

Recruitment Revealed

Fundamental Flaws in the H-2 Temporary Worker
Program and Recommendations for Change

a report by

 **CENTRO DE LOS
DERECHOS DEL
MIGRANTE, INC.**

Table of Contents

Executive Summary	4
Introduction	7
Recruitment: The First Step in a Cycle of Temporary Worker Abuse	10
Fundamental Flaws in the Recruitment Process	16
Fees	16
Debt	18
Fraud	20
Consequences	22
Inadequate Regulations and Insufficient Enforcement	24
Policy proposals	26
Conclusion	29
Acknowledgments	30
About the Author	31

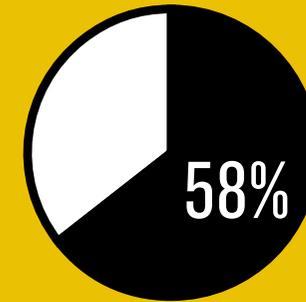
Executive Summary

This report reveals the reality of international labor recruitment for low-wage, temporary jobs in the United States, examining recruitment in Mexico, home to the largest number of temporary migrants who labor under H-2 visas in the U.S.¹ The findings are based on data gathered by Centro de los Derechos Migrante, Inc., (CDM) through a groundbreaking survey and lengthy interviews of hundreds of H-2 workers. The report's key findings are summarized below.

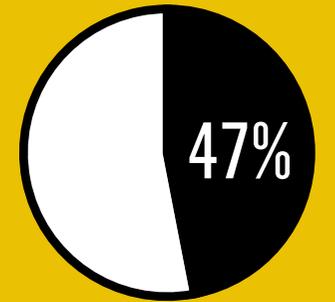
THE RECRUITMENT PROCESS IS FUNDAMENTALLY FLAWED

- 1. Employers, recruiters and their agents charge illegal recruitment fees and fail to reimburse visa, travel and recruitment-related expenses incurred by workers.** Despite bans on recruitment fees in both U.S. and Mexican law, it remains standard practice in Mexico for recruiters to charge workers for their services. Fifty-eight percent of workers surveyed reported paying a recruitment fee to their recruiter. The average recruitment fee charged was \$590. Regardless of legal precedent requiring reimbursement for travel, visa, and recruitment costs that reduce wages below the applicable minimum wage, H-2 workers rarely receive reimbursements for the often staggering costs they pay for their jobs in the U.S.
- 2. Employers, recruiters, and their agents often misrepresent terms of employment.** Recruiters often make false promises to workers about employment conditions in hopes of attracting more workers and charging higher recruitment fees. More than half of workers surveyed did not receive a copy of their job contract.
- 3. Recruitment fraud causes economic harm in migrant communities.** The lack of transparency in the visa certification process, paucity of government oversight of recruitment activities, and scarcity of information available to workers about their rights puts workers at serious risk for recruitment fraud by con artists posing as recruiters, bona fide recruiters and U.S. employers. One out of every 10 workers surveyed reported having paid a recruitment fee for a nonexistent job.
- 4. Workers arrive to the United States in debt.** Many workers take out loans, often at high interest rates and using property deeds as collateral. These loans, combined with workplace abuses, may lead to situations of forced labor, debt servitude or human trafficking. Almost half of all workers surveyed reported borrowing money to cover their recruitment costs.

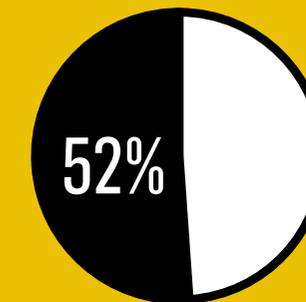
SELECT KEY FINDINGS ²



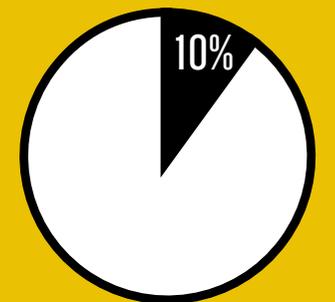
58% reported paying a recruitment fee.



47% took out a loan to cover pre-employment expenses.



52% were not shown contracts.



1 out of 10 reported paying a fee for a non-existent job.

¹ See Bureau of Consular Affairs (U.S. Dep't of State), Nonimmigrant Visa Issuances by Visa Class and by Nationality, FY1997-2011 NIV Detail Table (undated), http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html. In 2011, 106,210 temporary workers entered the US on H-2A and H-2B visas. Though absolute numbers have fluctuated over the past decade (due, in part, to government-imposed caps on the H-2B visa), Mexicans have always accounted for between 71-83% of the total number of individuals admitted to the US on H-2A and H-2B visas. In fact, that percentage has risen: slightly less than 75% were from Mexico in 2000, while almost 83% of H-2 visa holders were from Mexico in 2011. Most of that increase occurred from the years 2006-2011.

² Surveys (on file with CDM). Statistics presented in this report reflect data gathered through surveys of H-2 workers who worked in the U.S. during or after 2006.

KEY RECOMMENDATIONS FOR THE U.S. CONGRESS

The U.S. Congress must overhaul the H-2 guestworker programs to protect workers from recruitment abuse. Specifically, Congress must:

- Enact legislation to hold employers strictly liable for all recruitment fees charged to workers.
- Extend federally funded legal services to all H-2 workers.
- Create a public recruiter registry to increase transparency in the recruitment process.
- Amend federal anti-discrimination laws to clearly articulate the available protections for internationally recruited workers, both during the recruitment process and while employed in the U.S.
- Enact retaliation protections for workers who report recruitment abuse.
- Require that all job orders be treated as enforceable contracts.



A CDM outreach worker leads a Know-Your-Rights workshop in a small town in Veracruz.

PHOTO: LILIÁN LÓPEZ GRACIÁN

INTRODUCTION

Revealing a System of Flaws

Over 100,000 migrant workers are employed in low-wage, temporary jobs in the United States on H-2A visas for agricultural work and H-2B visas for non-agricultural work each year.³ These “guest” workers are contracted by U.S. employers to perform grueling work, whether harvesting crabs, assembling carnival rides, or cutting lawns, and they are paid paltry wages that sometimes do not meet federal standards. To maintain their jobs, the workers must meet production and work standards that endanger their lives. Their employment experience begins at recruitment.

While employers may recruit workers for H-2 visas from 58 different countries in the world,⁴ the overwhelming majority of individuals who travel to work in the U.S. on these visas is from Mexico:⁵ one such worker is Reynaldo.⁶

Reynaldo was recruited from a small town in Michoacán to pick tomatoes on an H-2A visa in Arkansas. Before leaving Mexico, Reynaldo took out a loan to pay the \$360 recruitment fee demanded by the recruiter as well as the visa fee and travel costs. He was told by the recruiter to lie if asked about paying a recruitment fee during his interview at the U.S. Consulate. Upon arriving in the U.S., he found the working and living conditions fell short of what he was promised. Although he was promised free housing, as is required by U.S. regulations for H-2A visas, his employers charged him \$80 per month for “utilities.” In addition, the living conditions were indecent: he and 11 other workers shared a small, one-bathroom apartment with a non-functioning kitchen. He worked long, 80-hour work weeks and was paid only \$7.25 per hour. Upon returning to Mexico he was unable to pay back his loan.

Workers like Reynaldo fill a critical role in the U.S. labor market, yet they are subject to pervasive mistreatment by employers and recruiters.⁷ This mistreatment is enabled by inadequate worker protections and lax oversight by the responsible government agencies. A flawed recruitment process and lack of worker protections in recruitment facilitate and, often, exacerbate many of the abuses that these internationally recruited workers may later experience.

³ See Bureau of Consular Affairs, *supra* note 1.

⁴ See Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs, 77 Fed. Reg. 2,558-2,559 (Jan. 18, 2012).

⁵ See Bureau of Consular Affairs, *supra* note 1.

⁶ Survey 0108 (on file with CDM).

⁷ For the purposes of this report, CDM will use the word “recruiter” to refer to any agency or individual that is involved in bringing workers to the US with H-2 visas for the benefit of themselves or a US employer.

During the past decade, U.S. temporary worker programs have received heightened attention as politicians and employers have advocated for their expansion, while advocates have sought improved oversight and worker protections. Many politicians and employers see temporary work programs as a crucial component of immigration reform and a potential solution to unauthorized migration. Since the 2012 election, Sen. Charles Schumer (D-NY) and Sen. Lindsey Graham (R-SC) have resurrected their bipartisan framework for immigration reform from two years ago, which includes a temporary worker program as one of its four pillars.⁸

In the push for a more convenient and less restrictive temporary worker program for employers, the interests of workers have been overlooked. This approach builds on a potent myth: that international labor recruitment is a win-win solution, benefitting employers and workers alike. Instead, the system effectively reduces the costs, liabilities, and legal duties of domestic businesses through the sacrifice of workers' safety, security and wages. Ignorance of the abuses inside labor recruitment, and the role of U.S. law in propagating them, therefore forms a crucial component in the flawed public narrative on immigration reform. The stories of workers like Reynaldo, and the revealing data therein about the recruitment process, disrupt the myth and jeopardize the traction of an unfair policy.

This report specifically aims to shed light on the existing H-2 recruitment system, to uncover the principal problems related to this system and to provide recommendations for improved oversight, regulation and reform.

Recruitment Revealed relies heavily on extensive outreach, interviews and surveys conducted by CDM over the past 5 years. This research produced 220 lengthy individual surveys with H-2 workers on their recruitment and employment experiences in the U.S. Additionally, CDM surveyed migrant support organizations, submitted information requests under government transparency laws in the U.S. and Mexico, and executed hundreds of community outreach trips to collect information on the recruitment industry. This information has been systematized in a recruitment database maintained and updated by CDM. The report's conclusions are based on the analysis of the research and data collected through this study.

CDM undertook this project, publishing valuable information related to the flawed U.S. temporary worker program, which begins with recruitment, to educate the public and political leaders about the flaws in the current system. This critical information and insight must be considered before any measures are taken to expand these programs as part of a comprehensive immigration reform package. Failure to ensure a just recruitment system in the current or an expanded H-2 program will only exacerbate abuses that exist in an already exploitative, dangerous, and broken system.

⁸ Dan Friedman, *Schumer, Graham Resume Immigration Talks*, *The National Journal* (Nov. 11, 2012), <http://www.nationaljournal.com/sunday-shows/schumer-graham-resume-immigration-talks-20121111>.



An office of the recruitment agency Labors Mex USA in Celaya, Guanajuato.

PHOTO: GRACIA CUZZI

A worker displays his H-2B visa. The photo has been redacted to protect the worker's identity.

RECRUITMENT: THE FIRST STEP IN A CYCLE OF TEMPORARY WORKER ABUSE

Abuses suffered by temporary workers under the H-2 visa programs often begin in the workers' countries of origin. Most workers recruited for H-2 visas are recruited in Mexico.⁹ A worker's recruitment experience may affect her employment experience in the United States, and workers who experience abuse in recruitment, often later experience abuse while employed in the U.S. with a visa. Despite the importance of recruitment, until now the recruitment process has been little studied or understood.

⁹ See *supra* note 1.

How Does Recruitment Work?

U.S. employers are required to obtain permission from the U.S. government to employ internationally recruited workers, also referred to as "guest" workers.¹⁰ The formal name for the permission given by the U.S. government to an employer is called a "temporary labor certification."¹¹ Once a U.S. employer has received certification from the U.S. Citizenship and Immigration Services (USCIS) for a certain number of H-2A or H-2B visas, an employer usually hires labor recruiters to locate the workers who will apply for these visas.¹²

In general, recruitment is a non-uniform, complex and often informal process. Thus, the recruitment supply chain can take many different forms. Below is a nonexhaustive list of recruitment models utilized in the H-2 visa system:

- **MODEL 1** Employer-Recruiter (Mexico)-Worker: The U.S. employer contracts directly with Mexico-based recruitment agencies.¹³ The recruiter then locates workers to fill the job order.
- **MODEL 2** Employer-Recruiter (U.S.)-Recruiter (Mexico)-Worker: The U.S. employer hires a U.S.-based recruiter. The U.S.-based recruitment agency subcontracts a Mexico-based recruitment agency or individuals in Mexico to assist them in their efforts.¹⁴
- **MODEL 3** Employer-Recruiter (U.S.)-Recruiter (U.S.)-Recruiter (Mexico)-Worker: The U.S. employer hires a U.S. recruitment agency. The U.S. recruitment agency subcontracts a second U.S. recruitment agency. The second U.S. recruitment agency subcontracts a Mexico-based recruitment agency or individuals in Mexico to assist with their efforts.¹⁵
- **MODEL 4** Employer-Recruiter (U.S.)-Worker: The U.S. employer hires a U.S. recruitment agency that then directly locates workers to fill the job order.¹⁶
- **MODEL 5** Employer-Worker: Some U.S. employers ask their temporary migrant workers to recruit for them during their annual return to Mexico between seasons.¹⁷

¹⁰ See 20 C.F.R. § 655.15(a) (pre-filing requirements for labor certification); see also 20 C.F.R. § 655.130(a) (filing requirements for labor certification); 20 C.F.R. § 655.101 (process for approving certifications).

¹¹ *Id.*

¹² See Office of Foreign Labor Certification (U.S. Dep't of Labor), FY2011 H-2A Labor Certifications DOL (undated), <http://www.foreignlaborcert.doleta.gov/quarterlydata.cfm>. Almost 62% of H-2A applications in 2011 listed agents who helped them with their applications. See also Office of Foreign Labor Certification (U.S. Dep't of Labor), FY2011 H-2B Labor Certifications DOL (undated), <http://www.foreignlaborcert.doleta.gov/quarterlydata.cfm>. Over 84% of H-2B applications listed agents who helped them with their applications. Until now, little information has been available about the recruitment industry. See changes to Requirements Affecting H-2B Nonimmigrants and Their Employers, 73 Fed. Reg. 78, 104, 78, 125 (Dec. 19, 2008). In fact, even the federal government has stated that "DHS has no reliable data on the number of firms that recruit H-2B employees, but DHS research in this area indicates that the majority of new, and many returning, H-2B employees have utilized such a service in their home countries."

¹³ See, e.g., survey numbers: 1566, 1668 (on file with CDM).

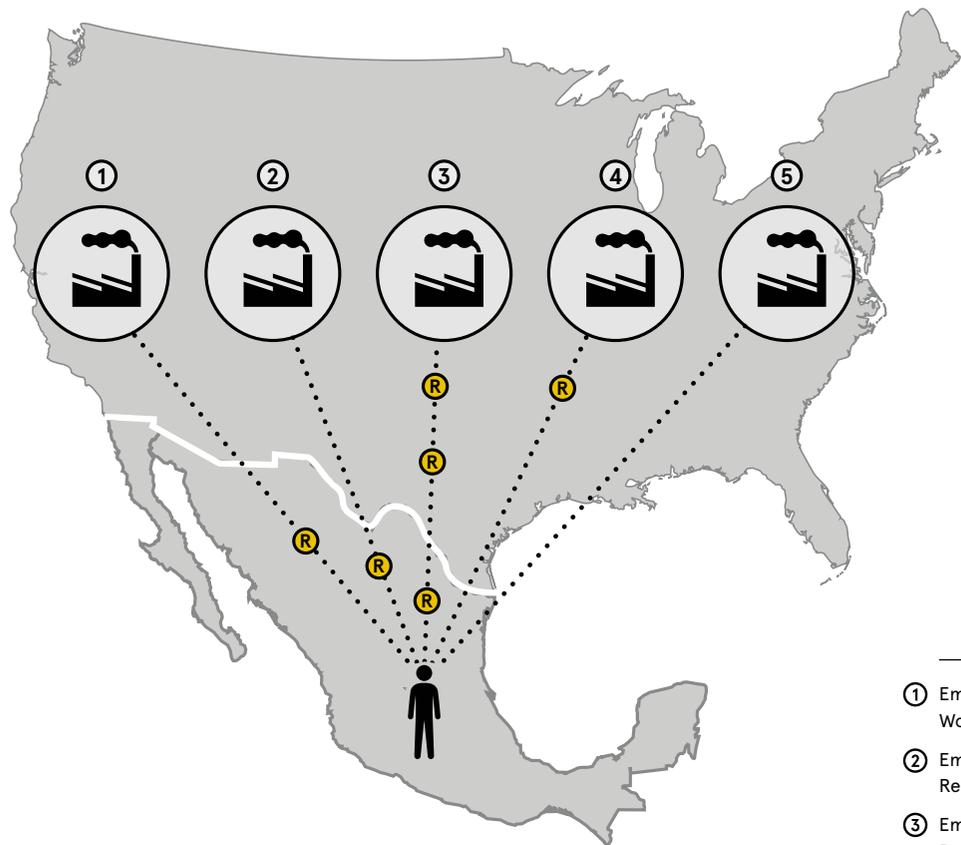
¹⁴ See, e.g., survey numbers: 0043, 0111, 1560 (on file with CDM).

¹⁵ See, e.g., survey numbers: 1619, 0078, 1618, 0108, 1548 (on file with CDM).

¹⁶ See, e.g., survey numbers: 1624, 0023, 0090, 0046 (on file with CDM).

¹⁷ See, e.g., survey numbers: 1416, 1526, 1554, 0125, 1688, 1638 (on file with CDM).

In addition to these various recruitment models, sometimes U.S. employers, U.S. recruitment agencies or Mexico-recruitment agencies may employ the assistance of staffing agencies to locate workers.¹⁸ These staffing agencies “lease” workers to other employers.¹⁹ At times, lawyers and law firms can also act as recruiters for U.S. employers, sometimes directly locating workers for employers, or sometimes subcontracting with recruitment agencies or individual recruiters.¹⁹



- ① Employer > Recruiter (mex) > Worker
- ② Employer > Recruiter (US) > Recruiter (mex) > Worker
- ③ Employer > Recruiter (US) > Recruiter (US) > Recruiter (mex) > Worker
- ④ Employer > Recruiter (US) > Worker
- ⑤ Employer > Worker

As a result, workers are often confused as to who among the recruiters, agents, and visa sponsors actually employs them. The lack of transparency in the process obscures worker-exploitation and shields those responsible for the abuse from liability. In sum, the existing recruitment system is an intricate web that is often difficult for workers and their advocates to untangle.

¹⁸ See Complaint at 4-5 and 10, *Magnifico, et al., v. Villanueva, et al.*, No. 9:10-cv-80771-KLR (S.D. FL Mar. 18, 2011); see also, e.g., U.S. Dep't of Labor, *Final Determination (Redacted)* (undated), (on file with CDM) (letter denying Dec. 9, 2010 application requesting H-2B temporary labor certification submitted by a job contractor).

¹⁹ See U.S. Gov't Accountability Office, GAO-10-1053, *H-2B Visa Program: Closed Civil and Criminal Cases Illustrate Instances of H-2B Workers Being Targets of Fraud and Abuse 4* (2010) available at <http://www.gao.gov/new.items/d101053.pdf> (stating that employers and recruiters leased additional workers to businesses not on the petitions); see also Press Release, New Orleans Workers' Center for Racial Justice, *Guestworkers Sue Mississippi Labor Brokers, Expose Captive Worker Racket* (Apr. 20, 2009), <http://nowcrj.org/2009/04/20/guestworkers-sue-mississippi-labor-brokers-expose-captive-workers-racket/> (Recruiters were sued for allegedly leasing workers, among other violations.); survey number: 0073 (on file with CDM).

²⁰ See *supra* note 12; see also survey number: 1582 (on file with CDM).

²¹ See survey numbers: 1309, 0085, 0099, 0108, 0124 (on file with CDM).

²² See survey numbers: 0136, 0139, 1530, 1571, 1601 (on file with CDM).

²³ Ley Federal del Trabajo [L.F.T.] [Federal Labor Law], as amended, Artículo 28, 1 de abril de 1970 (Mex.). For the H-2A visa, federal regulations prohibit employers from allowing workers to pay recruitment costs, employers' attorney or application fees, visa fees, and border crossing fees. See 20 C.F.R. § 655.135(j); 20 C.F.R. § 655.122(h) (stating that employers must reimburse incoming travel costs once the worker completes 50% of the contract period and the employer must provide return travel free of charge); see also 8 C.F.R. § 214.2(h)(6)(i)(B) (placing a ban on recruitment fees in the H-2B program); Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 77 Fed. Reg. 10,038 (Feb. 21, 2012). The new regulations for the H-2B program, which would have gone into effect on April 27, 2012, would also have prohibited recruiters and their agents from charging fees and would have improved transparency in the recruitment process. The new regulations are currently stayed due to a temporary injunction issued by a federal district court in the Northern District of Florida in *Bayou Lawn & Landscape Services, et al. v. Hilda Solis, et al.* (3:12-CV-00183-MCR-CJK).

RECRUITER INVOLVEMENT

The level of involvement by labor recruiters in the recruitment and migration process also varies widely. Some recruiters organize the passport paperwork, the consular appointment, travel, and room and board during the process.²¹ Other recruiters simply connect the worker with the employer by petitioning for a visa interview at a U.S. consulate in Mexico, but leave the worker to arrange all other logistical components.²²

Although recruitment fees are prohibited by both Mexican and U.S. law,²³ recruiters extract fees from workers with promises of employment in the U.S.

The lack of transparency in the process obscures worker exploitation and shields those responsible for the abuse from liability.



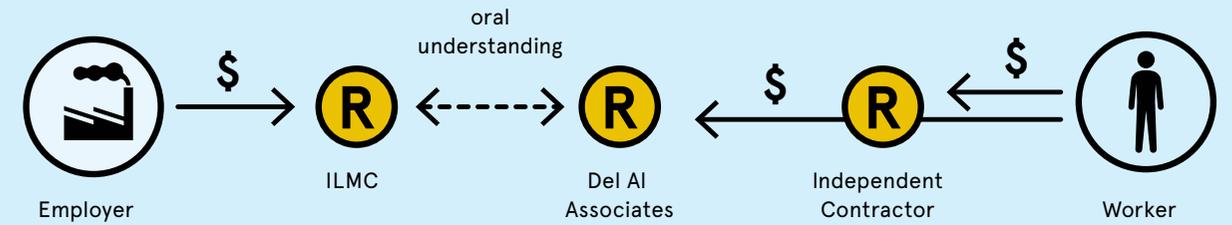
Workers review information about their rights as H-2 workers.

PHOTO: GRACIA CUZZI

Workers read about H-2B regulations.

PHOTO: GRACIA CUZZI

CASE STUDY: DEL-AL ASSOCIATES ²⁴



Del-AI Associates is a Texas-based recruitment agency that “places” Mexican workers with U.S. employers or recruitment agencies for H-2 visas. Each year, Del-AI Associates “places” thousands of Mexican workers with H-2 employment in the U.S. In 2005, Del-AI Associates provided testimony in a class action suit against International Labor Management Corporation, the North Carolina Growers Association, and Del-AI Associates, that illustrates the informal and complicated nature of the recruitment industry.

Juan Del Alamo testified that Del-AI Associates “placed” between 11,000 and 13,000 Mexican workers per year with North Carolina Growers Association (NCGA) and International Labor Management Corporation (ILMC) between 1998 and 2000.²⁵ NCGA was listed in the Temporary Labor Certifications as an employer, not as a recruiter or an agent. In most certifications, NCGA listed ILMC as its agent. ILMC is a recruitment agency that contracts with U.S. employers to locate Mexican workers for H-2 visas. ILMC, in turn, subcontracted with Del-AI Associates, which subsequently worked with an independent contractor in Mexico. Del-AI Associates’ relationships with both NCGA and ILMC were predicated on “oral understandings,” and no written agreement or contract existed for either.

In fact, Del-AI Associates did not receive payment from NCGA or ILMC for its services. Instead, the entire revenue generated for Del-AI Associates through these business transactions was collected in fees from workers by the independent contractor in Mexico. Interestingly, Juan Del Alamo insists that his company is not a recruitment agency because only the independent contractor has direct contact with workers and is neither an employee nor an “agent” of Del-AI Associates. At the same time, these “independent” contractors used business cards embossed with the words “Del AI Associates, Inc.” The independent contractors, however, were not paid by Del-AI Associates—they relied completely, like Del-AI Associates, on fees paid by workers for their income.

²⁴ Deposition of Juan Del Alamo (Dec. 9, 2005), *Olvera-Morales, et. al. vs. Int’l Labor Mgmt. Corp., Inc., et. al.*, 2008 U.S. Dist. LEXIS 27658 (M.D.N.C. 2008).

²⁵ *Id.* at 42:15–16 and 49:4–7.

FUNDAMENTAL FLAWS IN THE RECRUITMENT PROCESS

Fees

ILLEGAL RECRUITMENT FEES

According to both U.S. and Mexican law, it is unlawful for recruiters or recruitment agencies to charge recruitment fees to H-2 workers.²⁶ Nevertheless, it remains standard practice for recruiters to charge Mexican workers high fees in exchange for connecting them with employment in the United States.²⁷ Fifty-eight percent of workers surveyed reported paying a recruitment fee.²⁸

The costs associated with recruitment vary. Some workers pay the recruiter a lump sum for the visa, transportation, as well as room and board during travel to the work site.²⁹ Other workers pay each cost separately.³⁰ Some recruiters insist that “visa payments” be made to their own personal bank account for sums greater than the actual cost of the visa.³¹ The lack of uniformity makes it difficult for workers to be certain about which fees are permissible under the H-2 program and which fees are excessive or illegal.

On average, workers surveyed by CDM who worked in the United States in 2009 or later reported paying \$590 in recruitment fees, not including travel, visa and other fees, to come to the U.S.³² Workers pay hundreds or even thousands of dollars in total costs for the opportunity to work seasonal jobs in the U.S., often earning wage rates equal to or only slightly greater than the legal minimum.³³ Workers who reveal to the U.S. consulate that they have paid illegal recruitment fees risk being denied passage to the U.S.³⁴

²⁶ See *supra* note 23.

²⁷ See, e.g., survey numbers: 0150 (worker paid \$2,000 in fees), 1568 (worker paid \$1,557 in fees), 1566 (worker paid \$1,409 in fees), 0035 (worker paid \$1,200 in fees), 0017 (worker paid \$1,143 in fees), 1600 (worker paid \$935 in fees), 0041 (worker paid \$850 in fees) (on file with CDM).

²⁸ See *supra* note 2.

²⁹ See, e.g., survey numbers: 1290, 0085, 0098, 0105, 1553 (on file with CDM).

³⁰ See, e.g., surveys numbers: 0089, 1620, 0103, 0141, 0174 (on file with CDM).

³¹ See, e.g., survey number: 0103 (on file with CDM).

³² This statistic reflects the average amount in recruitment fees by surveyed workers after the DHS recruitment ban went into effect on January 19, 2009.

³³ See Southern Poverty Law Center, *Beneath the Pines: Stories of Migrant Tree Planters* (2006) at 4, available at <http://www.immigrationpolicy.org/sites/default/files/docs/SPLCBeneaththePines.pdf>.

³⁴ See 8 C.F.R. § 214.2(h)(6)(i)(B); see also 9 FAM 41.53, N2.2 *Approved Petition Is Prima Facie Evidence of Entitlement to H Classification*, Foreign Affairs Manual (Oct. 5, 2012), available at www.state.gov/documents/organization/87226.pdf.

PRE-EMPLOYMENT COSTS & THE EFFECT ON WAGES

Federal courts in two important class action suits, *Arriaga v. Florida Pacific Farms*,³⁵ and *Rivera v. Brickman Group, Ltd.*,³⁶ interpreted the law to require that H-2 workers be reimbursed for travel, visa, and recruitment costs incurred during their recruitment in some cases.

Additionally, the DOL takes the position that insofar as an H-2B employee's visa, travel, and recruitment costs bring an employee's pay below the minimum wage in the first week of work, the employer is responsible for paying these fees.³⁷ Despite this precedent, the reality is that employers rarely reimburse workers.

³⁵ 305 F.3d 1228 (11th Cir. 2002).

³⁶ No. 05-1518, 2008 U.S. Dist. LEXIS 1167 (E.D. Pa. Jan. 7, 2008), available at http://www.gpo.gov/fdsys/pkg/USCOURTS-paed-2_05-cv-01518/pdf/USCOURTS-paed-2_05-cv-01518-1.pdf.

³⁷ Wage and Hour Div., U.S. Dep't of Labor, Field Assistance Bulletin 2009-2, *Travel and Visa Expenses of H-2B Workers Under the FLSA* (Aug. 21, 2009) available at http://www.dol.gov/whd/FieldBulletins/FieldAssistanceBulletin2009_2.pdf.



CASE STUDY: GERARDO ³⁸

Gerardo lives in a small, rural community in central Mexico. In late fall of 2010, he and 7 friends accepted an offer to work for an Oklahoma forestry company on H-2B visas. To secure their positions they were required to pay a recruiter contracted by the company over \$1,500 each. They were promised 6 months of work at an hourly wage of \$10.60 per hour. In addition to paying extremely high recruitment fees, the workers were also required to pay for all travel costs, bringing their total employment-related expenses to approximately \$1,750 each.

However, when they arrived in the U.S. to begin work in late December, they found that instead of being paid an hourly wage as promised, they were paid on a piece rate basis. During their employment period they were paid only twice: \$220 in early January and two weeks later they were paid \$237.16. A total of \$65 was deducted for various work tools. In total, Gerardo and his co-workers were each paid \$392.26 for 121 hours of work. The resulting wage rate of \$3.30 an hour was far below the promised wage rate.

Had Gerardo and his coworkers maintained their employment with the forestry company, it would have taken them at least two months of work without spending any money on food, housing or other costs to pay off their inbound travel, lodging and recruitment fees. Because the work conditions were so poor and the pay was so low, the workers left their employment and returned to Mexico. They suffered great financial losses and remained indebted upon their return to Mexico.

³⁸ See, e.g., survey number: 1568 (on file with CDM). The worker requested that we use a pseudonym.



CASE STUDY: FERNANDO ³⁹

Fernando began working with a Missouri irrigation company on an H-2B visa in the spring of 2010. In order to begin work, however, Fernando was obligated to make a number of payments to obtain employment, including recruitment fees, visa fees, and travel expenses. By the time he actually began employment, Fernando had already paid approximately \$675 in order to obtain the opportunity to work. Federal law requires that these employer-related costs be reimbursed during the first week of employment, up to a level where employees are paid at the Federal Minimum Wage.³⁸

During his first week of employment, Fernando worked approximately 16 hours and received approximately \$152. Considering the employment-related expenses he incurred before he began work, the irrigation company owed Fernando \$640.

In addition, Fernando was dismissed four months before the end of the contract because “there was not enough work.” Fernando paid his return travel to Mexico at a total of \$204, yet according to federal law the employer is liable for return transportation if the employee is dismissed prior to the end of the established work period.³⁹

In this case, the employer violated federal minimum wage laws and federal regulation and owed Fernando approximately \$844.

³⁹ See, e.g., survey number: 1310 (on file with CDM). The worker requested that we use a pseudonym.

⁴⁰ See Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 203 *et seq.*; U.S. Dept. of Lab. Wage and Hour Div. *supra* note 36; *Arriaga v. Florida Pacific Farms*, 305 F.3d 1228 (11th Cir. 2002).

⁴¹ 20 C.F.R. § 655.22(m) (stating that the employer is liable for return transportation if the employee is dismissed prior to the end of the established work period).

Debt

Large numbers of workers take out loans to pay for the visa, travel, and recruitment costs that they are assessed.⁴² Some workers take no- or low-interest loans from family members or friends, but others turn to local banks, private lenders, or even the recruiter for money to cover the costs of recruitment.⁴³ Interest rates on these loans range from moderate to extremely high, with workers reporting paying anywhere from 5% to 79% interest.⁴⁴ In addition, local banks, lenders, and recruiters sometimes require workers to leave deeds to property or titles to automobiles as collateral.⁴⁵

47% 47% of workers surveyed reported having to take out a loan to cover pre-employment expenses.

These kinds of predatory lending practices leave workers extremely vulnerable. High interest rates on loans put workers at risk of becoming trapped in debt, and exploitative collateral requirements can cause workers to lose essential property, such as their vehicles or even their homes.⁴⁶ Moreover, when workers with abusive loans arrive in the U.S. to work, they are faced with an additional pressure to earn back the money they borrowed in their country of origin.⁴⁷ When these workers encounter abusive or unsafe working conditions, the choice becomes even more critical. If workers leave their employment in the U.S. and return home, they may have even less money than when they initially left to work under the H-2 visa program.⁴⁸ The necessity to earn back borrowed money can force workers to continue working in dangerous or abusive conditions.

⁴² In surveys conducted by CDM, 47% of workers who worked in the U.S. on H-2 visas during or after the year 2006 reported having to take out a loan to cover pre-employment expenses (on file with CDM).

⁴³ See, e.g., survey numbers: 1627, 1545 and 1309 (loans taken from family members and friends); 1522, 1220, and 0163 (loans taken from banks); 0132, 0073, and 1577 (loans taken from private lenders) (on file with CDM); see also CDM and American University Washington College of Law, *Picked Apart: The Hidden Struggles of Migrant Worker Women in the Maryland Crab Industry*, at 15 and 24 (2010), available at <http://www.cdmigrante.org/picked-apart-the-hidden-struggles-of-migrant-worker-women-in-the-maryland-crab-industry/>.

⁴⁴ See, e.g., survey numbers: 1564, 0051, 0163, 1582, 0129, 0128, 0086, 0042, and 0133 (on file with CDM).

⁴⁵ See, e.g., survey numbers: 1220, 0086, 0109, 0125, 0129, 0130, 0132, 0071, 1557, 1564, 1570, and 1573 (on file with CDM).

⁴⁶ Jennifer Ludden, *Corruption Leads to Deep Debt for Guest Workers*, NPR, (May 8, 2007), <http://www.npr.org/templates/story/story.php?storyId=10079556>.

⁴⁷ See CDM, *supra* note 43 at 15 (2010); see also Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States*, at 23 (2007) available at: <http://www.splcenter.org/publications/close-to-slavery-guestworker-programs-in-the-united-states/>.

⁴⁸ See *id.*; see also National Guestworker Alliance and Pennsylvania State University, Dickinson School of Law's Center for Immigrants' Rights, *Leveling the Playing Field: Reforming the H-2B Program to Protect Guestworkers and U.S. Workers*, at 15–16 (June 2012).



⁴⁹ See, e.g., survey number: 1582 (on file with CDM). The worker requested that we use a pseudonym.

CASE STUDY: CARLOS ⁴⁹

Carlos traveled from a small town in a poor region of Zacatecas to work for a sprinkler company in Texas from 2001–2007 to support his wife, several children and nephews. At the request of the company owner, Carlos paid the managers a \$750 “H-2B visa fee” each year, which he was told guaranteed him employment the following season, and received a receipt for this payment. In 2007, he paid the fee but was never brought back to work.

Each season, Carlos took out loans at extremely high interest rates ranging from 10–25%. To his knowledge, these lenders were not authorized by the government or any other entity to give these loans and did not pay taxes on the money they received from debtors. Since these individuals are not regulated by the government or anyone else, they can charge whatever they want, often resulting in abuse.



⁵⁰ See, e.g., survey number: 1564 (on file with CDM). The worker requested that we use a pseudonym.

CASE STUDY: JORGE ⁵⁰

Jorge has worked for many seasons on H-2 visas in the U.S. Every year that he travels to the United States to work, he borrows money to leave with his family to cover the family’s basic expenses until he can earn money to send home. Every time he travels to the U.S. he takes out a loan of \$5,000 pesos [about \$390 USD]. He borrows money from friends, money exchange businesses, or a Mexican bank that caters to low-income customers. He usually has to leave his voter registration identification or the title to his truck in order to secure the loan. When Jorge takes out these loans for \$5,000 pesos from the bank he reports paying \$800 pesos per month for a 10-month period for a total of \$8,000 pesos, or the equivalent of a 60% interest rate.



Fraud

The lack of transparency in the visa certification process, paucity of government oversight of recruitment activities, and scarcity of information available to workers about their rights puts workers—and even whole communities—at serious risk for recruitment fraud across Mexico. Persons purporting to be recruiters, bona fide recruiters, and employers may commit recruitment fraud.

SCAM ARTISTS POSING AS RECRUITERS

One way in which recruitment fraud occurs is when alleged recruiters arrive in a community, offer work under the H-2 program that does not actually exist, charge a service fee, and then disappear without a trace.⁵¹ This is often referred to as “recruitment fraud” because the individuals who carry out these schemes hold themselves out to be recruiters, but in many cases are scam artists who steal money by offering false promises of employment.

Fraudulent recruiters organize town meetings to present their false work opportunities during which dozens or hundreds of workers attend and pay fees.⁵² These individuals do not have real employment opportunities or contracts to offer workers. When presented with employment offers by unknown individuals, workers have virtually no means to verify the legitimacy of the recruiter or the employment offer because there is no recruiter registry for workers to check and no existing comprehensive job bank that workers can access to determine the legitimacy of the supposed offer.

Even if the alleged recruiter specifies the company with whom the workers are to be employed, workers do not know if the company is even hiring workers under H-2 visas. For many workers, the urgent need for stable employment outweighs the risks, obligating them to accept work offers even with no means of verifying their legitimacy. Thus, scam artists take advantage of the workers’ desire to work in the United States and, sometimes, desperation to provide for their families. Inevitably, many migrant workers are caught in recruitment fraud schemes and lose hundreds, if not thousands, of dollars with no effective system in place to help them track down or report the thieves who have stolen their money. This type of recruitment abuse can have devastating consequences for small communities.

CASE STUDY: ELIZARDO⁵³

In 2007, a recruiter offered Elizardo and several dozen other workers from the state of Zacatecas employment in the construction industry with H-2B visas. The recruiter promised Elizardo and the others that they would be paid \$15.00 per hour. The Zacatecas state employment agency confirmed this arrangement and indicated that the workers would be traveling to California. Based on this information, the workers deposited over \$200 for the recruitment fee into a Mexican bank account. When the group arrived in Monterrey, the Zacatecas state employment agency representative informed the workers that the terms of their employment—including where they were to work and the type of work they were to perform—had been changed. They were informed that the employment available to them was actually work with the Georgia-based carnival company Geren Rides and that they would be paid \$250 per week.

52%

52% of workers surveyed reported that they were never shown a written work contract.

⁵¹ See, e.g., survey numbers: 1545, 1522, 0094, 0118, and 0155 (on file with CDM.)

⁵² See, e.g., survey numbers: 0190, 0186, 1397, and 0175 (on file with CDM.)

⁵³ Survey number: 0103; see also *Rosales, et. al. v. Geren Rides*, No. 1:2009-cv-01390 (N.D. Ga. filed May 22, 2009).



CASE STUDY: MARISOL⁵⁷

In 2010, recruiters in a recruitment fraud scheme in the southern state of Tabasco defrauded Marisol and as many as 850 other individuals. Marisol heard that a man in the neighboring town was advertising temporary visas for employment at a Hershey’s factory in Houston, Texas, and went to speak with him. She and a group of others each paid him \$100, signed a recruitment contract, and provided personal identification information such as passport numbers and U.S. social security numbers. None of the workers was given a copy of the contract or a receipt of payment. The workers attended several subsequent meetings with the recruiters, who claimed that more workers were needed in New Jersey and Indiana. One fraud victim who attended these meetings described “streams of people” who arrived to sign up for visas, each paying \$100 and providing her or his personal information.

Eventually, the recruiters told Marisol and a group of 50 workers who had paid the recruitment fee that they had appointments at the U.S. Embassy in Mexico City. In March, the group of workers traveled with one of the recruiters to Mexico City, where they each paid the recruiter \$16 for their hotel accommodations and \$112 for what they were told was the visa fee. Another recruiter arrived at the hotel and charged each worker \$20 to help him or her fill out his or her visa application.

The following day, Marisol and the other workers went to the U.S. Embassy and discovered that they did not have appointments for visa interviews. The recruiters disappeared overnight. Marisol had taken out a loan of approximately \$800 to cover these fees. Without employment in the US, she was left with no means through which to make her loan payments. In total, the recruiters made approximately \$92,500 through their visa scam.

⁵⁷ Survey number: 0186 (on file with CDM). The worker requested that we use a pseudonym.

1 out of 10 workers surveyed reported paying a fee for a non-existent job.

MISREPRESENTATIONS BY BONA FIDE RECRUITERS

Recruiters can also be guilty of committing fraud. Because recruiters are rarely held accountable for their activities in either the United States or in Mexico, they sometimes misrepresent terms of employment in order to attract more workers and charge higher recruitment fees.⁵⁴ Sometimes recruiters promise higher wages, greater or fewer hours, or more optimistic job descriptions than the employer actually has to offer.⁵⁵ Some workers surveyed also reported that recruiters lied to them about the industry in which they would work.⁵⁶

Workers, who have no way to verify the promises made by the recruiter, accept these offers and find a completely different employment reality when they arrive in the U.S. Further, since the workers are rarely provided with a written contract setting out the terms of their employment, it is difficult for them to take any legal action to hold the recruiters or employers liable for failing to uphold the terms of the agreement under which they were lured to the U.S. Workers may have accepted one job offer with a promised wage rate of \$11.50 per hour only to find themselves working in an entirely different industry for the federal minimum wage, currently \$7.25 per hour.

⁵⁴ Steven Greenhouse, *Low Pay and Broken Promises Greet Guest Workers*, N.Y. Times, Feb. 28, 2007, available at: <http://www.nytimes.com/2007/02/28/us/28labor.html>.

⁵⁵ See, e.g., survey numbers: 0090, 0095, 0107, 0121, and 0071 (on file with CDM).

⁵⁶ See, e.g., survey numbers: 1568 and 0055 (on file with CDM).

Consequences

DECREASED LIKELIHOOD OF REPORTING ABUSES

Several systemic flaws in the recruitment process reduce the likelihood that workers report abuses they suffer in their places of employment. Given the high costs that most workers pay in order to obtain employment under the H-2 program, many arrive in the U.S. indebted. Consequently, workers face acute pressure to work in order to pay back loans, often laboring under conditions that citizens would reject.

H-2 workers are further discouraged from protesting abusive working conditions because their legal status in the U.S. is tied to their employment with the single, designated employer that sponsored their visas.⁵⁸ Reporting illegal labor practices means risking dismissal and losing legal status in the U.S.—perhaps the only opportunity to pay back loans or support a family.⁵⁹ In light of the risks, workers often choose to continue working without complaining.⁶⁰

Finally, many H-2 workers rely on seasonal work in the U.S. for their principle income, travelling to the U.S. on a yearly basis in order to support their families.⁶¹ Reporting abuses or even speaking up in their workplace about basic rights could endanger their chances of being rehired by their employer. Although retaliation against workers for filing a complaint or inquiring into their workplace rights is illegal, it is common practice among H-2 employers and their agents.⁶² Recruiters have been known to maintain “blacklists” of workers who are outspoken against mistreatment.⁶³

H-2 WORKERS ARE VULNERABLE TO TRAFFICKING

The current guestworker recruitment system makes workers vulnerable to human trafficking. Trafficking is any type of involuntary servitude or forced labor affecting men or women.⁶⁴

The U.S. Department of State recognizes debt bondage among migrant laborers as a form of human trafficking.⁶⁵

The H-2 program has produced situations of involuntary servitude and forced labor, both forms of human trafficking under the Trafficking Victims Protection Reauthorization Act.⁶⁶ H-2 workers may find themselves in situations of involuntary servitude or forced labor in which they are coerced to work.⁶⁷ Courts have interpreted “coercion” broadly, including “subtle psychological methods of coercion.”⁶⁸ The vulnerability of H-2

⁵⁸ See 20 C.F.R. § 655.35 (explaining that the employer must inform the worker that she must depart at the end of her contract or the DHS grace period, whichever is earlier, absent an extension.); see also 20 C.F.R. §655.22(f) (“Upon the separation from employment of H-2B worker(s) employed under the labor certification application, if such separation occurs prior to the end date of the employment specified in the application, the employer will notify the Department and DHS in writing of the separation from employment not later than 2 work days after such separation is discovered by the employer.”) *But see* 8 C.F.R. § 214.2(h)(2)(i)(D). In order for an H-2B worker to change employers, her new employer must file an I-129 and USCIS must approve the new petition. Practically speaking, the new employer must therefore establish all the requirements that the original petitioning employer did. Until the petition is approved, the H-2B worker may not begin work. The 2012 DOL H-2B regulations are currently stayed due to a temporary injunction issued by a federal district court in the Northern District of Florida in *Bayou Lawn & Landscape Services, et al. v. Hilda Solis, et al.* (3:12-CV-00183-MCR-CJK).

⁵⁹ *Id.*

⁶⁰ See Farm Labor Working Organizing Committee, *A State of Fear: Human Rights Abuses in North Carolina's Tobacco Industry* 38, 46 (2011). See also United States General Accounting Office, *H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers* at 68 (1997); see also Farmworker Justice, *Litany of Abuses* at 8 (2008); Colorado Legal Services, *Overworked and Underpaid: H-2A Herders in Colorado* at 23 (2010); *supra* note 43, at 31.

⁶¹ Many of CDM’s clients have worked multiple seasons in the U.S. on H-2 visas, often with the same employer. Employers usually maintain lists of preferred workers that they provide to their recruiting agent each year. See Juan Del Alamo Dep. *supra* note 24 at 15:16-22; see also Juan Del Alamo Dep. 69: 8-9 (January 23, 2007), *Olvera-Morales, et. al. v. Int'l Labor Mgmt Corp., et. al.*, 2008 U.S. Dist. LEXIS 27658 (M.D.N.C. 2008); Deposition of Elizabeth Whitley 51:13-15 (January 11, 2007), *Rivera et al. v. Brickman Grp. Ltd.*, No. 2: 05-cv-01518 (E.D. PA filed on April 1, 2005); Deposition of Daniel Bremer 17:25-18:1 (June 2, 2010), *Perez-Benites, et. al. v. Candy Brand, LLC., et. al.*, No. 1:07-cv-1048 (W.D. AK filed on June 7, 2007); Deposition of Ricardo Rodriguez, Jr. 44:6-9 (May 19, 2010), *Perez-Benites, et. al. v. Candy Brand, LLC., et. al.*, No. 1:07-cv-1048 (W.D. AK filed on June 7, 2007).

⁶² See, e.g., U.S. National Labor Relations Board Charge Against TexaScape Landscaping (July 14, 2008) (on file with CDM) (describing the retaliation charge leveled against employer by four H-2B workers who alleged they were threatened with discharge for participating in a protected, concerted activity). The NLRB issued a complaint against TexaScape, which resulted in a favorable settlement for the four workers, who had united in protest against a lack of breaks while working in the summer heat.

⁶³ See, e.g., survey numbers: 1548, 1309, 0080, 0081, 0082, 0083, 0086, 0111, 0137, 0140, 0141, 0145, 0171, 0050, 0054, 0072, 0076, 0077, 0078, 0079, 1574, 1565, 1598, and 1670 (on file with CDM).

⁶⁴ Trafficking Victims Protection Reauthorization Act of 2003, 22 U.S.C. § 7101 (2004).

⁶⁵ See U.S. Dep’t of State, *Trafficking in Persons Report* (2010) (“the attribution of illegal costs and debts on these laborers in the source country, often with the support of labor agencies and employers in the destination country, can con-

tribute to a situation of debt bondage. This is the case even when the worker’s status in the country is tied to the employer as a guestworker in the context of employment-based temporary work programs.”), <http://www.state.gov/documents/organization/142979.pdf>.

H-2 workers may fall victim to human trafficking when their employers or recruiters:

- lie to H-2 workers or to the U.S. government about the worker’s rate of pay;
- promise H-2 workers or the U.S. government that they will provide working conditions that are never provided;
- charge H-2 workers unlawful fees or fail to reimburse them for costs like visa fees and travel to the US;
- confiscate workers’ passports and other important identification or migration documents;⁶⁹
- physically confine workers to their place of work;
- threaten workers with deportation if they do not work or perform certain tasks.

These acts constitute trafficking under U.S. law when they amount to (1) a scheme, plan, or pattern that is intended to cause workers to believe that if they do not perform labor they or someone else will suffer harm or (2) an abuse or threatened abuse of law or the legal process.⁷⁰ U.S. courts are required to take into account a victim’s “special vulnerabilities” when evaluating degrees of coercion in cases of possible human trafficking.⁷¹ In the context of the H-2 programs, temporary workers face a power disparity in relation to their employers and recruiters that makes them particularly susceptible to involuntary servitude and forced labor.

Trafficked workers are often isolated, working in rural communities or for transient employers, making it extremely difficult for law enforcement and immigration authorities to identify these trafficking victims and to take action against the traffickers.

scheme, plan, or pattern intended to cause a person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (2) abuse or threatened abuse of law or the legal process.”); See also 18 U.S.C. §§ 1589(a) (1-2)(defining forced labor to include “force, threats of force, physical restraint, or threats of physical restraint to that

⁶⁶ See 22 U.S.C. § 7102(5) (defining involuntary servitude as “a condition of servitude induced by means of (1) any

person or another person” and “serious harm or threats of serious harm to that person or another person”).

⁶⁷ *Id.*

⁶⁸ *U.S. v. Bradley*, 390 F.3d 145, 150 (1st Cir. 2005); see also *United States v. Calimim*, 538 F.3d 706, 714 (7th Cir. 2008); See also *Shukla v. Sharma*, 2009 US Dist. LEXIS 90044, *33 (E.D.N.Y. Aug. 14, 2009).

⁶⁹ *U.S. v. Sabhnani*, 599



CASE STUDY: SAMUEL ⁷²

When a recruiter came to Manuel’s small town in Durango, a central-northern state in Mexico, offering job contracts in the U.S. as food vendors for an hourly wage of \$10.71/hour, he jumped at the opportunity. But what he found upon arriving in New York to work at Peter’s Fine Greek Food in 2010 was something far different than what he was promised. Samuel and 18 other workers on H-2B workers reported working 16 to 18 hour shifts at a wage rate of \$1 per hour. In addition, they had limited access to food and were forced to sleep in bug-infested trailers. As a result of these unsafe working and living conditions, workers became ill and had to visit the local emergency room. Threats of violating their visas and being deported kept the men working in these conditions. Federal authorities brought trafficking charges against the employer, but the charges were later dropped after parties arrived at a monetary settlement.

⁷² See Marnie Eisenstadt, *State Fair Vendor Abused Workers*, *The Post Standard* (April 19, 2011), http://www.syracuse.com/news/index.ssf/2011/04/vendor_abused_mexican_workers.html

F.3d 215, 245 (2d Cir. 2010) (a person may be liable for knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person either in the course of a violation of one of a number of statutes, including the forced labor and peonage statutes, or

with the intent to violate the same statutes, or for knowingly concealing immigration documents with intent to violate the forced labor or peonage statutes).

⁷⁰ Trafficking Victims Protection Reauthorization Act, *supra* note 64.

⁷¹ *U.S. v. Bradley*, 390 F.3d 145, 153.

Inadequate Regulations and Insufficient Enforcement

By subcontracting the recruitment process to third-party actors, U.S. employers do more than simply circumvent the logistical hassle of locating workers outside of the U.S. Employers may use the complicated recruitment supply chain to wash their hands of recruitment abuse, claiming ignorance of recruitment practices. The complex, multi-party relationships between employers and layers of subcontracted recruiters mean that the U.S. employer may not have contact with or even know about the individual that ultimately locates workers in Mexico. Recruiter-recruiter partnerships may leave no contract or payment history, which obscures the recruitment supply chain.

The complex, often informal nature of the recruitment supply chain is further complicated by the international nature of the dealings. Partnerships between U.S. employers and recruiters operating in Mexico limit the legal channels available to migrant workers and their advocates to seek redress for recruitment abuse. Although U.S. law prohibits certain activities like discrimination and retaliation by employers, passport confiscation, and charging visa, travel, or placement fees to workers, the responsible U.S. government agencies also claim they are unable to apply this law when those practices are committed outside U.S. territory.⁷³ Mexican law also prohibits many of these practices, but the Mexican government rarely intervenes in the recruitment of Mexican workers under the H-2 visa programs.⁷⁴

The U.S. government's failure to comprehensively monitor, regulate, or document the recruitment phase of the H-2 visa programs has meant that there is little information about recruiters and the recruitment industry available to researchers, advocates, U.S. employers who wish to comply with the law, or workers themselves. Because data about the H-2 programs is collected by various agencies, not standardized, and maintained in various locations instead of a single, centralized location, the little information that is available to the public is often difficult to access, conflicting, or incomplete.⁷⁵ Without comprehensive, accessible data about the diverse actors involved in the H-2 visa programs, workers, advocates, and well-meaning employers are severely limited in their ability to inform themselves about the recruitment industry or vet recruitment agencies.

⁷³ See changes to Requirements Affecting H-2B Nonimmigrants and Their Employers, 73 Fed. Reg. 78,104, 78,125 (Dec. 19, 2008), 73 Fed. Reg. 78,037, 78,113 (Dec. 19, 2008) (explaining limitations on DHS and DOL authority to regulate recruiters in a foreign country); see also *Olvera-Morales v. Sterling Onions*, 322 F. Supp. 211 (N.D.N.Y. 2004) (denying the hiring agency's motion to dismiss alien's employment discrimination action based on gender, where agency reserved H-2A visa positions, which provide better pay and benefits, for men). But see *Reyes-Gaona v. NCGA*, 250 F.3d 86 (4th Cir. 2001) (holding that the Age Discrimination in Employment Act ("ADEA") did not apply to a Mexican national who applied in Mexico for a job in the United States).

⁷⁴ See *supra* note 23.

⁷⁵ See *supra* notes 1 and 10.



A worker displays his H-2 visa.

PHOTO: GRACIA CUZZI

POLICY PROPOSALS



The U.S. Congress, the U.S. Department of State, the U.S. Department of Labor, the U.S. Equal Employment Opportunity Commission, the U.S. Department of Homeland Security, the National Labor Relations Board and other federal agencies should coordinate to protect internationally recruited workers’ interests. Further, the U.S. government should work in concert with the Mexican government and other foreign governments to ensure that H-2 workers from their countries are protected.

Finally, the U.S. government should work in collaboration with migrant advocacy organizations to ensure that worker experiences are reflected in reform efforts, that investigations into worker abuses are expediently investigated and remedied and that unscrupulous recruiters and employers are held accountable for their actions.

The U.S. Congress should overhaul the H-2 guestworker programs to protect workers from recruitment abuse in their countries of origin. Specifically, Congress should:

- Enact legislation to hold employers strictly liable for all recruitment fees charged to workers.
- Extend federally funded legal services to all H-2 workers.⁷⁴
- Create a public recruiter registry to increase transparency in the recruitment process.
- Amend applicable anti-discrimination laws to clearly articulate the available protections for internationally recruited workers, both during the recruitment process and while employed in the U.S.
- Enact retaliation protections for workers who report recruitment abuse.
- Require that all job orders be treated as enforceable contracts.

The U.S. Department of Labor, the U.S. Department of Homeland Security, the U.S. Department of State, the National Labor Relations Board, and the U.S. Equal Employment Opportunity Commission should coordinate to:

- Forbid the charging of recruitment fees by U.S. employers, their agents, or associates or subcontractors of the employer’s agents and investigate the charging of illegal fees.
- Vigorously investigate and litigate claims of abuse and discrimination against H-2 workers, even after workers have returned to their countries of origin at the expiration of their work visas.
- Defer action or grant other immigration relief to H-2 whistleblowers still in the U.S. so that they can stay in the country to aid in the investigation and prosecution of their employers, and issue short-term visas to workers who have already left the U.S. so that they can return to participate.
- Publish information about H-2 employer petitioners in searchable form on the Internet, including information on the recruiters that they used.
- Provide pre-departure and post-arrival orientation upon arrival for temporary workers, including written and oral Know-Your-Rights trainings and contact information for available legal services.
- Create an expedited investigation process for H-2 workers to ensure that all witness testimony and evidence is preserved given the temporary nature of their visas.

⁷⁴ Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504, 110 Stat. 1321, 1350 § 504(a)(11)(1996) (listing the categories of non-citizens who may receive LSC services, but not including H-2B workers); Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, § 540, 121 Stat. 1844, 1934 § 504(a)(11)(E) (2008) (granting LSC-funded nonprofit legal aid programs the ability to assist H-2B forestry workers).

The U.S. Department of Labor should:

- Require through regulations that employers reimburse workers for all visa and travel costs during the first week of work.
- Require all Temporary Labor Certifications to include an hourly wage rate.
- Forbid non-end-beneficiary employers (i.e. staffing agencies) from petitioning for H-2 workers.
- Require that all job orders be enforceable contracts.
- Create a public recruiter registry. As a requirement for entry in the registry, recruiter agents would supply the Department of Labor with yearly activity reports. Yearly reports would include: contact information, including all branch offices, a list of other recruiter agents with whom they collaborated, a list of employers with whom they placed workers, a description of services offered, and a list of regions from where they recruited (if they have direct contact with workers in their home countries). Recruiter agents would be required to participate in random audits.
- Require that employers use only recruiters registered in the public recruiter registry and that they identify their recruiter(s) on their H-2 petitions. If a random audit found that an employer failed to list a recruiter agent, a fine would be applied to the employer. If subsequent audits found that the employer consistently failed to adhere to this requirement, the Department of Labor would suspend the employer from petitioning for Temporary Labor Certifications.

- Publish a list of employers who have violated recruitment and/or labor regulations.
- Require U.S. employers to file end-of-year reports (including documentation of reimbursement of travel and visa expenses incurred by workers) on their participation in the H-2 program.
- Conduct random audits of workplaces that employ H-2 workers.
- Create a specific hotline for workers on H-2 visas, available in Spanish and English.
- Broaden U-visa certification to include workers who have suffered labor recruitment abuses and have returned to Mexico at the expiration of their work visas.

The U.S. Department of Homeland Security should:

- Streamline the humanitarian parole process to facilitate participation of H-2 workers in civil and criminal actions against recruiters and employers for rights violations.
- Create clear consular processing guidelines for individuals eligible for U-visas.

The U.S. Equal Employment Opportunity Commission should:

- Publish guidance on the coverage of internationally recruited workers by Title VII, ADEA, ADA and all other applicable laws.
- Create a targeted outreach plan aimed at educating H-2 and other internationally recruited workers about their rights against discrimination.
- Sign U-visa certifications for eligible workers.

* Additional recommendations available from the author.

Conclusion

Each year more than one hundred thousand workers are affected by the flawed H-2 programs' recruitment system. These workers are often lured to the U.S. by lies and charged illegal recruitment fees and high interest on their loans. Many would-be workers are also defrauded wreaking economic harm in home communities. The system is broken. The U.S. government must address the failed recruitment system before expanding the H-2 visa programs. Failing to address recruitment flaws will result in continued abuse and exploitation of workers during recruitment, in migration, and while they are employed in the U.S. In order to protect these workers, the U.S. government must create a transparent and accountable recruitment system. Once this system is established, the government must enforce the protections. Only then will these workers stand a chance of avoiding abuse while working in the U.S. with H-2 visas.

Acknowledgements

We would like to thank the John D. and Catherine T. MacArthur Foundation for providing us with resources to embark on this important project. We would also like to thank the Solidarity Center for its generous contribution. The foundations that provided general support that made this project possible are as follows: the Public Welfare Foundation, the New World Foundation, the Ford Foundation, the General Service Foundation, and the Open Society Foundations.

CDM acknowledges the following current and former staff and volunteers who have contributed to this project: A special thank you to Sarah Farr and Julia Coburn for their coordination of research and investigation; Brenda Andazola Acosta, Chris Benoit, Kathryn Brown, Maria Sofía Corona, Gracia Cuzzi, Alissa Escarce, Victoria Gavito, Jennifer Girard, Lelia Gómez, Adriana González, Catherine González, Laura Gutierrez, Hiba Hafiz, Jesse Hahn, Ingrid Hernandez Ardieta-Boix, Megan Horn, Jessica Killeen, Coreen Kopper, Lilián López Gracián, Kristin Greer Love, Kate MacCormack, Juan Antonio Maldonado Contreras, Lisette Martinez, Jonathan Micah-Jones, Rachel Micah-Jones, Nicholas Marritz, Elizabeth Mauldin, Rachel Nathanson, Charlotte Noss, Carson Osberg, Patricia Pichardo, Mónica Ramírez, Sarah Rempel, Sarah Rich, Rebeca Rodriguez Flores, Lindsey Ryan, Zafar Shah, Silas Shawver, Elizabeth Stephens, Jessica Stender, Justin Storch, Miriam Tauber, Adelina Vasquez Cedillo, James Wiley, Elizabeth Wilkins, and Jose Antonio Zapata Vega.

CDM thanks the leaders of the Comité de Defensa del Migrante for their input in the survey and identification of workers.

Thank you to the following individuals who have assisted us with this project, including Mary Bauer, Ben Davis, Anna Fink, Jennifer Gordon, Joseph Levin, Patricia Pittman, Jayesh Rathod, and Matthew Rubin.

The investigation began as a follow-up project to the Binational Labor Justice Initiative; we would like to thank our colleagues from the initiative including California Rural Legal Assistance, the Farm Labor Organizing Committee, FUNDAR, Global Workers Justice Alliance, the New Orleans Center for Racial Justice, el Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC), and the Solidarity Center for their input into the survey design.

Several organizations and groups also made this report possible, including American University Washington College of Law, Columbia Law School, FUNDAR, Texas Rio Grande Legal Aid, Southern Migrant Legal Services, Legal Aid Justice Center, Central Virginia Legal Aid Society, Legal Aid of North Carolina, South Carolina Legal Services, Georgia Legal Services, Florida Legal Services, and Florida Rural Legal Services.

Thank you to Susan Kolb and Steve Globerman for their technical assistance. And thank you to Kristen Spilman for the design of the report.

We would also like to thank our Board members for their insight, wisdom and continued support, including Ana Avendaño and Sarah Paoletti for their helpful edits, as well as Rick Mines, Elizabeth O'Connor, and Cynthia Rice. In addition, we thank all of our supporters.

Finally, and above all, we thank the courageous men and women who travel to the U.S. as migrant workers to fill critical jobs that help make the U.S. economy and our country stronger.

About the Author

Centro de los Derechos del Migrante, Inc. (Center for Migrant Rights, or CDM) is a transnational migrant workers' rights organization that supports migrant worker organizing and advocacy on both sides of the US-Mexico border and works to remove the border as a barrier to justice for migrant workers who experience workplace violations, exploitation and abuse during recruitment in Mexico and while living and working in the United States. CDM fights for a world where migrant workers' rights are respected and laws and policies reflect their voices. Through education, outreach, and leadership development; intake, evaluation, and referral services; litigation support and direct representation; and policy advocacy, CDM supports Mexico-based migrant workers to defend and protect their rights as they move between their home communities in Mexico and their workplaces in the United States.

Since opening its doors on Labor Day 2005, CDM has met with more than 7,000 people in more than 100 communities in 23 states across Mexico to ensure that migrants know their rights before they cross the border.

CDM has also collaborated with workers and allies to recover more than six million dollars in unpaid wages and other compensation and to establish important legal precedents and policies to protect migrants all along the migrant stream. CDM has supported the establishment and growth of the *Comité de la Defensa del Migrante* (Migrant Defense Committee), a leadership development initiative of more than 60 community-based leaders who organize and empower migrant workers to defend themselves and educate their co-workers.

CDM's publications include *Monitoring International Labor Recruitment: A Cross-Visa Exploration of Regulatory Changes*, *Picked Apart: The Hidden Struggles of Migrant Worker Women in the Maryland Crab Industry* and *Money Transfers to Mexico: A Manual Examining the Transfer of Funds from U.S. Advocates to Clients in Mexico*.

CDM's binational, multilingual staff and geographic reach have grown in response to increasing needs for its advocacy and services. Today, with headquarters in Mexico City, and two satellite offices in Juxtlahuaca, Oaxaca and Baltimore, Maryland, CDM has established itself as a powerful transnational agent of change.



Centro de los Derechos del Migrante, Inc.

MEXICO CITY OFFICE

Zamora 169-4
Colonia Condesa
CP 06140

OAXACA OFFICE

Calle Libertad 109
Colonia Centro
CP 69700
Santiago Juchitahuaca, Oaxaca

BALTIMORE OFFICE

519 N. Charles Street,
Suite 260
Baltimore, MD 21201