



## Summary of Reports: The Growth of Temporary Work Visa Programs and Widespread Abuse of Temporary Immigrant Workers

*These reports document (1) the expansion of temporary work visa programs as well as (2) the ever-increasing abuses of temporary workers by foreign labor recruiters (FLRs) over the last decade.*

### Report: Challenges and Trends of H-2A workers in agriculture, *AgNews Daily*, (Aug. 12, 2024)

- **Between 2017 and 2022, the number of DOL-certified H-2A workers — those requested by employers and subsequently certified — increased by 64.7 percent, from 224,965 to 370,628.**
- 2/3 of U.S. Counties have H-2A workers. The counties with the highest numbers included Monterey County, California; Farm labor contractors (FLCs) are playing an increasingly significant role in hiring H-2A workers. These contractors, who specialize in recruiting and hiring farmworkers, often provide housing and transportation to the farms. The share of H-2A employment managed by FLCs surged from 15 percent in 2010 to 44 percent in 2022.
- FLCs are now classified as the leading industry employing H-2A workers in 2022.

### Lawsuits Reveal Labor Abuses Faced by Some Migrant Workers on TN Visas, *Immigration Impact* (Jul. 25, 2024)

- Since 2010, the [number of TN visas issued](#) has steadily grown, reaching almost 35,000 in 2023. Despite the increase in TN visas, the program still lacks essential safeguards, leaving migrant workers at risk of serious labor abuses and human trafficking.
- In June 2024, Mexican TN workers filed a [class action lawsuit](#). **According to the lawsuit, recruiters used false promises of highly paid skilled engineering jobs to recruit the plaintiffs through the TN visa program. Upon their arrival in the U.S., the workers allege they were instead forced to work in warehouses and on automotive assembly lines. All the workers paid significant visa fees, travel expenses for consular processing and relocation to the U.S.**
- "By abusing the program, unscrupulous employers not only exploit migrant workers but also undermine those employers who are committed to following the law, creating an unlevel playing field."

### The Expanding Role of H-2A Workers in U.S. Agriculture, *American Immigration Council* (Jun. 11, 2024)

- 41,000+ workers come to CA under the H-2A Program.
- CA is the second largest recipient state with Monterey County, CA being the largest recipient county in the country

### These businesses say they can't keep up with consumer demand without immigrant workers. Americans just don't want the jobs, *CNN*, (Mar. 21, 2024)

- Report highlights the push to expand H-2B program to fill unmet construction demands or create new visa categories like H-2C to fill job vacancies in industries like construction

### U.S. Senators Collins and King praise increase in temporary work visas for 2024, *Maine Morning Star* (Nov. 9, 2023)

- After pressure for more temporary non-agricultural work visas from lawmakers including U.S. Sens. Susan Collins and Angus King, the federal government announced that nearly twice as many will be available for fiscal year 2024.



**'They all went away: Why some foreign farmworkers end up leaving the fields,** *Atlanta Journal Constitution*, (Oct. 9, 2023)

- A disconnect between the contractors who bring in the workers and the farmers who use them contributes to the problem.
- A growing share of foreign workers are being employed not by individual farmers, but by farm labor contractors, according to a report by the U.S. Department of Agriculture. Farm labor contractors hire the migrant farmworkers and then lease their services to different farmers.
- In addition, although H-2A program rules forbid employers from charging workers recruitment fees, farmworker advocates say that practice has become widespread among farm labor contractors and **their associates abroad**. That means contractors could have a financial incentive to bring in more foreign workers than are actually needed on local farms.
- **Young said there's no repercussions for labor contractors who request too many farmworkers. Even if workers wound up being unneeded, the contractor has already collected a "recruitment fee" and made their money.'**
- Although the visa holders work on farmers' property, they are officially employees of the labor contractors, if that's who brought them to the U.S. When farmers work with H-2A contractors to fill their labor needs, the farmers aren't responsible for housing, transporting or paying workers as required by the H-2A program. Contractors are.

**Employers Banned from hiring H-2A Worker can Reinvent Themselves to Hire Again,** *Investigate Midwest* (Sept. 14, 2023)

- Despite these legal protections, many workers report problems. According to a 2020 survey by Centro de los Derechos del Migrante, a migrant worker advocacy organization based in Mexico, 100% of respondents said they had experienced at least one major legal violation, including sexual harassment, threats of deportation or seizure of identity documents during their employment.
- The employees were on H-2A visas, which allow foreign nationals to work in the U.S. for short time periods. Many H-2A workers face mistreatment from some employers, and the federal government can temporarily ban, or debar, employers from hiring H-2A workers. But the bans rarely occur and are easy to evade, according to government reports.
- An unlimited number of H-2A agricultural visas are available each year, but there is an annual limit of 66,000 H-2B non-agricultural visas. ILMC circumvented the annual H-2B cap by applying for H-2A employees and sending them to H-2B sites, according to court records.
- In 2021, 24 people were **indicted** in connection with Operation Blooming Onion, a massive federal human trafficking investigation. Between 2014 and 2021, conspirators facilitated more than 71,000 H-2A visas and made at least \$200 million by withholding workers' wages, renting workers out to farmers, and charging illegal recruitment fees.

**Dept. of Homeland Security Factsheet,** *Dept. of Homeland Security*, (Jul. 31, 2023)

- The Department of Homeland Security (DHS), in consultation with the Department of Labor (DOL) and the Department of State (DoS), made available nearly 65,000 additional- temporary visas for workers to come to the U.S. in Fiscal Year 2023, including 20,000 visas allocated for workers from Haiti, El Salvador, Guatemala, and Honduras. Of these, 57,000 have already been issued.

**America's farms are desperate for labor. Foreign workers bring relief and controversy,** *NPR*, (Jul. 27, 2023)

- Nationwide, more than 9X as many H-2A visas were issued in FY 2022 vs. FY 2005
- In 2020, guest workers accounted for just **10% of the farm labor workforce**, but their numbers are skyrocketing, especially in the West Coast.
- To root out abuses, WAFLA does mid-season check-ins with guest workers, surveys revealed workers did report paying illegal fees.

**U.S. Temporary Foreign Worker Visa Program,** *Council on Foreign Relations*, (June 7, 2023)

- Documents history and increase of Foreign worker programs in the U.S. with focus on H-Visas
- The number of visas issued as part of U.S. temporary foreign worker programs has risen sharply after the first years of the pandemic slowed the movement of international migrants: more than 984,000 such visas were **granted in 2022**, up from some 846,000 in 2019.
- The H1-B, H2-A, H2-B, and H4 visas are the largest of these programs where the U.S. issued more than 766,000 visas for those programs in 2022 up from the 616,000 issued in 2019.
- The H2-A program provided visas to almost 300,000 workers in 2022, over 4X more than it did the decade prior.

**H-2A and H-2B Temporary Worker Visas: Policy and Related Issues**, *Congressional Research Services* (May 11, 2023)

- On March 26, 2020, Dept. of State (DOS) stated that “the H-2 program is essential to the economy and food security of the United States and is a national security priority” This was accomplished by authorizing consular officers to expand the category of H-2 Visa applications who applications could be adjudicated without an in-person interview. Authorization to waive in-person interviews for H-2 applicants remained in place through Dec. 31, 2023.
- The number of H-2A visas issued has increased sharply with visa issuances more than quadrupling from less than 70,000 in FY2012 to more than 290,000 in FY2022.2

**Human trafficking or a guest worker program? H-2A’s systemic issues result in catastrophic violations**

*Prism*, (April 14, 2023)

- The cases of many H-2A workers results from foreign labor contractor —recruitment charging illegal fee as part of a “non-uniform, complex, and often informal process.”
- H-2A workers often have confusing employment arrangements in which they are jointly employed by a labor contractor and a grower or farm. This was true for Diego and Mario, whose primary boss was a labor contractor. Shortly after they arrived, the labor contractor organized an offsite gathering of the hundreds of Mexican workers he brought to the U.S. that spring as part of the H-2A Temporary Agricultural Program. The purpose of this meeting was to threaten the workers with immigration enforcement if they left their jobs .
- The labor contractor also made the workers sign forms in English, falsely claiming they had been reimbursed for their visa and travel expenses and were told by the recruiter they would not be earning minimum wage. THIS had been promised by the recruiter as part of the recruitment process
- Diego and Mario found themselves starving, scared, and trying to escape from the very jobs they staked their families’ future on and for which they had already paid illegal recruitment fees.
- Mario and Diego’s story is the result of the federal government’s decades of failure to protect the workers that [account for 10%](#) of the farm labor force.
- **Records from the U.S. Department of Labor (DOL) showed \$7.2 million in unpaid wages due to thousands of H-2A workers victimized by wage theft over the previous decade had never been returned to them.**
- The Economic Policy Institute (EPI) reports that American employers [prefer to utilize](#) the H-2A program over hiring U.S. workers because they see foreign workers as “exploitable.”
- The Department of Labor’s [woefully inadequate](#) oversight allows “[frequent and extreme](#)” violators of H-2A regulations to continue [hiring guest workers with impunity](#).
- **According to John Sarraf, a fraud prevention manager with the U.S. Consulate General in Monterrey, Mexico, where the [most H-2A visas](#) in the world are processed, the typical cost of an illegal recruitment fee for a job that actually exists in the U.S. is around \$2,000, which is almost what some Mexican workers make in a year. In cases of pure fraud, where recruiters have sent workers to the consulate for H-2A visas and jobs that don’t exist, hopeful workers have been robbed of as much as \$8,000**
- **Despite being tied to much of the fraud in H-2A, the U.S. government has allowed labor recruiters to play an outsized role in the program by giving them unprecedented power to decide who gets to be an H-2A worker.**
- Evy Peña, the campaigns director at CDM, told Prism, Futuro Investigates, and Latino USA **that online fraud and scams related to recruiting became worse than she’d ever seen during the pandemic.** It’s rare to come across an H-2A worker who hasn’t experienced wage theft. The history behind H-2A how the H-2A program operates means wage theft is literally “baked into” how the program operates.
- “[Y]ou can see that the H-2A program literally is the purchase of humans to perform difficult work under terrible conditions, sometimes including subhuman living conditions,” Rios said.
- There is no overstating how under-resourced and understaffed the federal agency is. According to a December 2020 [report by EPI](#), WHD had “just under 1,500 employees, including 780 investigators, and a budget of \$229 million to investigate 10.2 million U.S. establishments with 148 million employees” the previous year. The number of workers that each individual WHD investigator is responsible for has also risen dramatically. In 1978, EPI reported one WHD investigator for every 69,000 workers. By 2018, one investigator was responsible for 175,000 workers.



### **Farmworkers in Florida Are Protesting Modern-Day Slavery**, *Jacobin*, (Mar. 16, 2023)

- In December of 2016, the Coalition of Immokalee Workers (CIW), received a phone call from two men who had just escaped captivity by hiding in the trunk of a car. The two men were migrant farmworkers, working on H-2A visas, who had been harvesting watermelons an owner of the farm labor contracting business Los Villatoros Harvesting LLC — a business that, in reality, was little more than a modern-day slave camp.

### **Beyond Qatar: Migrant Workers are Exploited in America, Too**, *VOA News* (Nov. 27, 2022)

- “Migrant workers are contributing in nearly every sector in the economy,” explained Shannon Lederer, director of immigration policy for the AFL-CIO, a union federation, “and they’re also being exploited in all of them – across all industries and across all wage levels. This is a full-blown crisis.”
- In the aftermath of natural disasters like Hurricanes Karina, Laura, Delta, and [2021’s] Hurricane Ida, migrant workers are employed – ““Most of our migrant workers came from Mexico and elsewhere in Central America, and their efforts after the storm in debris removal, demolition, and eventually reconstruction have had a huge impact on our city.”
- You have recruiters in the United States who are finding workers in other countries and demanding payment from them for the right to work in the U.S.,” Lederer continued. “So now those laborers are in debt when they arrive, making them more desperate for their job. And their visa is tied to one employer, so if they complain their employer can fire them and they’ll be sent back to their home country.

### **CA is on the Brink of Enacting the First Significant Law to Combat International Labor Recruitment Abuses and Protect 300,000 Temporary Migrant Workers. Will Governor Newsom Sign the Bill?**, *Economic Policy Institute*, (Sept 8, 2022)

- There are at least 310,500 migrant workers in California—employed through temporary work visa programs—making it the largest host state. These temporary migrant workers are vulnerable to abuses of labor recruiters that connect workers to jobs in the United States.
- The visa programs used to hire them have [expanded](#) at a rapid pace, but the rules and frameworks of the programs permit employers to control the bureaucratic process and the immigration status of their employees with work visas, keeping migrants indentured and often exploited by employers.
- The abuses of labor recruiters have included requiring the payment of illegal fees to obtain jobs which can result in debt bondage, as well as cases of wage theft, discrimination, human trafficking, and other abuses. But since these U.S. work arrangements are being set up abroad, it is difficult to regulate the behavior of recruiters.
- Congress has failed to act to protect workers who are recruited abroad through temporary work visa programs. A California law was enacted in 2014 to fill this gap. Senate Bill (SB) 477 created a registration system for labor recruiters, providing transparency and tools to hold recruiters accountable for abuses. However, that law has been interpreted to apply only to the H-2B visa program, one of the many visa programs that are used to hire workers in California. H-2B workers only account for a small share of the state’s temporary migrant workers, less than 1%.
- Assembly Bill (AB) 364, which passed the California Assembly and Senate, would expand the reach of SB 477 to nearly all temporary work visa programs, thus protecting an estimated 300,000 migrant workers. It would also give California the authority to monitor and regulate labor recruiters doing business in the state and more proactively prevent labor abuses and trafficking.
- As noted above, one of the points in the hiring and employment process where many of the abuses of migrant workers occur is during recruitment, which often takes place in countries of origin. There are countless cases of wage theft, human trafficking, and other exploitation that have [occurred](#) at the hands of labor recruiters.

### **California’s International Contract Workers Could Gain Some Protections Through Bills Awaiting Gov. Newsom’s Signature**, *Capital & Main*, (Sept. 16, 2022)

- Nationally, the U.S. Department of Homeland Security estimates the number of temporary work visa holders is 1.6 million
- Growers were certified to bring more than [317,000](#) H-2A workers to the U.S. in 2021, three times the number eight years earlier. Of these, 32,333 were brought to California. Three large California-based companies, Fresh Harvest, Foothill Packing and Rancho Nuevo Harvesting, accounted for 12,974 workers.
- Some of the most egregious examples of recruitment abuse involve farmworkers on H-2A visas. Larsen Farms, charged 100 Mexican workers as much as \$1,500 each for a visa, and workers couldn’t leave the job until they’d paid their debt.
- While the federal government sets regulations and is responsible for enforcement, effective oversight hardly exists. According to [the Cato Institute](#), the Department of Labor fined, on average, 2% of all employers from 2008 to 2018. Most fines averaged \$237 for minor infractions, and the maximum fine was only \$115,624. On average, fewer than 20 employers a year were suspended or banned from the program, an annual rate of 0.27%.

**Testimony prepared for the U.S. House Subcommittee on Workforce Protections for a hearing on “Second-class workers – Assessing H-2 Visa Programs’ Impact on Workers,”** Economic Policy Institute (Jul. 20,2022)

- Temporary migrant workers can face abuse even before arriving in the United States: many are required to pay [exorbitant fees](#) to labor recruiters to secure U.S. employment opportunities, even though such fees are usually illegal. Those fees leave them indebted to recruiters or third-party lenders, which can result in a form of debt bondage. After arriving in the United States, temporary migrant workers may find out the jobs they were promised [don’t exist](#). And in a number of cases, temporary migrant workers have become victims of [human trafficking](#)—with some being forced to work in the [sex industry](#)
- Contrary to popular belief, it’s not just farmworkers and other temporary migrant workers in low-wage jobs suffering from the abuses that pervade temporary work visa programs: College-educated workers in computer occupations, as well as teachers and nurses, have been victimized and put in “financial bondage” by shady recruiters and staffing firms that steal wages, forbid workers from switching jobs or taking jobs the recruiters don’t financially benefit from, and file lawsuits against workers if they try to change jobs or quit.
- The many temporary migrant workers who are in debt after paying recruitment fees are anxious to earn enough to pay back what they owe about even those who aren’t caught in the debt trap are often subject to exploitation once they are working in the United States.
- Like undocumented immigrants, many temporary migrant workers have good reason to fear retaliation because their visas tie them to one employer who controls their visa status thus making it hard for them to complain against unethical employers and recruiters. While portability of employment is important – that is the ability to change jobs or employers –it is important to stress that temporary migrant workers in these four visa programs that allow for some portability have nevertheless been subjected to trafficking.
- T Authorized temporary migrant workers can end up worse off economically than unauthorized workers because of the debts they incur through fees paid to recruiters. This could ultimately result in incentivizing workers to migrate without authorization, rather than using available legal channels.

**A human-trafficking case exposed farmworker abuses. The government is promising change,** *NPR*, (May 27, 2022)

- The demand for agricultural workforce visas has been steadily on the rise as producers face continued labor shortages, even before the pandemic. Most recently, [the Labor Department noted](#) the number of H-2A visas has more than tripled since 2012.
- Over 70 percent of DOL investigations find workplace violations, with 30 percent of investigations finding employers have committed five or more violations, [according to the Economic Policy Institute](#), which analyzed DOL data.
- Following the indictment of two dozen defendants in a [multi-year human trafficking case](#) found the defendants allegedly defrauded the government of over 70,000 H-2A visas — forcing hundreds of workers to illegally work on onion farms. Contractors and recruiters allegedly demanded workers’ pay illegal fees, held their identification documents hostage, required physically demanding work for little or no pay and housed workers “in crowded, unsanitary, and degrading living conditions. “Workers were also threatened with deportation and violence while the defendants profited \$200 million.

**‘This has been happening for a long time’: Modern-day slavery uncovered in South Georgia,** *The Atlanta Journal Constitution* (Dec. 3, 2021)

- A yearslong human trafficking operation trapped over a 100 migrant workers from Mexico and Central America in “modern-day slavery” Laborers were admitted to the U.S. through fraudulent use of the H-2A guest worker visa program and were forced to dig for onions with their bare hands under the threat of gun violence, according to the [federal indictment](#), earning just 20 cents for each bucket of onions harvested.
- Of the 24 accused members **Most were labor contractors or recruiters**
- **According to the indictment, laborers were charged unlawful fees for transportation, food and housing. And though they were putatively hired for agricultural work, some migrants were illegally used for lawn care, construction, and repair tasks.**
- **To prevent escapes, members of the accused crime ring unlawfully confiscated workers’ passports and documents. Conspirators also sold and traded workers amongst themselves, per the indictment.**
- At least two people died from heat exposure on the job, and one woman was repeatedly raped.
- The victims’ labor camps were surrounded by electric fencing. oTTThe case included violations that have become too common in the H-2A program: illegal recruitment fees, labor trafficking, wage theft, intimidation, threats of immigration enforcement, and passport confiscation.

**Temporary work visa programs and the need for reform-** a briefing on program frameworks, policy issues and fixes, and the impact of COVID-19, *Economic Policy Institute*, (February 3, 2021)

- Temporary work visa programs are an instrument ultimately used to deliver migrant workers to employers, but without having to afford them equal rights, dignity, or the opportunity to integrate and participate in political life. While such programs may serve as important pathways for migrants to come to the United States, the numerous programmatic flaws that undermine labor standards and leave migrant workers vulnerable to abuses—and even human trafficking—clearly demonstrate a need for dramatic improvements.
- This is not news; migrant worker advocates, government auditors, and the media have identified these flaws across U.S. temporary work visa programs for decades....The COVID-19 pandemic and the national emergency that was declared on March 13, 2020, along with the inadequacy of the federal government's response, have only exacerbated the challenges migrant workers face while employed through temporary work visa programs.
- ...data show that temporary work visa programs were 13% larger in 2019 than during the last year of the Obama administration. Even the temporary work visa "ban" issued in June 2020 in retrospect looks to be mostly symbolic—a political tactic to blame migrants for high unemployment and the economic collapse that resulted from the COVID-19 pandemic.

**Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program,** *Centro de los Derechos del Migrante, Inc. (CDM)* (2020)

- Report exposes the extensive labor abuses in the rapidly growing guest worker program that expanded to a record 256,677 job certifications in FY 2019. Based on in-depth interviews with 100 workers across Mexico who came to the U.S. on these visas in the last 4 years suffered widespread abuse. , i26% of the 100 H-2A workers the group interviewed said they paid illegal recruitment fees as high as \$4,500 -

**Federal labor standards enforcement in agriculture: Data reveal the biggest violators and raise new questions about how to improve and target efforts to protect farmworkers**

*Economic Policy Institute* (Dec. 15, 2020)

- Farm labor contractors, the fastest-growing segment of farm employment, are the worst violators, accounting for one-fourth of all federal wage and hour violations detected in agriculture and one-half of violations detected in two of the biggest states for farm employment, California and Florida.
- **There is a very low probability—1.1%—that any farm employer will be investigated by WHD in any given year.**

**Expanding California's Law to Increase Protections for Temporary Guest Workers Benefits Businesses,** Cambridge University Press ( Dec. 14, 2020)

**Federal Criminal & Civil Trafficking Cases Involving Legal Visas,** *The Human Trafficking Legal Center* (2009-2020)

- 39 Cases involving individuals or groups of individuals who were subjected to human trafficking after being admitted lawfully to the United States

**The Case for Transparency: Using Data to Combat Human Trafficking Under Temporary Foreign Worker Visas,** *Justice in Motion* (Sept. 2020)

- According to the Congressional Research Service, there are currently 24 major nonimmigrant visa categories, and over 70 specific types of nonimmigrant visas for entry into the United States
- The trafficking cases reported to Polaris were associated with a variety of nonimmigrant work visas, ranging from the more commonly known H-2A, H-2B, and H-1B visas – In total there are 180 civil cases involving non-immigrant visa holders.

**Personal Email from Polaris with Most Recent Data from National Human Trafficking Hotline on Fraudulent Labor Recruitment through 2020<sup>1</sup> (Feb. 8, 2020).**

- **Since January 2015, more than 4,145 victims of labor trafficking who held legal, temporary H-2A, H-2B, H1-B or J-1 work visas were reported to the U.S. National Human Trafficking Hotline ("Trafficking Hotline") operated by Polaris.**

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<sup>1</sup> Email from Allison Grossman, Policy Director Polaris dated 2/8/2020. Available for contact @ agrossman@polarisproject.org.

- **Of those victims, at least 22%, or more than 1-in-5, were recruited into their positions through false promises or fraud, and 66% were recruited through a job advertisement or offer that appeared to be legitimate.** Many victims with visas experienced a combination of both of these tactics.
- In addition to the thousands of laborers whose citizenship and visa status were reported, the Trafficking Hotline learned of nearly 13,000 labor trafficking victims whose citizenship or visa status was not known. Because the Trafficking Hotline does not ask a standardized set of questions about immigration and visa status and only records this data when it is disclosed incidentally, it is likely that many of these 13,000 laborers were also legal, temporary work visa holders who were subject to similar methods of recruitment.

*\*These statistics are accurate as of Oct. 27, 2020*

#### [As growers turn to Mexico for labor, workers turn to courts for wages](#), *Los Angeles Times* (Nov. 9, 2019)

- Recruitment of seasonal foreign workers in California under the H-2A visa program soared to a record 20,905 so far this year — with hiring still underway for the winter desert season, according to a Times analysis of federal labor data. That's more than double the number of workers recruited just four years ago, and an 11-fold increase across eight years. Once a minor player in the H-2A niche, California now ranks fourth among recruiting states, according to federal records. The U.S. Department of Labor announced results this week of long-term investigations mostly in Central Coast berry fields. Those cases pale in comparison with a \$2.2-million settlement this summer covering thousands of workers contracted by Salinas-based Foothill Packing to pick for industry leaders Taylor Farms California and Dole Fresh Vegetables. The vast majority of the foreign agricultural workers are hired through contractors such as Foothill and its larger California rival, Fresh Harvest. Headquartered in the Central Valley, Fresh Harvest recruited about 4,800 workers this year, making it the largest private contractor of H-2A workers nationally, according to the Labor Department's Office of Foreign Labor Certification. Foothill Packing, along with Taylor and Dole, admitted no wrongdoing in settling the lawsuit on behalf of more than 3,900 workers over three picking seasons. In 2016, DOL it fined a Salinas-area [strawberry grower](#) \$2.6 million and temporarily banned him from the H-2A program over allegations that he demanded kickbacks from guest workers he recruited.

#### [The H-2A Guest Worker Program Has Ballooned in Size, but Both Farmers and Workers Want it Fixed](#), *Civil Eats* (July 16, 2019)

- Previously underused, the H-2A program has swelled by nearly 200 percent, from about [82,000 certified workers nationwide in 2008](#) to [242,000 in 2018](#), according to [the Office of Foreign Labor Certification](#) at the U.S. Department of Labor. During the first two quarters of 2019, [nearly 124,000](#) workers have already been certified. California is one of the top five states receiving the most H-2A workers.
- Although guest workers represent less than 10 percent of the U.S. agricultural labor force, the program's exponential growth will likely continue, as there is no annual cap on the number of the temporary agricultural visas and most of the applications from growers [are approved](#). Many growers are now turning to H-2A guest worker visas to ensure a stable labor force. Recruiters drive to remote Mexican villages, and contact potential workers via Facebook and WhatsApp. Another concerning trend is third party labor contractors being approved as employers of guest workers, giving a legal shield to farm owners.

#### [Human Trafficking on Temporary Work Visas: A Data Analysis 2015-2017](#) (Polaris Project) (June 1, 2018)

- The crux of the problem is that the structural conditions embedded in the temporary guest worker programs are wedded to common employer-side incentives to maximize profit by reducing labor costs in a way that too often results in abuse and even trafficking.
- **For 22 % of the victims, there was enough information to establish the involvement of a foreign labor recruiter.** The report details the mechanisms of fraud, coercion, and control during the recruitment and employment of guest workers who often pay steep recruitment fees, landing them in debt and assuring they will keep working even when the conditions are unsafe and they aren't paid the promised wages. 327 of the 797 victims of human trafficking identified in the report were H-2A visa holders. The majority of these individuals were males from Mexico, a country that received 93 percent of America's H-2A visas issued between FY 2008 and FY 2017.
- There is little federal oversight of the practices of companies, including foreign labor recruiters, convicted of visa fraud, with some of the largest violators remaining eligible to hire workers under the H-2A program



## [The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States](#), *Polaris Project*

(March 2017)

- Abuse and exploitation of workers happens at multiple levels due to the complex labor supply chain of recruiters, managers, contractors, subcontractors, growers, and buyers. Recruiters charge victims recruitment and travel fees that create insurmountable debt. Traffickers subject victims to squalid living conditions, isolate them in rural parts of the country with little ability to access support, and substitute pay on a piece-rate basis for a recruiting promise of an hourly wage.

## [Modern Slavery: A Global Perspective](#) By: Siddharth Kara, *Columbia University Press* (2017)

- Foreign Labor Recruiters serve as intermediaries providing farm owners with the cheap labor pool they desire while severing the farm owner's legal liability for treatment of the workers both during the recruiting process and employment. Of 1,000 workers interviewed, Kara found 303 cases of human trafficking and 253 cases of debt bondage. Recruiting fees ranged from \$2,000 to \$5,000. Coercive labor practices of the Foreign Labor Recruiters are exacerbated using *enganchadores* (recruiters outside the US) because of the incurred debt for their services. (Chapter 3)
- Case Example: Mexican worker promised \$10,000 for farmwork for the season and paid \$2,000 to recruiter in Mexico for H-2A visa and \$667 for transportation to CA; was told both fees to be reimbursed at end of season. Instead, the workers was not paid for 2 months, food, rent, transport to and from the farm where he worked, attorney fees to process his visa, and even expenses to fix the truck that took him to the work site. This worker's identity documents were confiscated on arrival, his freedom of movement and employment were restricted and he was only paid about \$1.50/hour through system of unfair and excessive wage deductions and under threat of deportation. (Chapter 3)

## [Labor Trafficking in the U.S.: A Closer Look at Temporary Work Visas](#), *Polaris Project*, *Polaris* (October 2015)

- 29% of victims experienced fraud or false promises during the recruitment process, and reported that the nature or working conditions turned out to be substantially different than what they had been told during recruitment. Workers were also given misinformation about wages, schedules, associated fees, living conditions, and benefits.
- There was a general sense of confusion among victims as to the relationship between the person or agency who facilitated their recruitment and their employer. In the case of 15% of victims, there was enough information to identify the involvement of a foreign labor recruiter and 5% of victims appeared to have been directly recruited by their employer. However, there were 6 victims who had contact with both a foreign labor recruiter and their direct employer during the recruitment process and were unable to ascertain the relationship between the two entities
- Many of the victims had contracts with explicit stipulations which were later violated. Some of these contract violations varied by visa type. For example, in many H-2A cases, potential victims reported their contracts for agriculture work explicitly stipulated an hourly wage. However, upon arrival to their job, potential victims later learned they would be paid on a piece-rate basis, making their earnings almost entirely dependent on weather and other agricultural conditions beyond their control.
- Contract violations that spanned across visa categories included false promises of transportation between work and living sites, reimbursement or provision of food, living expenses, travel to the U.S., and the supply of uniforms or protective safety gear.
- A significant number of victims had to pay fees associated with the recruitment process which ranged from \$100 to \$5,000, but typically fell closer to the \$1,000 mark. Some victims did not have to pay lump sums, but instead, had deductions taken out of their paychecks on an ongoing basis which were explained vaguely as covering expenses related to recruitment, visas, and transportation. Because of the general sense of confusion regarding the visa process, many victims were not sure to whom they had paid recruitment fees or why they had been required. Victims mentioned paying the fees to foreign labor recruiters, their employers, or their direct supervisors at their jobs. Some specified that the fees were to cover the cost of obtaining a visa while others described the fees more vaguely as necessary "to get the job" which may indicate a more informal and inconsistent system of exploitative practices used by some recruiters
- 805 total cases of potential labor trafficking and 1,275 total cases of potential labor exploitation occurring in the United States were reported to the NHTRC and BeFree Textline.<sup>3</sup> Of these, there were 148 human trafficking cases and 644 labor exploitation cases which involved victims with A-3, B-1, G-5, H-2A, H-2B, or J-1 visas, which totals 38% of all cases referencing serious labor abuses. Polaris analyzed these cases and was able to identify 823 specific victims who held one of these particular visa types.



**[The American Dream up for Sale: A Blueprint for Ending International Labor Recruitment Abuse, The International Labor Recruitment Working Group](#)** *The International Labor Recruitment Working Group* (February 2013)

- The problems plaguing internationally recruited workers are systemic, beginning at the recruitment stage in a worker's home country and continuing after the worker arrives in the US. Overlaps in the work visa programs allow employers in certain industries, including the agricultural sector, to select the visa with the easiest availability or the weakest worker protections. **Abuses are present in all visa categories.** Recommendations to curtail these practices include employer responsibility for their labor recruitment supply chain and worker access to self-help advocacy.

**The Leadership Group for Responsible Recruitment and the Interfaith Center on Corporate Responsibility exemplify the recent trend in the private sector to tackle the widespread illegal practice of imposing recruiting fees on workers coming to the United States and around the world on temporary legal work visas.**

- [Leadership Grp. for Responsible Recruitment](#), *Driving Positive Change: About the Leadership Group* (2016)  
;Interfaith Center on Corporate Responsibility, [Best Practice Guidance on Ethical Recruitment of Migrant Workers 6](#) (2017)

**[Recruitment revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change](#)**, *Centro de los Derechos del Migrante, Inc.* (Jan. 17, 2013)

- Focuses on recruitment in Mexico, home to the largest number of temporary migrants who labor under H-2 visas. Employers, recruiters, and their agents charge illegal recruitment fees and fail to reimburse visa, travel and recruitment-related expenses incurred by workers. One out of every ten workers interviewed reported paying a recruitment fee for a non-existent job. Almost half of the workers surveyed reported arriving in the U.S with significant debt.

**[Monitoring International Labor Recruitment: A Cross-Visa Exploration of Regulatory Challenges](#)**, *Centro de los Derechos del Migrante, Inc.* (Oct. 19, 2012)

- Attorneys/agents listed as part of the H-2A certification process are rarely the recruiter who shows up in the worker's community of origin, charging fees. The only way to eliminate economic coercion and debt bondage is to name all the recruiters in the chain.

**[An Ethical Framework for Cross-Border Labor Recruitment: An industry/stakeholder collaboration to reduce the risks of forced labor and human trafficking](#)**, *Verite and ManpowerGroup* (Feb. 15, 2012)

- Workers are often exposed to unscrupulous brokers who charge exorbitant recruitment fees, change contract terms unilaterally, impose unreasonable deductions from agreed wages, and leave workers vulnerable to discrimination and exploitation. To eliminate unscrupulous recruiters from the market: require licensing of recruiters, provide employers with the tools necessary to identify ethical recruiters and their subcontractors, and improve information and choices for the workers themselves.



## LEGAL CASES AND REPORTS DETAILING LABOR CONTRACTOR ABUSES IN CALIFORNIA

### *U.S. v. Satish Kartan and Sharmishta Barai*

- March 14, 2019, the defendants were found guilty of conspiracy to obtain forced labor and two counts of obtaining forced labor. In addition, Kartan was found guilty of fraud in foreign labor contracting.
- Between February 2014 and October 2016, Kartan and Barai posted over 50 ads to recruit domestic workers from overseas. In advertisements seeking workers on the internet and India-based newspapers, the defendants made false claims regarding paying for airfare, providing separate private accommodations and the wages and the duties of employment. They subsequently hired workers from overseas to perform domestic labor in their home in Stockton, California. Once the workers arrived at the defendants' Stockton residence, Kartan and Barai forced them to work 18 hours a day with limited rest and nourishment. Few of them were paid any wage. The defendants kept their domestic workers from leaving, and induced them to keep working for them, by threatening them, by creating an atmosphere of fear, control, and disempowerment, and at times by physically hitting or burning them.
- The defendants also threatened several other victims to coerce them to keep working, including by telling the victims they would report them to police or immigration authorities if they tried to leave. Throughout the victims' time in the defendants' home, they were deprived of sleep and food. The defendants subjected the victims to verbal abuse and harassment in an effort to intimidate them into continuing to provide labor and services.

### *Scalia, Secretary of Labor v. Munger Bros, LLC, Crown Cold Storage and Sarbanand Farms, LLC*

- After an investigation by the U.S. Department of Labor's Wage and Hour Division (WHD), Delano, California-based blueberry grower Munger Bros. LLC and two related companies will pay \$2.5 million in back wages to approximately 3,000 workers to resolve violations of the H-2A visa program and the Migrant and Seasonal Worker Protection Act (MSPA)
- Complaint filed November 18, 2019 alleging *inter alia* defendants' violations in the recruiting and hiring of hundreds of farm workers to pick blueberries, many of whom were temporary workers hired under the H-2A visa program through the use of farm labor contractors who failed to provide the workers with employment contracts in a timely manner and to include required disclosures about wages and working conditions.
- Under the [consent judgment](#) entered in the U.S. District Court for the Eastern District of California in 2019, Munger Bros. and the two related companies, which are under the grower's control, are enjoined for three years from participating in the H-2A program and from using the services of H-2A labor contractors.
- Defendants are alleged to have further failed to: 1) pay all wages due; 2) provide the workers with safe housing as the housing was infested with bed bugs, inoperable toilets, windows with metal bars, and inoperable smoke alarms; 3) and provide safe transportation.

### *Matter of: Fernandez Farms Inc. and Gonzalo Fernandez*

- 400+ workers recruited to pick strawberries on H-2A visas. The employer also required each temporary worker to kickback more than \$1,600 from their earnings per season, allegedly to cover administrative costs of the program, in direct violation of H-2A program rules.
- Charged as much as \$1,750 per season for visa and recruiting fees; on the job, they were not paid the promised rate, or even the legally required wage; charged for housing that should have been free under the H-2A program; not given copies of their contracts; and the employer threatened them, made them hide when investigators were on site, and forced them to lie rather than report violations of their rights to investigators;
- Fernandez Farms and its president Gonzalo Fernandez must pay more than \$1.1 million in back wages to both domestic and immigrant workers for wage theft, intimidation of workers and disregard of the visa program, \$2.4 million in back wages and penalties for abusing the H-2A visa program
- Fernandez and his company are barred from the visa program for 3 years

### *Saramiento v. Fresh Harvest, Inc., 20-cv-07974-BLF (N.D. Cal. Mar. 10, 2022)*

- The case involves wage and benefits claims by both a domestic truck driver and an H-2A visa holder performing the same work against a farm labor contractor and the company it supplied with truck drivers to transport the company's farm produce.
- The rationale of this decision denying the defendants' motion for summary judgment involved an examination of the factors establishing a "co-employer" relationship between the two defendants such that the labor contractor could be held liable for labor code violations not only for the H-2A worker it hired and provided to the company but also for those suffered by the domestic worker hired directly by the company. The court concluded that there was sufficient evidence of this relationship to send the matter to trial (at 19-20).
- **The case is instructive on two points: (1) it reveals the extensive cooperation between labor contractors and companies for whom they provide workers in recruiting and managing both**

**domestic and H-2A workers and the arguments the contractors offer to absolve themselves of legal responsibility for labor violations once the guest worker begins employment (The company “went through the process of applying for and directly employing some H-2A truck drivers that had previously been provided by the [labor contractor] following the Department of Labor’s rejection of [the labor contractor’s] H-2A job orders”( at 10)) and (2) in voiding a summary judgment in the labor contractor’s favor regarding the H-2A worker’s claim, the analysis reveals the pressure tactics contractors will use to silence workers and avoid punishment for labor violations (at 13)**

**Martinez-Gonzalez v. Elkhorn Packing Co., 635 F. Supp. 3d 883 (N.D. Cal. 2022).**

- This case upheld a contract containing an arbitration clause inserted into an employment agreement by a labor contractor that was only provided to an H-2A worker upon his arrival in California after he began working and under rushed circumstances. Nonetheless, the 9<sup>th</sup> Circuit held that there was no duress or undue influence, and the agreement was valid.
- The labor contractor involved in the earlier case successfully invoked the doctrine of equitable estoppel as a non-signatory to the arbitration agreement held valid in the prior 9<sup>th</sup> Circuit decision. *See Franklin v. Cmty. Reg'l Med. Ctr., 998 F.3d 867, 874-75* (9th Cir. 2021)” cited at 895. The court held that plaintiff’s allegations of fraud by the labor contractor raised to invalidate the arbitration agreement were not properly preserved during the bench trial (at 892).

**For questions regarding the data and information contained in these reports please contact the Sunita Jain Anti-Trafficking Initiative at Loyola Law School:**

Stephanie Richard, Esq.  
Policy Director  
[Stephanie.Richard@lls.edu](mailto:Stephanie.Richard@lls.edu)  
213.375.8377

Aradhana Tiwari, Esq.  
Senior Policy Counsel  
[Aradhana.Tiwari@lls.edu](mailto:Aradhana.Tiwari@lls.edu)  
213.736.8377

