Negative: H-2A Visa Reform

By Katherine Baker

***Resolved:* *The United States federal government should substantially reduce its restrictions on legal immigration to the United States.***

Affirmative plan reduces restrictions on H-2A visas and gets the illegal workers a pathway to legalization so that they get into the system and become taxpaying members of society. AFF's theory is that there is a shortage of agriculture workers in the US and we need to bring in more (or legalize the ones already here). But the US agriculture sector has bamboozled the AFF and the public with some fake facts, most notably the "worker shortage." As in any industry, if you pay sufficient wages, you will get sufficient workers. If they don't have enough farm workers, it is because they are looking for people willing to work for low pay in terrible conditions. Farms intentionally turn away US citizen workers, so they can get immigrants instead, in part because they get tax breaks for hiring foreigners that they don't get for hiring US citizens, due to a loophole in the IRS code. They have no incentive to try very hard to get US workers, and their complaints about "jobs Americans won't do" ring hollow.

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2A Evidence: H2A Visa Reform

SIGNIFICANCE

1. A/T "High cost of H-2A workers"

Financial incentives outweigh

Ken Bensinger, Jessica Garrison, Jeremy Singer-Vine, 2015. (Ken Bensinger is an investigative reporter for BuzzFeed News and is based in Los Angeles. Jessica Garrison is a senior investigative editor for BuzzFeed News and is based in San Francisco. Jeremy Singer-Vine is the data editor for the BuzzFeed News investigative unit and is based in Washington, D.C.) ““All You Americans Are Fired”” December 1, 2015. <https://www.buzzfeed.com/jessicagarrison/all-you-americans-are-fired?utm_term=.ejMDAxmWbV#.rxdma5LYqe>

Employers who use the H-2 program note that it entails numerous added costs, including visa fees and transportation, as well as compliance with complex rules. It requires that most workers be paid above minimum wage, sometimes substantially so. But the guest worker program also offers numerous financial incentives. Agricultural employers are exempt from payroll and unemployment taxes on H-2 workers, for example; nonagricultural employers do not have to provide housing, but if they do they are allowed to charge their workers rent, which is sometimes extortionate.

INHERENCY – Status Quo mechanisms can solve

1. Just raise wages.

Wages attract US workers and solve labor shortages

Josh Harkinson, 2017. (staff reporter at Mother Jones, a nonprofit news organization; winner of the American Society of Magazine Editors’ 2017 Magazine of the Year Award.) “Trump’s Plan to Make America Great Again Using Cheap Foreign Labor” Mar. 14, 2017. (brackets in original) <https://www.motherjones.com/politics/2017/03/trump-guestworker-h2a-visa-farmworkers-immigration/>

Some labor advocates say the shortages are a product of inferior wages. They point to Christopher Ranch, a 4,000-acre farm in Gilroy, California, which at the end of last year was short 50 workers it needed to peel and package garlic. In January, the company announced that it would raise its farmhand wage from $11 to $13 an hour—an 18 percent increase—and boost it to $15 in 2018. Soon it had a waitlist of 150 people. “I knew [the pay raise] would help,” ranch VP Ken Christopher told the Los Angeles Times, “but I had no idea it would solve our labor problem.”

“Can’t pay their workers more’ RESPONSE: Less competitive sectors can

Josh Harkinson, 2017. (staff reporter at Mother Jones, a nonprofit news organization and the winner of the American Society of Magazine Editors’ 2017 Magazine of the Year Award.) “Trump’s Plan to Make America Great Again Using Cheap Foreign Labor” Mar. 14, 2017. <https://www.motherjones.com/politics/2017/03/trump-guestworker-h2a-visa-farmworkers-immigration/>

But farmers insist they can’t pay wages high enough to attract nonimmigrants. Labor economists tend to agree: “I don’t think we will ever get US workers in the field, period,” says P.L. Martin, a professor emeritus of agriculture and resource economics at the University of California-Davis. In America, he says, labor makes up about 40 percent of the cost of producing fresh fruits and vegetables, and that puts the farmers at a disadvantage to foreign rivals paying lower wages. But in less competitive sectors—fresh-picked strawberries, fresh lettuce, etc.—farmers could afford to pay more, according to a 2010 USDA report Martin co-authored.

1. Affordable housing

Investing in affordable housing solved one farm's worker shortage

Tim Henderson, 2017. (Staff writer for Pew Charitable Trust.) “Could Good, Affordable Housing Solve Farmworker Shortage?” January 05, 2017. <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/01/05/could-good-affordable-housing-solve-farmworker-shortage>

Thinking the shortfall was caused by crackdowns on illegal immigration, the company tried what it thought was an obvious solution: make it legal. Tanimura & Antle turned to a visa program called H-2A, which allows temporary agricultural workers to cross the U.S.-Mexican border and work during harvest season. The visas require employers to provide housing, so the company started the process in 2015 by spending $17 million to build 100 apartments for workers near its headquarters here in Spreckels, near Salinas. Then came a surprise. The farm’s worker shortage was as much about the high cost of housing as it was about crackdowns along the border. In Salinas, Tanimura & Antle offered last year to rent some of the units to U.S.-based migrant workers who normally travel from winter jobs in Arizona to spring and summer jobs in California. Those who had declined to come before were happy to get the work when it was coupled with affordable housing. The workers were charged as little as $125 a month for a dorm-style bed in the new complex, a fraction of the cost of renting a room in the area. Soon the roster for the 2016 harvest was full and there were plenty of hands to bring in the 2016 crop. “We thought we had to go to H-2A, but it turned out housing was really the impediment,” said Rick Antle, Tanimura & Antle’s CEO.

Living conditions increase productivity

Tim Henderson, 2017. (Staff writer for Pew Charitable Trust.) “Could Good, Affordable Housing Solve Farmworker Shortage?” January 05, 2017. <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/01/05/could-good-affordable-housing-solve-farmworker-shortage>

“We increased productivity, and we attribute that to the fact that they were getting more rest and were living in a more comfortable environment,” Van Camp said. “They were finishing in eight hours without overtime and producing more, so we think there’s a direct correlation to their living conditions.”

Housing improves bottom line

Tim Henderson, 2017. (Staff writer for Pew Charitable Trust.) “Could Good, Affordable Housing Solve Farmworker Shortage?” January 05, 2017. <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/01/05/could-good-affordable-housing-solve-farmworker-shortage>

In a handful of states, efforts are underway to crack down on unsafe, unsanitary housing for farmworkers. But Tanimura & Antle’s experience may show other farms that improving their bottom line is a greater incentive to provide good, affordable housing than government enforcement. And providing affordable housing may be the ticket that farmers in the West need to solve what has become a growing labor shortage. “What Tanimura & Antle is doing is great if it turns out to be a way to restart at least some of that seasonal migration,” said Philip Martin, a professor emeritus at the University of California, Davis, who studies farm labor issues. “This could be “Back to the Future.” Until the 1950s, farmworkers lived on the farms, and we could return to that.”

3. H-2A already growing

H-2A visa applications and approvals already increasing

Manuel Madrid, 2017. (writing fellow at The American Prospect. The American Prospect is a daily online and quarterly print American political and public policy magazine.) “Can a Revamped Farmworker Visa System Prevent Abuses?” July 20, 2017. <http://prospect.org/article/can-revamped-farmworker-visa-system-prevent-abuses>

H2A visa applications spiked in the first few months of the Trump administration. Between January and March, the Department of Labor approved nearly 70,000 farm-job applications, a 36 percent increase over last year. Annual H2A visa approvals have more than doubled over the last decade and some labor economists project that they will quadruple by the end of fiscal 2017.

4. A/T "Jobs Americans won't do "

Stop whining: Nothing wrong with American workers, it's the employers' fault. They want people to fill jobs where owners can oppress the workers

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

Though the regulations governing the H-2A program require employers to give job preference to qualified U.S. workers, in practice the H-2A program puts U.S. workers out of work. Growers can often be heard chanting the chorus that U.S. workers “just don’t work as hard” or are “not as loyal” as foreign workers. But rather than prove the inherent laziness of all Americans, these claims simply reveal the disproportionate power that employers hold over a foreign labor force with few rights.

When Americans show up for these jobs, the employers reject them, so they can hire immigrants instead

Ken Bensinger, Jessica Garrison, Jeremy Singer-Vine, 2015. (Ken Bensinger is an investigative reporter for BuzzFeed News and is based in Los Angeles. Jessica Garrison is a senior investigative editor for BuzzFeed News and is based in San Francisco. Jeremy Singer-Vine is the data editor for the BuzzFeed News investigative unit and is based in Washington, D.C.) ““All You Americans Are Fired”” December 1, 2015. <https://www.buzzfeed.com/jessicagarrison/all-you-americans-are-fired?utm_term=.ejMDAxmWbV#.rxdma5LYqe>

Last year, thousands of American companies won permission to bring a total of more than 150,000 people into the country as legal guest workers for unskilled jobs, under a federal program that grants them temporary work permits known as H-2 visas. Officially, the guest workers were invited here to fill positions no Americans want: The program is not supposed to deprive any American of a job, and before a company wins approval for a single H-2 visa, it must attest that it has already made every effort to hire domestically. Many companies abide by the law and make good-faith efforts to employ Americans. Yet a BuzzFeed News investigation, based on Labor Department records, court filings, more than 100 interviews, inspector general reports, and analyses of state and federal data, has found that many businesses go to extraordinary lengths to skirt the law, deliberately denying jobs to American workers so they can hire foreign workers on H-2 visas instead.

Self-fulfilling prophecy: Immigrants drive down wages… explaining why Americans don't want those jobs

Dr. Paul Krugman 2006 (PhD economics) NEW YORK TIMES 27 March 2006 "North of the Border" <https://www.nytimes.com/2006/03/27/opinion/north-of-the-border.html>

Because Mexican immigrants have much less education than the average U.S. worker, they increase the supply of less-skilled labor, driving down the wages of the worst-paid Americans. The most authoritative recent study of this effect, by George Borjas and Lawrence Katz of Harvard, estimates that U.S. high school dropouts would earn as much as 8 percent more if it weren't for Mexican immigration. That's why it's intellectually dishonest to say, as President Bush does, that immigrants do "jobs that Americans will not do." The willingness of Americans to do a job depends on how much that job pays -- and the reason some jobs pay too little to attract native-born Americans is competition from poorly paid immigrants.

5. No Labor shortage

No Labor Shortage: Glut of available workers for H-2A jobs

Ken Bensinger, Jessica Garrison, Jeremy Singer-Vine, 2015. (Bensinger is an investigative reporter for BuzzFeed News and is based in Los Angeles. Garrison is a senior investigative editor for BuzzFeed News and is based in San Francisco. Singer-Vine is the data editor for the BuzzFeed News investigative unit and is based in Washington, D.C.) ““All You Americans Are Fired”” December 1, 2015. <https://www.buzzfeed.com/jessicagarrison/all-you-americans-are-fired?utm_term=.ejMDAxmWbV#.rxdma5LYqe>

The H-2 visa was created to address shortages in the American workforce. Although labor is indeed tight in some areas — such as North Dakota, where an oil boom has driven unemployment below 3% — there is little evidence of labor shortages in many industries that use the visas. In some cases, there is even a glut of available workers.

No Labor Shortage: H-2A jobs were given to foreign workers despite high unemployment and plenty of US workers available

Farmworker Justice, 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

The expansion of the H-2A program has continued during an economic downturn and high unemployment (see Figure 3). In FY 2005, the DOL’s Office of Foreign Labor Certification (OFLC) approved 48,336 H-2A positions. In FY 2009, OFLC approved 86,014, an increase of nearly 80% in just four years. There are U.S. workers who want agricultural jobs, but the H-2A program often allows employers to avoid hiring them. All the top six H-2A states, with the exception of Louisiana, had a 2010 average unemployment rate higher than the U.S. average of 9.6%. In North Carolina, for example, the 2010 average unemployment rate was 10.6%. Yet, because the H-2A program lacks an adequate test of the labor market, employers who could have recruited and hired U.S. workers were permitted by DOL to hire foreign guest workers instead.

DISADVANTAGES

Big Link to Everything

More H-2A visas (see AFF evidence)

1. Elderly and disabled harmed

Link: Exempt from paying Social Security (SS) and Unemployment tax

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

H-2A employers are exempt from paying Social Security and unemployment taxes on guest workers’ wages. Since H-2A employers must pay federal social security and unemployment taxes if they hire U.S. workers, they can save substantial money by hiring guest workers.

Link: SS, Medicare, and Unemployment insurance are in trouble because of immigrants

David North, 2012. (Center for Immigration Studies fellow; has studied the interaction of immigration and U.S. labor markets for more than 30 years.) “How Employers Cheat America’s Aging By Hiring Foreign Workers” June 24, 2012 <https://cis.org/Memorandum/How-Employers-Cheat-Americas-Aging-Hiring-Foreign-Workers>

One of the many reasons why the Social Security, Medicare, and Federal Unemployment Tax Act (FUTA) trust funds are in trouble is that American employers can avoid paying taxes to these funds by hiring certain classes of aliens, who, in turn, also do not pay these taxes.

Link: $4,230 lost in taxes per person per year

David North, 2012. (Center for Immigration Studies fellow; has studied the interaction of immigration and U.S. labor markets for more than 30 years.) “How Employers Cheat America’s Aging By Hiring Foreign Workers” June 24, 2012 <https://cis.org/Memorandum/How-Employers-Cheat-Americas-Aging-Hiring-Foreign-Workers>

The payroll tax loss for such a full-time worker at $30,000 a year was about $4,230 a year in 2010. That's a $2,535 bonus to the employer for hiring an alien rather than a U.S. citizen or a green card carrier and a $1,695 bonus to the alien worker, and thus a $4,230-a-year blow to the three trust funds collectively. At $60,000 a year, the damage to these funds is twice as great, or $8,460 a year.

Brink: Change unlikely

David North, 2012. (Center for Immigration Studies fellow; has studied the interaction of immigration and U.S. labor markets for more than 30 years.) “How Employers Cheat America’s Aging By Hiring Foreign Workers” June 24, 2012 <https://cis.org/Memorandum/How-Employers-Cheat-Americas-Aging-Hiring-Foreign-Workers>

Changing the tax break for employers in both the H-2A and Q-1 programs will, of course, run into the skilled and vehement opposition of the Big Farming and Disney interests, and without a congressional champion for such a change — and there is none in sight — there is little chance of either change. The tax breaks for the J-1 program and for F-1s and M-1s would, similarly, run into a buzz-saw of opposition from the Big Education interests allied to the high-tech industries that make so much use of the OPT and H-1B programs.

Brink and Impact: Funds running dry would result in increased taxes, reduced benefits, and/or postponing retirement age.

David North, 2012. (Center for Immigration Studies fellow; has studied the interaction of immigration and U.S. labor markets for more than 30 years.) “How Employers Cheat America’s Aging By Hiring Foreign Workers” June 24, 2012 <https://cis.org/Memorandum/How-Employers-Cheat-Americas-Aging-Hiring-Foreign-Workers>

The surpluses in the larger two of these funds, Social Security and Medicare, have been slowly dropping as the population has aged, as the economy has sagged, and as more and more people become beneficiaries. The federal unemployment fund, the smallest of the three, has had similar problems. (There are also state unemployment insurance funds that are largely outside the scope of this paper.) The Hill reported on April 23, 2012,2 for example, that the current surpluses in the Medicare and Social Security trust funds will run out by 2024 and 2033, respectively, that these funds will be dependent totally on newly arrived receipts thereafter to meet their various obligations, and that after those dates receipts are expected to be insufficient to cover the funds' payouts unless Congress acts, as it probably will have to, by either increasing the FICA and/or Medicare taxes, reducing benefits, postponing the retirement age, or some combination of those actions.

Impact: Trust funds support aging, disabled, and jobless.

David North, 2012. (David North is a CIS fellow who has studied the interaction of immigration and U.S. labor markets for more than 30 years.) “How Employers Cheat America’s Aging By Hiring Foreign Workers” June 24, 2012. <https://cis.org/Memorandum/How-Employers-Cheat-Americas-Aging-Hiring-Foreign-Workers>

These trust funds are used to finance the retirement of those too old or too disabled to work, to support healthcare for the aging and the disabled, and to fund unemployment benefits for those of all ages who are temporarily out of work. In another society these worthy activities would be supported, at least in part, by general tax funds, but because of the political power of the well-to-do in the United States the first two of these programs are funded by workers and their employers only. The third is funded by employers only.

Impact: Americans lose jobs

David North, 2012. (Center for Immigration Studies fellow; has studied the interaction of immigration and U.S. labor markets for more than 30 years.) “How Employers Cheat America’s Aging By Hiring Foreign Workers” June 24, 2012 <https://cis.org/Memorandum/How-Employers-Cheat-Americas-Aging-Hiring-Foreign-Workers>

Further, and perhaps not recognized in the early days of these programs, these discounts create a perverse incentive; namely, employers looking at an F-1 worker for instance, and his or her American peers, will find that by hiring the nonimmigrant they can save at least 8.45 percent of the total payroll because of the inherent tax breaks. Thus the employer is encouraged — nay, subsidized — by the government not to hire the citizen or the green card worker. This is an odd arrangement — largely unknown to the public — that hurts some young American workers and just about all older legal residents of the country; and it helps only a privileged segment of America's employers. My sense is this pattern persists largely because it is so obscure and because the concentrated, well-lobbied interest of the employers is much stronger than the small-scale, general interest of the rest of us.

Impact: Estimated at over $100 million in losses to the trust fund from H-2A

David North, 2012. (Center for Immigration Studies fellow; has studied the interaction of immigration and U.S. labor markets for more than 30 years.) “How Employers Cheat America’s Aging By Hiring Foreign Workers” June 24, 2012 <https://cis.org/Memorandum/How-Employers-Cheat-Americas-Aging-Hiring-Foreign-Workers>

Of the estimated total trust fund loss of $127,000,000 in these two categories, fully $102,450,000 relates to mainland growers' employment of alien farmworkers, with the balance coming from Guam. The mainland estimate came about this way: Let's assume: that there were 56,000 H-2A workers, as suggested above, that each was in the country for 10 months, that three-quarters of these months included 40-hour weeks of employment, and that wages averaged $10 an hour,31 or 56,000 x 10 months (visa duration) x 75 percent employment = 420,000 months of paid work, then 420,000 months x 173 hours/month x $10/hour = $726,600,000 payroll. Applying the 14.1 percent discount, the trust funds' loss comes to $102,450,000.

“Immigrant worker won’t use these funds” RESPONSE: Employer benefits unfairly

David North, 2012. (Center for Immigration Studies fellow; has studied the interaction of immigration and U.S. labor markets for more than 30 years.) “How Employers Cheat America’s Aging By Hiring Foreign Workers” June 24, 2012 <https://cis.org/Memorandum/How-Employers-Cheat-Americas-Aging-Hiring-Foreign-Workers>

One thing is true about all of these programs: The rationale for excluding them from FICA, Medicare, and FUTA taxes is always ostensibly based on the interests of the workers, and rarely mentions the benefits to their employers. But both sides benefit, and usually benefit about equally. The general notion for all six programs is that the members of those classes, all aliens, will not stay in America long enough to profit from any of the benefits linked to the three trust funds, and thus they should not have to pay into these funds. I can see no rationale for the savings to the employers, nor could I find any argument for these employer savings beyond the superficial one that if the employee does not have to pay, why should the employer?

1. Immigrant abuse

Link: Inadequate protections for workers

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

The H-2A program’s protections for U.S. workers and against exploitation of guest workers by employers are modest; in fact, they are similar to those in the Bracero program (1942-1964), which was terminated due to its notorious labor abuses.

Link: Little oversight / lax enforcement, and illegal behavior routinely gets by

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

The labor certification process required by the H-2A law, in theory, demands more government oversight and employer accountability in the H-2A application process than the attestation process in place for the H-1B program for higher skilled jobs, for example. In practice, however, the additional scrutiny of employers and their job terms that should happen under labor certification rarely occurs. In Fiscal Year (FY) 2009, DOL certified 94% of the worker positions requested by growers and routinely approved applications that contained illegal job terms.

Brink: H-2A workers willing to except deplorable conditions and pay

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

Foreign workers are economically desperate. Most H-2A workers come from home countries plagued by economic crises and poverty. They are thus willing to accept wages and working conditions that U.S. workers could never afford to accept due to the high cost of living in the U.S.

Brink: Expansion will only lead to more abuse.

Manuel Madrid, 2017. (writing fellow at The American Prospect. The American Prospect is a daily online and quarterly print American political and public policy magazine.) “Can a Revamped Farmworker Visa System Prevent Abuses?” July 20, 2017. <http://prospect.org/article/can-revamped-farmworker-visa-system-prevent-abuses>

Of the 2.5 million farmworkers in the United States, H2A visa holders currently comprise only about 7 percent of the agricultural workforce. In a sector that relies heavily on undocumented workers (estimates range from 30 percent to 70 percent) the number of H2A visa holders is expected to increase as the Trump administration continues to step up its harsh immigration enforcement policies. “It’s safe to say that, without any reforms, an expansion of the H2A program will only lead to the abuse of more workers,” says Bruce Goldstein, president of Farmworker Justice, a Washington, D.C.-based advocacy group.

Link and Impact: US Dept. of Labor allows abuse. US workers are denied jobs, immigrants are cheated

Ken Bensinger, Jessica Garrison, Jeremy Singer-Vine, 2016. (Bensinger is an investigative reporter for BuzzFeed News and is based in Los Angeles. Garrison is a senior investigative editor for BuzzFeed News in San Francisco. Singer-Vine is the data editor for the BuzzFeed News investigative unit and is based in Washington, D.C.) “Bar None” May 12, 2016. <https://www.buzzfeed.com/kenbensinger/the-pushovers?utm_term=.wxRDy2L1Wn#.uhwBrReJWq>

The Department of Labor is charged with protecting guest workers, and it has the power to exclude abusive, exploitative, or neglectful employers from the H-2 program. Previous stories by BuzzFeed News have found that the increasingly popular program is rife with abuse and that many H-2 employers illegally deny jobs to American workers. A new investigation has found that the Department of Labor rarely kicks employers out of the program, leaving thousands of workers each year exposed to mistreatment, injury, and even death. Scores of employers have stolen guest workers’ pay, forced them to live in overcrowded or dangerous housing, held them at gunpoint, or even been sent to prison for immigration fraud, yet have been allowed by the Labor Department to continue receiving hundreds or even thousands of H-2 visas.

Link and Impact: Despite widespread abuse, massive employer rip-offs, nothing is being done

Ken Bensinger, Jessica Garrison, Jeremy Singer-Vine, 2016. (Bensinger is an investigative reporter for BuzzFeed News and is based in Los Angeles. Garrison is a senior investigative editor for BuzzFeed News in San Francisco. Singer-Vine is the data editor for the BuzzFeed News investigative unit and is based in Washington, D.C.) “Bar None” May 12, 2016. <https://www.buzzfeed.com/kenbensinger/the-pushovers?utm_term=.wxRDy2L1Wn#.uhwBrReJWq>

By its own admission, the Labor Department very frequently finds problems with guest workers’ labor conditions. In the 2014 fiscal year, it identified violations in 82% of the H-2 visa cases it investigated. Yet federal records show that the department bans — or to use its term, debars — very few companies, and in at least one year didn’t debar a single one in the entire country. Between 2010 and 2014, agency investigators identified nearly 1,000 companies that had violated H-2 laws, yet in that time period, the Labor Department debarred fewer than 150. Twelve employers were found to have each stolen more than $100,000 from their guest workers in that time period; only one was debarred.

Link and Impact: Abuse in the H-2A system

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

The modest legal protections put into place by DOL, many of which also existed under the bracero program, have not changed the inherent and systemic problems with the H-2A program. DOL oversight is lax, and most applications are approved, even for growers publicly known to ignore the law. The H-2A program continues to displace U.S. workers, and leads to rampant abuses, including wage theft, discrimination, and even debtpeonage. These abuses, with personal examples, are discussed in further detail in the next section.

Impact: imprisoned, starved, beaten, raped, threatened, and underpaid. Closest thing to slavery

Josh Harkinson, 2017. (staff reporter at Mother Jones, a nonprofit news organization and the winner of the American Society of Magazine Editors’ 2017 Magazine of the Year Award.) “Trump’s Plan to Make America Great Again Using Cheap Foreign Labor” Mar. 14, 2017. <https://www.motherjones.com/politics/2017/03/trump-guestworker-h2a-visa-farmworkers-immigration/>

Which is okay so long as the boss is fair. But the imbalance of power can also enable horrific abuses. A 2015 investigation by BuzzFeed found that thousands of H-2 visa holders had been badly exploited: deprived of fair pay, imprisoned, starved, beaten, raped, and threatened with deportation if they complained. And guestworkers seldom report labor abuses. When they do, advocates say, they lack the resources to fight for restitution. Former Rep. Charles Rangel once attacked the H-2 program as “the closest thing I’ve ever seen to slavery.”

Impact: Wage theft and labor law violations

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf> (brackets added)

Foreign workers’ vulnerability and lack of knowledge about their rights make them particularly susceptible to wage theft and other labor law violations. Employers have devised many ways of ducking their obligations to pay workers the DOL [Dept of Labor] mandated wage, leading to lawsuits compelling H-2A employers to pay workers what they are rightfully owed. For example, in 2007, 80 H-2A workers in Georgia sued their employer for routinely underpaying them and missing paychecks. The employer had allegedly prepared backdated checks to hide late payments and false checks to hide non-payments, and had made the workers endorse blank checks. In another class action suit in 2007 in Florida, an H-2A employer was sued for failing to report all the hours employees had worked, in order to pay them less than required by the AEWR. These are hardly isolated incidents; it is clear that wage theft is rampant throughout the H-2A program.

Impact: Employees not paid all guaranteed wages

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

“Three-fourths work guarantee” requires that employers offer recruited workers at least 3/4 of the number of working hours in the work period outlined in the contract (except when impossible due to “Acts of God”) or pay wages for any shortfall in work opportunities. ➜ In theory, this protects U.S. and foreign workers by discouraging over-recruitment and guaranteeing income for migrant workers who have traveled long distances to work. ➜ In practice, many workers are not paid all the wages they are promised under the three-fourths guarantee.

Impact: Injured workers uncompensated

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

On paper, the H-2A regulations require employers to provide H-2A workers with workers’ compensation insurance to protect them in case of a work-related injury. But in reality, complex workers’ compensation rules, which vary from state to state, often prevent H-2A workers from accessing these benefits, especially after they have returned to their home country, which the program demands. Severely injured workers and their families are thus never compensated for the lost income from their injury. Employers may also encourage workers not to apply for benefits, may simply return injured workers to their home countries, or may get injuries taken care of quietly, in order to prevent a hike in insurance premiums.

Impact: Injured workers left uncompensated

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

Workers compensation must be provided for occupational-related injuries. ➜ In theory, this protects both U.S. and foreign workers by ensuring medical care for injured workers and that the cost of health care for work-related injuries will not be borne by the worker. ➜ In practice, employers send injured foreign workers home after being injured, making it very difficult to access workers’ compensation.

Impact: Horrendous living conditions

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

Under the regulations, H-2A employers are required to provide or pay for housing for all guest workers and any domestic workers who are not reasonably able to return home each day. Employer-provided housing must meet DOL safety standards for farm labor camps, including adequate sanitation, water supply, toilet, laundry, bathing facilities, and pest control. In reality, H-2A workers frequently describe their housing as dirty, cramped, unsanitary, or pest-ridden—and sometimes all of the above. Indeed, farmworker housing has not improved much since the images portrayed in Edward R. Murrow’s documentary on the conditions of farmworkers, “Harvest of Shame,” shown on Thanksgiving, 1960. H-2A employers have placed five men in a single motel room with one bathroom, and reports have described workers sleeping on the floor because of worn and moldy mattresses. Other problems have included crumbling buildings; rat infestations; moldy toilets, showers, and sinks; and in one case workers were even known to be living in a converted chicken coop. Because a tangled mass of state and federal regulations and agencies holds authority over farmworker housing, deplorable conditions may go unnoticed.

1. As Bad as Slavery

Link: Indentured Servitude. Recruiters charge immigrants, forcing work to pay back debts

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

Despite recently revised regulations making growers promise that neither they nor their agents have received fees from workers to obtain a job, some growers are quite willfully ignorant of what goes on across the border. With many potential recruits hoping to escape poverty at home, recruiters have a significant incentive to charge recruiting fees at great personal profit. Thus, 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. Others have left the deed to their house or car in the hands of a recruiter as collateral to ensure that they will “comply” with the terms of their contract. Some fear for their own physical safety or that of their family members if they cannot repay their debt. Many have been lied to about the conditions of the work, including wages, crops to be picked, length of their visa, and type of housing. Tied to one employer, workers have no choice but to work at whatever wage the employer offers. In short, the H-2A program creates conditions ripe for debt-peonage, not unlike the labor arrangements suffered by many African Americans in the post-Civil War South.

Brink: Reliance on employers stifles backlash

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

H-2A workers who wish to stand up to unfair or illegal conduct have reason to fear retaliation in the form of discharge and deportation as well as denial of a job and visa in a future season. Because foreign citizens have no ability to apply independently for an H-2A visa, they must hope that an employer will request a visa for them. Employers have been able to retaliate against H-2A workers who assert themselves simply by refusing to offer visas to the workers in a following season.

Brink: Speaking out risks livelihoods

Manuel Madrid, 2017. (writing fellow at The American Prospect. The American Prospect is a daily online and quarterly print American political and public policy magazine.) “Can a Revamped Farmworker Visa System Prevent Abuses?” July 20, 2017. <http://prospect.org/article/can-revamped-farmworker-visa-system-prevent-abuses>

According to a report by the Southern Poverty Law Center, some workers arrive owing as much as $10,000 to labor brokers, only to find they won’t be able to earn enough to pay the money back. When dismissal means deportation, a worker is far less likely to complain about exploitative work environments. “Workers are forced to choose between returning home to insurmountable debts or remaining in an abusive work environment,” says Elizabeth Mauldin, policy director of Centro de los Derechos del Migrante, a migrant-rights organization headquartered in Mexico. “They’re risking their livelihoods by speaking out.”

Link and Impact: H-2A = Debt = forced labor and abuse

Farmworker Justice, contextually dated 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf> (ellipses in original)

This system of debt can lead to forced labor as well. The H-2A recruitment company Global Horizons Manpower, Inc. faces well-publicized and documented accusations of human trafficking and enslavement. During 2004-2005, the company allegedly brought more than 400 Thai H-2A workers to farms in Hawaii and Washington with promises of long-term employment, forced them into debt with recruiting fees of up to $21,000, and held them in forced labor conditions. According to an indictment filed by the Department of Justice against the company’s CEO and other executives, the object of this scheme was   
…to obtain cheap, compliant labor performed by Thai H2A guest workers indebted by the defendants’ recruiting fees, and to compel the workers’ labor and service through threats to have the workers arrested, deported, or sent back to Thailand, knowing the workers could not pay off their debts if sent home, thus subjecting the workers to serious economic harm including loss of their family property.  
 The Global Horizons scheme is the largest human trafficking case in U.S. agriculture, but it is by no means a unique case of recruitment abuses. As long as the H-2A program allows growers to rely on unregulated foreign recruiters, worker debt, fear, and illegal human trafficking will be the program’s inevitable byproducts.

Impact: New American Slavery

Daniel Costa, 2017. “(director of Economic Policy Institute immigration law and policy research since 2013.) “Proposal to change the H-2A program via appropriations would allow agribusiness to fill hundreds of thousands of permanent, year-round jobs with temporary guestworkers” October 25, 2017. <https://www.epi.org/blog/proposal-to-change-the-h-2a-program-via-appropriations-would-allow-agribusiness-to-fill-hundreds-of-thousands-of-permanent-year-round-jobs-with-temporary-guestworkers/>

This is troubling because H-2A is a guestworker program that has facilitated the exploitation of migrant workers and even human trafficking; so much that it has been dubbed “Close to Slavery” and “The New American Slavery.” Many H-2A workers arrive in debt to labor recruiters who in effect sell them their temporary jobs. They cannot change employers, and become deportable if they are fired by their employers, which keeps them from complaining about unpaid wages and other workplace violations. The title of a recent government audit reflected this reality: “H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers.” It’s also difficult for H-2A workers to bring their families with them and they have no path to permanent residence and citizenship.

1. US workers harmed

Link: US job protections ineffectual – farms use H-2A to turn away American workers

Farmworker Justice, 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

As Dawson Morton, a legal services attorney in Georgia, recently said on HDNet’s Dan Rather Reports, growers are “using the temporary guest worker program not as a temporary replacement but as a permanent workforce.” The protections aimed at preventing the H-2A program from replacing U.S. workers are clearly ineffectual. H-2A employers are thus given wide latitude to turn away domestic workers in favor of vulnerable foreign workers.

Link: Inadequate US recruitment

Farmworker Justice, 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

Recruitment of U.S. workers must occur through the interstate employment service system and through private-market efforts to find and hire farmworkers. Growers must post job orders with the state workforce agency (SWA) between 60 and 75 days before the date of need. Job qualifications and requirements must be reasonable and must not discriminate against U.S. workers. ➜ In theory, this protects U.S. workers by ensuring that growers attempt to hire U.S. workers first. ➜ In practice, growers’ recruitment of U.S. workers often is inadequate and many employers impose inappropriate job requirements to “scare away” domestic workers.

Link: Greater benefit to hire H-2A workers than US workers

Daniel Costa, 2017. “(director of Economic Policy Institute immigration law and policy research since 2013.) “Proposal to change the H-2A program via appropriations would allow agribusiness to fill hundreds of thousands of permanent, year-round jobs with temporary guestworkers” October 25, 2017. <https://www.epi.org/blog/proposal-to-change-the-h-2a-program-via-appropriations-would-allow-agribusiness-to-fill-hundreds-of-thousands-of-permanent-year-round-jobs-with-temporary-guestworkers/>

The terms and conditions of the program give employers an inordinate amount of power over their workers, as well as other benefits, like being exempt from paying payroll taxes on H-2A workers and the ability to hand-pick workers from abroad by age and gender without being subject to U.S. anti-discrimination laws. Those are major reasons why employers prefer to hire H-2A workers instead of U.S. workers. We know that this is the case because occasionally they get caught discriminating against American workers in favor of H-2A workers.

Link: H-2A workers hired to avoid fair wages, hiring US workers

Farmworker Justice, 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

Employers can avoid the wage demands of the labor market. Once an employer receives approval of its job offer from the Department of Labor, it may reject qualified U.S. workers who seek a higher wage or an extra benefit, such as paid sick days, and fill the slot with a guest worker willing to accept the approved terms. Similarly, a demand for higher wage rates by a labor union can be easily rejected. Thus, the minimum wage rates and other job protections required by the H-2A program usually become the maximum that a worker can hope to attain and that an employer need offer.

Link: Purpose of H-2A is to replace American workers – according to its advocates

Ken Bensinger, Jessica Garrison, Jeremy Singer-Vine, 2015. (Ken Bensinger is an investigative reporter for BuzzFeed News and is based in Los Angeles. Jessica Garrison is a senior investigative editor for BuzzFeed News and is based in San Francisco. Jeremy Singer-Vine is the data editor for the BuzzFeed News investigative unit and is based in Washington, D.C.) ““All You Americans Are Fired”” December 1, 2015. <https://www.buzzfeed.com/jessicagarrison/all-you-americans-are-fired?utm_term=.ejMDAxmWbV#.rxdma5LYqe>

Around the country, lawyers and labor brokers actively promote the H-2 program as a way to boost profit margins. Usafarmlabor, a labor broker serving the agricultural industry, until this month bluntly stated on its site: "Our workers actually save you money each month in a comparison with U.S. workers.”

Link: Government turns a blind eye – no enforcement

Ken Bensinger, Jessica Garrison, Jeremy Singer-Vine, 2015. (Ken Bensinger is an investigative reporter for BuzzFeed News and is based in Los Angeles. Jessica Garrison is a senior investigative editor for BuzzFeed News and is based in San Francisco. Jeremy Singer-Vine is the data editor for the BuzzFeed News investigative unit and is based in Washington, D.C.) ““All You Americans Are Fired”” December 1, 2015. <https://www.buzzfeed.com/jessicagarrison/all-you-americans-are-fired?utm_term=.ejMDAxmWbV#.rxdma5LYqe>

What’s more, companies often do this with the complicity of government officials, records show. State and federal authorities have allowed companies to violate the spirit — and often the letter — of the law with bogus recruitment efforts that are clearly designed to keep Americans off the payroll. And when regulators are alerted to potential problems, the response is often ineffectual.

Impact: US workers not offered jobs or forced to quit

Farmworker Justice, 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

“Fifty Percent Rule” requires employers to hire any qualified U.S. worker who applies for work until one-half of the season has ended. ➜ In theory, this protects U.S. workers’ jobs by preventing growers from choosing an H-2A guest worker over a qualified U.S. worker and by mandating that farms hiring additional workers for peak harvesting time must continue to accept domestic applicants. ➜ In practice, many U.S. workers are not offered available jobs at H-2A employers or are quickly forced to quit.

Impact: Americans laid off in favor of foreign workers

Ken Bensinger, Jessica Garrison, Jeremy Singer-Vine, 2015. (Ken Bensinger is an investigative reporter for BuzzFeed News and is based in Los Angeles. Jessica Garrison is a senior investigative editor for BuzzFeed News and is based in San Francisco. Jeremy Singer-Vine is the data editor for the BuzzFeed News investigative unit and is based in Washington, D.C.) ““All You Americans Are Fired”” December 1, 2015. <https://www.buzzfeed.com/jessicagarrison/all-you-americans-are-fired?utm_term=.ejMDAxmWbV#.rxdma5LYqe>

Year after year, Hamilton Growers, which has supplied squash, cucumbers, and other produce to Wal-Mart and the Green Giant brand, hired scores of Americans, only to cast off many of them within weeks, according to the U.S. government. And time after time, the grower filled the jobs with foreign guest workers instead.

Impact: Americans lose jobs

Ken Bensinger, Jessica Garrison, Jeremy Singer-Vine, 2015. (Ken Bensinger is an investigative reporter for BuzzFeed News and is based in Los Angeles. Jessica Garrison is a senior investigative editor for BuzzFeed News and is based in San Francisco. Jeremy Singer-Vine is the data editor for the BuzzFeed News investigative unit and is based in Washington, D.C.) ““All You Americans Are Fired”” December 1, 2015. <https://www.buzzfeed.com/jessicagarrison/all-you-americans-are-fired?utm_term=.ejMDAxmWbV#.rxdma5LYqe>

At the same time, companies across the country in a variety of industries have made it all but impossible for U.S. workers to learn about job openings that they are supposed to be given first crack at. When workers do find out, they are discouraged from applying. And if, against all odds, Americans actually get hired, they often are treated worse and paid less than foreign workers doing the same job, in order to drive the Americans to quit. Sometimes, as the government alleged happened at Hamilton Growers, employers comply with regulations by hiring Americans only to fire them en masse and hand over the work to foreign workers with H-2 visas.

Plentiful gimmicks used to keep US workers out of jobs

Farmworker Justice, 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

The gimmicks used to deny employment to qualified U.S. workers are plentiful. Real-life examples include interviews scheduled at inconvenient times or locations; hiring that occurs too early in the season, leading workers to arrive for work when there is none; limiting domestic workers’ hours in order to discourage them from continuing to work; employment contracts demanding that workers give up their right to sue a grower for lost wages; and unrealistic work demands and productivity quotas. Employers know that they can—and often do—chase away willing U.S. workers with such unfair terms. Other times there is no pretense: Domestic farmworkers are simply turned away or fired in favor of guest workers. For example, in 2006, after harvesting citrus fruit for an Arizona labor contractor for three previous seasons, a crew of domestic employees was told by their foreman that the company would no longer hire domestic labor, but would instead use H-2A. Sure enough, when they arrived at the corralon (pick-up spot) the buses previously reserved for them were now filled with H-2A workers “from all over Mexico.

1. Devalues agriculture industry

Link: Low wages

Farmworker Justice, 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

Wages offered by H-2A growers must be the highest of: (a) the local labor market’s “prevailing wage” for a particular crop as determined by DOL and state agencies; (b) the state or federal minimum wage; or (c) the “adverse effect wage rate” (AEWR), an hourly wage determined by DOL for each state based on the USDA’s annual Farm Labor Survey of average regional hourly wages for nonsupervisory crop and livestock workers. In most cases, the AEWR is the highest rate. ➜ In theory, this protects U.S. farmworkers by ensuring that growers cannot undercut their wages, and protects vulnerable foreign workers who would feel compelled to accept a substandard wage. ➜ In practice, the wage levels are based on surveys of wage rates that are depressed because they include earnings of undocumented workers, not just U.S. workers. The wage rates are also outdated because they are based on the previous year’s surveys. In addition, many growers violate the wage requirements.

Impact: Lower working conditions and wages for US workers

Farmworker Justice, 2011. (nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.) “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers” (ethical disclosure about the date: No date given, but cited information from 2011.) <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>

Currently, the majority—50% to as much as 70%—of the nation’s 2 to 2.5 million farmworkers lack authorized immigration status. Many of the rest are U.S. citizens or lawful permanent resident immigrants. Though H-2A guest workers account for only a small percentage of farmworkers in the U.S, their treatment sets the bar low for the entire agricultural industry, and their availability depresses wages and working conditions for U.S. workers.