

March 31, 2022

**THIRD SUPPLEMENT TO THE
PETITION REGARDING LABOR LAW MATTERS ARISING IN THE UNITED STATES**

Submitted to the

**LABOR POLICY AND INSTITUTIONAL RELATIONS UNIT
THROUGH THE GENERAL DIRECTORATE OF INSTITUTIONAL RELATIONS IN THE
SECRETARIAT OF LABOR AND SOCIAL WELFARE (STPS)**

**REGARDING THE FAILURE OF THE U.S. GOVERNMENT TO EFFECTIVELY ENFORCE ITS
DOMESTIC LABOR LAWS AND PROMOTE THE ELIMINATION OF EMPLOYMENT
DISCRIMINATION IN THE H-2 PROGRAM IN VIOLATION OF CHAPTER 23 OF THE UNITED
STATES–MEXICO–CANADA AGREEMENT (USMCA)**

NON-CONFIDENTIAL COMMUNICATION

We present this Third Supplement supporting the [Amended Petition from March 23, 2021](#), regarding the failure of the U.S. government to *effectively enforce its domestic labor laws and promote the elimination of employment discrimination in the H-2 program in violation of Chapter 23 of the United States-Mexico-Canada Agreement (USMCA)*.

The petition was presented on March 23, 2021 by Maritza Pérez Obando, Adareli Ponce Hernández, and a binational coalition of organizations led by Centro de los Derechos del Migrante, Inc. (CDM). On June 4, 2021, 59 Mexican and American human rights advocates, academics, professors, and lawyers submitted the First [Supplement](#) supporting the petition. That same day, four additional civil society organizations joined the petition through a Second [Supplement](#) supporting the petition.

Since the original petition was submitted over a year ago, women have continued facing systemic discrimination in the H-2 program. We submit this Third Supplement to illustrate how sex discrimination continues affecting worker women who seek to work under the H-2 program and those who work in the United States.

Background Procedures

Our public communication was deemed admissible by the Labor Policy and Institutional Relations Unit through the General Directorate of Institutional Relations in the Secretariat of Labor and Social Welfare (STPS) on March 31, 2021. Since then, a series of meetings have taken place to establish a path towards a resolution. In the months that followed, both governments held inter-agency working groups.

On December 9, 2021, representatives from the United States Department of Labor held a listening session where workers testified about discrimination in the H-2 program. However, a year after submitting the original petition, the United States government has failed to implement the requested actions (parts VII-VIII) to rectify the Chapter 23 violations and eliminate sex discrimination in the H-2 program.

Testimonials

Labor discrimination in the H-2 program continues to harm women. The following testimonials and the H-2 job ads in Annex 1 reveal that recruitment and work under the H-2 program are conducted discriminatorily and are based on gender stereotypes. Job offers contain explicitly discriminatory language by seeking to hire exclusively men for the H-2 program. (Annex 1) H-2 employers and recruiters either reject applications from worker women or assign them to jobs with worse conditions than those offered to their male counterparts because of their sex. Employers and recruiters also subject women to abuse, including violence, threats, and other forms of sexual abuse. In short, as long as the United States government fails to resolve the issues raised in the petition, women continue facing systemic sex discrimination in the H-2 program.

Adareli Ponce Hernández (petitioner)

Since we submitted the Public Communication on March 23, 2021, I have tried to apply for H-2A jobs and I have continued facing discrimination. Over the last year, I have come across many H-2A job ads on social media. But [each time], I realized very quickly that I am not eligible: they are exclusively hiring men.

In April 2021, I saw a Facebook ad for farm work in the United States with an H-2A visa. The ad mentioned they were only hiring men. Since I have pressing economic needs, I still decided to submit an application. I filled out the application online that explicitly asked about my gender. I did not receive a response for months. In September, I realized the people hired for that particular job were about to travel to the United States. The group was composed exclusively of men.

Since we submitted the petition, I have seen hundreds of men—both from my community and from neighboring ones—travel to work in the United States with H-2A visas. However, I have not seen a single woman afforded the same opportunity.

Reyna López

I am a day laborer in San Quintín, Baja California, Mexico. In the fall of 2021, I submitted an application to work with an H-2A visa for one of the biggest growers in the United States. I had to spend four days of my salary on paperwork—including a medical certificate, bloodwork, and a background check. But it was all for nothing. When I went to drop off my papers at the grower's office in San Quintín, the person in charge told me they were only hiring men. Things are getting

worse. When I submitted my application for the same grower back in 2020, I saw the group [of hired workers] was composed of more than 60 men and only three women.

The recruiter and many supervisors have told me that women are not suited to work in the fields, and that is why we do not get hired. But that is not true. For 18 years I have worked in seed production and planting and harvesting lettuce, celery, cauliflower, spinach, cilantro, strawberry, raspberry, and cranberry crops. [H-2A employers and recruiters] claim [women] are not hired because we are not strong or experienced enough, but those are excuses and prejudices.

“Clara Juárez”

I have always worked in the fields. I am a day laborer and I work harvesting strawberries and other berries in the San Quintin Valley, Baja California, Mexico. In May 2021, I went to California to work with a very well-known grower for the second year in a row, with an H-2A visa.

During my last season working there, while I traveled from my home community to the workplace, the driver took me out of the truck and touched me inappropriately. The recruiter—someone from my community who works for another recruiter connecting workers to be hired in the US—was also in the truck with us and he did nothing to help me. When I arrived in the United States, I complained to a supervisor about this incident, but nobody listened. I do not want to file a complaint against the driver because the recruiter knows where I live and I am afraid he will retaliate against me.

Daríá Hernández

For many years, I looked for an employer who would offer me a job in agriculture with an H-2A visa, but that never happened. Many recruiters told me those jobs were only for men. I could only get a job with an H-2B visa in a crab processing plant in Maryland. I have been returning to work in the United States for 14 years—since 2008.

Women’s wages in crab picking depend on production, and we can only work for eight hours. Men’s wages, however, depend on the hours they work, not on how big or small crabs are. Men are eligible to work overtime.

At the company where I work, we had a wage increase in 2021. Now I get paid US\$4.50 per pound, and I can process between 36 and 40 pounds per day, depending on the size of the crabs, something that’s completely out of the workers’ control. For example, if the crabs are too small or too thin, you simply cannot produce as many pounds. Some days production barely reaches 30 pounds.

Throughout my 13 years working in this industry, I have seen many situations where women suffer. For example, I saw how one of the men, a supervisor who weighed the meat, would touch and harass women. They usually did not say anything. But if they did, he would threaten them: he would say that if they did not like it, they could go back to Mexico, or that he would

report them to the employer. I have never had a woman supervisor. My supervisors have always been men.

“Guadalupe Martínez”

I have worked as a day laborer in Mexico for many years. I also previously did agricultural work on H-2A visas. However, the last time I was hired with an H-2A visa was in 2019, when a recruiter charged me \$1,000 USD for a job. I decided to pay this fee because I trusted the recruiter, who went on to be my supervisor. I needed the job and I was worried I was not going to find another recruiter willing to hire women.

For the first two months of the 2019 season, I was the only woman working for that company, and my supervisor constantly sexually harassed me. He began by insisting I sleep with him, promising free meals and better working conditions. He forced me to live in the same room as him where he slept on the bottom bunk, while I slept on the top one. He would make inappropriate comments about my body, threatening me with physical contact, and he tried to sexually assault me on several occasions, groping me while I worked. He would become very aggressive and violent when I rejected his advances.

Besides fearing for my safety, I felt I could not complain because my supervisor would use his position to intimidate me. He was the only one who could interpret for workers and employers; he took advantage of that position, threatening to change the details of my complaint to benefit him. This situation left me in constant fear of being sexually assaulted without having anyone to go to.

This sexual harassment went on for four months. I wanted to file a complaint, but I was worried about the consequences, like being deported or blacklisted, however I filed the complaint anyways. The last few weeks I worked there I was put in contact with a women's shelter, but I [could not travel there] because I had no transportation from the shelter to the worksite and back, and I was worried about retaliation for accepting the help.

Conclusions

Beyond failing to meet its obligations under USMCA's Chapter 23, the United States government has perpetrated abuse against migrant workers by failing to meaningfully respond to the petition filed on March 23, 2021.

Structural discrimination under the H-2 program continues harming women on many different levels. Employers and recruiters openly and explicitly deny H-2 job opportunities to Mexican women. (Annex 1). On the rare occasions where women are hired under the H-2 program, they face a wide range of systemic abuse, including sexual abuse and wage theft. Additionally, when women exercise their rights, they face intimidation and retaliation, and when they report these abuses to the authorities, they face barriers to justice.

Petitioners Ponce, Pérez, Hernández and the other workers who have presented their testimony to this Supplement, and the multiple signatories who support them, respectfully ask for an immediate, complete, and inclusive response that addresses the structural sex discrimination in the H-2 program.

The signatory organizations join the Amended Petition from March 23, 2021, regarding the failure of the U.S. government to effectively enforce its domestic labor laws and promote the elimination of employment discrimination in the H-2 program in violation of Chapter 23 of the United States-Mexico-Canada Agreement (USMCA).

Frente Auténtico del Trabajo
Consultora Solidaria SC
Instituto Mexicano de Derechos Humanos y Democracia, A.C. (IMDHD)

Respectfully submitted this 31 day of March 2022 by,

Centro de los Derechos del Migrante, Inc.

Annex 1



Bolsa de Trabajo Delicias y la Región

March 26, 2021 · 🌐

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Se busca personal para ir a trabajar a EEUU con la empresa GRIMMWAY FARMS en la pizca de zanahoria para hombres y al empaque para mujeres. Con visa H2A por una temporada de 6 meses. Mas información al WhatsApp 00529612979578 con el Lic. José Luis Villanueva Pérez.



5

2 Comments

[Seeking personnel to work in the United States with the business GRIMMWAY FARMS, in carrot picking for men and packing for women. With H-2A visas for a period of 6 months. More information through WhatsApp 00529612979578 with Lic. José Luis Villanueva Pérez.]



Jack Swan

December 16, 2021 · 🌐



Hola, estoy buscando hombres que les gustaría venir a trabajar a los Estados Unidos con una visa de trabajo H2A por 7-10 meses. Estoy buscando hombres que hablen al menos un 60% de inglés. Si no hablas inglés por favor no me contactes todavía. Habrá una oportunidad para aquellos que no hablan inglés también. También estoy buscando hombres que tengan una licencia de conducir de los Estados Unidos. No importa si está caducado. Envíame un mensaje de texto a 12319440859 por whatsapp. Gracias!



91

96 Comments

[Hello, I am looking for men who would like to come to work in the United States with an H-2A work visa for 7-10 months. I am looking for men who speak at least [a] 60% [level] of English. If you do not speak English, please do not contact me yet. There will also be a [later] opportunity for those who do not speak English. I am also looking for men who have a U.S. driver's license. It does not matter if [the license] has expired. Send me a text message to 12319440859 through whatsapp [sic]. Thanks!]



Juan Garcia

January 13 at 12:41 PM · 🌐



INFORMACIÓN IMPORTANTE

EMPLEO TEMPORAL H2A

(Jueves 13 de enero)

A las personas que entregaron documentos en alguna de nuestras 2 reuniones en el parque la tortuga

Les informamos que abra cupo en los primeros de marzo para 40 personas

- 1- Estas personas saldrán de los listados de personas que ya tenemos sus documentos
- 2- la próxima semana subiremos los nombres de estas primeras 40 personas para darles la información y confirmar su lugar ya de trabajo
- 3- por el momento solo abra trabajo para 40 hombres
- 4- seguiremos en pláticas para seguir en el tema del trabajo H2A

Para mujeres

Gracias a las personas que confían en su servidor

Nuestro personal en oficina y un servidor seguiremos gestionando para crear más y mejores oportunidades de vida para nuestras familias

Gracias mi gente ❤️

(Juan García)

[IMPORTANT INFORMATION
TEMPORARY H2A EMPLOYMENT
(Thursday January 13)

To the people who submitted their documents during one of our 2 meetings in the tortuga park

We inform you that there will be space at the beginning of March for 40 people

- 1- These people will come from the lists of people whose documents we already have
 - 2- next week we will post the names of the first 40 people so they can give us their information and confirm their work position
 - 3- at the moment there will only be work for 40 men
 - 4- we will continue the conversations to follow up on the issue of H2A work For women
- Thank you to the people who have trusted in me, your server
Our office personnel and I, your server, will continue managing to create more and better life opportunities for our families

Thank you my people
(Juan García)



Yarity Andoval
August 16, 2021 · 🌐

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Vacantes de trabajo agrícola VISA H2A

15 PERSONAS INTERESADAS MANDAR MENSAJE AL WHATSAPP
+52 272 236 7423.

Hombres de 19 a 49 años
Casados o Solteros
Buena salud y condicion física
Acostumbrado a trabajar
Mínimo primaria máximo secundaria terminada o trunca
Nivel de inglés no necesario
\$16.4DlIs x hora
Transporte pagado por empleador.

Requisitos
Correo electrónico
INE vigente
CURP
Pasaporte vigente (Vigencia mínima a diciembre 2021)
Comprobante de domicilio reciente
Comprobante de estudios
Acta de nacimiento
Salida para el 23.09.2021 Oeste de California.

 8 21 Comments

Vacancies in agricultural work H2A VISA
15 INTERESTED PEOPLE SEND WHATSAPP MESSAGE
+52 272 236 7423.

Men from 19 to 49 years
Married or Single

Good health and physical condition
Accustomed to working
Minimum primary school maximum secondary school finished or incomplete
Level of english not necessary
\$16.4 dollars x hour
Transport paid by employer.

Requirements

Email
Valid INE
CURP
Valid passport (valid [at least through] December 2021)
Recent proof of residence
Proof of schooling
Birth certificate

Leaving on 09.23.2021 West of California.