the petition filed in July of 2016.

Respectfully submitted,

Adareli Ponce Hernández
Barrio del Carmen
Chapulhuacan, Hidalgo
MEXICO

Elisa Tovar Martínez
Miguel Barragan #70

⁶ *Id.* at 12.

⁷ Centro de los Derechos del Migrante, Inc. & University of Pennsylvania Law School Transnational Legal Clinic, *Engendering Exploitation: Gender Inequality in U.S. Labor Migration Programs: Worker Stories*, 13 (Sept. 2017), available at <http://www.cdmigrante.org/wp-content/uploads/2017/09/Engendered-Exploitation-Worker-Stories.pdf>.

Ejido Palomas, San Luis Potosi 79320
MEXICO

Centro de los Derechos del Migrante, Inc.
Nuevo León 159, Int. 101
Col. Hipódromo, Del. Cuauhtémoc
06100 Ciudad de México, D.F.
MEXICO

Farmworker Justice
1126 16th St NW #270
Washington, DC 20036
UNITED STATES

North Carolina Justice Center
PO Box 28068
Raleigh, NC 27411
UNITED STATES

Southern Poverty Law Center
400 Washington Ave.
Montgomery, AL 36104
UNITED STATES

Catholic Relief Services Mexico
Indiana 260, Int. 503
Col. Ciudad de los Deportes, Del. Benito Juárez
03710 Ciudad de México, D.F.
MEXICO

Instituto de Estudios y Divulgación Sobre la Migración (INEDIM)
Mexicali 4, Dpto. 6
Col. Hipódromo, Del. Cuauhtémoc
06170 Ciudad de México, D.F.
MEXICO

Unión Nacional de las Trabajadoras y Trabajadores (National Union of Workers, or UNT)
Villalongín 50
Col. Cuauhtémoc, Del. Cuauhtémoc
06500 Ciudad de México, D.F.
MEXICO

Proyecto de Derechos Económicos, Sociales y Culturales, A.C. (ProDESC)
Calle Zamora 169-A

Col. Condesa, Del. Cuauhtémoc
06140 Ciudad de México, D.F.
MEXICO

Sin Fronteras
Carlos Dolci No.96
Col. Alfonso XIII, Del. Álvaro Obregón
01460 Ciudad de México, D.F.
MEXICO

Voces Mesoamericanas, Acción con Pueblos Migrantes
Pantaleón Domínguez, 35A
29250 San Cristóbal de Las Casas, Chiapas
MEXICO

Alianza Nacional de Campesinas, Inc.
P.O. Box 20033
Oxnard, CA 93034
UNITED STATES

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
815 16th St. NW
Washington, DC 20006
UNITED STATES

American Federation of Government Employees Local 3354
4300 Goodfellow Blvd Bldg 104D
St. Louis, MO
UNITED STATES

CATA – Comité de Apoyo a Trabajadores Agrícolas/Farmworker Support Committee
P.O. Box 510
Glassboro, NJ 08028
UNITED STATES

Community Food & Justice Coalition
398 60th Street
Oakland, CA 94618
UNITED STATES

Farmworker Association of Florida, Inc.
1264 Apopka Boulevard
Apopka, FL 32703
UNITED STATES

Federation of Southern Cooperatives/Land Assistance Fund
PO Box 95
Epes, AL 35460
UNITED STATES

Land Stewardship Project
821 E. 35th Street #200
Minneapolis, MN 55407
UNITED STATES

Legal Aid Justice Center
1000 Preston Avenue, Suite A
Charlottesville, Virginia 22903
UNITED STATES

Lideres Campesinas
2101 South Rose Avenue, Suite A
Oxnard, CA 93033
UNITED STATES

National Employment Law Project
75 Maiden Lane, #601
New York, NY 10038
UNITED STATES

National Family Farm Coalition
110 Maryland Avenue NE Suite 307
Washington, DC 20002
UNITED STATES

Rural Development Leadership Network
PO Box 98, Prince St. Station
New York, NY 10012
UNITED STATES

Rural Coalition 1029
Vermont Ave NW Suite 601
Washington, DC 20005
UNITED STATES

Sustainable Agriculture of Louisville (SAL)
104 Forest Court
Louisville, KY 40206

UNITED STATES

Worker Justice Center of New York
1187 Culver Road
Rochester, NY 14609
UNITED STATES

Grupo de Monitoreo Independiente de El Salvador
Residencial Decápolis, Pasaje San Carlos No.5
San Salvador
EL SALVADOR



Photo Credit: Mateya Kelley

ENGENDERING EXPLOITATION:

Gender Inequality in U.S. Labor Migration Programs

POLICY BRIEF

INTRODUCTION

Each year, thousands of women are recruited to work in the United States on temporary work visas intended to fill gaps in the labor market or to provide the opportunity for employer-sponsored cultural exchanges. While systemic flaws in U.S. temporary labor migration programs negatively impact the rights of both men and women,¹ labor migration is not a gender-neutral phenomenon. Instead, women's stories illustrate how gender bias and discrimination are deeply entrenched in the temporary labor migration programs, which facilitate women's exclusion from equal employment opportunities and foster gender-based discrimination in the workplace.

Women describe how employers and their recruiter agents frequently shut women out of equal employment opportunities or track them into jobs with less pay and fewer rights and benefits. In their worksites, they recount exploitation and abuse, ranging from wage theft to sexual harassment to human trafficking. And those who stand up to their abusers by seeking legal redress all too frequently confront retaliation, employer-biased institutions, and/or insurmountable barriers to justice. Unfortunately, these women's stories of exploitation and abuse frequently go unheard. The exclusion of worker women's voices leads to the continuation of the status quo or reforms that exacerbate discrimination and privilege businesses' interests above all others.

¹ For an in-depth review of temporary labor migration programs in the United States, and an outline of characteristics unique and common to the multitude of non-immigrant work visas, see International Labor Recruitment Working Group, *The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment* (Feb. 2013), available at: <https://fairlaborrecruitment.files.wordpress.com/2013/01/the-american-dream-up-for-sale-a-blueprint-for-ending-international-labor-recruitment-abuse1.pdf>.

For more than a decade, Centro de los Derechos del Migrante, Inc. (CDM, or the Center for Migrant Rights) has worked with and provided legal representation to workers from Mexico recruited for jobs in the United States through diverse visa programs, or without work authorization. In 2014, CDM launched Contratados.org, the “Yelp” for migrant workers, providing a platform for migrant workers to safely share their experiences with specific employers and recruiters and access know-your-rights information for the most common temporary labor programs.² Both online and in-person, migrant worker women have reached out to CDM about the discrimination they encountered at all stages of the temporary labor migration programs. In 2016, CDM filed a petition under the North American Agreement on Labor Cooperation (NAALC) regarding the failure of the United States to promote gender equality and equal pay for men and women under the H-2A and H-2B programs.³ Over the past year, CDM has sought to more systematically document the experiences of migrant worker women seeking access to, and ultimately employed through, temporary labor migration programs to better understand how the programs operate in service - and to the detriment

- of women. This brief contains findings to date from CDM’s ongoing, cross-visa and cross-sector study on women in temporary labor migration programs,⁴ highlighting ways in which temporary labor migration programs systematically serve to directly and indirectly foster discrimination against women throughout the labor migration process. The United States’ failure to track and make available data disaggregated by gender, visa category, and industry means that the unique issues confronting women in temporary labor migration programs are often absent from policymaking and public debate. The findings and recommendations set forth herein interject women workers’ voices⁵ into the ongoing debates on comprehensive immigration reform and existing temporary labor migration programs.

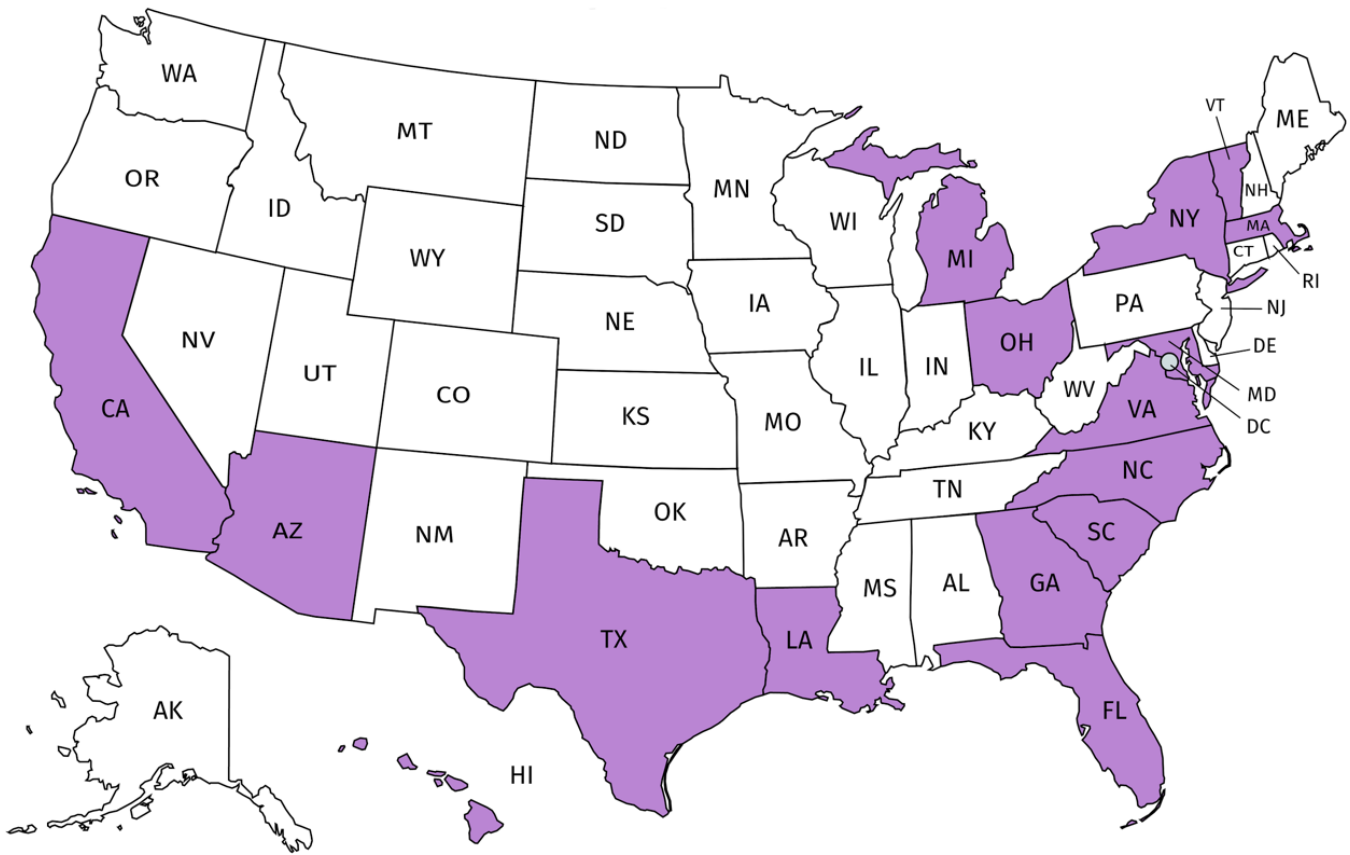
² See <http://www.cdmigrante.org/contratados/>.

³ The non-confidential communication was submitted to the National Administrative Office of Mexico on July 15, 2016, reporting on the persistent tracking of women into jobs under the H-2B program and away from the H-2A program, abuses in employment, and denial of access to justice. A copy of the petition is available at: <http://www.cdmigrante.org/wp-content/uploads/2012/01/NAALC-Petition-2016-English.pdf>.

⁴ This policy brief is based on extensive desk research, as well as detailed surveys of 34 women who participated in one of 5 labor visa programs: the H-1B, deemed a “skilled” visa for individuals in a specialty occupation, such as nursing; the H-2A, for temporary agricultural workers; the H-2B, for temporary non-agricultural workers in seasonal industries; the J-1 Exchange Visitor Program, an initiative of the Department of State, for the purported purpose of increasing cultural exchanges, and through which the Au Pair program is run, as well as the Summer Work Travel Program; the TN visa, created under NAFTA, which permits qualified Canadian and Mexican citizens temporary entry into the United States to engage in professional-level business activities; and the C-1/D visa for persons employed as crewmembers on a vessel or aircraft, typically issued for cruise ship workers. It also draws on questions, conversations, and intakes with thousands of workers that CDM has reached through legal services, community outreach, and policy advocacy over the past twelve years.

⁵ While some interviewees cited consented to the use of their real names, others who chose to remain anonymous are identified by pseudonyms using quotation marks.

Surveyed Womens' States of Employment

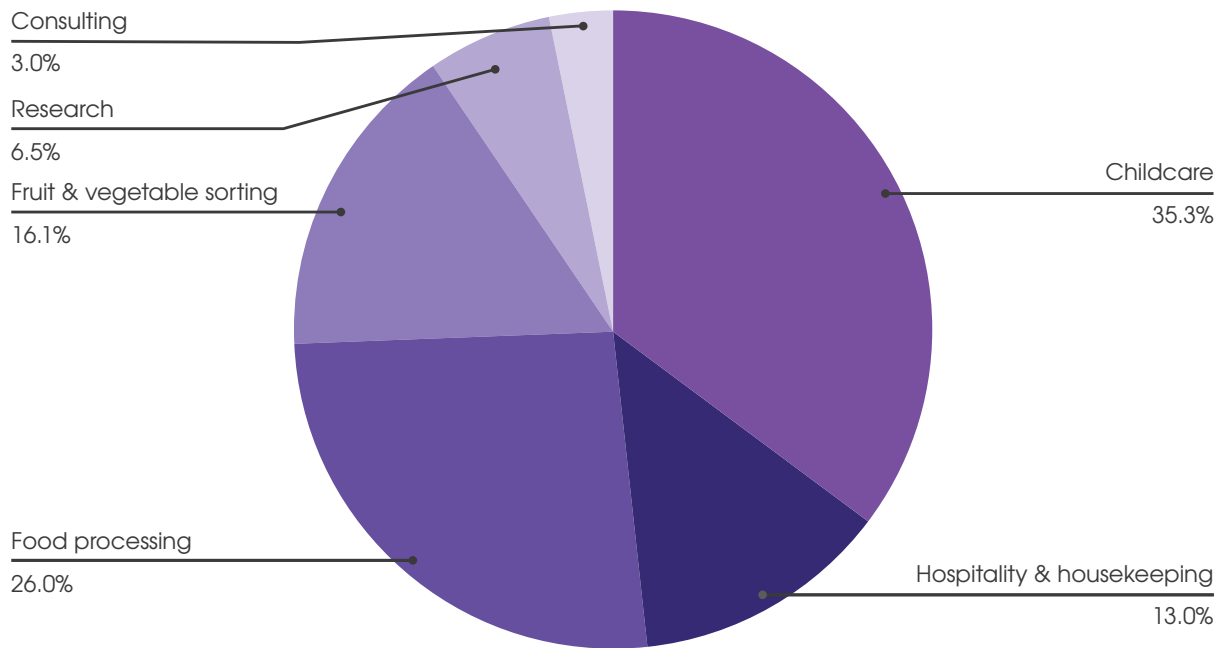


THE EXISTING TEMPORARY LABOR MIGRATION PROGRAMS FACILITATE GENDER-BASED DISCRIMINATION AND EXPLOITATION

Women who are prospective, current, and former participants in U.S. temporary labor migration programs share stories of gender-based discrimination that begins with recruitment, continues throughout their employment in the United States, and negatively impacts their ability to access justice. These stories reveal that

systemic flaws in the programs, coupled with restrictions on access to justice, disproportionately impact migrant women while empowering unscrupulous employers and recruiters with the means to ensnare them in exploitation and trafficking schemes.

Surveyed Women, by U.S. Industry of Employment*



*percentages may not add up to 100% due to rounding

A.

Employers use the recruitment process to discriminate against women, to defraud them, and to channel them into a limited range of gendered industries and roles.

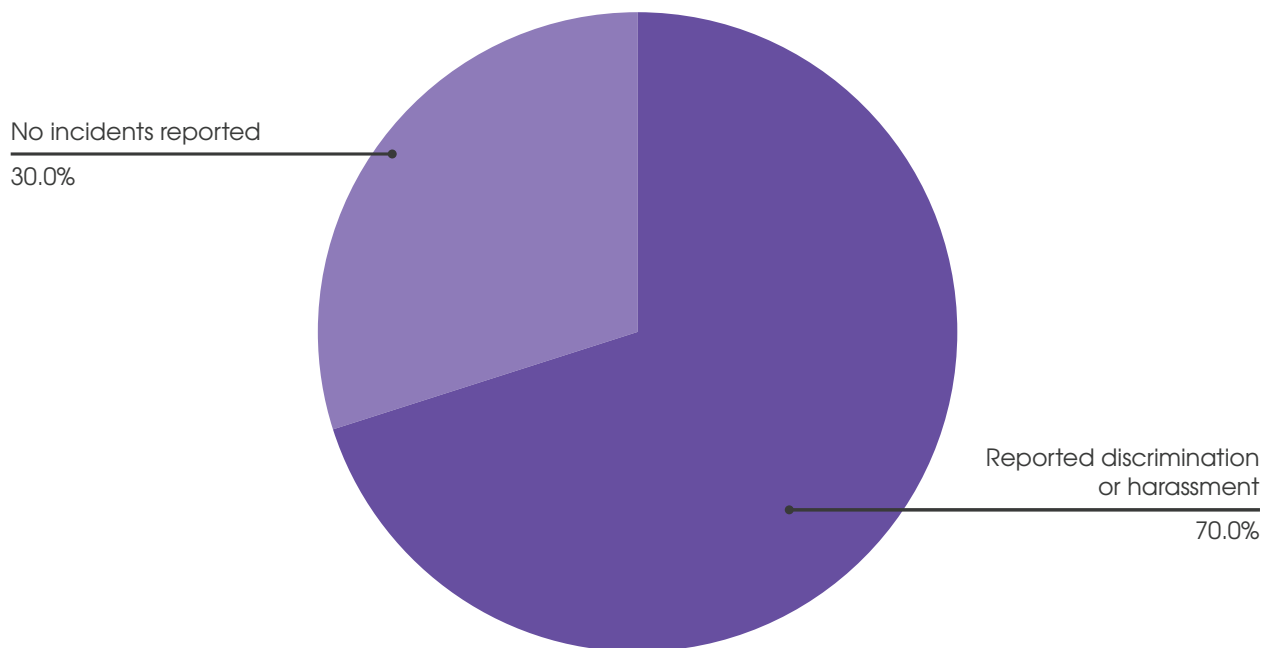
“They hired me as an Animal Scientist but had me cleaning food bins and bathrooms. They paid me less than the other workers. I didn’t do anything that required a degree.”

“Rosa” (Mexico), employed on a dairy farm under the TN visa for skilled professionals, was assigned to clean water troughs, unload animals, perform housekeeping and other menial tasks she was told were more suited to women, and paid well below the minimum annual salary she had been promised.

Persistent gender bias, lack of government oversight over recruitment, and the failure of the United States to enforce anti-discrimination and other labor and employment laws extraterritorially, conspire to permit employers and their recruiter agents to track women into visa categories and job sectors with lower wages, unequal income-earning opportunities, and fewer rights protections than their male counterparts. Employers using temporary labor programs tend to prefer women for employment in childcare, education, health care, personal and household services, and secretarial jobs, while selecting men instead for more labor intensive and often higher-paying jobs, like construction, utilities, transport, and communications. Over half of the workers that CDM surveyed observed some form of sex-based discrimination in their recruitment or employment experiences, which took one of four shapes: 1) visa distribution by sex, e.g., men are more frequently offered and provided jobs under either the H-2A or H-2B visas, while women are more likely to be tracked exclusively into jobs under the H-2B visa;⁶ 2) segmentation into gendered occupations

within the visa category, e.g., men under the H-2B program are offered and hired for landscaping jobs, while women are hired for housekeeping or domestic service; 3) assignment of gendered workplace roles, e.g., in agriculture, men harvest crops while women are tasked with crop sorting and maintenance; and 4) inequality in corresponding rates of pay, benefits, or opportunities for advancement within the same workplace resulting from 1-3, e.g., in the crab-picking industry, women assigned to crabmeat picking receive piece-rate pay, while men assigned to cooking and hauling crab earn hourly salaries. Gender-tracking is not limited to the H-2 programs. As “Rosa” shares in her story, employers participating in the TN visa program for skilled professionals regularly relegate women to gendered jobs, such as housekeeping duties and secretarial work, denying them both the earning and professional development opportunities employers and recruiters promise during the recruitment process.

Reported Incidents of Sex-Based Discrimination or Harassment in Recruitment or U.S. Employment



⁶ See, United States Government Accountability Office, H-2A and H-2B visa programs, Increased Protections Needed for Foreign Workers, March 2015 (reissued May 30, 2017) (noting there are approximately three times as many women given H-2B visas compared to H-2A), available at: <https://www.gao.gov/assets/690/684985.pdf>. As detailed in the Communication filed under the NAALC, *supra* n. 4, the H-2B visa program extends inferior benefits and protections as compared with H-2A visas, despite 2015 reforms.

In many of these scenarios, women felt that recruiters and employers had misled them during the recruitment process, concealing the true nature of their jobs until the women arrived in the United States. In other cases, women were denied outright the ability to apply for jobs under the H-2A visa program and were instead funneled into jobs under the H-2B program. As with their male counterparts, many women report being charged unlawful recruitment fees and incurring significant travel expenses for which they are not reimbursed by the employer. As gatekeepers to U.S. jobs, labor recruiters wield significant power over workers' economic prospects; this unequal power dynamic is heightened with respect to women, whose employment options are scarce. Because recruitment happens internationally, workers face barriers to accessing justice in the United States for fraud, discrimination, or unlawful fees charged by recruiters in their home countries, despite these agents' ties to U.S. employers. Moreover,

abusive recruitment practices often follow workers to their jobsite, where recruitment debt, fear of retaliation, and blacklisting can coerce workers to withstand unsatisfactory, unhealthy, or unfair conditions. For example, Adareli,⁷ an H-2B chocolate worker, was blacklisted by her employer after speaking out about unjust treatment in her Louisiana workplace. Another H-2B worker, Silvia, found herself unemployed for years after falling out of favor with the sole recruiter in her town who was willing to hire women; today, she works hard to keep her current job, because even if it is not ideal, "it's the only thing there is." For the vast majority of workers in U.S. temporary labor programs, job mobility is not a right; instead, it is a privilege bestowed upon a lucky few according to the criteria of employers and their recruiters. And when employers are permitted to select their workforce by sex, nationality, or race, women and other minorities can be doubly burdened by the pressure to accept or maintain jobs at any cost.

"We don't like the work, but we don't question it. Why would we, when it's the only thing there is?"

Silvia (Mexico), an H-2B seafood worker who supports her family through seasonal migration to Maryland's Eastern Shore. Losing this job would leave Silvia unemployed and unable to provide for her two children.

B.

Women working in the United States on temporary visas confront the full range of workplace abuse and exploitation common to all guestworkers, including sexual harassment and assault. Combined with discrimination, these factors can exacerbate the conditions that contribute to human trafficking.

Gender discrimination is compounded by workers' multiple identities as women, non-citizens, and temporary workers, who are often additionally subjected to race and national origin discrimination. Recruiters and employers often seek women to fill jobs in industries with a history of abuse and exploitation, such as food processing, housekeeping, and live-in childcare. Women endure discrimination, abuse and exploitation within all categories of visas, whether classified

as "unskilled," like the H-2A and H-2B visas, or "professional," such as the H-1B and TN visas. For example, women recruited with TN visas, a program created for professionals under the North American Free Trade Agreement (NAFTA), similarly reported suffering recruitment fraud, exploitation, demeaning working conditions, and psychological harm as a result of their employment.⁸

⁷ Survey 2459.

⁸ Surveys 2366, 2386, and 2649.

“It’s false advertisement. It feels like hell on earth, but it’s advertised as an amazing experience. It’s sold to the au pairs as a cultural exchange, but to the family as free/cheap labor. We are too vulnerable. We should feel like we have freedom.”

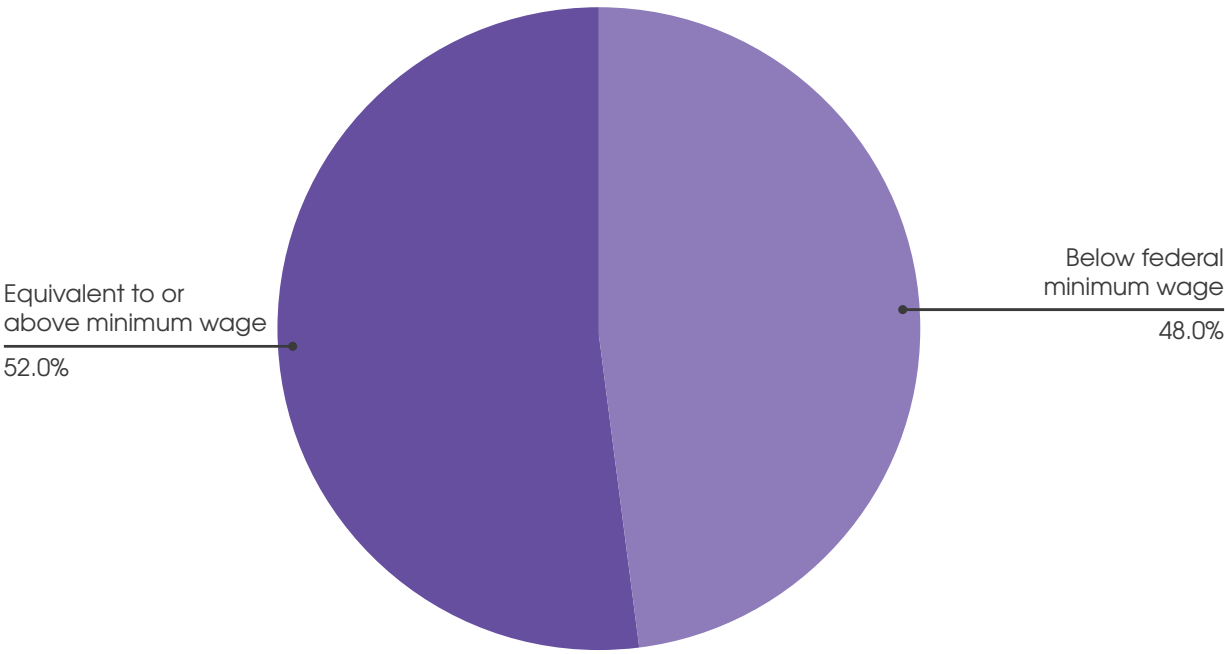
Estefani (Brazil), employed as Au Pair under J-1 visa, required to do laundry, housekeeping, and yard work, in addition to providing for the children, and suffered from a verbally aggressive employer who closely monitored her actions and made both sexist and racist comments to her regarding her Brazilian heritage.

Job duties, rates of pay, and working conditions reveal gender-bias and discrimination.

As noted above, employers and their recruiter agents regularly channel women into certain jobs where they are responsible for carrying out specific, gendered tasks. Women interviewed found that these jobs often paid less and provide fewer hours of work than those available to men. Generally speaking, wages within those sectors predominated by women participating in temporary

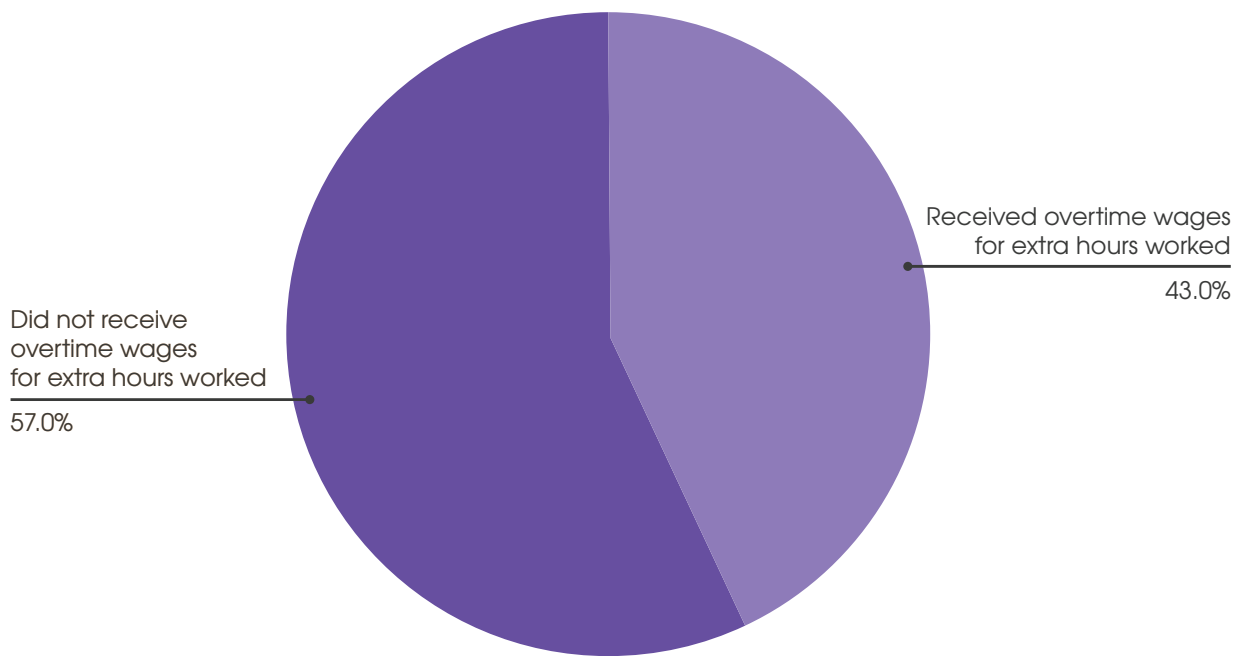
labor migration programs are exceedingly low. A J-1 Au Pair, who chose to remain anonymous, reported her employer paid her \$3.09 in hourly wages,⁹ while J-1 Au Pairs overall reported average earnings of \$3.83 per hour. Unfortunately, this trend is indicative of the systemic wage theft women confront across visa categories: of the women surveyed, nearly half (48%) were paid below the federal minimum wage at their time of employment, and 43% reported not having been paid for overtime hours.

Reported Earnings Relative to Minimum Wage at Time of Employment



⁹ Survey 2560.

Reported Overtime Earnings



Workers reported wage disparities between men and women in their workplaces, regardless of industry or gender ratio of the workforce. For example, one female H-2B worker working in the crab picking industry reported that women in her worksite were tasked with picking crabs at a piece rate, whereas men were paid at an hourly rate to wash, cook, and clean the crabs and had greater earning opportunities.¹⁰ Daria, a worker employed in the fruit and vegetable packing industry, noted that despite having been recruited to work in a tomato packing company working eight hours a day, she was sent to sort cucumbers and was given just three to five hours per week; by contrast, the men who had been hired at the same worksite held H-2A visas and were given more work.¹¹ "Sandra," employed in housekeeping services with a J-1 Summer Work Travel visa, reported that while men at her workplace were paid \$12 per hour, women earned a mere \$9.75.¹²

A hostile work environment, sexual harassment, and sexual violence are pervasive in many of the worksites and in many of the job sectors that rely on women workers on temporary labor migration visas.

Factors like physical and social isolation, language barriers, migration status, and lack of access to legal services contribute to migrant worker women's increased vulnerability to workplace hostility, sexual harassment, and sexual assault. A significant number of women participating in the study reported experiencing or witnessing harassment on the job, aggressive behavior by supervisors and others in position of authority within the workplace, and sexual assaults in the workplace. One survey participant employed on a J-1 visa for work as a housekeeper and cook reported that a supervisor would get close to her and touch her, saying, "you are a very good girl."¹³ Another H-2B crab worker described watching her male supervisor brazenly harass female workers, putting his hands down their pants, grabbing their underwear, and openly bragging about his exploits.¹⁴ Lissette, who was recruited to work on a cruise ship through the C 1/D visa program, reported that her supervisors put tremendous pressure on her and subjected her to hostile, authoritarian treatment. She explained that supervisors were known to demand sexual favors of her female shipmates, some of whom suffered sexual assaults. These aggressions, coupled

¹⁰ Survey 2455.

¹¹ Survey 2441.

¹² Survey 2390.

¹³ Survey 2385.

¹⁴ Survey 2455.

with inadequate food, insufficient breaks, the confinement of a ship and limited contact with the outside world, left her so physically and psychologically distressed that she suffered hair loss.¹⁵ “Leticia,” a TN worker, says she and her son have had to receive ongoing therapy for post-traumatic stress disorder (PTSD) resulting from her employers’ treatment.¹⁶ Many women participating in this ongoing study expressed hesitation at confronting the abusers or reporting

the abuse to supervisors, citing concerns over retaliation, fear, disillusionment with institutional authorities, or disorientation resulting from isolation and/or psychological manipulation.

Women living in employer-owned and operated housing reported a combination of deplorable living conditions, lack of security and privacy in their living quarters, or exorbitant deductions from pay for the cost of their housing.

“It was a pigsty. There was no door. I cried a lot because everything was terrible – I had to sleep on the floor and I suffered backaches and couldn’t sleep. The floor was very dirty.”

Daria (Mexico), recruited on H-2B visa for work in vegetable packing, had to pass through the men’s dormitory to use the bathroom, creating an environment that left the women feeling extremely uncomfortable and insecure.

Women who lived in employer-provided housing reported that accommodations often offered inadequate privacy and security, were unhygienic, or were generally ill-equipped for women living in mixed-sex environments. One woman, who chose to remain anonymous, was hired to pack vegetables under the H-2B program, where she was forced to live as the sole woman amongst thirteen men.¹⁷ Daria, who packed vegetables at a worksite that was 30% men and 70% women, reported having to pass through the men’s dormitory to access the bathroom, which had no doors to the stalls. “Leticia,” a TN worker, reported having to pay her employer such exorbitant rent that she

barely had enough money left over to support herself and her son.¹⁸ A woman who worked with an H-2B visa in a chocolate factory reported that the women’s trailers were so crowded that they were forced to improvise living space, sleeping on couches and among their belongings. At that time, eighteen women shared only two bathrooms.¹⁹

Several women also reported on the negative physical and emotional impact of their experiences with the temporary labor migration programs, compounded by difficulties in accessing affordable and safe medical care and other basic services.

¹⁵ Survey 2407.

¹⁶ Survey 2367.

¹⁷ Survey 2405.

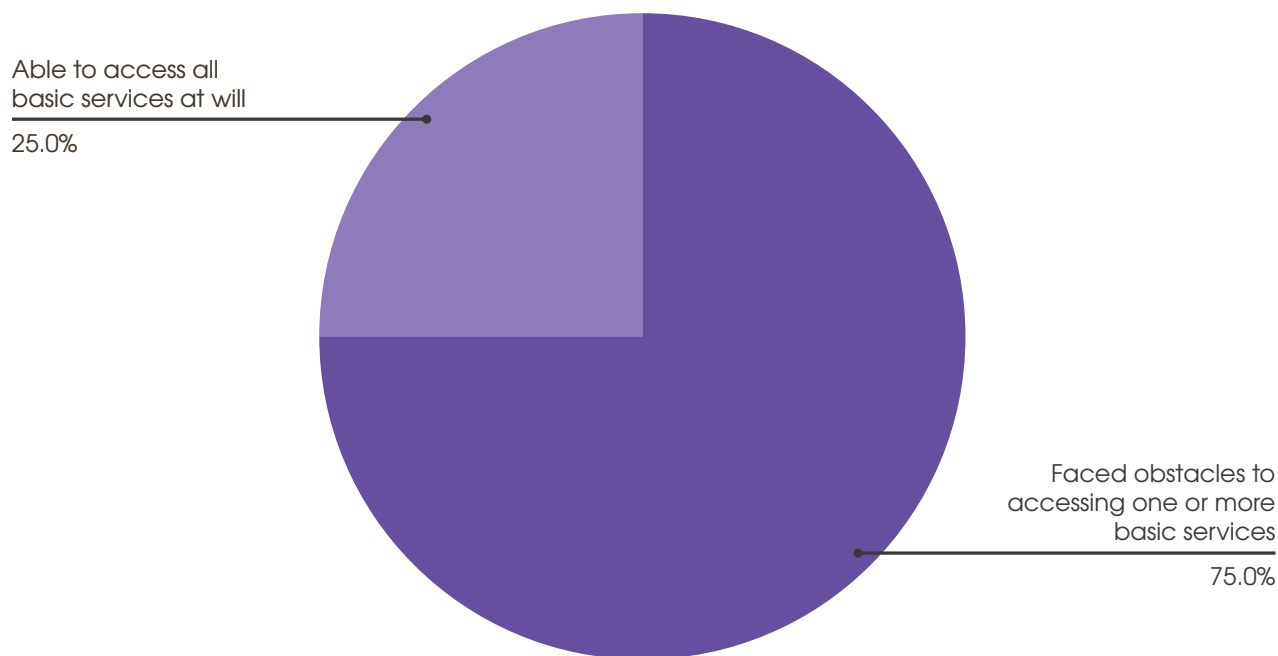
¹⁸ Survey 2366.

¹⁹ Survey 2668.

The industries that employ migrant worker women often combine poor health and safety records with time- or quota-pressured production standards. Physical isolation, limited mobility and transportation, and lack of access to health care benefits, all take their toll on workers' physical and psychological wellness. 75% of the study participants to date reported barriers to accessing one or more basic services, such as food, telephone, medical and legal services, while employed in the United States. "Sandra," who was recruited for a promised cultural exchange opportunity through the J-1 program, reported that her employer forced her to work long hours at minimum wage, and she suffered from physical and mental exhaustion, as well as lesions to her hands, as a result.

Unable to access any care, and closed off from interaction with the outside world, she sought medicine from her employer, who told her the hotel had no medicine available. Instead, she was forced to treat her lesions with leftover lotions found in the hotel's guestrooms.²⁰ Another woman reported that her employer docked her pay for using the bathroom.²¹ Yet another interviewee reported that her employer reserved the right to scrutinize her confidential, medical paperwork as a condition of granting her permission for prenatal doctor's visits. The same employer publicly mocked her female coworker's visit to a psychologist, telling other employees that she was "bad in the head."²²

Reported Ability to Access to Basic Services (Food, Medical, Legal, Telephone) at Will

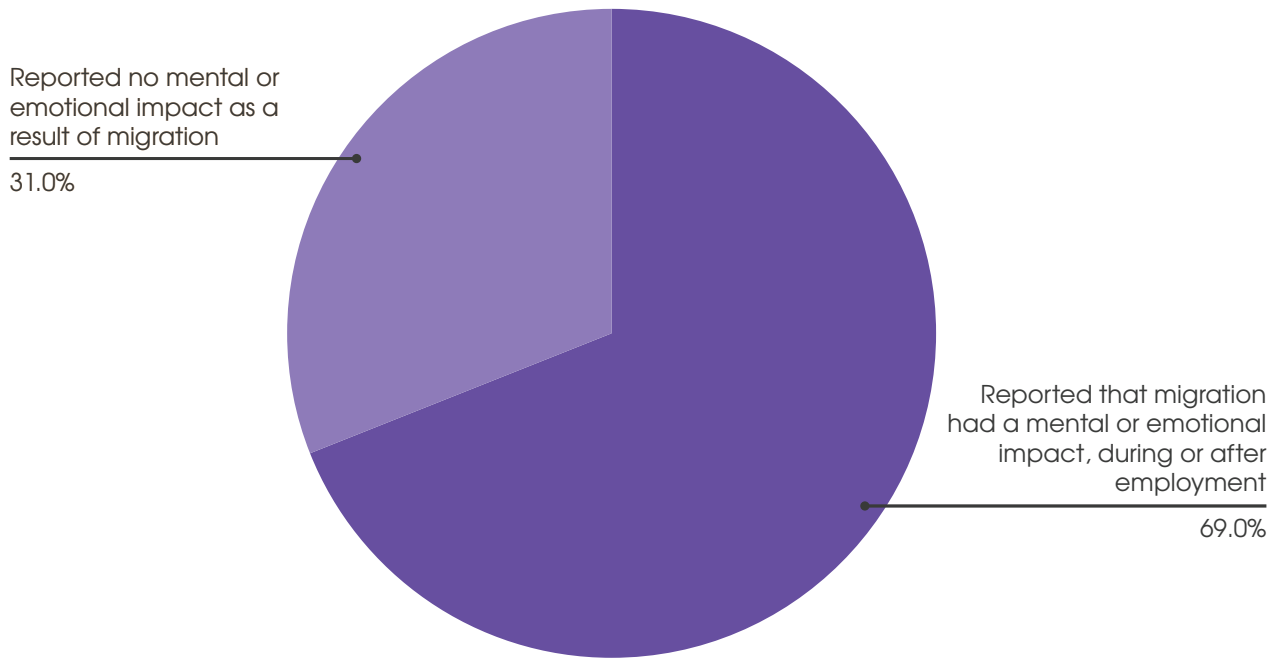


²⁰ Survey 2390.

²¹ Survey 2405.

²² Survey 2649.

Reported That Migration Had a Mental or Emotional Impact, During or After Employment



Conditions giving rise to human trafficking:

Several women participating in the study reported that their employers and/or recruiter agents conducted practices or instituted policies that left them feeling trapped, unable to report abuses, and/or unable to leave. These included applying heavy recruitment fees that left workers in debt, excessive monitoring and scrutiny of workers' personal matters and relationships, coercive conditions in employer-controlled housing, document

retention, denial of access to transportation or communication, and threats of retaliation, among others. Several workers also expressed concerns at their employer's and/or sponsor agency's control over their legal status in the United States, which heightens workers' dependency on their goodwill and limits their freedoms. These factors, when combined with limited transportation and communication, inadequate access to basic services, and seclusion from the world beyond the workplace create conditions ripe for human trafficking.

“There is no freedom. I felt trapped. The problem with the work visa system is that your boss holds over your head that he brought you to America. I will never apply to get a work visa again because of the horror that I have been through.”

“Leticia” (Guatemala), employed on a TN visa for work as a biotech researcher, who had a significant amount deducted from her pay each month for employer-provided housing, leaving her with just \$400/month to care for herself and her son.

C.

The United States fails to ensure full and equal access to justice for women in temporary labor migration programs.

The United States is obligated to ensure equal rights under the law as well as full and equal access to judicially-enforceable remedies to all persons, regardless of their gender and migration status. Women participating in temporary work programs, however, are often denied their right to redress and compensation before the courts either because of explicit statutory or judicial exclusions, or because of the way guestworker programs are structured. The problems begin with deception in recruitment, where employers and their recruiter agents misinform or mislead women about the true nature of their work. Once in the United States, employers, sponsor agencies, and responsible government authorities fail to adequately inform workers of their rights. Workers subsequently find themselves working in physical and linguistic isolation with limited access to legal, medical, and

other basic services. The sex-based discrimination that begins in recruitment further impacts workers' access to justice: for example, many workers participating in the H-2B program and several other temporary worker programs are ineligible for access to free, government-funded legal services. By contrast, H-2A agricultural workers in the United States are eligible for these free legal services but tend to be overwhelmingly (96%) male.²³ For worker women in the J-1 au pair program, isolation in the home makes it difficult to connect with others, share experiences, and learn of opportunities for redress. In addition, the majority of women surveyed shared concerns that reporting their employers for workplace rights violations meant risking retaliation, job termination, deportation, blacklisting, and other retaliatory actions; many had first-hand experiences with retaliation in their workplace.

I would talk to my female colleagues about our rights so that we would defend our dignity. But I realized, in that environment, fear was still preventing us from standing up for ourselves like we were meant to do; fear of losing our job, having to return to Mexico, and not being able to support our families.

Ignorance about this type of visa is the biggest problem. I lost everything we have because I am not able to work for another company. I was not able to defend my rights.

Adareli (Mexico), who worked four seasons packing chocolates on an H-2B visa, was afraid to speak up about the mistreatment and discrimination. She noted the lack of access to jobs under the H-2A visa program for women and pay disparities, the debts she incurred to obtain the visa, and the fear that she would lose the chance to work those debts off and support her family if terminated or blacklisted from future opportunities.

Beatriz (Mexico), recruited to work on a TN visa as a management consultant, put to work performing secretarial tasks. Unbeknownst to her, the company was bankrupt, and it soon shut down.

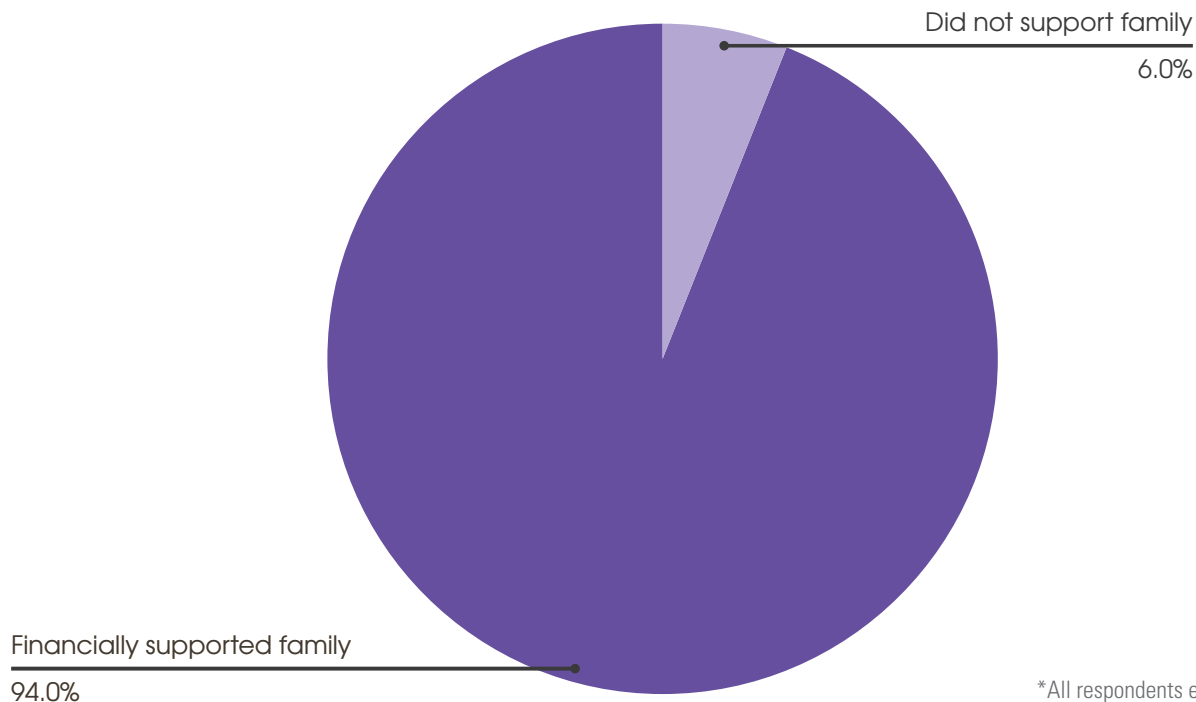
²³ FY2013 is the most recent year for which data on the gender breakdown of the H-2A and H-2B programs is publicly available. U.S. Gov. Accountability Office, GAO-15-154, H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers 18 (Mar. 2015), available at <https://www.gao.gov/assets/690/684985.pdf>.

U.S. TEMPORARY LABOR MIGRATION PROGRAMS FAIL TO ACCOUNT FOR THE ROLE WOMEN PLAY AS CHILD CARE PROVIDERS AND OTHER FAMILY SUPPORT RESPONSIBILITIES THEY SHOULDER.

By and large, U.S. temporary labor migration programs and the employers that use them deny women equal employment opportunities by inadequately accounting for women’s multiple social and economic responsibilities not only as workers, but as mothers and primary family caregivers as well. Worldwide, women disproportionately bear the burden of unpaid care work, which places them at a comparative disadvantage to their male counterparts with regards to full economic participation in the labor force.²⁴ While several U.S. states have passed childcare subsidy laws to provide women with equal economic opportunity, the failure to guarantee women on temporary labor migration programs access to these benefits further interferes with their access to the range of opportunities available under these programs. This exclusion creates additional barriers for migrant worker women seeking to enforce their rights and obtain judicial remedies for rights violations.

Ninety-four percent of study participants who were not J-1 Au Pairs (who are under 28, per program requirements) reported that they were financially supporting family members during and through their U.S. employment; these workers spent an average of 70% of their earnings on childcare and other family support. While several interviewees volunteered that access to childcare and childcare subsidies would open up their ability to participate in the temporary labor migration programs, many also noted that their working and living conditions were so poorly equipped that they could not possibly consider bringing their children. Still others observed that coworkers who were able to care for their children under adequate circumstances appeared happier and more productive in their environments.

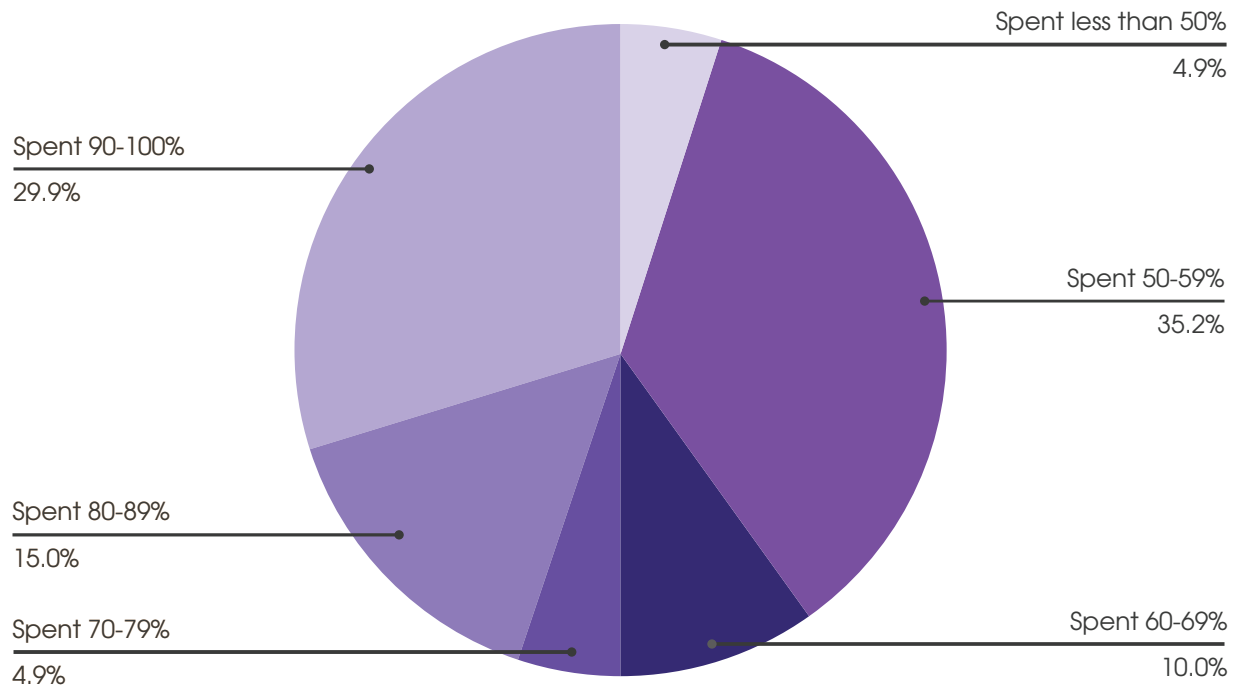
Financially Supported Family with U.S. Earnings*



*All respondents except J-1's.

²⁴ See <http://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>.

Reported Percentage of Earnings Dedicated to Family Support*



*Of those respondents who indicated they support family back home. Percentages may not add up to 100% due to rounding.

RECOMMENDATIONS

Ending abuses of women migrant workers requires interagency data collection and publication, consistent monitoring, and meaningful enforcement. Where the agencies lack authority to effectively protect workers, Congress must delegate authority for effective oversight. Congress should mandate that the Department of State, Department of Labor, Department of Homeland Security, and Equal Employment Opportunity Commission (“the Agencies”) create an integrated response to abuses of women migrant workers. Moreover, all temporary labor migration programs should be subject to the same rules and protections so that unscrupulous employers and recruiters do not use the patchwork of visa regulations to evade liability or to obscure the nature of abuses against women.

Data collection and publication:

- To ensure transparency and accountability throughout the temporary labor migration programs, the Department of State should work with the Department of Labor, Department of Homeland Security, and the Equal Employment Opportunity Commission to collect and publish current and complete

data in a manner that allows for comprehensive analysis of systemic abuses that permeate the labor migration programs, and serve to identify areas for congressional, administrative, and judicial action. Such data includes, but is not limited to:

- Data disaggregated by gender, age, and national origin of all workers who apply for temporary labor migration visas, and of all workers who ultimately come to the United States for employment, as well as sector of work into which they are recruited.
- Data disaggregated by gender, age, and national origin of all complaints filed by workers employed through the temporary labor migration programs, the visa category, the industry of work, and the name of the employer against whom the complaint was lodged, the nature of the complaint, and what, if any, resolution was reached.
- The Agencies should create an interagency database, available in real time, that allows women 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 women to review the terms of a visa and status of the visa's approval, 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.

Protect against gender-based discrimination in recruitment:

- In the above-mentioned database, the Department of Labor should publish detailed job offers and terms of employment for all temporary labor migration programs in order to ensure employer visa petitions contain bona fide job requirements, rather than requirements that serve to deny women access to employment.
- The Agencies should ensure women are granted full and equal participation in the temporary labor migration programs through rigorous monitoring and enforcement. Congress should create childcare subsidies that support migrant women in gaining equal access to job opportunities.
- The Department of Labor should protect women who report abuses from retaliation, including blacklisting for future recruitment.
- Congress should pass legislation that holds employers strictly liable for discrimination and other abuses committed by recruiters.
- The Agencies should be fully funded to prosecute and sanction noncompliant recruiters. The Agencies should bar noncompliant recruiters from all temporary labor migration programs.

Protection against gender-based discrimination in employment:

- The Agencies should monitor the practices of employers and recruiters in order to guard against discrimination, sexual harassment, and sexual assault in the workplace.
- The Agencies should protect women who report abuses from retaliatory job assignment, firing, deportation, and blacklisting for future job opportunities.
- The Department of Labor should protect women who report abuses from retaliation at the workplace.
- The Agencies should be fully funded to prosecute and sanction noncompliant employers. The Agencies should bar noncompliant employers from all temporary labor migration programs.

Protect against human trafficking:

- Congress should ban recruiters from charging workers recruitment fees, across all visa categories, and Congress should hold employers liable for any fees that are charged. The Agencies should ensure that workers who acknowledge being charged fees are reimbursed and hired without delay and that they do not face retaliation for reporting recruitment fees.
- The Department of Labor should vet and certify contracts for all temporary labor migration programs. The Department of Labor should ensure that contracts are provided in language that workers understand. The Department of Labor 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.

Ensure Access to Justice, Information, and Support Services:

- The Agencies should ensure access to information for women migrant workers so that they can evaluate job offers and avoid efforts to channel them into abusive, gendered positions.
- Congress should ensure equal access to legal services across all visa categories. Congress should ensure that women who experience gender-based discrimination, either in recruitment or employment, can access legal services both within and outside the United States. Until Congress acts, the Agencies should ensure that women are not unfairly tracked into visa categories that lack access to legal services.
- The Agencies should ensure access to meaningful complaint processes. The Department of Labor and the Equal Employment Opportunity Commission should work with the Department of Justice to ensure access to justice for women, both within and outside the United States, who experience gender-based discrimination in recruitment or employment.
- The Agencies should ensure women are provided adequate protections and are granted access to social and other support services to facilitate reporting gender-based violence and other trauma.



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Centro de los Derechos del Migrante, Inc.

10 E. North Avenue, #9

Baltimore, MD 21202

<http://www.cdmigrante.org/>



Transnational Legal Clinic

Transnational Legal Clinic

University of Pennsylvania Law School

Gittis Center for Clinical Legal Studies

3501 Sansom Street

Philadelphia, PA 19104

<https://www.law.upenn.edu/clinic/transnational/>



Photo Credit: Mateya Kelley

ENGENDERING EXPLOITATION: Worker Stories



Transnational Legal Clinic

ENGENDERING EXPLOITATION: Worker Stories

Justice for Migrant Worker Women was born of a collaboration between Centro de los Derechos del Migrante, Inc. (CDM) and the University of Pennsylvania Transnational Legal Clinic (TLC). Together, we envisioned a comprehensive, cross-sector, cross-visa study of U.S. labor programs that allow U.S. employers to recruit foreign workers for temporary employment, focusing especially on the impact of these programs on migrant women. The research conducted for this effort reflects substantial desk research combined with in-depth interviews. The study is also informed by questions, conversations, and intakes with thousands of workers that CDM has reached through legal services, community outreach, and policy advocacy over the past twelve years.

Worker Stories is a brief, diverse sampling of narratives collected through qualitative interviews with migrant worker women. The interviews were developed in collaboration with migrant worker women leaders

belonging to the CDM-supported Comité de Defensa del Migrante (Migrant Defense Committee, or Comité) in a series of workshops and focus groups conducted in July and August of 2016. Comité leaders also led efforts to identify interview subjects, and some participated in interviews themselves. Interviewees were asked about their experiences in labor recruitment, during employment in the United States, and afterwards. They also shared their resilience strategies and provided recommendations for the future of these programs and migrant workers' rights.

Many thanks to the students and professors of the New England School of Law's Human Rights and Immigration Law Project, and American University Washington College of Law's Civil Advocacy and International Human Rights Clinics for conducting surveys. CDM also thanks our many dedicated volunteers who contributed to this project in 2016-2017.



Centro de los Derechos del Migrante, Inc. is a transnational, non-profit organization dedicated to improving the working conditions of migrant workers in the United States. Headquartered in Mexico City, Mexico and with offices in Juchitán, Oaxaca and Baltimore, Maryland, 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. Our 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 United States for work.



The Comité de Defensa del Migrante (Migrant Defense Committee or Comité) is a group of community-based leaders who organize and empower migrant workers to defend themselves and educate their co-workers. Founded in 2006 and comprised of current and former migrants and their family members, the Comité forms a human chain across Mexico and the United States. Comité leaders train other migrants in human rights, building a culture of informed migrants to protect workers' rights all along the migrant stream.



Since its founding in 2006, the University of Pennsylvania Law School's **Transnational Legal Clinic** (TLC) has represented individuals seeking asylum and other forms of immigration relief from across the globe and has worked alongside and on behalf of international human rights and community-based organizations on a range of rights-based issues, particularly as they relate to migrants.



This report was made possible in part due to generous funding from the **Ms. Foundation for Women**.

Name: **Rosa**

Visa: **TN**

Country of origin: **Mexico**

U.S. state(s) of employment: **Wisconsin**

Position: **Animal Scientist**

Duties: **Empty water troughs, feed and vaccinate calves, unload animals, clean company bathrooms, kitchen, and closets**

Ratio men/women in workplace: **95:5**



A licensed veterinarian, Rosa was thrilled when a Wisconsin-based dairy farm offered her a three-year, professional position working as an Animal Scientist. As a recent graduate from one of Mexico's top universities, she was able to qualify for a TN visa, created by NAFTA to allow U.S. employers to hire qualified professionals in one of sixty-three occupations. In the application letter supplied to the U.S. Embassy, the dairy farm described Rosa's would-be responsibilities as "sophisticated," "professional," and requiring "advanced theoretical and practical knowledge and skills." Upon arrival in Wisconsin, however, Rosa discovered that her duties – and those of the other TN workers in her workplace – were far from those described. Instead of developing nutrition and breeding programs, Rosa spent her workdays cleaning water troughs, unloading animals, and performing other menial tasks for well below the \$30,000 minimum annual salary her employer had promised. Eager to prove her abilities, Rosa's continued efforts to advance her career were met with ridicule from supervisors. As the only woman in her area, Rosa was told to perform housekeeping duties, and even laundry, considered "women's work." Her supervisors constantly told her that women are slower, weaker, and less skilled than men; she watched as they

trivialized and dismissed incidents of chronic sexual harassment against another female co-worker. And despite their qualifications, Rosa found that she and her other TN-holding co-workers were relegated to the lowest positions in the company with the least pay. When she questioned her role, her supervisor simply responded, "you come here with this visa, and you have to do what you're told." Beyond her sponsorship letter, Rosa had received no formal employment contract.

Unable to switch employers due to the terms of her visa, Rosa continued to endure her conditions. She eventually developing gastritis as a result of constant ridicule and stress. Taking matters into her own hands, Rosa struggled to find legal counsel, unable to afford consultation fees.

Rosa believes that U.S. employers hiring TN workers should be held accountable for the promises they make for employment and pay that accurately reflect workers' skills and abilities: "so that one can genuinely say – 'I put into practice what I knew, and learned what I didn't.'" She decries the sex-based discrimination she faced, saying, "pure and simple, men and women should be allowed to do the same job."

They hired me as an Animal Scientist but had me cleaning food bins and bathrooms. They paid me less than the other workers. I didn't do anything that required a degree.

Name: “**Sandra**”

Visa: **J-1 Summer Work Travel**

Country of origin: **Peru**

U.S. state(s) of employment: **Vermont**

Position: **Housekeeper**

Duties: **Housekeeping**

Ratio men/women in workplace: **90:10**



Sandra was looking forward to learning English, immersing herself in American culture, and earning a decent wage through the J-1 Summer Work Travel program. An authorized, U.S. J-1 sponsor agency, working through a local partner in Sandra’s native Peru, had promised her an enriching, three-month cultural experience at a ski resort in Vermont, where she would have access to sufficient transportation and opportunities to take full advantage of her surroundings and community. In addition, they said, she would earn enough take-home pay to easily cover the more than \$2000 she spent in visa costs, travel expenses, and agency fees. Once in the United States, she became concerned, however, when her hours and housing conditions fell far short of those established. It was only after contacting the Peruvian Embassy that the sponsor agency, who had been largely unresponsive to her complaints, placed her in another position as a housekeeper. Burdened with loans for her recruitment process and at the mercy of the whims of her sponsor agency, Sandra was forced to accept the employment offer, or return home to mounting debt. Her new place of employment was a far cry from the cultural exchange the program described: instead, she toiled long hours at minimum wage that caused her physical and

mental exhaustion. Suffering lesions to her hands from gruelling work, she was told that the hotel had no medicine available; as such she treated her wounds with leftover lotions found in hotel guests’ rooms. Living in a substandard room in the hotel, she worked under isolating conditions with no opportunity for cultural immersion, meeting only a few of her co-workers. She had to request permission from her employer for transportation to town, which was often denied. She had limited access to the outside world, amenities, or food. Sandra felt that she was constantly starving and found herself scavenging for pieces of fruit that customers left behind. When another female co-worker suffered a sexual assault by an hotel employee, she and Sandra kept silent – with nowhere else to turn, Sandra feared retaliation in the place she lived and worked.

After returning to Peru, Sandra successfully sought a reimbursement from her sponsor for program fees with the help of a non-profit legal services organization. All the same, she feels she would not return to work again under similar circumstances. She argues that there should be greater government oversight over the J-1 programs and sponsor agencies to ensure that others like herself will not experience the same problems.

“I initially participated in this program to learn about U.S. culture, amongst other things. Throughout my employment, I was essentially isolated within my room, unable to experience any aspect of American culture.”

Name: **Beatriz**
Visa: **TN**
Country of origin: **Mexico**
U.S. state(s) of employment: **Texas**
Position: **Management Consultant**
Duties: **Secretarial duties**
Ratio men/women in workplace: **0:100**



Unbeknownst to Beatriz, her employer had declared bankruptcy before she was even hired. A native of Mexico, Beatriz and her two daughters had travelled to the United States as dependents of her husband, who had received a TN visa. Unfortunately, the terms of the TN visa were not designed for families, and the dependent status Beatriz and her teenage daughters received did not allow her to legally work in the United States. While she maintained her consulting job in Mexico from abroad, when a Texas-based management consulting firm offered her an attractive TN visa sponsorship, she quit her consulting position, which she had held for 13 years. In the employment offer, Beatriz's new firm described her "significant business management and consulting experience" as a prerequisite to her skilled employment. On her first day of work, however, she was shocked to discover that she had been deceived. Although hired to train and supervise other staff, Beatriz was the company's sole employee, besides her supervisor. There was no place for her to apply her skills or knowledge. Instead, she was forced to work as a secretary, putting in extensive overtime hours to compensate for six vacant positions. When she suggested that her supervisor hire additional staff, he became aggressive, holding her hostage in their office as

he humiliated and berated her for hours. She felt scared, humiliated, and disrespected. During this time, her spouse abandoned her and her children, leaving Beatriz as the sole provider for her family. Only three months after beginning her employment, the firm closed, leaving her without an income or options for employment. Unable to legally work for another company under the terms of the TN visa, she suffered heavy financial loss and emotional distress.

Seeking legal help for herself and her daughters, Beatriz reached out to the Mexican consulate, who advised her to simply return home to Mexico. The nonprofit organizations she contacted were at capacity, and she did not have money for a private lawyer. Those she contacted said they did not have enough information about TN visas to assist her. A church in Texas provided her with assistance for food, gas, and money.

Despite having read about the TN visa in detail, Beatriz was gravely deceived. She urges government agencies to properly regulate TN businesses and employers, ensure that they are financially solvent, and ensure that they respect workers' terms of employment.

Ignorance about this type of visa is the biggest problem. I lost everything we have because I am not able to work for another company. I was not able to defend my rights.

Name: **“Mara”**

Visa: **J-1 Au Pair**

Country of origin: **Brazil**

U.S. state(s) of employment: **Massachusetts**

Position: **Au Pair**

Duties: **Child care, housekeeping, transportation, homework help, meal preparation**

Ratio men/women in workplace: **N/A**



Mara had dreamed of coming to the United States to pursue an acting career. A friend put her in touch with an authorized J-1 sponsor agency. After meeting the J-1 Au Pair Program requirements, she paid the sponsor agency \$300 and was placed with a family in a small town in Massachusetts. Before departing Brazil, Mara received a contract describing her duties, but not her pay. Once in Massachusetts, Mara lived in her employer’s home and worked for 45 hours per week caring for their children, transporting them to school and other activities, helping with their homework, and preparing meals. For this work, she was paid \$195.75 per week. On the occasion that she was required to work additional hours, Mara’s employers compensated her in-kind with presents or gift cards. Her employers told her that eating with the children counted as her “break.” Having had no prior contact with the family before her placement, Mara soon began to have difficulties working with the children charged to her care, who began to mistreat her. She complained to the sponsor agency, which ignored her pleas. After three months, Mara’s family terminated her employment, and she

scrambled to find another placement. She lost two weeks’ of work and income during this time, but considered herself lucky to have been placed with another employer in a different state: according to Mara, in her experience, it was common for au pairs to be kicked out of their placements and sent home.

Despite being the only au pair in her household, Mara sought comfort in her friendship with other au pairs she met in her classes and online. She found that finding a “good” family was entirely based on luck, and she heard about families that “really wanted to enslave the au pair.” She recommends that the au pair program establish higher pay, especially in households with more children, and set more clearly-defined work schedules and duties that strike a better balance between workers’ and employers’ interests. She felt it was unfair that her host family had the sole power to set her schedule and sometimes left her in charge of the kids, alone, full-time. She lived in constant fear of being sent home for complaining.

“Even if you’re not working in your free time, you don’t have rights to do whatever you want to do. You’re being watched all the time. Some families put a curfew.”

Name: **Lisette**

Visa: **C1/D**

Country of origin: **Mexico**

U.S. state(s) of employment: **California, Hawaii**

Position: **Buffet steward**

Duties: **Prepare and serve meals, clean up, provide room service**

Ratio men/women in workplace: **50:50**



A recent college graduate, Lisette was eager to improve her English, learn a new language, and travel. Working on a cruise ship seemed like a perfect match. Program coordinators at her university put her in contact with a recruitment agency, which connected her with a California-based cruise line. Shortly thereafter, she was ready to embark. Upon arrival in California, Lisette was assigned to a route, not knowing where the cruise ship was going. Although she struggled to read her English language contract, Lisette trusted that that a reputable, American company would provide her with a positive experience. She never could have imagined what awaited her.

For the next two months, Lisette suffered exhaustion and psychological distress under a hostile environment she described as “authoritarian.” Tasked with meal service duties, Lisette worked day and night. The breaks she had been promised turned out to be as short as four to six hours – the only time she could use for sleep. With no overtime pay, her earnings amounted to less than \$4 per hour. Having received insufficient job training, she lived in constant fear of her supervisor, who ridiculed staff and berated their errors without mercy. She did not always have access to her visa and passport, which were held for “safekeeping” in a company office.

Living in “constant confinement” and having little communication with her family only made the situation worse. Lisette watched as the work took its toll on her workmates, who self-medicated with drugs, alcohol, or sex. Fearing retaliation, most kept silent about their treatment. She heard about sexual assaults perpetrated by supervisors, who would freely ask female staff for sexual favors. She and her shipmates found brief respite while in port, when those with visas were allowed six-hour visits to the mainland. All the same, Lisette’s hair began to fall out. Months later, after returning home to Mexico, Lisette was shaken to learn that one of her shipmates had committed suicide.

Although Lisette herself has actively sought justice for her case, she has been told that the odds are stacked against her. Today, she advocates for more breaks, overtime pay, and improved living conditions for cruise ship workers. She is outspoken about the dangers of misleading recruitment, wishing recruiters would thoroughly explain workers’ contractual rights and responsibilities so that prospective workers could make informed decisions about their employment.

“I had so much confidence going with an American company... I thought they were going to pay me for the extra hours I worked. I thought I was going to have more control. I was very deceived.”

Name: **Estefani**

Visa: **J-1 Au Pair**

Country of origin: **Brazil**

U.S. state(s) of employment: **Massachusetts**

Position: **Au Pair**

Duties: **Caring for children, laundry, housekeeping**

Ratio men/women in workplace: **N/A**



Estefani learned about cultural exchange opportunities in the United States from a teacher at school, and decided to apply. Although she consulted various visas, the only one she could afford was the J-1 au pair program. Altogether, she estimates having paid between \$1500-\$2000 up front in program fees and travel costs, excluding additional costs for six course credits upon arrival. Estefani was placed with a divorced couple in Massachusetts, where she split her time between two homes caring for children, doing laundry, and providing transportation to school. Although her terms of employment did not include housework, Estefani's employers soon insisted that she do laundry, dishes, cleaning and yard work. In one home, the host parent stopped hiring a housekeeping service, expecting Estefani to clean instead. In the other, her employer became so verbally aggressive with her over housework that Estefani tried to quit. Earning \$195.75 for 35 hours of work per week, Estefani paid her own telephone bill, educational expenses, and occasionally bought food when her employer failed to do so. She found that her salary barely allowed her to purchase necessities like shampoo, let alone pay for travel and cultural activities. One of the host parents kept her under watch, frequently entering Estefani's room and monitoring her social activities during her free time. Facing a constantly shifting schedule and requests for weekend hours, Estefani found herself postponing her classes and falling behind on her English goals. When she was unable to complete her credit requirements on time, her host family only reprimanded her for wanting to prioritize

schoolwork. She occasionally endured sexist or racist comments from her employers about her Brazilian heritage. Overall, Estefani found that her au pair experience was contrary to the cultural exchange program she had been sold.

Estefani noticed that the local childcare consultant (LCC) charged with overseeing her placement was highly biased toward her employers, whom she had known for eight years; when Estefani complained about her conditions, the LCC would only tell her to be more "understanding." Changing sponsor agencies seemed to be impossible. Estefani felt both her legal status and race placed her at a disadvantage to advocate for herself against the powerful interests of sponsor agencies. "If I need the government to help me," she explained, "I would be the weakest person dealing with a big entity and lobbyists ... I feel like it's convenient for the government to continue with this au pair program." Instead, Estefani dedicated time to educating herself online about her rights. She felt trapped in the program, worried that her visa would be taken away if she tried to change her circumstances.

Estefani feels that her experience has made her feel depressed. She believes that au pairs should have access to affordable mental health services and other types of local resources. Moreover, Estefani wishes that au pairs' work would be clearly defined in a contract, and that host families should be held to the same standards and vetting process to which au pairs themselves are subjected.

"It's false advertisement. It feels like hell on earth, but it's advertised as an amazing experience. It's sold to the au pairs as a cultural exchange, but to the family as free/cheap labor. We are too vulnerable. We should feel like we have freedom."

Name: **Daria**
Visa: **H-2B**
Country of origin: **Mexico**
U.S. state(s) of employment: **Anonymous**
Position: **Vegetable packer**
Duties: **Sort and pack cucumbers**
Ratio men/women in workplace: **30:70**



Daria had to fight to find a recruiter that would give her the opportunity to work in the United States. Recruiters charged money for the opportunity to work, so Daria had to take out loans. She landed an agricultural position, but soon found that opportunities for men and women were not equal at her worksite; while men were sent to harvesting jobs with H-2A visas, women like Daria were given H-2B visas and were assigned to sorting vegetables.

Immediately, Daria found that her work, and pay, did not meet expectations. Earning 10% less per hour than promised, Daria and her female colleagues also only worked three to five hours per week – a far cry from the forty hour workweek described. When work was scarce, Daria watched as the company supervisor would come by and pick up the men for work, leaving the women behind to clean their dormitories. She described the supervisor as a crass and intimidating man, who would yell at the women for being slow. The company took her passport from her, retaining it until the end of the season.

Daria’s worksite was so remote that she and her colleagues had no choice but to live in company-provided farmworker housing, for which they paid monthly rent. The dormitories were poorly equipped for mixed-gender living. To reach the bathrooms, for example, Daria and the other women would have to walk through the men’s dormitories. The bathroom itself, shared by both men and women, was a common room of stalls, with only a door to the outside. This experience made Daria excruciatingly uncomfortable, especially when some of the men had been drinking.

Far from town, and with no telephone, Daria and her female co-workers had little communication with their families or with the outside world. They were always waiting for work. The stress and isolation finally took its toll, and one day, Daria collapsed, unconscious. At the hospital, she was diagnosed with deep emotional distress. Eventually, she found strength in a church group, whose members prayed with her and gave her encouragement.

“It was a pigsty. There was no door. I cried a lot because everything was terrible – I had to sleep on the floor and I suffered backaches and couldn’t sleep. The floor was very dirty. Those who had worked there longer were better off because they managed to buy mattresses.”

Name: **Heidi**

Visa: **J-1 Au Pair**

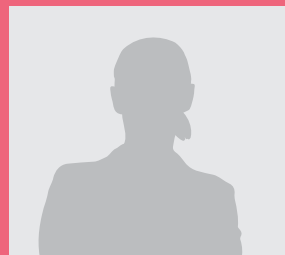
Country of origin: **Mexico**

U.S. state(s) of employment: **Massachusetts**

Position: **Au Pair**

Duties: **Cleaning, cooking, childcare, transportation, laundry, pet care**

Ratio men/women in workplace: **N/A**



As a J-1 au pair, Heidi was told that she would be treated to a year-long cultural exchange as a member of an American family. Soon after arrival, she began to see things differently. What started as childcare quickly snowballed into full-blown housework. Heidi found herself cooking for not only the children, but for the whole family; cleaning; taking care of the dog; and working seven days per week. Wanting to fit in with her host family, Heidi was eager to be extra-helpful, but soon she began to feel exploited. She took care of four children and earned the same \$197.75 weekly wage as au pairs who cared for one. She was only allowed breaks on days that she worked more than ten hours, and sometimes, not at all. Her employer even asked her to teach the children Spanish, requiring Heidi to develop a curriculum and measuring results. When she tried to set boundaries, Heidi's employers told her she was not doing her job. On one occasion, she and the employer argued. The employer told her, "I hired you so you could work 24/7 so I don't have to worry." Although Heidi's J-1 program entitled her to a partial academic subsidy, she was forced to pay her education back to her employers through deductions on her pay check.

Heidi also struggled with racist overtones in her employer's communication, like when she explained she "would

never hire a European au pair because they don't work as hard as an Hispanic." Her employer's use of the phrase "you Mexicans" made her uncomfortable. And there were times when Heidi felt that the family was spying on her. Her employer would go into her room and make comments about the state of her bed. When Heidi was out of the house, her employer would sometimes call her, her boyfriend, or even her boyfriend's family, to check up on her whereabouts.

When Heidi tried to tell her local childcare consultant (LCC) that she was working overtime and never getting a day off, the LCC sided with the employer. Heidi felt harassed by her LCC, who addressed Heidi's concerns with a "it's not me, it's you" attitude. Once, the LCC threatened her. Heidi felt that she did not know her rights. Another time, when a teacher at the child's school asked if she was being treated well, Heidi was too scared to respond.

Heidi recommends that host families undergo the same psychological tests, criminal record checks, and other evaluation to which the J-1 Au Pair Program subjects au pairs. She argues that the rate of pay – \$195.75 per week – should increase with the number of children in the home, or for additional activities. She herself had paid her sponsor agency more than \$1500 in program fees.

"[My employer] works as a police officer and told me if she finds out I'm breaking any rules there will be consequences... things got so bad that I had to see a therapist."

Name: **Adareli**
Visa: **H-2B**
Country of origin: **Mexico**
U.S. state(s) of employment: **Louisiana**
Position: **Chocolate packer**
Duties: **Sort and pack chocolates on assembly line**
Ratio men/women in workplace: **10:90**



Growing up, Adareli never understood why anyone would want to leave her hometown in Hidalgo, Mexico to work in the United States. It was not until she graduated from high school and struggled to find employment that she considered migrating. The recruitment process was competitive and difficult, and especially so for women: while men in her community were able to apply for both H-2A and H-2B jobs in different industries, women were only offered H-2B factory work. Her local recruiters argued that women’s physical limitations disqualified them from certain jobs.

When Adareli arrived at the factory in Louisiana, she found that her supervisors did not respect her and her colleagues’ dignity as women or human beings. Her male counterparts would earn more, carrying and stacking boxes, while women packed chocolates on assembly lines. In the words of her boss, H-2B workers’ only role was to work – the

company would not tolerate complaints or illnesses. Having paid transportation and visa costs, Adareli continued working to pay back her debts. On her fourth season of work, Adareli and seventy colleagues implemented a work stoppage, demanding fair labor standards. Afterwards, the working conditions mildly improved; nevertheless, Adareli’s fear of retaliation was realized when the company decided not to hire her or her coworkers again.

Adareli has dedicated much of her time and energy to fight for workers’ rights and transparency in recruitment. She wishes that recruiters would be up front with migrant workers about employment terms, and that employers would give women an equal chance to prove their abilities. She advocates for greater job mobility, arguing that migrant workers should be able to switch employers to escape exploitative working conditions and seek fair employment in the United States.

“I would talk to my female colleagues about our rights so that we would defend our dignity. But I realized, in that environment, fear was still preventing us from standing up for ourselves like we were meant to do; fear of losing our job, having to return to Mexico, and not being able to support our families... I wish that as migrants, we wouldn’t be tied to an employer, wouldn’t lived bound and unable to change jobs in the face of unjust conditions.”

Name: **Mayra**

Visa: **B-1**

Country of origin: **Mexico**

U.S. state(s) of employment: **Florida**

Position: **Domestic worker**

Duties: **Housekeeping, cooking, household shopping, caring for pets**

Ratio men/women in workplace: **N/A**



Mayra responded to an online advertisement: a wealthy family was looking to hire a domestic worker over 35 years of age at their Florida home through a Mexico-based recruitment agency. Although the agency provided only vague information about her employment, Mayra was attracted to the prospect of earning a U.S. salary far above what she could earn as a domestic worker in Mexico. She understood only that her primary responsibility would be to care for children. She wouldn't learn about her schedule, or even the name of the family, until she arrived in the United States and began work. To discourage her from changing her mind before departure, the recruitment agency representatives held onto Mayra's passport and visa, returning it to her at the airport on the day of her flight. Feeling pressed by a family illness and mounting financial concerns, Mayra trusted that the opportunity was worthwhile.

Once in Florida, Mayra quickly realized she had been misled. Working fifteen-hour days, she was paid \$5 per hour or less. Besides caring for the children, she performed all household duties, including cleaning, cooking, shopping,

and caring for the dog. Mayra was only permitted to leave the house on Sundays – after walking the dog – and she had to let her employer know where she was at all times. Through psychological manipulation, her employer made Mayra feel too helpless to take any action against her deplorable working conditions. She had little contact with the outside world. It was months later, when she began to speak with other domestic workers in her neighborhood about her situation, that Mayra realized her employers were exploiting her.

Mayra is determined to ensure that others are not subject to the conditions she experienced. She is now certain that employers understand, and take advantage of, some workers' economic needs. She wishes migrant workers would have access to legal services, which she has struggled to secure. She is also critical of the recruitment agency's obscure dealings and its lack of accountability, and believes that recruiters should be held accountable for their role in exploitation.

“The lack of information about our rights and access to legal services leaves us in a vulnerable position. I wish I could tell other domestic workers that they should fight for fair compensation... It's worth it to inform yourself. Know that you have rights.”

Name: **Barbara**
Visa: **J-1 Au Pair**
Country of origin: **Mexico**
U.S. state(s) of employment: **Ohio**
Position: **Au Pair**
Duties: **N/A**
Ratio men/women in workplace: **N/A**



Barbara wanted to be an au pair, but she never got the chance. Instead, she experienced first-hand how obscure and bureaucratic the J-1 recruitment process can be. A native of Mexico, Barbara was hoping to travel to the United States through the Au Pair Program in order to learn English and gain professional experience abroad. She sought out one of the few sponsor agencies that are licensed to manage au pair hiring and placement, and which charge participation fees to both prospective au pairs and host families alike.

Three days after arriving in the United States for her requisite au pair training, Barbara's dreams came to a screeching halt. For reasons that still remain unclear to her, the sponsor agency confronted Barbara, accusing her of being unfit for work and citing a medication she was no longer taking. Having been initially cleared for participation, Barbara was taken aback. She felt targeted and alone. She did not have access to a lawyer who could defend her, nor a doctor who could conduct the needed tests to make her case. She wanted to reach out to her family for help, but

she was unable to communicate with them due to limited phone access. Back home, her family struggled to contact her and became increasingly worried when they received no response.

After a long legal process that challenged the sponsor agency, Barbara managed to recover a percentage of the program fee. Intent on starting anew, she applied once again to be an au pair through a different licensed agency. Nevertheless, after making her payment, her application was denied. Barbara learned that the first agency had accused her of misusing her visa and filed a report. As a result, Barbara was marked delinquent.

Today, Barbara is a vocal advocate for greater recruitment transparency for J-1 workers. She argues that the agencies responsible for au pair recruitment should be monitored and held accountable for the conditions they promise. She also believes that the program could be improved by guaranteeing access to legal and health services for program participants and by providing workers with independent, workers' rights education and support.

“They do not give correct information. There’s a lack of transparency and accuracy in the recruitment process, and everybody is interested in money. Recruiters only try to generate commissions from applicants.”

Name: **“Leticia”**

Visa: **TN**

Country of origin: **Guatemala**

U.S. state(s) of employment: **Massachusetts**

Position: **Researcher**

Duties: **Research**

Ratio men/women in workplace: **N/A**



Leticia hoped that working in the United States would provide her young, Autistic son with a better life. Living in Guatemala, she found there was little public awareness of autism, let alone public schools or programs to meet her son’s needs. The few private school opportunities available were more expensive than she could afford. When a biotechnology firm in Massachusetts offered her a temporary research position, the monthly salary was well above similar positions in Guatemala. With a letter of support from her would-be employer, Leticia was able to apply for a TN visa, which allows U.S. employers to hire workers possessing certain qualifications and skill sets for temporary positions. With the promise of a stable income, Leticia was willing to cover her own and her son’s travel and visa expenses, which her employer promised to reimburse. However, upon arrival, Leticia discovered that her job was not what she expected. Instead of a reimbursement, her employer began to deduct hefty fees

from her paycheck for her shared housing and other costs, leaving her with barely \$400 per month to live on. When she brought her economic hardship to her employer’s attention, he gave her a “child bonus,” only to take the money back a few weeks later. Her employer, who was also her landlord, became verbally abusive, and he kept her emails and online activity under constant surveillance. Feeling isolated, exploited, and struggling to make ends meet, Leticia was eventually diagnosed with Post Traumatic Stress Disorder (PTSD).

Leticia eventually sought legal assistance, but she was told she did not have any recourse without jeopardizing her immigrant status. She feared taking legal action. Tied to her employer by the terms of her TN visa, Leticia’s only option was to quit and seek emotional assistance for herself and her son.

“There is no freedom. I felt trapped. The problem with the work visa system is that your boss holds over your head that he brought you to America. I will never apply to get a work visa again because of the horror that I have been through. I am grateful to have the opportunity to warn women about my situation so they know that they have the right to not be treated poorly.”

Name: **Claudia**
Visa: **J-1 Au Pair**
Country of origin: **Colombia**
U.S. state(s) of employment: **Massachusetts**
Position: **Au Pair**
Duties (actual): **Care for children, light housework**
Ratio men/women in workplace: **N/A**



Claudia was certain that the J-1 Au Pair Program would help her fulfill her wish to travel to the United States and learn English. Her terms of employment specified she would work 45 hours per week providing childcare, and that she should keep the house, and her personal space, reasonably organized. Once at work, Claudia felt her employer was taking advantage of her; she was often asked to do housekeeping and management, and her weeks frequently exceeded 45 hours. Rarely could she take weekends off, as initially promised, because living in the same house as her employers meant she was frequently on call. Claudia was never paid for extra hours she worked.

Four months into the program, Claudia's employers began to withhold her paycheck. When Claudia asked for her salary, her boss refused, saying he had lost his income. He became upset, even hostile, and he made threatening calls. When her employer restricted Claudia's access to the internet,

she felt isolated and scared. Claudia reported the incident to her local childcare consultant (LCC), who reminded the family to pay. In response, the family put Claudia's clothes in a trash bag and kicked her out of the house. She had to stay at the LCC's home for two weeks and was given an ultimatum: either find another host family, or risk being sent back to Colombia.

Claudia recommends that the United States government closely monitor the J-1 Au Pair Program, and notes that lack of oversight means "au pairs are being exposed to families who are abusing other au pairs." During her employment, Claudia felt she had "absolutely zero" protection, and she urges the program to report rampant abuses to authorities. She also wants both families and au pairs to understand au pairs' rights under the law, especially in regard to overtime hours and pay.

"The program needs to educate the families about how to treat au pairs and what the laws are with regards to au pairs [and] make sure they understand the law and what abuse means. We never knew who would protect us."

Name: **Silvia**
Visa: **H-2B**
Country of origin: **Mexico**
U.S. state(s) of employment: **Maryland**
Position: **Seafood processor / Crab picker**
Duties: **Remove crab meat from shells**
Ratio men/women in workplace: **50:50**



The only employment in Silvia's Mexican hometown is seasonal corn husk processing for tamales. The process uses strong, pungent chemicals that many suspect are unhealthy; even then, those jobs are sporadic and difficult to come by. Silvia needed to provide for her parents and two children, and so, like many women in her community, she decided to apply for a job processing crab meat on Maryland's Eastern Shore. Labor recruitment was politically challenging, as many women vied for the few available spots. The H-2B application process was expensive and complicated, but with the need to support her family, Silvia had no other choice. Without clear information to distinguish between genuine and fraudulent recruiters, Silvia lost money on several false offers. Out of ten recruitment attempts, Silvia succeeded in obtaining work in the United States five times.

As she applied for different jobs, Silvia realized men and women were not offered the same opportunities: year after year, most men had their choice of H-2B seafood

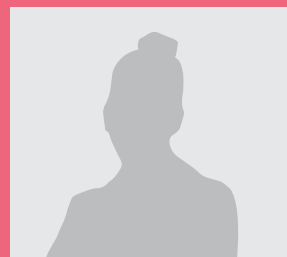
processing jobs or H-2A harvesting positions, where they earned higher wages and free housing. Women would simply be appointed to pick crab.

Discrimination followed Silvia to her workplace in Maryland, where she discovered that men and women were assigned different roles. While Silvia and other migrant worker women scraped crab meat from jagged shells, men would lift and empty buckets and cook crab. She noticed that her male counterparts also frequently worked more hours given the tasks they were assigned to do.

During her time in Maryland, being away from her children had an emotional impact on Silvia. While she would have liked to bring her kids along to Maryland with her, she knew that her salary would not be enough to support them financially. After paying her rent and food expenses, she would send her remaining salary home to her family. She wishes that the men in her community who had access to different, better-paying jobs would use their influence to recommend women to their employers.

“We don't like the work, but we don't question it. Why would we, if it's the only thing there is?”

Name: **Johanna**
Visa: **J-1 Au Pair**
Country of origin: **El Salvador**
U.S. state(s) of employment: **California, New York**
Position: **Au Pair**
Duties: **Care for, bathe, feed children**
Ratio men/women in workplace: **N/A**



Johanna, a teacher, wanted to follow her dream of working with children with disabilities, but she could not find relevant employment in El Salvador. Upon discovering the J-1 Au Pair Program, she thought it would be an opportunity to focus on her field while having an adventure, too. Reading the cultural exchange program's description, she was willing to pay the program fee required for participation. Johanna believed the sponsor agency's publicity that she would be regarded as a "big sister" in an American family, and that she would be able to go to school.

Before starting work caring for three children with a host family in New York, Johanna had been told she would be entitled to two days off each week, no questions asked. Her new employers soon informed her that, aside from sick days, any days off must be requested and approved. Faced with so many kids – one of them Autistic and requiring special care – Johanna felt like she could never take a break. Even though the job was supposed to include room and board, her employers would cook for themselves only, protect their food with labels, and avoid taking her to the store. Her employers provided her with an additional \$20 weekly allowance, with which she was expected to

feed herself. She brought her troubles to the attention of her local childcare consultant (LCC), who "didn't seem to care." Her location and lack of access to transportation left her feeling isolated and alone. Homesick and constantly worried about money, she struggled with her decision to stay, but felt ashamed of returning home with no money and no improvement in her English. Finally, fed up with her situation, Johanna left four months before her program ended.

Johanna wishes that J-1 recruitment agencies would be transparent on expectations for both the au pairs and host families, and that employers should be better educated. Her greatest frustration is that recruitment agencies characterize the program in an unrealistic way, selling "two different realities" to families and au pairs. She feels that "both sides are being sold something unrealistic – the families think they are getting cheaper nannies, and the au pairs want to explore. The company says you'll be [an] extra [set of] hands, not an employee."

"When you come to the U.S., you think you'll meet people, make money, and learn English. But you cannot do any of that. You're with a baby the whole time – being paid very little. I left the program because it was not helping me achieve the goals for which I came to the U.S."



Centro de los Derechos del Migrante, Inc.

10 E. North Avenue, #9

Baltimore, MD 21202

<http://www.cdmigrante.org/>



Transnational Legal Clinic

Transnational Legal Clinic

University of Pennsylvania Law School

Gittis Center for Clinical Legal Studies

3501 Sansom Street

Philadelphia, PA 19104

<https://www.law.upenn.edu/clinic/transnational/>