

Regional Report

June 2010

Immigrant Workers in US Agriculture: The Role of Labor Brokers in Vulnerability to Forced Labor



HELP WANTED:

Hiring, Human Trafficking
And Modern-Day Slavery in
The Global Economy

A Verité Research and Advocacy Initiative

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This initiative is being conducted under the supervision of Dan Viederman, Executive Director; Shawn MacDonald, Project Director; and Erin Klett, Project Manager.

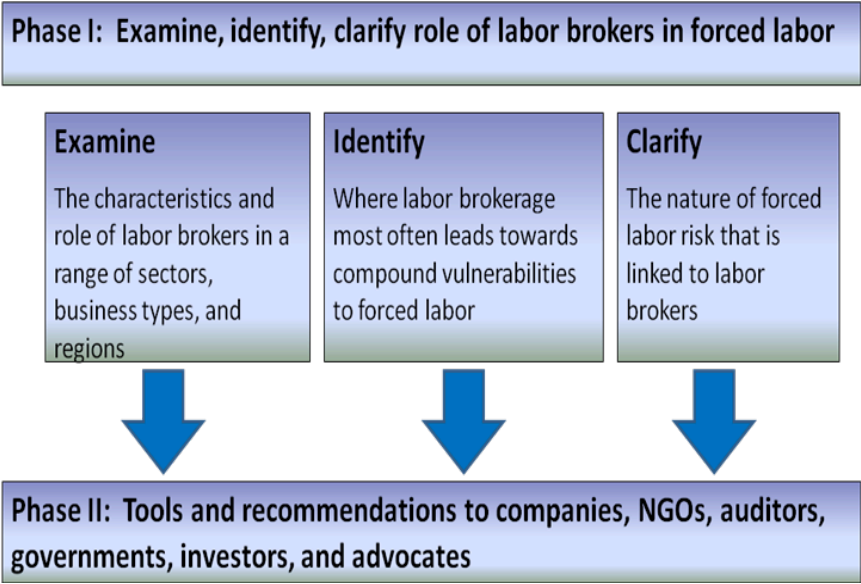
The U.S. team was led by Verité’s Research Manager, Quinn Kepes. Natali Kepes helped conduct U.S.-based interviews with Guatemalan and Mexican workers and served as translator of interview instruments and research findings. Lourdes Saenz conducted the desk and field research in Mexico. In Guatemala, Ana Lucia Fuentes from the NGO COVERCO (Commission for the Verification of Codes of Conduct) carried out desk and field research, supported by Aroldo Palacios on the legal analysis. Owen Thompson collaborated with Verité on the Global Horizons case study.

The U.S. research also benefited from the input of countless local NGOs and worker advocates who generously shared time and expertise. The full list of these NGOs can be found in the appendix of the U.S. report.

Bettina Brunner performed background research and assisted in analyzing and writing up field results. Julie Sobkowitz Brown managed the design and layout of the reports.

ABOUT THIS INITIATIVE

This regional research report is a product of Phase I of a multiphase Verité initiative that aims to clarify, publicize, and reduce the risks of exploitation associated with global labor broker practices, as shown below.



In Phase I, in-depth field research conducted over the course of 2009 examined several migration patterns, including:

- Indian workers (often children) migrating into domestic apparel production, and Indian adults migrating to the Middle East for work in manufacturing, infrastructure and construction;
- Philippine, Nepalese and Indonesian workers migrating into IT manufacturing in Taiwan and Malaysia; and
- Thai, Mexican, and Guatemalan workers migrating for work in the U.S. agricultural sector.

These diverse locales and populations were intended to provide a variety of representational settings to explore the range of structures by which migrant contract workers are brought into situations of forced labor, and the specific role that labor brokers play.

Phase II of the project will provide concrete approaches for the private sector, civil society, government institutions, and investors to address key leverage points and reduce the incidence of modern-day slavery. These approaches will include a primer, toolkit and policy brief on the intersections between labor brokerage, human trafficking and forced labor. Sign up on Verité’s webpage to receive updates on project outputs and activities.

LIST OF ACRONYMS

DOL	Department of Labor
EEOCC	US Equal Employment Opportunity Commission
FLC	Farm Labor Contractor
FLOC	Farm Labor Organizing Committee
FLSA	Fair Labor Standards Act
GAO	Government Accounting Office
ICE	Immigration and Customs Enforcement
INA	Immigration and Nationality Act
IRCA	Immigration Reform and Control Act
MSPA	Migrant and Seasonal Agricultural Workers Protection Act
NCGA	North Carolina Growers Association
NLRA	National Labor Relations Act
RICO	Racketeer Influenced and Corrupt Organizations Act
STPS	Mexican Secretary of Labor and Social Provision
TVPA	Trafficking Victim's Protection Act
WRA	Western Range Association

INTRODUCTION

Forced labor is a well-known phenomenon in agriculture in the United States; and labor brokers are key actors in the system, both for documented and undocumented workers.

The primary mechanism for entrapping workers in situations of forced labor in US agriculture is the facilitation of grave indebtedness prior to arrival in the United States. As this report will elaborate, labor experts and workers interviewed by Verité have reported brokerage fees ranging from USD 3,000-27,000 among workers coming in legally on H-2A and H-2B guestworker visas. Interest rates can be usurious, reaching up to 20 percent monthly. Brokers or moneylenders affiliated with brokers sometimes hold workers' titles to land or other valuables as collateral. Once in the United States, workers can be threatened with deportation, blacklisting, confiscation of land, and violence against themselves and their families if they complain.

The brokers themselves can be large or small; and workers on temporary guestworker visas seem more vulnerable to falling prey to forced labor schemes than undocumented workers.

The legal route into the United States for temporary work is the H-2 program. This report focuses explicitly on H-2A visas, under which workers labor specifically in agriculture; and H-2B visas, under which workers may work in a wide range of “nonagricultural” professions, including some very much akin to agriculture, such as forestry, and produce, meat, and fish packing. The H-2 program is widely criticized by worker advocates for lacking adequate protections for work, health, and housing; legalizing the payment of subminimum wages; and – because workers are, for practical purposes, bound to work for one or more employers – entrapping workers at specified worksites for the duration of their stay in the United States.

H-2B visas are subject to significantly less oversight and protections than H-2A visas. In fact, the US Department of Labor has stated that it has no authority to enforce labor law among H-2B visa holders.¹ Many H-2B visa holders face especially egregious violations, including in some cases, huge salary deductions (in one documented case, a worker's salary was reduced to 13 cents per hour). This in turn makes it virtually impossible to pay back loans, thereby perpetuating the cycle of debt bondage.² Verité has found evidence of workers being brought in on these more lenient H-2B visas and then illegally trafficked into work in agriculture. In some cases workers on H-2B visas are actually “sold” to agricultural employers – a system reminiscent of chattel slavery.³

Undocumented workers are also vulnerable to forced labor in US agriculture. These workers, the vast majority of whom are from Latin America, are typically smuggled or trafficked over the border with Mexico by *coyotes*, who are in some cases also their labor brokers or employers. Because of their undocumented status, these workers are by nature vulnerable to abusive labor practices and forced labor. In some egregious cases, *coyotes* hold workers hostage either until their families pay additional money or until they provide a certain amount of labor.

This report offers findings from research on the US agricultural sector as a whole, as well as four in-depth case studies. The four cases were selected to capture the primary broker mechanisms present in US agriculture; while at the same time providing diversity of geographic location, type of good produced, visa status, and origin of workers. These case studies include:

- a) The case of Moises and Maria Rodriguez, in which undocumented Mexican workers in traditional agriculture experienced labor abuses from a small labor broker tied to a coyote that brought them into the United States. The workers were laboring on an organic fruit and vegetable farm in northern Colorado. This case illustrates the forced-labor implications of ties between labor brokers and coyotes and of labor brokers acting as moneylenders for workers who need to borrow money to pay smuggling fees. In this case, the undocumented workers who came to the farm via the labor broker were in conditions of de facto

enslavement; whereas the undocumented workers who were directly employed by the grower labored under relatively good conditions.

- b) The Imperial Nurseries case, in which workers from Guatemala were brought in on H-2B visas by a labor broker (Pro Tree Forestry Services) to work for one of the largest plant nurseries (Imperial) in the Northeast. This case demonstrates that there can be good and bad brokers; and illustrates some of the “tipping points” for when brokering creates forced labor. It shows the ways in which the H-2B program itself creates vulnerability to forced labor and incentivizes the trafficking of workers on H-2B visas into sectors outside of that guestworker program (such as traditional agriculture). This case also demonstrates the ways in which H-2B workers, especially those that work under labor contractors, are more vulnerable to forced labor than undocumented workers, especially those that work directly for the employer.
- c) The Global Horizons case, in which H-2A workers from Thailand were trafficked to states across the United States to work in traditional agriculture. This case study shows the ways in which exploitive labor brokerage can become institutionalized in a large, formal, international firm operating in the first world, affecting over a thousand workers in this case. This case entailed extremely high levels of debt, with possible links between the international brokerage firm and moneylenders/recruiters in Thailand. Some workers lost their ancestral property due to their inability to pay back loans. Workers were treated very similarly in many states and in different types of agriculture, with the key factor contributing to their forced labor being the involvement of the Global Horizons brokerage firm, not only in their recruitment, but also in the management of their labor.
- d) The case of cattle/sheep herding guestworkers in the western United States, in which the employers, not the labor broker, directly subjected workers to forced labor. This case study shows the ways in which exploitive regulations created the vulnerability to forced labor of these workers, which was exploited by unscrupulous employers. The special provisions for H-2A shepherders, which were written in coordination with the Western Range Association (WRA)⁴, also create vulnerability by allowing workers to be on call 24 hours per day and to be brought in for up to three years at a time. In this case, workers’ extreme social and geographical isolation made their escape almost impossible and the employers used threats of deportation and violence to keep workers enslaved. The WRA creates vulnerability through the use of one exploitive recruiter in Peru and one in Chile, the alleged blacklisting of workers who complained, or the dismissal of these workers and their family members, resulting in their inability to pay back debt.

Based on fieldwork and a literature review, Verité posits the following insights regarding labor brokers and the H-2 guestworker system in the United States:

- The greatest opportunity for forced labor occurs when the labor broker is also the money lender or manages the workers in the United States.
- In many cases, undocumented workers in fact enjoy greater freedom of movement and better pay than legal H-2 visa holders, since undocumented workers can, in most cases, walk away from an abusive employer.
- Some labor brokers in the United States, such as the Western Range Association, are unusually powerful, which leads to inconsistent US regulations that strongly favor employers and lead to labor abuses, for example, in forestry and cattle and sheepherding.
- Using isolation as a parameter for forced labor requires a broader interpretation than is currently used. Workers can be isolated not only physically, but also by language, through threats, and also through psychological games played by labor brokers to keep workers in line.
- The threat of deportation cannot be underestimated as a coercive tool for guestworkers, since most have incurred extensive debt to moneylenders in their home countries with no way to repay it unless they remain working in the United States.
- To date, sending country and US governments have not shared available information regarding exploitative labor brokers abroad, which could greatly facilitate a more honest and equitable approach to migrant worker issues.

- The number of labor inspectors in the United States is inadequate, leading to a lack of oversight, particularly for the H-2B program.
- The separate agendas of US immigration and labor officials have tended to penalize farmworkers to the benefit of exploitative farm labor contractors. This can be seen in the inability of labor officials to enforce laws regarding H-2 workers and the emphasis on penalizing illegal workers, which has resulted in an erosion of trust in US law enforcement among the migrant worker community and a greater vulnerability for forced labor.
- The involvement of drug traffickers in the human smuggling business has made border crossing much more dangerous and expensive for undocumented workers, with greater risk of human trafficking and sexual exploitation.
- Employers demonstrate a low level of awareness of signs of forced labor among H-2 visa holders who work for a labor broker on their farms. Deeply felt family obligations (including the need to continue to send remittances to relatives in the country of origin) and lack of access to the federal social safety net often force immigrant workers to go to extraordinary lengths to remain employed, or to find new employment quickly. This pushes workers into dangerous working conditions.

Section 1 of this report highlights the geography of production in the United States for agricultural products, forestry, and sheep, and examines major stakeholders' understanding of the problem. Section 2 provides an overview of the types of US migrant workers by legal status, type of visa, type of product, and country of origin; and the seasonality of work flows. In Section 3, the broker's role in the supply chain is highlighted, along with common broker practices. Section 4 provides an overview of the legal and regulatory environment for seasonal workers, and Section 5 shows the paths of entrapment and forced labor in recruitment, hiring, and transportation. Section 6 discusses on the job mechanisms of coercion and subjugation, while Section 7 provides four case studies which highlight specific labor broker profiles. Case studies, based on original Verité research, then highlight different types of broker-, employer-, and worker arrangements to pinpoint vulnerabilities to forced labor in the recruitment, hiring and employment system.

RATIONALE AND METHODOLOGY

Research findings were conceptualized and organized according to three main categories: Setting, Employment Lifecycle, and Conclusions (Risks and Root Causes). Researchers explored these topics in rough chronological order, since one naturally leads to the next.

- *Setting* seeks to establish a foundation of knowledge of the sector and workforce under study, as well as the legal and regulatory context for the work. This aspect of the research focused particularly on aspects of the Setting that constitute preconditions for vulnerabilities to forced labor.
- *The Employment Lifecycle* seeks to situate the role of labor brokers vis-a-vis the different stages in the job cycle; mapping how the various stakeholders (brokers, employers, and workers) interact and the circumstances under which a route into forced labor is paved, and exploring the points in the job cycle in which vulnerability peaks and that are well-suited for policy interventions.
- *Conclusions* synthesizes the research on the Setting and Employment Lifecycle and, using the role of labor brokers as a lens and a potential intervention point, articulates some of the root causes of forced labor and the risks of forced labor entailed in various supply chain practices. The ultimate goal is to define the mechanisms and circumstances of labor brokerage that can potentially bind, trap, or enslave a worker.

Researchers began with desk research and targeted expert consultations, to establish background knowledge and approach. Verité's US research team then focused its qualitative research efforts on four instances of forced labor that were already uncovered and in which court cases were brought against the traffickers and/or employers. This method of case selection provided opportunities to:

- engage with workers who are already protected by T visas,⁵ and thus more likely to feel comfortable sharing their full experiences;
- benefit from research already performed by US prosecutors and legal services organizations, using it as a starting point for deeper and more targeted analysis;
- examine and evaluate the various ways in which current US law can and cannot be used to protect foreign workers from enslavement on US soil; and
- explore with employers the ways in which they were and were not aware of the potential for forced labor on their premises.⁶

Looking at previously uncovered cases also made it possible to trace the particular paths of these workers back to the villages from which they came, so that the complete path of trafficking and exploitation could be elucidated and understood.

As background for these four cases and on issues of immigrant workers in US agriculture more generally, the research team conducted expert consultations with over 50 representatives of worker advocacy organizations, universities, and government agencies in the United States, Guatemala, and Mexico. The research team additionally conducted a set of qualitative interviews with workers, employers, and brokers for three of the four cases. The specific research approach for each case is described below.

Case 1: Moises and Maria Rodriguez. Interviews – both structured and semi-structured – were conducted in Brighton, Denver, and Wellington, Colorado; and in Monterrey, Nogales, Sonora, Queretaro, and Tlapa Mexico. Eighteen undocumented farmworkers were interviewed in the United States; and 21 in Mexico. The employer of Grant Family Farms was interviewed; as were several representatives of nonprofit worker advocacy groups and government representatives located in the United States and Mexico that were either associated directly with the Rodriguez case or with issues of undocumented workers in agriculture more generally.

Case 2: Imperial Nurseries and Pro Tree Forestry Services. Research for this case entailed both structured and semi-structured interviews with workers, which were conducted in Hartford, Connecticut; Bremerton, Washington; and Todos Santos, Huehuetenango, Guatemala; as well as consultations with a range of stakeholders associated with the case. Imperial Nurseries, the employer, originally accepted but then later declined an interview with Verité. In all, 15 H-2B forestry workers were interviewed in Guatemala, and two Guatemalan workers specifically associated with the Pro Tree Forestry Services case were interviewed in the United States. Additional interviews were conducted with a Guatemalan *raitero* (worker transporter), and with five undocumented secondary forestry workers.

Case 3: Global Horizons. For this case, Verité originally anticipated conducting primary interviews with victims both here in the United States and in Thailand, as well as with Global Horizons and the Thai labor broker if possible, employers, and worker advocates both here and in Thailand. However, in the summer of 2009, the US government reopened its investigation associated with a federal class action lawsuit against Global Horizons initiated in 2007. In light of the reopened investigation, Verité made the decision not to contact victims of the case so as to be sure not to compromise any participation in the class action lawsuit; and so as not to create any confusion about the case or raise expectations regarding settlement. Instead, Verité relied for this case on extensive consultation with a former employee of Farmworker Legal Services of New York, which assisted some of the Thai workers employed by Global Horizons; targeted consultation with the Thai CDC; and a review and distillation of the secondary literature and court case documents on Global Horizons.

Case 4: The Western Range Association and Sheep and Cattle Herding in the Western United States. Research entailed structured and semi-structured interviews with workers and worker advocates. One Chilean former H-2A sheepherder, two Chilean former H-2A cattle herders, and one undocumented Mexican ex-cattle herder were interviewed in various locations in the United States (locations not divulged to protect informants). Interviews were also conducted with three lawyers who represented cattle and sheepherders in cases against exploitive employers. In addition, experts who have worked with and written about sheep and cattle herders were interviewed over the phone.

See the appendix for further elucidation of the types of individuals interviewed and their location during the research phase.

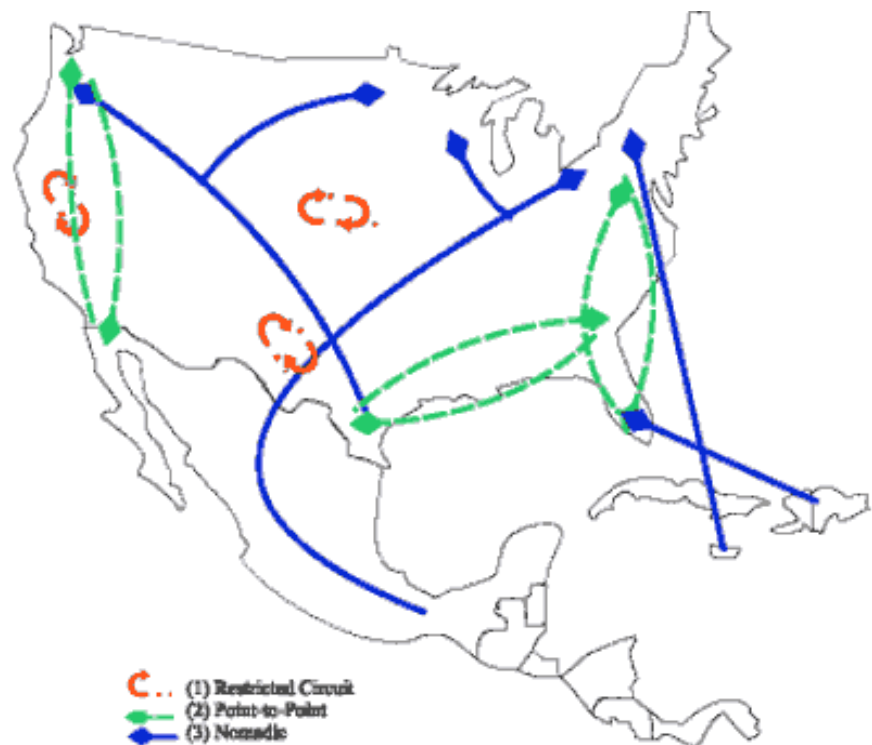
THE SETTING

The Sector

The agricultural sector has changed dramatically since World War II. In 1950, roughly 10 million workers were employed on farms and ranches, but by 1969 this figure had plummeted to about 3 million. By the early 2000s, there were less than 1 million farmworkers.⁷ This decrease was the result of the trend toward fewer and larger agricultural enterprises and the increasing use of technology on farms. One result of increasing concentration of production among very large farming enterprises has been the switch from family labor to the increased use of temporary workers. In the early 2000s, roughly 20 percent of all farms relied on contract labor, a considerable increase from 1980, when only about two percent did.⁸

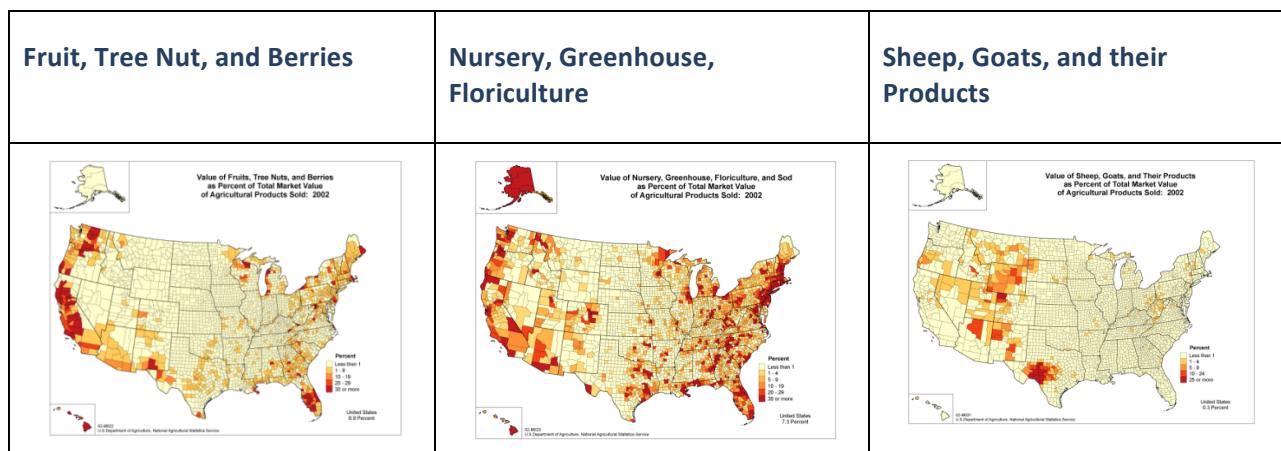
For decades, farmwork in the United States, including crop planting and harvesting, livestock management, and tree planting, has been performed by documented and undocumented workers, mainly from Latin America. This trend came about for many reasons. **Growing concentration of production in a handful of large and highly integrated firms has significantly altered the relationship between labor and management, and weakening job stability and benefits have facilitated the recruitment of immigrant labor.**⁹

Farming companies usually operate in nonmetropolitan counties to reduce transportation costs and associated risks to livestock. This has reduced the attractiveness of these jobs for native workers and created a demand for labor that often cannot be met in rural areas, given prevailing wages. Finally, the seasonal nature, physical demands, and work conditions of farm work relative to other employment with comparable wages, have led to high employee turnover rates that have helped to encourage labor recruitment practices focused on Latinos, particularly immigrants.¹⁰



Location of Activity

Agricultural production is grouped by climate and product type into distinct areas. As the map below to the left shows, fruit, tree nut, and berry production is found in California, Florida, Oregon, Washington, and parts of the Southwest.¹¹ Nursery, greenhouse, floriculture, and sod has a larger range, although the greatest activity is found up and down the two coasts, as seen in the middle map.¹² In contrast to these industries, sheepherding is concentrated in the interior western states and Texas, as shown in the map on the following page.¹³



Seasonality

Agriculture

In agriculture, the growing season is determined by climate and crop selection. Temperature, daylight hours, and rainfall influence the growing season in the United States, which is generally considered the period between the first and last frost, or roughly May to October.

Since different products have distinct growing seasons, migrant farmworkers can find work by traveling throughout a season within a relatively small geographic area, such as in the Central Valley in California or in the El Paso/Las Cruces/Ciudad Juarez area. Migrants may travel to the same place or a series of places along a route during the course of a season. These people tend to live in home base areas in Florida, Texas, Mexico, Puerto Rico, or California and travel for part of the year working in agriculture. The routes marked by the dotted arrow on the map show some of the routes that people travel during the growing season.¹⁴

Forestry

The forest season starts in November on corporate pine plantations in the South, and winds down around February or March. By April, the forestry workers, called *pineros*, migrate to the forests of the mountain west.¹⁵ Other forestry workers go to Maine in late spring or early summer, to Mississippi in October, and to North Carolina in December.¹⁶

Sheep and cattle herding

In the spring and summer months, most sheepherders graze their flock—typically consisting of 750 to 1,250 sheep—in high pastures. From November to March, during the “lambing season” when new lambs are born, herders return to the ranch to assist in lambing and to facilitate the shearing and slaughter of selected sheep.¹⁷ Generally, workers are contracted to work as sheep and cattle herders year-round.

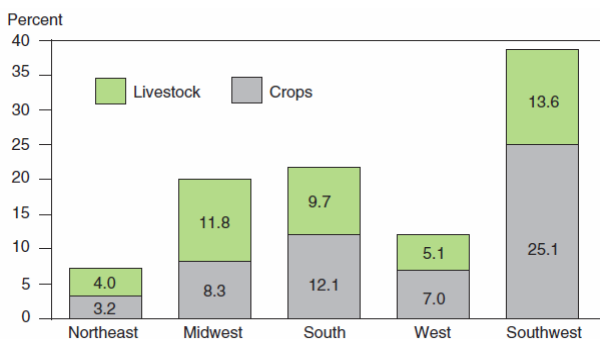
In a 2005 US Department of Labor farmworker survey, the majority of workers (60 percent) said that their current job was seasonal; 25 percent said they worked year-round with their current employer, and 15 percent were unsure. Among those who had been with their current employer for one year or less, 42 percent did not know if their farm job would be year-round or seasonal. Workers employed by farm labor contractors were 72 percent more likely than those hired directly by growers and 57 percent more likely than those hired by packing houses to say that their current job was seasonal.¹⁸

The Workforce

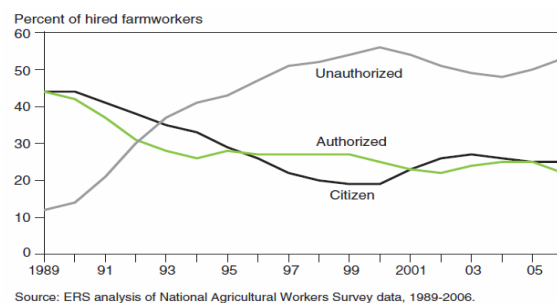
The US Public Health Service estimates a total of 3.5 million migrant and seasonal farmworkers in the United States, most earning annual incomes below the poverty level, and half earning below USD 7,500 per year.¹⁹ According to a 2006 US Department of Agriculture report, about 56 percent of all hired farmworkers worked in crops and 44 percent worked in livestock. Most hired crop farmworkers are located disproportionately in the Southwest, with California and Texas accounting for almost a third of the USD 22 billion spent on hired and contract farm labor in the United States in 2002.²⁰ The Midwest and Southwest have the largest number of hired livestock farmworkers, as shown in the table at left below. From 1989- 2006, undocumented farmworkers represented the largest and fastest growing segment of farmworkers. (See chart below.)

Hired US farmworkers by region and product type, 2006

Note: The sum of all figures equals 100 percent.



Legal status of hired crop farmworkers, 1989-2006



Estimates put the number of undocumented workers in all professions in the United States at more than twelve million. In 2008, the Department of Homeland Security (DHS) estimated that 27 to 57 percent of America's undocumented population is made up of visa overstays.²¹

Nearly 60 percent of undocumented workers in the United States are migrant workers from Mexico. Approximately 74 percent of undocumented Mexican workers are aged 30 or younger, compared to the 44 percent of non-Hispanic whites who are 30 or younger. The US Department of Labor reports that indigenous migrants are a rapidly growing population in the United States, now making up 17 percent of the country's total farmworkers. Some states have even higher percentages, such as California (30 percent), and Washington (25 percent). These indigenous peoples are the Native peoples of Mexico and Guatemala, whose ancestors lived in the Americas before European colonization. Many have limited Spanish language ability and their customs differ greatly from non-indigenous people in their home countries and from those in the United States.

From 2005-2007, unauthorized Mexico-born crop workers comprised 52 percent of all hired crop workers. While these unauthorized Mexico-born crop workers were employed in all crop categories, 44 percent were concentrated in fruit and nut crops.²²

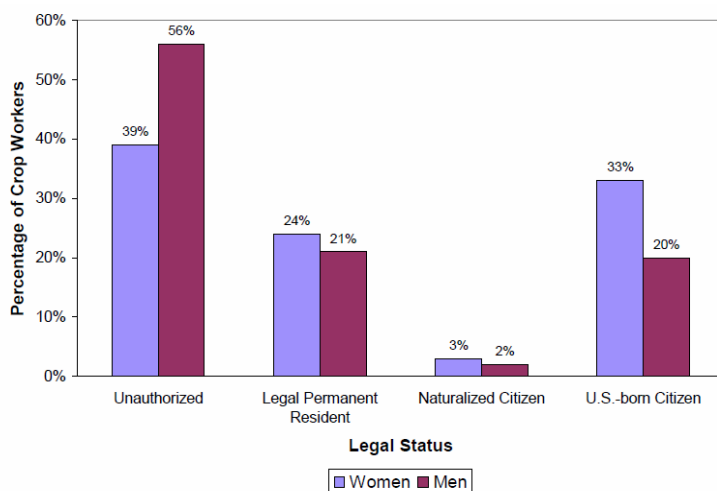
An important trend in the past ten years is the shift of the Hispanic population away from its traditional base in the Southwest into the nonmetropolitan Midwest and Southeast. This was caused by several factors. Increased US border enforcement at well-established crossing points caused new migrants to cross farther east along the Mexico-US border into more remote regions of the Midwest and Southeast. US Border policy has made it riskier

to cross the border, prompting many migrants to extend their stays in the United States to recoup their investment.²³

A significant deterioration in immigrant employment rates can be observed among Mexicans and Central Americans in the United States in the past two years due to the economic crisis. In most cases, immigrants are more likely to be fired first. The unemployment rate in the United States among Mexican and Central American immigrants rose from 4.7 percent to 11.1 percent between July 2007 and July 2009. At the same time, evidence from United States and Mexican population surveys showed a recent steep decline in the number of Mexicans immigrating to the United States. While there has been a drop in illegal immigration, legal immigration levels have remained largely unchanged. However, worsened economic prospects at home, increased border enforcement, and the presence of social networks that unauthorized immigrants can tap into during hard times are causing many migrants to stay put in the United States.

Farmworker Profile

In 2001-2002, among all crop workers, 79 percent were male, and men were more likely than women to be unauthorized (56 percent vs. 39 percent). Fifty-eight percent were married, and 51 percent were parents, with an average of two children. The majority (81 percent) of all crop workers reported that Spanish was their native language. Forty-four percent reported that they could not speak English “at all”; 53 percent said that they could not read English “at all.” On average, the highest grade completed was seventh grade.²⁴



Mexico-born crop workers, the largest category of US migrant crop workers, were from almost every state of their native country. The largest share (46 percent) was from the traditional sending states of west central Mexico: Guanajuato, Jalisco, and Michoacan. However, an increasing share was from nontraditional Southern states such as Guerrero, Oaxaca, Chiapas, Puebla, Morelos and Veracruz.²⁵

Guatemalan immigrants also constitute a large percentage of farmworkers. They are mainly recruited from Huehuetenango, a poor region where many indigenous people live. Often illiterate, many speak Spanish as their second language, with varying degrees of proficiency. They generally work as subsistence farmers and have virtually no opportunity to earn wages in rural Guatemala.²⁶

According to Verité's research, few Asians work in US agriculture legally.²⁷ Furthermore, the vast majority of cases of forced labor among Asian workers in the United States occur in domestic work, garment manufacturing, sex work, and hotels.²⁸ However, there have been cases of Thai guestworkers subjected to forced labor in agriculture, which are discussed in the case study section below.

Turning to sheepherding, over 2,100 foreign sheepherders work for American ranchers, and they are overwhelmingly male. Sheepherders are almost all from central Peru—with a few exceptions from Chile, Mexico, and Mongolia.²⁹ Interviews indicate that the H-2B workforce for cattle herding is primarily comprised of Chilean and Peruvian immigrants, with a smattering of undocumented Mexican workers.

The Guestworker Program

The US Department of Labor issues labor certifications for skilled and unskilled temporary employment under several non-immigrant programs including the H-1 specialty professional worker program, K1 fiancée visa, B1 athlete visa, Domestic Employees' J Au Pair Visa, and H-3 worker training visa.³⁰ This report focuses on the H-2 visa programs for unskilled seasonal guestworkers.

In 2008, the total number of temporary non-immigrant workers in the United States for agricultural and non-agricultural work was 277,721, a small fraction of the total migrant agricultural workforce of 3.5 million. About ninety percent of all guestworkers hail from Latin American countries and three-fourths are from Mexico.

First authorized by the US Immigration and Nationality Act (INA) of 1952, and modified by the Immigration and Control Act (IRCA) of 1986, the unskilled seasonal guestworker program is composed of the H-2A and H-2B programs.³¹ Before 1986, agricultural and non-agricultural workers were both classified as H-2 workers with Congress drawing no distinction between the two. The H-2 program was derived from the *Braceros* program which brought Mexican workers to work in the United States in the 1940s. The H-2 program was later divided into H-2A visas for temporary agricultural workers and H-2B visas for temporary “non-agricultural” workers. The legal protections from the *Braceros* workers were passed on to H-2A workers, including the right to the highest wage in the sector from the prevailing wage, adverse wage rate, or minimum wage; a right to employer-provided transportation and housing; the right to free, federally funded legal services; health and safety protections, and enforcement of these protections by the US Department of Labor. However, H-2B workers only have the right to the prevailing wage, which is the average wage in the sector, taking into account wages of undocumented workers (see chart below).³²



Huehuetenango, Guatemala, where many migrant farmworkers originate

An unexpected consequence of IRCA was an increase in the use of labor brokers/farm labor contractors (FLCs), to evade penalties levied via IRCA on employers who knowingly hired undocumented workers.³³ At the same time, by requiring that employers demand citizenship or legal residence papers of their employees, IRCA also fostered the industry of counterfeit citizenship and residency documents in the United States.

Key differences between the H-2A and H-2B programs are indicated below.

GUESTWORKER VISA PROGRAMS AT GLANCE		
	H-2A	H-2B
Quota/year	No limit	66,000 + those returning from the previous year
Number Admitted in 2008	173,103	104,618
Main industries	Agro business	Forestry
Main sending Countries (2008)	Mexico, Jamaica, South Africa, Peru, Guatemala	Mexico, Jamaica, Philip pines, Guatemala, Romania
Main receiving states	Arkansas; California; Louisiana; Florida; Georgia; Kentucky; New York; North Carolina. ³⁴	Texas, Florida, Louisiana, Colorado, Virginia, and Maryland
Travel to and from	Yes, after 50 percent of work contract period,	Not required

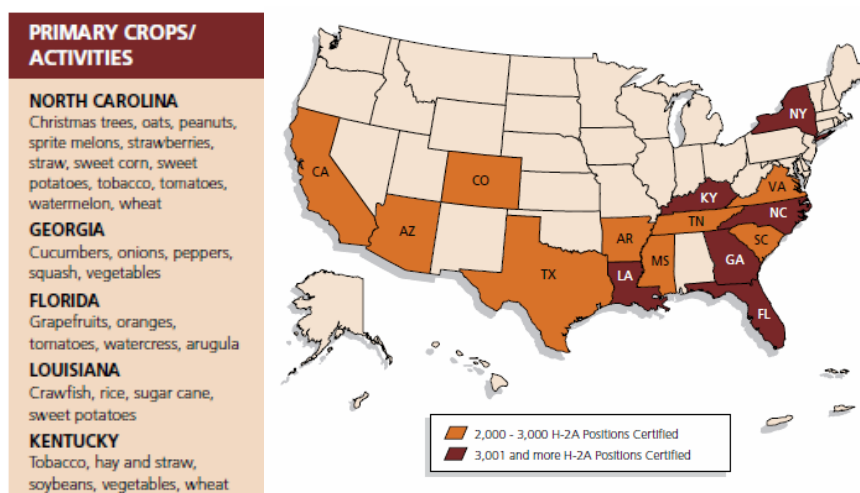
US paid by employer	employer must reimburse workers for transport	
Exceptions	Employers are not required to pay shepherders and cattle herders the prevailing wage	Tree Planter, Forest Planters, Forestry Workers and Laborers, and Brush Clearers are considered non-agricultural workers
Government fees for employer	A USD 100 fee charged to employer granted temporary foreign agricultural labor certification, plus USD 10 for each job opportunity certified, up to a maximum fee of USD 1,000 for each certification granted.	I-29 Filing Fee: USD 320; Anti-Fraud fee: USD 150, Expedited USCIS processing fee: USD 1,000 ³⁵
Duration of visa	1 year or less, but work must be seasonal in nature	1 year, renewable up to 3 years
Wages	Must be paid the same as US workers (whichever is higher among applicable adverse effect wage, prevailing wage, and state or local minimum wage)	Must be paid "prevailing wage", which varies by location and occupation. Employees paid on a piece rate basis are guaranteed the required hourly wage rate per pay period.
Lodging, travel to worksite paid by employer	Yes	Not required
Meals paid by employer	Three meals daily, or furnish free and convenient cooking and kitchen facilities for workers to prepare their own meals	Not required
Health insurance?	Workman's compensation insurance if applicable by state law or equivocal insurance for all workers.	Not required
Provision for US worker priority	50 percent rule says employer must hire any qualified US worker up to the time when 50 percent of the contract period has elapsed.	Job must be listed in US newspaper for 10 days prior to employer certification in the H-2B program. Employer cannot begin recruitment more than 120 days prior to needed employment.
Provisions for minimum number of hours	3/4ths Rule states that employer must guarantee employment for at least 75 percent of the working hours within the contract period and extensions. If less, employer must compensate the employee for the difference.	No requirement
Access to federally funded legal services	Yes, for matters related to employment as H-2A workers	No

THE H-2A PROGRAM

The H-2A agricultural guestworker program is the most exacting of the guestworker programs. Under this program, employers must engage in recruitment locally, regionally, and nationally; provide free housing and transportation reimbursement, and demonstrate that the work promised is actually provided to the worker. To safeguard US jobs, employers must also promise to hire any United States worker who presents him or herself for the job, until the work period is half over.

The major sending countries for the H-2A agricultural worker program in 2008 were Mexico (163,695), Jamaica (4,131), South Africa (1,285), Peru (846), and Guatemala (533). As the map below shows, states with the largest H-2A workforces in 2007 were North Carolina, Georgia, Florida, Louisiana, Kentucky, and New York.

States with more than 2,000 H-2A Certifications



In principle, the H-2A program provides legal protections for foreign farmworkers, but many of the protections are not enforced. H-2A workers must be paid wages that are the highest of: (a) the local labor market's "prevailing wage" for a particular crop, as determined by the DOL and state agencies; (b) the state or federal minimum wage; or (c) the "adverse effect wage rate." H-2A workers are also legally entitled to:

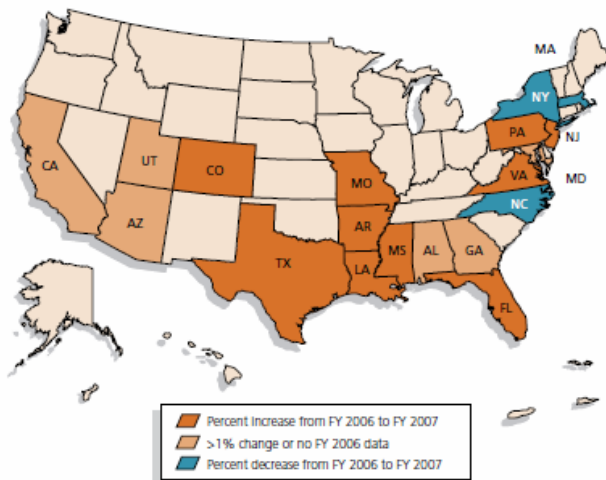
- ⇒ At least three-fourths of the total hours promised in the contract, known as the "three-quarters guarantee." (Note that full time is considered 30 hours per week.)
- ⇒ Free housing in good condition for the period of the contract.
- ⇒ Workers' compensation benefits for medical costs and payment for lost time from work.
- ⇒ Reimbursement for the cost of travel (airline or bus ticket and food) from the worker's home to the job once the worker finishes 50 percent of the contract period. If the guestworker stays on the job until the end of the contract the employer must also pay transportation home.
- ⇒ The same health and safety regulations as other workers.
- ⇒ Federally funded legal services for matters related to their employment as H-2A workers.³⁶

Sheep and cattle herders, who form a very small subset of all H-2A guestworkers, do not enjoy the same rights as other H-2A workers. Ranchers have successfully lobbied since the 1980s to gain exemptions from the prevailing wage requirements of the H-2A program, citing national competitiveness as the reason to pay guestworker sheep and cattle herders below minimum wage. In most cases, sheep and cattle workers are paid monthly and are not paid for the hours that they are "on-call."³⁷

The H-2B Program

The H-2B program is the nonagricultural temporary worker program typically used in the reforestation, landscaping, and hospitality industries, among others.³⁸ For the H-2B program, the major sending countries in 2008 were Mexico (74,938), Jamaica (8,765), the Philippines (3,686), Guatemala (3,275), and Romania (1,942). Mexico sends more H-2B workers to the United States than all other countries combined. Of these workers, a significant number are residents of the El Bajío region of Mexico, with a particular concentration in the State of Michoacán.³⁹

States with More Than 5,000 H-2B Certifications⁴⁰



The states with the largest amount of H-2B workers in 2007, shown on the map at left, were Texas, Florida, Louisiana, Colorado, Virginia, and Maryland, which had a total of over 9,000 positions certified. Laborer/Landscaper was the largest certified occupation for H-2B workers, followed by housekeeper, construction worker, groundskeeper, and dining room attendant.⁴¹

Under the H-2B program, most of the legal protections for H-2A workers do not apply, such as reimbursement for travel and lodging, medical insurance, and federally-funded legal assistance. Unlike the H-2A program, which requires employers to pay guestworkers the

same wage as US workers (whichever is higher among applicable adverse effect wage, prevailing wage, and state or local minimum wage), the H-2B program only requires employers to pay the prevailing wage, which in many cases is set by the employer.⁴² The H-2B visa also lacks the three-fourths guarantee that sets a limit on the lowest number of hours that an employer must guarantee a worker.

Since the procedures governing certification for the H-2B visa were established by an internal Department of Labor (DOL) memorandum instead of a federal regulation, the DOL has taken a hands-off policy to enforcement, saying it lacks any legal authority to enforce the labor law among H-2B workers.⁴³ Employers merely need to state to the DOL that the wage and other terms meet prevailing conditions in the industry.

Because the workers themselves, not the employers, absorb most of the costs associated with recruitment, employers often exaggerate their labor needs when seeking DOL approval to import workers. Because there is no “75 percent guarantee,” workers are given fewer hours than they were promised in many cases, making it extremely difficult for them to repay the loans they took out to cover the recruitment, visa, and transportation costs.

Los Pineros

Forestry workers from Mexico and Guatemala, called *pineros*, constitute the majority of forest labor on federal lands in the Pacific Northwest as well as in private tree plantations in the Southeast. *Pineros* receive no benefits and have little protection from labor violations. Contractors often illegally deduct transport costs and other expenses, thereby bringing wages below the stipulated minimum.

Of particular interest in the H-2B program is forestry workers, who have been classified as non-agricultural workers since 1986. Many American citizens, and even undocumented workers, do not want to work in forestry, as it is a dangerous and demanding job that offers low pay and only seasonal employment. Farm labor contractors (FLCs) have found that H-2B workers are more productive than US work crews because they spend more time planting and less time traveling, as they live at or near the worksite in many cases. FLCs also prefer H-2B workers because they risk raids by immigration authorities if they employ undocumented workers and it would be prohibitively expensive to employ US citizens. Therefore, most large labor contractors have turned to the H-2B program to recruit their workforce. This is evidenced by the fact that 41 percent of FLCs in forestry employ a workforce made up of over 75 percent H-2B workers, who comprised approximately 84 percent of forestry workers in 2005. The three largest hand tree-planting FLC’s in the Southeastern United States, which were responsible for over half of all tree planting in the Southeast, reported that all of their workers were H-2B workers.⁴⁴

New laws from January 2009 regarding the guestworker program were suspended by the Department of Labor as of June 29, 2009. These new laws had included a provision that allowed forestry workers to be classified as H-2A workers under the guestworker program. Suspension of the “new” rules will result in forestry workers once again being classified as H-2B workers. Also part of the “new” rules was a provision that made it mandatory for all employers to contractually forbid any labor contractor from accepting fees from an employee as a condition of employment.⁴⁵

A recent study comparing H-2B and undocumented forestry workers found that there is no real difference in the working conditions of undocumented immigrants and guestworkers—both groups face labor exploitation. However, guestworkers in the forest industry, many of whom have no previous work experience or access to social networks in the United States, face extreme isolation at worksites, are beholden to contractors, fear losing their jobs if they complain, and are generally unaware of their basic rights. By contrast, many undocumented forest workers belong to established social networks through which they are recruited onto forest labor crews.⁴⁶ Therefore, guestworkers, who are more isolated and are subject to deportation if they complain, are more vulnerable to forced labor.

Undocumented Workers

Undocumented farmworkers comprise more than half of the farm workforce.⁴⁸ Undocumented Mexican workers in 2007 comprised almost 60 percent of all unauthorized residents, followed by El Salvador, Guatemala, and the Philippines. Chinese undocumented immigration, widespread in the 1980s and early 1990s, leveled off at the turn of the 21st century. But once again an increased number of Chinese immigrants are entering the United States illegally, mainly through Mexico. According to a Chinese Press report, during the first five months of 2009, US immigration authorities arrested 969 undocumented Chinese immigrants, most of whom entered through southern Arizona.⁴⁹

Total Unauthorized Residents as of January 1, 2007 ⁴⁷	11,780,000
1. Mexico	6,980,000
2. El Salvador	540,000
3. Guatemala	500,000
4. Philippines	290,000
5. China	290,000
6. Honduras	280,000
7. Korea	230,000
8. India	220,000
9. Brazil	190,000
10. Ecuador	160,000

New US Strategy for Undocumented Workers

Previous attempts to control immigration have centered on criminalizing undocumented workers. For example, in 2008, the Bush administration began roundups of undocumented workers, including a high profile bust of 389 workers at a meat packing plant in Iowa. Two-thirds of the Iowa workers, who had fake social security numbers, were charged with felony identity theft, which carries a mandatory two-year jail sentence.⁵⁰

The Obama administration has recently outlined its draft strategy for decreasing illegal immigration. Enforcement will shift to criminalizing employers to deter them from hiring undocumented workers. In July 2009, Immigration and Customs Enforcement (ICE) began a “crackdown” on 650 employers of suspected undocumented workers.⁵¹ The new program provides immigration enforcement authority to participating state and local authorities. Another important development for undocumented workers was the May 2009 Supreme Court ruling that immigrants can no longer be charged with felony identity theft⁵² simply for using a fake social security card, since they did not knowingly use the identity of an actual person. This should decrease the number of undocumented workers in US prisons. Concerns with the new Obama policy are that it could lead to racial profiling by state and local authorities and erode the level of trust and cooperation between local police and immigrant communities. Further, although this new policy will reduce fear among undocumented immigrants, it could lead employers to increase hiring through labor brokers in order to reduce liability for failure to check workers’ immigration status.

Awareness of Forced Labor in the Farmworking Sector

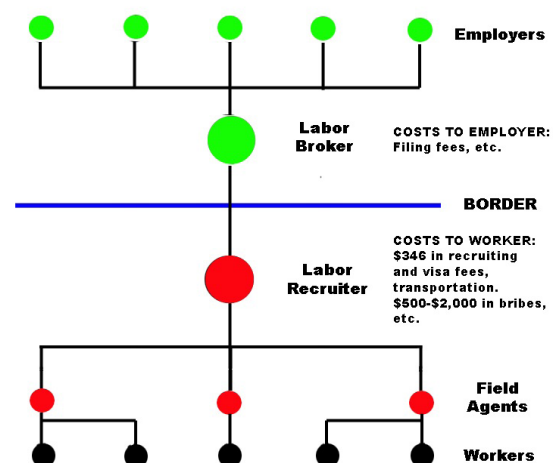
Brands and consumers have been, in general, unaware of the extent of forced labor involved in the farming sector due to lack of transparency. With private labeling, it is often difficult to track the producer down. Brands, for the most part, want to conform to US regulations, and may be unaware of labor abuses since they outsource to labor brokers. In several pending court cases, agricultural companies and their parent companies were unaware of the presence of forced labor in their operations because labor brokers were the ones that interfaced with the workers. For example, among the case studies in this report: Imperial Nurseries, one of the largest nurseries in the United States, purported to be appalled to hear that Pro Tree, its labor broker, was not paying its employees appropriately, because it paid Pro Tree enough to pay its employees a fair wage. Similarly, Andy Grant, supplier of Whole Foods, said he was shocked to be named in a lawsuit since his labor broker, Moises Rodriguez, handled all payment issues.

With the increased usage of **RICO** statutes to prosecute all parties who financially benefit from the forced labor of farmworkers and a recent lawsuit that held a farmer financially liable for exploitative practices of its farm labor contractor, farmers are beginning to look more closely at work papers provided by the labor brokers in order to reduce the risk of lawsuits and reputational damage.⁵³

In a positive development for farmworkers, in September 2009, East Coast Growers and Packers -- one of Florida's largest tomato growers -- agreed to work with the Coalition of Immokalee Workers (CIW) and food industry leaders to implement the CIW'S Fair Food agreements. These Fair Food agreements include a penny-per-pound raise to harvesters, supply chain transparency, and a stringent code of conduct. The agreements include the world's four largest restaurant companies (McDonald's, Burger King, Subway, Yum Brands, Chipotle) and the nation's leading organic grocer (Whole Foods).⁵⁴

For consumers, the visibility of farmworker and migrant labor abuses has increased in the past few years, as consumer activists and immigrant labor groups have published reports which indicate the extent of forced labor.

"GUEST WORKER" RECRUITMENT SYSTEM



The Brokers

Labor brokers, or farm labor contractors (FLCs), come in many shapes and sizes and range from large organizations placing thousands of farm laborers all over the globe to small specialized brokers or unregistered brokers working exclusively with undocumented workers. Labor brokers usually work with recruiters in sending countries, although some brokers provide the full package: recruitment, contract arrangement and work-management services.

Most workers coming into the United States as part of the H-2 guestworker program go through labor brokers. The H-2 program generally functions in the following manner, shown at right⁵⁵: A field agent associated with a labor broker visits rural villages and funnels interested workers to the labor recruiter, which is usually in a large

city. The labor recruiter manages the employment and visa paperwork, and arranges travel for the worker. In some cases, the labor recruiter is an employee of the labor broker, while in others the recruiter is a free agent. The labor recruiter will usually manage the worker until they arrive in the United States, when the US labor broker takes charge.

In the United States, it is common for labor brokers to oversee all worker-employer interaction. In many cases, the labor broker is, technically speaking, the worker's employer; and the actual employer is not involved in payment issues or direct supervision and is thus unaware of labor violations. However, there have been several recent court cases in which the employer was held responsible for forced labor that was perpetrated by an FLC. These cases will be summarized in the following section.

The recruitment path for undocumented workers differs from the guestworker scenario above. The worker may smuggle him/herself across the border and then find employment through a broker. However, due to tightened US border controls, this scenario is becoming less common. Another pathway for undocumented workers is to enter legally but then overstay their visa. Once illegal, the worker returns to an existing employer or seeks jobs through an informal labor broker in the United States.⁵⁶ Many undocumented workers use *coyotes*,⁵⁷ *polleros* or *caminantes*, as they are known in different sending regions, to obtain work in the United States. It is likely that the percentage of undocumented workers using *coyotes* has increased due to stronger US border surveillance.

Coyotes may have diverse arrangements with undocumented workers. The *coyote* may be responsible for the worker's border crossing but not be involved in labor issues, may also serve as the labor broker, or may do the entire package: recruiting, border crossing, and worker management in the United States.

According to Verité's interviews with workers and worker advocates in Mexico, a "reputable" *coyote* will charge workers from USD 1,000 to USD 3,500 to cross from Mexico to the United States. For Chinese migrants transiting through Mexico, the fee can be up to USD 20,000. A "disreputable" *coyote* may treat the worker like expendable cargo to be bought, sold, traded, or stolen. Worker's families may be required to pay additional funds to *bajadores*, or 'takedown crews,' to guarantee safe delivery of their loved ones.⁵⁸ These workers may be shuffled among employers in the same sector because of their particular skill set or traded back and forth.⁵⁹

Verité's research has indicated that, the greater the *coyote's* involvement in the worker's journey from sending country to the United States and subsequent employment, the higher the vulnerability of forced labor to occur.

Labor Brokers in the United States

The US Bureau of Labor Statistics estimated that there were 1,110 legal farm labor contractors in the United States in May 2009, with a mean annual wage of USD 35,640. States with the highest concentration in this profession are Florida, California, Washington, Arizona, and Michigan. Michigan has the highest annual mean wage for this profession at USD 68,300, while California had the lowest at USD 26,190.⁶⁰ Several states post lists of farm labor contractors online, in addition to the Foreign Labor Certification Data Center, which provides all H-2A and H-2B disclosure data by year.⁶¹ In August 2009, the US Department of Labor released a list of farm labor contractors whose permission to employ farmworkers had been revoked.⁶² The North Carolina Growers Association (NCGA) is the largest labor broker/FLC in the United States, and provides over 10,000 workers to US growers each year.⁶³

California is home to many of the largest FLCs in the nation. Valley Pride, Inc. of Castroville, California, has USD 22 million in annual sales and 400 employees. Tara Packing in Salinas, has USD 21 million in annual income and 600 employees. Other major FLCs include Vegpacker, Inc. of Yuma, Arizona, with sales of USD 7

million and 250 employees; Emco Harvesting of Yuma Arizona with USD 18 million in revenues; and 5A Harvesting Co. of Labelle, Florida.⁶⁴

In the past, most FLCs operated on an overhead. For example, they collected an overhead of 25-35 percent of each worker's wages to cover the costs of social security, unemployment insurance, and workers compensation taxes, plus the cost of record-keeping, toilets, supervision, etc. However, there is evidence that this practice has changed, particularly for H-2B and undocumented workers, whereby most FLCs are paid a one-time fee for each worker (either by the employer or by the workers themselves). Previously, FLCs received the same amount for a small number of workers working full-time as a large number of workers working part time and they would accrue more overhead costs for employing more workers. Therefore, the incentive was to provide employers with exactly the number of workers they needed. Now, FLCs are paid per worker, thus encouraging FLC to inflate the number of workers they need.⁶⁵

A 1992 survey of farm labor contractors in California found that of over 300 FLCs interviewed, more than 80 percent were male and Hispanic. Nearly half were born in the United States. They averaged six years of schooling in the United States or three years in Mexico. About a third had graduated from high school, and 23 percent had completed some college courses. Growers employed FLCs primarily to reduce paperwork and to help recruit and manage farmworkers. FLC business and employment practices varied considerably among regions with varying labor demands. Many FLCs mentioned "cutthroat" competition and stated that lack of governmental enforcement of rules and regulations put honest contractors at a disadvantage.⁶⁶ The US Department of Labor list of approximately 500 ineligible farm labor contractors on its website indicates just how widespread farm labor contractor abuses are.⁶⁷ Of these ineligible farm labor contractors, 41 percent hail from Florida, 18 percent from Texas, and 9 percent from Georgia. Surprisingly, only 3 percent are from California.

One of the most frequent criticisms aimed at farm labor contractors (FLCs) and crew leaders is the allegation that they allow growers to sidestep labor laws.⁶⁸ Evidence supports these criticisms. Between July of 2003 and February of 2004, the Department of Business and Professional Regulations conducted 21 inspections of Florida citrus groves, uncovering a total of 257 labor violations in that state alone. Particularly in FLC-heavy California, the dependence on illegal farmworkers, most notably from previously untapped regions in Mexico, has skyrocketed.⁶⁹ In order to avoid the liability of certifying that workers are legally employed, growers are increasingly hiring through FLCs, who become the "employers" of these workers.⁷⁰ Issues that seem to be motivating growers to use FLCs are more stringent immigration laws and enforcement.

FLC recruitment patterns vary. In many cases, recruiting firms do not have to actively recruit because there is so much demand for jobs in the United States. Jeffrey West, president of MexicanLabor.com, says, "Workers find us. We don't have to go out and recruit."⁷¹ West charges USD 160 to do all the visa paperwork, arrange an interview with the US Consulate, and connect laborers with employers under the guestworker program.⁷² West claims that 95 percent of the migrants he places are veteran guestworkers whom US employers request by name. The company has six offices throughout Mexico, most near poor villages. Around October, his employees begin calling former guestworkers, asking the job-seekers to travel to a company field office where they will have a bar code attached to their passports and a photo taken. The migrants deposit USD 160 directly into the company's bank account. West's database – MexicanLabor.com -- contains photos and profiles of more than 20,000 Mexican men and a few women. Most are from rural villages and few have more than a third-grade education.⁷³

Global Horizons, a California-based labor broker, functions as an agent and middle-man between would-be workers in foreign countries and agribusinesses or other companies in the United States where the migrants actually work. Global Horizons works with recruiters abroad and obtains H-2A agricultural guestworker visas, pays for transportation to and from the United States, sets them up in housing, and shifts them from farm to farm as needed. The employer is responsible for following labor law as far as actual working conditions go and paying the contractor (Global Horizons) its agreed-upon rate. Each worker paid upwards of USD 20,000 to a recruiter in

Thailand to come to America on Global's promise of three years of employment. A detailed summary of Global Horizon's labor broker practices is found in the case study section below.

Some US organizations have gotten involved in labor brokering to decrease corruption and extortion. For example, the United Farm Workers Union (UFW) matches foreign farmworkers with American farmers, saving the foreign farmhands money paid to labor contractors. The UFW signed agreements with the governments of Mexico and Thailand to implement the program.⁷⁴

As mentioned above, in September 2004, the North Carolina Growers Association (NCGA) recognized the Farm Labor Organizing Committee (FLOC) as a bargaining agent for the 10,000 H-2A workers it brings in each year to harvest tobacco and other crops.⁷⁵ FLOC opened an office in Monterrey, Nuevo Leon, Mexico in 2005, and began requiring US employers to pay the cost of recruiting workers from Mexico and effectively cutting out the middleman. FLOC reports that H-2A workers pay 2.5 percent of their earnings in dues, and that employers for the first time are acceding to worker requests for more breaks and amenities. However, NCGA's Stan Eury says that as a result of the agreement, about half of the 1,000 farmers have ceased using NCGA to obtain workers, and that NCGA brought only 5,000 H-2As to North Carolina in 2006.⁷⁶ In March 2007, Santiago Rafael, a FLOC staff member in Mexico, was assassinated. Circumstances suggest labor contractors may have had him killed.⁷⁷

Sending Country Recruiters

As described above, undocumented workers typically make the crossing into the United States with the help of smugglers – or *coyotes* – and then find jobs through personal networks. When the coyote is tied to a moneylender or employer, vulnerability to forced labor is heightened.

For legal workers, the path into the United States is the H-2 program. Workers coming in on this program are typically recruited, through a variety of combinations of local brokers, US-based FLCs with local ties, and US employers with local ties. Overlap between recruiting and brokering functions is common. The H-2 program allows US labor brokers to create their own labor pool, with recruiting networks in major cities in Latin America. In many cases, sending country recruiters are former workers who have worked their way up to become crew leaders. These men use ties with family and friends to recruit workers to fill positions. Many lawyers also act as labor brokers. These sending country recruiters/brokers find workers for employers, help workers fill out paperwork in order to obtain visas, and assist them in obtaining airplane and bus tickets for travel to the United States. While active recruitment by the labor brokers reduces the obstacles to migration by providing job contacts, information, visas, documentation, and transportation, the possibility for abuse is high.⁷⁸

These sending country labor brokers/recruiters are also known as *enganchadores* (*enganche* is the Spanish word for “down payment”). According to worker advocates interviewed in Mexico, many Mexico-based brokers, recruiters, and moneylenders that facilitate both legal and illegal migration to the United States have links in some capacity with human, drug, and arms traffickers.⁷⁹

Tory Gavito, the Legal Director at the Centro de los Derechos de los Migrantes in Mexico, described a common scenario in which the sending country recruiter is also a loan shark, and a percentage of workers' checks are sent directly to the recruiters in order to pay off the debt that the workers accrued in order to get to the United States.⁸⁰ In this case, recruiters have significant ties to the employers. Local recruiters who are also loan sharks can be extremely coercive, as they may threaten workers' family members if they quit their jobs or fail to pay back their loans. Recruiters can also serve as the *coyote*, with an additional role as a narcotics or arms trafficker.⁸¹

When the farm labor contractor is involved in recruitment and transportation, workers' vulnerability to forced labor is greatly increased. When workers are recruited from within the United States instead of from abroad and there is no debt involved, the level of coercion and vulnerability to forced labor is much lower.

Brief Review of Legal and Regulatory Environment in Sending and Receiving Locales

Sending Locales

Although poorly enforced, sending countries have laws which govern labor broker activities. Of the three countries that are the focus of the case studies below (Mexico, Guatemala, and Thailand), Mexico has the most stringent labor laws.

Guatemala

Article 34 of the Guatemalan Labor Code prohibits contracting Guatemalan workers for work outside the country without previous permission of the Ministry of Labor and Social Welfare. Further, the recruiting agent or company must pay all worker transportation expenses, including those incurred by crossing borders. This payment must be deposited in a Guatemalan bank as a bond or paid directly to a friend or relative who is paying the worker's travel. The Code further stipulates that workers be provided with a written contract, and that the worker and a Guatemalan diplomatic representative in the country of employment be provided with a copy of the contract. The contract must specify how the worker will be housed, transported, and repatriated.

Mexico

Article 123 of the Mexican Constitution states that all labor contracts between a Mexican and a foreign business must be registered by the municipal authority and the consulate in the country in which the worker will be employed. In addition, the Article requires that the contract specify that any repatriation costs be paid by the business.

The Federal Labor Law (*Ley Federal del Trabajo*) establishes the following regulations concerning Mexican workers employed outside of Mexico:

- ⇒ Employers are required to cover all expenses related to worker transportation, repatriation, and food. These expenses cannot be deducted from workers' pay.
- ⇒ Workers shall have the right to all benefits provided by social security and workers' compensation.
- ⇒ Workers have the right to decent housing.
- ⇒ Workers' contracts shall be submitted to the Conciliation and Arbitration Council, which will review the contracts and establish the appropriate amount of a deposit in order to ensure that the conditions of the contract are met.
- ⇒ The contract must be reviewed by the Mexican consulate in the nation in which the worker is to be employed.
- ⇒ Once the employer has proved that the conditions of the contract have been met, the deposit is to be returned to the employer.
- ⇒ The employment of workers under the age of 18 outside of Mexico is prohibited, with the exception of technical workers, professionals, artists, athletes, and specialized workers.
- ⇒ Worker placement services should be provided free of charge to workers, should be provided by the Secretary of Labor and Social Provision (STPS) or other non-profit entities, which must register and coordinate with the STPS.
- ⇒ For-profit worker placement agencies may only be given authorization by the STPS to contract workers in exceptional cases for specialized jobs. In these cases, the services must be provided to workers free of charge and any fees must be previously set by the STPS.

The Regulations on Worker Placement Agencies (*Reglamento de agencias de colocación de trabajadores*) set out the following requirements:

- ⇒ Job placement services shall be provided to workers free of charge. It is prohibited to charge workers any fees for any reason.
- ⇒ Service providers are prohibited from discriminating on the basis of ethnicity, gender, age, disability, social or economic status, health, pregnancy, language, religion, opinion, sexual preference, civil status, or for any other reason that impedes workers right to equality of opportunity.

Worker placement agencies are required to:

- ⇒ Provide services in respect of workers' dignity without incurring discriminatory conduct
- ⇒ Provide a bi-annual report of their activities
- ⇒ Publish accurate advertisements with detailed information on vacancies, characteristics of employment, working conditions, and required knowledge and skills.
- ⇒ Include their name, address, phone number, and authorization and registration number in all advertisements.
- ⇒ Adopt appropriate measures to transport, house, and feed workers who live more than 100 kilometers from the place of recruitment free of cost.
- ⇒ Permit labor authorities to inspect their establishments to ensure that they are abiding by regulations.
- ⇒ Ensure that their personnel abstain from sexual harassment and discrimination of applicants.

Worker placement agencies are prohibited from:

- ⇒ Charging any fee to applicants in any form, directly or indirectly, including for advertisement expenses, training, or any other service.
- ⇒ Conspiring, directly or indirectly, with employers to have fees deducted from workers' salaries.
- ⇒ Offering an illicit or non-existent job, misleading workers about the characteristics or conditions of a job, or engaging in any act or omission that constitutes deceit of applicants.
- ⇒ Charging employers any fees if the agency is registered as a non-profit, unless the fees are legally approved and are intended to fund administrative costs.

Worker placement agencies must provide workers with informational material about the working and living conditions to which they will be subjected, as well as with information about their right to consular protection and the location of Mexican embassies and consulates in the country in which they will be employed.

Authorities are responsible for ensuring that actual working conditions are equal to or superior to those set out in relevant laws and workers' contracts. Worker placement agencies that violate these regulations will be subject to fines of 3 to 315 times the federal minimum wage.

The General Population Law (*Ley general de población*), amended in April 2009, imposes jail sentences of six to 12 years as well as fines of 100 to 10,000 times the federal district minimum wage for anyone who brings Mexicans or foreigners to another country illegally for the purposes of trafficking. The same penalty applies to those who traffic people into or through Mexico in order to avoid migration checks. Anyone who aids human traffickers will be subjected to one to five years in prison and fines of 5,000 days of the minimum wage. The penalties will be increased by 50 percent if the victims are minors, if the undocumented immigrants' health or lives are endangered, or if the perpetrator is a public servant.

Thailand

Recruitment of Thai workers for positions abroad is governed by the 1985 Recruitment and Jobseekers Protection Act. This piece of legislation requires all persons recruiting workers in Thailand to possess a license. Eligibility

for a license is restricted to Thai companies, i.e. companies in which a majority of shareholders are Thai. It is illegal for prospective employers to recruit Thai workers in Thailand for employment abroad without going through the government Employment Office or a licensed Thai recruitment company. There are contradictions between Thai recruitment law and US labor law. The most serious of these issues concerns recruitment fees.

Regulating Farm Labor Contractors in the United States

Below we provide a snapshot of US laws and regulations relating to FLCs. See the Annex for a detailed review.

In the United States, FLCs are generally required to be registered by both federal and state governments. The legal requirements for FLCs are found in the Annex. Accreditation varies slightly by state, but most states require the same or similar elements as those required for FLC certification in Washington State:

- ⇒ A Washington State master business license from the Department of Licensing.
- ⇒ A Washington State farm labor contractor license.
- ⇒ Tax compliance certifications.
- ⇒ Employment agreement signed by each worker.
- ⇒ A surety bond or cash deposit in the following amounts to ensure the payment of wages owed to workers: Required amounts are USD 5,000 for 1 – 10 employees, USD 10,000 for 11 – 50 employees, USD 15,000 for 51 – 100 employees, and USD 20,000 for 100 or more employees.
- ⇒ Vehicle insurance, if providing transportation to workers, at the following coverage levels: USD 50,000 injury or damage to property; USD 100,000 for injury or damage, including death, to any one person; and USD 500,000 for injury or damage, including death, to more than one person.
- ⇒ Payroll records which include the basis on which wages are paid, piece rate units earned (if applicable), number of hours worked, total pay period earnings, specific sums withheld, the purpose of each sum withheld and net pay. Farm labor contractors are also required to disclose in a written statement to the workers their rights in English and other languages common to the workers, and the terms and conditions of their pay basis.⁸²
- ⇒ If the FLC will house workers, a certificate of registration with authorization to house migrant agricultural workers identifying each facility or real property to be used by the applicant to house any migrant agricultural worker during the period for which registration is sought is required.⁸³

Since the labor contractor is the de facto employer, in principle other labor rules that apply include minimum wage requirements, breaks and work schedules, pay requirements, payroll and personnel records, and paperwork filing requirements. Most of the jobs guestworkers and undocumented workers perform do not allow for overtime. Workers employed on farms or ranches, or in any agricultural or horticultural business that packs, packages, grades, stores, or delivers to market such products, or any commercial business in canning, freezing, processing or transporting these products are not required to be paid overtime. Similarly, because the Fair Labor Standards Act of 1938 exempted sheepherders from having to be paid the minimum wage, the Labor Department has relied on statewide surveys to determine their prevailing wage. In Wyoming, ranches pay herders USD 650 a month. Colorado ranches pay USD 750, which is well below the prevailing wage.⁸⁴

Several states hold any grower or farm labor contractor lacking a license prior to entering into a contract with workers civilly liable for violations committed by an unlicensed farm labor contractor, including wages and attorney fees.⁸⁵ California and Florida, with their large numbers of farmworkers, have developed more detailed regulations for FLC certification. In Florida, the FLC must take a test and pay a USD 35 fee in order to be certified. FLCs must agree to follow a 31-page manual that outlines FLC requirements, detailing, for example, the amount of water that must be available at the worksite and requiring that employers provide workers with drinking cups.⁸⁶ In contrast, while Idaho's USD 250 fee is higher, it has no test for FLCs nor does it have specific guidelines, other than a requirement that FLCs abide by existing Idaho labor laws.⁸⁷

It is interesting to note that several states do not require a FLC to be certified if they are placing farmworkers in jobs in other states.⁸⁸

Enforcement of FLC regulations

At the federal level, enforcement of FLC regulations is lax. In fact, government enforcement of basic labor protections for all workers has declined in recent decades. Between 1974 and 2004, DOL wage and hour investigators decreased by 14 percent, and the number of completed compliance actions declined by 36 percent, while the number of workers covered by the Fair Labor Standards Act increased by over 50 percent to 88 million. This makes the government less able to ensure that employers are complying with the most basic workplace laws. Guestworkers are particularly vulnerable to abuses, but there is currently no discussion of increasing the federal budget for the DOL and the Occupational Safety and Health Administration to ensure that guestworkers are protected on their jobs.

In federal fiscal year 2007, the most recent year for which the Administrative Office of the United States Courts has published data, there were 7,310 Fair Labor Standards Act (FLSA) actions filed in all federal district courts, but only 151 of these actions — two percent — were filed by the DOL. In 2008 testimony before the House Committee on Education and Labor, the Government Accountability Office reported that a study of the DOL's Wage and Hour Division revealed that the department "often failed to record complaints received, to use existing tools to increase compliance, and to adjust its priorities in response to new data."⁸⁹

In 2004 the DOL conducted 89 investigations of the 6,700 businesses certified to employ H-2A workers. Data is lacking to determine the number of investigations DOL conducts on the 8,900 employers certified to hire H-2B workers, but given the DOL's contention that it does not have authority to enforce the prevailing wage provision, or other aspects of H-2B workers' contractual rights, a low level of enforcement can be inferred. H-2B legal requirements are currently in limbo. A 2008 law made State Workforce Agencies (SWA's) no longer responsible for the H-2B application process. Instead, employers or their acting representative now have to file Form 9141 to request the required prevailing wage rate with the Department of Labor's National Processing Center in Chicago.⁹⁰ However, this ruling was rescinded in 2009 and it is unclear what changes will follow.

There are other requirements that DOL does not enforce. In 2001, the 11th US Circuit Court of Appeals rules in *Arriaga v. Florida Pacific Farms* that guestworkers' payment of transportation and visa costs effectively brought their wages below the legal minimum wage. The employer was thus obligated to reimburse workers for the difference between the minimum wage and their transport costs during their first week of work. While this is now law in the 11th Circuit, even in the states within the 11th Circuit's jurisdiction — Alabama, Florida and Georgia — the DOL has refused to enforce the ruling.

At the state level, there are several new initiatives aimed at fighting abuses in the FLC system. In Washington, proposed legislation would allow the state government to meet and negotiate with foreign representatives to import temporary guestworkers for jobs in certain seasonal industries such as agriculture, construction and hospitality. Employers would pay the state up to USD 500 per worker to participate in the program and could see the first wave of foreign workers here by the summer of 2010. However, since immigration is the purview of the federal government, it is unclear whether the state would need a waiver to enact the legislation.⁹¹

The United Farm Workers Union signed an agreement with the governor of the Mexican state of Michoacan to help recruit local residents to apply for temporary jobs on US farms, all of which would be covered under union contracts. Under the new pact, government field staff in Michoacan will distribute information on US labor protections, especially in rural towns known for sending a large number of their residents north. In exchange, the union will negotiate contracts with US growers willing to guarantee that legal workers' rights will be respected on both sides of the border. The union's efforts to import temporary workers under the guestworker program follows

similar moves by lawmakers in Arizona and Colorado, who are also trying to create new pathways to bring in foreign field hands without approval from the federal government.

Legal Issues in the United States

In general, farmworkers do not file lawsuits against abusive employers because they are unaware of their rights, many federally funded legal services organizations are legally prohibited from representing undocumented or H-2B workers, and most importantly, guestworkers risk blacklisting and other forms of retaliation against themselves or their families if they sue to protect their rights. Typically, workers will complain only if they are so severely injured that they can no longer work, or once their term of employment has expired. When workers have filed complaints, the Southern Poverty Law Center has documented a number of cases in which workers and their families have been threatened with blacklisting and even death.⁹²

Litigation of both H-2A and H-2B labor abuses is problematic. H-2A workers are specifically exempted from the major statute designed to protect agricultural workers in the United States from abuse and exploitation — the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). H-2B workers, although legally working in the United States, are ineligible for federally funded legal services because of their visa status. As a result, most H-2B workers have no access to lawyers or information about their legal rights. Because most do not speak English and are usually both geographically and socially isolated, it is unrealistic to expect that they would be able to take action to enforce their own legal rights.⁹³

Several recent legal cases highlight the level of controversy, contention, contradiction, and confusion surrounding the regulation of labor brokerage:

In a landmark case from 2002, the US Court of Appeals for the 11th Circuit decided in *Arriaga v. Florida Pacific Farms*⁹⁴ that farm employers must reimburse the travel expenses of workers from Mexico during their first week of employment, even though DOL rules do not require transportation expenses to be repaid until the worker completes half of the contract. In *Arriaga*, the court ruled that any expenses paid by the employees that benefitted the employer, either directly or indirectly, were to be paid back under the Fair Labor Standards Act. Federal district courts have applied this standard to H-2B visas as well. As mentioned above, the DOL has declined to enforce this ruling.

In 2009, the 5th Circuit Court of Appeals, in the *Castellanos-Contreras v. Decatur Hotels, L.L.C.* case, rejected the *Arriaga* ruling, stating that while the Fair Labor Standards Act does apply to temporary guestworkers on H-2B visas, employers are not required to repay recruitment expenses incurred by workers unless they were “kick-backs” to the employer. The court also ruled that visa expenses are classified by the DOL as “worker expenses” and reimbursement is not required. This case is important moving forward as many cases presently being litigated are in this circuit.

In another important case, *Luna v. Del Monte*, from 2008, the United States District Court for the Northern District of Georgia ruled that Del Monte, who used a farm labor contractor for H-2A workers, was still liable under the MSPA (Migrant and Seasonal Workers Protection Act) and the FLSA (Fair Labor Standards Act), for labor abuses committed by the FLC. This sets an important precedent for companies wishing to offload all responsibility for workers onto labor contractors.

Recinos-Recinos v. Express Forestry, Inc. is an example of labor abuses in the forestry industry committed by a labor broker that coerced workers to remain silent in the United States and visited workers and their families in Guatemala to threaten them not to participate in the case.

Showing that forced labor takes place at very high levels, *Asanok v. Million Express Manpower, Inc.*, filed in 2007, involved 22 Thai and three Indonesian workers who sued alleging that the broker failed to pay them for work performed and held them captive. The labor brokerage firm was owned by the ex-Thai Minister of Labor.⁹⁵

In *Nasee v. Global Horizons*, Thai workers in Washington brought suit against Global Horizons, a large Israeli labor brokerage firm, alleging FLSA violations. The litigation is on-going, and the case will be discussed in Section 7 below.⁹⁶

In *Marshall v. Buntings' Nurseries of Selbyville, Inc.*, the court held that employees of a tree nursery were engaged in "agricultural employment" as defined by the Farm Labor Contractor Registration Act (7 U.S.C.A. §§ 2041 et seq.) since their work involved the handling of various horticultural commodities such as trees, shrubs, and plants and the statute expressly included the handling, planting, drying, packing, packaging, processing, freezing, or grading of any horticultural commodity in its unmanufactured state within the definition of "agricultural employment."⁹⁷ This ruling contradicts USDOL policy that categorizes nursery employees as H-2B workers with fewer rights than H-2A agricultural workers.

In another recent ruling, *Davis Forestry Corp. v. Smith*,⁹⁸ the court concluded that forestry work was considered "agricultural employment" under the Farm Labor Contractor Registration Act (7 C.A. §§ 2041 et seq.), noting that there was little doubt that the 1974 Amendments to the Act were intended to apply to forestry contractors who employ tree planters, thinners, and other forest laborers.

In *John Does I-V v. Moises Rodriguez, Maria Rodriguez, Andrew L. Grant, and Grant Family Farms, Inc.*, farmworkers filed a federal lawsuit against Moises and Maria Rodriguez, the agricultural contractors who brought them to the United States and forced them to live as virtual prisoners as they worked off their debts. A federal judge in Denver recently awarded them USD 7.8 million in what immigration experts described as the largest judgment of its kind in the country."⁹⁹ The case was also significant because the judge allowed the plaintiffs to file the suit anonymously due to fear of retaliation.¹⁰⁰

The Annex contains a legal review of all recent litigation regarding migrant farmworkers.

THE EMPLOYMENT LIFECYCLE

Recruitment, Hiring and Transport: Paths of Entrapment and Forced Labor

Overview of Recruitment Practices: Information Dissemination, Choosing a Broker

As discussed above, US employers almost universally rely on private agencies to find and recruit guestworkers from their home countries, mostly in Mexico and Central America. These labor recruiters, known in Mexico as *enganchadores*,¹⁰¹ usually charge fees to the worker — sometimes thousands of dollars — to cover travel, visas and other costs, including profit for the recruiters.¹⁰²

Sending country recruitment practices are piecemeal, and workers find out about jobs in many ways. Recruitment methods vary by whether the labor recruiter is associated with a large company or not. A 2005 survey of migrant farmworkers from Mexico found that the majority obtained employment in the United States through relatives (35 percent) and friends or acquaintances (35 percent). In addition, 23 percent obtained employment through individual searches.¹⁰³ A growing trend is for workers to sign up with guestworker websites such as www.get-aworker.com, www.labormex.com, www.landscapeworker.com, or www.mexican-workers.com.

Job information is spread through workers who have been contracted before or by their families and acquaintances. Few specifics about recruitment fees, the working conditions, and monthly earnings or deductions are provided. In one example told to Verité by returned workers in Guatemala, recruiters told workers they would earn USD 7 to USD 13 an hour, but workers were unable to verify whether the work was seasonal and whether wages would be reduced by deductions. In many cases, US businesses contract a recruiter who also charges workers for visa processing, although the employer has already covered these expenses.

In Guatemala, Verité's research indicates that communities may have longstanding family ties to specific locations or jobs in the United States, with succeeding groups of workers continuing on those same pathways. Dissemination of available jobs is often made verbally by family members and/or acquaintances of brokers. Alternately, an FLC may have a representative or office in Guatemala that visits villages and asks "Who wants to go to the United States?" Recruitment intensifies seasonally, especially in April and October.

Incentive to Inflate. Lori Elmer of Legal Aid of North Carolina explained that, because labor brokers are no longer making money from payments from employers (who used to get a dollar per hour for each worker), but instead from recruitment fees from each worker; there is a large incentive to vastly overstate the need for workers.¹⁰⁵ When workers get to the United States, oftentimes there is no work. An example of this phenomenon is a case of Guatemalan H-2B workers who were contracted to work in forestry in North Carolina in January 2008. The employer solicited 120 workers, but only



Recruiting advertisement in Mexico

In Oaxaca, Mexico a couple, under the auspices of evangelical missionaries, visited small, impoverished villages to preach and offer the chance to come to the United States to work. Upon arrival, the immigrants' documents were subsequently confiscated by the couple, who locked the immigrants up at night and forced them to work in restaurants and food stands. According to the testimony of one of the immigrants, the recruiters paid a Border Patrol agent to assist in smuggling the immigrants across the border.¹⁰⁴

had enough work for 48. Many of the workers had signed over deeds to their land in order to obtain loans for recruitment, visas, and transportation costs. They were promised full-time employment, which they were relying upon to pay back their loans, many of which grew at a rate of 20 percent monthly. However, the workers were only provided with unpredictable, part-time employment.

Example of Above-Board Mexican Labor Broker Practices

The home-country brokerage process is well-illustrated through an interview a Verité associate conducted with a lawyer whose firm acts as a recruiter and broker in Monterrey, Mexico and Los Angeles, California. The majority of the firm's clients are brokers, or *contratistas*, while some of them are individual ranchers or farmers seeking work in the States. The law firm helps businesses obtain DOL certification to contract foreign workers, after which they may begin to solicit visas. The firm does not help individuals find US work, but rather facilitates the visa process. (However, the interviewee reported that the majority of labor recruiters perform all of the necessary functions such as contracting, visas, and transportation, in an effort to keep all of the profits.) This firm obtains an average of 300 visas a year.

The lawyer usually represents workers who are renewing their visas with the same employer, and if these employers have vacancies, they usually hire the workers' friends or family members. The firm also recruits workers by holding conferences in communities, and through media advertisement.

After the initial meeting, the lawyer begins preparing visa files and making appointments at the consulate. He accompanies them to the consulate to be fingerprinted and interviewed, and later distributes the visas to the workers, since the consulate will only give the visas to worker representatives.

For processing up to ten people, they charge workers USD 200 each for the two-day consulate appointment, as well as transportation and lodging; businesses pay a flat rate of approximately USD 4,000. When the client is a worker, he charges USD 23 for representation. However, he charges employers and brokers USD 40 per worker for paperwork, plus an additional fee for the complete service, which includes lodging, transport, and meals. The firm arranges transport to the State-side employment destination, but workers must pay the costs.

The Los Angeles office asks the workers to keep in contact with them and to report any problem they may have in transit. Once reaching their destination, the firm is no longer involved in working conditions or the contract. However, the firm guarantees the business that it will take back any problem workers and send a replacement worker.

According to field research, because of the incentive to recruit as many workers as possible, many brokers fail to assess workers' skill sets for employers. The determining factor is generally the workers' ability to make an immediate payment for the visa and brokerage fees. A mismatch of skill sets is common. According to a Colorado drywall contractor who hired Mexican H-2B workers through a labor broker, "When the men showed up we discovered they were the wrong kind of workers. Only 16 of 80 could do the work," he said, adding that he had been duped by the company in Mexico that had helped hire the workers. They had asked for drywallers and instead got 35 welders, the man said."¹⁰⁶

In a particularly egregious example of misgauging work availability, three Guatemalan workers were told that they would be brought from North Carolina, where they had been working in forestry, to Maine to harvest blueberries in early April 2008. However, when they arrived they were told that there was no work available in Maine and were locked in the employers' garage garret and were not provided with food or water, which they had to beg for from other immigrants. They were put on a plane back to Guatemala from Logan Airport in Boston on April 16th although they wanted to continue to work, their visas were not going to expire until May 31, and they had been promised full-time work and a visa extension by the broker.¹⁰⁷

The relationship between the broker and the worker over the life of the worker's employment contract varies. A licensed or unlicensed farm labor contractor in the United States will keep in close contact with workers since they are the interface between farmer and worker and handle payment, labor issues, etc. In many cases, they house workers and it is common for them to transport workers to different farms, depending upon which growers need their services on any given day.¹⁰⁸

Brokers and employers have different arrangements concerning communication regarding workers. Field research indicates that many employers notify the broker if a worker escapes from the workplace. While the sending country broker usually has no communication with workers while they are employed in the United States, s/he does typically have communication with the worker's family. S/he uses this to pressure workers to continue working, even if working conditions and compensation differ from those promised during recruitment. In Guatemala, Verité found that, in many cases, the worker had granted the broker the deed to his property as collateral for a loan or as a guarantee of his returning home at the expiration of his visa. This issue is discussed in more detail in the finance section below.

Fees

Examples of Excessive Broker and Recruiter Fees for H-2 Workers

According to a worker advocate interviewed by Verité, although the Thai Ministry of Labor sets the maximum broker fee at 50,000 baht (approximately USD 1,500), because of corruption and a link between government officials and brokers, brokers in the Global Horizons case were able to obtain certification to recruit workers and charge excessive fees, sometimes as high as 900,000 baht (approximately USD 27,000).

An H-2B worker labor broker, Accent Personnel Services Inc., placed 290 guestworkers in hotel jobs at Decatur Hotels vacated by Hurricane Katrina evacuees. Accent earned USD 1,200 for each person recruited to work for Decatur Hotels — USD 300 each from Decatur Hotels and another USD 900 each from recruiters working in Peru, Bolivia, and the Dominican Republic. If Decatur had imported all 290 workers, Accent would have earned nearly USD 350,000. Accent did not have to pay for travel or visa costs out of those fees. Each of the workers paid between USD 3,500 and USD 5,000 to cover recruiting fees, transportation, and visa fees. The recruiters had promised a minimum of 40 hours of work per week and plenty of overtime. Instead, they found themselves working about 25 hours a week, sometimes far less.¹⁰⁹

Guatemalan H-2B workers represented by the Southern Poverty Law Center paid an average of USD 2,000 in travel, visa, and hiring fees to obtain forestry jobs in the United States. The fees paid by these Guatemalan workers amounted to far more than the actual cost of travel and visas.¹¹⁰ Many of these workers reported having been charged 20 percent interest each month by a loan shark from whom they borrowed money to pay the recruitment fees. The workers were also required to leave some form of collateral, generally a property deed, with an agent in Guatemala to ensure that the worker would "comply" with the terms of his contract. This practice served to stop complaints about pay, working conditions or housing, since workers feared reprisals if they complained, especially in cases where a broker was holding the deed to the home where his wife and children lived.¹¹¹

Verité's research has found that workers are charged placement fees ranging from USD 3,000-USD 27,000 by local brokers to work in agriculture. On average, according to Verité interviews, Mexicans are charged USD 3,000-USD 5,000; Guatemalans are charged USD 5,000-USD 6,000; and Thais in the Global case, USD 17,000-USD 27,000. The following box contains examples of excessive fees charged by recruiters and brokers.

Sending country brokers/recruiters require payment either in local currency or by direct deposit into their bank account. Often other fees and conditions are tacked on, such as a fee to be placed on the list of potential candidates for a job.

Workers interviewed by Verité in Guatemala described situations in which workers were not selected for employment in the United States, but the broker did not refund the recruitment or the visa fees. This was the case with 14 interviewees who paid a broker in October 2008 and to date have not been hired. Unfortunately, the loan amount must be repaid, or at least interest on the amount borrowed, despite the lack of income. Workers fear filing complaints for this type of abuse since they are threatened directly or indirectly by recruiters, and they do not have enough evidence to bring the case to court.

Financing/Credit

To pay for recruitment fees, workers frequently obtain high-interest loans. "Every one of us has to sell things in order to have the money to come here," said Francisco Sotelo Aparicio, who came from Peru to work for Decatur Hotels. "I sold some of my land, my belongings, and we leave our families to try to come out ahead."¹¹²

Informal moneylenders are generally the only financing option for most workers, because in order to obtain a loan at banks, workers must meet stringent financial requirements, in addition to the time it takes for loan approval.

Most interviewees in Guatemala revealed that workers know more than one lender who lives on the outskirts of their villages. In Guatemala, in order to obtain the money for the cover broker fees, workers request loans from lenders located in their villages, some of whom may be their relatives or friends. In the absence of government regulations or oversight, lenders charge five to 30 percent interest monthly. Verité interviews of Guatemalan workers revealed that many workers are obliged to sign a bill of sale for a piece of property (usually a house, land, or a vehicle) to the lender, who agrees to return the property when the worker has paid the capital and interest. In many cases, lenders are the ones who make the property valuation and do not issue receipts for the fees received. There are penalties for late payments, and lenders are the ones who establish these penalties. Many workers are illiterate and are only told the amount of debt and are not provided with details about interest rates, late fees, or conditions for the return of their property deeds.

food because they did not have enough money to provide for themselves after all the salary deductions.

Contracts

By US law, H-2A workers must be given a copy of their employment contract and a written statement each payday listing hours, earnings, pay rates, and deductions. The contract must state they are to be paid at a rate no less than the federal minimum wage, and that they be paid for at least 3/4 of the total hours promised in their contract. The contract must also state that they must be reimbursed for travel from their country after 50 percent of the contract is completed. H-2A workers must be provided safe housing, worker's compensation, and any required works tools or supplies at no cost to the worker.¹¹⁴ Verité interviews with workers indicate that it is common for the contract, the pay stub, and any other correspondence from the FLC to the worker to be written in English, a language workers usually do not speak or read. The FLC tells the workers that they must sign it in order to be employed by the company. Workers often do not understand what they are signing and routinely do not receive a copy of the contract.

A chronic problem for guestworkers is that they are not given the full number of weeks of work specified in their contracts and thus earn much less than they are promised. For example, in *Gaona-Gaona v. Allison Tree Digging* from 2008, six H-2A guestworkers in Tennessee sued their employer for failing to pay the contract wage mandated by the guestworker program over several years, for failing to pay them for all the time that they worked, and for not reimbursing them for their transportation costs as required by both the Fair Labor Standards Act and their contracts.¹¹⁵ New regulations threaten to compound this problem further. The definition of full-time work for H-2 workers recently changed from 40 to 30 or more hours per week and is further weakened by loosening the requirement that employers provide a certain number of hours.¹¹⁶

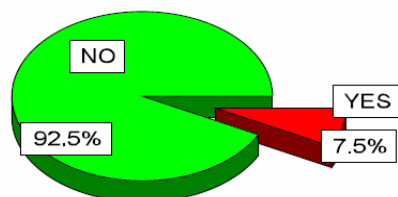
One of the most common contract violations is that of misclassification. This occurs most often when workers who should be characterized as H-2A workers (because, for example, they are picking produce in the field) are instead brought to the United States as H-2B workers (and labeled as packing shed workers, for example). This results in workers being paid substantially less than the wage rate they should lawfully be paid and being denied the legal protections afforded to H-2A workers, such as free housing and eligibility for federally funded legal services. Another common form of misclassification involves employers who misstate the kind of work H-2B employees will be performing, so that the prevailing wage rate is set for one kind of work, such as landscaping, when the workers actually will be doing work that warrants a higher prevailing wage rate, such as highway maintenance. Again, there is virtually no recourse for workers to file grievances.¹¹⁷ In 2007, Texas Rio Grande Legal Aid filed a lawsuit against a watermelon grower, two FLCs, an immigration attorney and the DOL for complicity in misclassification of over 400 Mexican agricultural workers as H-2B workers.¹¹⁸

Often the contract differs from what the worker was led to believe in the sending country. For example, a Thai worker testified: "They showed me all the documents, and they are a legal company approved by the Thai government, and the information about the jobs they showed me seems real."... It turns out the H-2 guest-worker program is seasonal: The job must last less than one year — not the three years that the broker promised."¹¹⁹

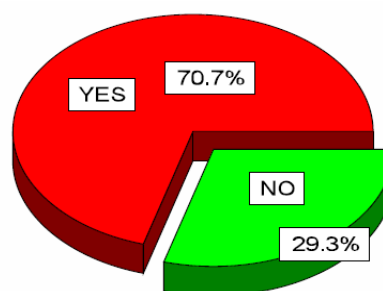
Chilean cattle and sheepherders interviewed by Verité reported that they were forced to sign a contract at the airport, while they were being paged to report to the gate, which specified lower pay and longer hours than those originally promised to them. The lawyer who acted as their recruiter and filled out their visa applications told them that he would not give them their visas if they did not sign the contract, and they would thus lose all of the money that they had paid to obtain their visas along with their plane tickets. They had less than five minutes to review the multi-page contract, which required them to be on call 24 hours per day. They reported that their employers violated even the very loose stipulations of this contract. In a sheepherder survey from 2001¹²⁰, workers were asked if Western Range Association complied with the terms of their contract, as shown in the chart

below at left. Ninety-three percent answered the FLC did not comply with contract requirements. Further, 71 percent stated they did work that was not required in their contract, as the following chart shows.

Do you think the WRA complied with the contract?¹²¹



Do you perform work other than sheepherding?¹²²



■ NO ■ YES

Information Verité collected in over 50 interviews with immigration experts, government officials, employers, and lawyers in the United States, Mexico, and Guatemala indicate that the vast majority of undocumented agricultural immigrants lack any kind of employment contract.

Visas

H-2 visas are petition-based visas, meaning that a US employer must submit a request for the worker in another country by obtaining a Labor Certification from the US Department of Labor (Form I-129, called "Petition for Non-Immigrant Worker") and receiving the Notice of Approval (I-797) of the petition from the US Department of Homeland Security.¹²³ The fee for employers to file Form I-129 through the CIS is USD 320.¹²⁴

The recruiter in the sending country usually helps the prospective worker apply for a temporary work visa at the US Embassy or Consulate with jurisdiction in their place of permanent residence. A passport is needed to process the visa; and in the case of Guatemalan workers interviewed by Verité, each applicant processes his own passport and delivers it to the recruiter for visa processing. As part of the visa application process, an interview at the embassy consular section is required. To make an appointment for the visa interview, the worker must provide the receipt number that is printed on the approved Form I-129 petition from the employer.¹²⁵ Workers pay two fees associated with applying for an H-2A and H-2B Visa. One is the Nonimmigrant visa processing fee to be paid before the interview at the embassy consulate. If the visa is issued, there is an additional visa issuance reciprocity fee which varies from country to country. Mexican applicants are charged USD 131 for the visa processing fee and USD 100 for 12 months for the visa issuance fee.¹²⁶

H-2 visas are only valid for the US company named on the visa, and it is not legal to switch from one company to another without written permission from the Department of Homeland Security. Visa terms for H-2 jobs are wide ranging. Guatemalan workers interviewed by Verité had visa terms between six and nine months; while sheep and cattle herders' visas can extend up to three years. Visas stipulate the kind of work that workers will carry out, their place of employment, the length of their employment, and their hours and wages. Many consulates will not issue visas to workers who report workplaces, hours, or wages different from those stipulated in their visas or those who report having paid broker or recruitment fees.

According to a Mexican government official interviewed by Verité, the majority of brokers/recruiters in Mexico coach workers before their consular interview, telling them their visa will be denied if they say they paid a fee to the broker for the visa processing or if they report that their contract stipulates terms different from the terms on their visas. The official further reported that although the US consulate in Mexico has records of the individuals who charge immigrants fees when the employer has already paid the visa processing fees, they fail to take any action against these individuals or share the information. Likewise, the director of an international labor rights NGO interviewed by Verité stated that the US consulate in Guatemala did not share information about exploitive labor brokers with the Guatemalan Ministry of Labor.

Interviews with government officials and immigration attorneys in Mexico indicate that the US consulate requires that each group of workers be represented by a “worker representative” who must bring their documents to the consulate in order to speed up the visa process. When only a few workers come to the interview, the consulate allows an experienced worker—usually one who has travelled to the United States before—to represent the rest. In many cases, the representatives are paid by employers. Since the “worker representatives” are paid by employers they become de facto brokers who represent the interests of the employers rather than the interests of workers. A Monterrey-based visa broker said to Verité that would-be immigrants generally do not file complaints against labor brokers, perhaps because they are afraid or consider the effort hopeless.

In some cases, visa applicants pay people who claim to be worker representatives, who are actually con artists who merely take their money and flee. According to a Mexican government official interviewed by Verité, in 2008, a person who said that he was from the Association of Temporary Workers (*Asociación de Trabajadores Temporales*), offered to obtain guestworker visas for a small fee. In three days, 2,000 people came to him and paid MXN 500 (USD 39) each. He disappeared with MXN 1 million and did not obtain even one visa. The Mexican government knows of many people who have been deceived by so-called labor brokers who open up a temporary office, collect money for doing visa paperwork, and then disappear. Many of these labor brokers download visa forms from the Internet and tell the immigrants to fill them out so that they think that they are doing the legitimate paperwork. Recruiters often show prospective workers lists detailing US employers’ workforce needs. However, the lists actually show workers that have already been contracted. The recruiters, upon receiving payment from recruits, sometimes ask a lawyer to fill out the paperwork for the workers, providing a cover of legitimacy to the transaction. The workers return to the lawyer the following day, looking for the recruiter who has abandoned them. The well-intentioned lawyer in this case may also become a victim of ruined reputation or consular investigation.

Pre-departure Measures

According to Verité’s field research, agricultural and forestry workers in Guatemala and Mexico did not receive training before leaving their country, despite the fact that they are not accustomed to differences in weather and agricultural practices in the United States. There is evidence of required unpaid training for sheepherders, however: According to interviews with a lawyer who represented Peruvian immigrants recruited to work as sheepherders in the United States, a Peruvian lawyer who acts as the sole recruiter for the WRA required that applicants undergo unpaid training at his ranch as a precondition to employment. Given that this lawyer acts as the broker for all Peruvian workers who work as sheepherders on H-2A visas in the United States, this practice is particularly significant.



Workers Getting Ready to Cross the Border

A survey found that the job duties and living conditions were not explained to most sheepherders prior to leaving their countries and

traveling to the United States. Sixty-six percent did not know what their duties would be before they arrived in the United States. Ninety-five percent reported they did not know what was waiting for them in the United States.¹²⁷ Chilean cattle and sheep herders interviewed by Verité reported that every time they asked about working and living conditions, the WRA recruiter in Chile told them that he had to go and hung up the phone.

Verité's research in Mexico and Guatemala revealed two patterns of departure lag times: Many workers had to wait 20 days after their visa interview to start their trip, while others indicated that at the time of the visa approval they were taken away immediately without notice, unable to even say goodbye to their families.

Transport

H-2A workers are legally entitled to be reimbursed for the cost of travel from the worker's home to the job as soon as the worker finishes 50 percent of the contract period. The expenses include the cost of an airline or bus ticket and food during the trip. If the guestworker stays on the job until the end of the contract the employer must pay transportation home. H-2B regulations do not require an employer to pay the workers' transportation.¹²⁹

Guestworker brokers usually oversee workers' transportation from their villages to the US airport, and when they arrive, the company transports them to the workplace. In Guatemala, guestworkers use ground transportation from their villages to Guatemala City, and then take a plane to the airport closest to the workplace where company transportation waits for them to transport them to the worksite. H-2 workers from Thailand and Chile are also transported to the United States by airplane, while workers from Mexico may be transported to the United States either by plane or bus.

"The Greyhound pulls up to a two-story metal warehouse in the tiny town of Vass, North Carolina. Efrain Madrigal gets off the bus. The 24-year-old has been traveling nonstop for four days since he left the ranch where his family lives in Nayarit, Mexico. Madrigal and passengers from six identical buses are herded into the warehouse. When the orientation ends, he boards another bus, bound for the farm that has purchased his labor for the next seven months."¹²⁸

Certain hubs have sprung up for documented immigrants, such as Monterrey's central bus station, where workers arrive from around Mexico and, once they've received visas, leave for a two-and-a-half hour ride to the border.¹³⁰

Regarding transport to and from the worksite, a recent survey found that the largest share of immigrants (42%) drove a car, while 35 percent rode with others and eight percent walked. The remaining 15 percent either rode an employer provided bus (8%) or got to the work-site by riding with a paid driver, or *raitero* (7%).³⁵ Among the 15 percent who either rode an employer provided bus or went with a *raitero*, 14 percent reported that they were required to use that means of transportation. Among those who rode with others, took an employer provided bus, or went with a *raitero* (50% of all workers), 71 percent paid money to someone to get to the work-site.¹³¹

Transport Issues for Undocumented Workers

For undocumented workers traveling to the United States, smuggling fees must be paid to a *coyote*. While smuggling fees often vary dependent upon the route and method of smuggling, they generally have been rising over the past two decades.¹³² Verité performed an informal survey of 21 cases of smuggling through Mexico that found that fees average USD 2,821 per person. Verité's estimate of smuggling fees accurately reflects a large study conducted by the Mexican Migration Project, which pins the current average fee at approximately USD 2,800.¹³³

Depending upon the country of origin, the journey for undocumented workers to the United States can take anywhere from a day to weeks or even months, whether across the border from Mexico or across several

borders.¹³⁴ Since the United States began beefing up border patrols in 1994 in California and Texas, undocumented immigrants have been driven from crossing at urban centers such as San Diego and El Paso into more remote areas. As a result, the number of deaths due to the region's inhospitable landscape have increased dramatically. In the 15 years since the United States tightened up its borders along the 2,000-mile Mexico-United States frontier, a human rights report alleges that deaths have occurred at a rate of one every 24 hours.¹³⁵

*The Los Angeles Times reported on October 15, 2009 that federal authorities arrested eight people who were believed to have smuggled over 200 immigrants per year into the United States at a cost of up to USD 4,500 per person. The ring provided phony immigration papers and smuggled the human cargo into the United States from Mexico concealed in hidden compartments of trucks. A house in Los Angeles was the base for the smuggling ring and served as a "drop house" before undocumented immigrants were taken to their final locations.*¹³⁶

In addition to walking, smuggled migrants enter the United States by several different modes of transportation, including aircraft, boats, and overland vehicles, all of which can pose potential health risks. People who are hidden among cargo shipments during transport risk injury or death by drowning, freezing, or suffocating. The potential for health complications is further exacerbated

by overcrowding, lack of food, poor sanitation, severe dehydration, and environmental extremes. A May 2003 case in which seventeen undocumented migrants from Mexico and Central America died from asphyxiation and heat stroke inside an abandoned tractor-trailer crammed with more than 100 immigrants in southern Texas is indicative of a phenomenon that is repeated year after year in Mexico and US border states.¹³⁷

For undocumented Asian workers, the path is more circuitous. In the 1980s and 1990s, Chinese immigrants came to the United States in the holds of large freight ships. Since the tightening of US border security, more and more Asians are transiting through Mexico, Guatemala and Thailand. In Guatemala, Chinese immigrants are allowed into the country on visas and then smuggled into the United States via Mexico by *coyotes*. In Thailand, they are given false papers and visas and flown into the United States.¹³⁸ There have also been recent indications that Chinese immigrants have arrived in Ecuador and Colombia with the intention of continuing on to the United States, since there were no visa requirement for Chinese tourists. After indications that some of these immigrants had been subjected to forced labor in Colombia, Colombian authorities reinstated the visa requirement for Chinese immigrants, who have continued to enter Colombia illegally by boat.¹³⁹

Human Trafficking

For undocumented workers, travel to the United States brings a host of other issues, including human trafficking. According to a report published by the American Bar Association in August 2009, 47 organized bands dedicated to trafficking of immigrants for labor and sexual exploitation existed in Mexico. No members of these bands had been captured or tried.¹⁴⁰

There is evidence that drug cartels are heavily involved in human trafficking, a lucrative business. The Zetas, one of the most violent drug trafficking organizations in Latin America, controls undocumented worker traffic in the southern United States, according to Mexican and US officials.¹⁴² In Michoacan, La Familia runs a brutal debt collection service (including recruitment debt), in a town where 85 percent of the legitimate businesses have some link to that cartel.



Human Trafficking Routes to the United States¹⁴¹

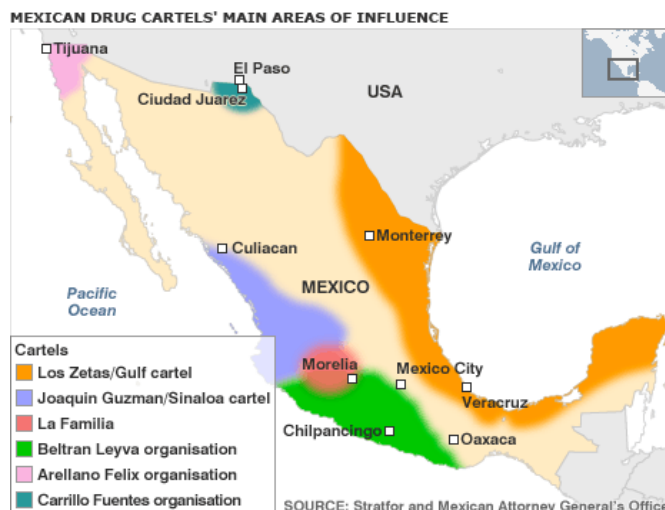
The following map shows the sphere of influence of the major Mexican drug cartels.¹⁴³

Trafficking victims are highly vulnerable to enslavement, and exploitation by forced labor accounts for 63 percent of human trafficking cases in North America.¹⁴⁴ A large number of Central American trafficking victims come through Guatemala and Mexico to the United States. In 2004, 215,000 Central America migrants were intercepted by Mexican authorities.¹⁴⁵

According to a recent study, there are five routes that human traffickers use to bring immigrants to the border, where they are sexually exploited or trafficked into to the United States:

- ⇒ The first begins in South America, passes through Mexico City or Puerto Vallarta, and continues to Baja California through Los Cabos.
- ⇒ The second route begins in Central America, where immigrants arrange to be smuggled through local contacts. Immigrants from Guatemala generally go through Chiapas, while those from El Salvador tend to go through Veracruz. They are sometimes forced into prostitution in hotels in Tijuana to pay back debts for transport, food, and lodging.
- ⇒ The third route is from Tijuana to Mexicali, where women who have been deported or cannot cross the border for a lack of money are forced into prostitution.
- ⇒ A fourth route goes from Tijuana to Ciudad Juárez and Sonora via Nogales, Caborca and Agua Prieta.
- ⇒ The fifth route is into the United States via San Diego.

Victims are transported by networks of *polleros* whose bases of operation are in Vista, La Escondida; Las Antenas, Carlsbad; Carrizales in Oceanside; and Del Mar and Los Gatos in Valley Center.¹⁴⁶ Data suggest that forced labor operations are concentrated in the destination states of California, Florida, New York, and Texas—all of which are transit routes for international travelers.¹⁴⁷



Migrant Kidnapping by Smugglers and Traffickers

Members of drug cartels have begun to kidnap Mexican and Central American immigrants who are en route to being smuggled into the United States, and to demand that their families pay a ransom of up to USD 12,000. Kidnapping has proven to be extremely lucrative, because it brings in earnings equivalent to trafficking, without

*In August 2009, ICE agents found over 30 immigrants from Guatemala, El Salvador and Ecuador – including two boys aged 7 and 9 - who were being held hostage by smugglers in Compton (Los Angeles). These smugglers threatened the hostages with a pit bull and demanded additional money on top of the thousands of dollars that the immigrants had already paid.*¹⁴⁸

the high overhead costs and securities associated with long-term enslavement. Mexico's Human Rights Commission reported in 2009 that approximately 18,000 immigrants passing through Mexico are kidnapped each year. In September 2009, the government found and freed almost 150 kidnapped immigrants in a period of three days in two separate incidents in Veracruz and Reynosa. Many times, kidnappers beat or kill kidnapped immigrants to prove to the other immigrants that they mean business.¹⁴⁹

According to an ICE agent, human traffickers and smugglers have also maimed and starved kidnapped immigrants in order to get more money from their families.¹⁵⁰ Some traffickers force their victims to work during their captivity or act as drug mules (a transporter of illegal drugs), adding to profits.

Interviews with experts and immigrants in the United States and Mexico indicate that many small-time smuggling operations must hand over a percentage of their human cargo each day as a protection fee to narco-traffickers, who charge these immigrants' families ransoms on top of the payment that they had to give the smuggler.¹⁵¹ In other cases, immigrants are told upon arrival in Mexican or US border towns that they must make an additional payment on top of the agreed upon amount before the smugglers will let them go.

Whereas, in the past, prosperous immigrants with bank accounts were targeted, recent data indicates that poor immigrants have been increasingly targeted. Kidnappers call their families demanding USD 1,500 to 10,000 on top of the thousands of dollars that immigrants pay to be smuggled across the border, according to a *New York Times* report. One Salvadorian immigrant reported, "They beat me and kept beating me until I handed over my telephone numbers." A Honduran immigrant stated that, "They said that if they did not receive payment, they would take away my kidney afterward and throw me into the river so the big lizards would eat me."¹⁵²

There are indications that immigrants whose families do not pay the ransom demanded by kidnappers may be killed or trafficked into sexual or labor exploitation. A detective in Bonita Springs, Arizona who was involved in the liberation of 15 kidnapped undocumented immigrants in Phoenix said that, "Our concern was if the ransom wasn't paid, the [kidnap] victims may become victims of human trafficking. They may become commodities."¹⁵³ Phoenix, which registered 366 reported kidnappings for ransom in 2008 and 359 in 2007, the majority of which were related to human and drug smuggling, has been dubbed the kidnapping capital of the United States.¹⁵⁴

Kidnappers, smugglers, and traffickers alike rely upon wire-transfers for their fees, with Arizona becoming a hub for such activity. The Arizona state Attorney General's Office estimated that *coyotes* received 95 percent of their fees via money-wiring businesses such as Western Union and MoneyGram. Over a one-year period during 2005 to 2006, Arizona authorities froze 12,417 transactions and seized a dozen money-transfer businesses for criminal complicity.¹⁵⁵

An immigrant from Mexico whose testimony to a worker advocate was shared with Verité indicated that he had been held in Phoenix by *coyotes* who refused to release him and a friend until they paid them. The *coyotes* originally told them that they would be charged USD 700 to cross the border from Mexico into the United States. However, when they arrived in Phoenix, they were locked in a house and told that they owed an additional USD 2,000 each. After six days, the immigrants still had not been able to find any family members who had enough money, and the *coyotes* beat them and said that if they did not pay them the next day they would beat them again and leave them in the desert to die. The next day, the *coyotes* received a call from a Phoenix police officer who demanded USD 10,000 from the *coyotes* in protection money and told them that they would raid the apartment in ten minutes if they did not get the money. The *coyotes* fled the apartment and the immigrants were able to escape.

There are also indications of a rise in "virtual kidnapping," in which extortionists take advantage of the fact that immigrants are out of touch with their families for long periods of time while they are being smuggled across the border to call family members and tell them to send money so that they will not harm the immigrants, who in fact have not been kidnapped. ICE reported that this phenomenon began in 2007, and had reached about one case per week as of October 2008.¹⁵⁶ An experienced immigrant interviewed by Verité who had crossed the border numerous times reported that he is always careful to cover the telephone when calling family members on the way to the United States, because extortionists often look over the shoulders of immigrants to see the numbers that they have dialed and call their family members the next day demanding a ransom.

The Best Case Scenario: An Undocumented Immigrant's Perilous Journey Through Mexico

This story was recounted to Verité by the worker himself (His name has been changed to protect his identity)

Pedro came from the eastern part of Guatemala, where his family had a large farm. While he had attended the country's most prestigious military school and fought in the civil war, he was unable to find a decent job in Guatemala. He worked on his family's farm, but competition from a large multinational chicken company forced the family to take out a bank loan to try to keep the farm afloat. Unable to repay the loan, Pedro decided to migrate to the United States. Pedro chose the most reputable coyote he could find, who charged USD 5,000, which is two to three years of pay in Guatemala. For this price, he was promised good food and treatment along the way, and that if he got caught he could try two more times for free.

Pedro borrowed the money for this trip from a friend who was a moneylender, who charged Pedro USD 125 in interest monthly. Despite being friends with the moneylender, Pedro was told that there would be consequences if he didn't pay, since the moneylender knew where his family lived.

Pedro began his journey in June 2009. At the border crossing, he met up with 75 men and women, and they walked eight hours into Mexico under grueling conditions. The coyotes then put Pedro and 150 other immigrants into the back of a tractor trailer truck for 24 hours with no food or water. Two Brazilian women who were riding in the back of the trailer passed out and the immigrants banged on the truck until it stopped. Two of the coyotes came into the back of the trailer and threw the Brazilian women out of the truck while it was still moving.

When they got to Puebla, they were housed on a ranch. They were then transported in a caravan of approximately 25 pickup trucks for two days. There were no stops and they were given two plastic bags: one to urinate in and another to defecate in. When one man complained about this poor treatment, he was punched in the face and his wife was "taken away."

The immigrants were taken to Hotel Oasis in Cananea, Mexico, close to the US border, where over 800 immigrants were housed. They were given horrible food, were not able to shower, and were not given a place to sleep. According to Pedro, "It was like hell. It was a jail. It was subhuman." He said that some Zetas worked as coyotes in Cananea and that they forced many immigrants into forced labor in Cananea - women as prostitutes, men as laborers. He said, "They treat them like animals." He heard that the Zetas charge coyotes five immigrants per day as a protection fee. The recruiters send five people per day to the Zetas, who charge the family a ransom to free the kidnapped immigrants.

After this, they began their journey through the desert. They did not take the normal path because of increased immigration control, but instead took a longer trip that lasted seven days. For this trip, they were only given a plastic bag containing a gallon of water, two packages of crackers, a can of corn, a Gatorade, a can of sardines, and a jar of jelly. After the exhausting journey, they reached a house in a luxurious neighborhood outside of Phoenix. They were housed there for a day and were not given any food. The husband who had been hit earlier asked for food and was savagely beaten again.

The next day, they were transported in a van to Los Angeles with no stops. They arrived at a house full of gang members and were forced to strip naked as soon as they arrived. There were over 100 people in the house and only one bathroom and two meals per day. The coyotes told Pedro that he would not be able to leave until he gave them an additional USD 1,000, and he was held against his will until his family would pay. Luckily, Pedro was able to contact his brother, an administrator of a large farm in Colorado, who wired the money, and Pedro was allowed to leave two days later.

Pedro was transported to the border of Colorado, where his brother picked him up. He had lost 18 pounds during his 22 day trip. Even so, Pedro described himself as "fortunate," saying that he traveled with one of the "nicer coyotes." Very fortunately, a position had just opened up at the farm where Pedro's brother worked as an animal specialist. He was even more fortunate that his employer turned out to be a very good person who paid Pedro a fair salary; treated him with respect; and took him to the doctor when needed. He said that he was planning on paying off his family's loans and sending about USD 300 to his family every month so that they could survive.

On the Job: Mechanisms of Coercion and Subjugation/Enslavement

Reception and Job Assignment

Upon arrival in the United States, H-2 workers are usually met by company employees, who lead them to a company van. Workers often must hand over their identification documents (passport with visa) to these employees. Workers interviewed by Verité reported that these documents are retained by employers until the term of the contract ends or until the employer cancels the contract. Workers also reported that, immediately after arriving in the United States, often while still in the airport or on the bus, they signed a work contract in English. Workers are usually not provided with a copy. After signing the contracts, workers are taken to the fields. They are given few instructions on how to do their job.

There are many cases where the contract terms are changed from weekly wages to piecework, particularly in forestry. Instead of being paid the prevailing wage of USD 6 to 10 per hour as promised prior to departure, forestry workers are often paid according to the number of seedlings planted--and are expected to empty two bags of 1,000 seedlings each per day. Many are paid less than USD 25 a day, despite working eight to 12 hours.¹⁵⁷ Hugo Martin Recinos-Recinos, a former H-2B worker who led a class action civil suit against Express Forestry, said workers were promised a wage of USD 8 an hour, but instead were paid on a piecework basis. Even though they worked from 6 a.m. to 7 p.m., six days a week, their paychecks said they had worked only 26 or 27 hours.¹⁵⁸ One forestry worker was promised travel reimbursement and wages high enough to support his three young children in Guatemala. Instead, his piecework wages amounted to USD 3.75 an hour, even before steep illegal deductions for telephone service and other costs.¹⁵⁹ There are also reports of a lack of payment transparency and wage discrimination by FLCs according to workers' country of origin among forestry workers in the Pacific Northwest.

This lack of transparency is also visible in H-2A work, where DOL has recently modified its methodology for determining the prevailing wage in a way that is extremely favorable to employers. When an industry relies on guestworkers for the bulk of its workforce, wages tend to fall. Unfortunately, guestworkers are unable to bargain for better wages and working conditions due to their exemption from the NLRA. Over time, wages fall further.¹⁶⁰ Although H-2A employers are required to make up the difference between the prevailing wage and the piece rate if workers fail to earn the prevailing wage through piecework, this reportedly rarely happens in practice.¹⁶¹

In the H-2B program, there is no regulation of the number of hours that must be guaranteed to workers. Thus, if a worker arrives in the United States on an H-2B visa and is offered no work for weeks, that worker has no recourse since he may not lawfully seek employment elsewhere. He likely has substantial debts on which he must continue to make payments. As an H-2B worker, he more than likely is obligated to pay for housing and food while in the United States.¹⁶² Workers that Verité interviewed in Guatemala reported that when they arrived in the United States, their workplace was not ready so they had to wait one to two weeks in a hotel for which they had to pay USD 60 weekly for lodging and additional money for food. These are costs the worker did not anticipate and is poorly equipped to afford.

Wages

Once in the United States to work either legally or illegally, many workers see their wages whittled away - sometimes to less than the minimum wage - by deductions for gas, food, lodging, tools and even, in one case, using a portable outhouse.¹⁶³ According to a study released in November 2009, over two thirds of immigrants are subjected to minimum wage violations and 80 percent are subjected to overtime payment violations. Latin

American immigrants were the ethnic group that suffered the greatest percentage of minimum wage and overtime payment violations in the United States.¹⁶⁴

Most of the lawsuits for sheepherders and forestry workers involve significant FLC infractions including withholding payment, having state and federal taxes wrongfully withheld from wages,¹⁶⁵ and substantial illegal deductions which further reduced their wages.¹⁶⁶

Government regulators also report that many FLCs find other ways to short workers on their wages. For example, shaving two hours off a 10-hour workday in the books will effectively lower the wage rate from USD 6.98 to USD 5.58. In other cases, according to the GAO, growers request workers for longer contract periods than necessary. When the work runs out, the men are forced to return home early -- meaning growers don't have to pay transportation costs and other guaranteed benefits. One North Carolina internal document estimates that 85 percent of all H-2A work dries up five months into the seven-month season.¹⁶⁷

Threats of deportation and personal harm are common if workers complain of payment violations. When one Latino worker attempted to collect wages from a contractor, “The contractor raised his shirt and showed he had a gun — and that was enough,” said Eva San Martin, an advocate working in New Orleans. “He didn’t have to say any more. The worker left.”¹⁶⁸

Examples of Labor Broker Payment Violations

- ⇒ In Florida, workers are paid 45 cents for every 32-pound bucket of tomatoes collected. A worker has to pick nearly two-and-a-half tons of tomatoes to earn the minimum wage. So bad are their working and living conditions that the US Department of Labor called it "a labor force in considerable distress".¹⁶⁹
- ⇒ Immigrants working in the seafood industry in Virginia and North Carolina filed no fewer than 12 lawsuits from 1998 to 2007 against ten companies for sub-minimum wage piece rates; deductions for travel, substandard housing, and tools; and non-payment of overtime.¹⁷⁰

Working and Living Conditions

The agricultural sector exhibits some of the highest rates of occupational injuries and illnesses of all industrial sectors. Between 1996 and 2001, the agriculture, forestry, and fishing sector, which employed less than two percent of the US workforce, accounted for a disproportionate 13 percent of all fatal occupational injuries.¹⁷² While the average fatality rate for all industries in the United States is 4.3 deaths per 100,000 individuals employed, the fatality rate for agriculture is five times higher. The use of heavy machinery, exposure to pesticides, and poor access to healthcare make agriculture generally a high-risk occupation whether one is an H-2 worker or not.

Farmworkers rarely have access to workers’ compensation, occupational rehabilitation, or disability compensation benefits. Only 12 states, the District of Columbia, Puerto Rico and the Virgin Islands provide farmworkers with workers’ compensation to the same degree as other workers; in 13 other states, farmworker coverage is optional but not required by state law. Although many farmworkers meet eligibility

*Van accidents are reportedly the primary cause of death of forestry workers. The Sacramento Bee reported that 21 forestry workers from Honduras and Guatemala were killed going back and forth to work in separate van accidents from 2002-2005.*¹⁷¹

requirements for programs such as Medicaid and the Food Stamp Program, very few are able to secure these benefits.¹⁷³

Migrant health centers estimate that less than 12 percent of their revenues are derived from Medicaid, and it is believed that fewer than 25 percent of eligible farmworkers receive food stamps. Different state eligibility requirements and the lack of portability or reciprocity in Medicaid create administrative barriers to coverage for mobile populations. When farmworker families move from state to state seeking employment, Medicaid benefits stop at the state border, making Medicaid unobtainable for most farmworkers and their families.¹⁷⁴ The USDOL reports that if guestworkers are injured or get sick at work they may seek medical treatment and have the right to free medical treatment and part of the wages lost while injured in most cases.¹⁷⁵ However, between five and 11 percent of all farmworkers have health insurance provided by their employer, while seven to 11 percent have Medicaid or other government-provided, needs-based, health insurance coverage, despite the fact that their poverty status would otherwise qualify them. An obvious barrier to accessing the latter type of health insurance is the fact that so many are undocumented immigrants.¹⁷⁶

Thirty-nine percent of the workers reported that they would be covered by unemployment insurance (UI) if they lost their job. Fifty-four percent reported not being covered by UI and eight percent did not know. Work authorized respondents were much more likely than those not authorized to report that they would receive UI benefits should they lose their job (76 percent vs. four percent, respectively).¹⁷⁷

Health-Related FLC Infractions

- ⇒ In California, there were five heat-stress deaths in 2008, including three farmworkers. During May 2009 inspections, five southern California FLCs were ordered to cease operations because they did not have the shade and heat-stress prevention plans required by the heat-safety regulations. In July 2009, the state moved to revoke the licenses of FLCs Joel Salazar Farm Labor of Escondido and Valley Pride Inc. of Coachella for failure to abide by heat-stress regulations.¹⁷⁸
- ⇒ H-2A fruit pickers commonly suffer from falls and exposure to pesticides. A recent study published by the Journal of Occupational and Environmental Medicine revealed that nearly a quarter of all North Carolina tobacco workers surveyed had suffered from nicotine poisoning, or "green tobacco sickness," at some point during the previous harvest. Combined, tobacco and fruit account for over half of all H-2A workers.¹⁷⁹
- ⇒ Reports indicate that H-2B forestry workers are often injured and sometimes killed on the job. These workers rarely receive compensation for their injuries, have to pay their own medical bills in many cases, are not given paid time off to recuperate from injuries, may be forced to work before they are better, and may be sent home before their visas expire if they can no longer work.¹⁸⁰
- ⇒ Berta, a Latina worker in Georgia, said the impact of workplace abuse, like being chronically exposed to pesticides, isn't fully realized while they still live in the United States. And the cost is not borne by the US companies that employ them — or by the consumers who enjoy the products or services they produce. "What happens is when we feel sick, we go back to our homeland, and that's where we die," Berta said. "The consequences are not seen here, they leave and they are seen in Mexico."¹⁸¹
- ⇒ Undocumented migrants have been shown to suffer from psychological disorders and the added impact of virtual enslavement is likely in many cases to be severe. In particular, the possibility of post-traumatic stress disorder, which may continue to plague victims for years and can manifest itself in a wide range of symptoms, must always be a major concern. Symptoms can include depression, anxiety, insomnia, nightmares, seemingly irrational outbursts, and problems with concentration.¹⁸²

Living Conditions

The housing quarters provided to farmworkers by FLCs are usually substandard. A 2008 farmworker report found that over half of farmworkers lived in overcrowded conditions and over a quarter lived directly adjacent to pesticide application. Over 15 percent were missing either toilets, drinking water, or washing water.¹⁸³ A survey of sheepherders in the western United States found that out of 41 workers, most had no heat, air conditioning, running water, or toilets.¹⁸⁴

Table 9
Select statistics on housing conditions

Characteristic of housing unit	Migrants	Nonmigrants
	Percent	
Overcrowded	52	3
Lacks stove	10	1
Directly adjacent to pesticide application	26	N/A

Note: N/A—not available.
Source: Housing Assistance Council 2001.

Under federal regulations, employers hiring H-2A workers must provide them with free housing. The housing must be inspected and certified in advance as complying with applicable safety any health regulations. In practice, the quality of housing provided to H-2A workers varies widely and is often seriously substandard and even dangerous. H-2B workers have even less protection. There are no general federal regulations governing the conditions of labor camps or housing for H-2B workers. State and local laws also generally do not cover housing for H-2B workers. In practice, this means that H-2B workers are often provided housing that lacks even basic necessities, such as beds and cooking facilities.¹⁸⁵

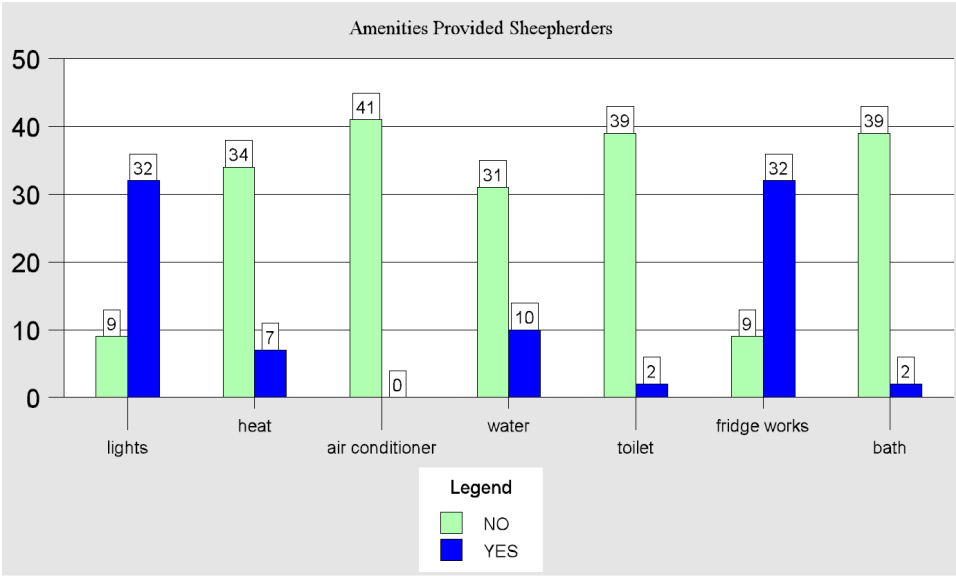


Figure 4: Graph displays frequency of no and yes as sheepherder answers to questions regarding availability of lights, bathing necessities, toilets, heaters, and air conditioners.

Examples of FLC Housing Abuses

- ⇒ Vreba Hoff Farms engaged in a “bait and switch” scam. The employer told the DOL that workers would be housed at a local Ramada Inn and the hotel was certified as the official housing site. When the H-2A workers were not found at the Ramada, state officials conducted an investigation. They discovered not only that no H-2A workers had ever stayed at the Ramada, but that the employer never intended them to. The manager of the hotel reported that it was understood that the housing certification was merely a technicality.¹⁸⁶
- ⇒ In Michigan, nine grown men were crammed and living inside a walk-in, closet-sized room and forced to share three dirty, worn-out mattresses at the worksite. Unfortunately, the state has eliminated funding for migrant housing inspections, social services, and other jobs ensuring farmworkers were being treated fairly, said several migrant advocates.¹⁸⁷
- ⇒ H-2A camps are approved by state inspectors, but the standards are primitive. In one camp, 32 men shared a house with no bathroom, and were forced to resort to a cinder-block outbuilding that contained four toilets without partitions. In another camp, a dozen men slept in a two-bedroom house so ramshackle that rats and raccoons could slip through cracks in the walls.¹⁸⁸
- ⇒ A study conducted by the HAC found that the following problems are most common in North Carolina: Overcrowding, with an average of more than 2.1 persons per room, broken or non-existent appliances and fixtures such as stoves, refrigerators, showers and toilets, serious structural problems such as broken windows and doors, peeling paint, sagging porches and holes in the walls and floors, and proximity to fields sprayed with pesticides.¹⁸⁹

Isolation

Housing for both H-2A and H-2B workers is often located in extremely isolated rural locations, subjecting workers to many kinds of difficulties. In most instances, workers lack both vehicles and access to public transportation, making them totally dependent upon their employers for transportation to work, grocery stores, and banks. Some employers charge exorbitant fees for rides to the grocery store. Much of the housing provided to workers lacks telephone service, isolating workers even further.¹⁹⁰

While geographic isolation can be severe for workers in agricultural work camps, the perhaps more dire plight of H-2B forestry workers and sheepherders has remained out of the public eye, due to remote job sites and the wariness of the workers, who generally do not speak English and fear retaliation by employers.¹⁹¹

Isolation can hide abuses. In 2008, a federal judge ruled that 3,000 *pineros*, the “men of the pines” who plant the massive pine plantations in the Southern United States, had been grossly underpaid and subjected to abuse made possible by the workers' social and physical isolation.¹⁹²

Cattle herders interviewed who were employed as H-2A workers at a rural ranch in Colorado reported that they were extremely isolated both physically and socially. These workers were unable to leave because their passports and immigration papers were confiscated and because of their extreme isolation on a ranch that spanned three states. As an example of the level of social and physical isolation, one worker reported that it took him the whole night riding on horseback to get to the nearest ranch, where there was a telephone. He was unable to call a friend

in the United States for six months because he did not know to dial “1” before the area code and there was nobody that he could ask. When this worker told his employer that he wanted to leave, the FLC took away his horse and left him to herd cattle in an even more isolated area from which he could not walk to any inhabited areas by foot.

By isolating workers and becoming their sole source of food, information, and communication with the outside world, labor brokers can often damage the victim’s sense of self-hood and autonomy and render him or her incapable of independent action or even thought.¹⁹⁴

"Most of the time, these workers are housed miles from civilization, with no telephones or cars. They're controllable. There's no escape. If you do escape, what are you gonna do? Run 17 miles to the nearest town, when you don't even know where it is? And, if you have a brother or a cousin in the group, are you gonna leave them behind? You gonna escape with 17 people? You'll make tracks like a herd of elephants. Whoever's got you, they'll find you. And heaven help you when they do."¹⁹³

Restrictions on Freedom of Association and Movement

A 2009 study entitled "Broken Laws, Unprotected Workers" found that 43 percent of workers who made labor-related complaints to their employers or attempted to unionize experienced illegal forms of retaliation, including threats to call immigration officials and deportation.¹⁹⁵ An AFL-CIO report published in October 2009 details incidents from 2005-2008 in which Immigration and Customs Enforcement (ICE) acting on behalf of employers and police, conducted surveillance or detained workers during labor disputes, and arrested workers at courthouses where they were filing labor-related disputes.¹⁹⁶

"So they took us to that neighborhood and the specifically told us that we could not leave the apartment. They said, 'get out of the van get into the apartment and don't leave. If you want to buy something do it right here but no further.'"

—Former Imperial Nursery Worker

In addition to farmworkers' restrictions on collective bargaining and other freedoms of association, perhaps most abuses of guestworkers flow from the fact that the employer/FLC can easily have them deported, as guestworkers' visa status is dependent upon employment with a specific employer and they become deportable if the employer decides to sever the employment relationship for any reason. One of the most chronic abuses reported by guestworkers concerns the seizure of identity documents —

in particular passports and Social Security cards. In many instances, workers are told that the documents are being taken in order to ensure that they do not leave in the middle of the contract.¹⁹⁷ The Southern Poverty Law Center has also encountered numerous incidents in which employers destroyed passports or visas in order to convert workers into undocumented status. When this happens, there is little likelihood of a worker obtaining assistance from local law enforcement officials. In many jurisdictions, lawyers representing workers advise them to avoid calling police because they are more likely to take action against complaining workers than against the employer.¹⁹⁸ The FBI confirmed in the case of Mexican workers in Louisiana strawberry fields (owned by Bimbo's Best Produce) that workers had their passports confiscated, and that supervisors carried shotguns to keep workers fearful.¹⁹⁹

A lawsuit against Imperial Nurseries charges that agents of Imperial confiscated Guatemalan H-2B workers' passports to prevent their escape, forced them to work nearly 80 hours a week for far less than minimum wage, denied them emergency medical care and threatened them with jail and deportation if they complained.²⁰⁰ Workers interviewed by Verité indicated that their freedom of movement was severely curtailed. Eight workers were housed in a small two bedroom apartment in a dangerous neighborhood in Hartford where they were either afraid to talk to people or were unable to do so due to language barriers. They also reported that they were specifically told not to leave the apartment and that two Mexican supervisors were housed with them to ensure

that they did not escape. The employers threatened to report workers to immigration services if they tried to leave.²⁰¹

A Colorado Legal Services advocate reported to Verité that Mexican workers in the Hudson, Colorado area had been recruited by a labor broker who had direct ties with Mexican communities. Once the workers arrived they could not leave until they had paid their debt to the FLC, Moises Rodriguez. Workers were housed in a substandard housing compound which lacked potable drinking water. Although the gates of the compound were not always locked, workers were afraid to leave the compound because the FLC's house was adjacent to their compound, he carried a gun, and threatened workers. Workers interviewed reported that a worker who had escaped without paying his debt in the past was tracked down in North Carolina and pistol whipped by the FLC.

Workers may also be locked up or have to sleep at the worksite. Commonly, forestry workers spend nights sleeping on tarps on the forest floor.²⁰² In 2003, a group of women from Hidalgo, Mexico, traveled to Cocoa, Florida, on H-2A visas to harvest tomatoes. "El patron would put a lock on the gate where our trailers were, and he or a trusted worker were the only ones who could open it," one of the women told the *Palm Beach Post*. Another said, "After a time, they would not let us communicate with other people. Everything was locked up with a key."²⁰³ In Immokalee, Florida undocumented workers were locked in trucks at night and threatened with harm if they tried to escape before paying off their debts.

Some FLCs completely restrict worker interaction with outsiders. A worker advocate from Southern Migrant Legal Services recounted to Verité a lawsuit filed against Odom Farms and Jack Odom in Austin, Arkansas on behalf of Mexican H-2A workers that alleged forced labor under the Trafficking Victim's Protection Act (TVPA). In this case, the grower would not allow them to leave the packing shed where they lived unless escorted by a crew leader. They were told that if they left, they would be immediately deported.

A survey of sheepherders found that employers severely controlled worker access to information and to other people, with many not allowed visitors, to visit others, or to speak to others.²⁰⁴

Not only are workers discouraged from speaking up about their labor rights, but they are warned not to talk with labor advocates. The North Carolina Growers Association, the largest FLC in the United States, tells workers, "When the attorneys from Legal Services show up, watch out. They want to take your job away from you." Instead, the association urges the men to call the association if they have concerns.²⁰⁵



Empty Town in Mexico where most men are away working in the United States

Fear and Violence – Actual or Threatened

Employers use threats to assert control over the workers, such as threatening to call ICE. For example, in one case where workers refused to work until they received their pay after not having been paid in several weeks, the employer responded by threatening to call immigration and declared that the workers had abandoned their work and were thus "illegal" workers. Even when employers do not overtly threaten deportation, workers live in constant fear that if they complain, they will be sent home or not be rehired. Human Rights Watch found that in the H-2A program there is "widespread fear and evidence of blacklisting against workers who speak up about conditions, who seek assistance from Legal Services attorneys, or who become active in [the union]." Human Rights Watch also found evidence of a "campaign of intimidation" against workers to discourage any exercise of freedom of association by the workers. One widely publicized example of blacklisting to discourage complaints was the North Carolina Growers

Association 1997 blacklist, called the “1997 NCGA Ineligible for Rehire Report,” which consisted of more than 1,000 names of undesirable former guestworkers.

The US Government Accountability Office (formerly the General Accounting Office) similarly reported in 1997 that H-2A workers “are unlikely to complain about worker protection violations, such as the three-quarters guarantee, fearing they will lose their jobs or will not be accepted by the employer or association for future employment.”

FLCs and brokers also threaten to harm workers' families in their home countries: One worker described how a group of men came to his home in Guatemala and threatened to kill him if he did not drop the lawsuit. A SPLC report notes that a labor recruiter threatened to burn down his entire village.²⁰⁶

Superstition, faith, and religion have been used as tools for forced labor and modern slavery. For example, human traffickers who brought Catholic women and girls from Latin America into the United States have used the church's value of virginity before marriage as a tool to keep their victims enslaved. The abusers claim that a woman who has been sold for sex or raped will no longer be accepted back into her church or family; so women feel they have no alternative but to remain as sex slaves.²⁰⁷

Gender Abuse and Discrimination

There is evidence of widespread gender discrimination and sexual abuse in the guestworker program. At least one labor recruiter systematically placed women in H-2B jobs while placing men in H-2A jobs because H-2B workers get lower pay and fewer benefits.²⁰⁸ Marcela Olvera-Morales, a Mexican guestworker charged the International Labor Management Corp., a recruiter which places thousands of guestworkers in US jobs, systematically placed women in H-2B jobs while placing men in H-2A jobs. That case is pending in federal court.²⁰⁹

A 2009 study found that 40 percent of female immigrants were subjected to minimum wage violations, compared to 35 percent of immigrants overall. The study concluded that female immigrants constitute the social group that is most vulnerable to wage violations in the United States.²¹⁰

A recent survey in California found that male workers outnumber women in the fields and nurseries by about 20 to one and there is little workplace monitoring.²¹¹ In a survey conducted in 2008, among female farmworkers and low-wage immigrant women in the Southeast, 77 percent revealed that workplace sexual harassment was a major problem. According to another survey conducted in California by the Southern Poverty Law Center, 90 percent of the female farmworkers interviewed identified themselves as victims of sexual harassment on the job, not only by fellow workers but by supervisors as well.²¹² In several recent cases brought before federal court in California, women who resisted advances were fired or suspended without pay.²¹³

Immigrant women are faced with additional obstacles, including language barriers, in their attempts to seek justice for violence against them. Immigrant women have reported taking their abusers to court only to find that the court provided no interpreter and that the abuser himself would serve as their translator. There are also no legal protections to prohibit law enforcement from turning over victims — even of rape — to ICE. The SPLC is aware of several cases in which female victims of crimes have been turned over to ICE and deported.²¹⁴

In a precedent-setting settlement, the US Equal Employment Opportunity Commission (EEOC), representing current and former employees who were allegedly subjected to sexual harassment and retaliation in California, reached a USD 1.8 million voluntary settlement this past year with Tanimura & Antle, one of the largest lettuce growers and distributors in the United States. William Tamayo, a regional attorney for the EEOC, portrayed sexual harassment as an industry-wide problem in US agriculture. “From California, where the fields were called ‘field de calzon’ (or ‘field of panties’) because so many supervisors raped women there, to Florida, where female

farmworkers call them 'The Green Motel,' and throughout the country, we have found women working in agriculture are often particularly vulnerable to sexual harassment," Tamayo said.

Smugglers often carry out sexual abuse against migrants for its social symbolism of power.²¹⁵ Border crossings are particularly problematic. According to the United Nations, up to 70 percent of women crossing the border without husbands or families are abused in some way. According to experts, rape is now considered "the price of admission" for women crossing the border illegally. But this practice is suspected to be vastly underreported.²¹⁶ Central American women, who must cross through Mexico illegally, are at a greater risk of being raped, especially by immigration officials and gangs. According to a Salvadorian NGO activist, Jesus Aguilar, "The normal rule, according to women who migrate, is that before leaving their countries they have to take the pill for at least one to three months to ensure that they will not get pregnant after a rape," Central Americans women who cross through Mexico on border trains are at even greater danger according to Aguilar who reports that 99 percent of these women are raped.²¹⁷

Undocumented women workers are particularly vulnerable to sexual abuse that includes forced prostitution. For example, in November 2009, an American citizen was jailed for requiring a woman smuggled into the United States to pay off her debt through prostitution.²¹⁸

Although not as widely reported, migrant men are also sexually abused. In 2009, Austin police charged a man with sexual assault after investigators say he held an undocumented immigrant from Guatemala against his will and sexually assaulted him after promising him a job. The victim, who is 19, told police that his captor threatened to kill him and members of his family in Guatemala if he fled.²¹⁹

Remittances

Remittances are the major reason farmworkers come to the United States. A remittance industry has sprung up in the United States, catering to those sending money back to their families. Most people sending money back home do so by money transfer, as illustrated by the graph to the left. However, banks have gained market share in the past two years.

Table 13: Remittance sending method			
	2007	2008	2009
	(%)	(%)	(%)
Banks	12	7.00	20
Money transfer operators	74	76.00	65
Internet	1.2	3.00	2
Travelers, informal transfers	12	14.2	14
Source: Orozco, 2007, 2008, 2009. Survey of Migrant Remitters.			

Remittances during the last two years have decreased by 12 percent in Mexico, 11 percent in Honduras, and 21 percent in Ecuador due to the economic crisis.²²⁰ A survey of migrants in the United States found that they are sending money with less frequency and in smaller amounts.²²¹ The costs of money

transfers, which in recent years had fallen dramatically due to increased competition and the adoption of new technologies, are starting to increase.²²²

A growing number of department stores with affiliates in the United States offer clients the possibility of in-kind remittances, purchasing everything from living room sets to computers for delivery to branch stores in Mexico and Central America. FAMSA, Elektra, and La Curacao are among the companies that have opened branches in the largest Latino neighborhoods of Los Angeles and other US cities. Large Mexican corporations such as Cemex and Telmex have also entered this market.²²³

Verité's interviews with workers in Mexico and Guatemala indicated that many workers' families depended on remittances for both living expenses and loan repayment. Because of changes in terms of employment,

underpayment of wages, and unexpected deductions, many workers sent back much less than they expected. In the case of some Guatemalan and Thai workers, this resulted in the inability to pay back high-interest loans and the loss of property that they had signed over as collateral for the loans. Some Guatemalan H-2B workers at Imperial Nurseries were forced to beg family members to wire them money to eat rather than sending remittances, because their piece rate wages, after deductions, were so much lower than the wages promised to them prior to departure.

Return and Reintegration

Due to changes in the US labor market, including the economic recession and an up-tick in deportations, guestworkers and undocumented workers are returning to their home countries still carrying the debt they left with because their work contract was cut short or they were deported. These debts continue to accrue, and since the loan shark must still be paid, the workers find themselves hard pressed to come up with enough money even to pay back the interest on the loan. Since the worker had to sign over their land as collateral, entire families are being displaced in rural areas in Mexico and Guatemala. In a 2009 BBC documentary, a Guatemalan worker was deported after three months of work and was unable to make enough to pay for his mother's cancer treatments. Each month he struggled to pay the loan shark, and since wages are so low in Guatemala, inevitably he would either lose his land or make the perilous journey once again as an undocumented worker to the United States.²²⁴

With increased raids at worksites, more and more undocumented workers find themselves at detention facilities awaiting deportation, which can be a lengthy process. Sarnata Reynolds, Amnesty International USA's policy and campaign director for refugee and migrant rights, said at a press teleconference in July 2009 that "Over the last twelve months, I have met with dozens of people detained in local jails, privately contracted centers, and ICE (Immigration and Customs Enforcement) facilities across the United States. Their arbitrary, prolonged and in some cases, indefinite, detention is shameful. Just a few weeks ago in Minnesota, I met two immigrants who had gone an entire year without ever being outside. Twelve months. The county jails they are held in are not designed for long-term detainees, and they have no outdoor facilities. One of the men stated, 'deportation is supposed to be a civil procedure, but there's nothing civil about it.'"²²⁵

CASE STUDIES

To better illustrate how different types of labor brokers operate, we examine four scenarios in which labor brokers are associated with forced labor. The first case study involves a small labor broker illegally trafficking Guatemalan forestry workers from the H-2B program into agricultural work at a nursery in Connecticut. The second case study highlights a large international labor broker and deals with Thai H-2A farmworkers in fruit and vegetable harvesting. The third case study highlights unregistered labor brokers and their relationship to undocumented workers. In this case, the Mexican farmworkers work in an organic farm in Colorado that supplies to Whole Foods Grocery Store. And finally, we examine forced labor conditions among sheep and cattle herders working for large labor brokers in western United States.

Case Study 1: Imperial Nurseries/Pro Tree Forestry Services – Small Labor Broker and Guatemalan H-2B Workers

Sector	•Forestry and plant nursery – southeastern United States and Connecticut
Workers	•H-2B Guatemalan workers
Broker	•Small Colombian broker in United States
Employer	•One of largest plant nurseries in the northeastern United States
Coercion Mechanisms	•Fraud, trafficking to other sector, threats of deportation, housing workers with supervisors in dangerous neighborhood, confiscation of passports, signing over of property deeds in Guatemala, social isolation

This case study is two-pronged, examining (1) the plight of a handful of Guatemalan workers brought into the United States on H-2B visas to work in forestry in the southeast who were then trafficked to the northeast to work at a large nursery performing jobs more akin to those covered under the H-2A guestworker program; and (2) key elements of broker-related forced labor occurring amongst H-2B forestry workers in the United States more generally. The circumstances of H-2B forestry workers with respect to broker-induced forced labor is so stark that we chose to use this Imperial case study as a jumping off point for examining the experiences of these workers in a bit more depth. This two-pronged case highlights how holes in H-2B regulations are exploited by brokers and employers; the ways in which legal immigrants can be trafficked into forced labor; and the startling finding that, in at least some cases, undocumented workers are significantly less vulnerable to exploitation than their guestworker counterparts.

Imperial Nurseries and Pro Tree Forestry Services

Introduction

In 2007, a dozen Guatemalan workers filed a federal lawsuit accusing Imperial Nurseries, one of the nation's largest nurseries, and their FLC, ProTree Forestry Services, of engaging in human trafficking. Among the charges were that the broker and employer forced the workers to work nearly 80 hours per week, paid them less than minimum wage and denied them medical care for injuries on the job. During their contract period, the workers reported being paid about USD 3.75 per hour, with this meager wage being further whittled down through substantial, illegal deductions. These workers had incurred substantial debts in Guatemala to pay for their visas and trip to the United States. The workers alleged in the lawsuit that they were afraid to talk freely to labor investigators because of threats of deportation and arrest levied against them. Some of the workers flew to North Carolina, then were taken to Hartford, Connecticut in a small van. According to the lawsuit, when they arrived, they were housed in small filthy apartments and slept on the floors.

Work at Imperial Nurseries entailed preparing flowers, trees, shrubs and other plants to be sold to residential and wholesale consumers. Workers were forced to work when ill, injured, and in bad weather. Marvin Coto, 33, one of the workers, said he took refuge in a church, while other workers fled. Instead of sending money home, the workers said they wound up begging their relatives to send them money. Pro Tree employees opened the workers' mail, prohibited them from riding city buses and restricted their travel, the lawsuit alleges.²²⁶

Griffin Land & Nurseries, parent company of Imperial, said the workers were hired by Pro Tree Forestry Services, an independent labor contractor that Imperial had retained. Imperial later terminated its contract with Pro Tree, who was charged with engaging in human trafficking and a pattern of racketeering. "Imperial was appalled to hear that Pro Tree was not paying its employees appropriately, because it paid Pro Tree well in excess of what they would need to pay their employees in compliance with applicable law," the company said. "In addition, Imperial offered to give the DOL the final payment Imperial owed to Pro Tree so that DOL could pay these Pro Tree workers directly."

Recruitment and Hiring: A Tale of Two Brokers

Fortunately, although the workers at Imperial Nurseries were employed by a very exploitive FLC in the United States, their broker in Guatemala was unusually good. Most of these workers got in contact with the Guatemalan broker through personal connections rather than being actively recruited. One of the workers interviewed by Verité got the contact information of the broker through a friend who had worked in a *maquiladora* with him, while another met the broker through his aunt.

The broker worked independently and sent workers to a number of employers in the United States. The broker handled the visa paperwork and brought the workers to their interviews. He told them that they would be asked where they would work, what they would do, and what they would earn. He told them what he assumed to be the truth, that they would be paid minimum wage to plant trees in North Carolina. He did not charge the workers any fees, and workers interviewed assumed that he must have been paid by the employer. The workers only had to pay GTQ 1,300 (USD 156) to the consulate and their transportation costs, approximately (USD 500).

Even given that the broker was not exploitative, the fees still proved a burden for some Imperial workers: One of the ex-Imperial Nurseries workers interviewed by Verité reported that he had to borrow a total of approximately USD 2,000 to cover the consulate fees, the plane ticket, money for living expenses for his first 15 days in the United States before he got his first paycheck, and his family's living expenses. He was able to obtain a bank loan for GTQ 5,000 (USD 603) and was able to borrow the remaining USD 1,400 from his brother. Nevertheless, this put his brother in a difficult financial situation, especially since the worker was unable to pay back the loan until almost two years later. Another ex-Imperial worker interviewed reported that he had to borrow a GTQ 15,000 (USD 1,809) from a friend who did not charge any interest. However, other Imperial workers were not as

fortunate. Some had to sign over deeds to their land as collateral and ended up paying a total of approximately GTQ 20,000 (USD 2,412) on loans of approximately GTQ 15,000 (USD 1,809).²²⁷

It was the first time that the Guatemalan broker had ever worked with Pro Tree Forestry, and the broker said to the workers that he would never have sent them to work for Pro Tree if he had known how they would be treated. In fact, after he was contacted by the workers about their treatment, he tried to help them by contacting a Guatemalan lawyer who went to the United States to try to help them, free of charge. An Imperial worker interviewed by Verité said that, “the broker in Guatemala never tricked us or took advantage of our need for work. The ones that took advantage of us were the employers here.”

The workers’ employer in the United States was actually a labor broker, or Farm Labor Contractor (FLC) himself. The broker was a Colombian by the name of William Forero who ran his brokerage business, Pro Tree Forestry Services, alongside his wife and brother-in law, out of an office in Miami. One of the ex-Imperial workers said, “I still don’t know whether Imperial knew what was happening to us. At first I was under the impression that Imperial and ProTree Forestry were two separate businesses, but then I came to realize that ProTree was a broker (*contratista*) for Imperial.”

William Forero transported the workers from North Carolina, where they were supposed to work in forestry, to Connecticut, where they were forced to work in Imperial’s plant nursery for far less than they were promised.

Reception and Job Assignment: A Journey to the Unknown

The twelve workers from Guatemala were picked up at the airport by a man known as El Chino, who said that William Forero told him to pick them up. They drove for three days in a crowded van to Connecticut. Some workers had to sit on the floor due to an inadequate number of seats and the workers had to sleep in the car as they did not stop at hotels. The driver made only infrequent stops for food and short bathroom breaks.

The workers were not told where they were going and many assumed that they were still in North Carolina when they arrived at their small apartment in Hartford, Connecticut, where their passports were immediately confiscated and they were told that they could not leave the apartment. One of the workers on this trip, Marvin Coto, reported feeling afraid and disoriented during the three day journey to Connecticut.²²⁸ Another worker interviewed by Verité arrived a month later in Atlanta and experienced a similar journey to Hartford. He reported that, as his knowledge of US geography and communications were limited, it was not until eight days after he arrived in Connecticut that he realized that he was not working in North Carolina.

Contracts

Ex-Imperial workers interviewed by Verité were forced to sign a contract in the United States. The contract was written in English, a language which the workers could not read or speak. The FLC refused to give them a translation although he spoke and wrote fluent Spanish. When one of the workers said that he did not want to sign a contract which he did not understand, the FLC told him that he would be returned to Guatemala and would lose the money that he had paid to come to the United States if he refused to sign the contract. The worker finally decided to sign the contract as he saw no other way to pay off his loan if he was returned to Guatemala. He asked the FLC for a copy of the contract on multiple occasions and each time the FLC told him that he would give him a copy but never did so.

Payment and Deductions

An ex-employee of Imperial Nurseries interviewed by Verité, reported that he worked from approximately 5:45 a.m. until 8:00 or 8:30 p.m. and made less than USD 60 each workday because they were never able to reach their quota of 5,000 perfectly aligned plants per day. He reported that the Imperial supervisor had a ruler and he

measured the distance between the plants. If he found one plant that was crooked, he would make the workers recheck all the plants. There was not one day that the supervisor did not find at least one crooked plant. Therefore, William Forero made the workers plant 5,000 plants by noon so that they would have time to check them all and made them work the rest of the day without payment as a punishment for not planting all the plants perfectly. The worker stated, “If we had earned USD 60 for half a day it wouldn’t have been bad, but to be made to work the rest of the day without payment and without adequate health care is inhumane. The whole time that we were there, every day there was at least one crooked plant.”

Two ex-Imperial workers interviewed by Verité reported that they did not know the exact amount that they earned before deductions or the amount for each deduction because they were not provided with a pay slip or a written or verbal explanation of deductions. They were paid in cash and were only provided with a handwritten piece of paper stating the total amount of money that they earned after deductions, which was usually USD 190 to USD 210 every two weeks. The only time that workers were provided with checks and pay slips was for their last paycheck after they had filed a complaint. For this paycheck, workers were paid USD 665, far higher than any other payment that they had received. The workers believed that Mr. Forero did this to try to prove that he paid the workers more than he actually had.

Although they were unsure of the amount, workers were aware that deductions were being made for rent, electricity, gas, telephone, and transportation. The workers reported that they believed that approximately USD 200 in rent was deducted monthly from their paychecks. Workers interviewed reported that William Forero deducted USD 45 from each paycheck for taxes. However, after he left the job, a worker discovered that Mr. Forero had never paid his taxes and the worker was forced to pay back taxes.



Given that the workers reported working an average of 14.5 hours per day, six days per week, their wages averaged out to USD 1.09 to USD 1.20 per hour after deductions. A worker interviewed by Verité said, “People come here for the American dream but we come to live these types of situations. I was earning USD 60, a good salary in Guatemala. Why did I leave? Because I had this dream. I had a neighbor who came to work in New Jersey with another business and they paid him USD 600 per month. That is more just.”

It is important to note at this juncture that there were actually two separate groups of workers hired by Pro Tree Forestry to work at Imperial Nurseries: the workers brought in on H-2B visas, and undocumented workers. These two groups of workers were prohibited from communicating with each other. The existence of two separate workforces is significant, because their conditions were entirely different: The H-2B workers reported that they were able to establish communications with one of the undocumented workers, who reported that undocumented workers were paid directly by Imperial and were earning USD 8.50 per hour. These workers also

reportedly worked fewer hours, were not forced to work as hard as the H-2B workers, and were free to come and go as they pleased. The vastly better conditions experienced by the undocumented workers at Imperial is startling, and underscores the element of entrapment that is inherent to the H-2B guestworker visa program.

Working Conditions

Workers at Imperial Nurseries reported that they had wake up at 5 a.m. so that they could travel from their apartment in Hartford, CT to arrive at Imperial Nurseries in Granby, CT at 5:45 a.m. Workers reported working at

an incredibly fast pace 12 to 14.75 hour days until 8 to 8:30 p.m., six days per week. Undocumented workers employed at Imperial reportedly left work at 5 p.m.

The H-2B workers reported that William Forero constantly pressured them to work faster and scolded them if they broke pots. They reported that they had to plant 5,000 plants by noon and that there was no time to rest from 5:45 a.m. until the last of the 5,000 plants was planted. One of the Imperial supervisors told the workers on various occasions that they were working too hard and that they should slow down, as they had met Imperial's production target for three months in less than two months. Subsequently, William Forero told them to work slower when Imperial supervisors came around, but to speed up again when they left. According to a worker interviewed by Verité, "They made us work like animals, like horses, but at least horses receive care when they are harmed."

Workers interviewed reported having to work under very poor conditions and a lack of medical attention when they were sick or injured. One worker reported, "We had to wake up at 5 a.m., which is not a problem, because we are accustomed to working hard. The problem is that they made us walk through large puddles without any boots. ... There were people who had health problems and there was never anyone to provide them with health care. The only thing that mattered to them is that we worked ... There was a coworker who woke up with a fever and was forced to work. He felt bad and they would not even let him work inside. They made him work in the pouring rain. They did not care about the workers." The worker, Martin Coto, said "I got tremors from the fever, I'm shaking from the fever, I started crying and said you should let me go free. Every day they forced us to do more and more work. Our hands began to get swollen and they laughed at us and said you can keep working."²²⁹

A worker also reported that they were given drinking water from the river. He went on, "I started to lose trust [in the water]. One time we were planting and they started the sprinkler. We ran through the sprinklers because we were hot, and some women came up and told us to be careful because the water came from a pond where all the sewage went. They had never told us that."

Living Conditions, Freedom of Movement and Isolation

After being transported three days from North Carolina, eight Imperial workers were brought to a filthy two bedroom apartment in which they were forced to sleep on the floor for ten to 11 days due to a lack of beds.²³⁰ Upon arrival, their passports were confiscated and they were told not to leave the apartment.

In order to ensure that the workers did not leave, two Mexican supervisors, or *capatazes*, were housed with six other Guatemalan immigrants on the top floor of the apartment building. These *capatazes* transported all the workers to and from the workplace. During their employment, workers were confined to their worksite and apartment with the exception of two visits to a shopping plaza and one visit to a Wal-Mart, during which they were accompanied by the *capatazes*. A worker stated that the *capataz* treated him very badly.

The workers' physical and social isolation was increased by fear of the neighborhood that they lived in and of immigration authorities. According to a worker interviewed, "The neighborhood was a place where they sold drugs. ... A person can come here trying to improve the lives of their children and work in a horrible job, and at any moment one of these people can shoot you for no reason. Because the neighborhood was so bad we couldn't go anywhere. There was no one who we could talk to because they didn't speak Spanish. It was mostly African American and some Puerto Ricans. But I didn't want to talk to them. I could get into trouble. The police could arrest me for talking to them and deport me. And that is a very bad situation for one who is here on a visa and has debts. This was my way of thinking: stay in the apartment."

Workers were also physically isolated at the workplace. They worked at their own warehouse and were prohibited from talking to other workers at Imperial, many of whom were undocumented Spanish speaking immigrants. It is possible that the broker feared that the undocumented workers would inform the workers that they were receiving

far better payment or that they could have helped get the workers assistance. One worker said, “I realized, after talking with the lawyers, the amount of damage that William Forero and his people had caused us and the type of people that they were. ... This country is a place with many good, beautiful things, but unfortunately, some people take advantage of this and all of the things that this country has given them.”

Fear, Threats and Violence

While workers at Imperial were not explicitly threatened with violence, their passports were confiscated and they were implicitly and explicitly threatened with deportation if they complained or tried to leave. After some of the workers fled and another worker asked to be sent back to Guatemala, William Forero told the remaining workers that they had been arrested and deported in order to instill fear of deportation in these workers.²³¹ Workers also reported they were subjected to verbal abuse by William Forero, who called them *indios*, an offensive term used to refer to indigenous Guatemalans.²³² In addition, the mere possibility that something could happen to a worker’s family can be dissuasive. One worker said, “Although I do not know whether he [William Forero] has any contacts in Guatemala, I imagine that he does, and it is so easy to get human beings to harm others. That is the problem. I wasn’t going to let him harm my family.”

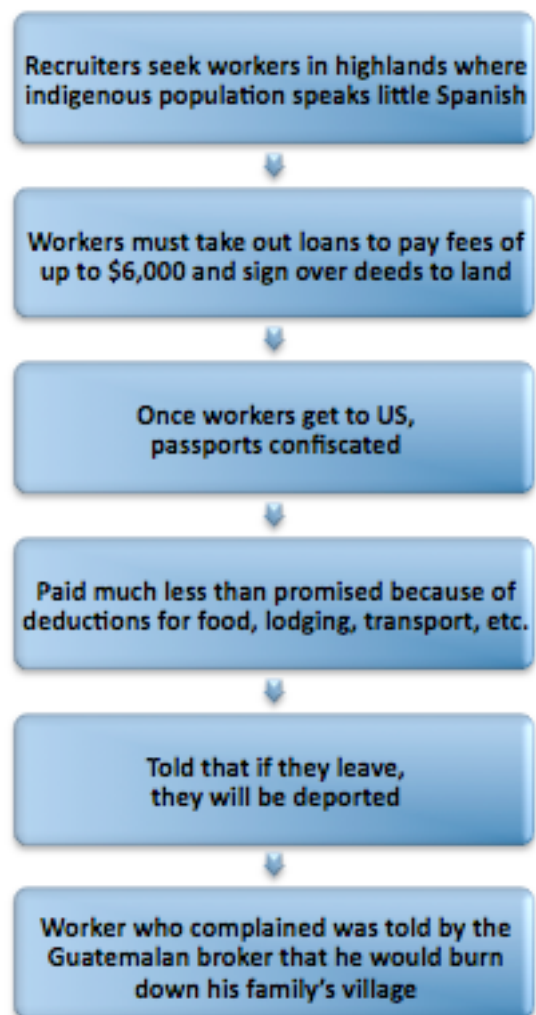
Another way in which William Forero manipulated the workers was by claiming that a DOL inspection was actually immigration related. The DOL showed up to interview William Forero’s workers after a lawyer contacted DOL to do an inspection. Mr. Forero separated the workers into two groups and told the workers that the DOL had come to do an inspection and that if they said that they were being paid less than minimum wage they could lose their visas and would be deported. He told them to say that they were being paid well. All of them complied, no one complained to DOL, and workers were even more fearful after DOL inspectors left.

Remittances

One of the Imperial workers interviewed reported that during his three and a half months working at Imperial, he was unable to pay off any of his loan and was unable to save any money or send any money back to Guatemala as he had planned. In fact, he had to ask his cousin, who lived in the United States, to wire him money because he did not have any food to eat.

Another ex-Imperial worker interviewed by Verité reported that he planned ahead and borrowed extra money so that he could eat in the United States. However, despite his careful planning and hard work, he was only able to send about USD 10 back to his family every two weeks after deductions and living expenses. He said, “My wife did not have a job and I had to pay for the studies of my children, and I was hardly able to send them any money. Thank God that we didn’t have to pay rent, because if we did, they would have thrown my family out on the street.”

The path to entrapment of Imperial Nurseries workers from Guatemala where workers had to take loans of up to USD 2,000



Escape

It was not the Department of Labor, or the police, that freed the Imperial workers, but rather a chance encounter on the sidewalk. One of the workers was sitting on the porch and a Spanish-speaking member of a church walked by trying to recruit people to come to the church. When he was spoken to, the worker said that he would like to go, but that he was prohibited from leaving and had no transportation. The church member offered to come back and pick him up and he later brought the worker to the church.

The church member thought the situation was odd and connected the worker with a lawyer who referred him to an organization that helps immigrants and also to Yale Law School. Both of these institutions assisted the workers in leaving their jobs and pursuing a lawsuit against Imperial and Pro Tree Forestry. If it had not been for this chance encounter, the workers probably would have had to finish out their contracts still in debt, and possibly would have had to return the following year, as working abroad would be their only hope of ever paying off their debt.

Return and Reintegration

Some Imperial workers ran away without their passports and became undocumented workers in the United States, one asked the employer to be sent home, and others returned to Guatemala before the lawsuit was filed and trafficking visas were awarded. These individuals found it extremely difficult to pay off high interest loans, and there are indications that one was at risk of losing his property. The ones who stayed in the United States are considered the lucky ones. Nevertheless, it was very difficult for the Imperial workers who remained in the United States to integrate into society and to pay off their loans.

One worker interviewed had to stay in the United States to pay off his loan despite missing his family deeply. He found a job that paid USD 11 per hour making kayaks for an employer who treated him very well. However, he lost his job during the economic downturn and took almost two years to pay off his loan. Even after becoming adjusted to the culture and paying off the loan, it was very difficult for him to stay in the United States without his family, “For people who do not care about their families, it is easier for them to come over the border, but it was very hard for me. I cried a lot for my family. I was never the type of person who would leave his wife in the house and leave his children to go out drinking with his friends. I always arrived from my job as a mechanic to eat at 4 p.m. My children would wait for me to eat and to take a bath with me. I lived a very tight life with my family. When I came here to work for what was supposed to be five months, the time that I was without them was killing me and breaking my heart. It got to the point that I decided that if they would not bring my family here, I would return.” Luckily his family was recently awarded a visa and they are reunited again after more than two years apart during what was supposed to be a five month trip to make money to support his family.

H-2B Forestry Workers – Los Pineros—in Focus

The risk of forced labor among H-2B forestry workers is high due to the isolation of workers, the dependence of visa status on employment with a single employer, the widespread confiscation of passports, and weak legal protections and enforcement for H-2B workers compared to H-2A workers. Under the H-2B program, most of the legal protections for H-2A workers do not apply, such as reimbursement for travel and lodging, medical insurance, and federally-funded legal assistance. Furthermore, employers are only required to pay H-2B workers the prevailing wage, which in many cases is set by the employer.²³³ The US Department of Labor has claimed that it lacks any legal authority to enforce labor law among H-2B workers.

According to a lawyer who represents H-2B forestry workers in North Carolina, labor brokers used to be paid by employers who paid the brokers per worker per hour. Therefore, the incentive was to bring in exactly the number of workers needed. Now brokers and recruiters are being paid excessive recruitment and visa processing fees for each worker they bring in. This creates an incentive for labor brokers to bring in as many workers as they can,

even if there is not enough work for these workers. Because of the H-2B visa's lack of the 75 percent guarantee, which requires employers to provide H-2A workers with at least 75 percent of the hours guaranteed to them in their contracts, workers end up working fewer hours than they expected. This is especially problematic for workers who take out large high interest loans in order to pay broker fees and depend upon working the amount of hours promised to them in order to pay back the loans.²³⁴



Because of the low cost of bringing in H-2B workers and the lax legal protections and enforcement of labor law among H-2B forestry workers, it is attractive for employers to misclassify H-2A workers as H-2B workers.²³⁵ In two cases, Guatemalan workers were issued H-2B visas to work in forestry in North Carolina and were then trafficked to the Northeast to work in agricultural jobs. While this case study focused above predominantly on workers who were trafficked to Connecticut to work at Imperial Nursery, Verité also discovered a similar case in which Guatemalan workers were trafficked to Maine to pick blueberries.

From Debt Bondage in North Carolina to a Garage Garret in Maine

In January 2008, Ramon Forestry Services solicited H-2B visas for 120 Guatemalan H-2B workers specifically to work in forestry in North Carolina from November 1, 2007-May 31, 2008. An agent and employee of Ramon Forestry recruited workers in Guatemala and promised the workers eight months of employment. The applicants had to pay significant fees to the recruiter for the visa, travel, and recruitment, none of which were reimbursed. Most applicants had to take out high interest loans, many of which grew at 20 percent monthly, in order to pay the fees. Applicants anticipated being able to pay off their loans by working full-time for eight months.

The FLC required many of the applicants to sign over deeds to their property as a condition of employment. Those who did not have property were required to pay a higher recruitment fee. Upon arrival, the workers' passports and visas were confiscated by the FLC. This, coupled with their isolation, high level of debt, and the FLC's possession of their property deeds created a high level of vulnerability to forced labor and a reluctance of workers to complain about working or living conditions and a lack of work.

Workers were initially housed in trailers, which were monitored by the employer at all times, and were then moved to a motel in which eight men were housed to a room which lacked kitchen facilities and a sufficient number of beds. The FLC failed to notify the North Carolina Department of Labor of housing arrangements and failed to have the housing inspected, as required by law. Initially, the workers worked over 40 hours per week, but were not paid overtime and were paid below even the prevailing wage for their regular hours.

In early April 2008, the FLC declared that he did not have enough work for all of the workers. Three Guatemalan workers were told that if they wanted additional work, they would be brought to the FLC's house in Maine to harvest blueberries. However, when they arrived they were told that there was no work available in Maine and were locked in the employers' garage garret, which lacked running water, beds, and heat. They were not provided with food or water, which they had to beg for from other immigrants who were housed in

the garage. The FLC took them to Logan Airport in Boston on April 16th although they wanted to continue working, their visas were not set to expire until May 31, and they were promised full-time work and a visa extension by the FLC.²³⁶

The Brokers – H-2B Forestry

According to a 2005 study, labor brokers have set up recruiting networks in major cities in Mexico, Honduras, and Guatemala to recruit H-2B forestry workers. Many recruiters are former workers who work their way to becoming both recruiters in the sending countries and crew leaders of ten to 15 men in the United States. These recruiters use family ties or friendships to recruit workers or post advertisements for job openings.²³⁷ In addition to recruiting workers, they may also help fill out visa paperwork and facilitate transportation to the United States.²³⁸ In some cases, these recruiters also lend money to workers at high interest rates.²³⁹

Independent lawyers may also act as labor brokers and recruiters for H-2B forestry workers and help with visa paperwork in sending countries. There are also larger independent labor brokerage and recruitment firms that advertise to employers, who can shop for workers on websites such as www.get-a-worker.com or www.labormex.com.²⁴⁰ There is a great deal of variation among local labor brokers, with some being paid by workers, some being paid by employers, and some being paid by both.

In most cases, field research indicates that brokers in sending countries have no communication with workers after they are brought to the United States. However, they are in communication with the worker's family, because many times workers sign over the deed to their property to the broker as a guarantee that they will return to Guatemala when the visa expires. Labor brokers in Guatemala do communicate with employers, who are in many instances labor brokers themselves. In some instances, local brokers and employers have agreements that if a worker escapes from a workplace, the employer will alert the broker. If this happens the broker may harass the worker's family or threaten to take away their property.

Fieldwork in Guatemala indicates that H-2B forestry workers are not generally evaluated for their skills or appropriateness for the job. Instead, the key criterion for selection tends to be the workers' ability to make an immediate payment to the broker. This results in some workers being unprepared for the rigorosity of forestry work and creates an environment in which a number of workers are competing to pay the broker first, as there are a limited number of jobs. Workers do not have the time or ability to find out what the actual working conditions will be. This information is only available through workers who have been contracted before or through their families and acquaintances, and in many cases workers who have been exploited are reluctant to talk about their negative experiences.

Verité's interviews with returned forestry workers in Guatemala indicate that these workers were charged between USD 1,000 and USD 1,500 for visa and recruitment fees alone. These fees had to be paid up front through a bank deposit or cash payment in local currency. In addition, some workers interviewed reported having to pay an additional USD 50 after obtaining the visa in order to be eligible to travel to their workplace. Brokers rarely gave applicants receipts for the payment of fees.

The Story of a Guatemalan Forestry Worker

A worker interviewed by Verité researchers in La Libertad, Huehuetenango was charged GTQ 8,000 (USD 965) by a labor broker for an H-2B visa to plant trees in the United States. The broker demanded that the worker sign over a property deed to him for the right to solicit a visa. As the worker had no property of his own, he had to have his wife send the broker a photocopy of her deed of property valued at GTQ 50,000 (USD 6,030). He was promised a one-year visa and free food and lodging during his stay in the United States. When he got

to the worksite, his passport and visa were confiscated and he was told that the visa was only valid for four months and that food and lodging expenses would be deducted from his pay.

The worker reported that his employer required workers to meet a quota in order to receive any payment. According to the worker, “The say that you are working, but when the ground is frozen it is difficult to plant trees. Therefore, the first day I was only able to plant 300 trees, and they told me that in order to get paid the daily wage I needed to plant 800 trees.” He reported that he was a victim of “inhumane treatment” from his employers who gave him no food because he was not making enough money to pay for his food. He reported going a number of days without eating.

The worker reported being housed in a mobile home alongside 11 other workers, all of whom had to sleep on the floor with no blankets. Two of the workers who slept in the mobile home contracted hypothermia. He therefore asked his supervisor to return his passport and visa so that he could return to Guatemala and was told that he would not be able to leave until the end of the planting season.

When he was refused access to his documents, the worker, alongside other workers, snuck into the office and photocopied their visas so that they would have some type of identification document. A couple of days later, when conditions did not improve and his employer refused to pay him, he escaped and was met by friends who lived in the United States and helped him to find a better job. After he escaped from his employer, his wife began to receive threats from his labor broker’s lawyer. The lawyer sent her a number of subpoenas to attend court hearings related to a lawsuit to have her property deed transferred to the labor broker. The worker told his wife not to attend the hearings or sign any documents allowing them to take away her property.

He spent two years studying English so that he could file a complaint against the labor broker who brought him to the United States for violating his rights and withholding his payment. He finally returned to Guatemala and filed a lawsuit against the labor broker. The suit is still in the process of being resolved.

In order to obtain the money to pay these exorbitant fees, the vast majority of workers have to take out loans. Some workers are able to borrow money from friends or family members. A very select few are able to acquire bank loans, but most workers either do not meet the bank’s requirements or do not have the time to wait for the banks’ lengthy approval process. Therefore, most workers must borrow money from local informal moneylenders who require workers to sign over deeds to property as collateral, and charge interest rates of five to 20 percent monthly due to an absence of government regulation. These lenders have a great deal of leverage to set the terms of payment, such as deadlines for repayment and fees for late payments. Worker interviews indicated that workers were rarely provided with written notifications of these terms or receipts for the fees they paid.

Most returned workers interviewed by Verité indicated that they knew more than one lender who lived on the outskirts of their villages and that brokers did not tell workers where they had to borrow money. In some instances, workers looked for the first person willing to lend them money quickly in order to get on the list of candidates for H-2B visas and they did not have the time to estimate the rate at which interest would accrue. In other instances, workers carefully calculated the time that it would take them to pay off the loan and the profit that they would make based upon the wages and number of hours promised to them. However, these calculations can be seriously skewed when the wages and number of hours that workers are actually provided with end up being much lower than those promised to them.

Many returned forestry workers interviewed by Verité in Guatemala reported having to sign over deeds to their property valued at an average of USD 6,000 to brokers as a guarantee that they would work for the specified employer for the duration of their contract and return to Guatemala upon the expiration of their visas. Brokers

rarely gave applicants receipts or a written guarantee that the deeds to their land would be returned to them upon their return to Guatemala. Many workers' families live in fear, as their homes are in the hands of the recruiter and the family may be evicted if the worker fails to comply with his contract. In addition, the family has the pressure of making payments the moneylender, as the deeds that they have signed over are usually deeds to land that they use to plant subsistence crops.

The Labor Broker as a Con Artist

Verité researchers interviewed 14 Guatemalans in Escuintla who had been scammed out of thousands of dollars by a labor broker who offered to get them H-2B visas to work in forestry in the United States. These individuals had to take out large, high interest loans from moneylenders to pay the labor broker GTQ 17,000 (USD 2,050) – GTQ 25,000 (USD 3,015) for the visa processing costs and the airplane ticket and GTQ 8,000 (USD 965) in fees. Verité research indicates that the visa fees charged by the consulate are approximately USD 100 and a roundtrip airplane ticket costs an average of USD 500 to USD 600, so it can be deduced that the broker overcharged the workers by approximately USD 1,350 for the visa fees and airplane ticket in addition to the USD 965 that he received in fees. The labor broker also required applicants to sign their property deeds over to him as a guarantee that they would not escape from the workplace. In return, he guaranteed them jobs in forestry in the United States and promised that he would pay the interest on their loans.

However, the labor broker took their money and never gave them visas, claiming that the business that was supposed to have contracted them had closed because of financial and labor issues. Many of them tried to call the broker and visited his house, but he refused to receive them or return their money. When they inquired at the bank and the property registry, they discovered that the broker had transferred all of his money and assets to distant family members, making it impossible to recuperate the money through a lawsuit.

An interviewee said, “the broker told us that he would pay the money lenders the interest on our loans, but the lenders have come to look for many of us because the broker has not paid them any interest. We do not have jobs to pay off the capital, much less the interest, which is now equal to or higher than the original amount of the loan. Additionally, we gave him our land or the land of our family members as a guarantee that we would return to Guatemala and that we would not escape from the workplace. We signed a paper that he said was a bill of sale, but he said that he would only keep it while we were there and that he would return it to us when we got back to Guatemala. We have gone to his house many times to ask for them, but he will not even receive us.”

The workers reported that a total of approximately 60 people were scammed by the broker and were in a similar situation. Some of them live far from the community where the broker lives and must travel many hours to try to demand their money back. The workers reported to Verité that they had not received any refund, that their loans were growing at a very fast pace, and that they had no hope of being able to pay back the loans.

Contracts

None of the H-2B forestry workers interviewed by Verité were provided with a contract in Guatemala. Some workers reported signing a contract when they arrived in the United States. All workers who signed a contract in the United States indicated that the contracts were written in English and that they were not provided with a verbal or written translation or explanation of the terms of the contract, so they did not know what they were signing. Workers were told that they would not be employed if they failed to sign the contract.

Visas

Although most workers interviewed were not provided with a contract in Guatemala, the terms of their employment, including their workplace, the type of work, and their wages were spelled out in their visas and workers had to recite these terms in their visa interviews. Most workers interviewed reported believing that their employers would comply with the terms. Visas issued for H-2B forestry workers ranged between six and nine months and workers were bound to a specific US employer or employers.

According to an outreach worker from a major legal aid organization in the Southeast, while many H-2B workers' visas are valid from November-September, many employers do not have enough full-time forestry work to keep workers busy for six to nine months. In some cases, there is an unwritten understanding that the workers can work at other workplaces, as many workers are unable to make any profit in four months of forestry after paying off broker fees. However, most workers are unaware that this is not legally permissible.²⁴¹

Transport

Returned forestry workers in Guatemala reported that they used ground transportation from their villages to Guatemala City for their visa interviews and to get to the airport, a journey of approximately four to five hours. All interviewees reported being transported to the United States by plane, usually to the airport closest to the workplace. Upon arrival at the airport, workers were met by an employer representative who transported them to the workplace. Many workers interviewed reported being accompanied by a broker or employer representative from their villages all the way to their workplaces.

Returned H-2B forestry workers interviewed by Verité indicated that employer representatives were waiting for them outside the airport in the United States and that these representatives immediately required them to hand over their passports and visas. These documents were retained by the employers until the term of the contract ended or until the employer canceled the contract.

Undocumented “Brush Pickers” – Exploited but not Enslaved

According to a report on forestry workers, while undocumented workers, who make up the majority of forestry workers in the Pacific Northwest are less vulnerable to forced labor than H-2B workers, they are still vulnerable to other forms of labor exploitation due to the threat of deportation and family links to their employers.²⁴²

According to lawyers and advocates that work with secondary forestry workers, over 1,000 Guatemalan and Mexican undocumented immigrants work in secondary forestry in Oregon and Washington. They are mostly employed as “brush pickers” who harvest naturally growing salal for flower arrangements from mid April through December.

While many of the undocumented workers in this sector had to borrow up to USD 5,000 to pay smuggling fees to *coyotes*, they were much less vulnerable to forced labor because their employers were not linked to *coyotes*, money lenders, or recruiters. While these workers felt obliged to pay back the loans, they were free to change employers at will. The only case of forced labor that was reported was of a female immigrant who was pregnant and unable to work in forestry and was forced to work indefinitely as a domestic servant by someone related to the *coyote* in order to pay off her smuggling fee.

The main form of exploitation reported was underpayment of wages. According to secondary forestry workers interviewed by Verité, workers are paid by the piece (per bunch of salal) by “sheds” that set the price for salal at unpredictable rates and sell the salal to bigger companies. As there is usually only one “shed” in most

geographic areas, the sheds have a great deal of leverage over workers. The piece rate is generally set very low from April through August, when there are many workers and a great deal of supply. It generally begins to increase in September or October when it gets colder and many workers migrate to areas further south. However, the piece rate is very unpredictable. When the piece rate is high, workers may earn up to USD 10 per hour, but when it is low they may earn USD 3-4 per hour.

Another problem is that many sheds own the land on which workers harvest salal and in some cases workers must pay for permission to harvest salal. These payments may be deducted from workers' wages, bringing their already meager wages down by ten to 30 percent. A worker interviewed reported that in some instances workers' piece rate is reduced from 50 cents per bunch to 35 cents per bunch.

Deductions are also made for transportation to and from the worksite. In most cases workers are transported to and from the workplace by *raiteros*, usually immigrants from the same geographic region who have been in the United States for a longer time and own a vehicle. Workers may live as far as four hours from their worksite, so in some cases they travel eight hours per day and are only able to work for four hours per day. They are not paid for the time that they spend commuting to and from work and may have to pay large fees for transportation. In some cases, these *raiteros* act as a form of labor broker, finding employment for newly arrived immigrants, arranging and charging for transportation, receiving checks directly from employers, and deducting transportation fees directly from workers' wages. Although this constitutes a form of labor brokerage and exploitation, these workers are much less vulnerable to forced labor because they do not owe money to the *raiteros* and may leave their job or change employers at will.²⁴³

Payment and Deductions

Reports indicate that most H-2B forestry workers are paid by the piece instead of being paid the legally required USD 6-10 hourly prevailing wage rate. Many *pineros* are expected to plant approximately 2,000 seedlings each day and are paid less than USD 25 for eight to 12 hours of work.²⁴⁴ Reports indicate that most *pineros* are paid between USD 0.015 and USD 0.06 per seedling,²⁴⁵ or USD 15 to USD 30 for each bag of seedlings they plant.²⁴⁶

Hugo Martin Recinos-Recinos, a Guatemalan H-2B forestry worker and the main plaintiff in a class action civil suit against Express Forestry reported that he had been promised USD 8 per hour, but was in fact paid on a piecework basis. He reported working 13 hours per day six days per week – a total of 98 hours per week - but only being paid for 26 or 27 hours per week. Reports indicate that wage payment violations are due in part to a lack of DOL enforcement.²⁴⁷

Research indicates that *pineros'* wages are greatly reduced through deductions for transport, food, housing, tools, and the use of bathroom facilities.²⁴⁸ There is evidence of workers being paid as low as 13 cents per hour after deductions, having to get money wired from their families to eat, or even owing money after deductions. A worker interviewed by SPLC was paid USD 105, or USD 7 per hour, for 15 hours of work, but earned only 13 cents an hour after deductions for travel, the recruiting fee, a salary advance, and Social Security and Medicare. His paycheck for this period was for a total of USD 1.98. Since it cost USD 2 to cash the check, the worker decided to keep it and it later served as evidence of the payment violation.²⁴⁹

The High Cost of Injury

A Guatemalan Forestry Worker who was employed planting pine trees in the United States under the H-2B program was interviewed by Verité researchers in La Libertad, Huehuetenango, Guatemala. He reported that he hurt his back while carrying a heavy load of pine saplings. The worker reported, "social security did not

cover anything, because although I had worked there for four months, they did not give me a social security number. I think that they sold it because the supervisors sell workers' social security numbers to other people." As he was no longer able to plant trees, his employer cancelled his contract before his visa had expired and the worker was forced to pay his return ticket to Guatemala because his employer said that he failed to fulfill his contract period. When he returned to Guatemala, he was faced with a large number of debt as he was unable to pay back the loans with the meager wages he earned during his four months working in the United States.

Living Conditions, Freedom of Movement, and Isolation

H-2B forestry workers' plight has been concealed by their geographic and social isolation. Housing for H-2B workers is often located in extremely isolated locations, usually in rural areas. As most workers do not have access to cars or public transportation, they become completely dependent upon their employers for transportation. Many of these workers also lack access to telephones.²⁵⁰ This isolation, coupled with fear of retaliation, language barriers, weak legal protections and inadequate enforcement make it difficult for workers to voice their complaints.²⁵¹

Remittances

Sending remittances back to their families' is H-2B workers' primary motivation for coming to work in the United States. They know that they will have to work long hours under grueling conditions, but because well-paying work is so hard to come by in their countries, they see migrating as the only chance to educate their children or lift their families out of poverty. However, because Imperial Nurseries workers' wages were so low, instead of sending money home as they had planned, some of the Imperial workers reported that they had to beg their relatives to wire them money in order to get enough to eat.²⁵²

Fear, Threats, and Violence

The fear of deportation is a great one for these workers and it does not simply constitute a free ride home. First, deportation usually involves a period of incarceration, during which workers are unable to earn any money to support their families, and it usually crushes their chances of being able to return to the United States legally. Second, workers have almost no hope of paying off their loans in their home countries if they are deported. One of the Imperial workers interviewed said, "I could not have paid off the debt of USD 2,000 in Guatemala. I could not even save GTQ 2,000 (USD 241) with a salary of GTQ 500 (USD 60) per month, which is a good salary in Guatemala."

Conclusion

The stories shared above, both of Imperial Nurseries workers and of forestry workers on H-2B visas more generally, demonstrate the deep flaws in the H-2B program. The opportunities for exploitation through this program are so rich, in fact, that brokers choose to traffic workers into the United States on these visas for work in sectors not covered by the program. The Imperial story also illustrates in stark terms, the ways in which workers coming in on guestworker visas appear significantly more vulnerable to abuse, exploitation, and forced labor than their undocumented counterparts: In debt from following the rules and paying for formal and legal passage to the United States, without social support networks or even – in some cases – a sense of where in the United States they are located, and legally bound to their employer, these guestworkers are "low hanging fruit" for nefarious brokers and employers who seek to enslave them.

Case Study 2: Global Horizons – Large international broker and Thai H-2A workers

Sector	•Traditional agriculture: mushrooms, apples, etc. – HI, WA, PA, NY, CO
Workers	•H-2A Thai workers
Broker	•Large international broker based in Thailand that also received workers in US
Employer	•Diversity of employers
Coercion Mechanisms	•High levels of debt, signing over of property deeds, confiscation of passports, isolation, fear of deportation.

This is a case in which a large international labor broker – Global Horizons – trafficked over 1,000 Thai workers on H-2A visas into forced labor in fruit and vegetable harvesting in countless locations across the continental United States and Hawaii.

From 2002 to 2005, there was an influx of over 1,000 Thai workers on H-2A visas, the vast majority of whom were brought in by the Global Horizons labor brokerage firm. Workers were reportedly charged recruitment fees of up to USD 10,000-27,000.²⁵³ To pay the placement fee, workers took loans first from family, then from legitimate institutions, and then from illicit moneylenders, some of which were tied to the labor broker. These lenders in some cases confiscated the deeds to their property, forcing workers to sign contracts saying that they would lose their land if they violated the contract with the broker. Upon arrival in the United States, workers' passports were confiscated on the job, their wages were lower than promised, and in some cases pay was withheld, rendering them in situations of debt bondage.²⁵⁴

Legal services organizations across the United States made various attempts to file suit against Global Horizons, obtain restitution through settlements, and/or to gain protection for the workers through acquisition of T visas. In some states, such as North Carolina and Washington, these efforts took the form of litigation; in other locations, alternative avenues were used. In the New York case, joint advocacy by Farmworker Legal Services of New York (FLSNY) and the Farmworker Law Project (FLP) sought to recoup the workers' lost wages while simultaneously encouraging those workers' designation as victims of human trafficking. In New York, as in many other cases, the federal government ultimately decided not to pursue Global as a human trafficking matter, a decision owing in part to the difficulty of proving a direct link between Global Horizons and the local broker in Thailand. However, the New York State Attorney General's office, working with FLSNY and FLP, did reach a settlement with the New York farm, Fortistar, to provide back wages and damages to Global's victims in the summer of 2007.

The New York case is a particularly sharp illustration of the legal challenges in pinning down responsibility for trafficking within a complex, international supply chain of labor. From the point of view of the federal law enforcement agents investigating Global's operations in New York, the prospect of digging into business records in Thailand in order to establish conclusively that AACO had a formal relationship with Global must have seemed more trouble than it was worth: even setting aside the inherent difficulty of mounting such a search within the bureaucracy of a far-away country whose language was known to few employees within the FBI, ICE, and the Department of Labor; the remaining obstacles were still potentially prohibitive. Furthermore, if AACO was indeed passing on workers' recruitment fees to Global—the easiest way to show that Global was in control of its

employees' debt, and thus engaged in trafficking—these payments could have simply been made in cash, never recorded, and thus left all but invisible to even the most persistent outside auditor.

All details of Global's recruitment process described here, other than those available in the public record (e.g., from court documents and newspaper articles), come from interviews with worker advocates. In the New York case, information is derived from the interviews of a former employee of Farmworker Legal Services of New York (Owen Thompson) with a Thai worker who was employed by Global at a farm called Fortistar in New York State. This worker has requested anonymity for reasons of privacy and to avoid repercussions from potential future employers in the H-2A system. Though the details provided by this worker could not be independently verified by every Thai worker employed by Fortistar in 2007, Thompson views them as broadly representative of Fortistar workers' experience based on his own familiarity with the case.

The Sector/Good

When Fortistar, a medium-sized farm in the town of Niagara Falls, NY, decided to use foreign guestworkers in 2006, it was far from alone. Throughout Upstate New York, the H-2A program had been steeply gaining in popularity for several years. Despite what many growers have described as an excess of red tape—the requirements, for instance, to advertise first to US workers and to pay an above-minimum wage rate set by the federal Department of Labor—the program was nevertheless becoming an attractive alternative to the employment of undocumented workers, still the main source of labor for New York State agriculture.

Fortistar, with its operations so close to the Canadian border, would have been particularly concerned about the possibility of ICE or Border Patrol deporting its workers before they had completed the harvest season. (Indeed, owing to their proximity to the border, the New York workers had two run-ins with Border Patrol; in one case they were able to satisfy the suspicious agents with identification documents, and the next time advocates from the Farmworker Law Project intervened on their behalf.) Even so, this was a fear shared by growers large and small, extending well beyond New York's so-called Frontier Region. In the second term of the Bush Administration, ICE had conspicuously stepped up the number of workplace raids on agricultural sites, while local police departments were simultaneously targeting undocumented workers with roadside stops that often led to deportation—often because ICE and Border Patrol were invited into the situation as “interpreters.”

New York's migrant farmworkers, overwhelmingly of Mexican origin and overwhelmingly unauthorized to work in the United States, have been frightened by the increased attention from law enforcement—but not frightened enough to change the fundamental calculus of desperation that still leads them to traverse the Eastern Seaboard each year, following the seasonal harvest work performed largely by African American workers in generations past and by Afro-Caribbean workers in more recent times. These workers constantly seek more stable, year-round employment, such as construction, restaurant work, and agricultural work of a less seasonal nature. Within New York State, examples of more stable Mexican communities can be found throughout the Hudson Valley, an area benefiting from closer commercial ties to New York City and its wealthy suburbs. Farther upstate, however, these economic opportunities are nearly



nonexistent, and most Mexican workers remain tied by necessity to the annual cycles of the tree fruit and root vegetable crops.

Growers, on the other hand, are no longer quite so bound to these undocumented Mexican migrants. While growers often lament that American citizens appear almost uniformly uninterested in agricultural employment²⁵⁵—a phenomenon owing not just to poor pay but also to seasonality itself and the extreme physical difficulty and dangerous nature of the work—the H-2A program has created a means of reaching foreign workers for whom farm wages are appealingly high compared to their local opportunities.

One might conclude, then, that growers have made a rational calculation and found that complying with the bureaucratic restrictions of the H-2A program is a fair price to pay to eliminate the risk that their entire workforce might be detained by ICE halfway through a harvest. A more complete analysis of the situation, though, has to take into account the widespread abuses found on farms using the H-2A system. While Global Horizons took the practice of flouting H-2A regulation to a baroque extreme, many more employers have simply failed to pay the above-minimum wage or reimburse workers for their job-related expenses²⁵⁶. A more skeptical conclusion, then, would be that growers and contractors do not see the H-2A program as a tradeoff of following stricter workplace rules in exchange for a more stable workforce, but in fact as a way to replace undocumented workers with an even more exploitable population.

The Brokers

Global Horizons is a large, international labor contracting firm headquartered in Beverly Hills, California. Self-described on its website as "recruiting quality workers from diverse places like Thailand, India, Nepal, Israel, as well as Eastern and Western Europe;" Global Horizons also places workers from Mexico, Vietnam, Malaysia, Guatemala, South Africa, Australia, Nepal, and China in a wide range of skilled and unskilled jobs in the United States.

Global Horizons describes its beginnings as such: "In the midst of a massive worker shortage in a foreign country. Born out of necessity and acting boldly, the newly-formed organization brought thousands of qualified workers into a strategic nation, averting impending economic disaster for that country." (The country is Israel; where Global Horizons formerly operated, until its license was reportedly canceled by the Minister of Labor for illegal employment of migrant workers. Global Horizons placed Asian workers in construction and agriculture there – thus beginning a long relationship with sourcing Thais, in particular, into agricultural labor.)

In the United States, Global Horizons originally focused on placing professionals such as agronomists and management consultants. Three years later, Global switched gears, beginning to specialize in placing H-2A workers in agricultural across the United States.²⁵⁷

Under the provision in the H-2A visa program that workers entering the States through a labor broker are considered employees of the broker, Global Horizons functioned as the official employer of its recruits, including those from Thailand. According to plaintiffs in a lawsuit brought in Washington State, Global used a Bangkok-based broker called AACO International Recruitment Company for its worker recruitment in Thailand.²⁵⁸ Expert consultations with advocates involved in other Global cases also mentioned AACO as a Thai broker, although it is not clear that AACO was the exclusive Thailand-based broker to Global Horizons. Global then arranged transportation to the United States and ferried workers from job site to job site, taking responsibility for managing the workers on-site, as well as for housing and payment of wages. (In the case of wage payment, Global was transferring money from the client to the workers, taking an undisclosed commission in the process.) According to Owen Thompson, formerly of Farmworker Legal Services of New York, "Many advocates involved in the case believed Global was charging a per-worker fee up-front, before the growers realized that Global couldn't reliably provide workers at the right moment in the harvest cycle. But, I don't know that this suspicion was ever

substantiated.” This complicated chain of employment created an environment in which employers were in many cases simply not paying much attention to the Thai workers, and conceivably may have been partially or even entirely ignorant of the slave-like operation unfolding in their fields.

The Workforce

Among the cases of H-2A labor broker violations, Global Horizons, Inc. stands out because a significant number of workers recruited by the agency were not Latino but Asian. In 2006, Global Horizons was sponsoring approximately 3,000 workers from around the world, including, in Asia, Thailand, India and Nepal; its workers were placed in 28 states that year.²⁵⁹ The crops they worked with varied widely, and included coffee (Hawaii); sweet corn, tomatoes, and pumpkins (Pennsylvania); oranges, grapefruits, and lemons (California).

In 2005, 600 of the workers sponsored were from Asia, primarily Thailand.²⁶⁰ According to one report, some employers reported preferring Asian farmworkers because they tended to remain on the farms they were certified to work on rather than violating the terms of H-2A and departing for more profitable employment (in, for example, construction); and also they are more likely to return home after their job stint.²⁶¹ Global Horizons’ Chief Strategic Officer Mordechai Orian, was quoted saying that the Mexicans they had sponsored “had all run away”, moving on to better paying jobs, and that Thai workers represented their “biggest success”. “After years of doing it, we realized that there’s nothing better than the Thai people,” he said. “They’re humble, they’re respectful, and they go back home.”²⁶² Global Horizons further reported targeting married men with children who would be more likely to wish to return to their home communities.²⁶³

These sentiments have been echoed by owners themselves. “Domestic workers are not committed,” said Rob Valicoff, co-owner of an apple farm in Yakima Valley, Washington; in an interview with the *Seattle Weekly*. “They work hard, don’t get me wrong, but last year they would get on their cell phones and figure out where the best pay was - and some would leave.” Comparing local workers to guestworkers, Valicoff further observed: “The guestworkers ... aren’t allowed to go anywhere. They have a contract with us and we have one with them. If they leave, it’s our responsibility to inform ICE [Immigration and Customs Enforcement, formerly INS]. That’s why the guestworker program works.”

“Domestic workers,” it should be noted, is a term of art in U.S. agriculture. Growers, brokers and advocates alike employ this phrase in sensitive circumstances—when speaking to a judge or a journalist, for example—to refer to workers recruited within the United States, regardless of their country of origin or their intent to return to that country. This euphemism has proven useful to anyone seeking to deflect attention away from the fact that foreign guestworkers in the “unskilled” industries are competing mainly with undocumented foreign workers, not U.S. residents.

Furthermore, farmworker advocates have questioned the sentiments embodied in grower Valicoff’s statements—in particular, the notion that U.S. citizens avoid farmwork out of laziness, or leave these jobs early because of a lack of commitment. In a July 2008 essay, Owen Thompson, then employed by Farmworker Legal Services of New York, summarized the counterargument: “A better explanation for the lack of American-born workers in the agricultural industry, I would argue, can be found in the horrible conditions workers face at nearly every farm: frequent exposure to cancer-causing pesticides, poverty wages, and the unwillingness of most government agencies, local as well as federal, to enforce even those few labor laws that apply to this industry.” Perhaps the single most obvious deterrent from agricultural work is how little it pays: as recently as 2002, the average annual income for a farmworker was just USD 11,000.²⁶⁴

Recruitment, Hiring and Transport: Paths into Entrapment and Forced Labor

Information Dissemination, Choosing a Broker, Recruitment Fees

The Thai workers in the New York case originally heard about work opportunities with Global Horizons while residing in their home villages, where the Bangkok-based labor broker, AACO International Recruiting Company Ltd. – recruited them on behalf of Global.²⁶⁵ (According to one advocacy organization interviewed by Verité, at least one representative of this Thai broker was an ex-employee of Global Horizons; Verité was unable to confirm this, and other advocacy organizations had not heard of this link.) AACO advertised through word-of-mouth and printed flyers that described a three-year contract for agricultural work in the United States. Although Global Horizons was a trailblazer in terms of bringing Thai workers to the United States, the globalized labor market was already at work in Thailand: Many of the Thai men who responded to AACO's advertisement had prior experience working abroad in Israel and Taiwan, or had friends and relatives who had done so.

The flyers instructed workers to report to AACO's offices in Bangkok, where they were screened by Thai and American representatives of Global Horizons. The female, Thai-born Global Horizons representative present at this screening—who would later travel with and supervise the group of workers who eventually arrived in New York—took an active role in the recruitment process, examining the men to see if their arms were strong and their hands rough—indicators that they were experienced in “rough work,” according to one man who was screened. The potential recruits were then told they would have to pay about 720,000 Thai bhat to secure the job, which in 2007 came out to about USD 22,000 (the exact fee changed over time, as did the dollar-bhat exchange rate, dramatically). In the face of this daunting sum, they were assured they would be able to earn about USD 25,000 a year once in the United States. Workers in other cases reported having been promised wages between USD 8 and USD 9 per hour.²⁶⁶ This squares with legal wages under the guestworker program under the adverse effect wage rate (AEWR), which range from USD 8.41 to USD 10.01.

Workers were generally guaranteed 26 eight-hour workdays a month, and were even promised healthcare. As a rice farmer in Thailand earning on average USD 500 to USD 600 a year²⁶⁷, this meant that, working fulltime, even a farmer earning the minimum rate in the U.S. could expect to earn in two weeks what he would earn in Thailand in one year.²⁶⁸ “The recruiter said if you work hard, you can make USD 8.50 an hour. They told us we would have 28 months of work in America,” said one Thai worker interviewed by the *Seattle Weekly* who, at the time, was making about USD 50 a month farming rice; and eventually took a job with Global Horizons.²⁶⁹

Not all workers brought to the United States by Global were recruited by AACO, but the fundamentals of the recruitment process seem to have been consistent. One worker recruited by a different Thai broker reported having been promised “such high wages I would not need to work for the rest of my life.”

Because the H-2A visa can be extended for up to three years, workers for Global Horizons, like many others, evaluated the contract and its inherent risks on the basis of long-term rather than short-term employment, erroneously assuming that they would remain employed throughout the maximum work period. And although the H-2A visa is specifically for seasonal work, many recruits were assured that they would have long-term employment.²⁷⁰ Workers also made their decisions based on the assumption of a constant stream of work – which turned out to be false; and on the wages promised to them, which in actuality were much lower.

Thus many Thai farmers presented with the recruiter's pitch decided that the cost – a very expensive recruitment fee – was worth it. “The amount of money they promised was very attractive,” said one 40-year-old farmer with a 15-year-old daughter he had wanted to send to college.²⁷¹

Recruitment Fees

Recruitment fees paid by Thai workers recruited by Global Horizons and its Thailand-based brokers were nothing short of astronomical – ranging from USD 8,000 to USD 27,000. But given the potential earning power, and a contract more than long enough to pay back the debt, workers still opted to pay the fees.

These fees were not only astronomical, but also well beyond guidelines established by the Thai Ministry of Labor, which limits the recruitment service fee to no more than the first month's salary or the first 30 days of salary earned overseas.²⁷² A quick back-of-the-envelope calculation for a worker earning USD 9/hour, working 40 hours a week, shows that this worker should pay a recruitment fee of no more than USD 1,440. Thus these Thai workers were paying recruitment fees that were ten, and in some cases upwards of twenty times beyond the legal limit in Thailand. According to one advocacy organization interviewed by Verité, the Thai Ministry of Labor was aware of this situation and still certified and permitted the operation of the broker.²⁷³

In some cases, the workers' financial obligations to the broker did not end with the first fee: In 2007, Legal Aid of North Carolina filed a lawsuit on behalf of 20 Thai workers who paid USD 11,000 in initial recruitment fees; and were then told they would be charged an additional fee of USD 3,000 upon beginning a second year of work.²⁷⁴

In terms of why the charging of these blatantly illegal recruitment fees was not pursued by the Thai government, Verité was unable to find an answer. One advocacy organization mentioned that the Thailand-based broker was linked in some way with a former Minister of Labor of Thailand – thus indicating high-level corruption; but Verité was unable to verify this claim.

Financing

The Thai broker made it clear that only workers with cash in hand would be able to go overseas. Those without sufficient funds or collateral were not able to get visas through Global Horizons.²⁷⁵

In order to obtain the necessary funds, some workers used a range of financing methods, turning first to legitimate lending institutions (e.g., banks), using family land as collateral; next to family; and finally to loan sharks. This strategy sought to borrow the maximum amount possible from lenders with the lowest interest rates.²⁷⁶ However, other workers turned to illegitimate lenders first, because these under-the-table financiers were able to provide cash on the fast timetable that AACO was demanding.

Many workers leveraged ancestral lands in order to borrow such substantial sums of money. In one case, a worker described figuring that he would gross USD 40,000 over the course of his contract; with an initial fee of USD 11,000. In that worker's case, his family wound up facing monthly interest payments of USD 150, while he was unable to make the money he had counted on because the work simply wasn't available – he was sent back and forth to Thailand twice because of work lulls; and finally became part of a class action suit against Global. His family's ancestral land is still in jeopardy.²⁷⁷

One worker advocacy organization that helped to initiate a federal, nation-wide investigation of Global Horizons' practices suspected a link between the Thai broker and local lenders, but has so far been unable to prove it. In document associated with a court case against Global Horizons in Washington State, it was asserted that AACO itself lent money to workers who were unable to finance their recruitment fees through other means.²⁷⁸ Verité's extensive research on foreign contract labor practices in the Philippines has found links between sending country brokers and lenders to be common practice. Such links are often critical to establishing/proving that debt undertaken by a worker in order to secure a job constitutes a deliberate tactic by the recruiter and/or employer to "trap" the worker in the job. This issue would benefit from further investigation in the Global Horizons case.²⁷⁹

Contracts, Visas and Transport

One news report alleged that workers were promised certain job conditions verbally by recruiters and were then asked to sign contracts that were not in Thai²⁸⁰. Global Horizons has disputed this claim, asserting that all workers received contracts in both English and their native language as required by law.²⁸¹ Verité was unable to find specific information on contracts for the New York case.

In general, Global Horizons arranged all the visas and paperwork for the Thai workers. Plane tickets were generally included in the brokerage fees, with return tickets being conditional upon completion of the contract. According to the New York Times, “Many employers fail to make good on their commitment to pay transportation costs.”²⁸² Again in the New York case, Verité was unable to obtain specific information about how the plane ticket home may or may not have played into workers’ feelings of entrapment.

The Thai broker and Global Horizons collaborated on the transport of the Thai workers to their various workplaces in the United States. According to the testimony of many workers, the system was always the same: Workers were required to wear bright yellow jackets for the flight; and were picked up by Global Horizons staff in uniforms at the destination airport. Workers were then transported to farm housing which, in some cases, was an hour or more away.²⁸³

On the Job: Mechanisms of Coercion and Subjugation/Enslavement

Reception and Job Transport

Guestworkers have limited control over their work location and are often moved from farm to farm according to work availability. Workers in the Global Horizons case reported arriving at different destinations, and sometimes different states than those they were originally assigned, and sometimes being paid at different pay rates than those to which they originally agreed. In one case, a group of 30 Thai workers were assigned to North Carolina for one month but then moved to New Orleans to do hotel repair following Hurricane Katrina, work for which they were not paid.²⁸⁴ In another case, workers were transported from Louisiana to Arkansas and given work falling under the H-2B visa, limiting their rights and lowering their wages.²⁸⁵

Fulfillment of Job Assignment

While workers are required to be compensated for 75 percent of their contracted time, in practice they often do not have sufficient work and do not receive full compensation.²⁸⁶ The full amount of labor broker fees must be paid regardless of time spent abroad or working.

This phenomenon was very much in play in the Global Horizons case. Once on-the-job in the United States, Global Horizons workers across the country reported a very similar pattern: They would have a few weeks’ of work on one location, after which the work would dry up and they would wait for further work availability. Workers would then be transported to different locations – for example, from Washington state to Hawaii – or worse, they would be sent home to Thailand to wait until further work became available. One worker in the New York case was sent home twice in this manner. While sitting on their hands in Thailand, workers were still obligated to make payments on the debt they had incurred to pay the initial recruitment fees. In the case mentioned earlier of workers trafficked from North Carolina to New Orleans, they had earned a total of only USD 1,400 to USD 2,400 before being sent home.²⁸⁷

One worker based in Washington State who joined a federal class action suit against Global Horizons said that he had been in the US four months and had earned only USD 4500 before his work in apple orchards dried up. Global representatives told this worker and his compatriots that they would be sent to Hawaii; but instead they were first housed in a local motel and then sent back to Thailand. This worker noted

Everybody was sad, and nobody knew what to do. We were all too scared to leave, and some of us thought that maybe what Global Horizons was telling us was true and we would come back in one or two months and keep working.

This worker waited nine months in Thailand before being brought back to the States, where there was still no immediate work to be done. He became concerned that he would be sent back again to Thailand so he fled to a Southeast Asian community in Eastern Washington where he tried to find work as an undocumented worker. Eventually he joined the class action suit against Global.

Global Horizons' reasons for this pattern of shifting and relocating workers are unknown. It could be that, due to the need to determine the number of guestworkers far in advance, many employers overestimated how many workers they required, leading to a surplus. This is a common difficulty with guestworker programs. In the case of Global Horizons, however, the pattern is so clear that it raises suspicion of ulterior motives. Whatever the reasons, deliberate or inadvertent, the resulting effect was to disorient workers, compound their debt, and make them more vulnerable and desperate for work.

Freedom of Movement

Workers who are granted H-2A visas are certified to work only with the certified employer. If employment is terminated the visa is revoked. This provision, in effect, ties workers to their employer – and in this case, to Global Horizons. The practical effect of this provision is that workers are entrapped in a particular working arrangement: The combination of the debt at home, which in turn requires the worker to be earning at a rate only possible somewhere other than his home country – i.e., in the US; and the obligation to work for a particular employer while in the US, means that workers feel they have literally no other option but to continue working for the same employer – even when that employer is failing to pay them on time if at all, and continually changing their working locations and terms.

In many cases associated with Global Horizons, workers' passports were confiscated. In one case, the transporting agent asked them to sign papers allowing Global Horizons to hold their passports.²⁸⁸ In a second case, workers were told their passports were being “copied” but the originals were never returned.²⁸⁹ In a third, non-related case, passports were taken without the permission of workers.²⁹⁰ “They said they would take care of them for me so I wouldn't lose them,” said one worker to a Seattle Weekly reporter.²⁹¹

Housing

In regards to housing, employers of H-2A workers are required to provide “free housing to all those who are not reasonably able to return to their residences the same day”, and this housing must meet all relevant OSHA standards.²⁹² Many Global Horizons workers found the housing to be substandard. In one case, workers were told they would live in a hotel, but were instead placed in overcrowded and unsanitary trailers.²⁹³ In the case of the workers trafficked from North Carolina to New Orleans workers, they were placed first 33 to a shed; later, they were indeed placed in a hotel, but one without electricity or hot or potable water.²⁹⁴ Equally inadequate conditions have been reported for many companies and across many states.²⁹⁵

Financial Penalties and Withholdings

If a worker violates the terms of the visa or does not fulfill the contract, the entire recruitment fee as well as the return ticket, if applicable, is forfeited.

Verité did not find any solid evidence that Global Horizons engaged in any sort of elaborate system of financial penalties or withholdings. One source reported that Global Horizons takes a portion of the worker salaries, though whether this was towards recruitment fee payment or whether it represented an additional fee was not clear.²⁹⁶ In

any event, the two key elements of Global’s failure to deliver on its promise to recruited workers were the failure to provide consistent work; and consistent, significant delays in wage payment.

Methods of Payment

In the earliest years of Global Horizons’ operations in the United States, it paid Thai workers by direct deposit to Thailand-based banks, for easy access by family members. Starting around 2005, however, at least some of the workers were paid by direct deposit into Bank of America accounts based in the U.S. Incidentally, this would prove useful for the New York workers when the State Attorney General’s office had to arrange for them to be paid their back wages.

One of the reasons that Global’s license was ultimately revoked by USDOL was a pattern of failure to pay wages on time.²⁹⁷ Workers reported having to wait weeks, with their Global representatives assuring them that payment would be coming soon. In some cases, Global put the blame on client companies themselves failing to pay Global; but there are enough cases in which Global was paid on time by their clients to shed substantial doubt on this claim.²⁹⁸ Many employers were ignorant of Global’s failure to pay its workers, since Global itself was managing the workers on-site.²⁹⁹

In some cases, the payments never arrived, and workers eventually initiated court proceedings. Global’s failure to pay wages on time was not only illegal, but also compromised the ability of workers to make payments on their debts at home, in some cases compounding indebtedness.

Many workers in the New York case and others chose to abandon their employment with Global, thus becoming undocumented. In cases where Global did not pay workers in full or when the terms of employment did not allow for repayment of the recruitment fees, workers often abandoned their employment, and hence legal status and guarantee of return transportation, in order to remain in the U.S. with whatever work they could obtain. Many Thai workers are still in this situation of legal limbo, with no clear restitution for their exploitation by Global in sight.³⁰⁰

Pathway to Forced Labor for Global Horizons Workers from Thailand³⁰¹



In addition to the NY case, two other cases are offered here, as further examples the pattern of failure to pay wages:

(1) Creekside Mushrooms of Pennsylvania and (2) Del Monte Produce of Hawaii, were among the employers who contracted with Global Horizons and received Thai workers for temporary agriculture.

In 2006, after seeing thousands of pounds of produce go to waste due to lack of workers, and unable to raise wages to a rate sufficient to tempt American workers, Creekside Mushrooms hired 20 Thai men for a season of picking. The company was alerted to possible irregularities when the workers did not receive payment for their work. Following the normal procedure, Creekside had paid the Global Horizons, which was supposed to remit the payment to the workers. A Global Horizons representative claimed that some payments had been delayed due to financial difficulties, not canceled, but that the workers, who had been promised three years of work, would have to return to Thailand after only one year instead of the three they had been promised. As the workers at Creekside reported paying fees upwards of USD 20,000, the shortening of their work left them deeply in debt.³⁰² According to a Creekside official, "These guys are going home with huge debt owed to this company that cost them to get the ability to come here."³⁰³

Wage violations were also the principle labor rights violation carried out against 88 Global Horizons workers harvesting onions and pineapples in Hawaii for Del Monte Produce. In this case, Global Horizons placed the blame for underpayment on the farmer for not paying the appropriate wages to the company.³⁰⁴ Authorities found deeper issues, however, including improper deduction of income taxes and housing and meal fees from workers' payments. In addition, the workers, who before being moved to Hawaii had originally been certified to work at a lower rate in Arkansas, had not had their wages increased to reflect the move. Global Horizon's ultimately settled the case, paying USD 300,000 in fines and back wages.

In Washington State, Global Horizons fell under a double-pronged attack. Here, conditions of work were as much of an issue as wage violations: 170 Thai H-2A visa holders signed English-language contracts they could not read, taxes were wrongfully withheld from wages, other wages were delayed, housing was crowded and unsanitary, and food provisions were insufficient.³⁰⁵ Reportedly, Global Horizons agreed to pay USD 230,000 in back wages to workers and fees to the State of Washington.³⁰⁶

In 2006, as a result of the Washington cases and "a persistent pattern of non-compliance stretching back to early 2004"³⁰⁷ Global Horizons was barred from H-2A visa sponsorship for three years, the maximum penalty permitted.³⁰⁸ The prohibition expired as on July 2009 and the company is again active in the United States.³⁰⁹

Isolation

Some work sites may be isolated from local communities, making farmworkers dependant on employers for transportation to grocery stores, medical attention, or means of communication.

In the case of Global Horizons, vulnerabilities commonly experienced by migrants were exacerbated by the limited number of educational or legal resources available to Thai speakers in the United States. In the case of the Washington State workers, contact with union organizers and legal aid lawyers months after the violations led to the lawsuits.³¹⁰

On the other hand, in the New York case, while the worksite was somewhat isolated; some workers were managing to go back and forth to a Buddhist temple and Southeast Asian community in Buffalo with fair regularity. Thus, isolation does not seem to have been a key element in their exploitation. Even with access to a religious community and the public in general, these Thai workers still felt very much "entrapped" in their situation.

Fear and Violence

The Thai workers in New Orleans worked under the surveillance of armed guards, and another group picking tomatoes in Florida slept in locked areas that they could not leave.³¹¹ Employers displayed guns to the workers. The worker interviewed by Seattle Weekly reported that he was under surveillance by Global Horizons employees and was strongly discouraged from leaving his housing compound. “We weren't supposed to leave the house,” says Kampilo. “We could go outside, but we had to stay nearby. They had other workers come and check on us, and they called all the time to make sure that we were there. If we stayed away too long, they said they would send us back. I think they were afraid we would find better work at other companies.”³¹²

Other Exploitive Practices

Immigrant rights advocates claim that the protections of wages and working conditions promised to H-2A workers often go unmet, that workers’ inability to leave their certified employer, as well as the isolated work sites unfairly bonds them once they are in the United States, and that workers are often brought in on less stringent H-2B visas in order to complete H-2A level work, circumnavigating legal protections while still providing quasi-legal status.

Return and Reintegration

One Global Horizons worker who originally took out a USD 11,000 loan to pay recruitment fees and was able to work only one year in the U.S. reported having to pay USD 150 a month in interest on the loan upon return, which represented 300 percent of his monthly earnings.³¹³ At Creekside farm, workers reported paying fees upwards of USD 20,000, and the shortening of their work left them deeply in debt.³¹⁴ According to a Creekside official, “These guys are going home with huge debt owed to this company that cost them to get the ability to come here.”

Conclusions

The case of Global Horizons illustrates one of the ironies of the H-2A visa system: while undocumented immigrants may be subject to abuses due to their illegal status, workers brought to the U.S. by labor brokers can actually be made more vulnerable by attempting to adhere to the law. Accepting the need for a work visa but unable to navigate the process independently, they are exposed to inflated visa and transportation fees. Anticipating multiple seasons of work when they take on debt, they are obligated to leave the country should that work not materialize without any means to repay brokerage fees. Bound to a single employer, they are unable to leave situations of forced or exploitive labor.

Neither the financial or legal penalties for Global Horizons’ various violations have been severe. The USD 300,000 pay off in favor of guestworkers harvesting in Hawaii averaged USD 3,400 per worker. Even the USD 1.85 million payout to the American farmers Global Horizons displaced with guestworkers broke down to a little over USD 3,000 per worker. In light of the USD 2 million that the company earned just from Valley Fruit and Green Acre Farms in 2004 alone,³¹⁵ both numbers pale. The three year shut-down applied only to H-2A visas, not to other guestworker programs. In comparison, workers risk entire-life savings, and are rarely compensated either through wages or legal compensation.

Case 3: Moises and Maria Rodriguez – Unregistered labor broker, undocumented Mexican workers

Sector	• Traditional agriculture in Colorado
Workers	• Undocumented farmworkers
Broker	• Small FLC tied to coyote who was also moneylender
Employer	• Organic farmer that sourced to Whole Foods
Corecion Mechanisms	• Direct threat; carrying weapon, Past violence against those who escape; Debt bondage directly to broker; Geographic isolation/locking of gates

The involvement of labor brokers, especially those who offer to pay undocumented workers' smuggling fees, greatly increases their vulnerability to forced labor. In this case study, we look at the plight of undocumented workers brought in by *coyotes* tied to a farm labor contractor (FLC). This case highlights an organic farmer who supplies to Whole Foods who reported that he was unaware that workers who were harvesting his crops were being subjected to forced labor by his FLC. This case shows that even small-time organic growers can be unknowingly complicit in subjecting workers to forced labor if they hire through brokers and fail to heed the signs of exploitive labor brokerage mechanisms.³¹⁶

This case took place on a farm in rural Colorado. It involved undocumented Mexican workers who were brought in by a small, unregistered labor broker, or FLC, named Moises Rodriguez. Moises and his agents got in touch with workers in Mexico and offered to pay their smuggling fees to the United States and work on his farm. It was usually not specified how much the smuggling fees would be or that workers had to work off those fees for Rodriguez upon arrival. The workers were transported through the desert on foot to Arizona, often accompanied by an agent of Rodriguez, where they were picked up by Rodriguez, who charged more to drive them from Phoenix to Colorado than the *coyotes* had charged to transport them over the border. Once they arrived in Colorado, Rodriguez housed them in a fenced-in, substandard housing compound with non-potable water and kept them under constant surveillance. He used threats of violence and deportation and large deductions for food, housing, transport, tools, and smuggling fees to keep workers in debt bondage. Their path to forced labor is shown below.

This case highlights that the ways in which undocumented farmworkers are vulnerable to forced labor, especially when brokers are tied to money lending and human smugglers, or *coyotes*. In this case, undocumented workers who were directly employed by the grower reported working under better conditions; and although most undocumented workers reported wage violations, they did not report forced labor.

When five undocumented Mexican farmworkers brought a suit against Moises Rodriguez and his wife Maria for violations of the Agricultural Worker Protection Act, the Fair Labor Standards Act, and the Trafficking Victims Protection Reauthorization Act (TVPRA) – and against the grower, Andy Grant, for failing to prevent their exploitation – the judge ruled that the names and identifying details of these workers should remain anonymous because of the high level of coercion and threats against workers. Therefore, Verité has chosen not to elaborate on specific characteristics of these workers.

The Sector and Goods

Grant Family Farms is located in Wellington, Colorado, close to the southern border of Wyoming. The farm was started by Lewis Grant, the father of the current owner, Andy Grant, who grew up with the children of migrant farmworkers.³¹⁷ In 1974, the Grants began to grow organic vegetables.³¹⁸ Today the farm has grown to over 2,000 acres and sources to Whole Foods and Colorado’s largest grocery chain, King Soopers.

Grant Family Farms produces over 150 varieties of vegetables, as well as fruits, herbs, grains, meat, and eggs. Its main crops include cabbage, lettuce, spinach, summer greens and herbs, broccoli, onions, cauliflower, tomatoes, peppers, summer and winter squash, tree fruit, beans, corn and wheat. These products are sold both fresh and frozen, both wholesale and to individuals through Community Supported Agriculture (CSA).³¹⁹

Andy Grant, who was interviewed by Verité, said that he was an “outspoken adherent to social justice” who had worked in the past to help legalize undocumented immigrants and treated his workers fairly, paying them above the minimum wage. He claimed that he had hired workers through Moises Rodriguez due to a shortage of workers, which he said was caused by aggressive immigration laws and enforcement in Colorado, which caused workers to migrate to other states. He reported that, due to the shortage of immigrants, his crops were rotting and he was losing money. This assertion is supported by an NPR report that indicates that following a crackdown on immigration, seasonal undocumented farmworkers decided not to come back to Colorado for the harvest, causing farmers’ crops to rot on the vine. Colorado went so far as to start a program to hire out prisoners to help deal with the extreme labor shortage.³²⁰

Grant claimed that he only turned to using labor brokers due to the extreme labor shortage of undocumented immigrants and the difficulty of hiring US citizens and legal immigrants. He claimed that in the past 20 years, “no white worker has ever applied for a field job.” He reported that many immigrants look for work in sectors that pay higher wages and offer less rigorous working conditions as soon as they get green cards. He claimed that some of the workers that he had helped legalize during the last amnesty had quit work at his farm as soon as they had work permits. Grant reported that he worked with Burmese refugees after a tsunami and even went so far as to try to hire Burmese refugees.

Grant also reported that many farmers are increasingly reluctant to directly hire undocumented workers, which he reported constitute 70 to 80 percent of the agricultural workforce, because of increased immigration enforcement. Grant claimed that stepped up prosecution of farmers who hire undocumented workers, as well as the institution of the E-Verify program, which requires some employers to verify that workers’ social security numbers are legitimate through a government database, has led more farmers to hire through labor brokers in order to pass the liability on to labor brokers. The brokers become workers’ official employers, with the responsibility of verifying their social security numbers and I-9 forms and paying them and providing them with benefits. According to Grant, this has resulted in increased labor violations, as labor brokers tend to be more exploitive than growers.

In order to hire documented workers, Grant turned to the H-2A program in 2007. However, he reported that it is almost impossible for family farms to make a profit if they pay, house, and feed H-2A workers in compliance with labor law. Grant said that the first problem with the H-2A program is that it requires employers to first

advertise job positions for local workers, the vast majority of whom are undocumented, thus forcing employers to either violate immigration law by hiring these workers, or to violate the H-2A program rules by turning local undocumented workers away and hiring workers from overseas. Grant reported that he built worker housing for H-2A workers and that he paid their recruitment and visa fees, transportation, housing, food, and wages and benefits in accordance with labor law. However, he soon found that he was losing money under this system and decided to stop hiring H-2A workers rather than violate the law by paying them less than the legal minimum or making illegal deductions. Grant reported that many other farmers choose to exploit H-2A workers and that, “H-2A is bringing farming back to where it was 50 years ago, to a patriarchic system.”

Grant said that, because of the difficulty of hiring workers legally and the difficulty of making a profit while competing with the low prices of large corporate farms who have begun to dominate agriculture in the United States and abroad, 75 percent of vegetable farms have gone out of business in last 35 years and 44,000 acres of farmland close down each year in the United States and open up in Mexico. In fact, Grant had to file for Chapter 11 bankruptcy in 2006 due to an inability to turn a profit.

Grant reported that he pays his regular workers USD 7.55 per hour, slightly more than the State Minimum wage of USD 7.28 per hour and complies with all labor law. According to Grant, when the DOL’s Wage and Hour Division inspected his farm in 2005, he received a perfect score out of 55 indicators. A worker currently employed by Grant described him as a very good employer (see below), which is a far cry from workers’ descriptions of Rodriguez. This indicates that the key variable to workers being subjected to forced labor was not the employer, but rather the broker.

Working for Andy: “The calm after the storm”

“Pedro”, a worker from Grant Family Farms who was interviewed shortly after a harrowing journey as an undocumented immigrant from Guatemala to Colorado described his employment with Andy Grant as “the calm after the storm.” Pedro reported that he arrived at Grant’s farm, where his brother was employed, after a 22 day-long journey through Mexico detailed earlier in this report, during which he experienced extreme hardship and trauma and lost 18 pounds. Grant took him in and offered him a job taking care of his livestock for far above the minimum wage.

Pedro said that Andy listened to his story about his journey, and after hearing about Pedro’s weight loss and the injuries sustained during the journey, he paid for a doctor to come to the farm and give Pedro a physical. Pedro said, “I have a lot of love for Andy. He gave me a salary that many do not have. ... I am very lucky.” He described how Andy took him to eat sushi, to watch a Colorado Rockies game, and to watch the movie *Food, Inc.*

The Broker

Field research indicates that a number of FLC’s operate in northern Colorado and that workers employed by FLC’s are generally paid less, receive fewer benefits, and work under worse conditions than those employed directly by growers. Although other exploitive labor brokers in the area underpay and mistreat workers, none of them instill the same level of fear and intimidation among workers as Moises Rodriguez.

Moises Rodriguez had been a labor broker and Farm Labor Contractor in northern Colorado for over 20 years. He was described by Andy Grant as a “paternalistic,” “old-school Mexican” who “treated workers as peons” and was “always trying to skirt the rules.” Workers interviewed reported that Moises always carried a gun, that he sat in

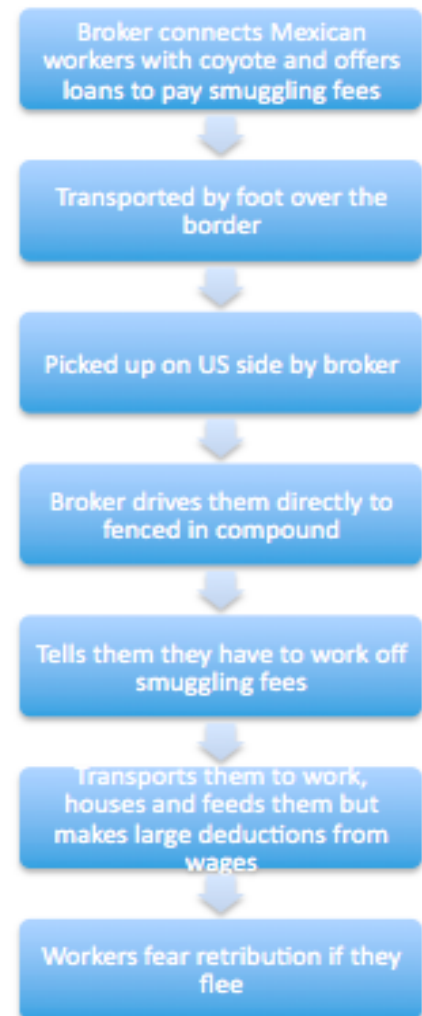
his car and watched them as they worked, that he was aggressive when he drank, and that he fired a gun at workers feet in one instance.

With the exception of the workers who were employed by Moises, none of the 34 undocumented Mexican workers Verité interviewed in Colorado and Mexico had been subjected to forced labor. Although they had been verbally abused and paid under the minimum wage for long working hours with very few breaks, they were free to leave their employers at will and some chose to do so.

The key difference with Moises Rodriguez was that he paid and arranged for workers to be smuggled across the border into the United States. According to field research and expert interviews, it is rare for an FLC to pay for the smuggling of undocumented immigrants because of the risk that workers will leave their employment before paying off the loan for smuggling fees. Moises ensured that workers paid back their smuggling fees through implicit and explicit threats, and in some cases the use of violence. For some immigrants, especially those that already had high levels of debt or were unable to borrow money, even from loan sharks because of a lack of collateral, the fact that Moises would pay their smuggling fees seemed like a blessing. However, they soon found that it created a situation in which they were indebted to Moises and were unable to leave his employment until they paid off the fees.

Moises was well known as an FLC who was able to quickly gather a large crew of workers. This was a very valuable skill for many farmers in northern Colorado who needed large crews of workers for no more than a few days for a harvest and then would not need them again for many months.³²¹ According to Andy Grant, at the time that Moises was arrested, he was working for 12 farms in addition to Grant Family Farms. According to Patricia Medige, the plaintiffs' lawyer, at the time of Moises' arrest, his workers spent most of their time on Grant's farm.

During the time that plaintiffs were subjected to forced labor, Moises was not technically their crew leader, although he was in practice. In 2004 the USDOL prohibited Moises from being a crew leader and housing migrant farmworkers after the Colorado DOL determined that his worker housing was "not livable." Shortly afterward, his wife, Maria Rodriguez's application to become a crew leader was accepted. However, they were not authorized to house or transport workers. Nevertheless, although Maria was technically the crew leader and they were not allowed to house or transport workers, the situation remained the same, with Moises in charge and continuing to house, transport, and exploit workers. According to Andy Grant, "Moises was their contractor, money lender, and landlord."



Andy Grant: "Do not hire through brokers"

Andy Grant claimed that he was "shocked" to learn that immigrants employed on his farm were being underpaid by Moises Rodriguez and that he had been named in a civil suit. Grant learned, like many companies, that outsourcing work to labor brokers does not exempt employers from liability. Instead, it increases workers' risk to exploitation and forced labor and increases employers' risk to reputational damage and to lawsuits.

Grant further stated that, “the Colorado contractor system does not have a future because there is too much liability for farmers.” According to Grant, although the government authorized Moises to contract workers, they did not monitor him and the government was not held accountable. However, employers are increasingly being held accountable for abuses committed by their labor brokers. Now that RICO statutes are being used to prosecute anyone who financially benefits from the exploitation of workers and triples damages awarded to victims, ignorance is no longer an adequate defense and employers must be extremely vigilant if they hire through labor brokers. In fact, when asked whether he could provide any advice to other employers on identifying risk signs that workers were being subjected to forced labor by brokers, Andy Grant said that the only way to ensure that workers were not exploited was to “not hire through brokers.”

According to Andy Grant, he only hired through brokers as a last resort when he could not find enough workers or when he needed a large number of workers for a short period of time, such as a harvest of strawberries. He said that during those times, he might need 100 workers to harvest strawberries for a week and would then need to let them go. He said that this was the nature of farming and that it was almost impossible to directly recruit a large number of workers for short-term employment. Grant reported that he now only uses an FLC under these situations when he is “desperate”, and he only uses reputable FLCs on whom he has done extensive background checks. He also says that he has always told workers hired through FLC’s that they are free to work directly through him.

Grant says that, in general, there is no way to ensure that workers employed by brokers are not being exploited. He stated that every day, up to 350 workers arrived in a number of vans at his farm at 6:00 AM. It was extremely difficult for Grant to determine which workers were employed directly by him and which workers were employed or housed by brokers. Whereas in other sectors, people live away from their employer or broker, in agriculture they are housed by the brokers in many instances. He said that when brokers house workers, the only way to ensure that they are not being exploited is to inspect to their houses, but Grant did not believe in invading workers’ privacy. He said that if employers hire through brokers, they now have a “responsibility to get involved in peoples’ personal lives.”

Grant stated that it was also undesirable to hire through brokers for additional reasons. Grant claimed that he gets double the productivity from workers who work directly for him as opposed to those hired through an FLC, as temporary workers have no incentive to work hard for growers who they may only see a couple of times. He also stated that in 2004, the same year that Moises exploited the plaintiffs; Moises had also run a scam on him. Moises promised Grant that he had paid all of his workers’ workers’ compensation and showed Grant a certificate to prove it. But Grant later found out that Moises had canceled the workers compensation shortly after receiving the certificate, and Grant had to pay all of workers’ compensation in 2005.

Recruitment

Research indicates that most undocumented Mexican workers find out about job opportunities through word of mouth. A 2003 survey of undocumented Mexican farmworkers indicated that 70 percent of respondents had obtained their last job in the United States through friends and relatives.³²² This was also the case with most of the immigrants who went to work with Moises Rodriguez, although some were recruited by an agent of Moises and others had worked for Moises on a previous occasion.

In most cases, workers in Mexico heard from family members, friends, or acquaintances that there was a labor contractor in the United States who was willing to pay their smuggling fees if they came to work for him. These workers were given Moises’ phone number. In other cases *encargados*, or agents, of Moises went to Mexico to

recruit workers. They were also responsible for supervising them as they were being smuggled into the United States and while they were working in the fields in Colorado.

The offer of a “free” trip to the United States and a job seemed too good to be true for many workers, especially those in debt. Some workers interviewed reported owing large amounts of money in Mexico and not seeing any way of paying off their debts through employment in Mexico. According to the plaintiffs’ lawyer, Patricia Medige, many of these workers were unable to take out loans for smuggling fees to the United States due to their high levels of debt and a lack of collateral. Therefore, they saw Moises’ offer as the only way to pay off their debt and did not inquire as to whether they would have to pay back the smuggling fees or what their wages and working and living conditions would be.

In most instances, workers were not informed of the amount of their wages, smuggling fees, or deductions during recruitment. In the cases in which they were informed, they were generally misinformed. One worker interviewed reported that he was told that he would earn USD 1,000 to USD 2,000 per month, when in reality he earned about USD 600 per month. One worker was told that USD 200 would be deducted from each paycheck to pay the smuggling fee, while in reality deductions for smuggling fees were unpredictable and ranged from USD 100 to USD 320 per paycheck and were accompanied by other deductions that were not mentioned at the time of recruitment. In one instance, the *Encargado* told a worker that he would be unable to leave his job with Moises until he paid off the debt, but this was not explicitly mentioned to most workers interviewed.

Transport

Workers were told by Moises over the phone, or were brought by one of the *encargados*, to meet a variety of human smugglers, known as *Coyotes* or *polleros* at hotels in Mexico. Some workers were told to meet “El Girasol” in Agua Prieta while others were told to meet “Gerardo” in a town called Palomas, just south of the New Mexico border.³²³ Others connected with a man known as “El Radio” who brought them to Agua Prieta, where they met up with the *coyotes*.

These *coyotes* walked with the immigrants through the desert until they reached Douglas, Arizona, where they were met by a vehicle that transported them to a safe house in Phoenix.³²⁴ Workers interviewed reported walking as many as five days through the desert with as many as 60 other undocumented immigrants. Some reported that one of the *encargados* accompanied them on the trip and all of them reported that the *coyotes* would not let them out of the safe house until Moises, his son, or an *encargado*, picked them up and paid the *coyotes*.

Workers interviewed reported that they saw Moises or a representative hand over between USD 500 to USD 600 to the *coyotes* for each one of his workers that they brought over the border. Moises or a representative then drove the workers to his compound in the back of a pickup truck, telling them that they each owed between USD 1,100 and USD 1,300.³²⁵ Workers interviewed reported that Moises charged each worker USD 700 to USD 800 just to transport them from Phoenix to Hudson, Colorado. Workers were charged more for the approximately 14 hour drive than for the up to five day trip through the desert and across the border.

One worker’s experience: fraud, frustration, and fear

One worker interviewed reported that he heard that there was work in Colorado with Moises from an acquaintance who had come to work in the United States and that this acquaintance gave him Moises’ phone number. Moises told him that he had a job for him and would pay his smuggling fee up front, but did not tell him how much the fee would be, how much he would be paid up front, or how much would be deducted from his paychecks. Moises simply told him to go to Agua Prieta and call him when he got there.

Upon arrival in Agua Prieta, the worker called Moises, who connected him with *coyotes* who brought him into the desert with approximately 60 other immigrants. After crossing into the United States, the immigrants were intercepted by immigration officials and began to scatter into the desert. The officials caught the immigrant and a friend who had accompanied him to work with Moises and deported them both back to Mexico.

They went to Altar, Sonora, where they found another *coyote* who offered to cross them over to Phoenix for USD 700. They walked through the desert for five days until they arrived at a safe house in Phoenix, where they were told that they would be charged USD 2,000 instead of USD 700. They were told that they would not be released until they paid. They called Moises and asked him to pay their smuggling fees, but he refused, saying that he told them to go with the other *coyotes*.

They had no money and knew no one that they could borrow money from, so they were held by the *coyotes* for a week. The *coyotes* told them that if they did not pay the money the next day they would “beat them up and leave them in the desert.” The workers reported that, “We didn’t have any other option but to accept it because we didn’t know anybody, so we said, ‘do what you want with us’.”

The next day, a *coyote* and a woman were watching them when the *coyote* received a call from a Phoenix police officer who demanded USD 10,000 in protection money. He said that if he did not receive the money in ten minutes, there would be an immigration raid at the safe house. The *coyote* called back ten minutes later and reported that he did not have the money, and the police officer responded by saying that the immigration authorities were on their way.

The worker was able to convince the *coyote* to let him go and everyone went running out into the street. A young man saw him running on the street and took him and his friend to his house and gave them food, clothing, and a place to sleep. He also lent them a phone to call Moises, who said that his grandson would be there the next day to pick them up.

Moises had never told them the amount that he would charge for their transport from Agua Prieta to Hudson, Colorado. When they got to the compound, he told them that they owed him USD 1,300, even though he did not have to pay their smuggling fee. The worker said that he told Moises that he could give him USD 600, which he thought was a fair fee, but Moises responded by saying, “I will charge you what I decide.” Moises charged them USD 1,300 and deducted USD 200 to USD 250 from every paycheck to pay for the smuggling fee, as well as rent, transportation between their housing and the workplace, bathroom cleaning, tools, and social security that they were never actually provided with.

According to the worker, “Moises is contractor who rents us out to ranchers ... Moises is very rude ... He is an unjust person. ... He is always in his truck watching us.” He further reported that he had heard that Moises tracked down a worker who escaped to the south, where he shot at him. The worker reported that although he had only personally seen Moises shoot at ducks, he did believe that Moises was capable of tracking him down and harming him if he left his job without first paying Moises the USD 1,300. “I had planned on going somewhere else ... but he told me that I could not leave until I paid my debt. I said that I didn’t have a debt, but he told me that I owed USD 1,300. I said, ‘well, I guess I have to stay until I have paid’ because he said, ‘if you go I will find you wherever you are’.”

Payment and Deductions

Andy Grant paid Moises USD 7.25 per worker per hour and expected Moises to give workers at least the minimum wage of USD 5.25 per hour. Labor law requires that workers earn the minimum hourly wage after deductions. According to Patricia Medige, this should have been a red flag for Andy Grant, as it was unlikely that Moises would pay his workers minimum wage while complying with legal requirements to also pay insurance, social security, workers' compensation, transportation, and taxes. In fact, the workers only ended up with as little as 2.90 per hour after deductions.³²⁶

One worker interviewed reported that Moises had originally promised him USD 1,000 per month, but that he ended up earning approximately USD 600 per month after deductions for six to seven 12-14-hour days per week. The worker reported that he had relatives that worked directly for farmers on other farms in Colorado who were earning USD 1,400 to USD 1,600 monthly. He was depending upon the USD 1,000 per month salary promised to him in order to send money back home to pay off his debt of MXN 60,000 (USD 4,734). However, the worker reported being unable to send any money back to Mexico due to his low wages.

Moises paid workers with checks, which they had to cash at a store to which they had to be driven. According to Patricia Medige, Moises charged workers a one percent fee to cash their checks and documented all deductions on pay stubs. Deductions were reportedly irregular and unpredictable. One worker interviewed reported that Moises deducted anywhere from USD 100 to USD 300 from his bi-weekly paychecks. Another worker interviewed reported that he earned a total of USD 500-600 biweekly, and that Moises deducted USD 300-320 from each paycheck.

In addition to deductions for the smuggling fee, Moises made deductions for rent, rides, social security, and tools. One worker reported that Moises made biweekly deductions of USD 50 for rent, USD 48 for rides, and USD 50-53 for social security. The worker said, “I don’t know if we really had it [social security].” Another worker indicated that Moises deducted USD 60 from each check for social security. According to Andy Grant, although Moises deducted money from workers checks for social security, he never paid this money into the social security system. According to Patricia Medige, none of the workers’ paychecks contained social security numbers.

One worker interviewed reported that Moises charged him USD 10 for a knife and USD 20 for scissors used for harvesting. Another worker interviewed reported that Moises returned the money that he had deducted for the tools after he returned the tools in good shape, but did not return the USD 20 that he had deducted from the worker’s paycheck for a rain jacket that he provided him with and that ripped on the job. This worker also reported that Moises charged each worker on the second floor of the building USD 4 per month for bathroom cleaning, which entailed no more than emptying the trash can, and that the bathroom was always dirty.

Working and Living Conditions

One of the workers interviewed described the work on the farms as “very hard work.” He reported that the *encargado* and his wife, Marta, supervised workers. He stated that the Marta would scold them, spy on them, report them to Moises, and “threaten to fire us and drop us off at the other side of the border” if they worked slowly or made mistakes. Workers interviewed also reported that Moises would sit in his truck and observe their work. One worker said, “I get nervous when I talk about Moises. He sits in his truck with binoculars and tells [the *encargado*] when someone isn’t working.”



According to Patricia Medige, workers had to leave the compound in Hudson at approximately 4:30 a.m. in order to arrive at Grant's farm in Wellington one and a half hours later at 6:00 a.m. She reported that workers worked until 6:00 or 6:30 p.m., and did not get back to the compound until 8:00 or 9:00 p.m. When they got to the fenced-in nine acre compound, they were exhausted and promptly went to sleep in order to wake up to go to work early the next morning.

In an interview with Verité, Sister Molly Munoz, who provides services to immigrants, described the compound as "one of the worst camps I've seen," but said that "workers do not like to complain because they know I'll do something about it." In a press interview, she said that, "When the high winds came, the apartments would sway. There were no screens on the windows and they had rashes all over their arms."³²⁷ In 2004, Colorado DOL inspectors had visited the camp and denied permission to house workers at the camp after they declared it "uninhabitable." This resulted in the decertification of Moises as a crew leader after it was discovered that Moises was continuing to house workers. A journalist who visited the compound reported that up to four workers lived in each of the 20 units, "in squalor — ratty tile floors, holes in the walls, mold, disgusting bathrooms, unsafe water."³²⁸ Workers interviewed reported that they had to boil the tap

water for at least ten minutes in order to drink it, and even then it had a very strange taste. They usually had to go to Moises' house to get drinking water.

Moises could see the compound from the front steps of his house, which was just across the railroad tracks; and Moises' son lived in a mobile home next to the compound. Moises and his son reportedly drove around the periphery of the camp at night. Although the compound was fenced in, the fence was not always closed and the compound was only a short distance from town. It was not the fence or the relative geographic isolation that kept workers in, but rather their social isolation, their debt to Moises, and their fear of deportation and violent reprisals if they tried to escape. Molly Munoz reported to Verité that two workers who worked up the courage to try to escape only made it to the highway before Moises and his son grabbed them and brought them back to the camp.

Fear and Violence

In an interview with Verité, Patricia Medige reported that although some of the plaintiffs did not see themselves as enslaved, they did believe that there would be reprisals if they tried to leave without paying their debt. According to Medige, "when asked if they were free to leave would say 'yes', if asked what would happen if they left, they said that he [Moises] would find them and would make them pay their debt." Medige reported that Moises carried a gun at all times and that automatic guns were seized during a 2005 raid on the compound. She said that in one instance, after a worker challenged Moises by saying that he did not think that his gun worked, he shot at some ducks a few feet away from the worker. She said that while there was not a great deal of direct threats or physical violence, there was a great deal of psychological coercion, which although hard to prove, can be just as effective as actual violence in keeping workers in debt bondage.

According to Molly Munoz, "Everyone was afraid of him [Moises]. When he came around, everyone was paralyzed." Molly Munoz, who is a spirited nun who has aided immigrants in Iowa and Colorado for decades and who said that "I have been shot at and my car has been crashed into as reprisals" claimed that Moises frightened

even her. She said that Moises and his wife repeatedly followed her around and that Moises told her to get off of his property “now” when she visited the camp to counsel and assist workers. She said, “I did not feel comfortable going to that camp as he was capable of hurting me. If no one was there, I wouldn’t get out of the car. I want a witness if he kills me.”

A worker said that he was told by the *encargado* that Moises would find him and “make him pay” if he ran off without paying his debts. Another worker interviewed also reported that he had received the same threat and that he had heard rumors that Moises had tracked a worker who ran off without paying his debts down to the Southeast United States and pistol whipped when he found him. A third worker interviewed reported that he saw Moises threaten people when he worked for him in 1999, and that Moises would track down workers and pistol whip them if they escaped. A fourth worker said, “We have to work until we pay off the debt” and that after one of the 12 workers that he had crossed the border with escaped, he had heard that the *encargado* had been charged the USD 1,300 that the worker owed because he had recruited the worker.

Several workers demonstrated anxiety around Moises’ constant possession of a gun. One worker said, “He never left without his pistol – all the time with his pistol.” Three of the workers interviewed mentioned the incident with the duck and it was clear that they had been frightened by this incident. One worker said, “No one said anything, no one moved. We remained there humiliated, scared, nervous.”

Andy Grant pointed out that the workers’ fear of immigration agents and vigilante groups that have perpetrated acts of violence against immigrants have also contributed to their social isolation and their fear of running away or reporting abuses to authorities. One of the workers interviewed said, “We don’t complain because we don’t know the laws here.”

The Investigation and Lawsuits

Luckily, in late 2004, five workers were brave enough to come forward and launch a formal complaint against Moises. They went through several sets of interviews with the FBI and Immigrations, Customs and Enforcement (ICE), and ICE finally took the lead on the investigation. Although Patricia Medige was essential in getting workers to come forward and assisting them in their case, she didn’t hear much from ICE until their October 2005 raid on the compound. Since then, she has learned that they were conducting surveillance on the compound and had a confidential informant in Mexico.

Criminal charges were brought against Moises and Maria for “transporting illegal aliens and harboring and employing smuggled aliens”. Trafficking charges were not brought against them because the immigrants had agreed to be smuggled and because there was a lack of direct physical violence - and psychological coercion is very hard to prove in a court of law - even though deceit and fraud were involved, resulting in conditions that met US Department of Labor and ILO definitions of trafficking and forced labor. The case never went to trial because Moises and Maria pled guilty to transporting illegal aliens and harboring and employing smuggled aliens. The charges and the plea were detrimental to workers because they were legally characterized as being complicit in their exploitation as “illegal aliens” and were thus ineligible for restitution. Moises, who had a criminal record for a DWI, assault, shoplifting, and menacing behavior, served a little over a year in prison. Moises and his wife were subsequently deported despite being legal permanent residents.

The victims pursued a civil case against Moises and Andy Grant. According to Patricia Medige, the intimidation and fear continued during the criminal case, even after Moises and Maria had been deported. During the trial, a large number of Moises’ family members sat in the court, and some of the family members were overheard saying that they were going to find the plaintiffs and “get them.” After an article ran in the Denver Post, one of Moises’ children reportedly made a threatening comment to Sister Molly Muñoz. Because of the high level of intimidation

and fear surrounding the criminal case, the judge ruled to allow the plaintiffs to file the civil complaint anonymously.

Workers also reportedly feared retaliation from Maria and Moises even after they were deported. Some workers reported being afraid that Maria or Moises would harm their family members in Mexico, while others reported hearing about sightings of Moises in Colorado and feared that he would harm them there. Moises became an almost supernatural figure, with contradictory rumors of sightings of Moises in the United States and Mexico and even rumors that he had died. Moises' ghost continues to haunt many of the workers that he employed and exploited.

Although the workers did not receive as much as they deserved, they did receive some compensation for their suffering. The workers won USD 7.8 million, due to the fact that the case was brought under RICO provisions, under a precedent set by the Imperial Nurseries case, which tripled the damages, resulting in the "largest judgment of its kind in the country."³²⁹ The Rodriguez's, who were in Mexico, failed to contest the charges, which resulted in a default judgment of USD 1.5 million for each plaintiff. However, due to the fact that the Rodriguez's are in Mexico and are close to defaulting on their mortgage on their property in Hudson, it is unlikely that the plaintiffs will see any of this money.³³⁰ Grant filed for bankruptcy in 2006 because of financial difficulties unrelated to the case. He settled the case for USD 10,000 (USD 2,000 per worker), plus an additional USD 60,000 from the bankruptcy. As part of the settlement, Grant also promised to do background checks on all future contractors and supervisors. Workers agreed to this settlement because the damages that they could receive were limited by Grants declaration of bankruptcy.

Grant claims that he settled the case because he was afraid that if the case got too much media attention, Whole Foods and King Soopers would stop sourcing from him. In fact, in response to the case, a spokeswoman from Whole Foods said, "Part of our core values is to care about not just the products we sell but people who help make these products ... We do as much as we reasonably can do other than growing and harvesting with your very own hands." In addition, a spokesman from King Soopers said that they would reconsider doing business with a supplier involved in "unethical practices."³³¹

Andy Grant by most accounts seems a well-intentioned, decent employer who cares about his workers and at least strives to provide them with the legal minimum. However, his choice to contract workers through a labor broker and his lack of monitoring almost cost him his two biggest buyers and it did cost workers their freedom. Hiring through labor brokers is too risky for businesses and for workers.

Case Study 4: Cattle and Sheepherders in the Western United States

Sector	•Cattle and Sheepherding - Western States
Workers	•H-2A Chilean Workers
Broker	•Western Range Association with recruiter/broker/ lawyer in Chile
Employer	•Exploitive rancher in Colorado
Corecion Mechanisms	•Fraud, extreme geographical and social isolation, threats of deportation, confiscation of identification and banking documents, intimidation

This case study analyzes the ways in which exploitive labor broker practices contribute to the forced labor of Chilean sheep and cattle herders. Sometimes referred to as “America's solitary nomads,” sheep and cattle herders herd livestock all day, every day in unfamiliar, remote locations.³³² Sheepherders, known as *borregueros*, and cattle herders, known as *vaqueros*, come to America with hopes of earning a living, only to find themselves living precarious, lonely existences for little to no pay. They fall upon economic exploitation before they even board the plane, face abuses and harsh living conditions on the job, and often return home empty-handed.

This case study will provide a background on the Western Range Association (WRA), both an industry association composed of ranchers and a large and formalized US labor broker that brings H-2A workers into the United States for sheepherding. It will also provide information on the ways in which legal exceptions for sheep and cattle herding and the exploitive labor brokerage system creates vulnerability to forced labor, which is exploited by employers.

For this case study, Verité highlights the experiences of a Chilean H-2A sheepherder and two Chilean H-2A cattle herders interviewed by Verité. These workers were recruited from Patagonia by a Chilean who is the only WRA recruiter in Chile. This recruiter charged the workers illegal recruitment fees; misled them about their pay, hours, and working conditions; and exploited the fact that they had made large payments to secure employment in order to make them sign a contract as they were about to board a plane for the United States. The workers reported that they would not have accepted the jobs if they had known the actual conditions under which they were to be employed. The legal authority conferred to the WRA, as well as its reputation for blacklisting and deporting workers who complain or try to leave an undesirable employer, along with their family members, further contributes to workers' fear and vulnerability. This fear and vulnerability is taken advantage of by unscrupulous employers who isolate workers in remote locations and subject them to almost unbearable conditions and treatment. However, the root cause of this exploitation is the legal and labor brokerage system, because if they did not exist, workers could simply walk away from exploitive jobs.

Methodology/Challenges in Obtaining Information

For this case study, Verité relied on primary news sources, reports and surveys from legal services and non-profit organizations, and interviews conducted by Verité with sheep and cattle herders, their lawyers, and experts on sheep and cattle herding. While the information surrounding sheep and cattle herders' experiences in the United States is fairly well-documented, there is little publicly available information regarding recruiting and labor broker practices. Verité relied on testimony from sheep and cattle herders. However, their names and identifying details will not be shared due to fear of reprisals.

The Sector

The United States had an estimated 6.2 million sheep on 68,000 farms, as of 2006, most of which are concentrated in the West and Southwest. Most of these operations were located in Texas; followed by California, with 2,700 ranches, 1,000 of which are commercial;³³³ and then Wyoming.³³⁴ Sheep graze year-long, but the lambing period in the spring brings about the hardest work and longest hours.

There are approximately 95 million head of cattle in the United States, valued at upwards of USD 75 million.³³⁵ Texas, Nebraska, Kansas, Oklahoma, and California are the top cattle-producing states, totaling 40 percent of the national share. Texas' portion comprises double that of any other state.³³⁶ While sheep are used both for meat and wool, with the US wool market struggling to compete with Australia, cattle are mostly sold for meat.

The Workforce

The US sheepherding workforce was traditionally made up of Basques from Spain, but now is primarily made up of Peruvians and Chileans. In 1966, 1,283 herders were under contract to the Western Range Association.³³⁷ In 1970, at the peak of Basque sheepherding, 1,500 herders were under contract to the WRA; 90 percent were Basque.³³⁸

In 2004, the Labor Department allowed 1,690 shepherds into the United States on three-year H-2A contracts.³³⁹ The WRA is the one of the largest brokers of H-2A workers for the sheep industry and employs about 800 Peruvians--representing eighty-two percent of their labor force. Twelve percent of the H-2A workforce is made up of Chileans, and a small number are Mexican. "We tried Mongolians, but it didn't work out. There was too much of a language barrier," said the WRA's executive director, Dennis Richins.³⁴⁰ The vast majority of sheep and cattle herders are male and speak Spanish, though some South Americans arrive speaking indigenous languages.

A sheepherding expert interviewed by Verité indicated that there has been a recent shift to hiring Chilean workers, due to unionization campaigns undertaken by Peruvian workers. Interviews with workers, lawyers, and labor experts indicate that the majority of Chilean sheep and cattle herders come from Patagonia. Although these workers have low levels of education and many of them have not traveled outside of Patagonia, they have a great deal of experience in herding. On the other hand, some of the Peruvian workers come from urban areas, with higher levels of formal education, but with little training in herding. They also have little experience with the hardships associated with long periods of time living on the range.

"The incredible thing is that there are Mexican immigrants who are working at the ranches without documents, who are doing the same thing and are receiving the minimum wage for fewer working hours. And the guestworkers are working more, are being treated like slaves, and are receiving a small percentage of the minimum wage, and all of this is sanctioned by the law."

-A lawyer who has represented H-2A sheepherders

Legal and Regulatory Environment

The California Range Association, which later became the WRA,³⁴¹ successfully lobbied in the 1950s for the “shepherd bills,” three special laws which allowed them to bring in for permanent employment a large number of “foreign workers skilled in sheepherding,” most of whom were Basque immigrants from Spain. Special privileges were given to expedite visas for sheepherders and there were no requirements that the Department of Labor (DOL) certify that the employment of sheepherders was not having an adverse effect on US workers. However, an investigation undertaken by the House Judiciary Committee culminated in a 1957 report that indicated that a large number of workers brought in under this program were leaving sheepherding shortly after arriving and were obtaining employment in other sectors. This resulted in congress allowing the special legislation to expire.³⁴²

The DOL then instituted a new program to bring sheepherders in under the H-2 program. According to the DOL, “Because of the unique occupational characteristics of sheepherding, the special legislative and administrative history in operating the program and the multi-State role of the Western Range Association, DOL established separate procedures and guidelines. These were last articulated in Field Memorandum No. 74-89, May 31, 1989.” This Field Memorandum was supplanted by the “Special Procedures Labor Certification Process for Sheepherders and Goat herders under the H-2A Program.” While these “special procedures” require DOL labor certification, as with the regular H-2A program, they include significant exceptions from the H-2A program.³⁴³

The most significant difference from the regular H-2A program is that workers may be brought in for periods of up to three years. Another notable difference is that applicants are required to possess at least one month of experience in herding and they must agree to be “on call for up to 24 hours per day, 7 days per week.” However, the legislation does not require that herders be paid at least the minimum wage for all hours worked, rather allowing for workers to be compensated at a special monthly rate, which is set annually.³⁴⁴ There are also a number of procedures specific to the WRA which increase the WRA’s power and workers’ vulnerability to forced labor.

“Procedures Applicable Only to Western Range Association (WRA) Applications”

The “Special Procedures” include “Procedures Applicable Only to Western Range Association (WRA) Applications.” These federal procedures consider the WRA as a “joint employer” of all sheepherders, which “represents the majority of employers of sheepherders who participate in the H-2A program.” They include the following provisions:

Advertising and Job Description

The regulations stipulate that the WRA must advertise in US newspapers every three months, with the following language, which provides a description of workers’ job responsibilities and legal rights under the program:

Range Sheepherders (some experience needed). Immediate Openings Available. Attends sheep grazing on range or pasture. Herds sheep using trained dogs. Guards flock from predators and from eating poisonous plants. May examine animals for signs of illness and administer vaccines, medications and insecticides. May assist in lambing, docking and shearing. May perform other ranch duties incidental to goat/sheep production. Large flocks with single/pair herder. Free food, housing, tools, supplies and equipment provided. May be on call 24 hours per day, 7-days per week. Minimum 11-month employment. Employment for 3/4 of workdays guaranteed. Workers compensation provided. Transportation to job and subsistence provided; deducted from wages

until 50% of employment contract completed, then paid to worker. Return transportation provided at end of employment contract.³⁴⁵

This provision describes herders' job duties, requiring them to be on call 24 hours per day, seven days per week, and allowing for deductions to be made for transportation, food, and lodging.

I was receiving less than minimum wage and at the trial they told me that it was legal.”

-Shepherd interviewed by Verité

Worker Transfers

One of the key provisions regarding the WRA reads, “The WRA may transfer a domestic or foreign shepherd from one rancher-member to another rancher-member, but not to employers who do not belong to the WRA. Such transfers may be made at the WRA's discretion. When a worker objects to a transfer, the WRA will consider the worker's concerns and preferences. However, ultimate refusal on the part of a worker to a transfer may subject the worker to dismissal for a lawful, job-related reason, as provided for in DOL regulations.”³⁴⁶ This provision creates the inherent penalty of deportation for workers who refuse to be transferred to another WRA ranch that he was not originally contracted to work on.

Fees

The employer is responsible for reimbursing travel and subsistence expenses incurred in getting to the job site once half of the original contract period has elapsed. Further, the employer must pay the worker for costs of getting to the recruitment site after a year of employment or after severing the employment relationship.³⁴⁷ However, employers are exempt from this payment if the worker is fired for a legitimate reason, if the worker quits before finishing the contract, or if the worker refuses to be transferred to another WRA member, regardless of locality or reduction in pay.³⁴⁸ This provision creates a penalty for workers who choose to leave their employment early or refuse to be transferred to another WRA ranch.

State-Specific Legislation

Washington has passed regulations that give additional protections to herders, as well as regulations that favor the WRA, and a Supreme Court Ruling precludes herders' right to the minimum wage. Washington's State Employment Security Department lists additional guidelines regarding mobile housing standards, waste disposal, heating, lighting, bathing and laundry, food, cooking and eating facilities, sleeping facilities, and safety standards. In addition, employers in Washington State must produce a copy of each contract to the Employment Standards Administration, though WRA members are exempt. Perhaps most importantly, because H-2A workers can only work for one employer, a WRA-contracted shepherd cannot work for non-WRA ranchers in Washington State.³⁴⁹ The Supreme Court of Washington ruled five to four that because shepherders live at the ranch and have to be “available” on call 24 hours per day, their rate to the minimum wage did not apply.

California has seen the most contentious struggles over wages. The Industrial Welfare Commission (IWC), which sets the minimum wage and standards for working conditions, had specifically excluded shepherders from minimum wage protections,³⁵⁰ but raised its own state prevailing wage in 2002 to USD 1,200 per month.³⁵¹ California recently passed a law requiring labor improvements for shepherders. However, this law resulted in few improvements in practice.³⁵²

The Brokers

While individual ranchers and recruiters in sending countries can serve as brokers, the WRA is one of the two major brokerage firms in the shepherding industry. The WRA is comprised of ranchers, serves as a joint employer for the H-2A program, and represents the majority of employers who participate in it.³⁵³ The WRA is a

unique type of broker, as the ranchers who it recruits for are also members of the WRA, which doubles as an industry association. The WRA is a large, formalized broker that receives legal favoritism in the United States. It reportedly has exclusive recruitment arrangements in sending countries, including an office in Lima, Peru.

While the WRA is a major player in the sheepherding sector, it does not bring in cattle herders. Mountain Plains Agricultural Service, another major broker that brings in sheep, goat, and cattle herders, employed the largest overall number of H-2A herders in 2008.³⁵⁴ Jennifer Lee of Colorado Legal Services reported that Mountain Plains Agricultural Services uses the same Chilean broker as the WRA and that this broker also works independently for individual ranchers, soliciting visas as the joint employer of H-2A workers. Jennifer Lee further reported that in Colorado approximately one third of workers are brought in by the WRA, another third are brought in by Mountain Plains, and the remaining third are brought in by individual ranchers.

The WRA's predecessor, the California Range Association, successfully lobbied for the "sheepherder bills" in the 1950's. Today, with between five to ten employees, WRA's annual sales are estimated at anywhere between USD 400,000 and USD 2.5 million.³⁵⁵

The WRA has also helped the industry receive a number of exemptions from regulations, which enable many of the abuses we profile here.³⁵⁶ The Western Range Association informally lobbied against graduated raises and mandatory vacation time for herders, claiming it would bankrupt a deteriorating industry.³⁵⁷ In spite of its legislative successes, the organization is not a federally registered political action committee (PAC), and thus does not actively contribute money to political candidates. However, several employees, including past and present executive directors, have made contributions to federal candidates in recent years.³⁵⁸ And in January 2003, Senator Larry Craig approved USD 1,014 in privately financed travel expenses to send a staffer to Las Vegas to address the WRA board of directors on a host of issues.³⁵⁹ Still, the WRA acts primarily as a joint venture for labor recruitment. This "executive arm" of the industry does not work on legislation or influence lawmakers to the extent of the American Sheep Industry Association (ASI). The ASI's PAC performs the "legislative function" of the industry, raising and contributing anywhere between USD 10,000 and USD 110,000 per election cycle, over the past 20 years.³⁶⁰

"They tell you will have a horse, lots of benefits, good treatment, a good salary, but when you arrive you find a huge surprise. ... I got angry inside. I started to think about what happens to people in the US and all the lies they tell you."

"How can WRA permit that here in the US, one is paid USD 700 per month for 17 hours per day. They know how much each person earns ... I hope that one day the situation will be fixed, but it is very difficult because they [the WRA] is a large group. ... I think that the government has to fix this, because the government of the US should not be permitting that they bring people from Chile like this. It is one person who does all the paperwork and why can't the government talk to him and demand better payment and treatment? How much will it cost a rancher to install a shower, a decent bathroom, and pay a little more. Instead of USD 800, USD 1500. They had 45,000 cows. Every day they sold 1,000-2,000."

Recruitment

Since Spain's economy has improved and the number of herders there has dwindled, the WRA has shifted its focus to Peru, Mongolia, Mexico, and Chile,³⁶¹ recruiting among impoverished communities for potential workers. According to interviews with workers, their lawyers, and herding experts, the WRA has one recruiter in Peru and one recruiter in Chile, both of whom have been cited for exploitive and deceptive practices. These brokers, known as *contratistas* or *intermediarios*, help to recruit and process the visa applications of potential

workers. According to one worker who has gone through the recruitment process, 5,000 people are signed up with the company in hopes of coming to the United States. Sometimes, workers can wait up to ten years, in part because of steep fees. “If you don’t have the money, you can’t come,” said the worker.

The *intermediarios* rely on word of mouth references to find recruits, and a frequent condition is that one must have a family member who has gone to the United States. This condition is generally in place to serve as a disincentive for workers to complain or flee, as there is an unspoken understanding that the family members of these complaining workers who are employed in the United States will be fired and deported, creating a large economic impact on impoverished families.

Sheep and cattle herders from Chile interviewed by Verité reported that they never met the recruiter in Chile until they got to the airport to fly to the United States. A shepherd interviewed reported that when he talked to the broker on the phone prior to this time, he would only discuss the visa process, and not his salary or working conditions. A cattle herder interviewed reported that the broker told him that he would be paid USD 1,500 per month, when in practice he was paid a little over half this amount. When the applicants inquired about the conditions of their employment he would say that he had to go and would hang up the phone. He also required that the herders receive a medical checkup, which the workers had to pay for. According to lawyers and labor experts interviewed by Verité, the WRA recruiter in Peru operates out of a WRA office in Lima and requires that applicants undergo unpaid “training” on his private facility in Peru before they can be sent to the United States.

“One comes from Chile with the hope of helping their family. I grew up without shoes, with peeled feet because we didn’t have enough money. So I was very happy to have the opportunity to come to the United States. In Chile we think we will pick dollars from a tree. One doesn’t know that they will suffer more than in Chile because at least in Chile the bosses don’t treat us so bad.”

Because of the various parties involved, some workers do not know who is officially employing them or sponsoring their visas, whether it is the *intermediario*, the rancher, or the WRA. “We came *medio asustados*—kind of scared,” said one herder from Patagonia. “We had never left the region, had never been on a plane.” One doesn’t know where they will arrive or who will meet them. And in hiring from the most destitute labor pool, the WRA and ranchers are able to justify the living conditions of these ‘guestworkers.’³⁶² “We bring these guys in to herd sheep and that’s what they’re supposed to do,” said Dennis Richins, the executive director of the Western Range Association.³⁶³

Recruitment Fees, Contracts, and Visas

Intermediarios are known to charge both the contracting employer and the recruiter, which is often illegal in their home countries. This is often the first in a series of deceitful and unlawful acts.

The range of fees varies. The shepherd and cattle herders interviewed reported that they had to pay a total between USD 1,000 and USD 2,000 in recruitment fees, visa fees, medical checkups, transport, and other expenses related to their employment. Some workers have reported needing to borrow money from friends and family members to pay for these costs. A recruiter told a Chilean cattle herder that he could pay back the fees with his monthly wages of USD 1,300 - USD 1,500. The herder did the calculations and determined that he could pay off the loan and still make money, so he said that he would like to apply for the job. The *intermediario* told him to send his identification documents and that he would let him know when he had obtained the visa. He limited communications with this worker as much as possible.

Chilean sheep and cattle herders interviewed by Verité reported that the WRA's Chilean recruiter forced them to pay him an additional fee and to sign a contract at the airport shortly before their plane departed. As these workers were being paged to report to their gate for boarding, the broker said that if they did not pay him and sign the contract, he would not hand over their visas and they would miss their plane and lose the approximately USD 1,000 to USD 2,000 that they had invested. He also said that, as the main recruiter in Chile, he would not allow them to work on any ranches in the United States in the future. A worker interviewed, who had low levels of literacy and education to begin with, did not have time to read the contract, and thus did not know until after he arrived in the United States that he would be on call 24 hours per day, seven days a week. When he was told at the airport that he would be earning USD 800 per month instead of the USD 1,300 to USD 1,500 per month promised to him by the recruiter, he was unable to refuse because he felt that he would be unable to recoup the money that he invested to get the job and plane ticket. According to one worker interviewed, "I didn't really understand because there was so little time and they were already calling my name on the intercom, so I signed the paper. Before I left, he told me that I had to pay him an additional USD 120." Before he boarded the plane, the Chilean broker told another worker that if he tried to leave the ranch, the rancher would call immigration authorities and they would find him.

A 2000 survey carried out in California and a 2010 survey carried out in Colorado both found that approximately half of herders surveyed indicated they were unable to read their employment contracts.³⁶⁴ Reports also indicate that many employers issue new contracts in the United States that differ from those signed in applicants' home countries. These contracts stipulate longer working hours and lower wages than those originally agreed to in sending countries.³⁶⁵ There are also reports that many brokers and ranchers neglect to renew workers' visas, which means that the workers are technically residing illegally in the country, and puts them in danger of deportation if they file complaints against their employer.

Working Conditions

According to a Colorado Legal Services survey of 93 herders in Colorado carried out from December 2007 to December 2009, 42 percent of herders reported that their passports and visas were confiscated upon arrival.³⁶⁶ Most H-2A herder visas must be renewed every three to nine months for up to a total of three years. However, many workers do not know that their visas have to be renewed, as they are not informed of the visa stipulations by their recruiter, the ranchers hold all their papers, and visa extensions are done by mail. Workers interviewed reported that the ranchers renewed their visas without their knowledge. One interviewee's visa had expired, but he never knew this because he was not in possession of his documents.



Workers also find that their duties differ greatly from those described to them during recruitment, laid out in their contracts, and stipulated by DOL as permissible activities for herders.³⁶⁷ A survey carried out in Colorado found that over half of workers surveyed reported that their employer had not fulfilled the terms of the contract.³⁶⁸ Another study found that 70 percent of sheepherders reported that they were required to perform activities other than those specified by their job specification.³⁶⁹ Among the activities that sheepherders have been required to

carry out, include, working as mechanics,³⁷⁰ building fences and walls, fixing machines, soldering, cutting grass, and painting.

Workers are required to remain at the work site 24 hours per day, seven days per week, 365 days per year.³⁷¹ A 2000 survey indicated that 90 percent of sheepherders in California never receive a day off during their tenure of up to three years, while a 2010 survey carried out in Colorado found that 73 percent of herders surveyed never got a day off.³⁷² Those who tell their employers that they were promised a day of rest per week by their recruiter may be shown their contract, which indicates that they are not entitled to a day of rest. A sheepherder interviewed by Verité reported that he was told by his recruiter in Chile that he would have a week of vacation per year; however, during the 16 months that he was employed, he did not receive even one day off, even after begging his employer for a day off upon finding out that his sister had died. Indeed, leave is so infrequent, that those who do get a day off remember it well. Two cattle herders interviewed reported that each year they were only provided with five hours off during Christmas.

In addition to a lack of days off, herders often have to work extremely long hours. A survey released in 2010 indicated that 62 percent of herders surveyed in Colorado actively worked in excess of 81 hours per week and 35 percent worked in excess of 91 hours per week, with only seven percent of herders reporting that they worked less than 60 hours per week.³⁷³ Two cattle herders interviewed reported that they worked up to 17 hours per day, beginning at 3 or 4 a.m. with only one 15 minute break to eat. They reported that they had to wake up every half hour to check on the cattle during the three month long birthing season, which begins in the spring. When asked how they could sustain long periods of time with very little sleep during the birthing season, one cattle herder responded, “How could we let an animal die? It was not their fault that there weren’t enough of us.” A sheepherder interviewed reported that for one month, the owner treated him well, but that everything changed in March, when the birthing season started. He reported that for two months he had to wake up every half hour to check on the sheep.

According to a 2009 press report, 46 percent of sheepherders reported becoming ill or getting injured on the job, 61 percent of whom reported receiving no medical attention for their injuries, including tick-borne illnesses and serious injuries after workers were thrown from horses.³⁷⁴ A survey indicated that only five out of 17 herders surveyed who had been injured reported that they received adequate medical care.³⁷⁵ One report indicates that when workers sought time off to recuperate from illnesses or injuries, they were told, “Oh, you Peruvians are just lazy; you’re always looking for an excuse to get out of work.”³⁷⁶ Some injured or seriously ill workers have reported being abandoned by their employers,³⁷⁷ while others have been forced to work for days after reporting their injury. A herder “injured his eye while welding,” read one news report, but the ranchers made him continue working. “Three days later, a doctor removed four pieces of metal from his eye.”³⁷⁸

Injury and Abuse: A Taped Interrogation

One of the cattle herders interviewed reported that after another Chilean cattle herder suffered severe head injuries when he was trampled by a horse, he carried him to the employer. He demanded that the employer bring the unconscious worker to the hospital. The employer promised that he would, but the next day the workers found that he had not brought the injured worker to the hospital and instead forced him to keep working. After the worker began to bleed from the nose, they again asked the employer to take him to the doctor. He again refused to bring him to the doctor, only doing so the next morning after discovering that the worker had lost a great deal of blood while he was sleeping.

The worker later decided to file a workers’ compensation claim for his injury, as he experienced ongoing headaches and dizziness. The employer reacted by deciding to film a video deposition to try to get the worker to rescind his claim. In the video interrogation, filmed by the rancher’s wife, the level of power and physical intimidation that the rancher exhibits over the cattle herder is clear. First, the rancher requires that

the worker sign a document written in English. Then, in poor Spanish, he yells at the worker for filing the complaint and points his finger in the face of the worker, who cowers in the corner of a small trailer that serves as his house.

The rancher repeatedly asks the worker, in an increasingly stern voice, “didn’t I take you to the doctor when you asked me to?” The worker says, “no,” in an almost inaudible voice, with fear visible on his face, saying that the rancher only gave him ibuprofen. When the worker mentioned that he was bleeding profusely, the rancher responded by saying, “blood is not bad” and that the doctor had told him that the bleeding was “all in your head, it was a nervous thing.” The employer also expressed visible anger that the worker had contacted a lawyer to file the workers’ compensation claim, saying, “Lawyers came on my land and took my men. It is simple. They should talk to me and I will say yes or no.”

This is a film that the employer took himself, with the intent to get the worker to rescind his workers compensation claim. The film was later used against the employer in a lawsuit. The film was shared with Verité by a worker advocate.

Living Conditions

Living conditions are substandard as well. Living in small, old, dilapidated trailers,³⁷⁹ sheepherders have repeatedly described a lack of toilets, bathing facilities, potable water, heating, electricity, and refrigerators. The temperature swing in the western states makes the climate unbearable without proper heating or ventilation. A lawyer interviewed by Verité described attending a meeting about poor living conditions, during which a rancher said it did not make sense to provide workers with bathrooms, “because workers did not like to use bathrooms and prefer to go in a hole.” A survey released in 2010 found that 65 percent of herders surveyed never had access to a functioning toilet.³⁸⁰ Sheep and cattle herders interviewed by Verité reported that their living conditions were “much worse than in Chile,” describing a kitchen full of flies and a shower in the garage.

Reports find fault not only with the employers, but also with the government for failing to enforce the already weak labor law.³⁸¹ A sheepherder interviewed reported that government inspectors came once to check on the camp, but that the rancher was informed ahead of time and cleaned up the camp. He reported that the inspectors only inspected the central camp where the rancher lived and not the workers’ trailers, which were scattered around the mountainside and were in a much worse state than the central camp. In addition, the worker said that the rancher, “told me not to speak to anyone if the inspector came, if anyone came. I would have liked to speak to someone, but there was no one to speak to, no one spoke Spanish.” A lawyer interviewed by Verité indicated that ranchers have a great deal of leverage over inspectors, as many are large landowners who are influential and have friends in Congress and in state and local offices.

Methods of Payment, Financial Penalties and Withholdings

Reports from herders and advocates indicate that many employers have violated, and state agents such as the California Labor Commissioner failed to enforce, minimum wage statutes.³⁸² A survey released in 2010 indicates that the 93 herders surveyed in Colorado made an average of approximately USD 2.00 per hour for the hours that they actively worked, not including the time that they were on call.³⁸³ There are many reports of workers being paid being less than the agreed upon rate, and further diminished through automatic deductions, often for goods and services such as food, housing, and travel, which workers are required to pay.³⁸⁴ Cattle herders interviewed reported that they were promised a salary of USD 1,300 to USD 1,500 per month, but were in fact only paid USD 800 per month before deductions. A Chilean sheepherder interviewed reported that he received USD 600 to USD 650 per month after deductions.

Some employers fail to provide workers with pay stubs showing hours, rates, and deductions.³⁸⁵ Others provide workers with receipts that detail deductions, but these receipts are written in English, a language that many workers are unable to read.

A shepherd interviewed reported being overcharged for cigarettes and beer, and being charged USD 25 for telephone cards with 20 minutes of airtime. In addition, the rancher made a monthly deduction from his wages for “insurance,” which he was never actually provided with. After the shepherd had finally been able to save USD 900, his employer told him that he needed to get a tooth pulled so that he would “look nice.” The employer took him to a dentist, who pulled his tooth. He later told the worker that the bill had come out to USD 2,000, which the worker now owed to the employer. The employer took the USD 900 that the worker had saved out of his bank account and deducted the rest from his wages.

“I said, ‘you called me and my brother trash, I worked two years for you without a break and now I ask for my ticket back to Chile and my money, because it is my money and my documents, and I want to go on good terms back to Chile and you refuse and on top of that you treat me like trash. After two years without a break ...”

This worker reported that when he finally left employment after 16 months, he found that he had only made a total of USD 4,000 after deductions and he still owed USD 3,000 for money spent on recruitment, the visa, and transport, leaving him with a total of USD 1,000 for 16 months of work. Given that he was on call 24 hours per day during this whole time, his hourly wage would come out to less than ten cents per hour after deductions and payments for fees and transport that should have been covered by the employer. After deductions, reports indicate that workers often owed their employers money.³⁸⁶ Four out of seven shepherders interviewed for an article had not been paid during their eight months of work.³⁸⁷

A survey released in 2010 found that 85 percent of herders in Colorado received their pay by check, with 35 percent reporting that they were not paid every month and some stating that they received their pay once a year or when they returned home after their employment. Thirty six percent surveyed reported that they did not receive a check stub or any other form of receipt for their payment.³⁸⁸ Sheep and cattle herders interviewed by Verité reported that they were never paid by check or cash, and their payments were instead directly deposited into bank accounts to which they did not have access. These workers reported that their employers told them to sign a document in English, which they did not understand, authorizing their employers to deposit and withdraw money from their bank accounts.³⁸⁹ The workers’ ATM cards and identification were confiscated, so they could not withdraw money from their accounts. Two of the workers interviewed did not even know which bank their money was deposited into and one of the workers reported that the bank tellers in the small town closest to where he was employed knew the rancher and notified him when he tried to cash a check at the bank.

Isolation and Freedom of Movement

H-2A workers in the herding industry are socially and geographically isolated from society. Workers commonly live 15 to 30 minutes drive from the closest town, and have no idea which way to walk if they wanted to get to town. Workers are geographically isolated from anyone other than those working for the employer, and have very limited access to telephones and transportation. According to the Colorado Legal Services survey, over 80 percent of workers reported that they were not permitted to leave the ranch, 85 percent were not allowed to have visitors who were not employees of the ranch, 85 percent were not permitted to attend social gatherings, and 85 percent reported not always having access to a phone, with 16 percent reporting that they never had access to a phone.³⁹⁰ In another study, 93 percent

“We thought the experience of working on a ranch in US would be marvelous,” said one worker, laughing. “But it turns out that the conditions there were much worse than our life in Chile.”

of the shearers surveyed in California reported that they had no transportation, creating a dependency on their employer.³⁹¹

Many of these workers lack any human contact for weeks at a time, with some workers only seeing their employers every few weeks for food deliveries over a period of three years. Over half of the shearers surveyed in Central California Legal Services' 2000 assessment cited loneliness when asked about their worst experience as herders.³⁹² A shepherd interviewed by Verité reported he only left the ranch property on three occasions during his 16 month-long employment: to sign papers for his visa, to open a bank account, and to buy clothes. After the initial clothing purchase, he had to buy clothing via catalogue.

Social isolation is severe. Over 80 percent of shearers surveyed in a 2000 study indicated that they were explicitly prohibited from talking to any outsiders and 59 percent reported that they were prohibited from having newspapers, magazines, or books.³⁹³ Many workers' mail is distributed through their employers,³⁹⁴ and at least one worker's mail was opened.³⁹⁵ A cattle herder interviewed by Verité reported that a rancher from a neighboring ranch ripped the phone from wall when he tried to call somebody and a shepherd interviewed reported that his employer listened in on his phone calls. Lawyers interviewed reported that some of their clients had suffered reprisals after it was discovered that they had talked to lawyers. The ranchers had noticed tire tracks different from their own. A researcher reported that fearful workers told him to return after dark, and the while being surveyed, one worker dimmed his lantern whenever he heard a truck for fear of being caught talking with outsiders.³⁹⁶

Workers' extreme geographic and social isolation makes it very difficult for them to leave exploitive employment. One worker interviewed reported that he was so far from any other inhabitants that he had to ride his horse all night over the mountains to make phone calls. He would come back before dawn, change horses and work all day without sleeping. He also reported that he had a friend who by chance lived close by in the United States who had given him her phone number. He reported that he intermittently rode over the mountains to call her for two months after his working conditions became unbearable, but was unable to reach her because he did not know that he had to dial "1" before the area code. There was no one who he could ask except for his employer because of his extreme social and geographical isolation.

Due to their isolation, workers are dependent on their employers for food and potable water. Many times, workers' food deliveries are delayed. In a 2000 study, 66 percent of shearers surveyed reported that crucial supplies were delivered late.³⁹⁷ A worker interviewed in another study on shearers said, "I was three days in the desert without water to drink."³⁹⁸ Interviews with experts indicate that sheep and cattle herders have had to resort to stealing vegetables, eating their sheep, or eating dead animals that they find in order to obtain sufficient food. In one case, when a shepherd became so hungry that he ate part of a rotting elk carcass, the rancher accused the worker of poaching the elk and left him at a local immigration office for deportation.³⁹⁹

Two of the cattle herders interviewed reported that their food shipment had been delayed for five days at one point and that the ranchers were "more worried about their machinery and animals than about us." Another issue related to workers' extreme isolation is that if they are injured or become ill, they may not have any human contact for weeks at a time, and have no way of communicating with anyone that they are not well.

The confiscation of workers' identification documents greatly contributed to their sense of isolation and their inability to leave. In one study, 61 percent of shearers surveyed said that their employers had confiscated their I-94 Form, required by the H-2A program.⁴⁰⁰ Workers' lack of identification documents makes it impossible to take money out of their bank accounts and makes it even harder to escape from already isolated areas due to fear of deportation by immigration authorities. All of the sheep and cattle herders interviewed reported that their employer had confiscated their identification and banking documents. When two cattle herders told their employer that they wanted to leave and wanted their documents back, the employer refused, and instead took away their horses so that they could not escape.

Cattle herders interviewed reported that the employers separated workers out according to their country of origin. Workers from different social groups were prohibited from communicating with one another. The Chilean H-2A cattle herders reported that undocumented Mexican workers were employed on another ranch. These workers reportedly worked under much better conditions and were free to come and go at will. Even when in close proximity, the cattle herders worked so much that they did not have time to talk. All of the workers interviewed reported that if it had not been for a friend who assisted them in escaping, they would not have been able to leave because of the high level of geographic and social isolation.

Fear and Violence

Sheep and cattle herders have been victims of physical and verbal abuse and restrictions on food. The DOL filed a lawsuit against John Peroulis & Sons Sheep, a Colorado sheep ranch in 2000. The ranch was accused of “beating, starving and exploiting” its workers for a period of ten years. However, through a settlement, the ranch only had to pay workers’ back wages and a fine of USD 3,000 as well as submitting a manual on worker treatment.⁴⁰¹ A sheepherder interviewed by Verité reported being extremely scared of his employer, who constantly verbally abused him and would fire off a shotgun whenever he wanted the worker to come running to the house. The worker reported that this employer tracked him down in a town hours away from where he had been employed and threatened him after he escaped.

The threat of deportation is also used to create fear among sheep and cattle herders. A cattle herder interviewed reported that his employer said that any errors would be met with deportation, and that a friend had been told to grab their belongings and was taken directly to the airport after making an error. This worker’s family members were also deported shortly afterwards and were given no explanation. In fact, he said that the broker preferred to contract multiple members of families so that if one worker made an error or escaped, all of the members of his family would be deported. In this case, deportation did not simply constitute a ride back home, but would instead cause extreme economic hardship for multiple members of families, which would suddenly be without income. Lawyers and labor experts interviewed supported this claim.

According to the president of the WRA, in the event of a worker complaint, the WRA contacts the employer, and upon receiving a second complaint, the rancher is removed from the WRA.⁴⁰² However, worker testimony runs contrary to the WRA’s claims. Although herders are supposed to be able to request to be transferred to another WRA ranch if they are not happy with their employment, interviews with workers and labor experts indicate that this does not happen in practice, and that worker complaints to the WRA about individual ranches often end in deportation. A sheepherder interviewed by Verité said, “I could complain to the WRA and say that I want to change ranches, but then they will send me to another ranch for a week and I will then be told that I am not a good worker and will be deported.”

Although claims of a WRA blacklist have not been substantiated, workers’ belief in the existence of the blacklist itself is a disincentive to complain or try to escape. Additionally, the WRA’s legal right to transfer workers from one ranch to another at will, under the threat of dismissal can constitute another tool to keep workers subservient. These practices may be used by WRA to prevent workers from leaving their extremely demanding jobs.

According to the WRA, “Some 60 to 70 contract shepherds in Colorado and other Western states have abandoned their flocks, and ranchers who paid for recruiting, paperwork and airfare are out tens of thousands of dollars.”⁴⁰³ “Ranchers call several times a week to report runaway shepherds,” said the Peruvian consul general. “We are trying to tell Peruvians that they have a contract and they should follow the contract,” she said.⁴⁰⁴

Return and Reintegration

Once returned home, many herders are reluctant to talk about the miserable conditions that they experienced in the United States. “The people who had gone said it was very nice experience to work. They never tell people what they have really lived through,” said one worker interviewed by Verité. Therefore, many applicants have no way to know that the WRA’s recruiters’ claims are false.

Another problem is that many workers return home with little money, or even in debt, having not made enough to pay back loans for recruiting fees, visa fees, and transport. This is the case with a few workers who have completed their term of employment, but much more common among workers who have been deported. The prospect of being deported and of being unable to pay back large loans in countries with depressed wages often keeps workers from filing complaints or leaving the ranch, in spite of their conditions. A Peruvian sheepherder interviewed by the *New York Times* said, “I am talking now because I don’t want this to happen to anyone else ... I never thought when I came here from Peru that this country would treat people as less than human.”⁴⁰⁵

Conclusions: Risks & Root Causes of Forced Labor

This case study highlights the ways in which the WRA’s legal exemptions and labor brokerage create a high level of vulnerability to forced labor among H-2A sheep and cattle herders, which is taken advantage of by unscrupulous employers.⁴⁰⁶ The H-2A program ties workers to specific employers and inherently contains the penalty of deportation for leaving a specific employer, even if conditions are inferior to those promised. The “special procedures” for herders contain provisions that favor the WRA, allow workers to be brought in for three years at a time, state that workers are on call for 24 hours, allow workers to be paid less than the hourly minimum wage, and allow the WRA to transfer workers among ranches under the penalty of dismissal and deportation. This creates a situation in which the WRA and ranchers are able to exploit workers with impunity.

“I understand people who go back to Chile from ranches and lie. They have given three years of their lives and have had lots of problems in the ranches. They don’t want to tell their mothers what happened to them. When they go back to Chile they just want to be happy. I just went back to Chile and the same thing happened to me. I wanted to be happy and tranquil and forget about everything that happened to me.”

The WRA’s role as a major official labor broker for many ranches in the United States also contributes to worker vulnerability to forced labor. As there is only one WRA-affiliated recruiter in Chile, and one in Peru, workers must go through these intermediaries, who have been shown to engage in exploitive practices, in order to obtain employment on WRA ranches. The WRA’s reputation for blacklisting and deporting workers also contributes to workers’ reluctance to complain or try to leave their jobs. Employers, who are members of the WRA, take advantage of the workers’ vulnerability, which is created by exploitive labor broker mechanisms. Labor brokerage is thus the root cause of forced labor among H-2A sheep and cattle herders.

CONCLUSIONS

This report highlights different brokerage systems, different sectors, and different types of workers to determine which ones make workers particularly vulnerable to forced labor situations. Some root causes of forced labor cross all sectors and brokerage systems. Most importantly, tying guestworkers to a specific employer:

- undermines their employment opportunities and prevents wage growth and upward advancement.
- creates conditions for employers to keep wages and working conditions below fair market value, harming both immigrants and native workers.⁴⁰⁷
- fails to consider the seasonal nature of agricultural, forestry and herding jobs, which translates into idle periods during the work season when workers earn no money.
- can lead to worker isolation, including language, cultural and physical isolation.
- makes workers unlikely to complain or speak to outsiders due to fear of deportation.

Although the H-2 program is administered by DOL, there appears to be no effort by DOL to inform workers of their rights. Workers are not provided with information about how to contact the DOL if they have a complaint. Even if such information were provided, it is unlikely the DOL would receive complaints since the workers would need to mail a complaint through the employer or request a ride to a public telephone to call the DOL.

Another root cause of forced labor in the guestworker system is the use of labor brokers as employers. Inherent risks with this employment structure include:

- Labor brokers base their employment needs on peak periods, since the bulk of their income is derived from illegal recruiting fees paid by workers. Thus, there is no incentive to accurately gauge true market need for workers,
- Giving labor brokers control over all aspects of worker lives leads to power disparities, exacerbated when female workers are involved.⁴⁰⁸
- Labor brokers linked to trafficking and loan sharking can exacerbate the forced labor risk by charging workers exorbitant rates which make workers tolerate the worst forms of abuse in order to pay back their onerous loans. Ultimately, the broker may get the worker's land given the variability of the guestworker season.
- Brokers who manipulate workers to incur debts through deductions and non-payment of wages make it even more difficult to pay back the loans in their home countries.
- Brokers who frequent poorer areas of non-Spanish speaking workers count on workers believing their promises of high wages with housing and food. Once on the job in the United States, workers realize they have no choice but to continue.

Government issues related to the guestworker program that encourage labor abuses are:

- Sending countries are lax in enforcing labor laws and do not penalize labor brokers who do not comply with government regulations on recruiting fees and methods.
- The lack of economic opportunity in sending countries, particularly for indigenous peoples, leads workers to set out for the United States.
- The lack of sending country policies to promote agrarian reform to combat poverty in the country, or policies that may protect migrants in order to prevent violations of human rights suffered during their stay in the United States.
- The lack of labor law enforcement in the United States for working conditions, housing, payment, and worker transportation predisposes the system to labor abuses.

Other root causes of forced labor in the migrant worker system include:

- The farmworking, forestry, and herding occupations are inherently more dangerous than most other occupations due to hazardous working conditions, lack of adequate safety equipment, and lack of oversight.

- Buyers will generally choose low price products of high quality, without being concerned with the people involved in the production cycle, therefore, they indirectly contribute to forced labor.
- High unemployment and financial and political inequality in sending countries severely limits workers' ability to earn money without migrating to the United States.
- Increased border surveillance has resulted in a larger role for *coyotes*, who charge high fees to help workers cross in more desolate, and thus less easily detected locations. The worker's debt encourages them to accept poor working conditions in the United States.

The Universal Declaration of Human Rights⁴⁰⁹, Articles 23 and 24, state that every person has the right to “just and favorable conditions of work,” living conditions that are “worthy of human dignity,” and the opportunity for “rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.” Adequate food, clothing, housing, and medical care are also basic human rights that are too often denied to farmworkers and cattle and sheepherders working in the United States.⁴¹⁰

In the H-2 guestworker program, it is important to document how employers, non-governmental organizations and advocacy organizations can determine whether forced labor exists. Free the Slaves and the Human Rights Center at the University of California, Berkeley, list the following indicators of forced labor in seasonal unskilled employment:⁴¹¹

- Evidence of the use of force, abuse, coercion, fraud, or threats
- Lack of free will to leave the job
- Confiscation of documents such as immigration papers and passports
- Debt bondage
- Payment below minimum wage and/or unreasonable deductions
- Work different from what was promised

Based on findings from this research, Verité adds additional indicators which can serve to alert officials, employers, and advocacy agencies of the presence of forced labor among documented and undocumented farmworkers in the United States:

- High levels of geographical and social isolation
- Labor brokers' possession of workers' deeds to property
- Threats of violence, deportation, and confiscation of property if workers leave their employment or complain about working conditions
- Restrictions of workers' freedom of movement
- Legal restrictions that inherently establish the penalty of deportation for leaving a job or changing employers.

APPENDIX I: INTERVIEWS AND CONSULTATIONS CONDUCTED FOR US CASE STUDIES

UNDOCUMENTED MEXICAN FARMWORKERS
<p>Colorado: Conducted 8/23/09-8/25/09</p> <ul style="list-style-type: none"> • Farm owner, Grant Family Farms, Wellington, CO • Pat Medige, Colorado Legal Services (lawyer of plaintiffs in Grant case) – Denver, CO • Sister Molly Munoz – United with Migrants (assisted plaintiffs) – Denver, CO • 1 undocumented Guatemalan farmworker who recently immigrated, Wellington, CO • Reviewed testimony of 5 Undocumented plaintiffs- Colorado Legal Services office, Denver, CO • 1 Female Mexican undocumented farmworker, Wendy's Brighton, CO • Six male undocumented Mexican farmworkers, farmworker housing (inside) – Brighton, CO • Five male undocumented Mexican farmworkers, farmworker housing (outside) – Brighton, CO
<p>Mexico: Conducted between 8/24/09 and 9/05/09</p> <ul style="list-style-type: none"> • Director of Office of Federal and Consular Relations and Migrant Assistance (CAM) – Monterrey, Mexico • National Director of Operations, Office of Immigration Attorneys – Queretaro, Mexico • 1 Labor Broker, Monterrey, Mexico • 1 Representative, FLOC, Mexico Office – Monterrey, Mexico • Coordinator, Group of Migrant Protection (BETA Group) Office - Nogales Sonora, Mexico • 2 Coordinators, Centro de Derechos Humanos de la Montaña “Tlachinollan” – Tlapa, Guerrero, Mexico • 5 Aspiring Undocumented Agricultural Workers, Monterrey, Mexico • 16 Returned Undocumented Agricultural Workers, Monterrey, Mexico
<p>Massachusetts: Conducted between 5/28 and 6/24</p> <ul style="list-style-type: none"> • Director of Massachusetts Migrant Education Project – Northampton, MA • Massachusetts DOL Farmworker Monitor Advocate- Springfield, MA • Director of Springfield Vietnamese Civic-American Civic Association – Springfield, MA • Outreach worker for the Alliance to Develop Power – Springfield –MA • Professor of Agricultural Studies, University of Massachusetts – Amherst, MA • Professor of Legal Studies, University of Massachusetts – Amherst, MA
<p>Telephone: Conducted between 5/28 and 9/9</p> <ul style="list-style-type: none"> • Director of Trafficking Policy, Department of Health and Human Services • Director, Immigrant Rights Project, Southern Poverty Law Center • Outreach worker, Colorado Immigrant Rights Coalition • Outreach worker, Southern Migrant Legal Services • Director and Director of Mexico Programs, Global Workers Justice Alliance • Director Indigenous Farm Workers, California Rural Legal Assistance (CRLA) • Deputy Director, California Rural Legal Assistance (CRLA) • Community Outreach Worker, California Rural Legal Assistance (CRLA) • Legal Director, Centro de los Derechos del Migrante, Mexico • Attorney, Centro de los Derechos del Migrante, Mexico • Ex-H2A Outreach Worker, AFL-CIO FLOC, Mexico
H-2B FORESTRY WORKERS AND IMPERIAL CASE
<p>Washington: Conducted 8/27/09-8/28/09</p> <ul style="list-style-type: none"> • 1 documented Guatemalan <i>raitero</i> (transports worker), translator, and secondary forestry worker - Bremerton, WA

<p>Guatemala: Conducted 9/12/09-9/13/09</p> <ul style="list-style-type: none"> • 5 Aspiring Guatemalan H-2B Forestry Workers, Todos Santos, Huehuetenango, Guatemala • 10 Returned Guatemalan H-2B Forestry Workers, Todos Santos, Huehuetenango, Guatemala
<p>Connecticut: Conducted between 6/16 and 9/23</p> <ul style="list-style-type: none"> • Connecticut DOL Farmworker Monitor Advocate – Storrs, CT • Human Resources Director – Imperial Nurseries – Storrs, CT • 2 H-2B Guatemalan Imperial Nursery workers - Hartford, CT
<p>Telephone interviews:</p> <ul style="list-style-type: none"> • Four undocumented Guatemalan secondary forestry workers in Bremerton, WA • Outreach worker, Southern Migrant Legal Services • Director, COVERCO (Guatemalan workers' rights NGO) • Director, Immigrant Rights Project, Southern Poverty Law Center • Migrant Worker Attorney, North Carolina Justice Project • Two Attorneys, Legal Aid North Carolina, Farmworker's Unit • Director, Global Workers Justice Alliance • Attorney, Legal Aid North Carolina, Farmworker's Unit • Director, Alliance for Forest Workers and Harvesters • Northwest Workers' Justice Project (NWJP) • Attorney, Oregon Law Center • Professor at Pitzer College • Pro-Bono Attorney representing forestry workers in Washington • Attorney, Colombia Legal Services • Attorney, Legal Aid Services of Oregon • Attorney and Professor who represented workers in Imperial Case, Yale Law School • Law student who works with ex-Imperial workers-Yale Law School
H-2A SHEEP/ CATTLE HERDERS
<p>Colorado: Conducted 8/25/09</p> <ul style="list-style-type: none"> • 1 undocumented Mexican ex-cattle herder , farmworker housing (outside) – Brighton, CO • Lawyer of H2A cattle herders– Denver, CO
<p>Confidential</p> <ul style="list-style-type: none"> • 1 Chilean ex-H-2A sheepherder, 2 Chilean ex-H-2A cattle herders
<p>Oregon: Conducted 8/28</p> <ul style="list-style-type: none"> • Lawyer, Northwest Workers' Justice Project (represented sheepherders)
<p>Telephone</p> <ul style="list-style-type: none"> • Chris Schneider (expert on sheepherders' rights), Central California Legal Services
GLOBAL HORIZONS & H-2A WORKERS
<p>Telephone</p> <ul style="list-style-type: none"> • Director, Immigrant Rights Project, Southern Poverty Law Center • Executive Director, Thai Community Development Center • Professor and collaborator with Thai CDC on Global Horizons case • Executive Director, Farmworker Legal Services of New York • Attorney, , Farmworker Legal Services of New York • Owen Thompson, former worker advocate for Farmworker Legal Services of New York • Coalition to Abolish Slavery and Trafficking (CAST) – Vanessa Lanza, Outreach Coordinator • Outreach worker, Southern Migrant Legal Services • Attorney, New Orleans Center for Racial Justice: Alianza de Trabajadores Huespedes • Trafficking Department Director, Asian Pacific Islander Legal Outreach • Hawaii Immigrant Justice Center • Ex-H2A Outreach Worker, AFL-CIO FLOC, Mexico

APPENDIX II: ANALYSIS OF LEGAL AND REGULATORY FRAMEWORK FOR US FARMWORKERS

Controlling Law and Legal History

The Immigration and Nationality Act (INA) was created in 1952 to collect, codify and organize existing provisions and statutes governing immigration law. The INA is divided into titles, chapters and sections and is the basic body of immigration law. Although the INA stands alone as the basic body of immigration law, the Act is also contained in the United States Code (U.S.C.)⁴¹² which is the collection of all the laws of the United States. Title 8 of the United States Code⁴¹³ addresses “Aliens and Nationality” and codifies Congressional power to authorize the legal admission of both agricultural⁴¹⁴ and non-agricultural workers⁴¹⁵ into the United States.

The U.S. Wage and Hour Division of the Department of Labor (DOL) was created with the enactment of the Fair Labor Standards Act (FLSA) in 1938 and remains responsible for the administration and enforcement of laws governing private, State and local government employment. This Division has the task of enforcing numerous regulations including, but not limited to, FLSA, Government Contracts labor standards statutes, the Migrant and Seasonal Agricultural Worker Protection Act and the Immigration Reform and Control Act of 1986.⁴¹⁶

The INA is the principle legislative mechanism for the regulation and oversight of modern guest worker programs.⁴¹⁷ Through the guest worker programs the INA aims to achieve two goals: to ensure a steady and consistent labor force for U.S. businesses and to protect the domestic workforce from any adverse effects caused by undocumented workers.⁴¹⁸

The initial program designed by Congress made no differentiation between agricultural workers and non agricultural workers. All unskilled temporary laborers were placed in the same category and subject to the same rules. Due to numerous reports of employer abuse of migrant and seasonal agricultural workers, the Department of Labor issued separate procedures for agricultural and non-agricultural workers.⁴¹⁹ Congress, recognizing the need for a change in the program, addressed this issue in 1986, passing the Immigration Reform and Control Act (IRCA).⁴²⁰ The IRCA amended the INA to create two distinct classifications; the H-2A, or agricultural worker program, and the H-2B, or non-agricultural worker program.⁴²¹

Through the IRCA, Congress provided specific guidelines for employing foreign agricultural workers which provided protections for laborers involved in the H-2A program.⁴²² In doing so, Congress noted “the unique needs of growers and the inadequacy of current protections for farm workers.”⁴²³ Although numerous changes were made to assist in the protection of migrant seasonal agricultural workers, Congress specifically noted that no changes were made to the statutory language regarding non-agricultural H-2B workers and that the guidelines and protections made available to H-2A workers did not apply to the H-2B program.⁴²⁴ A federal district court agreed with this interpretation in 1996.⁴²⁵ As a result, the Department of Labor has not provided more regulation for the H-2B program.⁴²⁶

New regulations for the H-2A Guest Worker Program were published by the Bush Administration’s DOL in the Federal Register on December 18, 2008. These new rules proved controversial and were to take effect on January 17, 2009. Shortly after the December 2008 rule was published, the DOL, under a new Secretary, announced that the new rules were to be suspended and the “old” rules reinstated for a period of nine-months. This suspension was to take effect on June 29, 2009. However, on the day the suspension was to take effect, a federal district court for the Middle District of North Carolina granted a preliminary injunction of the new rules suspension. In

response to the Courts decision, the Department of Labor announced that they would be foregoing the suspension and continuing with the new rules.

The Administrative Procedures Act requires all executive government agencies to publish a notice of proposed rulemaking changes before putting any new rules into effect.⁴²⁷ The public is then given a period of time to submit comments, which the agency then responds to prior to issuing the new rule.⁴²⁸ In seeking a federal court injunction, the North Carolina Grower's Association argued that the Department of Labor violated the Administrative Procedures Act by failing to allow an adequate amount of time for public comment. The Administrative Procedures Act authorized district courts to review and enjoin all agency final rules.⁴²⁹ The district court, in issuing the order, ruled that the Grower's Association would suffer irreparable harm in the absence of an injunction.⁴³⁰

Individuals and Agencies Regulated Under the Guest Worker Program

H-2 Visas

There are two types of visas granted to low skilled, nonimmigrant workers: the H-2A and H-2B visas. Agricultural workers, pursuant to the Immigration and Nationality Act, are issued H-2A visas, while non-agricultural workers are legally admitted on H-2B visas.⁴³¹ These visas have the intended purpose of alleviating temporary work shortages and are valid for one year.⁴³²

Congress sets no limit on the number of agricultural workers that may be admitted each year into the H-2A program.⁴³³ By comparison, the H-2B visa program has an annually cap of 66,000 workers.⁴³⁴

Employment Agencies

The Private Employment agencies that are regulated by the INA and the DOL under the Guest Worker Program fall under the title of H-2A Labor Contractors (H-2ALC's). An H-2A Labor Contractor includes any person who maintains an employer relationship with a migrant worker. An employer relationship exists where a party recruits, solicits, hires, employs, furnishes, houses, or transports any worker. Additionally, to qualify as an H-2ALC, the company must also have an employment relationship "with respect to H-2A employees or related US workers."⁴³⁵

H-2ALC's include fixed site employers as well as non-fixed site employers but do not include agricultural associations. H-2ALC's are required to provide "a means by which it may be contacted for employment to which US Workers may be referred." (pg. 77115) In an effort to accommodate employers without a fixed location, employers are no longer required to have a specific "location" within the US. (SITE)

Process for Qualifying for the Guestworker Program

Qualification for Certification

In order for an H-2ALC to qualify for the H-2A nonimmigrant visa program, the petitioner must be certified by the Secretary of the Department of Labor (DOL) before filing a petition to the Secretary of Homeland Security for final approval or denial.⁴³⁶ In order for an H-2ALC to file an application for certification, it must meet all of the requirements of an employer and comply with all the assurances, guarantees, and other requirements contained in the Code of Federal Regulations⁴³⁷. The Code of Federal Regulations defines an employer as an entity that suffers to permit a person to work.⁴³⁸ It includes entities that are entitled to "hire, fire, pay, supervise or otherwise control the work of any employee."⁴³⁹

To be certified by the Secretary of Labor, the petitioner MUST demonstrate that two factors have been met.⁴⁴⁰ The petitioner must first demonstrate that there are insufficient US workers who are able, willing, qualified and

available to perform the labor or services involved in the petition.⁴⁴¹ Second, the petitioners must demonstrate that the employment of an alien in such labor or services will not “adversely affect the wages and working conditions” of United States workers who are similarly employed.⁴⁴² In addition to the previous two requirements, the employer must have the need for foreign labor that is temporary or seasonal, meaning “generally less than 1 year.”⁴⁴³ Job opportunities that are permanent do not traditionally qualify for the H-2A program.⁴⁴⁴

In addition to the INA requirement of certification by the Secretary of the DOL, the Migrant and Seasonal Agricultural Workers Protection Act (MSPA) requires anyone wishing to perform farm labor contracting activities to register with the Department of Labor.⁴⁴⁵ The MSPA defines farm labor contracting activity as the “recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker.”⁴⁴⁶ Farm labor contractors are required to apply to the Department of Labor for a Certificate of Registration.⁴⁴⁷ Persons employed by farm labor contractors are also required to register with the Department of Labor.⁴⁴⁸ The application for the Certificate is made by completing and submitting form WH-530.⁴⁴⁹

Certification

Certification requires that all H-2A labor contractors meet the following assurances and obligations.⁴⁵⁰ First, they must provide the MSPA, Farm Labor Contractor (FLC) certificate, including the registration number and expiration date.⁴⁵¹ This certificate must list the name and location of each fixed-site agricultural business to which the H-2A Labor Contractor expects to provide H-2A workers.⁴⁵² Further, the certificate must list the expected beginning and ending dates that the H-2ALC will be providing the workers to each fixed site, and a description of the crops and activities the workers are expected to perform at such fixed site.⁴⁵³ Second, the H-2ALC must provide proof of its ability to discharge financial obligations under the H-2A program by attesting that it has obtained a surety bond as, stating on the application the name, address, phone number, and contact person for the surety, and providing the amount of the bond.⁴⁵⁴ The bond must be in the amount of \$5,000 for a labor certification for which a H-2ALC will employ fewer than 25 employees, \$10,000 for a labor certification for which a H-2ALC will employ 25 to 49 employees, and \$20,000 for a labor certification for which a H-2ALC will employ 50 or more employees.⁴⁵⁵ The amount of the bond may increase if it is shown that the amount of the bond is insufficient to meet potential liabilities.⁴⁵⁶

Hiring H2-A Workers

Requirements

Labor contractors desiring to hire H-2A workers must apply for a labor certification, recruit U.S. workers, and attest to the terms and conditions of H-2A employment.⁴⁵⁷

Recruitment

Any employer who applies for certification of H-2A job opportunities must first attempt to recruit U.S. workers to fill these openings. Employers must continue to engage in “positive recruitment” of U.S. workers until the foreign workers depart for the place of employment. (DOL) Access to the guest-worker program is contingent on the employer’s engagement in the “positive active recruitment” of qualified U.S. workers.⁴⁵⁸ Positive active recruitment includes placing three advertisements with a newspaper or other printed medium which is appropriate to the occupation and workers likely to apply for the job opportunity. The advertisement should include the locale of intended employment and the job requirements. The required advertisements may not be placed in the newspaper until the job order has been accepted by the State Workforce Agency for clearance.⁴⁵⁹ An employer’s recruitment “must contain terms and conditions of employment which are not less favorable than those that will be offered to the H-2A workers.”⁴⁶⁰ Recruitment efforts made by the employer must be equivalent to the efforts made by similarly situated non-H-2A employers in the area.⁴⁶¹

Labor Certification and Attestation

The employer bears the responsibility of completing and filing the appropriate applications with the Department of Labor.⁴⁶² As a means of simplifying the system, employers are free to delegate this responsibility to persons expressly designated as authorized agents.⁴⁶³ The Department of Labor promulgates several rules in place to ensure that eligible domestic workers are not passed over and wages are not adversely affected.⁴⁶⁴ If the task of completing and filing applications has been shifted to another person or entity, that entity assumes responsibility for adhering to Department of Labor's rules.⁴⁶⁵ The Secretary of Labor may impose a fee, as a condition of certification, in order to recover the "reasonable" costs related to the processing of applications.⁴⁶⁶ If applicable, this cost, should be borne by the employer.

Procedure

In order to hire foreign workers, a recruiter must first apply to the Office of Foreign Labor Certification for a temporary alien agricultural labor certification for temporary foreign workers.⁴⁶⁷ If an association of agricultural workers files the application on behalf of the employer, they must identify whether they are an agent, the sole employer, or a joint employer.⁴⁶⁸ The recruiter must be an authorized agent of the employer; a legal entity or person, such as an association of agricultural employers, or an attorney for an association.⁴⁶⁹ Regulations regarding applications filed by agents are found in the Code of Federal Regulations.⁴⁷⁰

If the labor certification application is filed by an agent on behalf of an employer, the agent may sign the application if the application is accompanied by a signed statement from the employer authorizing the agent to act on the employers behalf. This statement must specify that the employer assumes full responsibility for the accuracy of the application, for all representations made by the agent on the employer's behalf, and for compliance with all regulatory and other legal requirements.⁴⁷¹

Foreign Recruitment- The New Rules

The new rules attempt to limit the oppressive techniques of foreign recruitment by incorporating two new regulations that, for the first time, address foreign recruitment companies' unscrupulous practices in recruiting workers to participate in the H-2A and H-2B visa programs.

The Department of Labor, under the new rules, require an employer seeking H-2A or H-2B labor certification to attest that "[t]he employer has contractually forbidden any foreign labor contractor or recruiter whom the employer engages in international recruitment of H-2A/H-2B workers to seek or receive payments from prospective employees, except as provided for in DHS regulations at 8 CFR 214.2(h)(5)(xi)(A)." 20 C.F.R. § 655.22(g)(2).

In addition, the Department of Homeland Security forbids an employer, employer's agent, recruiter, or similar employment service from collecting any "job placement fee or other compensation (either direct or indirect)" from a foreign worker as a condition of an H-2A/H-2B job offer or as a condition of employment.⁴⁷²

The Department of Labor requires that the employer contractually forbid any foreign labor contractor from receiving or seeking payments from prospective employees in exchange for access to job opportunities.⁴⁷³ This includes payment of the employer's attorney fees, application fees, or recruitment costs.⁴⁷⁴

These regulations may influence whether H-2A or H-2B employers will be required to reimburse the recruitment expenses of future guest workers. These rules do not apply retroactively.

Required Fees

Filing Fees

When filing for nonimmigrant workers, employers are required to file Form I-129 with the United States Citizenship and Immigration Services.⁴⁷⁵ The fee attached for filing this form is \$320.00.⁴⁷⁶ An employer also

files Form I-539 if they are filing for an extension or change of nonimmigrant status.⁴⁷⁷ Here, there is a fee of \$300.00. Employers who gain temporary labor certifications are charged a fee of \$100 plus \$10 for each job opportunity certified up to a maximum of \$1,000.⁴⁷⁸ The Secretary of Homeland Security may levy a fraud prevention fee against any employer filing for H-2B workers.⁴⁷⁹ If applicable, this fee is set at \$150.⁴⁸⁰

Recruitment Fees

The Code states that recruitment fees are the responsibility of the employer.⁴⁸¹ However, the rule only purports to prohibit employers and their recruiter agents from shifting the cost of recruiting for open job opportunities to workers. It does not prevent a person or entity from charging workers “reasonable” fees for rendering assistance in applying for or securing services related to passports, visas, or transportation, so long as such fees are not made a condition of access to the job opportunity by the recruiter, employer, or facilitator.⁴⁸²

Conditions of Employment/Terms of Operation

Provisions Required in H-2A job offers

The Code of Federal Regulations requires that certain provisions be included in all H-2A job offers.⁴⁸³ The purpose of these provisions is to protect similarly employed U.S. workers from any adverse effects attributable to a foreign labor force. Employers must pay H-2A workers the same as any U.S. workers similarly employed.⁴⁸⁴ This wage must be whatever is higher among the applicable adverse effect wage rate, prevailing wage rate, or the state or local minimum wage standard.⁴⁸⁵

Adverse effect wage rates for agricultural work must equal the annual weighted average hourly rate combined for all field and livestock workers for the region.⁴⁸⁶ The Department of Agriculture publishes this rate annually.⁴⁸⁷ If the State Workforce Agency determines that the prevailing wage rate in an area is higher than the adverse effect wage rate, then the prevailing wage rate applies and employers must offer this rate to their workers.⁴⁸⁸ An adverse effect wage rate must never be lower than the applicable hourly minimum wage rate as set forth in the Fair Labor Standards Act.^{489, 490}

Employers must provide free housing to workers who cannot reasonably return to their permanent residence.⁴⁹¹ Any facility that is used for the purposes of housing foreign workers must be inspected by and receive the approval of the Department of Labor’s Occupational Safety and Health Administration (OSHA).⁴⁹² Employers are free to substitute rental housing as long as those accommodations meet all local and state health and safety standards.⁴⁹³ In addition to free housing, employers must provide workers with three meals a day, or alternatively, must give free and convenient cooking and kitchen facilities for them to prepare their own meals.⁴⁹⁴ An employer that provides workers with their meals may charge them up to \$9.90 per day.⁴⁹⁵ However, the employee’s job offer must explicitly state these charges.⁴⁹⁶ Employers must give free transportation to and from the worksite to workers who receive free housing.⁴⁹⁷ Transportation payments may not more than the most economical and reasonable similar common carrier transportation charges for the distances involved.⁴⁹⁸ Once a worker has completed 50% of the work contract period, they are entitled to reimbursement for all of their transportation costs.⁴⁹⁹ Upon completion of the work contract, the employer shoulders the burden of paying the worker’s repatriation costs.⁵⁰⁰

Where applicable by state law, worker’s compensation insurance must be made available to all employees.⁵⁰¹ In States that do not require worker’s compensation, the employer must provide equivocal insurance for all workers.⁵⁰² The employer is further required to furnish all tools and supplies necessary for the worker to carry out their duties.⁵⁰³ Employers must provide these tools or supplies at no cost to the employee except in areas where it is customary for the worker to pay for some of the costs.⁵⁰⁴

The 3/4ths Rule requires that employers contractually guarantee each temporary worker employment for a minimum of 75% of the workdays within the contract period, including any extensions. If the employee receives less work for than the mandatory 75% period, the employer must compensate the employee for the difference.⁵⁰⁵

Under the old regulations, employers were required to hire any qualified and eligible US workers up to 50% of the contract period.⁵⁰⁶ However, the December 2008 rule changes this period to 30 days.⁵⁰⁷

The Code of Federal Regulations requires all employers of temporary foreign workers to keep detailed records of employees' hours and wages.⁵⁰⁸ Further, employers must provide an accurate statement that details their hours and wages to each of their employees.⁵⁰⁹ Payments must be made bi-weekly, or, if it is the prevailing custom, more frequently.⁵¹⁰ The Code further requires that an employer state in their job offer the frequency the worker is to be paid, based upon the prevailing practice in the area.⁵¹¹ However, this frequency may not be less than twice a month.⁵¹² Employers may not require H-2A workers to work on their Sabbath or on federal holidays.⁵¹³ H-2A workers are not required to pay social security taxes.⁵¹⁴

Work Contracts

It does not appear that either the Immigration and Nationality Act or the Code of Federal Regulations requires the federal government to approve or deny work contracts. However, the federal government does require both parties to enter into contractual agreements.⁵¹⁵ Work contracts, for purposes of the guest-worker program, contain "all the material terms and conditions of employment relating to wages, hours, working conditions, and other benefits, including the terms and conditions required by the applicable regulations."⁵¹⁶

Prior to commencing employment, foreign workers must enter into contracts with their United States employers.⁵¹⁷ This contract may be in the form of a separate written document that includes all the terms and conditions required by the Code of Federal Regulations, along with any other agreements entered into by the parties.⁵¹⁸ If no separate written instrument exists then the work contract must provide the terms and conditions found in the job order,⁵¹⁹ while still adhering to all required provisions of the Code of Federal Regulations.⁵²⁰ While the federal government does not provide a model contract for H-2A workers, the Code states that in the absence of a written agreement the job order will serve as the work contract.⁵²¹ The worker must receive a copy of the work contract no later than the date the work commences.⁵²²

Termination of Work Contracts

If an employer no longer needs a foreign worker, they can legally terminate the labor contract provided that reason for this is the result of something beyond the employer's control, such as a fire or other "acts of God."⁵²³ However, if such occurs, the employer must still fulfill a three-fourths guarantee for the time that has elapsed from the start of the work contract to the time of the contract's termination.⁵²⁴ Repatriation is the responsibility of the employer.⁵²⁵ The employer must either return the worker, at the employer's expense, or transport the worker to their next certified H-2A employer.⁵²⁶ The employer must reimburse any deductions taken from workers if the deductions were for transportation and subsistence expenses to the place of employment.⁵²⁷ These transportation payments may not be less, and are not required to be more, than the most economical and reasonable common carrier transportation charges for the distances involved.⁵²⁸

Suspension, Revocation and Debarment

Employer

Revocation of certification is instituted upon a finding that the employer made a willful misrepresentation of a material fact on the certification application.⁵²⁹ These violations include failure to cooperate with DOL investigations; failure to comply with one or more sanctions resulting from Department initiated legal action,

referrals by the Wage and Hour Division (WHD) of the DOL, or failure of the employer to cure, after notification, a substantial housing violation.

If it is determined that the employer or agent either collected or entered into an agreement to collect any prohibited fees or compensation, the H-2A or H-2B visa will be revoked on notice unless the employer or agent demonstrates that the employee has been reimbursed in full for such fees or compensation.⁵³⁰ The employer or agent may prevent this by filing a petition and demonstrating that, prior to filing the petition, that the worker has been reimbursed in full for such fees or compensation.⁵³¹

Debarment is instituted when there is a “single heinous act showing such flagrant disregard for the law that future program compliance cannot be reasonably expected.”⁵³² The employer must substantially violate a material term on the labor certification in regards to wages, benefits and working conditions. If an employer violates any provision of the Code of Federal Regulations, they subject themselves to possible program debarment.⁵³³

The Wage and Hour Division may assess civil monetary damages to the employer if the wages paid to the workers is less than the statutory requirement.⁵³⁴ These damages may not exceed \$10,000.⁵³⁵ One company, Global Horizons, responsible for subjecting 170 workers from Thailand into forced labor, was debarred from the H-2 program in June of 2006. This debarment was lifted in July of 2009.⁵³⁶

H2-A Laborer

If the H-2A or H-2B visa is revoked then the employee’s stay will be authorized and the employee will not accrue any period of unlawful presence for a thirty-day period following the date of the revocation for the purpose of departure or extension of stay based upon a subsequent offer of employment.⁵³⁷ Further, H-2A employees’ may be entitled to a reimbursement of their expenses by means of the surety bond which all H-2ALC’s are obligated to obtain.⁵³⁸

Free legal aid

Workers classified as H-2A are legally entitled to free legal aid services.⁵³⁹ **The December 2008 rules reclassified forestry workers as H-2A workers meaning that they are now also entitled to free legal aid.**⁵⁴⁰ H-2B workers are granted no right to free legal services.⁵⁴¹

Authority to Sanction

The Department of Labor’s Wage and Hour Division of the Employment and Training Administration handles filing and investigation into complaints involving work contracts. Other complaints are turned over to the ETA. The ETA retains the authority to debar and revoke. The Wage and Hour Division retains the authority to make debarment recommendations.

Enforcement- Denying/Approving Labor Certification

Enforcement of contractual obligations fall within the purview of the Wage and Hour Division, a division of the Employment and Training Administration in the Department of Labor.⁵⁴² By the authority vested in the Secretary of Labor, the Office of Foreign Labor Certification has the responsibility of issuing and denying labor certifications.⁵⁴³ Once again, as a means of ensuring the domestic workforce is protected from adverse effects that may be attributable to maintenance of a guest-worker program, the Immigration and Nationality Act authorizes the Secretary of Labor to take any action deemed necessary to assure that employers comply with all of the terms and conditions of the employment contract.⁵⁴⁴ Some of these potentially “necessary” actions include imposing appropriate penalties, seeking injunctive relief and requiring specific performance of contractual obligations.⁵⁴⁵

Government Enforcement of Immigration Law Concerning Foreign Workers

Immigration and Customs Enforcement (ICE)

The U.S. Immigration and Customs Enforcement Agency (ICE) is a division of the Department of Homeland Security (DHS). Its mission is to protect national security through the enforcement of immigration laws. Since its inception in the early 1990's, ICE's role in immigration enforcement has varied significantly and continues to change.

Prior to 9/11, ICE was a fairly passive division of the DHS. It was used primarily to issue administrative fines to employers for violations of I-9 Forms. Post 9/11, ICE began having a much more active role in the labor market. ICE began engaging in publicity oriented raids of the workplace to round up and criminalize undocumented workers. ICE's 2008 Fiscal Report detailed that 356,739 illegal aliens were removed from the U.S. and 221,085 criminal aliens in federal prisons were issued documents to start removal proceedings. The DHS stated that "Of the more than 6,000 arrests related to worksite enforcement in 2008, only 135 were employers."⁵⁴⁶ ICE's focus was on penalizing the workforce to deter future migrant workers from undocumented employment and did little to address the role of the employer in hiring undocumented workers.

ICE revised its strategy yet again in 2009 to shift its focus from criminalizing and deporting the illegal workforce to detecting and criminalizing the employer. "ICE must prioritize the criminal prosecution of the employers who knowingly hire illegal workers because such employers are not sufficiently punished or deterred by the arrest of their illegal workforce."⁵⁴⁷ Employers are currently being viewed as the root cause of the U.S. housing undocumented immigrants. In July, ICE issued I-9 Audits to 650 employers to begin this "crack down." The theory behind this new strategy is that if employers are deterred from hiring illegal workers then there will be significantly less of an undocumented worker issue.

Section 287(g) of the INA

Section 287(g) was added to the INA in 1996 to authorize the DHS and state and local governments to enter into assistance contracts. The scope and intent of the program, and their assistance contracts, are agreed upon before they are implemented. Section 287(g) gives states and local communities the flexibility to shape the programs to meet their specific needs.⁵⁴⁸ State and local law officers governed by a §287(g) agreement must receive adequate training and operate under the direction of federal authorities. In return, they receive full federal authority to enforce immigration law and access to the ICE databases. Full federal authority shifts liability to the federal government and provides the officers with additional immunity when enforcing federal laws.⁵⁴⁹

Although ICE was fashioned in 1996 states did not begin participating in the program until 2002 and 2003. Alabama and Florida were the first states to enter into assistance contracts.⁵⁵⁰ By September of 2007, 29 law enforcement agencies were participating in the 287(g) program. ICE's 2008 Fiscal Report revealed that there were 67 agencies participating in the §287(g) program in 2008 and as of October 16, 2009 55 new contracts have been created with 12 pending government approval.⁵⁵¹

In January of 2009, the GOA Report found that better controls were needed over the §287(g) program.⁵⁵² In response to numerous reports of §287(g) abuses and misuse, over 500 civil rights organizations joined together in August to demand that President Obama end the 287(g) program.⁵⁵³ In October, the Assistant Secretary for U.S. Immigration and Customs Enforcement (ICE) John Morton announced a new standardized Memoranda of Agreement (MOAs). These new agreements are aimed at prioritizing the identification and removal of "dangerous criminal aliens."

Controversial Regulations/ Litigated Issues

Reimbursing Relocation Costs/ The FLSA v. DOL

Relocating Fees have been the subject of recent litigation. Interpreting the language of the FLSA in combination with the language of the H-2A Guestworker Program to determine if relocation fees must be reimbursed in the first week of work has proven to yield different results in different courts. The DOL interpreted the language of the FLSA and provided a detailed explanation of its meaning in the Federal Register in order to assist Courts in the proper interpretation of what expenses comprise a benefit that is primarily for the employer.

FLSA

The Fair Labor Standards Act establishes a minimum wage requirement.⁵⁵⁴ Under the FLSA, pre-employment expenses incurred by workers that are business expenses of the employer and primarily for the benefit of the employer are considered “kick backs” and are treated as deductions from the employees’ wages.⁵⁵⁵ Such deductions must be reimbursed by the employer during the workers’ first work week.⁵⁵⁶

H-2A

The H-2A general policy is to ensure that workers receive relocation transportation reimbursement when they complete 50 percent of their work contract and then to pay their way back to their home country upon completion of the contract.

CaseLaw and the DOL

Travelling Fees have been the subject of recent litigation. Interpreting the language of the FLSA in combination with the language of the H-2A Guestworker Program has proven to yield different results in different courts. Current legal precedent dictates that employee relocation costs are not typically considered to be primarily for the benefit of the employer.⁵⁵⁷

Arriaga v. Florida Pacific Farms involved a group of lawfully employed Mexican farm-workers residing in the United States under the H-2A program.⁵⁵⁸ In order to meet labor demands, the defendant employer contracted with the Florida Fruit and Vegetable Association (FFVA) to recruit foreign workers.⁵⁵⁹ The Farm-workers arrived in the United States and began their employ. After a week of work, they were not compensated for their travel expenses and decided to file suit.

The Farm workers argued that their employer failed to comply with minimum wage provisions of the Fair Labor Standards Act (FLSA) by not reimbursing them for travel, visa and recruitment expenses at the end of their first week of work.⁵⁶⁰ This failure to tender reimbursement resulted in the workers’ wages falling below the minimum wage requirement set by the FLSA.⁵⁶¹ Additionally, the farm workers claimed the defendant breached their employment contract by failing to reimburse them for the cost of transportation to and from their home villages to the Mexican port of hiring.

The 11th Circuit Court of Appeals, presiding over the *Arriaga* case, held that the defendant violated the minimum wage provisions of the FLSA⁵⁶² by failing to reimburse the farm workers for their travel expenses during their first week of their employ. The 11th Circuit reasoned that the transportation and visa costs were primarily for the benefit of the employer and necessary and incidental to the employment of H-2A workers thereby allocating responsibility of payment for those costs to the employer by the end of the workers’ first week of work.⁵⁶³ District Courts later extended this decision to apply to H-2B workers. The DOL’s December 2008 interpretation

of the FLSA rejected *Arriaga* and its entire line of cases.⁵⁶⁴ However, in the March 26, 2009 Federal Register, the DOL withdrew their interpretation and left it open for further consideration.⁵⁶⁵

In *Castellanos-Contreras*, H-2B workers sued their employer, Decatur Hotels, because each H-2A worker paid \$3,000 to \$5,000 to relocate and retain employment at Decatur for which they were not reimbursed. The H-2A workers argued that Decatur's failure to reimburse them reduced their pay below the minimum wage in violation of the FLSA. A federal district court agreed to certify their class-action suit, but the US Court of Appeals for the 5th Circuit dismissed the suit concluding that Decatur was not obligated to take the immigration related expenses of the H-2B workers into account when setting their wage rate.

Decatur obtained H-2B workers via Accent Personnel Services. Accent Personnel Services had a sister firm, VP Consultants, that earned a fee by informing recruiters of Decatur vacancies. The H-2B workers paid fees directly to the recruiters for the Decatur jobs.

The 5th Circuit held that non-agricultural H-2B workers were entitled to FLSA protection.⁵⁶⁶ They asserted that H-2B employees must be assured wages that are free and clear. The court opined that wages cannot be free and clear if they provide a direct or indirect kick-back to the employer.⁵⁶⁷ A "kick-back" occurs when the employer shifts any expense that should be a business expense to the employee.⁵⁶⁸ In *Rivera v. Brickman Group*, a court found that the employer was liable for recruitment fees because the employer required H-2B workers to use a specific recruitment agency in order to be hired. Decatur did not specify a recruiter therefore is not liable for recruitment fees. The Court held that inbound relocation costs, visa and recruitment expenses do not constitute business costs to Decatur and were therefore not reimbursable because they do not create a kick back to the employer.

Additionally, the 5th Circuit used the DOL's December, 2008 interpretation of the FLSA to assist the court in interpreting the meaning of "primarily for the benefit of the employer." The DOL stated that relocation expenses do not qualify as being primarily for the benefit of the employer because both parties "benefit equally from such a transaction – it would be neither primarily for the benefit of the employer, nor would it be primarily for the benefit of the employee."⁵⁶⁹ Using the DOL's interpretation as guidance, the Court concluded that the FLSA does not obligate the employer to reimburse guest workers for their relocation and Visa expenses within the first week of their employ because the expenses were not primarily for the benefit of the employer. The relocation fees must be borne by the employees until they have fulfilled 50 percent of their contracted work period at which time the employer, under the H-2A regulations, must reimburse their relocation fees.

Department of Labor

The DOL explained in the December Federal Register that relocation fees do not meet the requirement that the expenses be "primarily" for the benefit of the employer. It balanced the benefits derived by H-2A employers against the benefits of the H-2A workers. The DOL noted the ability of H-2A workers to make substantially more money than they could make in their home countries and mentioned the benefit that is derived from the ability to engage in non-work activities in the U.S. Needless to say, after balancing the benefits, the DOL concluded that relocation fees equally benefit the employer as well as the H-2A worker thereby negating any requirement on the employer to reimburse employees within the first week of work. Additionally, the DOL made clear that the reasoning in *Arriaga* was flawed by explicitly stating, "*Arriaga* and the district courts that followed its reasoning in the H-2B context misconstrued the Department's regulations and are wrongly decided."⁵⁷⁰

In March of 2009, the DOL issued a withdrawal of their interpretation that the FLSA and its implementing regulations do not require employers to reimburse H-2A workers for relocation costs. Additionally the DOL stated that their December interpretation "may not be relied upon as a statement of agency policy."⁵⁷¹

Conclusion

The divergent court opinions seem to hinge on the question of whether or not the relocation costs meet the standard of being “primarily” for benefit the employer. If they do meet that standard, then the payments are reimbursable within the first week of employ under the FLSA.⁵⁷² If they do not meet that standard, then the costs are not reimbursable to the worker until 50 percent of the contractual period is complete.⁵⁷³

The H-2A regulations incorporate a reimbursement of the H-2A workers’ relocation costs after 50 percent of their work has been completed. There are few other costs that have a provision that addresses later reimbursement. What other costs will be litigated? What other financial burdens will the H-2A worker have to shoulder under the guise of the expense not being a primary benefit to the employer?

The DOL asserts that it is fair and appropriate to have the employer reimburse the worker after half of the contractual period is complete in order to avoid compensating H-2A workers who fail to meet employment standards, specifically, “to give H-2A workers a strong incentive to complete at least 50 percent of their work contract.”⁵⁷⁴ This interpretation may expose H-2A workers to abuse and mistreatment. In an effort to avoid reimbursement for relocation fees, employers may find reason to fire H-2A workers just before their completion of the 50 percent contractual term. The employers, then, received the benefit of H-2A laborers for a period time without having to shoulder the costs of the laborers relocation fees. Additionally, this practice could leave H-2A workers homeless, jobless and unable to secure transportation to their countries of origin.

Relocation Compensation/ Place from which the worker has departed

Current regulation uses the phrase “place from which the worker has departed” to alert employers to the location from which they are required to pay for inbound transportation and the ending point to where the employers are required to pay for outbound transportation.⁵⁷⁵ Previously, this phrase had been construed to mean the H-2A workers home, or the place where the H-2A worker was recruited.⁵⁷⁶ The DOL makes clear, under the new rules, that the “place from which the worker has departed” for foreign workers outside the United States who intend to be employed under the H-2A program is the “appropriate U.S. Consulate or port of entry.”⁵⁷⁷ The rationale behind the clarification of this term is to provide the Department with an administratively consistent place from which to calculate charges and to put employers on notice of their financial obligation. Additionally, the DOL believes that because H-2A workers gather in groups for processing and transfer to the United States; making the Consulate the location for these fees is fair and reasonable.

Certification/ The New Attestation Process

The DOL, and the organizations that support the attestation based process, declare that the attestation process was designed to alleviate the cumbersome and repetitive paperwork that employers were mandated to file. This process was created to be more efficient and less burdensome on employers. The emphasis on compliance through enforcement mechanisms, such as debarment and certification revocation was designed to give employers more incentive to be truthful. Should an employer make an untruthful declaration, the attestation based process puts those employers on notice of the guarantees they are making and what their obligations are, including the sanctions that the employer may receive.

Organizations opposed to the attestation process argue that although the process may ease the application process for employers, it ignores the damage that can be caused by false attestations and lack of oversight of job terms, recruitment and hiring of us workers. A large concern lies with the belief that attestation based certification will dramatically reduce government oversight. Minimal oversight could result in an increase in inadequate housing and unfair working conditions. Minimal oversight could also result in a massive expansion of the guest worker program, as there is no annual visa cap for H-2A workers.

Applications/ The New Centralized Processing

The new rule requires employers to file their H-2A applications directly with DOL instead of filing simultaneously with both the State Work Agency and DOL. Under the DOL, the federal processing of all applications for the H-2A temporary foreign workers program is done in the Chicago National Processing Center. Job orders are still placed with the SWA.

The centralized processing system was introduced into the H-2A program to eliminate the duplication of activities performed by the SWAs and the Department's Employment and Training Administration (ETA). According to the DOL, this system will enable SWA's to focus on job orders, referrals and housing inspections by relieving them from application review. Additionally, centralized processing helps because it provides more efficient review and greater consistency in application of program requirements and it will lead to development of greater expertise to meet programs unique needs and timeframes.

Conversely, many farm worker organizations are concerned that the centralized processing of H-2A applications will remove adequate state involvement which will result in the certification of employers who do not meet program standards. Failing to require employers to give an application to the SWA means that the federal processing center will have to take on faith that the employer's job offer is consistent with the terms of the H-2A program.

The Effects of §287(g)

Racial Profiling

In June 2003, in response to federal law enforcement agencies using race to profile criminality, the USDOJ issued a guidance stating that "Racial profiling in law enforcement is not merely wrong, but also ineffective. Race based assumptions . . . perpetuate negative racial stereotypes that are harmful . . . and materially impair our efforts to maintain a fair and just society."⁵⁷⁸ A report released by University of California Berkeley Law School's Warren Institute analyzed arrest data that revealed that police in Irving, Texas began arresting Hispanics in far greater numbers for petty offenses (mostly driving offenses) once they began participating in the §287(g) program. The study found that the program "tacitly encouraged local police to arrest Hispanics for petty offenses" and that after the agreement, "arrests of Hispanics for petty offenses- particularly minor traffic offenses- rose dramatically." The study also found that despite a stated intent of the program to "deport serious criminal offenders," felony charges amounted to only 2% of the ICE detainees under the program.⁵⁷⁹ Lastly, in October of this year, DHS released a report on immigrant detention conditions which included statistics on detainees from §287(g) arrested. The statistics showed that 65% of immigrants that passed through the §287(g) programs were non criminal, meaning that they did not sustain even a misdemeanor charge.⁵⁸⁰ Section 287(g) has been used as an excuse for local authorities to racially profile Latinos and other minorities in their attempts to locate and criminalize undocumented workers.

Selective Enforcement and Accountability

In 2006, Major Cities' Chiefs Association issued a national statement in opposition to §287(g) and other programs encouraging enforcement of immigration laws by local police agencies concluding: "Immigration enforcement by local police would likely negatively affect and undermine the level of trust and cooperation between local police and immigrant communities. . . . Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community."⁵⁸¹ Many interviewed workers fear retaliation. Local police forces are often their only recourse, once federalized under these contracts, the local police force may be viewed as yet another deporting institution instead of as a valid protective force.

In September of this year, the Congressional Hispanic Caucus wrote a letter to President Obama stating, "The misuse of the §287(g) program by its current participants has rendered it ineffective and dangerous to community safety. Although its stated purpose is to provide law enforcement a tool to pursue criminals, it is our experience

that state and local law enforcement officials actually use their expanded and often unchecked powers under the program to target immigrant and persons of color.”⁵⁸²

Despite local and national community opposition, an ongoing DOJ investigation, and multiple federal lawsuits, the now infamous Sheriff Joe Arpaio of Maricopa County, Phoenix, Arizona is on the list of partner agencies. Offering local agencies full federal protection under §287(g) and providing officers with governmental immunity is being used to protect oppressive practices and to target an already volatile population without providing any recourse for the minority population and failing to provide accountability.

E-Verify

E-Verify is an Internet based system operated by the Social Security Administration (SSA) and the United States Citizenship and Immigration Services (USCIS). This system includes an automatic link to an I-9 search which determines employment eligibility of new hires and the validity of their social security numbers. Employers E-Verify workers in order to discover their work status and consequently to avoid employing undocumented workers.

The Obama administration has made E-Verifying mandatory to federal contractors. All federally contracted employers must E-Verify new and existing employees to determine work status. Under the Obama administration, the E-Verify system is to be used as an investigative tool to detect federally contracted employer violations, such as systemically aiding and abetting unlawful workers, and is to be used to bring criminal prosecutions to employers.

Some states have issued state specific rules that require E-Verify as a condition to having a business license. Workers, under these investigations are NOT protected and undocumented workers may still be deported.

The E-Verify Controversy

There are many controversial issues revolving around the E-Verify program and the Obama administrations changes. The first issue involves the E-Verify statute and the Obama administrations recent changes. The E-Verify statute does NOT make E-Verifying mandatory for employers, so the requirement of federally contracted employers to E-Verify is inherently problematic. Additionally, the E-Verification statute requires only new employees to be E-verified where the Obama administration is requiring all employees to be E-Verified. These two issues are being discussed and are being challenged on Appeal in the 4th Circuit.

The integrity of the database is at issue. The database does not detect instances of misrepresentation such as multiple uses of one legal name and SSN. Individuals who have T-Visas and U-Visas, or those who are waiting for their employment documents, are not yet in the E-Verify system either, leaving the most vulnerable workers exposed to employer retaliation.

Additionally, the databases used are very often inaccurate resulting in numerous tentative non-confirmations. 10-12 million errors exist in the databases. Errors alone would result in 3.6 million workers having tentative non-confirmations. When there is a tentative non-confirmation the employee has 10 days to prove his/her legal status at which time MOST employers assume illegality and fire them.

Discrimination

While there does not appear to be much case law involving interpretation of discrimination law in the guest-worker context, a 4th Circuit Court of Appeals decision held that the Age Employment Discrimination Act (ADEA) did not extend to foreign nationals who apply for jobs in the United States, while in a foreign country.⁵⁸³ In reaching their conclusion, the 4th Circuit noted that legislation passed by Congress, unless it is expressly noted

or clearly intended, is only applicable within the territorial jurisdiction of the United States.⁵⁸⁴ The Court opined that a foreign national must already be authorized to work in the United States to receive the protections of the ADEA.⁵⁸⁵ Representing the workers, the Equal Employment Opportunity Commission, argued, unsuccessfully, that an extra-territoriality application was unnecessary since the job the plaintiff applied to *was* in the United States.⁵⁸⁶ Disagreeing with that argument, the 4th Circuit reiterated that there is a general presumption against extra-territorial application of United States law stating, “The simple submission of a resume abroad does not confer the right to file an ADEA action.”⁵⁸⁷

The Fair Labor Standards Act, an act that has been interpreted to apply to H-2B workers, generally prohibits discrimination based on sex.⁵⁸⁸ Other claims of discrimination could be brought under anti-discrimination acts such as section 1981 of the 1866 Civil Rights Act⁵⁸⁹ and Title VII of the 1964 Civil Rights Act.⁵⁹⁰ Included in the 1866 Act is a provision stating that everyone, within the jurisdiction of the United States, has the same right to the “full and equal benefit of all laws.”⁵⁹¹ Nothing was found to indicate that employers might legally repatriate a worker who becomes pregnant on the job; though nothing was found to indicate that they could not.

Passports

During the period of public comment, one organization suggested that the Department of Labor include in their December 2008 rules, a provision mandating that employers attest that they will not confiscate workers passports.⁵⁹² However, the Department of Laborer responded that they were unaware of widespread abuses involving passport confiscation, and they believed that any such occurrence was probably an indicator of other covered abuses.⁵⁹³ Additionally the Department declined to impose substantial penalties for employers who “lure H-2A workers away from contract jobs before the termination of their contracts.”⁵⁹⁴ Citing the possibility that any abandonment of work prior to expiration of the contract may result in a change in immigration status, the Department responded to this recommendation by stating that both the Department of Homeland Security and Department of Labor wished to encourage workers to move from one job to another once the contract was completed.⁵⁹⁵ Nothing was found that would indicate that an employer may legally charge a fee for holding an employee’s passport.

Current Litigation

The 5th Circuit’s departure from *Arriaga* may affect a line of cases currently before the federal courts. Many of these cases, including two being litigated by the Southern Poverty Law Center (SPLC), originate in the 5th Circuit. One such case involves hundreds of Indian H-2B workers who allege various labor brokers defrauded them out of as much as \$20,000 each.⁵⁹⁶ Further, the workers allege that they were subjected to pre-dawn raids by the defendant employer’s security guards following talk of the workers organizing.⁵⁹⁷

In a separate action filed in the 5th Circuit, a class of Mexican H-2A guest-workers claimed to be victims of psychological coercion, threats of serious harm, and threatened abuse of the legal process.⁵⁹⁸ The workers allege that the defendant confiscated their passports and visas in order to ensure that they would not leave. Further, the workers claim that they were forced to pay a variety of fees to get to the strawberry farm in Louisiana, including point of hire, visa, travel and other subsistence fees.⁵⁹⁹

In yet another case, a group of Brazilian H-2B workers have filed suit in Michigan alleging that they spent weeks in windowless portable buildings at their employer’s surveillance camp upon arriving in the United States.⁶⁰⁰ The workers claim their employer promised consistent and well-compensated work that they never received and for which they paid heavy recruitment and visa fees.⁶⁰¹

On February 6, 2009, 145 Mexican H-2A workers filed suit against their farm labor contractor, Salvador Gonzalez Farm Labor Contractor, alleging violation of the FLSA minimum wage requirement.⁶⁰² The workers

paid recruitment, visa and administrative fees as well as transportation costs to California from their homes. The workers allege that in addition to failing to reimburse them for the above stated expenses, the SLGC did not provide them with adequate rest breaks or required meals.⁶⁰³

Legislative Activity

Senate Acts that did not pass

In recent years, members of Congress have proposed legislation that, had it passed, may have positively impacted the guest-worker program. George Miller, representing the 7th District of California and Chairman of the Committee on Education and Labor, introduced in 2007 the Indentured Servitude Abolition Act.^{604, 605} This bill would have required that the terms of employment be clearly and accurately disclosed to workers in their native languages.⁶⁰⁶ Additionally, Chairman Miller's bill also sought to outlaw what he termed "exorbitant" fees paid by workers to recruiters, force foreign labor recruiters to register with the Department of Labor, grant the Department the ability to exclude unscrupulous recruiters from participating in guest-worker programs and hold both recruiters and employers liable for violating any of the Act's provisions.⁶⁰⁷

Also in 2007, Senator Bernie Sanders of Vermont introduced a bill with the stated purpose of "increasing the wages and benefits of blue collar workers by strengthening labor provisions in the H-2B program, to provide for labor recruiter accountability, and for other purposes."⁶⁰⁸ The Increasing American Wages and Benefits Act⁶⁰⁹ would have applied many of the protections specifically designated for H-2A workers to H-2B workers as well.⁶¹⁰ Some of the proposed provisions included affording H-2B workers with transportation reimbursement, the 75% work guarantee⁶¹¹ and workers' compensation.⁶¹² This bill also sought to increase prevailing wage rates and authorize the Legal Services Corporation to represent H-2B workers.⁶¹³ The Act also marked an attempt to regulate international recruitment of guest workers by labor contracting firms employed by United States businesses seeking employees.⁶¹⁴ The bill never made it out of the Senate with 91 Senators voting against it.⁶¹⁵

Bills currently in the Senate

*With a goal of establishing minimum due process standards for persons detained in immigration raids, the Protect Citizens and Residents from Unlawful Raids and Detention Act would require Immigration Customs and Enforcement agents to inform affected individuals of their legal rights prior to detention.*⁶¹⁶ All detained individuals would receive a list of free and low-cost legal services providers and, if held for more than 48 hours, have a custody determination hearing before an immigration judge within 72 hours of the raid.⁶¹⁷ Senators Robert Menendez and Edward Kennedy introduced this bill in 2008.⁶¹⁸

Meanwhile, California Representative Howard Berman and Senator Dianne Feinstein have reintroduced the AgJOBS Bill.⁶¹⁹ If passed, this bill would create a legal pathway to United States citizenship for agricultural workers employed under the H-2A guest-worker program.⁶²⁰ Currently the bill is before the House judiciary subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law.⁶²¹

Activity at the State level

Awaiting a vote by the Senate, the Farmworker's Fair Labor Practices Act⁶²² could create several important protections for farm workers, including seasonal agricultural workers in New York State. Some key provisions of this bill include affording farm workers collective bargaining rights, requiring a minimum of 24 consecutive hours of rest each week, providing for an 8-hour workday and establishing a mandatory overtime rate at one and a half times the normal pay rate.⁶²³ The bill also states that the sanitary code shall apply to all farm and food processing labor camps that intend to house migrant workers.⁶²⁴ Under the bill, farm-workers would also become eligible for

workers' compensation benefits.⁶²⁵ Governor David Paterson has promised that if the bill passes in the Senate he will sign it into law.

The States of Colorado and Nevada have each proposed creating their own H-2A program in order to address state workforce needs.

Trafficking

The Criminal Section of Department of Justice's civil rights division, in collaboration with U.S. Attorneys' Offices nationwide, has principal responsibility for prosecuting human trafficking crimes, except for cases involving sex trafficking of children. Within the Department of Justice's criminal division, the Child Exploitation Obscenity Section (CEOS) are the subject matter experts on the prosecution of sex trafficking of minors and child sex tourism.⁶²⁶ For the 2008 fiscal year there were a total of thirteen cases filed involving trafficking in the labor context. In all 34 defendants were charged and 27 convictions were secured.⁶²⁷

The U.S. Immigration and Customs Enforcement Agency (ICE) is an investigative agency of the DOL which maintains a mission of strengthening the nation's immigration system and combating cross border and financial crime. In their 2008 fiscal report they announced conducting 432 human trafficking investigations which resulted in 189 criminal arrests and 483 administrative arrests.⁶²⁸ ICE also participated in more than 2,300 human smuggling cases which resulted in 2,138 arrests.⁶²⁹

The "T" visa

A third type of visa, the T-visa, is available for anyone purporting to be the victim of a "severe" form of human trafficking.⁶³⁰ Before obtaining a T-visa, the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS) must be satisfied that the applicant has met a number of requirements.⁶³¹ First, the applicant must be a victim of some "severe" form of human trafficking.⁶³² Second, the applicant must be physically present in or at a port of entry into the United States.⁶³³ Third, the applicant must comply with all reasonable requests for assistance in both the investigation into and prosecution of acts of trafficking, or, alternatively, that they are less than 18 years old.⁶³⁴ Finally, the applicant must show that he or she would suffer extreme hardship if their application were to be denied, which includes unusual and severe harm upon removal from the United States.⁶³⁵

Recipients of T-visas are eligible to remain in the United States for up to four years.⁶³⁶ Extensions may be granted if law enforcement officials certify that the victim's presence in the United States is necessary in assisting in the investigation and/or prosecution of the alleged trafficking activity.⁶³⁷ Following a period of three years, T-visa non-immigrants are eligible to apply for an adjustment of status to lawful permanent residence.⁶³⁸ Any adjustment in status is subject to certain statutory criteria.⁶³⁹ Power resides in the Secretary of Homeland Security to grant a work authorization to an alien who has a "pending, bona fide application for nonimmigrant status."⁶⁴⁰ According to a report published by the Attorney General's Office, 394 people filed applications for T-visas during the 2008 fiscal year of which 247 were approved.⁶⁴¹ During that same period the Federal Bureau of Investigation's Civil Rights Unit opened 132 investigations into trafficking-in-persons stemming from 129 complaints; these investigations ultimately lead to 139 arrests and 94 convictions.⁶⁴²

Recent trafficking cases

Reporting to Congress in 2008, the Attorney General lauded efforts to combat trafficking in persons.⁶⁴³ The cases included two hotel owners in North Dakota who were convicted for peonage, document servitude and visa fraud stemming from their threatening legal coercion as a means of forcing Filipino workers to labor in their hotels.⁶⁴⁴

A court sentenced the defendants' to 50 and 36 months imprisonment respectively and fined them \$15,000 each.⁶⁴⁵

In a separate action, a court sentenced six Texan defendants to terms of up to 180 months imprisonment for smuggling several Central American women into the United States. Threatening to harm to their relatives, the defendants forced the women to work in various bars, restaurants and cantinas. Along with their prison terms, the defendants were ordered to pay restitution in amounts upwards of \$1.7 million (United States v. Mondragon).⁶⁴⁶ In Florida, a pair of defendants pled guilty to charges relating to a scheme to enslave Mexican and Guatemalan nationals, and force them to work on farms in the Ft. Myers area. The defendants were sentenced to twelve years imprisonment and ordered to pay over \$20,000 in restitution to the victims (United States v. Navarrete).⁶⁴⁷ Indictments secured in a federal district court in Georgia led to a guilty plea in January of 2009 for harboring an alien for financial gain (United States v. Garrett).⁶⁴⁸

Forced Labor and Human Trafficking Criminal Statutes

The most direct way to combating human trafficking is through the criminal statutes codified in Title 18 of the United States. Forced labor, defined as using threats of serious harm or physical restraint in order to provide or obtain the labor or service of a person, is a federal crime punishable by fine and/or up to 20 years imprisonment.⁶⁴⁹ In 2008, Congress reauthorized the Trafficking Victims Protection Act (TVPA)⁶⁵⁰ providing a mechanism for trafficking victims to file civil complaints as long as the complaint involves forced labor, trafficking into servitude, or sex trafficking.⁶⁵¹ Perhaps more importantly, the TVPA also authorizes criminal prosecution by allowing sanctions to be brought against "significant traffickers in persons."⁶⁵² With a purpose of combating trafficking in persons,⁶⁵³ the Act identifies forced labor as a problem⁶⁵⁴ which "organized sophisticated criminal enterprises" are increasingly perpetrating.⁶⁵⁵

Acknowledging trafficking in persons as the "fastest growing source of profits for organized crime in the world,"⁶⁵⁶ the TVPA recognizes that these crimes substantially affect interstate and foreign commerce.⁶⁵⁷ Seeking to address the problem of trafficking around the world, the Act states "for the knowing commission of any act of a severe form of trafficking in persons, the government of a country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense."⁶⁵⁸ Further, the U.S. can bring sanctions against foreign persons who are significantly involved, either directly or indirectly, in severe forms of trafficking.⁶⁵⁹ In addition to, and at times working in conjunction with the TVPA, the Mann Act makes it a crime to knowingly transport an individual, whether male or female, in interstate or foreign commerce or in any territory or possession of the United States for the purpose of prostitution.⁶⁶⁰

Another way of punishing those involved in human trafficking and forced labor is through the criminal provisions of the Racketeering Influenced and Corrupt Organizations Act (RICO).⁶⁶¹ A successful RICO case requires proving that the accused is a member of a criminal enterprise that commits at least two predicate acts which are related to and indicate a continuation of criminal activity.⁶⁶² RICO indictments carry harsh penalties and allow the courts to seize any assets or ill gains in order to prevent those charged from evading prosecution.⁶⁶³

In a forced labor context, racketeering is defined as including any act which is indictable under sections 1581-1592 of Title 18 of the United States Code, including slavery and forced labor.⁶⁶⁴ Any time an alien is imported for "immoral purposes" resulting in financial gain for the offending party, a RICO indictment may be sought.⁶⁶⁵ For purposes of the RICO statute, a criminal "enterprise" is defined to include any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.⁶⁶⁶ A "pattern of racketeering activity" requires at least two acts of racketeering activity, within ten years, excluding time in prison, after the commission of a prior act of racketeering activity.⁶⁶⁷ The Supreme Court has recently lowered the threshold for establishing a pattern of racketeering activity by ruling in favor of a test requiring only that those petitioning under RICO show a continuity or threat of continuity of activity

embracing criminal acts having the same or similar purposes, results, participants, victims, or methods of commission.⁶⁶⁸

Federal prosecutors must obtain the Justice Department's approval prior to moving forward with any RICO case.⁶⁶⁹ The Attorney General has the power to charge any attorney with the task of enforcing the RICO statute.⁶⁷⁰ In a case filed this year, a federal district court in Missouri charged twelve individuals, eight hailing from Uzbekistan, with human trafficking crimes under the RICO statute.⁶⁷¹

Coinciding with any criminal charges filed by the federal government, plaintiffs can seek civil damages under RICO provided they can show that there was criminal activity which directly caused harm to either the complainant's business or property.⁶⁷² To file these charges the plaintiff must have suffered an injury to either their business or property because of the racketeering activities.⁶⁷³ If successful, the plaintiff can recover treble damages, damages triple the amount of actual/compensatory damages as a punishment.⁶⁷⁴ The Government, in addition to filing RICO charges, could also file various charges of fraud.⁶⁷⁵

The FLSA and Migrant and Seasonal Agricultural Workers Protection Act

As the courts have interpreted the Fair Labor Standards Act (FLSA) to apply to the H-2B program, these workers will typically have a forty-hour workweek.⁶⁷⁶ Anything in excess of forty hours should follow applicable overtime regulations.⁶⁷⁷ In addition to the employer's attestation that they offered a full-time temporary position that is consistent with the "normal and accepted qualifications required by non-H-2A employers in the same or comparable occupations or crops,"⁶⁷⁸ a job offered must consist of at least a 30 hours per week to be considered full-time and thus eligible for labor certification.⁶⁷⁹

Although the Internal Revenue Code and the Fair Labor Standards Act do not classify forestry work as agricultural work, two court cases found that the Department of Labor was to cover forestry workers under the Migrant and Seasonal Agricultural Workers Protection Act (MSPA).⁶⁸⁰ Since H-2A workers are, by express provision, not covered by the MSPA, forestry workers will no longer be entitled to these protections.⁶⁸¹

Civil damages are recoverable under the Fair Labor Standards Act.⁶⁸² This Act, in addition to allowing the injured party to sue, allows the federal government to file a civil suit seeking recovery of back wages and liquidated damages on behalf of the worker.⁶⁸³ If the offending party's conduct is determined to have been "willful," the Department of Justice can file criminal charges.⁶⁸⁴ Those found to be in violation of any of the FLSA's prohibited materials are subject to a fine not to exceed \$10,000 and possible imprisonment of no more than six months.⁶⁸⁵ The statute of limitations for a FLSA claim is two-years unless it can be shown that the violations were "willful" in which case the statute will toll for another year.⁶⁸⁶

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