

H-2A: The Agricultural Guest Worker Program

"When an alien resides with you in your land, you shall not oppress the alien. The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself, for you were aliens in the land of Egypt."

Leviticus 19:33-34



Farm workers are the backbone of our food system I

In order to feed the country, an estimated 2 million farm workers labor in the fields across the United States, **handpicking the vast majority of fruit and vegetable crops** produced here and supporting our multi-billion dollar agricultural industry.



Agricultural work is **one of the most dangerous and least adequately compensated** jobs in the United States.

For their demanding physical labor, farm workers earn an annual average of between **\$10,000 to \$12,499** individually and **\$15,000 to \$17,499** per family.

Farm workers are the backbone of our food system II



- Farm workers are **excluded from important national labor protections** that protect workers in other economic sectors.
- They face health problems resulting from **pesticide exposure, deplorable housing conditions, workplace abuse**, among other causes.
- Many farm worker women experience **sexual harassment and discrimination**.

Who are our nation's farm workers?

- Farm workers are U.S. citizens, legal permanent residents, seasonal laborers on special guest worker visas (H-2A workers), or undocumented workers.
- **The vast majority of farm workers** –78% according to the most recent National Agricultural Workers Survey– **are foreign-born** and crossed a border to get here.
- It is estimated that **at least 6 out of 10 of our country's farm workers are undocumented.**



Why would somebody leave their home to come to the United States?



Coming to the United States is a difficult process through which **people incur debt, leave their families, and live in isolation under strenuous conditions.** Why would somebody do this?

Generally, people undergo such harsh conditions because they have no choice.

There are different **push and pull** factors that encourage people to come to the United States...

The Roots of Migration



"I migrated to the United States because I could not find a job here in Mexico, and because the little money that my family earned was not enough to support my children or to pay for our most pressing needs. Leaving my family was very painful, but I wanted to be able to provide for them. I wanted the American Dream."

Guadalupe Hernandez, Mexico

Push and Pull Factors

<u>Push Factors</u> (conditions that drive people to leave home)	<u>Pull Factors</u> (conditions that attract people to a new country)
<ul style="list-style-type: none">• Poverty or economic hardship	<ul style="list-style-type: none">• Potential for better wages
<ul style="list-style-type: none">• Unemployment, lack of opportunity	<ul style="list-style-type: none">• Potential job opportunities
<ul style="list-style-type: none">• War or political unrest	<ul style="list-style-type: none">• Political stability
<ul style="list-style-type: none">• Environmental factors (drought, crop failure, flooding, natural disasters)	<ul style="list-style-type: none">• Fertile land, less risk of natural disaster, better infrastructure
<ul style="list-style-type: none">• Lack of services or basic amenities	<ul style="list-style-type: none">• Better service provision (healthcare, education, etc.)

What causes the push factors?

- Government corruption
- Social services are not a government priority
- Low investment in research and education; science and technology
- Ingrained social inequalities
- Racism
- Country's international debt



- Subsidies for multinational corporations that undermine small or local producers
- International agreements/treaties that benefit a minority of people and corporations

North American Free Trade Agreement (NAFTA)

Paradoxically, workers from other countries are sometimes forced to migrate as a direct result of U.S. foreign policy.

One of many communities affected by NAFTA is Mexico's coffee farming community.

The state-owned Mexican Coffee Institute (INMECAFE), which provided small producers with credits, technical assistance, stable prices, and export markets, was **shut down as part of the agricultural reforms preceding NAFTA.**

With the dissolution of INMECAFE, small-scale farmers could no longer compete with big producers and had little choice but to migrate or to sell their harvest to local middlemen who would buy the coffee at rock-bottom prices and then sell it abroad for a profit.

Source: Witness for Peace



Migration from Mexico's coffee growing regions is high, forcing families to depend on contracted labor to replace family members who have left to find work in the United States or other places.

The Right to Stay Home

If the root causes of migration are addressed, people could **stay home** and provide for their families. The results would be:

- Intact family structures and communities
- Preservation of local and indigenous cultures
- Better living and working conditions
- More equitable societies
- Less outsourcing of jobs in developed countries



(Image source: familiasocializacioncultura.blogspot.com)

**Here are some things that
you can do to support
people's right to stay home...**

The Role of U.S. Foreign Policy I

U.S. foreign policy contributes to the political, social, and economic instability of countries that people migrate from. As U.S. citizens it is our responsibility to:

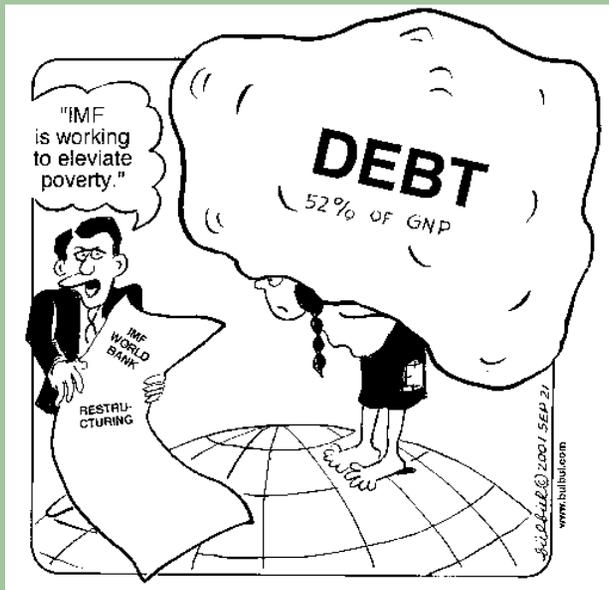


Image Source: <http://www.bulbul.com/imf/IMF.gif>

- **Advocate loan forgiveness for poor countries.** These loans are usually given by international financial institutions such as the World Bank or the International Monetary Fund (IMF).
 - Decisions in the World Bank and the IMF are made by a board of directors which represents 185 countries. However, the voting power of each country is determined by the nation's financial contribution to the institution. The United States holds 17% of the voting power (just enough for veto power on a majority vote decision requiring 85%).
 - The president of the World Bank is almost always from the United States.
 - Despite the tremendous effects on their economies and societies developing countries hold little power within the institutions.

The Role of U.S. Foreign Policy II

As U.S. citizens it is our responsibility to (cont.):

- **Advocate for the elimination of Structural Adjustment Programs (SAPs)** which destroy social policies that protect the most vulnerable citizens.

SAPs are the conditions imposed on developing countries by International Financing Institutions (IFIs) in order for these countries to receive aid in the form of loans or lower interest rates on existing loans.

Cutting spending on basic services (education, health, etc.), privatizing state-owned enterprises, imposing laws more favorable to foreign investors, lifting import/export restrictions, and focusing the economy on exports are all examples of the conditions imposed by IFIs using SAPs.



Image Source: <http://www.goolgule.com/reexamining-structural-adjustment-programs/>

“The World Bank and others stimulate borrowing by the rich and powerful in the poor countries, the risky loans yield high returns, and when the system crashes, structural adjustment programs transfer the costs to the poor, who never borrowed the money in the first place.”

- Noam Chomsky

The Role of U.S. Foreign Policy III

As U.S. citizens it is our responsibility to (cont.):

- **Hold U.S. corporations accountable** so that they have sound environmental, social, and business practices abroad and so that they offer good working conditions, wages, and benefits to all employees.
- **Support democratically elected governments** that encourage political stability in other countries.



The Role of U.S. Foreign Policy IV

- Make sure that our trade agreements are **FAIR** to all countries involved.

These agreements must protect workers' rights, the environment, and the autonomy of indigenous communities. They must also include fair immigration policies and have equivalent protections and subsidies for all parties involved.



The Role of U.S. Foreign Policy V

As U.S. citizens it is our responsibility to
(cont.):

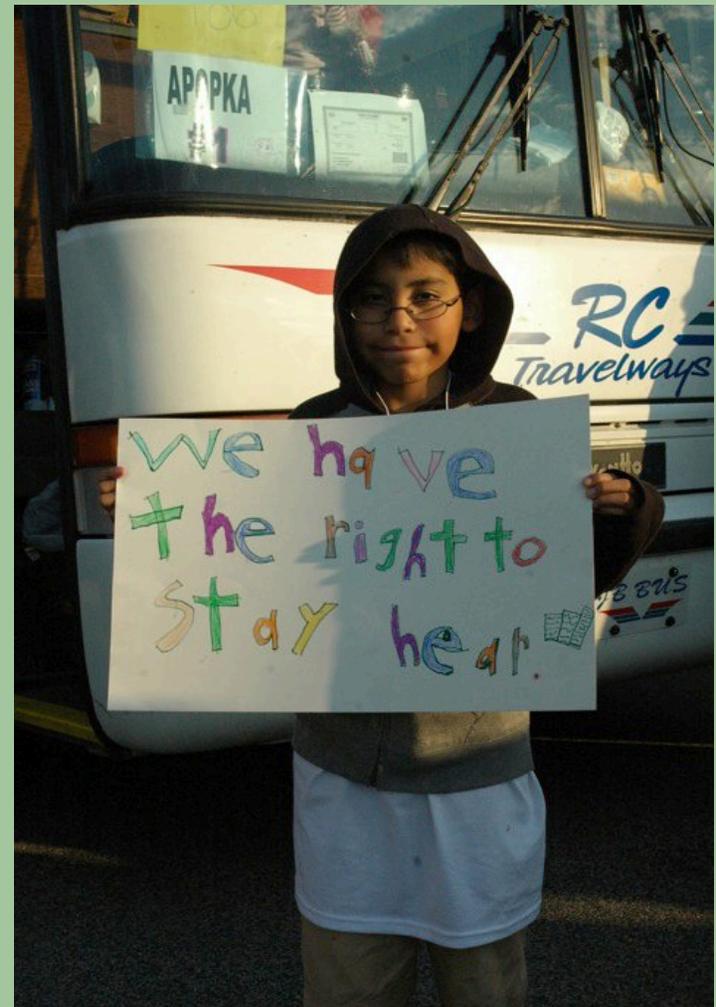
- **Advocate for fair immigration reform that prevents the separation of families, halts the criminalization of immigrants, and provides safety to migrants along their journey.**

Immigration laws in Latin America are now stricter than ever due to the pressure from the U.S. government to hinder immigrants BEFORE they get to U.S. soil. Our governments must realize that people will move across borders just as capital does.



The Role of National Policy: Comprehensive Immigration Reform

- There are currently around **12 million undocumented** people in the United States.
- There is a strong need for **comprehensive immigration reform** in order to provide those already in the country with a pathway to citizenship.



Current Options for Migration I



Image source: usa.immigrationvisaforms.com

Until we address the roots of migration people will continue to migrate to the United States.

There are three ways to become a citizen of the United States.

1. To be born in the United States
2. To have at least one parent who is a U.S. citizen
3. To be naturalized (after 5 years of legal permanent residency)

Current Options for Migration II

There are 5 ways to become a legal permanent resident:

- 1. When an immediate family member sponsors you**
 - Citizens of countries with a high number of migrants living in the United States have longer waiting periods (for example; Mexico, India, Philippines, etc.). Waiting periods can be up to 25 years.
 - Citizens can sponsor more relatives than legal permanent residents.



Current Options for Migration III



Image sources: immigrationnavigator.com and <http://article.wn.com//>

2. When an employer sponsors you

- **H1 Visas:** For “skilled” labor (for example, computer engineers). Workers are allowed to change employers.
- **H2 visas:** For “unskilled” labor (for example, farm workers). Workers are not allowed to change employers.
 - **H2A** - agricultural workers (planting and harvesting crops)
 - **H2B** - non-agricultural workers (landscaping, construction, forestry-planting or cutting, hotel cleaning staff)

Current Options for Migration IV

3. When you are fleeing prosecution and apply for political asylum or refugee status

- The burden of proof is on the applicant and their prosecution must be based on their identity (nationality, religion, political ideology, sexual orientation, etc.).
- The applicant must prove that their government is unwilling or unable to protect them.

Many people apply for political asylum or refugee status after becoming victims of war, receiving death threats, or being prosecuted because of their ideas, religious beliefs, or gender identities.



Image source: keprionline.blogspot.com

Current Options for Migration V



4. When you win the diversity lottery

- The lottery was designed to increase the diversity of the U.S. population by granting documents to people from countries with a small number of people living in the United States.
- Citizens of countries with a high number of migrants living in the United States are not allowed to participate (Mexico, China, India, etc.).
- The requirements to participate are a high school diploma, computer skills, and some type of labor skills.

Current Options for Migration VI

5. Other types of visas

- **Temporary protected status:** temporary immigration status for people whose countries are in war or have suffered a recent natural disaster
- ***T-Visas** allow certain victims of human trafficking to remain temporarily in the United States if they assist law enforcement and testify against the perpetrators.
- ***U-Visas** give victims of certain crimes temporary legal status and work eligibility for up to 4 years.
- ***VAWA** allows battered immigrants to claim temporary visas when they are abused by a U.S. citizen.



On January 2010, the DHS granted TPS to Haitians in order to assist Haiti after a devastating earthquake
Image source:flimmigrant.wordpress.com

***These visas are important because farm workers are often targets of crimes, including human trafficking and modern day slavery.**

Modern Day Slavery/Human Trafficking

Why are farm workers targets of crime, including modern day slavery and human trafficking?

- They earn poverty wages.
- Many do not speak English.
- Many are recent immigrants.
- Most live far away from their families and friends.
- Many are day laborers.
- Many are undocumented.
- Many are migrant workers (they travel from state to state working in different crops).
- They are often isolated.
- They are not entitled to many labor benefits.



- Enforcement of laws concerning farm workers is poor.
- Farm work is dangerous.
- Many farm worker conditions today are the equivalent of a "19th century plantation-style" model.

Case Study: U.S. vs. Ronald Evans

Operating in Florida and North Carolina, Ron Evans recruited **U.S. citizens** from homeless shelters across the Southeast, with promises of good jobs and housing.

In Palatka, FL and Newton Grove, NC labor camps, the Evans deducted rent, food, crack cocaine, and alcohol from workers' pay, holding them “**perpetually indebted.**” The Palatka labor camp was surrounded by a chain link fence topped with barbed wire and a No-Trespassing sign.

The Coalition of Immokalee Workers (CIW) and a Miami-based homeless outreach organization began the investigation and reported the case to federal authorities in 2003.

In 2007, employer Ron Evans was sentenced to **30 years in federal prison** for drug conspiracy, financial re-structuring, witness tampering, and other charges. Jequita Evans was sentenced to 20 years, and Ron Evans Jr. to 10 years.

Case Study:

Smith v. Bulls-Hit Ranch and Farm

In 2012 Farmworker Justice and other organizations achieved a settlement with another grower in the same region of North Florida. Thomas R. Lee, owner of Bulls-Hit Ranch and Farm, awarded back pay to three workers named in the lawsuit for the time they were employed and agreed to reform other practices.

Workers were picked up at Jacksonville homeless shelters and promised jobs on a potato farm. The contractor took the workers to an **overcrowded camp** where they lived in **decrepit housing** and were supplied with **illegal drugs**. Instead of paying the men directly, **deductions were made for meals, housing, and the drugs which they were supplied with on credit, by dealers at the camp.**

Bulls-Hit took advantage of the workers' drug dependence to provide the farm with "a compliant and low-cost workforce", according to Farmworker Justice.

Bulls-Hit had been sued in 2004 for using the same labor practices with a different contractor.

Case Study: U.S. vs. Ramos

In 2004, Ramiro and Juan Ramos were sentenced to **15 years each in federal prison** on slavery and firearms charges and were forced to forfeit over \$3 million in assets.

The men, who had a workforce of over 700 farmworkers in the citrus groves of Florida and North Carolina combined, threatened workers with death if they tried to leave, and pistol-whipped and assaulted -- at gunpoint -- passenger van service drivers who gave rides to farmworkers leaving the area.

The case was brought to trial by the DOJ after two years of investigation by the CIW.



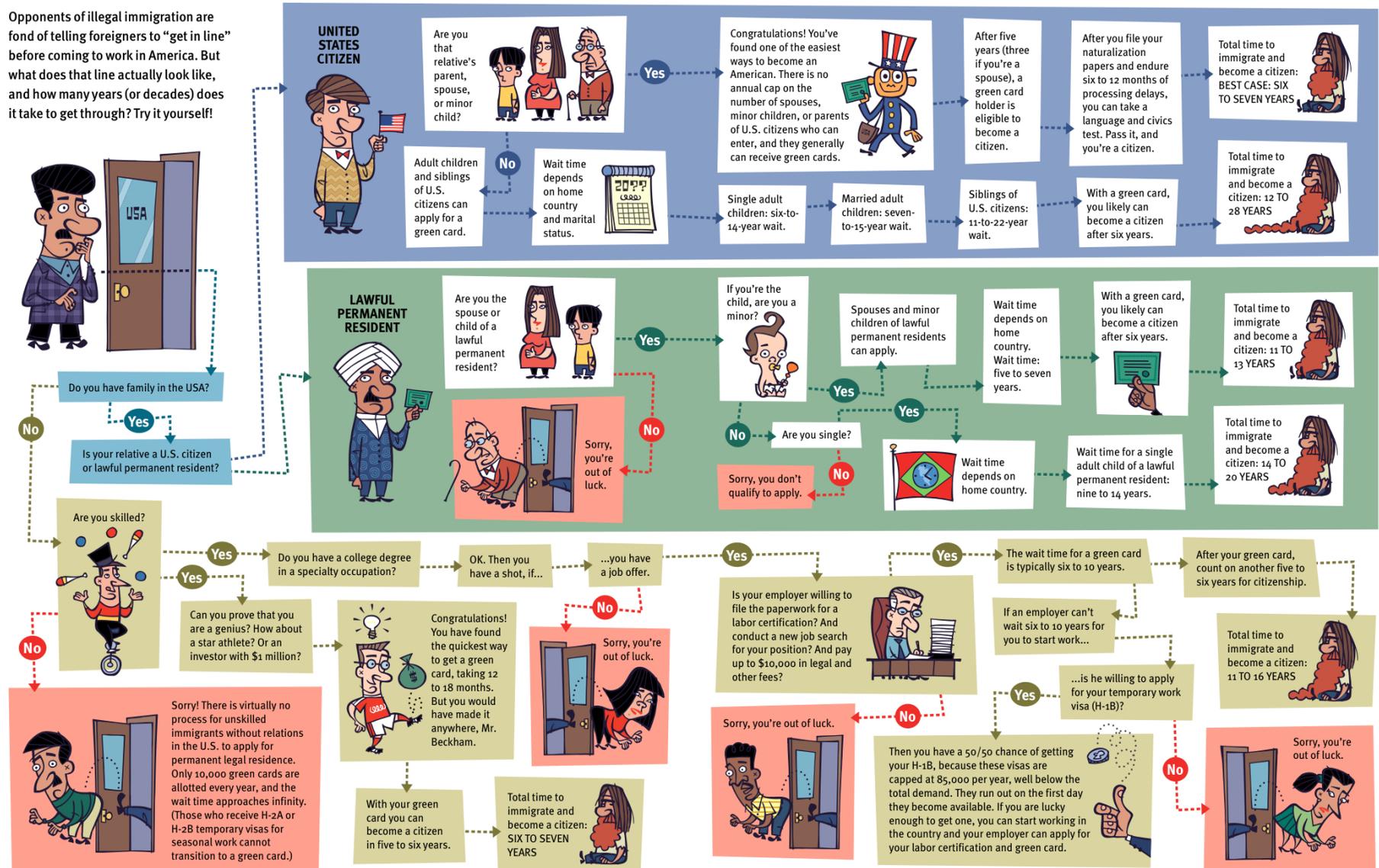
Many modern day slavery cases and human trafficking cases are never prosecuted.

Some of the victims of these abuses could qualify for a T-visa.

What Part of Legal Immigration Don't You Understand? *Mike Flynn and Shikha Dalmia*

Illustrated by Terry Colon

Opponents of illegal immigration are fond of telling foreigners to "get in line" before coming to work in America. But what does that line actually look like, and how many years (or decades) does it take to get through? Try it yourself!



(Flynn is director of government affairs and Dalmia is a senior policy analyst at Reason Foundation. This chart was developed by Reason Foundation in collaboration with the National Foundation for American Policy.)

The H-2A Program I

- **H-2A is a seasonal agricultural visa** that allows employers to hire workers from abroad on a short term basis as non-immigrant “guest workers.”
- H-2A workers make **up less than 2%** of the total U.S. farm worker population. However, this number grows every year.
- In order to hire guest workers, employers must:
 - Meet certain wage and working conditions
 - Prove there is a shortage of U.S. workers
 - Demonstrate that the job is temporary



The H-2A Program II

- The U.S. has had a long history of guest worker programs.

In general, we tend to **import workers when we need them**, for example during labor shortages or during wars.

- The earlier version of the H-2A program, called the **Bracero program**, was terminated because of the mistreatment of workers.

Mexican Workers Wanted in October

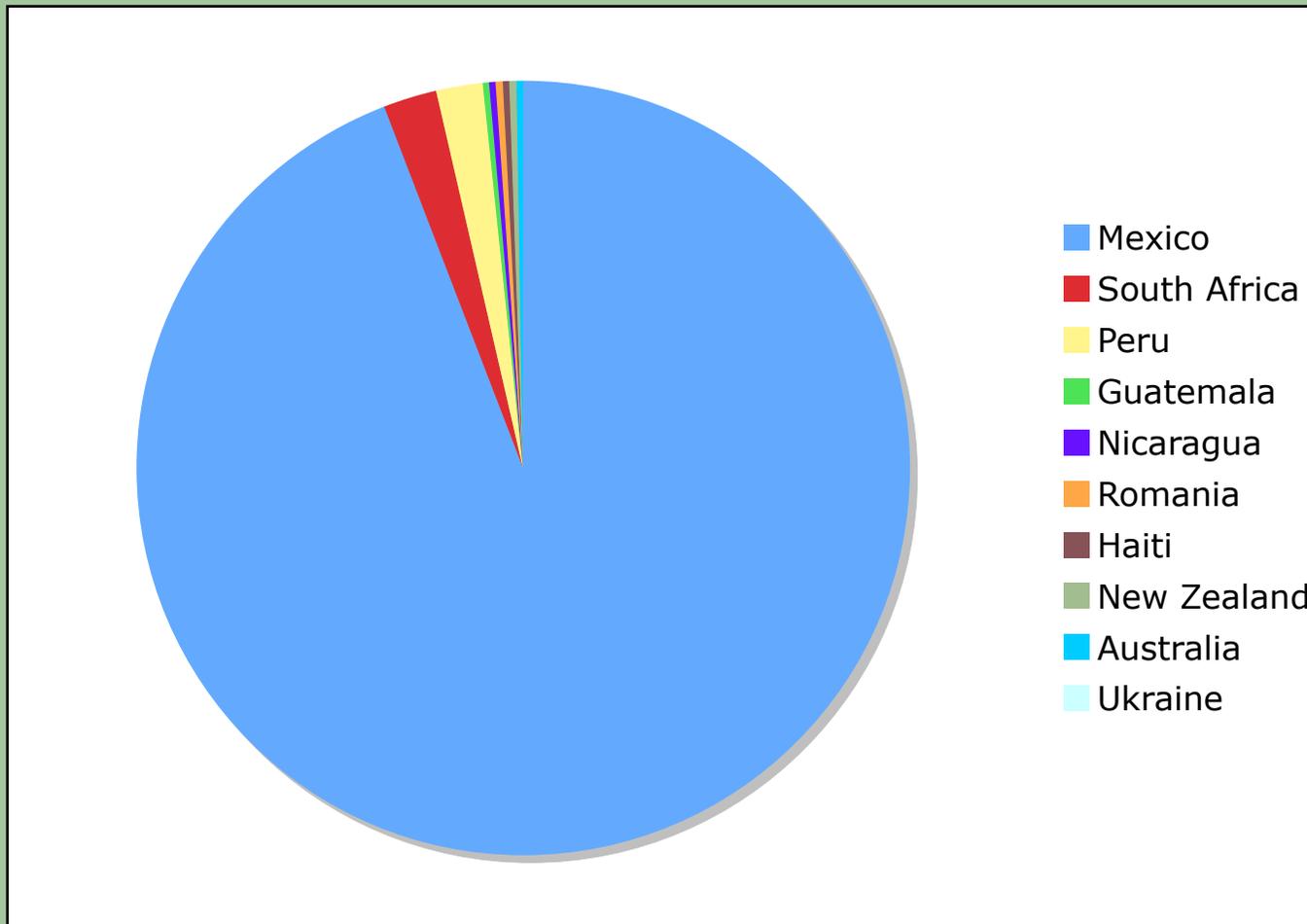
Farmers and orchardists in Washington state have placed orders for approximately 6000 imported Mexican workers for the month of October, according to reports sent to

Figure 14. A description of the demand for Mexican laborers (Source: Northwest Farm News, September 9, 1943).

- **The current H-2A program is controversial.** Although the protections, benefits, and working conditions for the workers should be improved, it does provide workers with a legal pathway to work in the United States. It also provides the agricultural industry with a much needed workforce.

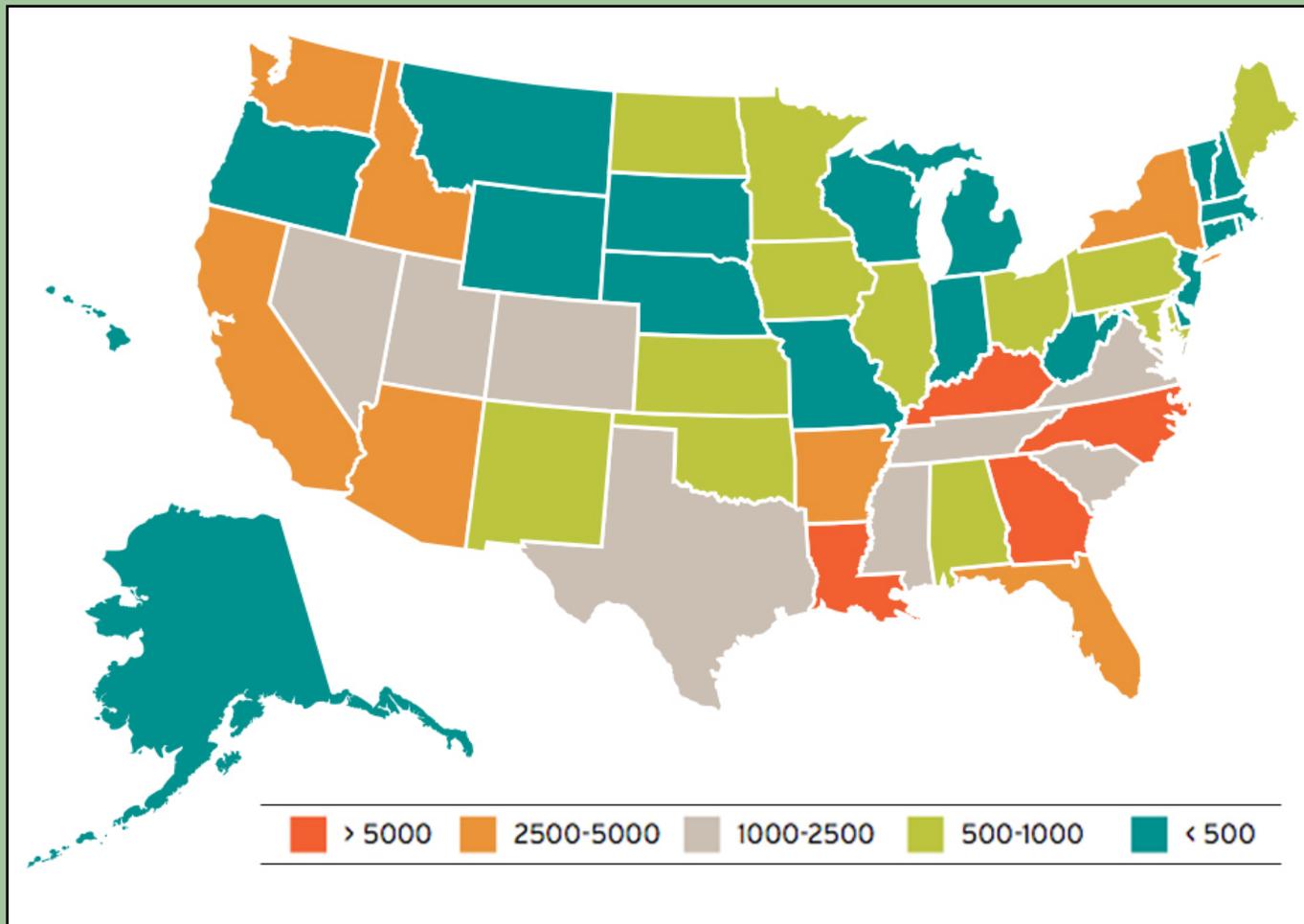
To learn more, visit nfwfm.org for a timeline of agricultural labor in the United States.

Where do H-2A workers come from?



In 2011, the DOL certified about 68,000 H2A worker positions

Where do they go?



Map of H-2A Workers; Source: Farm Worker Justice: “No Way to Treat a Guest” 2010

Who employs H-2A workers?



The employment of H-2A workers depends on many factors, including what crops are being harvested and the scale of the operation.

The most likely users of H-2A labor are:

- Full-time growers
- Large farms
- Farms earning total cash receipts of at least \$250,000

H-2A workers are most likely to pick:

- Tobacco
- Apples
- Sweet potatoes
- Tomatoes
- Nursery stock (ferns, flowers, etc.)

The largest concentration of H-2A employers is in the southeastern United States.

Benefits for Growers who Employ H-2A Workers

- **Choosing the ideal demographic:** U.S. anti-discrimination laws do not apply to foreign workers, so growers can choose their ideal workforce- usually young, single men.
- **Tax Exemption:** Employers don't have to pay certain taxes for guest workers (Social Security, unemployment) that they do have to pay for U.S. workers.
- **Avoiding extra demands and benefits:** Employers can reject U.S. workers who seek higher wages or extra benefits (like paid sick days) in favor of a guest worker who accepts the original job offer terms.
- **Lower Wages and Working Conditions:** H-2A workers provide a low-cost and productive labor force. H-2A workers accept pay and working conditions that U.S. workers cannot accept because of the high cost of living in the United States.
- **A stable work force.**

Once an employer hires H-2A workers, they are unlikely to return to hiring U.S. workers.

Before recruiting guest workers, employers must prove that:

1. There are not enough qualified, willing & able U.S. workers available.

- Through the **50 Percent Rule**, the employer must give the job to any eligible U.S. worker who applies, until half of the time of the work contract is over.
- The employer must **actively recruit U.S. workers**, including advertising in a local newspaper on two separate days (and one must be a Sunday).

2. Employing H-2A workers will not adversely affect wages and working conditions of U.S. workers doing similar jobs.

- The employer **can't impose any restrictions** on U.S. workers that do not apply to H-2A workers.

Hiring H-2A Workers I

- Employers determine the need for H-2A workers and demonstrate that they have outreached to domestic workers (job listings, recruitment).
- The employer sends an application to the U.S. State Department.
- The application is processed. The employer is notified if the application has been approved.
- The employer talks to the recruiter in the sending country while continuing to try to recruit workers domestically.
- The recruiter finds workers and helps them process their visas.
- Workers come to United States.

Hiring H-2A Workers II

The employer determines the wage rate that they will pay. It must be the highest out of the following:

A) Prevailing hourly wage or piece rate

Piece rate: pay based on how many buckets or bags are picked of a particular crop. See piece rates of Washington apples below.

WAGE REPORTING AREA: CH-53-06 Eastern

Golden Apple, Harvest- Strip Picking, Medium Density, Non-trellised	\$17.00 Per Bin (47 inch X 47 inch X 24 1/2 inch)	02/18/2010
Pink Lady Apple, Harvest - Strip Picking, Medium Density, Trellised	\$17.00 Per Bin (47 inch X 47 inch X 24 1/2 inch)	02/18/2010
Braeburn Apple, Harvest - Strip Picking, Medium Density, Non-trellised	\$17.00 Per Bin (47 inch X 47 inch X 24 1/2 inch)	02/18/2010
Red Delicious Apple, Harvest - Strip Picking, Low Density, Non-trellised	\$15.00 Per Bin (47 inch X 47 inch X 24 1/2 inch)	02/18/2010
Fuji Apple, Harvest - Strip Picking, Low Density, Non-trellised	\$22.00 Per Bin (47 inch X 47 inch X 24 1/2 inch)	02/18/2010
Gala Apple , Harvest - Strip Picking, Medium Density, Trellised	\$20.00 Per Bin (47 inch X 47 inch X 24 1/2 inch)	02/18/2010
Bartlett Pear, Harvest	\$17.00 Per Bin (47 inch X 47 inch X 24 1/2 inch)	12/09/2009
D'Anjou Pear, Harvest	\$17.00 Per Bin (47 inch X 47 inch X 24 1/2 inch)	12/09/2009
Red Cherry, Harvest	\$5.00 Per 30 Pound Lug (24 inch X 16 inch X 7 inch)	11/27/2009
Yellow Cherry, Harvest	\$5.00 Per 20 Pound Lug (16 inch X 10 inch X 8 inch)	11/27/2009
Apples, Thinning	\$8.75 Per Hour	10/16/2009
Apples-Pink Lady, Harvest	\$20.00 Per Bin (47 X 47 X 24½)	02/26/2008
Apples-Braeburn, Harvest	\$15.50 Per Bin (47 X 47 X 24½)	02/26/2008
Apples-Fuji, Harvest	\$23.60 Per Bin (47 X 47 X 24½)	02/26/2008
Apples-Red Delicious, Harvest	\$15.00 Per Bin (47 X 47 X 24½)	02/26/2008
Apples-Golden, Harvest	\$17.00 Per Bin (47 X 47 X 24½)	02/26/2008
Apples-Gala, Harvest	\$20.00 Per Bin (47 X 47 X 24½)	02/26/2008

Hiring H-2A Workers III

The employer determines the wage rate that they will pay. It must be the highest out of the following (cont.):

B) Federal or state minimum wage

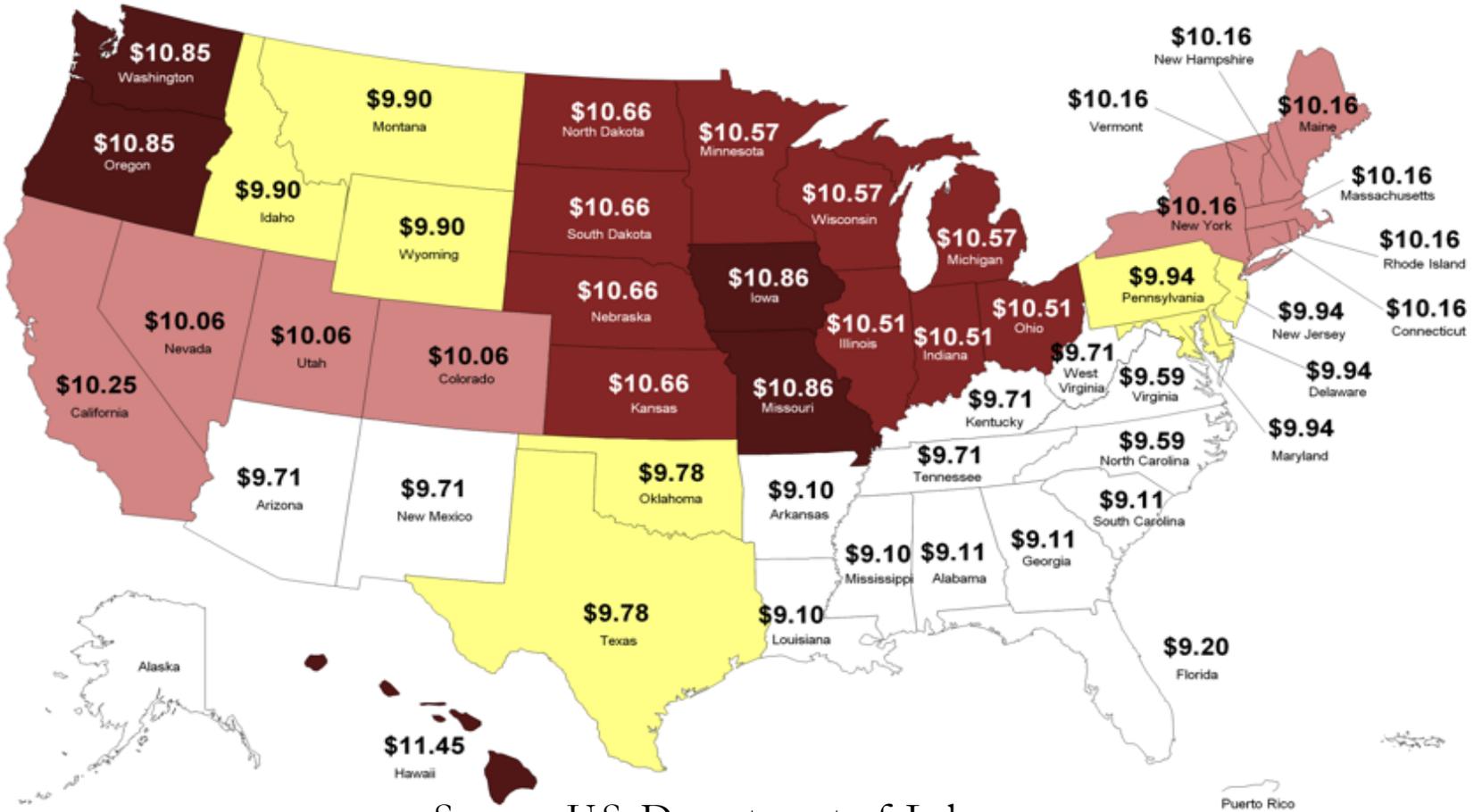
C) Agreed-upon collective bargaining agreement (CBA) wage

D) Adverse Effect Wage Rate (AEWR)- hourly wage rate that will not adversely affect the employment opportunities of U.S. workers as set by the Department of Labor for each state and based on an annual survey



AEWR 2010

FY 2010 Adverse Effect Wage Rates



Source: U.S. Department of Labor

(Keep in mind the highest concentration of H-2A workers is in the Southeast)

Hiring H-2A Workers IV

Employers must submit a **job order**, within the intended area of employment, to the State Workforce Agency (SWA). This must be done no fewer than 60 days and no more than 75 days before the workers are needed.

 <p>U.S. Department Labor Employment and Training Administration</p> <p>Agricultural and Food Processing Clearance Order ETA Form 790 Pedido de Empleados para Agricultura y Procesamiento de Alimentos</p>	<p>OMB Control No. 1205-0134 Expiration Date: November 30, 2012</p>
	<p>Nos. 4 - 8 for STATE USE ONLY Números 4 a 8 para USO ESTATAL</p>
<p>1. Employer's Name and Address (Number, Street, City, State, and Zip Code)/ Nombre y Dirección del Empleador (Número, Calle, Ciudad, Estado y Código Postal)</p>	<p>4. Industry Code/Código Industrial</p>
<p>Telephone number/Teléfono: _____ Fax: _____</p>	<p>5. Job Order No./Num. de Orden de Empleo</p>
<p>2. Location and Direction to Work Site/ Ubicación y Dirección al Lugar de Trabajo</p>	<p>6. Occupational Title and Code /Título Ocupacional y Código</p>
<p>10. No. of Workers Requested / Num. de Trabajadores Solicitados</p>	<p>7. Clearance Order Issue Date / Fecha de Tramite</p>
<p>11. Anticipated Hours of Work per Week/Horas Anticipadas de Trabajo por Semana. Total: _____</p> <p>Sunday / Domingo _____ Monday / Lunes _____ Tuesday / Martes _____ Wednesday / Miércoles _____ Thursday / Jueves _____ Friday / Viernes _____ Saturday / Sábado _____</p>	<p>8. Job Order Expiration Date / Fecha de Expiración</p>

- The job order includes the worksite locations, housing plans, anticipated hours of work per week, transportation arrangements, etc.
- SWA reviews the job order within 7 days and notifies the employer of acceptance or denial.
- Once accepted, the job order is automatically submitted to a public job registry.

Hiring H-2A Workers V

The employer must fill out an **Application for Temporary Employment Certification** for H-2A workers. It must be done no fewer than 45 days before the date of need and it must be submitted to the National Processing Center in Chicago.

OMB Approval: 1205-0466
Expiration Date: 11/30/2011

Application for Temporary Employment Certification
ETA Form 9142
U.S. Department of Labor



Please read and review the filing instructions carefully before completing the ETA Form 9142. A copy of the instructions can be found at <http://www.foreignlaborcert.doleta.gov>. In accordance with Federal Regulations, incomplete or obviously inaccurate applications will not be certified by the Department of Labor. If submitting this form non-electronically, ALL required fields/items containing an asterisk () must be completed as well as any fields/items where a response is conditional as indicated by the section (§) symbol.*

A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application (Write classification symbol): *

B. Temporary Need Information

1. Job Title *

2. SOC (ONET/OES) code *

3. SOC (ONET/OES) occupation title *

4. Is this a full-time position? *
 Yes No

Period of Intended Employment

5. Begin Date *
(mm/dd/yyyy)

6. End Date *
(mm/dd/yyyy)

7. Worker positions needed/basis for the visa classification supported by this application

Total Worker Positions Being Requested for Certification *

Basis for the visa classification supported by this application
(indicate the total workers in each applicable category based on the total workers identified above)

a. New employment * d. New concurrent employment *

b. Continuation of previously approved employment * without change with the same employer e. Change in employer *

c. Change in previously approved employment * f. Amended petition *

8. Nature of Temporary Need: (Choose only one of the standards) *
 Seasonal Peakload One-Time Occurrence Intermittent or Other Temporary Need

9. Statement of Temporary Need *

How do workers find out about the H-2A Program?



- **Almost all H-2A employers use recruiters** in other countries to find workers.
- Recruiters may look for workers by posting announcements in newspapers or by advertising the jobs to their networks or to community members.
- Sometimes the workers look for ways to migrate to the United States with a visa and they themselves seek a recruiter.

Job Shops

- Although prohibited since 2008, a high percentage of the workers are charged up to **thousands of dollars** for visa, travel, and recruiting fees.
- **Job shops** are the intermediaries in other countries who charge high fees for job placement in the U.S.
- This exploitation takes place due to the **lax enforcement of the U.S. laws** that protect workers during the recruitment processes.
- Workers take out **high-interest loans** and/or provide collateral (for example, deeds to their house or car) for a chance at a job.



Image source: <http://www.bamco.com/newsroom/sustainable-sourcing/farmworker-welfare>



“Most H-2A workers arrive in the United States with significant debt. Some have paid as much as \$11,000 for the chance at a job.”

Job Shops

(H-2A employers in the U.S. rely on private recruiters or “job shops”, to find workers in the sending countries)

Debt & Fear

(Workers who can't pay recruitment fees may use personal property as collateral. They fear for their own safety and their families if they can't repay their debt.)

Exploitation in the Recruitment Process

H-2A Worker Protections I



Image source: en.wikipedia.org

- The H-2A program includes certain **protections for the workers.**
- In 2008, when his term was coming to an end, President Bush made drastic changes to the H-2A program, **cutting wages and reducing or eliminating other worker protections.**
- In 2009, Secretary of Labor Hilda Solis issued new regulations, largely **restoring the pre-Bush regulations** that had been in effect since 1987.

Source: Farm Worker Justice

H-2A Worker Protections II

The current protections for H-2A workers include:

1. **Provisions on how to set worker wages** (*see previous slides Hiring H-2A Workers II and III*)
2. A guarantee that employers will provide the workers with work for **at least three fourths of the number of hours in the job offer**, or pay for any shortfall

This provision protects against over-recruitment designed to drive down wages and assures migrants who travel long-distances that their job will be worth the trip.



H-2A Worker Protections III



Image source top picture: 123rf.com

The current protections for H-2A workers include (cont.):

- Workers who complete half the season with an H-2A program employer, must be **reimbursed for the transportation and subsistence costs** associated with traveling to the place of employment.

Those who complete the full season must be paid **transportation costs for returning home.**

- H-2A employers must **provide housing for their workers at no cost** to the worker. The housing must meet federal and state safety standards.

Source: Farm Worker Justice

H-2A Worker Protections IV

The current protections for H-2A workers include (cont.):

- Employers soliciting H-2A workers must provide **workers' compensation insurance for occupational injuries** (but not health insurance coverage).

**Employers do not pay Social Security or Medicaid for hiring H-2A workers*

Source: Farm Worker Justice



Image source: bloggingpainters.com

H-2A Worker Protections V

Since H-2A workers are entitled to these benefits, in many cases they enjoy better working and living conditions than undocumented workers.

For example:

- H-2A workers are provided **transportation** to the U.S. in air conditioned buses. Undocumented workers usually face danger by crossing the border on foot or in the back of a crowded van.
- H-2A workers are provided with **housing** – which is registered with the government and is usually inspected more often than the housing where undocumented workers live.



Flaws of the H-2A Program: Discrimination Rules



Image source: flickr.com

Since the hiring process of H-2A workers takes place outside the U.S., employers are not subject to U.S. regulations.

For example, because employers are **not subject to U.S. discrimination rules**, they can specifically ask for young, single, Mexican male workers.

Flaws of the H-2A Program: Inability to Change Jobs

The most fundamental protection offered by a free market system--the ability to change jobs--is denied to H-2A workers.

- A worker on an H-2A visa can **ONLY** work for the employer who petitioned for them to come to the U.S.
- A worker who does not receive what was promised, or is otherwise exploited, has **few options but to go back home** (and if they violate their contract in doing so, they must provide and pay for their own transportation).
- This means it's much **less likely for a guest worker to complain** about wages, working conditions, or their own safety, because doing so could **threaten their job**.



(Image source: irjci.blogspot.com)



Stress: Job Security

(Debt, gaps in work, inability to voice complaints without fear of losing job)

Stress: Cultural Adjustment

(Language barriers, separation from family, discrimination in community)

Health: Exertion

(Bending over, staying low to the ground for long periods of time, strenuous manual labor)

Stress: Physical Surroundings

(Inability to maintain clean living environment due to substandard housing, living in crowded, isolated areas, limited access to transportation)

Health: Heat

(Heat exhaustion, exposure to sun)

Health: Pesticide Exposure

(Direct skin contact with pesticides & other chemicals on crops, breathing in chemicals, bringing them home on clothing)

Mental & Physical Health of H-2A Workers

Flaws of the H-2A Program: Lack of Enforcement of Regulations

The Cornell Institute for Public Affairs cites this statistic from 2004:

“Of the nearly 6,700 employers certified to employ H-2A visa holders, only 89 were investigated by the Department of Labor.”

(In other words, only 0.0132%!)

Flaws of the H-2A Program: Substandard Housing

- H-2A housing can be very substandard and may be located in isolated areas. Frequently the workers have no contact with anyone besides a grower or a labor contractor. H-2A workers usually depend on them for transportation anywhere.
- Housing is sometimes inspected only once - **before the workers move in**. After inspection, housing is filled to over maximum capacity.



Substandard Housing

“ Most H-2A workers live in mobile homes and overwhelmingly lack clothes washers, dryers, and vacuum cleaners. This makes it difficult to keep houses clean and lower the risk of pesticide and disease spread within homes, especially if clothes can't be washed. ”

Overcrowding

(Uncomfortable, lack of access to basic appliances and hygiene & laundry facilities)



Overcrowding: Health Risks

(Pesticide exposure & spread of disease)



Infestations

(Climates that necessitate pesticide use, like in FL & NC, often mean housing is infested with insects!)

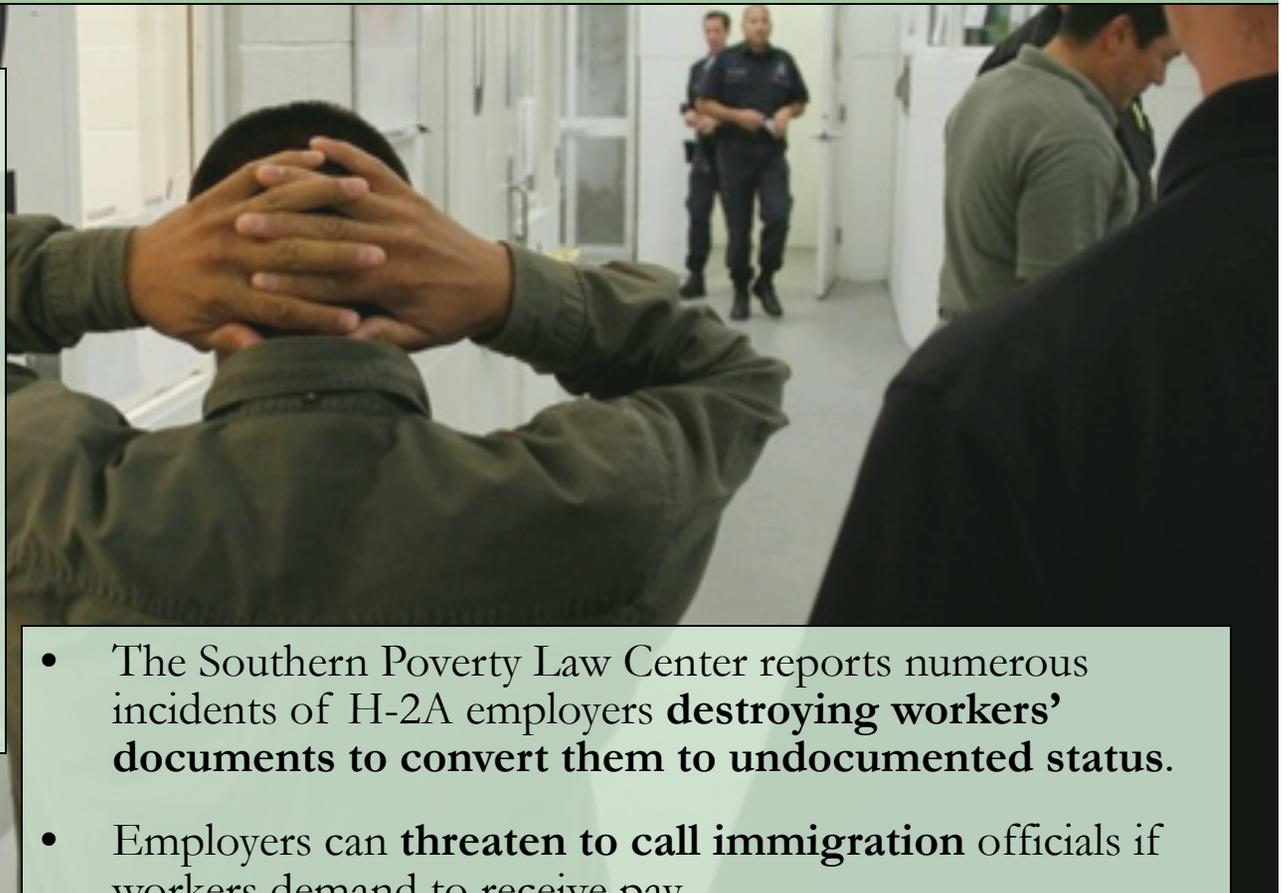


Flaws of the H-2A Program: Living in Fear: The Deportation Card

In the H-2A system, employers decide whether workers can come to the U.S. and whether they can stay.

This extreme power imbalance leaves workers with little agency to report abuses or fight for the rights to which they are legally entitled.

Image source: Reuters



- The Southern Poverty Law Center reports numerous incidents of H-2A employers **destroying workers' documents to convert them to undocumented status.**
- Employers can **threaten to call immigration** officials if workers demand to receive pay.
- Workers who stand up for their rights can be **blacklisted** from being hired again in the future.

Without CIR, we will be a nation of guest workers with no access to citizenship.

Farm worker organizations are fighting to protect the rights of H-2A workers...

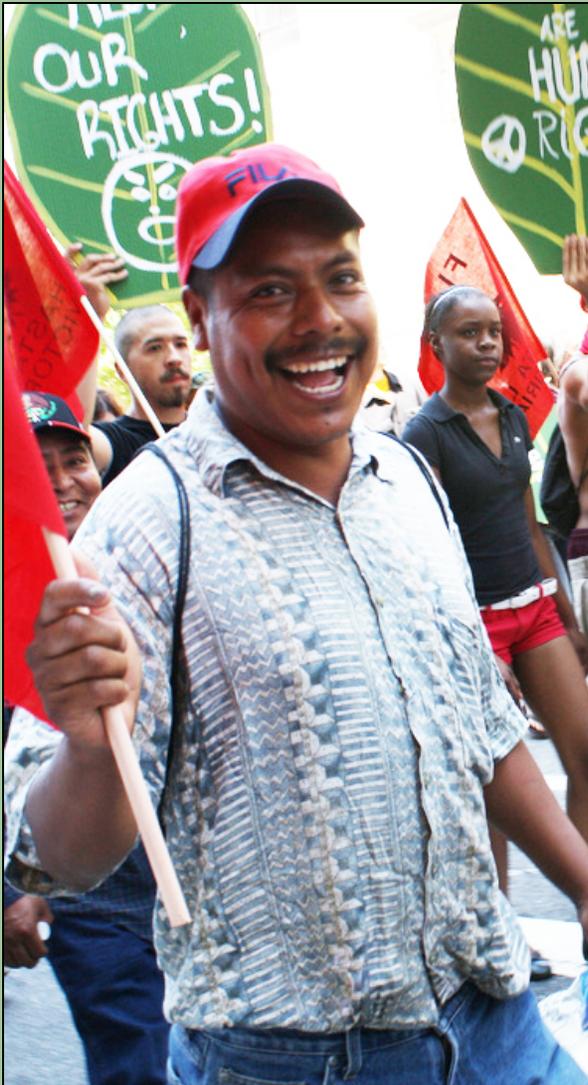
H-2A Workers Organize: FLOC

In 1998, the Farm Labor Organizing Committee (FLOC) began organizing farmworkers in North Carolina, a major pickle producing region. After organizing thousands of farmworkers and after a 5-year boycott of Mt. Olive Pickles, **FLOC signed contracts in 2003** with the North Carolina Growers Association. The contracts benefited workers involved with not only pickles, but also with sweet potatoes, tobacco, Christmas trees, and other crops.

These contracts set labor history, not only by changing the agricultural system, but by **protecting H-2A guest workers under union contracts.**



H-2A Workers Organize: FLOC



Formerly, H-2A workers had little say regarding who employed them or the conditions of their work. **Now, through their union, they have their own direct voice** and are directly involved in labor negotiations, grievance procedures, and building structures to address issues such as health care, immigration policies, and transportation from their home areas in Mexico.

FLOC also works on guest worker recruitment, education, and training **on the Mexican side of the border.**

(Source: Farm Labor Organizing Committee)

H-2A Workers Organize: CITA

By integrating the H-2A program with Mexican rural development efforts, the **Independent Agricultural Workers' Center** (or CITA by its Spanish acronym) envisions the H-2A program as a way to benefit growers in the United States as well as migrant-sending communities in Mexico.

CITA serves as a “matchmaker” between prospective Mexican guest workers and U.S. growers.

They help workers on both sides of the border: in Mexico they help with the recruitment process, and in the United States they assist with disputes between workers and growers.



H-2A Workers Organize: CITA



CITA provides services like financial literacy information, psychological counseling, and education about the guest worker system to Mexican H-2A workers

The organization also helps growers recruit workers in Mexico and assists in getting growers' H-2A applications through the Department of Labor and other agencies.

CITA hopes to train migrant-sending communities on how to facilitate employer petitions, pre-screen workers, and expedite the visa process, so growers can hire workers directly when looking to process H-2A visas.

By doing so, CITA hopes to provide an alternative source of financial income that could be used to develop the migrant sending communities.

(Source: The 2012 Hunger Report)

Farm Worker Standards: The Equitable Food Initiative



NFWM was a founding member of the Equitable Food Initiative (EFI), a multi-stakeholder initiative made up of farm workers and growers, environmental and food safety organizations, and retail and food service industry representatives.

EFI has developed standards in the areas of farm labor, pesticide use, and food safety. Leadership teams, composed of workers and management, are trained in the implementation and ongoing monitoring of the standards, which will ensure a farm's compliance as well certification by third-party auditors.

These farm labor standards include vital benchmarks for the recruitment and treatment of H-2A guest workers.

www.equitablefood.net

Farm Worker Standards: The Equitable Food Initiative

Here are some examples of the benchmarks established by the EFI:

- If the company provides farm workers with housing, the conditions and the infrastructure of the housing must ensure decency, privacy, and security. Housing is provided at reasonable or zero cost.
- Housing for farm workers complies with all federal, state, and local environmental health regulations.



Farm Worker Standards: The Equitable Food Initiative

Here are some more examples of the benchmarks established by the EFI:

- Auditors and other representatives of the EFI have unimpeded access to housing and may make unannounced visits.
- The recruitment of farm workers, H-2A guest workers *and* U.S. citizens, occurs in a transparent and fair manner. Employment through recruitment is provided free of cost and without prejudice.
- Farm workers remain in control of their personal documents at all times.
- Each farm using H-2A guest workers provides access/transportation (at least weekly) to public telephones, religious services, medical attention, cultural events, Laundromats, etc.

Conclusion

We believe that the H-2A program will be increasingly used by U.S. farmers. In order to **improve the working and living conditions of guest workers** we must:

- **Support organizations** that are working to improve the H-2A program and that are organizing guest workers
- Work in **solidarity with the people in the Global South** to improve the the social, political, and economic conditions in their home countries. The H-2A program should be seen as a labor option, but not as the only work choice for people in the Global South.
- Work to pass a **fair immigration reform bill** in the United States so that farm workers who are currently here as well as future guest workers will live with dignity and justice.
- Guest workers are often isolated and lack access to transportation. Find out where these workers live and **develop friendships and relationships of solidarity** with them.

Further Resources



For updates on bills related to this topic, including the treatment of H-2A workers, visit our website at www.nfwm.org

Other sources of information:

- Farmworker Justice
- Southern Poverty Law Center
- Department of Labor
- U.S. Citizenship and Immigration Services

"Speak out for those who cannot speak, for the rights of all the destitute. Speak out, judge righteously, defend the rights of the poor and needy."

Proverbs 31:8-9

Together With Farm Workers Harvesting Justice
National Farm Worker Ministry

