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Assistant U.S. Trade Representative for the Western Hemisphere  
Office of the United States Trade Representative

*Submitted through:*

<https://comments.ustr.gov/s/submit-new-comment?docketNumber=USTR-2025-0004>

**Comment in response to FR Doc. 2025–18010 Request for Public Comments and Notice of Public Hearing Relating to the Operation of the Agreement Between the United States of America, the United Mexican States, and Canada; Docket No. USTR-2025-0004**

Dear Mr. Watson,

Centro de los Derechos del Migrante (CDM) writes to provide our comments on USTR-2025-0004 Request for Public Comments and Notice of Public Hearing Relating to the Operation of the Agreement Between the United States of America, the United Mexican States, and Canada (hereinafter “USMCA”).

CDM is a binational migrant workers’ rights organization, headquartered in Mexico City, Mexico, with offices in Baltimore, Maryland, and Juchitán, Oaxaca. For two decades, CDM has worked alongside migrant and immigrant families and communities to ensure that borders are not a barrier to justice and that migrant workers’ voices, experiences, and priorities shape labor migration policies. CDM’s mission is to improve the working conditions of Mexican migrant workers in the United States. CDM provides direct representation and referrals for migrant workers and their family members, builds migrant worker leadership, conducts know-your-rights trainings across Mexico and the United States, and advocates for improved working conditions in the United States. Over the past 20 years, CDM has spoken with over 44,000 workers and recovered more than \$50 million in unpaid wages and compensation.

CDM has partnered with researchers to publish groundbreaking reports on structural flaws in U.S. work visa programs that endanger the safety of working people and undercut their wages. In 2017, CDM published *Coerced Under NAFTA*, a report that exposed how TN visa employers and their recruiters commit fraud, retaliation, discrimination, wage theft, and

economic coercion, among other abuses, against TN visa holders.<sup>1</sup> The TN visa category, created by the North American Free Trade Agreement (NAFTA), the precursor to the USMCA, allows highly trained professionals to enter the United States from Mexico and Canada.<sup>2</sup> CDM has also published reports on H-2 visa categories — including *Ripe for Reform*, a groundbreaking report on the flaws endemic to the H-2A agricultural worker program that harm migrant workers, and *Breaking the Shell* and *Picked Apart*, which document the pervasive gender discrimination experienced by H-2B non-agricultural migrant workers at work in the United States.<sup>3</sup> Although the H-2 visas were not created by NAFTA, because H-2 workers migrate in and out of the United States, they too are impacted by the terms of the USMCA and their interests should be considered in any review of the treaty.<sup>4</sup>

CDM has partnered with workers, advocates, unions, and anti-trafficking organizations to defend people's rights to fair wages, safe working conditions, and good jobs. CDM co-founded and chairs Migration that Works — a coalition of labor, migration, civil rights, and anti-trafficking organizations and academics advancing an alternative labor migration model that respects the human rights of workers, families, and communities. Since 2006, CDM has convened the Comité de Defensa del Migrante (Migrant Defense Committee, or “Comité”), a group of current and former migrant workers in temporary work visa programs and their family members. The Comité works to empower and organize migrant workers in the United States and in their home communities, creating a culture of informed migration and centering migrant workers' perspectives in policy conversations. Working in partnership with the Comité and other worker leaders, CDM conducts extensive outreach in H-2A, H-2B, and TN workers' home communities and regions of employment each year, building relationships that guide our policy priorities.

Hundreds of thousands of migrant workers labor in the United States every year — picking vegetables, shoveling snow, planting trees, building and operating carnival rides, caring

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<sup>1</sup> Exhibit A, CDM, *Coerced under NAFTA: Abuses of Migrant Workers in the TN Visa Program and Recommendations for Reform* (2017), [https://cdmigrante.org/wp-content/uploads/2018/01/Coerced-under-NAFTA\\_-Abuses-of-Migrant-Workers-in-TN-Visa-Program.pdf](https://cdmigrante.org/wp-content/uploads/2018/01/Coerced-under-NAFTA_-Abuses-of-Migrant-Workers-in-TN-Visa-Program.pdf). CDM's other research and publications are here: <https://cdmigrante.org/publications/>

<sup>2</sup> 8 U.S.C § 1184 (e)(1) (defining TN visa); United States-Mexico-Canada Agreement at Annex 16-A Section D (creating TN professional visa), Office of the U.S. Trade Representative, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> [hereinafter USMCA]. See also United States-Mexico-Canada Agreement Implementation Act, Pub. L. No. 116-113, 134 Stat. 11 (2020)

<sup>3</sup> Exhibit B, CDM, *Ripe for Reform: Abuse of Agricultural Workers in the H-2A Visa Program* (2020), <https://cdmigrante.org/ripe-for-reform/>; Exhibit C, CDM, *Picked Apart: The Hidden Struggles of Migrant Worker Women in the Maryland Crab Industry* (2010), <https://cdmigrante.org/wp-content/uploads/2018/02/PickedApart.pdf>; Exhibit D, CDM, *Breaking the Shell: How Maryland's Migrant Crab Pickers Continue to be “Picked Apart”* (2020), <https://cdmigrante.org/wp-content/uploads/2020/09/Breaking-The-Shell.pdf>.

<sup>4</sup> 8 U.S.C §§ 1101(a)(15)(H)(ii)(a)-(b); I.N.A. §§ 101(a)(15)(H)(ii)(a)-(b) (defining H-2A and H-2B visas); see USMCA *supra* note 2, at Chapter 23 (outlining labor protections for migrant workers who migrate between the United States, Mexico, and Canada).

for children, and in numerous other industries. The U.S. relies heavily on migrant labor, particularly from Mexico, to cover key trade sectors, such as agriculture and food processing. Migrant workers are a particularly vulnerable labor sector because the structural flaws in the temporary visa programs lead to economic coercion during recruitment and enable other workplace abuses. In addition, migrant workers face challenges to vindicating their rights at work, such as language barriers, and difficulties accessing effective cross-border justice. Many migrant workers who travel to the U.S. for temporary work come from economically disadvantaged, rural communities in Mexico, often at great personal expense. Ineffective enforcement of transnational law, such as the USMCA, results in a “race to the bottom” in the workplace, marked by reduced wages, weakened benefits, unsafe working conditions, and degradation of working standards for all workers. Additionally, when the domestic labor laws of the U.S., Mexico, and Canada are not enforced, competing local and regional employers who play by the rules are placed at an economic disadvantage, and workers suffer abuses.

CDM’s long history of working with migrant workers makes us uniquely situated to provide comments on how the current structure of the USMCA impacts some of the most essential yet exploited workers in the United States. CDM filed two petitions under the USMCA’s predecessor — the North American Agreement on Labor Cooperation (NAALC), NAFTA’s labor side accord — and, in 2021, brought the first ever petition against the United States under the USMCA on behalf of two migrant women workers who faced severe gender discrimination in the H-2 visa programs.<sup>5</sup>

The United States must preserve and strengthen the USMCA Labor Chapter and follow through on its commitments to protect all workers who work in the United States.<sup>6</sup> CDM submits the following comments to express support for the preservation of the migrant worker<sup>7</sup> and gender discrimination<sup>8</sup> protections currently contained in the USMCA Labor Chapter and to urge changes to the Labor and Dispute Settlement Chapters<sup>9</sup> that would protect migrant workers and provide effective cross-border access to justice. Any review of the USMCA must address the deficiencies of the current USMCA dispute resolution procedure and the U.S. Department of Labor’s and other agencies’ enforcement failures in order to provide adequate redress for migrant workers and to safeguard basic labor standards for all workers.

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<sup>5</sup> Exhibit E, CDM, *Amended Petition on Labor Law Matters Arising in the United States*, (March 23, 2021), [https://cdmigrante.org/wp-content/uploads/2021/03/USMCA-Amended-Petition-and-Appendices\\_March-23-2021\\_reduced.pdf](https://cdmigrante.org/wp-content/uploads/2021/03/USMCA-Amended-Petition-and-Appendices_March-23-2021_reduced.pdf). More information about CDM’s USMCA petition and supplemental filings can be found here: <https://cdmigrante.org/migrant-worker-women-usmca/>.

<sup>6</sup> USMCA *supra* note 2, at Chapter 23.

<sup>7</sup> USMCA *supra* note 2, Chapter 23 Article 23.8 (ensuring protection of migrant workers under parties’ domestic labor laws).

<sup>8</sup> USMCA *supra* note 2, Chapter 23 Article 23.9 (commitment by parties to implement domestic policies that protect workers against employment discrimination on the basis of sex).

<sup>9</sup> USMCA *supra* note 2, Chapter 23 (setting forth labor protections, 31 (setting forth dispute settlement process)).

These comments provide background on the exploitation of migrant workers, analysis of the USMCA based on our firsthand experiences representing transnational workers and submitting the first petition against the United States under the treaty, and recommendations for the Labor and Dispute Settlement Chapters. We explain how the Labor Chapter can be modified to increase enforcement of U.S. domestic labor and employment laws on behalf of migrant workers and improve access to justice for migrant workers, while at the same time maintaining its current protections for migrant workers in general and migrant women workers in particular. We additionally provide comments on how the Dispute Settlement Chapter could be strengthened to streamline the complaint and dispute mechanisms. Specifically, we recommend the removal of footnote two — which requires that all denial of rights claims in the United States be brought under an enforced order of the National Labor Relations Board (NLRB) — from the Dispute Settlement Chapter so that the Rapid Response Labor Mechanism in Annex 31-A of the Dispute Settlement Chapter applies equally to the United States and Mexico.<sup>10</sup>

**I. The United States fails to adequately protect migrant workers under its labor and employment laws in accordance with its obligations under Article 23.8 of the USMCA.**

CDM strongly supports maintaining the migrant worker protections contained in Article 23.8 of the USMCA. Article 23.8, regarding migrant workers, reads: “The Parties recognize the vulnerability of migrant workers with respect to labor protections. Accordingly, in implementing Article 23.3 (Labor Rights), each Party shall ensure that migrant workers are protected under its labor laws, whether they are nationals or non-nationals of the Party.”<sup>11</sup> The preservation of Article 23.8 within the USMCA is crucial to protect all workers. Without protections for migrant workers, U.S. workplaces will be unsafe, labor abuses will go unchecked, and it will be increasingly difficult to find U.S. workers who are willing to work in industries that do not provide safe, sanitary, and adequately compensated jobs. Protecting those workers who are least protected benefits all workers, and therefore the U.S. economy as whole.

Every year, hundreds of thousands of migrant workers travel to the U.S. to work on a wide array of temporary nonimmigrant visas, filling labor shortages at all levels of skill and education. The TN professional, H-2A agricultural, and H-2B non-agricultural visa programs rely overwhelmingly on Mexican migrant workers.<sup>12</sup> In fiscal year 2024, the U.S. government issued 15,672 TN visas, of which 99.7% (15,630) were issued to Mexican nationals.<sup>13</sup> The

<sup>10</sup> USMCA *supra* note 2, Chapter 31 Annex 31-A n. 2 (limiting Denial or Rights claims with respect to the United States), Annex 31-B (Canada-Mexico Facility-Specific Rapid Response Labor Mechanism).

<sup>11</sup> Article 23.8 (migrant worker protections).

<sup>12</sup> Exhibit F, U.S. Dep’t State, “FY 2024 Nonimmigrant Visas Issued” at 20, 41 <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY24NIVDetailTable.pdf> (outlining nonimmigrant visas issued by Country and Visa-type and noting higher H-2 and TN issuance to Mexican nationals).

<sup>13</sup> *See id.* at 41; Exhibit G, U.S. Dep’t State, “Table XV(B) Nonimmigrant Visas Issued by Classification” at 3 <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2024AnnualReport/Table%20XVB.pdf> [hereinafter Exhibit G] (outlining total number of non-immigrant visas issued by visa type in FYs 2020-2024).

issuance of TN visas almost exclusively to Mexican nationals demonstrates that the TN visa is essentially a visa category for U.S. employers to bring highly trained Mexican professionals to the United States. A total of 315,328 H-2A visas and 139,541 H-2B visas were issued in 2024.<sup>14</sup> Ninety one percent (285,781) of H-2A visas and 65% (90,457) of H-2B visas were issued to Mexican nationals in 2024.<sup>15</sup> The TN visa program has no cap on the number of visas that can be issued. The H-2A program, which is also not capped, is growing rapidly as employers seek to expand their migrant workforce in terms of numbers of workers, the period of time workers can stay, and the range of industries that are considered agricultural.<sup>16</sup> The number of H-2A jobs certified increased 47% between 2020 and 2024.<sup>17</sup> The H-2B program has also expanded rapidly.<sup>18</sup> Although the H-2B program is statutorily capped at 66,000 visas annually,<sup>19</sup> the Department of Homeland Security (DHS) has the power to expand the H-2B program if it deems it necessary.<sup>20</sup> Indeed, DHS has exercised this power every year since 2021, on average certifying nearly double the number of H-2B visas allowed under the cap each year.<sup>21</sup>

United States employers' appetite for migrant workers makes these visa categories ripe for abuse. CDM has observed that in many cases, if employers cannot bring workers to the United States on the appropriate visas, they will bring workers in on any visa that they can, violating the law and defrauding workers in the process. For example, CDM has witnessed an alarming trend where U.S. employers who are unable to get H-2A or H-2B visas for workers will instead sponsor Mexican workers for TN visas, promising jobs that require a high degree of training and expertise. However, when the workers arrive at the job site they are assigned manual labor, in violation of their employment contracts and contravening the purpose of the TN visa

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Percentages were calculated by dividing the number of visas by category issued to Mexican nationals by the grand total of visas issued by category.

<sup>14</sup> Exhibit G, U.S. Dep't State *supra* note 13, at 2.

<sup>15</sup> Exhibit F, U.S. Dep't State, *supra* note 12, at 20; Exhibit G, U.S. Dep't State *supra* note 13, at 2.

<sup>16</sup> See Department of Homeland Security Appropriations Act, H.R. 4213, 119th Cong. § 414 (2026); Farm Workforce Modernization Act of 2025, H.R. 3227, 119th Cong. (2025); Bracero Program 2.0 Act, H.R. 4367, 119th Cong. (2025).

<sup>17</sup> Exhibit G, U.S. Dep't State *supra* note 13, at 2. Percentages were calculated using the total number of H-2A jobs certified in 2020 and 2024. It is unlikely that there will be a decrease in U.S. reliance on the H-2A program under the second Trump administration. Indeed, this administration has noted that the H-2A program "makes American farming more profitable and sustainable while keeping down food costs." Exhibit H, The Heritage Foundation, *Mandate for Leadership: The Conservative Promise*, (2023) at 612, [https://static.heritage.org/project2025/2025\\_MandateForLeadership\\_FULL.pdf](https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf).

<sup>18</sup> Exhibit G, U.S. Dep't State *supra* note 13, at 2.

<sup>19</sup> INA § 214(g)(1)(B), 8 U.S.C. § 1184(g)(1)(B). See also Exhibit I, U.S. Citizenship and Immigration Services, "Cap Count for H-2B Nonimmigrants," at 1 <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-for-h-2b-nonimmigrants>.

<sup>20</sup> Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2025 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 89 Fed. Reg. 95626 (proposed Dec. 2, 2024).

<sup>21</sup> See Exhibit G, U.S. Dep't State *supra* note 13, at 2 (listing more than 66,000 H-2B visas from 2021-2024).

program.<sup>22</sup> A similar pattern occurs in the H-2 programs, where employers who are unable to get H-2B visas bring workers to the United States on H-2A agricultural visas and then have them work in H-2B non-agricultural jobsites.<sup>23</sup> Employer manipulation of the temporary visa categories means these visa categories are interconnected — when employers improperly sponsor workers for inapplicable visas, the lack of worker protection and enforcement of U.S. law in one visa category impacts workers across the temporary visa programs creating conditions for workplace abuse.<sup>24</sup>

Although the inclusion of Article 23.8 in the USMCA is a necessary element in ensuring safe and dignified working conditions for all, its benefits remain illusory without adequate protection and enforcement for migrant workers under U.S. labor and employment laws.<sup>25</sup> In the current legal environment, migrant workers are vulnerable to abuse before they even reach the United States. Although both Mexican and U.S. law prohibit recruitment fees, unscrupulous recruiters continue to charge workers steep fees.<sup>26</sup> For example, 58% of workers surveyed by CDM for *Recruitment Revealed* reported being charged a recruitment fee.<sup>27</sup> As of 2013, these fees for H-2 workers coming from Mexico averaged \$590 USD, excluding related charges for visa processing or travel to the United States.<sup>28</sup> Such fees have likely significantly increased in the intervening twelve years. Workers frequently have to take out high-interest loans to cover the cost of their recruitment fees, thereby compounding debt that they already cannot afford.<sup>29</sup>

Arriving in the United States indebted puts migrant workers at an enormous disadvantage, particularly when confronted with abuses in the workplace. Because many H-2 workers go into debt to make the trip to the United States, they cannot afford to return home without the income the job provides, even if they find themselves in an abusive situation. This, combined with the fact that H-2 workers' visas are tied to a specific employer — such that if they are fired or leave their jobs due to abusive working conditions they typically lose their authorization to remain in the United States — means that workers are effectively shackled to

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<sup>22</sup> See Exhibit J, Plaintiffs' First Amended Complaint, *Jimmy Martinez-Lopez v. GFA Alabama Inc.*, (N.D. Ga. Oct. 18, 2024), Case 1:24-cv-02676-JPB-CCB; Exhibit K, Plaintiffs' Third Amended Class Action Complaint, *Martinez v. Mobis Alabama, LLC.*, (N.D. Ga. Mar. 20, 2023), Case Case 3:22-cv-00145-TCB-RG.

<sup>23</sup> Exhibit L, Ryan Murphy, *Employers banned from hiring H-2A workers can 'reinvent' themselves to hire again*, Investigate Midwest (2023), <https://investigatemitwest.org/2023/09/14/employers-banned-from-hiring-h-2a-workers-can-reinvent-themselves-to-hire-again/>.

<sup>24</sup> See generally Exhibit D, CDM, *Picked Apart supra* note 3 (discussing labor conditions of H-2B crab pickers).

<sup>25</sup> 29 U.S.C. § 213 (a)(6) (exempting agricultural workers from the minimum wage and overtime protections of the Fair Labor Standards Act); 29 U.S.C. § 1802 (8)(A)-(B)(ii) (exempting nonimmigrant workers, such as H-2A workers, from The Migrant & Seasonal Agricultural Worker Protection Act); 29 U.S.C. § 152 (3) (exempting agricultural workers from the protections of the National Labor Relations Act).

<sup>26</sup> Exhibit M, CDM, *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change* (2013), at 3, [https://cdmigrante.org/wp-content/uploads/2018/02/Recruitment\\_Revealed.pdf](https://cdmigrante.org/wp-content/uploads/2018/02/Recruitment_Revealed.pdf).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 4.

any terms of employment that their employers impose, even if those terms are vastly different than what was promised or what U.S. law allows. An H-2A worker in Florida describes this coercive experience:

In my community, there are not many recruiters, so you have to take what you get if you want to work and have [the] opportunity. I was charged 30,000 pesos [roughly \$1,700 in 2023 dollars] for the visa, payable to the recruiter. The recruiter took all this money and said that if we didn't pay, he wouldn't take us to work. This is how it works, not only in our town. [At the H-2A workplace] there were people from other states who, once we were already in the United States, told me that they weren't able to get the 30,000 pesos together so they gave the recruiters deeds to their land or papers for their car.

When [other H-2A applicants and I] went to the recruiter's house, he held a videoconference with the employer. The employer was watching the interview and listening to what one of the recruiters asked . . . . After the employer selected us, the recruiter made us sign a promissory note for 200,000 Mexican pesos [over \$11,000 in 2023], which was his to keep. And he clearly told us that he would keep it until we completed the contract and returned to Mexico; then we could go to him and ask him to destroy the note . . . . Before you go to the United States, the recruiter tells you, "Never say that I charged you," or "Don't talk about money." This is a threat.

But [after arriving at the H-2A workplace], I began to think that the employer did know about the money the recruiter had charged, and the promissory note he had required us to sign, because that's the only way [the employer] could have had us working in that way, without ever leaving, in the conditions that they dictated. Only with the fear of the promissory note would they be able to retain us in a business like that. Someone who had felt free to leave would have left without thinking about it. But people wouldn't leave because they were trapped. It was my first time [in H-2A employment] but other workers who had had different contracts before said it was the worst place they had ever worked. [But] we couldn't leave because the owner of the company would say, "If someone escapes from here, I will personally file a report with the consulate that you have escaped." For that reason, I had never wanted to go anywhere — that and the promissory note.<sup>30</sup>

The dynamic described by this worker allows employers to extract forced and compulsory labor from migrant workers in violation of Article 23.6 (commitment to eliminating all forms of forced labor) of the USMCA.<sup>31</sup> Additionally, where workers' visas are tied to a specific employer, migrant workers are unable to easily escape violence, threats, and intimidation

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<sup>30</sup> CDM interview with anonymous former H-2A worker, October 24, 2023.

<sup>31</sup> USMCA *supra* note 2, Chapter 23 Article 23.6 (commitment to eliminating all forms of forced labor).

in the workplace, in violation of Article 23.7 (commitment to address violence or threats of violence against workers).<sup>32</sup>

## **II. The United States fails to adequately protect migrant women workers under its labor and employment laws in accordance with its obligations under Article 23.9 of the USMCA.**

CDM strongly supports maintaining and improving enforcement of the gender discrimination protections contained in Article 23.9 of the USMCA. Article 23.9, regarding workplace discrimination, reads: “The Parties recognize the goal of eliminating discrimination in employment and occupation, and support the goal of promoting equality of women in the workplace. Accordingly, each Party shall implement policies that it considers appropriate to protect workers against employment discrimination on the basis of sex (including with regard to sexual harassment), pregnancy, sexual orientation, gender identity, and caregiving responsibilities; provide job protected leave for birth or adoption of a child and care of family members; and protect against wage discrimination.”<sup>33</sup> Article 23.9 could be strengthened by removing the “that it considers appropriate” language from the Article in order to create a commitment to eliminate gender-based employment discrimination and underscore the mandatory nature of the “*shall* implement” language of the preceding phrase.<sup>34</sup>

Every year, thousands of migrant women workers travel to the United States from Mexico to work in low-wage industries on temporary work visas. Facilitated by the coercive structure of the current U.S. framework for labor migration, gender discrimination is rampant in these programs. From the moment of recruitment, migrant women workers face hiring discrimination that excludes them from the majority of available better-paid job opportunities and funnels them into lower-paid visa programs and gendered sectors.<sup>35</sup> Women workers who are able to secure a job in the temporary visa programs typically find themselves in highly segregated workplaces where sexual harassment, pregnancy discrimination, and other abuses are commonplace—and barriers to justice are high.<sup>36</sup>

As an initial matter, women are largely excluded from the H-2 programs. In the migrant-sending communities CDM has spent extensive time in over the years, it is widely known that recruiters — acting on H-2 employers’ instructions — typically refuse to hire women

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<sup>32</sup> USMCA *supra* note 2, Chapter 23 Article 23.7 (commitment to address violence or threats of violence against workers).

<sup>33</sup> USMCA *supra* note 2, Chapter 23 Article 23.9.

<sup>34</sup> See *U.S. v. McLean*, 749 F.Supp.3d 167, 170 (D.D.C. 2024) (“when a statute uses the word ‘shall,’ Congress has imposed a mandatory duty upon the subject of the command”) (quotation omitted) .

<sup>35</sup> See generally Exhibit C, CDM, *Picked Apart*; Exhibit D, CDM, *Breaking the Shell*, *supra* note 3.

<sup>36</sup> *Id.*; Exhibit E, CDM, *Amended Petition*, *supra* note 5 at 37-42 (declaration of petitioner Ponce), 118-120 (declaration of petitioner Pérez).

workers for H-2A work.<sup>37</sup> H-2 recruiters and employers in Mexico regularly post job ads seeking “men only,” in open violation of U.S. anti-discrimination law.<sup>38</sup> As such, it is unsurprising that women make up only 3% of H-2A workers and 12% of H-2B workers.<sup>39</sup> When able to access H-2 employment, women are primarily funneled into H-2B rather than H-2A work, which typically offers lower pay, inferior terms of employment, and less oversight.<sup>40</sup> Unlike the H-2A program, the H-2B program does not provide workers with free housing or access to federally funded legal services.<sup>41</sup> Unlike H-2A workers, H-2B workers have to pay for housing, meals, and sometimes their own transportation and equipment. Within the H-2B program, women are typically shut out of more lucrative sectors like landscaping and construction and tracked to lower-paid jobs like housekeeping or food processing.<sup>42</sup>

In mixed-gender workplaces across visa categories, employers frequently assign workplace roles based on gender — and women lose out on earnings opportunities or other benefits as a result. For example, in the crab industry, a major sector of H-2B employment for women, women workers are typically relegated to work as crab pickers, while male workers wash and clean the crabs and supervise women’s crab picking work.<sup>43</sup> Across states and workplaces, women crab workers have repeatedly observed that this segregated dynamic results in wage disparities: men washing and cleaning earn more per hour and have access to more work hours than women crab pickers do.<sup>44</sup>

Sexual harassment and sexual violence are also pervasive in many of the worksites and job sectors that rely on migrant workers.<sup>45</sup> The few women who obtain H-2A employment typically find themselves vastly outnumbered by male colleagues and supervisors both at work

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<sup>37</sup> Exhibit N, Tina Vasquez, *She managed to get a temporary farmworker visa. Once in the U.S., she endured abuse and exploitation*, Prism, (September 24, 2025),

<https://prismreports.org/2025/09/24/women-h2a-visa-farm-workers-migrant/>

<sup>38</sup> Exhibit O, “Oportunidad de Trabajo H2A en los campos de EUA,”

<https://cdmigrante.org/wp-content/uploads/2024/07/unnamed.png>

<sup>39</sup> These percentages were calculated from the data available in the Department of Homeland Security’s [Nonimmigrant Admissions by Selected Classes of Admission and Sex and Age: Fiscal Year 2021](#).

<sup>40</sup> See generally Exhibit D, CDM, *Picked Apart*, *supra* note O (discussing labor conditions of H-2B crab pickers).

<sup>41</sup> 45 C.F.R. § 1626 (restricting federally funded legal assistance only “to citizens of the United States and eligible aliens”).

<sup>42</sup> Exhibit P, the Biden-Harris White House H-2B Worker Protection Taskforce, *Strengthening Protections for H-2B Temporary Workers*, (2023), at 7-8,

<https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/10/H-2B-Worker-Protection-Taskforce-Report.pdf>, (“Women H-2 workers are also disproportionately concentrated in lower-paying industries, such as hospitality and domestic work, and in more poorly compensated jobs overall.”).

<sup>43</sup> See generally Exhibit D, CDM, *Picked Apart*, *supra* note 3.

<sup>44</sup> Exhibit Q, ACLU of North Carolina, “North Carolina Seafood Company to Implement Gender Non-Discrimination Policy After Guest Workers’ Lawsuit,” (2011),

<https://www.aclu.org/press-releases/north-carolina-seafood-company-implement-gender-non-discrimination-policy-after-guest>.

<sup>45</sup> Exhibit N, Vasquez, *supra* note 37; Exhibit R, Ariel Ramchandani, *There’s a Sexual-Harassment Epidemic on America’s Farms*, The Atlantic, (January 29, 2018),

<https://www.theatlantic.com/business/archive/2018/01/agriculture-sexual-harassment/550109/>;

and in employee housing.<sup>46</sup> This creates an uncomfortable dynamic at best, and too often creates conditions ripe for sexual harassment. In CDM's petition against the United States under the USMCA, Maritza Pérez, a former H-2A worker and one of the primary petitioners, described the hostile work environment her H-2A supervisor subjected her to in the United States, routinely making explicit requests for sex under threat of being reassigned to lower-paying and harder work.<sup>47</sup> CDM regularly hears from migrant women who face similar quid pro quo harassment in workplaces across the country, as well as from workers subjected to hostile work environments.

Pregnant migrant workers in particular face discrimination in the workplace. While many pregnant workers are prevented from participating in the visa programs altogether due to gender discrimination in recruitment, a substantial number of women workers do experience pregnancy at some point during their temporary visa employment. Across visa categories, migrant women workers frequently find that employers overtly discriminate against pregnant workers, openly chastising them for their pregnancies and refusing to provide reasonable and necessary accommodations for workers during pregnancy. For example, Rosa Linda Soriano Torres, a former TN visa worker CDM represents, brought Title VII of the Civil Rights Act of 1964 (Title VII) and Americans with Disabilities Act (ADA) claims against her former TN employer, who told her to return to Mexico and then fired her after she disclosed her pregnancy and requested a lighter work assignment.<sup>48</sup>

Migrant worker women who encounter gender-based discrimination at work in the United States face significant barriers to justice, including physical and social isolation, lack of access to legal services, inaccessible government complaint filing processes, and a heightened threat of retaliation driven by the coercive structure of the visa programs. H-2 and TN workplaces are often in remote areas, and workers typically live in housing either provided by or obtained through their employers. As such, it is difficult for workers to identify and connect with legal services providers while at work in the United States. Making matters worse, the vast majority of women workers in the H-2 and TN visa programs are barred from receiving legal services from organizations that are federally funded through the Legal Services Corporation (LSC).<sup>49</sup> In many areas of the country, LSC-funded legal services are the only real option for low-wage workers to bring legal challenges to workplace violations. However, many migrant workers are not able to access these services because LSC-funded organizations are not permitted to serve TN workers

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<sup>46</sup> See *id.*

<sup>47</sup> Exhibit E, CDM, *Amended Petition*, *supra* note 5 at 21.

<sup>48</sup> See generally Exhibit J, GFA complaint, *supra* note 22; Exhibit S, Lautaro Grinspan, 'I wanted to keep my baby: Mexican migrant says pregnancy led to firing', *The Atlanta Journal-Constitution* (September 5, 2023), <https://www.ajc.com/news/georgia-news/i-wanted-to-keep-my-baby-mexican-migrant-says-pregnancy-led-to-firing/I-CWZTADOUFCEXHUWRG76K56VKA/#:~:text=To%20legally%20bring%20Soriano%20to,with%20Mexican%20and%20Canadian%20professionals>.

<sup>49</sup> Exhibit T, "Alien Eligibility for Representation by LSC-Funded Programs," [https://www.lsc.gov/sites/default/files/Grants/RIN/Grantee\\_Guidance/Program-Letters/1626eligibilitychart.pdf](https://www.lsc.gov/sites/default/files/Grants/RIN/Grantee_Guidance/Program-Letters/1626eligibilitychart.pdf).

or the majority of H-2B workers.<sup>50</sup> While exceptions exist for certain victims of crime, these do not cover all forms of workplace discrimination. In many instances, alternatives to LSC-funded legal services are scarce, leaving women migrant workers with nowhere to turn for help in enforcing their legal rights and escaping abusive working conditions.

Migrant women workers who are unable to access legal services and want to pursue justice for discrimination must do so by representing themselves in administrative complaint processes at the Equal Employment Opportunity Commission (EEOC) or state anti-discrimination agencies. Unfortunately, the EEOC's complaint processes are often inaccessible and difficult for migrant workers to navigate *pro se*. Among other issues, the EEOC's online complaint portal is only available in English, and the EEOC does not accept charges by phone—only pre-complaint inquiries. CDM and other advocates have seen workers with viable discrimination claims be dissuaded through the pre-complaint inquiry process, a major barrier for unrepresented workers.

Finally, even where migrant women workers can access legal assistance or navigate the bureaucratic administrative complaint process *pro se*, many hesitate to come forward — or speak up in the first place — because of the looming threat of retaliation and blacklisting. Because temporary workers' immigration status is contingent upon their continued employment with a sponsoring employer, many temporary workers are forced to choose between enduring abusive working conditions and returning to their home countries empty-handed. These coercive structural conditions are particularly acute for migrant worker women, who already have extremely scarce access to employment due to recruitment discrimination. As Adareli Ponce Hernandez, Maritza Pérez's co-petitioner in the USMCA complaint explained, "If women had more work opportunities, we would face less abuse and harassment. For example, if an employer abuses me at work and I have an opportunity to work somewhere else, I can leave and take another job. But when there are no other opportunities, I have to put up with abuse because it is the only job available."<sup>51</sup>

### **III. The United States must expand and enforce its labor and employment laws in order to comply with its treaty obligations under Articles 23.8, 23.9, and 23.10 of the USMCA.**

#### *A. Recruitment*

The U.S. government must create a transparent and accountable recruitment system and enforce the law. Employers are both directly and vicariously liable for discriminatory hiring practices under Title VII. First, where an employer directly recruits and hires workers and discriminates against women by failing or refusing to hire an individual on the basis of their

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<sup>50</sup> *Id.*

<sup>51</sup> Exhibit E, CDM, *Amended Petition*, *supra* note 5 at 26.

sex,<sup>52</sup> such an employer violates Title VII. Second, an employer may also be liable for the discriminatory hiring practices of recruiters under a theory of vicarious liability. Nearly all H-2A and H-2B employers rely on United States and/or Mexico-based recruiting agencies to source workers for temporary positions.<sup>53</sup> Under Title VII, employers are liable for the discriminatory actions of their “agent[s].”<sup>54</sup> Recruiters act on behalf of employers, as their agents, making employers legally responsible for their actions. This means that employers are accountable for their recruiter agents’ discriminatory recruitment practices. Employers are aware of the gender makeup of their workers and are complicit in, and liable for, discriminatory hiring when they ignore that their workforces do not have a gender balance that is representative of the labor pool.

Employers’ attempts to keep their hiring practices at arms’ length facilitates the exclusion of women from H-2A and H-2B programs. Such actions violate Title VII under a theory of disparate impact.<sup>55</sup> Indeed, Petitioner Ponce’s story of having extreme difficulty in accessing H-2A employment is not an anomaly — her experiences are representative of the experiences of other women. As part of CDM’s petition against the United States under the USMCA, we did a statistical analysis, using publicly available data, which demonstrated a statistically significant difference between the proportion of women in the agricultural workforce that have H-2A visas and women in the agricultural workforce that do not have H-2A visas. Our analysis found that women are severely underrepresented in the H-2A program and that such under representation could not have occurred but for systematic discrimination against women.<sup>56</sup>

Next, Title VII also considers H-2A and H-2B recruiters to be “employment agencies.” As noted above, an “employment agency” is “any person regularly undertaking . . . to procure employees for an employer” or to procure job opportunities for potential employees.<sup>57</sup> As a result, H-2 recruiters act as “employment agents” when they recruit and procure workers for an employer. Thus, recruiters are also subject to liability under Title VII.

Finally, because government agencies, such as the Department of Labor (DOL) and the State Department (DOS), “procure”<sup>58</sup> employees for employers, these federal agencies arguably act as “employment agencies.” The fact that recruiters have historically supplied single-sex labor forces is well known to federal agencies, including DOL and DOS. As a result, these agencies are complicit in employers’ procurement of single-sex workforces. Therefore, federal agencies

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<sup>52</sup> 42 U.S.C. § 2000e-2(a).

<sup>53</sup> See Exhibit U, CDM and U of Penn L. Sch. Transnational Law Clinic, *Engendering Exploitation: Gender Inequality in U.S. Labor Migration Programs*, (2018), <https://cdmigrante.org/wp-content/uploads/2018/01/Engendered-Exploitation.pdf>.

<sup>54</sup> § 2000e.

<sup>55</sup> See § 2000e-2(k).

<sup>56</sup> See Exhibit E, CDM, *Amended Petition*, *supra* note 5 at Appx. A: Disparate Impact Analysis, for more information about the statistical analysis.

<sup>57</sup> See 42 U.S.C. § 2000e(c).

<sup>58</sup> See § 2000e-2(b).

may violate Title VII by administering a program that is widely known to discriminate on the basis of sex by allowing pervasive employment discrimination to continue, even if it appears facially neutral.<sup>59</sup>

Given the legal framework outlined above, EEOC should send notifications to employers with approved labor certifications to work in the United States to remind them that Title VII applies for workers recruited for open positions, *irrespective of geographic location*. Employers should then be required to affirm that they will abide by Title VII when submitting an initial application for labor certification. The Office of Foreign Labor Certification (OFLC) should additionally publish a non-discrimination statement on every job posting. Furthermore, it is not enough to affirmatively recruit and prohibit discrimination in writing — anti-discrimination protections must be enforced by relevant DOL, DHS and DOS sub-agencies. For example, DOL's Wage and Hour Division (WHD) should create an enforcement initiative, in coordination with the EEOC and other federal agencies as necessary, which prioritizes the inspections of H-2 and TN employers in order to detect indicia of sex discrimination. And finally, EEOC should conduct employer education about their, and their agents', obligations under Title VII.

DOL should promulgate and implement H-2 program regulations to address sex-based discrimination through the recruitment chain, such as the following :

1. The H-2 program regulations should be amended to address discrimination against non-U.S. workers. Currently, both H-2A and H-2B program regulations explicitly prohibit sex-based discrimination but only against U.S. workers.<sup>60</sup>
2. The H-2 program regulations should expressly require employers to apprise everyone in their recruitment chain that they must comply with U.S. anti-discrimination laws with respect to recruitment activity with any prospective worker.
3. Employers should require their recruiters to affirmatively demonstrate that they are not discriminating against workers because of sex. To effectuate this purpose, the regulations should clarify that employers are directly liable for the discriminatory actions carried out by their agent recruiters.
4. Just as H-2 employers are required to attempt to recruit U.S. workers before recruiting temporary foreign workers, DOL should require that employers ensure that recruiters and H-2 employers take affirmative action to recruit women workers.

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<sup>59</sup> Although Title VII addresses the federal government as an employer in § 42 U.S.C. 2000e-16, it does not separately address the federal government as an employment agency.

<sup>60</sup> 20 C.F.R. § 655.135(a); § 655.20(r).

5. DOL should require labor contractors and recruiters to have a balanced workforce based on local labor market conditions.
6. DOL should require employers to submit an accounting of job assignments by sex as a condition of receiving future visas. The DOL should then adopt internal policies that call for the rejection of future visa requests from employers whose hiring and job assignment results for H-2 workers are so disproportionately adverse to women so as to establish a prima facie case of sex discrimination.
7. The H-2 regulations should be amended so that employees' work authorizations are not linked to specific employers. Freedom of movement for workers could be achieved by allowing workers to petition for and control their work visas, choose a residence, and change jobs or industry sectors, and ensuring that workers maintain control of their documents at all times. At a minimum, the regulations should specify that a worker will not lose lawful immigration status and their work authorization will be valid for other employers for at least the duration of the approved labor certification period, if they are fired in retaliation for speaking out about discrimination, or as a result of discrimination.
8. Finally, employers using migrant workers should be required to post a bond sufficient to cover the value of the workers' legal wages. Absent a requirement to post a bond or otherwise demonstrate solvency before certification, employers have avoided paying workers back wages owed by filing for bankruptcy.<sup>61</sup>

#### *B. Access to Federally Funded Legal Services for all Temporary Visa Holders*

Lack of LSC funding for legal services for TN and the vast majority of H-2B visa holders<sup>62</sup> curtails workers holding these visas from accessing U.S. tribunals that enforce U.S. labor and employment laws and contravenes the United States' obligation to provide appropriate access to such tribunals under Article 23.10.2. of the USMCA (commitment by parties to provide appropriate access to tribunals for the enforcement of that party's domestic labor laws).<sup>63</sup> Given that the discriminatory recruitment and employment practices (discussed above)

<sup>61</sup> Exhibit V, Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States*, (February 19, 2013), <https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states>, at 40 (discussing a case in which SPLC won damages of over \$11 million for former H-2B workers, but the company declared bankruptcy).

<sup>62</sup> 45 C.F.R. § 1626. See also, Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504, 110 Stat. 1321, 1350 § 504(a)(11)(1996) (listing the categories of non-citizens who may receive LSC services, but not including H-2B workers); Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, § 540, 121 Stat. 1844, 1934 § 504(a)(11)(E) (2008) (granting LSC-funded nonprofit legal aid programs the ability to assist H-2B forestry workers only).

<sup>63</sup> USMCA *supra* note 2, Chapter 23 Article 23.10.2.

disproportionately funnel female migrant workers into the H-2B and TN visas, the lack of LSC funding for legal services for these visa types disproportionately impacts female migrant workers in contravention of Article 23.9.<sup>64</sup> In many instances, LSC-funded legal services would be the only option for legal representation for these workers, without which they have few opportunities to seek legal assistance in making Title VII complaints to the EEOC and must attempt to navigate complex, bureaucratic complaint mechanisms, in a foreign language, *pro se*. For the proceeding reasons, the United States must remove restrictions on LSC funding for all the temporary visa categories in order to abide by its commitments under Article 23.10.2.<sup>65</sup>

### *C. Federal Agency Data Transparency & Accessibility*

It is difficult to address discrimination that is not adequately documented. By instituting more complete, transparent, and language-accessible data practices, U.S. government agencies could make significant progress towards eliminating discrimination in the temporary visa programs. The lack of data transparency in the temporary visa programs inhibits monitoring and accountability. It is imperative that agencies publish data that workers can use to make their employment decisions.

#### *1. Department of Labor*

To ensure transparency and accountability in the H-2A visa program, DOL should require employers to post ETA-790A job orders in English, Spanish, and other languages of workers targeted for domestic or foreign recruitment on [seasonaljobs.dol.gov](http://seasonaljobs.dol.gov) and include employer names on Form ETA-790A. Employer names currently only appear on Form ETA-790, which is not publicly available. Additionally, because the ETA-9142A provides important information about the employer and conditions of employment for H-2A positions, DOL should publish the ETA-9142A for each position on [seasonaljobs.dol.gov](http://seasonaljobs.dol.gov), alongside the existing publication of the ETA-790A.

In the H-2B program, because the ETA-9142B form provides important information about the employer and conditions of employment for H-2B positions, DOL should publish the ETA-9142B for each position on [seasonaljobs.dol.gov](http://seasonaljobs.dol.gov). This is particularly important for H-2B jobs since there is not a standardized job order. Additionally, given that foreign labor recruiter information is not currently available to workers on the website, DOL should post information identifying each domestic and foreign labor recruiter authorized to recruit workers on [seasonaljobs.dol.gov](http://seasonaljobs.dol.gov) with each job order and require employers to post full terms and conditions

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<sup>64</sup> USMCA *supra* note 2, Article 23.9.

<sup>65</sup> USMCA *supra* note 2, Article 21.10.2. The “super restriction” found at 45 C.F.R § 1626.11 that prohibits Legal Services Corporation-funded entities from representing TN and many H-2 workers should be eliminated through notice and comment rulemaking.

of employment for each job order in English, Spanish, and other languages of workers targeted for domestic or foreign recruitment.<sup>66</sup>

DOL should also keep all H-2B job orders open for active U.S. worker recruitment for a minimum of 30 days after acceptance by DOL on the [seasonaljobs.dol.gov](http://seasonaljobs.dol.gov) website, including jobs which are delayed in DOL processing because of large number of H-2B applications received for the beginning of a calendar quarter. Additionally, DOL should develop a national H-2B job order disclosure form equivalent to the H-2A ETA-790A setting forth relevant terms and conditions of employment to be posted in English, Spanish, and other languages of workers targeted for domestic or foreign recruitment on [seasonaljobs.dol.gov](http://seasonaljobs.dol.gov) and include each foreign labor recruiter authorized to recruit H-2B workers.

## *2. Department of Homeland Security*

DHS also must work to improve its data transparency in the H-2A program. DHS should provide workers with direct access to information about the status of I-129 petitions in which they are named and should clarify within the H-2A Employer Data Hub whether petitions for a change of employer or for a change of job conditions with the same employer were approved or denied. DHS should also compile and publish individual-level micro data on H-2A petitions.<sup>67</sup> Access to this data would give H-2A visa holders more information about — and, therefore, agency in — their employment relationships.

DHS should include the DOL case number attached to petitions listed in the H-2B data Hub, clarify within the H-2B Employer Data Hub whether petitions were approved or denied for a change of employer or for a change of job conditions with the same Employer, and provide workers with direct access to information about the status of I-129 petitions in which they are named. Although the H-2B visa is generally not portable between employers, CDM has seen extensions, change of start of work date, or transfer of workers by labor contractors from one of their clients to another. H-2B workers should be able to access information about such changes to their terms and conditions of employment. DHS should additionally compile and publish

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<sup>66</sup> DOL should also post all employer provided job orders prepared for state State Workforce Agency (SWA) job sites on [seasonaljobs.dol.gov](http://seasonaljobs.dol.gov) at the time of receipt and specifically note where job orders are pending review by DOL and have not yet been accepted. This is essential where DOL is unable to immediately review applications for labor certification due to the high volume of employer applications given that otherwise these jobs may not be made available to workers in the U.S.

<sup>67</sup> Such individual-level micro data should include: (1) Petitioner/employer name and address, (2) status of the petition, (3) year the petition was received by USCIS, (4) the type of employment (for new or continuing employment or change of employer, etc.), (5) country of origin of the beneficiary, (6) the occupation and job code for the beneficiary, (7) the salary of the beneficiary, (8) the employment start and end dates for the beneficiary, (9) the gender of the beneficiary, (10) the age of the beneficiary, and (11) all individuals and business entities authorized to recruit workers on behalf of the employer.

individual-level micro data on H-2B petitions.<sup>68</sup> Making such data public would give H-2B visa holders more information about and, therefore, agency in their employment relationships.

### *3. Department of State*

Given its crucial role in administering the H-2A visa program, DOS should also improve its data transparency practices. Specifically, DOS should compile and publish individual-level micro data on H-2A visa applications. Although DOS currently publishes aggregate information about the number of visas issued in the H-2A program and the countries of origin that receive those visas, it does not publish individual-level visa data on employers and beneficiaries in the H-2A program.<sup>69</sup> Public access to such data would allow workers and worker advocates to better understand which workers and employers are being issued visas under the H-2A program.

We additionally recommend that DOS compile and publish individual-level micro data on H-2B visa applications. Although DOS currently publishes aggregate information about the number of visas issued in the H-2B program and the countries of origin of the individuals who receive H-2B visas, it does not publish individual-level visa data on employers and beneficiaries in the H-2B program.<sup>70</sup>

### *4. Interagency Coordination*

In addition to changing their individual data transparency practices, DOL, DHS, and DOS must coordinate to ensure maximal transparency and efficacy in the H-2A program. For example, they should require employers to identify all domestic and foreign labor recruiters authorized to recruit workers and post that information on [seasonaljobs.dol.gov](http://seasonaljobs.dol.gov) with each job order and ensure that individual records in the USCIS Data Hub include a full employer identification number (EIN) instead of just the last four digits of the EIN (which creates

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<sup>68</sup> Such individual-level micro data should include: (1) Petitioner/employer name and address, (2) status of the petition, (3) year the petition was received by USCIS, (4) whether the petition was subject to the cap or cap-exempt, (5) type of employment (for new or continuing employment or change of employer, etc.), (6) country of origin of the beneficiary, (7) the occupation and job code for the beneficiary, (8) the salary of the beneficiary, (9) employment start and end dates for the beneficiary, (10) gender of the beneficiary, (11) age of the beneficiary, and (12) all individuals and business entities authorized to recruit workers on behalf of the employer.

<sup>69</sup> DOS should compile and publish the following information based on data it collects from visa applications: (1) Employer name and address, (2) year the visa was approved, (3) visa validity start and end dates for the beneficiary, (4) country of origin of the beneficiary, (5) the occupation and job code for the beneficiary, (6) the salary of the beneficiary, (7) the gender of the beneficiary, and (8) all individuals and business entities authorized to represent the employer in dealing with Consulates and all individuals and business entities identified as recruiter workers on behalf of the employer.

<sup>70</sup> DOS should compile and publish the following information based on data it collects from visa applications: (1) Employer name and address, (2) year the visa was approved, (3) visa validity start and end dates for the beneficiary, (4) country of origin of the beneficiary, (5) the occupation and job code for the beneficiary, (6) the salary of the beneficiary, (7) gender of the beneficiary, and (8) information about all individuals and business entities authorized to represent the employer in dealing with Consulates and all individuals and business entities identified as recruiter workers on behalf of the employer.

duplicates and makes the information difficult to analyze). Additionally, DOL and DOS employer data should include the full EIN of each employer and of authorized agents of the employer.

DOL and DHS should work together to ensure that the H-2B USCIS data hub and the [seasonaljobs.dol.gov](http://seasonaljobs.dol.gov) website are being updated to timely reflect which H-2B employers (identified by DOL ETA H-2B case number) have been granted approval of I-129 petitions by USCIS and which employers have filed and been approved for petitions under the supplemental cap authority as well as any change in foreign labor recruiters authorized to act for the employer. This is especially important to have in real time for H-2B positions which may have been initially barred from consideration, because of the H-2B statutory cap of 33,000 workers per the first and second half of the year.<sup>71</sup>

DOL, DHS, and DOS should coordinate to require employers to update information with DOL and for DOL to update information on [seasonaljobs.dol.gov](http://seasonaljobs.dol.gov) as to each domestic or foreign labor recruiter authorized to recruit workers until all H-2B positions have been filled. Additionally, DOL, DHS, and DOS should ensure that individual records in the USCIS Data Hub include full EINs rather than just the last four digits of the EIN (which creates duplicates and makes the information difficult to analyze). DOL and DOS employer data should also include the full EIN of each employer and of its authorized agents. Finally, DOL, DHS, and DOS should require employers to identify all domestic and foreign labor recruiters authorized to recruit workers and post that information on [seasonaljobs.dol.gov](http://seasonaljobs.dol.gov) with each job order.

DOS, and DHS if applicable, should compile and publish individual-level micro data on TN visa issuances, as well as aggregate numbers and micro data on individual Canadian and Mexican nationals, such as their gender, age, and country of origin, that are collected on I-129 forms and submitted to DOS with DS-160 forms.<sup>72</sup> In addition to publishing the micro-level data collected on I-129 forms DHS, and DOS if applicable, should compile and publish aggregate numbers and individual-level micro data on TN petitions for both Canadian and Mexican TN

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<sup>71</sup> USCIS, “Cap Count for H-2B Nonimmigrants,”

<https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-for-h-2b-nonimmigrants>.

<sup>72</sup> DOS currently publishes aggregate data about TN visa issuances from Mexican or Canadian consulates, but neither DOS, Customs and Border Patrol (CBP), nor USCIS publishes the number of Canadian nationals who are issued TN status at ports of entry. Indeed, no federal agency publishes individual-level petition or visa data of TN employers or visa holders.

DOS should compile and publish the following information based on data it collects from visa applications: (1) Employer name and address, (2) year the visa was approved, (3) visa validity start and end dates for the TN visa holder, (4) country of origin of the TN visa holder, (5) the visa holder’s designated profession, as listed in Appendices 1 and 2 of Annex 16-A of the USMCA Chapter 16, (6) the TN visa holder’s salary, as promised in the visa support letter, (7) the TN visa holder’s gender, and (8) the TN visa holder’s age.

visa holders, including Canadian nationals who are issued TN status at ports of entry, but for whom a visa is not required.<sup>73</sup>

#### *D. Update EEOC Complaint Process to Make it More Accessible*

The EEOC inadequately monitors abuses of Title VII on behalf of H-2 and TN workers because it places the onus on workers to report Title VII violations. The EEOC further burdens workers by subjecting them to a complicated and bureaucratic complaint process. The very nature of migrant work creates barriers to successfully taking advantage of the EEOC filing procedures.

First, a worker who suffers discrimination must file a charge within 180 days of the discrimination occurring.<sup>74</sup> Charges can be filed in person, by mail, or through an online portal. Notably, the EEOC does not permit workers to file charges by phone, and the online portal is only available in English.<sup>75</sup> If workers do file a complaint, the EEOC conducts an interview of the worker or applicant filing the charge; then, if the EEOC gives them a Notice of Right to Sue, there is a 90-day time limit to file a lawsuit.<sup>76</sup> EEOC offices are located exclusively in metropolitan centers which limits access to workers, especially H-2A workers, who are typically located in rural areas performing agricultural labor. Because migrant workers rely on their employers for transportation, the barriers to access these offices are extremely high. This also applies to the EEOC's partner centers, known as Fair Employment Practice Agencies.<sup>77</sup> These too are located exclusively in urban centers, have differing contact availabilities, and are opaquely listed on the EEOC website under "State and Local Agencies" with no link from the "How to file" page of the EEOC's website.<sup>78</sup>

Second, migrant workers' addresses and phone numbers in the United States are temporary and many infrequently use email, making it difficult to comply with the requirements of filing by mail, which include phone number, email, and address. Third, migrant workers often

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<sup>73</sup> Currently CBP and/or USCIS compiles individual-level data on employers and workers from I-129 petitions which includes the data categories below, but does not make it publicly available; CBP and/or USCIS should furnish and publish the same information on Canadian TN visa holders who are not required to obtain a TN visa, but who do fill out an I-129 Nonimmigrant Visa Petition and turn it in to CBP at ports of entry. In some cases, DOS may possess the information from the I-129 forms it collects as part of an application with a DS-160 form from either Canadian or Mexican citizens. The information from the I-129 that should be made public are: (1) Petitioner/employer name and address; (2) status of the petition, (3) year the petition was received by USCIS, (4) type of employment (for new or continuing employment or change of employer, etc.), (5) country of origin of the beneficiary, (6) the occupation and job code for the beneficiary, (7) the salary of the beneficiary, (8) the education level of the beneficiary, (9) employment start and end dates for the beneficiary, (10) gender of the beneficiary, and (10) age of the beneficiary.

<sup>74</sup> EEOC, "Time Limits For Filing A Charge," <https://www.eeoc.gov/time-limits-filing-charge>.

<sup>75</sup> EEOC, "Public Portal," <https://publicportal.eeoc.gov/Portal/Login.aspx>.

<sup>76</sup> EEOC, "Filing a Lawsuit," <https://www.eeoc.gov/filing-lawsuit>.

<sup>77</sup> EEOC, "Filing a Charge of Discrimination," <https://www.eeoc.gov/filing-charge-discrimination>.

<sup>78</sup> EEOC, "State and Local Programs," <https://www.eeoc.gov/state-and-local-programs>; EEOC, "How to File a Charge of Employment Discrimination," <https://www.eeoc.gov/how-file-charge-employment-discrimination>

lack access to the internet — and even if they have access, the EEOC’s online filing form is not translated into Spanish.<sup>79</sup> Additionally, only a complaint — not a pre-complaint inquiry — tolls the 180-day statute of limitations.<sup>80</sup> This means that when unrepresented workers call the EEOC and talk with a staff member they may think that they have started the complaint process within the limitations period, not realize that clock is still running on their claim, and miss the opportunity to file a charge of discrimination. As a result, the process for filing an EEOC charge may be prohibitive for many H-2 and TN workers. Although information on the number of EEOC complaints filed by H-2 and workers is not publicly available, many advocates believe that these barriers cause few to be submitted.

Next, even if a complaint is successfully filed, the EEOC often fails to adequately investigate discrimination cases, as it can decide to limit or close an investigation for several reasons. Since 2008, the EEOC has doubled the number of complaints placed on its lowest-priority track, which means an increasing number of complaints are not investigated, mediated, or resolved by providing relief for the workers submitting the complaints.<sup>81</sup> In fiscal year 2024, the EEOC only closed approximately 18% of all complaints with a resolution on the merits.<sup>82</sup>

Workers who are currently facing discrimination must have access to clear and culturally competent complaint mechanisms. The EEOC, DOL, and state agencies charged with implementing anti-discrimination policy should make their complaint processes more accessible to H-2 and TN workers. The EEOC online portal for filing complaints exists only in English, thereby denying migrant workers who have limited English proficiency access to enforcement mechanisms. Accordingly, we ask that all agencies that interface with H-2 and TN workers, including DOL and the EEOC, ensure that their complaint processes are user-friendly, available in Spanish and other languages spoken by migrant workers, and easily accessible to workers and job applicants abroad. For example, advocates have suggested setting up a 24-hour complaint hotline in multiple languages, including indigenous languages.<sup>83</sup>

#### *E. Investment of Resources by DOL and EEOC to Focus on Preventing Employment Discrimination in the Temporary Visa Programs*

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<sup>79</sup> EEOC, “Public Portal,” <https://publicportal.eeoc.gov/Portal/Login.aspx>.

<sup>80</sup> EEOC, “Time Limits For Filing A Charge,” <https://www.eeoc.gov/time-limits-filing-charge>.

<sup>81</sup> Exhibit W, Maryam Jameel, *More and More Workplace Discrimination Cases are Being Closed Before They’re Even Investigated*, Vox News (June 14, 2019), <https://www.vox.com/identities/2019/6/14/18663296/congress-eeoc-workplace-discrimination>.

<sup>82</sup> Exhibit X, EEOC, “Table E1c. Charge Receipts and Resolutions by Type (All Statutes), FY 1997 - FY 2024,” <https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0>.

<sup>83</sup> Exhibit Y, José R. Padilla and David Bacon, *Protect Female Farmworkers*, New York Times (Jan. 19, 2016), <https://www.nytimes.com/2016/01/19/opinion/how-to-protect-female-farmworkers.html>. Although this article specifically addresses sexual harassment, its recommendations are applicable to sex discrimination as well.

In addition to addressing the barriers to workers seeking justice, EEOC and DOL should affirmatively allocate more resources to investigating and monitoring H-2 workplaces for sex-based labor segregation. Further, DOL should debar employers and recruiters found to have discriminated against workers on the basis of sex from participating in the H-2 and TN programs for a specific period of time. EEOC and DOL should also take affirmative steps to address sexual harassment, gender-based violence, and other work environment conditions in H-2 and TN workplaces.

The United States should direct a cross-agency — specifically DOL, DHS, and DOS — enforcement initiative dedicated to inspections of employers. Additionally, the U.S. should conduct inter agency referrals where appropriate. For example, DOL should establish and publicize a toll-free hotline that recruited migrant workers can call to report potential instances of discrimination or retaliation before they arrive in the United States and after they return to Mexico. Recruiters may begin recruiting H-2 and TN workers months before U.S. employment begins — rejecting workers who don't fit their desired demographic profile through discriminatory recruitment practices. Additionally, DOL should coordinate with the U.S. Embassy and Consulates in Mexico, and other countries high densities of migrant workers come from, to publicize said hotline. DOL should also work to disseminate this number in communities with high rates of labor migration to the United States through popular media including radio, social media, and printed flyers. This hotline should be staffed with trauma-informed, bilingual, and multilingual staff who can speak with workers in Spanish and indigenous languages and inform them of the anti-discrimination and anti-retaliation laws that protect them. Hotline employees should be trained to refer workers by phone in languages they understand to appropriate DOL subagencies about potential discrimination and other complaints. Finally, DOL should investigate and sanction recruiters and employers engaging in discrimination, retaliation, and other misconduct in recruitment and coordinate with the DOS and U.S. Embassy in Mexico, and other countries where high densities of migrant workers come from, to publish in an accessible, real-time online format, all information about fraudulent recruiters, recruitment agencies, and schemes collected by the U.S. Embassy.

All agencies must work to ensure workers are informed of existing immigration relief policies and avenues available to them when they face workplace rights violations. DOL should allocate funds for civil society organizations to conduct workers rights education for H-2 and TN workers about discrimination and access to EEOC complaint mechanisms pre- and post-departure from their countries of origin and from the United States. DOL should additionally hold interagency meetings addressing gender discrimination in the H-2 and TN programs with stakeholder input and migrant worker women, which are accessible to workers and in a language the workers understand. By implementing these strategies, the U.S. government will make progress towards upholding its commitment to update U.S. policies in order to protect workers from employment discrimination under the USMCA.

*F. Include H-2A workers in The Migrant & Seasonal Agricultural Worker Protection Act*

The Migrant and Seasonal Agricultural Worker Protection Act (AWPA) requires that migrant and seasonal agricultural employers meet certain standards in the housing, recruitment, and transportation of workers.<sup>84</sup> The AWPA additionally offers workers a private right of action in federal court.<sup>85</sup> These protections set the baseline for how migrant and seasonal workers must be treated in the United States. They include provisions related to farm labor contractor registration and mandatory employer and contractor disclosures, wages, supplies and working arrangements, safe and healthy housing, and transportation safety.<sup>86</sup> And yet, despite its name, H-2A workers, who are definitionally migrant agricultural workers and who scholars estimate make up almost 17% of crop employment on U.S. farms,<sup>87</sup> are explicitly excluded from the AWPA.<sup>88</sup>

The AWPA provides that “[t]he term ‘migrant agricultural worker’ does not include any immediate family member of an agricultural employer or a farm labor contractor; or any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 1101(a)(15)(H)(ii)(a) and 1184(c) of Title 8.”<sup>89</sup> The exclusion of H-2A workers from the AWPA violates the United States’ commitments under Articles 23.8, 23.9, and 23.10 of the USMCA because it prevents migrant nonimmigrant workers, such as temporary visa holders, from being able to access U.S. federal courts as a means to vindicate their rights in the same way as their U.S. citizen or immigrant peers who have the same job, at the same workplace.

Although the H-2A regulations on-paper may appear to provide H-2A workers with stronger protections than those offered by the AWPA,<sup>90</sup> H-2A workers face much higher barriers to enforcing their rights given the recruitment dynamics, language barriers, and cumbersome administrative exhaustion requirements outlined above. By contrast, workers covered by the AWPA have no administrative exhaustion requirement and have a private right of action that

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<sup>84</sup> Christopher Ryon, *H-2A Workers Should Not be Excluded From The Migrant and Seasonal Agricultural Worker Protection Act*, 2 U. Md. L.J. Race Relig. Gender & Class 137, 138 (2002). Available at: <http://digitalcommons.law.umaryland.edu/rreg/vol2/iss1/8>.

<sup>85</sup> 29 U.S.C. § 1854 (1995) (private right of action).

<sup>86</sup> §§ 1811 (farm labor contractor registration), 1821 (disclosure and posting requirements), 1833(b)-(c) (supplies and working arrangements), 1841 (motor vehicle safety).

<sup>87</sup> Exhibit Z, Daniel Costa, *How many farmworkers are employed in the United States?*, Economic Policy Institute (October 3, 2023), <https://www.epi.org/blog/how-many-farmworkers-are-employed-in-the-united-states/>.

<sup>88</sup> § 1802 (8)(B)(ii) (excluding “any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 1101(a)(15)(H)(ii)(a) and 1184(c) of Title 8” from the statute’s definition of migrant agricultural worker.)

<sup>89</sup> *Id.*

<sup>90</sup> Compare §§ 1821-1844 with 20 C.F.R. § 655.135 (2024) (assurances and obligations of H-2A employers).

allows them to bring claims to enforce their rights under the AWPAs directly in U.S. federal courts.<sup>91</sup> This difference in the process for how migrant agricultural workers enforce their rights — which is solely based on immigration status — is discriminatory and often forces H-2A workers to choose between tolerating abusive working conditions and returning to their countries of origin.

Petitioner Pérez's story, contained in her declaration appended to CDM's USMCA Petition, is emblematic of how H-2A workers' exclusion from the AWPAs and, therefore, the private right of action it provides, traps H-2A workers in abusive conditions and prevents them from enforcing their rights. Pérez, a former H-2A worker, recalled:

My Employer exploited the workers by underpaying us and regularly threatening to contact immigration or have us blacklisted from the H-2A program if we complained about the job or threatened to quit. I believe my Employer did this because we were Mexican and knew we were in a vulnerable situation. For most of us, this was the first time we had worked in the United States, and many did not have a strong formal education. This vulnerability was even greater for me because I was a woman working in a hostile work environment.

Despite my fear of further reprisal, I found this treatment offensive and I knew I had to stand up for myself. On or around September 22, 2018, I went with two other female workers to my Employer to try to quit because we couldn't handle the terrible working conditions any longer. When we met with him in his office, which was also his bedroom at the hotel, my Employer implied that he had "dirt" on me and all of the workers, so that we would stay.

Because my Employer told me that he would not accept my resignation, I ended up staying at the job.

I kept trying to raise complaints about the working conditions. I wrote a note to the farm owner to let him know how awful the working conditions were. I gave the note to the farm owner's brother and asked him to pass it on. My Employer found out and became extremely upset. My Employer made all of the workers write down our names on a piece of paper in order to compare our handwriting to the note. Eventually, my Employer found out that I wrote the note and he fired me on October 18, 2018.<sup>92</sup>

Were petitioner Pérez and her colleagues covered by the AWPAs, they could have filed suit for wage theft directly in federal court.

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<sup>91</sup> § 1854 (private right of action).

<sup>92</sup> Exhibit E, CDM, *Amended Petition*, *supra* note 5 at 119-20 (Pérez declaration numbered paragraphs 17-20).

Not only does the exclusion of migrant nonimmigrant workers from the AWPAs violate the United States' commitments to protecting migrant workers, preventing all forms of discrimination in the workplace and ensuring that migrant workers have access to U.S. tribunals, under the USMCA, it also sets up the conditions for a *prima facie* case of race and/or national origin based disparate treatment under Title VII. Where two sets of workers — one migrant nonimmigrant workers, the other migrant workers who are U.S. citizens or have a form immigration status — do the same job and labor in the same workplace, but are subject to two different sets of rules and protections, they are inherently treated differently. Given that H-2A workers are predominately men and overwhelmingly from Mexico,<sup>93</sup> this difference in which rules apply to nonimmigrant migrant agricultural workers likely leads to race and national origin based discrimination in violation of Title VII.

CDM is also seeing an increasing trend of the federal government attempting to roll back the protections that H-2A workers currently have. For example, the Department of Employment and Training Administration (ETA), a DOL subagency, recently issued an interim final rule that would result in a majority H-2A workers earning less per hour than they are currently entitled to and the ETA and DOL's WHD proposed a rule that would rescind H-2A worker protections such as progressive discipline policies for cause-based employment terminations and anti-retaliation measures for certain workers engaged in self-organization and other concerted activities.<sup>94</sup> If this trend continues, and H-2A workers are not included in the AWPAs, disparate treatment of H-2A workers on the basis of their race and/or national origin will only be exacerbated.

Finally, because the AWPAs provides the possibility of criminal sanctions against employers who "willfully or knowingly" violate its provisions, including H-2A workers in the category of workers covered by AWPAs would not only provide workers with a more accessible way of enforcing their rights, it would also deter employer mistreatment of H-2A workers.<sup>95</sup> Additionally, inclusion of H-2A workers in the AWPAs' initial disclosure and anti-retaliation provisions would greatly benefit H-2A workers because it would allow workers greater information about the terms and conditions of employment and avenues for recourse if and when their rights are violated.<sup>96</sup> Inclusion of H-2A workers in the AWPAs is not only consistent with, but required by, the United States' obligations under the USCMA.

### *G. Adopt the International Labor Organization Convention 111*

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<sup>93</sup> Exhibit F, U.S. Dep't State, *supra* note 12, at 20; Exhibit G, U.S. Dep't State *supra* note 13, at 2 (91% of H-2A visas are issued to Mexican nationals).

<sup>94</sup> Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, 90 Fed. Reg. 4791489 (interim final rule Oct. 2, 2025); Recission of Final Rule: Improving Protections for Workers in Temporary Agricultural Employment in the United States, 90 Fed. Reg. 28919 (proposed July 2, 2025).

<sup>95</sup> 29 U.S.C. § 1851.

<sup>96</sup> Christopher Ryon, *supra* note 84 at 56-157.

Under USMCA Articles 23.2.1. and 23.3.1.(d), the United States has committed to ensuring the “elimination of discrimination in respect of employment and occupation,” consistent with its obligations under the International Labour Organization’s (ILO) Declaration on Fundamental Principles and Rights at Work (ILO Declaration).<sup>97</sup> The ILO Declaration outlines five core principles that ILO Member States, regardless of whether they have ratified the ILO’s Conventions, are called upon to respect by virtue of their membership.<sup>98</sup> ILO Convention C111 Discrimination (Employment and Occupation) Convention (1958) defines and prohibits discrimination in employment or occupation based on certain defined characteristics.<sup>99</sup> The United States is one of only twelve ILO Member States that have not ratified C111.<sup>100</sup> However, as an ILO Member State, the United States is obligated to respect the ILO Declaration.<sup>101</sup> Accordingly, the U.S. must ratify ILO C111 in order to fully live up to its commitments under the USMCA.

#### *H. Amend the National Labor Relations Act and the Fair Labor Standards Act to Include and Protect Migrant Workers*

The structural exclusion of farmworkers from core U.S. labor protections constitutes a treaty violation “in a manner affecting trade and investment between the Parties” in contravention of Article 23.3 of the USMCA. Similarly to their exclusion from the AWP, Section 2(3) of the National Labor Relations Act (NLRA), categorically excludes agricultural workers from the definition of “employee,” thereby denying them access to the processes of union recognition, collective bargaining, and protection against anti-union retaliation.<sup>102</sup> The Fair Labor Standards Act (FLSA) further marginalizes migrant workers by excluding many farmworkers and H-2B carnival workers from overtime pay and, in some cases, from minimum wage coverage.<sup>103</sup>

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<sup>97</sup> USMCA *supra* note 2, at Chapter 23 Articles 23.2.1., 23.3.1.(d).

<sup>98</sup> Exhibit AA, International Labour Organization (ILO), *Declaration on Fundamental Principles and Rights at Work and its Follow-up*, (1998 (adopted), 2022 (amended)). The five fundamental rights outlined by the ILO Declaration are: 1) Freedom of association and the effective right to collective bargaining; 2) the elimination of all forms of forced and compulsory labour; 3) the effective abolition of child labour; 4) the elimination of discrimination in respect of employment and occupation; and 5) a safe and healthy working environment as a fifth principle and right. The fifth principle was added in 2022 when the Declaration was amended.

<sup>99</sup> Exhibit BB, ILO, “C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111),” (1958), [https://normlex.ilo.org/dyn/nrmlx\\_en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111).

<sup>100</sup> *Id.* The other non-ratifying members of the ILO are Brunei Darussalam, Cook Islands, Japan, Malaysia, Marshall Islands, Myanmar, Oman, Palau, Singapore, Tonga, and Tuvalu. The list of non-ratifying states can be found here: [https://normlex.ilo.org/dyn/nrmlx\\_en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310\\_INSTRUMENT\\_ID:312256:NO](https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312256:NO).

<sup>101</sup> Exhibit BB, ILO, *C111*, *supra* note 99.

<sup>102</sup> 29 U.S.C. § 152 (3) (exempting agricultural workers from the protections of the National Labor Relations Act).

<sup>103</sup> 29 U.S.C. § 213 (a)(3) (exempting employees “employed by an establishment which is an amusement or recreational establishment” from the protections of the Fair Labor Standards Act), § 213 (a) (6) (exempting agricultural workers from the minimum wage and overtime protections of the Fair Labor Standards Act).

These legal exclusions disproportionately affect low-income migrant workers, many of whom are recruited under conditions of economic coercion and labor in sectors with minimal regulatory oversight. The structure of these laws not only undermines international labor standards, it codifies a racialized hierarchy of labor rights in direct tension with the equality guarantees in Article 23.3 of the USMCA.<sup>104</sup> Freedom of association, a right guaranteed to non-agricultural workers under the NLRA,<sup>105</sup> in particular, operates as the gateway through which the other rights can be effectively claimed and defended. Without the ability to organize collectively, workers lack the institutional power to denounce forced labor, to resist discrimination, to expose hazardous conditions, or to protect minors from labor exploitation. In this sense, freedom of association is not simply one right among many, it is the enabling right, the mechanism by which all other labor rights can be monitored, enforced, and advanced. The power asymmetry inherent in the employer-employee relationship, especially in low-wage and precarious sectors like agriculture and other sectors filled by temporary visa holders, makes individual complaint mechanisms insufficient. Only collective organization offers the scale and protection necessary for workers to act without fear of retaliation.

To bring its laws and practices into compliance with the USMCA, the United States must:

1. Amend the NLRA to eliminate the agricultural exclusion and guarantee organizing and collective bargaining rights for all farmworkers.
2. Develop administrative regulations that allow agricultural workers to access a transparent union certification and bargaining process at the federal level.
3. Expand legal services and outreach capacity to support union formation and protect organizing efforts in rural and migrant-heavy regions.

If the USMCA is to be a meaningful framework for labor rights, then the exclusion of farmworkers, especially migrant farmworkers from the NLRA and the FLSA, must be addressed as a core violation of the agreement. Freedom of association and collective bargaining are not abstract ideals; they are tools for dignity, equity, and justice.

**IV. The Facility Specific Rapid Response Labor Mechanism (RRM) contained in Annex 31-A of the USMCA Dispute Settlement Chapter entered into between the United States and Mexico should be subject to stricter timelines, and the RRM process should be the same for covered facilities in the United States and Mexico.**

Currently the Facility Specific Rapid Response Labor Mechanism (RRM), allows interested parties to petition the U.S. government, on the basis of sufficient, credible evidence that workers'

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<sup>104</sup> USMCA *supra* note 2, at Chapter 23 Article 23.3.

<sup>105</sup> 29 U.S.C. § 157.

rights are being denied, to review specific covered facilities in Mexico or the United States.<sup>106</sup> Those rights the violation of which can trigger a review under the RRM include the right to freedom of association and collective bargaining,<sup>107</sup> which are guaranteed under U.S. and Mexican law and the terms of the USMCA.<sup>108</sup> Although the RRM is written to apply bilaterally to the United States and Mexico, the inclusion of footnote two in the Dispute Settlement Chapter of the USMCA effectively limits the application of the RRM to covered facilities in Mexico.

Footnote two reads, in relevant part: “With respect to the United States, a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered facility under an enforced order of the National Labor Relations Board [(NLRB)].”<sup>109</sup> Limiting RRM petitions in the United States to only those covered facilities under an enforced NLRB order means that if an interested party wanted to bring a petition related to a denial of rights at a covered facility in the United States, it would first have to exhaust the NLRB administrative process to get an enforced NLRB order.<sup>110</sup> Given that agricultural workers are not covered by the NLRA, the NLRB’s organic statute, all agricultural workers, including H-2A workers, working in the United States are excluded from the RRM because they definitionally will not work at a facility “under an enforced order of the [NLRB].”<sup>111</sup> Similarly, temporary visa holders engaged in domestic labor, like au pairs in the J-1 visa program, are categorically excluded.<sup>112</sup> Additionally, the current mechanism to submit an RRM petition through DOL specifically states that it cannot be used to submit complaints regarding labor issues occurring in the United States.<sup>113</sup>

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<sup>106</sup> The USMCA defines a “Covered Facility” as: “[A] facility in the territory of a Party that: (i) produces a good or supplies a service traded between the Parties; or 31-A-9 (ii) produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party, and is a facility in a Priority Sector.” USMCA *supra* note 2, at Chapter 31, Annex 31-A, Article 31-A.15. A USMCA Priority Sector means “a sector that produces manufactured goods, supplies services, or involves mining.” Exhibit CC, Office of the United States Trade Representative, “FACT SHEET: The USMCA Rapid Response Mechanism Delivers for Workers” (2024), <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2024/september/fact-sheet-usmca-rapid-response-mechanism-delivers-workers>; see also DOL, Frequently Asked Questions (FAQs) on ways to raise United States-Mexico-Canada Agreement (USMCA) Labor Issues with the U.S. Government – (A) Web-Based Hotline; and (B) Petitions: Rapid Response Mechanism Petitions, and Labor Chapter Petitions, <https://www.dol.gov/agencies/ilab/our-work/trade/usmca-faq> (“Any person or organization of the United States, Mexico, or Canada may submit a [USMCA RRM] petition, including individuals, labor organizations, companies, and non-governmental organizations.”).

<sup>107</sup> USMCA *supra* note 2, at Annex 31-A, Article 31-A.2.

<sup>108</sup> Exhibit CC, Office of the United States Trade Representative, *supra* note 106.

<sup>109</sup> USMCA *supra* note 2, at Chapter 31, FN 2.

<sup>110</sup> Exhibit DD, NLRB, *An Outline of Law and Procedure in Representation Cases*, (2025) at 37-48, <https://nlrbresearch.com/pdfs/outlineoflawprocedurejan2025.pdf> (outlining case procedure before the NLRB).

<sup>111</sup> 29 U.S.C. § 152 (3) (exempting agricultural workers from the protections of the National Labor Relations Act (NLRA)); USMCA *supra* note 2, at Chapter 31, FN 2.

<sup>112</sup> 29 U.S.C. § 152 (3) (exempting domestic workers from the protections of the NLRA). Where J-1 au pairs act in concert with au pairs or other domestic workers employed by the same or other families and sponsoring agencies, their activity should be protected by the NLRA.

<sup>113</sup> DOL, “Frequently Asked Questions (FAQs) on ways to raise United States-Mexico-Canada Agreement (USMCA) Labor Issues with the U.S. Government – (A) Web-Based Hotline; and (B) Petitions: Rapid Response Mechanism Petitions, and Labor Chapter Petitions,” <https://www.dol.gov/agencies/ilab/our-work/trade/usmca-faq>

Considering the NLRB’s limited enforcement power and lack of enforcement resources,<sup>114</sup> the inclusion of footnote two in the USMCA Dispute Settlement Chapter effectively makes the RRM unidirectional and limits its application only to covered facilities in Mexico such that even those workers who are covered by the NLRA are unable to use the RRM.

Indeed, between 2021 and 2024 the RRM was used 27 times to review potential denials of rights at facilities in Mexico but has never been used in the United States.<sup>115</sup> CDM has personal experience with the severe limitations that footnote two imposes on petitions under the USMCA. It was due to these restrictions that CDM was unable to use the RRM to bring our petition on behalf of petitioners Ponce and Pérez alleging sex-based employment discrimination in the temporary visa programs. Footnote two must be removed because it denies migrant workers — especially women migrant workers — who experience labor violations in the United States “appropriate access to tribunals for the enforcement of its labor laws”<sup>116</sup> counter to the United States’ obligations under Articles 23.8 (migrant worker protections), 23.9 (gender-discrimination protections), and 23.10.2 (procedural guarantees) of the USMCA.

The RRM recognizes that in a transnational economy, the exploitation of workers in any part of the labor chain has a detrimental impact on all workers in that chain. Thereby, when Mexican workers are exploited in Mexico, U.S. workers suffer in the form of jobs being moved abroad and depressed wages and conditions of employment as a result. As the RRM acknowledges, the transnational exploitation of workers, requires a transnational solution. Given that an integrated supply chain where workers are able to exercise their rights at work is the goal of the RRM, workers in both the United States and Mexico only stand to benefit if workers working at a covered facility in the United States are able to bring petitions, without first going through the NLRB process, on behalf of workers working at covered facilities in the United States.

Exploitative employment practices are pervasive in the United States as well as Mexico. As discussed above, Mexican migrant workers in the United States often experience abusive and exploitative working conditions and have few options for enforcement of their rights. There is no reason why the RRM should not apply equally to U.S. and Mexican workplaces. Removing the barriers to using the RRM in the United States would raise the floor for enforcement of the labor and employment rights of all workers, creating safer and better working conditions for both U.S. and Mexican workers. Indeed, the very success of the RRM in Mexico is proof of concept for why it should apply equally to U.S. workplaces.

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(“The USMCA web-based hotline was not established as a mechanism to receive complaints regarding issues occurring in the United States.”).

<sup>114</sup> Exhibit EE, Kristin Toussaint, *For years the NLRB has been too toothless to enforce labor laws. Is that finally changing?*, Fast Company (April 12, 2024),

<https://www.fastcompany.com/91090679/nlr-unfair-labor-practices-labor-laws>.

<sup>115</sup> Exhibit CC, Office of the United States Trade Representative, *supra* note 106.

<sup>116</sup> USMCA *supra* note 2, at Article 23.10.2.

Both the Biden administration and the first Trump administration touted the effectiveness of the RRM for protecting workers' rights.<sup>117</sup> Indeed, at the time of its adoption the RRM enjoyed broad bipartisan support,<sup>118</sup> and since then the RRM has directly benefitted tens of thousands of workers and provided millions of dollars in back pay and benefits to workers in Mexico.<sup>119</sup> Many of the actions initiated under the RRM resulted in increased wages, workers' rights trainings, and improved workplace policies at the facilities at issue in Mexico.<sup>120</sup> It is time for these benefits to be extended on equal terms to workers who experience labor violations at covered facilities in the United States.

Finally, in addition to equal terms for the application of the RRM in both the United States and Mexico, the RRM must be subject to stricter timelines so that workers can timely redress violations of their rights. Justice delayed is justice denied; without prompt enforcement workers may suffer injuries that cannot be adequately redressed at a later date.

## V. Conclusion

Thank you for your consideration of these comments. We urge you to maintain the protections for migrant workers in Article 23.8, maintain the gender-discrimination protections in Article 23.9, and improve protections for migrant workers in general, and migrant women workers in particular, under U.S. law. Additionally, we urge you to remove footnote two of Chapter 31 and allow the RRM currently in Annex 31-B of the Chapter 31 to apply bilaterally on equal terms to facilities in the United States and Mexico.

Sincerely,

Centro de los Derechos del Migrante

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<sup>117</sup> Exhibit CC, Office of the United States Trade Representative, *supra* note 106.

<sup>118</sup> Chad P. Bown and Kathleen Claussen, *The Rapid Response Labor Mechanism of the US-Mexico-Canada Agreement*, 23 World Trade Rev. 335, 335 (2024). Available at: <https://doi.org/10.1017/S1474745624000053>.

<sup>119</sup> Exhibit CC, Office of the United States Trade Representative, *supra* note 106.

<sup>120</sup> *Id.*