The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse

THE INTERNATIONAL LABOR RECRUITMENT WORKING GROUP

Acknowledgments

The International Labor Recruitment Working Group, formed in October 2011, is a coordinated effort to strategically address abuses in international labor recruitment across visa categories. The Working Group is composed of organizations working in various industries and with workers across employment sectors and visa categories. This report represents a consolidation of the research and experience of Working Group members. The following organizations have authored this report: AFL-CIO, AFT, Centro de los Derechos del Migrante, Inc. (CDM), the Coalition to Abolish Slavery and Trafficking (CAST), Department for Professional Employees (DPE), Economic Policy Institute (EPI), Farm Labor Organizing Committee (FLOC), Farmworker Justice, Global Workers Justice Alliance, National Domestic Workers Alliance (NDWA), National Employment Law Project (NELP), National Guestworker Alliance (NGA), Safe Horizon, SEIU, Solidarity Center, Southern Poverty Law Center (SPLC), UNITEHERE! and Verité. The following organizations endorse the content of the report: Free the Slaves, Polaris Project and Vital Voices Global Partnership.

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Executive Summary

Each year, hundreds of thousands of people from around the world are recruited to work in the United States on temporary work visas.[1] Internationally recruited workers[2] are employed in a wide range of U.S. industries, from low-wage jobs in agriculture and landscaping to higher-wage jobs in technology, nursing and teaching. They enter the United States on a dizzying array of visas, such as H-1B, H-2A, H-2B, J-1, A-3, G-5, EB-3, B-1, O-1, P-3, L, OPT and TN visas, each with its own rules and requirements. This report will demonstrate two key findings regarding the current U.S. work visa system:

1. Regardless of visa category, employment sector, race, gender or national origin, internationally recruited workers face disturbingly common patterns of recruitment abuse, including fraud, discrimination, severe economic coercion, retaliation, blacklisting and, in some cases, forced labor, indentured servitude, debt bondage and human trafficking.

2. Disparate rules and requirements for workers, employers and recruiters,[3] as well as lax enforcement of the regulations that do exist, allow and even incentivize recruiters and employers to engage in abuses.

The International Labor Recruitment Working Group ("the Working Group") seeks to end the systemic abuse of international workers who are recruited to work in the United States. By convening workers' rights advocates across labor sectors, the Working Group has undertaken a thorough analysis of the current regulatory and enforcement framework to identify the shortcomings and gaps in worker protections. This report aims to bring the voices of internationally recruited workers of all skill and wage levels into policy discussions to illustrate the extent of the problems with international labor recruitment practices. This report shows how structural flaws in work visa programs increase the vulnerability of workers to human trafficking.

The Working Group calls upon the U.S. government to adopt policies that protect internationally recruited workers from recruitment abuse. To do so, the government must acknowledge that these abuses are systemic rather than visa specific. Effective policies and oversight must be comprehensive, addressing core issues common across the worker recruitment experience.

Comprehensive Recommendations

1. A thorough overhaul of work visa programs that is comprehensive in nature and addresses recruitment abuse is required.
2. Recruiters should be regulated.
   a. An Office of International Labor Recruitment should be created to monitor international labor recruitment. The Office of International Labor Recruitment should create and maintain a publicly available online database.
   b. Employment contracts should be mandated for internationally recruited workers.
3. Employers should be accountable for the actions of recruiters and the agents of recruiters.
   a. Employers and recruiters should be jointly and severally liable for abuses in international labor recruitment.
   b. Employment contracts should list the recruiters and agents of recruiters who are working on behalf of the employers. All contracts should be maintained in a database.
4. Prohibit the charging of recruitment fees by employers, recruiters and their agents across all visa categories.
5. Workers should have access to self-help advocacy and legal aid.
   a. Internationally recruited workers should be provided pre- and post-departure information on their rights under the law and information on organizations they can contact.
   b. Workers should have an effective and efficient mechanism for raising complaints that ensures adequate whistle-blower protections.
6. Data should be collected to monitor international labor recruitment.
   a. The GAO should be encouraged by Congress to issue reports that address international labor recruitment.
   b. Data across agencies should be linked and made publicly available.

The Working Group has developed a list of eight core principles that must be adhered to in any work visa program to prevent recruitment abuse. These principles should inform a comprehensive overhaul of the laws, structure and enforcement of all work visas that are used to recruit international workers to the United States.

1. **Freedom from Discrimination and Retaliation.** Workers shall have the right to a recruitment and employment experience free of discrimination and retaliation.

2. **Right to Know.** Workers shall have the right to be informed in a language they understand about the recruitment process and their rights under U.S. work visa programs.

3. **Freedom from Economic Coercion.** Workers shall have the right to freedom from economic coercion in U.S. work visa programs.

4. **Right to Receive a Contract with Fair Terms and to Give Informed Consent.** Workers shall have the right to a legal employment contract that respects their rights and the right to provide informed consent before being hired.

5. **Employer Accountability.** Workers shall have the right to be recruited for work in the United States under a system that holds the employer accountable for any and all abuses suffered during their recruitment or employment.

6. **Freedom of Movement.** Workers shall have the right to move freely and change employers while working in the United States.

7. **Freedom of Association and Collective Bargaining.** Workers shall have the right to form and join unions and to bargain and advocate collectively to promote their rights and interests.

8. **Access to Justice.** Workers shall have the right to access justice for abuses suffered under U.S. work visa programs.

This report is structured around these core principles, highlighting examples of violations of each, and also recommending detailed policy solutions.

Overview of Abuses

Internationally recruited workers work in both high- and low-wage sectors in the United States. They face fraud, discrimination, severe economic coercion, retaliation, blacklisting and in some cases forced labor, indentured servitude, debt bondage and human trafficking. The international labor recruitment industry employs abusive tactics to deliver indebted and vulnerable workers to U.S. employers.

After paying recruitment, visa processing and travel costs, internationally recruited workers across visa categories arrive in the United States with considerable debt.[4] International labor recruiters, who often have a virtual monopoly over the job market in which they recruit, charge workers high fees for the opportunity to work in the United States. To pay these fees, many workers borrow money at high interest rates and even use their homes as collateral.[5] Recruiters often lie about visa and working conditions or require workers to sign extremely disadvantageous employment contracts.[6] Predictably, workers who arrive in the United States in debt are much less likely to leave the job, whatever the conditions, without first earning enough to repay their debt.[7] Workers generally are unable to repay these loans by working in their home countries for lower wages. High debts combined with exploitative conditions make workers extremely vulnerable to human trafficking. Because of common practices in the international labor recruitment industry and the structure of the U.S. work visa program, employers are able to exploit an essentially captive workforce, and workers are deterred from asserting their rights under U.S. law. Workers who complain routinely are blacklisted, threatened or physically intimidated by recruiters.[8] Additionally, many internationally recruited workers face language barriers, racism, xenophobia, sexism and the pressures of poverty in both the United States and their home countries.

The majority of internationally recruited workers are tied to a single U.S. employer through their visas. With few exceptions, an internationally recruited worker's legal immigration status is dependent on his or her continuing relationship with the employer. In most cases, a worker who resigns or is fired from employment no longer is authorized to remain in the United States; the worker is required to return to his or her home country within several days and the employer is required to inform the Department of Homeland Security of the termination. When they return to their home countries, internationally recruited workers who complain are blacklisted by recruiters who control access to future employment opportunities in the United States. Finally, internationally recruited workers who, in spite of these risks, report unlawful employment practices face incredible obstacles to accessing legal services in the United States.

Background and History of U.S. Work Visa Programs

The United States' work visa system is designed to facilitate legal labor migration to fill labor shortages in particular sectors of the economy. The system is composed of numerous immigrant and nonimmigrant visas[9] created at distinct times in history and in response to specific economic and political conditions.[10] The rules and regulations that govern each program vary widely, but together the programs share a loose common structure: Workers are recruited on behalf of U.S. employers in their home countries, apply for visas at U.S. consulates and then travel to the United States to perform a specific job for a designated period of time for a single employer. In the case of nonimmigrant workers, the legal immigration status of the worker depends on the continued, specified employment for which the visa was granted. At the end of the specified period, or at the behest of the employer, the worker returns to his or her home country. For immigrant workers, continued employment with a designated employer is not a condition of legal immigration status, but is often a condition of a work contract or contract with a recruitment agency. The majority of these programs also are designed to ensure the admission of international workers will not adversely affect the job opportunities, wages and working conditions of U.S. workers.[11]

The United States has a long history of using international workers to fulfill labor needs. Initially, slaves from Africa were used to provide manual labor in the United States. After the abolition of slavery, Chinese workers were used by American employers in large numbers, until their participation in the workforce was curtailed by the Chinese Exclusion Act in 1882. Japanese immigration then surged, until Japanese labor migration was terminated by the "Gentlemen's Agreement" of 1907 between the United States and the Empire of Japan.[12] Afterward, Filipino laborers were recruited intensely, especially by the Hawaiian Sugar Planters' Association, until 1934 when Congress instituted a quota.[13]

In 1942, the large-scale recruitment of contract laborers from Mexico began, as the United States and Mexico entered into a bilateral agreement under which more than 4 million Mexicans, known as *braceros*, came to work in the United States.[14] During the program's 22-year history,

participation rates fluctuated from 100,000 to 450,000 workers annually. Today, in addition to the roughly 56,000 temporary agricultural workers admitted through the H-2A program,[15] the United States admits more than a half-million international workers each year to perform jobs across an increasingly wide range of employment sectors. Internationally recruited workers are employed as landscapers, domestic workers, carnival workers, forestry workers, seafood workers, hotel workers, maids/janitors, herders, computer programmers, engineers, nurses and public school teachers.

Beginning in the 1950s, a number of temporary work visa programs were created in response to specific economic or political considerations. Many early programs are now in their second or third incarnation. The H-2 program, created for limited use in 1943 to admit Caribbean sugar cane workers to Florida, was revised as part of the 1986 Immigration Reform and Control Act and split into two separate programs: the H-2A agricultural program and the H-2B nonagricultural program.[16] The Immigration Act of 1990 created the H-1B program for "specialty occupations," revised from a similar program established in 1952. The Immigration Act of 1990 also created three new visa categories—the H-1C visa for nurses[17] in areas of critical shortage, and the O and P visas for prominent educators, artists, scientists, athletes and entertainers.[18]

International political considerations drove the creation of other work visa programs. The A-3 and G-5 visas were created to enable diplomats, representatives of foreign governments and employees of certain international organizations to bring domestic workers with them when they traveled, or temporarily relocated, to the United States. The B-1 visa, used for business travel, was created to admit domestic workers of foreign nationals or U.S. citizens living abroad.[19] In 1961, Congress created the J-1 Exchange Visitor Program. Originally created to facilitate educational and cultural exchange with other nations, the program now operates far afield of its original intent. It is used primarily as a temporary worker program and has become attractive to employers due to lax enforcement of its minimally protective regulations. Today the program authorizes approximately 300,000 internationally recruited workers annually, more than any other temporary work visa program in the United States.[20] The L-1 visa was established by Congress in 1970 in response to unintended consequences of the 1965 Immigration Amendments, which impeded U.S. companies operating abroad from bringing staff in foreign offices to work in U.S. offices.[21] The L-1 visa was intended to allow companies to transfer executive- and managerial-level staff to their U.S. offices, but weak worker protections and nearly nonexistent government oversight have made this visa category particularly appealing to unscrupulous employers seeking to circumvent prevailing wage rates and immigration laws.[22]

The result of this piecemeal construction is that the work visa system lacks coherence across visa categories.[23] Since each visa was created separately, each visa's regulatory framework differs greatly. Overlaps in the work visa programs allow employers in certain industries to select the visa with the easiest availability or the weakest worker protections. For example, an employer can bring in a teacher through the J-1 or H-1B programs, a greenhouse worker through the H-2A, H-2B or J-1 programs, and a domestic worker through the B-1, A-3 or G-5 programs. Each program's certification process, wage rates and employee protections and benefits differ considerably.

Workers typically are recruited for temporary worker programs in the United States through a network of private labor recruiters. Recruitment for different industries varies, but generally is structured as follows: (1) A local recruiter makes contact in a worker's home community to present a job opportunity in the United States. Interested workers pay a lump-sum fee to the recruiter to be considered as candidates. The lump sum rarely is itemized, but may include a recruiter's fee and visa and travel expenses. Most workers must borrow this money from family and friends or from private lenders who often are associated with the recruiter and who usually charge exorbitant interest rates. (2) The local recruiter directs workers to a larger recruitment agency, or counterpart agency in the United States, to complete the necessary paperwork and receive a formal job offer. Workers may be charged fees again at this point. (3) Workers travel to the nearest U.S. consulate to attend the visa interview and obtain the work visa. (4) Workers travel to the job site in the United States.

However, workers may follow a different recruitment path depending on the visa and job type. For example, participants in the J-1 Visitor Exchange program must find employment through a sponsor organization designated by the State Department. Domestic workers who enter the United States on B-1, A-3 or G-5 visas already may

work for their employers in the home country and choose to relocate with the employers to the United States. Some workers may be screened for their qualifications only by the recruiter, while others may interview directly with the employer, either in person or via the Internet.

Recruitment networks often employ abusive, coercive tactics to exploit workers eager to find employment in the United States. Workers rarely are fully informed about the visa limitations or the terms of employment in the United States. The relationship between actors in recruitment networks frequently is unclear, making it difficult to prove liability for fraud or abuse. Recruiters often lie about the pay rate, type of visa and even type of employment. Workers may not receive an employment contract of any kind before they depart for the United States. If they do receive a contract, it may misrepresent the terms of employment, be written in a language the worker does not understand, or ultimately be disregarded by an employer.

Internationally recruited workers are particularly vulnerable to human trafficking. In practice, temporary work programs are a legalized structure for exploiting workers and increasing their vulnerability to severe labor exploitation, including human trafficking, forced labor, debt bondage and involuntary servitude. Exploitation ranges from debt bondage caused by recruitment fees to confiscation of passports and other identity documents, recruiter threats of physical violence to families back home and physical, sexual and psychological abuse of the worker.

Despite these serious problems, the U.S. government has few mechanisms in place to protect internationally recruited workers during recruitment. The problems that plague internationally recruited workers are systemic—they begin at the recruitment stage in a worker's home country and continue after the worker arrives in the United States. Abuses are present in all visa categories and cannot be solved visa by visa. As this report demonstrates, a comprehensive solution to work visa abuses is required.

The table on the next page is a list of visas that will be referred to throughout the report:[24]

Total Visas Issued by Continent in 2011[25]

	Asia	Africa	Europe	Oceania	South America	North America	Total
A-3	570	269	61	10	87	90	1,087
G-5	290	150	60	6	256	73	835
B-1	12,836	3,894	5,300	298	7,963	7,469	37,770
H-1B	98,650	2,244	17,771	836	5,234	4,391	129,134
H-1C	5	1	0	0	0	1	7
H-2A[26]	39	1,026	326	141	887	52,965	55,384
H-2B	1,496	1,279	2,104	319	301	45,327	50,826
J-1	91,940	8,764	170,817	7,009	31,551	14,161	324,294
L-1	40,751	1,326	19,371	1,554	3,994	3,728	70,728
O-1	1,396	135	5,290	560	1,005	442	8,828
P-3	3,656	594	2,139	44	352	608	7,417
TN	0	0	0	0	0	4,918 (Mexico) 53 (Canada)	4,971
TOTAL							**691,281**

Category	Description	Industry	History
A-3	Personal employees, attendants and servants of A visa holders (foreign diplomats)	Domestic work	Created in 1952
B-1	Personal or domestic employees	Domestic work	Created in 1952
EB-3	Employment-based immigrant visas, often used by professionals and skilled workers	A wide range of professional industries	Created in 1990
G-5	Personal employees, attendants and servants of G visa holders (foreign government representatives or employees of certain international organizations)	Domestic work	Created in 1952
H-1B	Specialty occupations	Architecture, engineering, mathematics, physical sciences, social sciences, biotechnology, medicine and health, education, law, accounting, business specialties, theology and the arts	Created in 1990, based on a similar program initiated in 1952
H-1C	Registered nurses in shortage areas	Nursing	Created in 1999, expired in 2009; may be renewed
H-2A	Temporary or seasonal agricultural workers	Agriculture	Created in 1986, based on a program created in 1942
H-2B	Temporary or seasonal nonagricultural workers	Landscaping, forestry, seafood, meat/poultry, carnivals, construction, carpentry, housekeeping and restaurant worker	Created in 1986 when the H-2 program was divided into H-2A and H-2B programs.
J-1	Exchange visitor program	A wide range of such professional industries as higher education, research and medicine to such low-wage industries as restaurants, amusement parks and dairy farms	Created in 1961 as an outgrowth of earlier scientific exchange programs
L-1	Intracompany transferee executive or manager	Science, technology, engineering and math	Established by Congress in 1970
O-1	Individuals of extraordinary ability or achievement	Sciences, arts, education, business, athletics, television and cinema	Created in 1990
P-3	Artists or entertainers coming to be part of a culturally unique program	Entertainment and the arts	Created in 1990
TN	NAFTA professionals	The profession must appear on the list of approved NAFTA professions, which are divided into the following four categories: general; medical/ allied professional; scientist; teacher	Created in 1994

Freedom from Discrimination and Retaliation

Workers shall have the right to a recruitment and employment experience free of discrimination and retaliation.

The U.S. government's anti-discrimination laws aim to convert the U.S. workplace into an engine for social equality. The laws prohibit discrimination in hiring and employment on the basis of race, color, sex, religion and national origin. Yet, government-sponsored temporary worker programs are quietly reclassifying entire sectors of the U.S. workforce by race, gender, national origin and age. These programs also are weeding out workers who speak out against unlawful employment practices, assert their rights under the law or organize for better working conditions. During the recruitment process, internationally recruited workers are subject to various forms of invidious discrimination. Recruiters and employers limit access to the recruitment stream by national origin, gender and age. They sort workers into jobs and visa categories based on racialized and gendered notions of work. They also retaliate against and blacklist workers who complain about unfair or unlawful treatment.

U.S. work visa programs enable employers and recruiters to circumvent U.S. anti-discrimination law at the point of hire. Through work visa programs, an employer may select an entire workforce composed of a single nationality, gender or age group. The ability to choose the exact characteristics of a worker (e.g. male, ages 25–40, Mexican; woman, ages 20–30, Filipina) is one of the factors that make internationally recruited workers attractive to employers.[27] Employers even can shop for internationally recruited workers on employment agency websites that advertise workers like commodities.[28]

These discriminatory practices are pervasive across visa categories and employment sectors. For example, workers recruited for the H-2A program almost exclusively are young men without families, a demographic thought to be ideal for farm labor.[29] In contrast, the great majority of nurses and domestic workers recruited for the H-1C, B-1, A-3 or G-5 programs are young women. Advocates are investigating widespread gender-based discrimination by employers and recruiters who relegate female

From Mexican-Workers.com, "Nursery workers" *(website now inactive; last accessed May 2012)*
"We have always looked for the careful and thoughtful person to fill these jobs. Calm and tranquil. We have found that many work visa candidates live in remote rural areas in Mexico where their lives depend on careful use of the land, the animals and the resources at their disposal.

What is remarkable to us is the large number of Mexican workers who have a delicate touch with their hands. The same person can dig a ditch with a shovel and embroider or knit later in the same day."

From Mexican-Workers.com, "Ag-Employers FAQ" *(website now inactive; last accessed May 2012)*
"We look for workers in INTERIOR Mexico for their work ethics and capacity for hard work." [emphasis is original]

Source: www.arrowheadmanpower.com/about.html *(website suspended; last accessed May 2012)*
We are a Philippine based corporation specializing in the placement and immigration of highly qualified skilled and professional workers seeking employment overseas, in the fields of:

- Nursing
- Teaching
- Physical Therapy

Our Unique Asset: The Filipino Worker
The Filipino culture has endowed its people with attributes that make them one of the most sought after health care givers and teachers in the world. In addition to being highly skilled, literate and competent, Filipinos add a new dimension to the global workforce with their inherent warmth, caring nature and adaptability to different cultures and environments.

From: www.WOLLT.org "More smiling faces in theme parks with foreign j1 students!"
http://wollt.org/hirej1students/505/theme-parks/

Perfect entry-level positions to cover with foreign students
Below is the list of entry-level positions in theme parks that most often are covered by international students. Further, we provide a short list of j1 employer benefits. Positions include, but are not limited to:

- Ride operators/attendants
- Food/beverage servers
- Admission staff
- Merchandise staff
- Pass processors
- Parking lot attendants
- Golf course maintenance
- Players' assistants
- Lifeguards
- Security
- Guest relations
- Maintenance
- Entertainment crew
- Wardrobe
- Refreshment car hosts
- Cashiers

internationally recruited workers to lower-paying jobs.[30] Former H-2B worker Marcela Olvera-Morales filed suit against a large recruitment agency alleging the company discriminated against her and other women on the basis of gender by steering them into positions as H-2B workers while refusing to assign them to more desirable positions as H-2A workers, which typically are assigned to men.[31] Advocates also think the J-1 visa program, which draws workers primarily from Eastern European countries, is used by employers who seek young white workers for "front shop" jobs such as store clerks and wait staff at seasonal vacation destinations. Meanwhile, the H-2B program, which draws workers primarily from Mexico and Central America, is used to fill the "back shop" housekeeping and kitchen jobs in those same resort areas.

In another example, former H-2B employees filed a complaint with the Equal Employment Opportunity Commission asserting that luxury hotel chain Decatur Hotels discriminated against them on the basis of national origin. Decatur Hotel's applications to the Department of Labor (DOL) reveal it sought to pay workers differently based on country of origin alone. Bolivians were to be paid $6.02 per hour, Dominicans $6.09 per hour, and Peruvians $7.79.[32]

Age discrimination against older workers often is explicit in H-2A recruitment.[33] There are also indications that recruiters for H-2B jobs weed out older workers who wish to obtain jobs or be rehired.[34]

Discriminatory retaliation extends beyond termination and blacklisting. Internationally recruited workers who assert their rights under the law face physical and financial threats to themselves and their families by recruiters and employers. After the Southern Poverty Law Center filed a lawsuit on behalf of Guatemalan internationally recruited workers, a labor recruiter threatened to burn down a plaintiff's village in Guatemala.

Employers and recruiters also retaliate against workers who assert their rights under the law. Retaliation and blacklisting are prevalent in work visa programs in the United States. Because employers control a worker's immigration status, they have the power to end a worker's legal immigration status at their discretion by terminating the employment relationship.[35] Employers wield the threat of deportation explicitly.[36] For example, an H-2B forestry worker reported that his supervisor would rip up the visas of workers who complained about inadequate pay and would threaten to call immigration to have workers sent home.[37] Job-dependent immigration status, coupled with heavy recruitment debt, is a powerful deterrent to worker complaints.[38]

Once fired and forced to leave the country, a worker has no way of returning to the United States through a temporary visa program without a willing employer. In nearly every visa program, the employer, not the worker, petitions the government for the work visa. If an employer does not want an "uncooperative" worker to return the following season, the employer may simply refuse to offer that worker a visa in the next season.[39] Employers and recruiters also maintain blacklists of workers who have complained in the past. Blacklisted workers are prevented from obtaining *any* employment in the United States.[40] The stakes are extremely high—a worker who complains risks blacklisting his family, friends or even the entire sending community.

Blacklisting is an extremely effective deterrent. Workers are aware of the industry practice and the risk they may potentially jeopardize their own economic opportunities as well as their neighbors'. Fear is justifiably widespread. The highly publicized North Carolina Growers Association blacklist, called the "NCGA Ineligible for Rehire List," contained more than 1,000 names in 1997 for a single industry in a single state.[41] Livestock herders in Colorado, recruited on H-2A visas, reported they avoided conflicts with employers that could result in retaliation, blacklisting or deportation.[42] The U.S. government acknowledges that blacklisting effectively deters worker complaints. The U.S. Government Accountability Office found H-2A workers were "unlikely to complain about worker protection violations…because they fear that they will lose their jobs or will not be accepted by the employer or association for future employment."[43]

Discriminatory retaliation extends beyond termination and blacklisting. Internationally recruited workers who assert their rights under the law face physical and financial threats to themselves and their families by recruiters and employers. After the Southern Poverty Law Center filed a lawsuit on behalf of Guatemalan internationally recruited workers, a labor recruiter threatened to burn down a plaintiff's village in Guatemala.[44] Other plaintiffs reported death threats against themselves and their families.[45] The court found the plaintiffs had produced evidence to establish that the company and its agents had launched a "campaign designed to threaten, intimidate and coerce plaintiffs, opt-in plaintiffs and potential class members" to withdraw the pending claims.[46] In interviews with domestic workers, Human Rights Watch found a major reason the workers opted not to file complaints against abusive employers was fear that their politically powerful employers would harm them and their families in their home countries.[47]

The current regulatory frameworks of almost all temporary employment visas fail to address discriminatory hiring practices by recruiters and employers. U.S. employers rarely supervise how the recruiters they hire operate in foreign countries or whether they comply with U.S. anti-

discrimination laws.[48] Employers who violate U.S. anti-discrimination laws by requesting workers based on age and gender preferences seldom are held accountable.[49] One federal court found an H-2A employer's blatant age discrimination at the time of hiring was not actionable under the Age Discrimination in Employment Act because the choice to discriminate had occurred outside of the United States.[50] Lack of oversight and accountability essentially allows employers to use the temporary work visa programs to circumvent U.S. hiring standards.[51]

The government has few mechanisms in place to protect internationally recruited workers from retaliation and blacklisting abroad. In fact, the single-employer structure of most temporary work visas actually facilitates immigration retaliation by U.S. employers. Although the rules governing several temporary work visas require employers to use licensed recruiters and to register any agreements between themselves and a recruiter, and prohibit recruiters from charging placement fees to workers, these rules do little to protect workers from recruitment abuses in their home countries. The U.S. government conducts little meaningful monitoring of these recruitment agencies or their activities, and chains of subcontractors allow employers to escape liability for the recruiters' actions.

Chart of Regulatory Framework

	Measures to Prevent Discrimination Against International Workers	Measures to Prevent Retaliation and Blacklisting
A-3	None	May remain in the United States to seek legal redress against former employers and may also receive work authorization while seeking redress.[52]
G-5	None	May remain in the United States to seek legal redress against former employers and may also receive work authorization while seeking redress.[53]
B-1	None	None
EB-3	None	None
H-1B	No protection against discrimination in foreign recruitment. H-1B visa holders are explicitly entitled to the same benefits as similarly employed U.S. workers.[54]	Regulations prohibit employers from retaliating against workers who take action to protect their legal rights. If a company retaliates against a complaining worker, the employer may be fined up to $5,000 and disqualified from filing H-1B petitions for two years.[55]
H-1C	None	Regulations prohibit employers from retaliating against workers who take action to protect their legal rights.[56]
H-2A	None	Regulations prohibit employers from retaliating against workers who take action to protect their legal rights.[57]
H-2B	None	None. New regulations would prohibit employers from retaliating against workers who take action to protect their legal rights.[58] These regulations are currently enjoined.[59]
J-1	None	None
L-1	None	None
O-1	None	None
P-3	None	None
TN	None	None

Recommendations

WORKERS shall have the right to a recruitment and employment experience free of discrimination. To this end, workers shall have the right to:

1. be recruited in a manner that does not subject them to discrimination;
2. be employed in a manner free from discrimination;
3. raise concerns or file complaints about abusive or illegal recruitment practices or working conditions without fear of discrimination or blacklisting; and
4. organize to advance their interests and protect their rights without fear of discrimination or blacklisting.

EMPLOYERS AND LABOR CONTRACTORS[60] shall not engage in discrimination in the recruitment or employment of foreign workers. To this end, employers and labor contractors shall NOT:

1. distinguish, exclude or prefer workers on the basis of race, color, national origin, sex, sexual orientation, gender identity, pregnancy, familial status, religion, disability, political opinion, social class or any other basis prohibited by federal or applicable state law, that impairs equality of opportunity or treatment in employment or occupation,[61] absent a showing that such practice is necessary based on the inherent requirements of the job;[62]
2. punish or blacklist workers for union membership, participation in union activities or for acting as a worker representative;[63] and
3. punish or blacklist workers for raising concerns or filing complaints about abusive or illegal recruitment practices or working conditions.

THE U.S. GOVERNMENT shall prevent employers and labor contractors from engaging in discriminatory practices and blacklisting in the recruitment or employment of foreign workers. To this end, the U.S. government shall:

1. establish programs and processes to monitor the practices of all employers and labor contractors using U.S. work visa programs; and
2. pursue civil or criminal prosecutions or other sanctions against noncompliant employers and labor contractors, including barring noncompliant employers and labor contractors from U.S. work visa programs.

Right to Know

Workers shall have the right to be informed in a language they understand about the recruitment process and their rights under U.S. work visa programs.

Internationally recruited workers lack adequate information about the recruitment process and their legal rights as workers in the United States. Without this information, workers are ill equipped to protect themselves from fraudulent recruitment practices and unlawful employment conditions. In this environment, recruiters and employers mistreat workers with impunity.

To prevent abusive recruitment practices, internationally recruited workers need access to information about the recruiters, labor contractors and employers in the chain of their employment. Currently, the government does not provide sufficient access to meaningful information about these actors. For several visas, the DOL and State Department maintain databases that contain information about these actors and their past participation in the program. However, information about employers who engage in unlawful practices is only publicly available for the H-1B program.[64] In other programs, the DOL even continues to issue labor certifications to employers found by federal courts to have engaged in unlawful employment practices.[65]

The system's lack of transparency makes informed decision making difficult for a worker who already is unfamiliar with the U.S. legal system and employment practices. The majority of workers depend on word of mouth to learn if a recruiter, job contractor or employer has a history of unscrupulous or unlawful behavior. Information by word of mouth is limited in the isolated communities from which many workers hail. Without information regarding the recruitment chain and the compliance records of all actors involved, workers rely on a series of individuals and agencies that may or may not lead them to *bona fide* employment with a law-abiding U.S. employer.

Recruitment fraud is widespread and affects workers across visa categories. Recruiters routinely charge workers for the "privilege" to be considered for jobs and visas that do not exist.[66] If the job does exist, recruiters often fail to provide workers with sufficient information about the type of work to be performed, the conditions of employment, the location or the name of the actual employer.[67] In a report on fraud in the H-2B program, the U.S. Government Accountability Office found that H-2B

Worker Profile: H-2B Fair and Carnival Worker

Photo: Sarah Farr

Juan José Rosales, a member of CDM's Migrant Defense Committee, was recruited from Mexico to work in the fair and carnival industry on an H-2B visa. Juan José reported that the pre-departure information he was provided included false representations of work conditions in the United States. When Juan José learned about the employment opportunity, the recruiter told him he would receive around $7–8 per hour for his work with a fair company. Juan José accepted the offer and agreed to travel from his home in Mexico to the United States for work. He paid approximately $500 in recruitment, visa and passport processing, as well as lodging and transportation fees. Juan José was never reimbursed for any of these expenses.

Once he was in the United States, Juan José traveled with fairs to job sites in Alabama, Georgia, Mississippi and Tennessee. He was subjected to grueling workweeks, often working in excess of 72 hours per week. On days the fair was in transit, he worked additional hours taking down, cleaning up and packing the rides in one location and then transporting them to the next location where he would unpack and set the rides up for the next business day. His wages never amounted to the rate he was promised in Mexico. On average, he earned only $270 per week, or approximately $3.75 per hour, far less than the wage he was promised in Mexico, before he came to the United States. In addition, he was forced to live in overcrowded trailers with no air conditioning, unclean bathroom facilities and no kitchen facilities.[68]

recruiters and employers misclassified employee duties on applications to the DOL, used shell companies to file fraudulent applications for unneeded employees and then leased those employees to businesses not on the visa petitions.[69]

The relationship between actors in a recruitment chain is rarely clear. Without access to this information, workers encounter difficulty in holding actors accountable for fraud, poor working conditions and other abuses. Employers often are shielded from liability by a string of subcontractors; employers may not have direct contact with internationally recruited workers and can claim to be unaware of the unlawful employment conditions. For example, recruitment in the H-2A and H-2B programs typically involves a local recruiter, recruitment agency, U.S.-based labor broker and the employer. Local recruiters may be employed by the recruitment agency or may act as independent agents. U.S.-based labor brokers or job contractors often assume a direct supervisory role over the workers and may appear to be employers. Workers may not know who actually employs them.[70] Although the J-1 program allows only State Department-designated sponsor organizations to solicit visas and job placements for participants, sponsors are free to subcontract worker recruitment and employment placement to other companies.

The recent J-1 student sit-in and protests at the Hershey packing plant in Palmyra, Pa., in 2011 are illustrative. Preliminary investigations reveal a complex web of actors responsible for subjecting the students to fraud and coercion in recruitment and contracting, unlawful pay, long hours under terrible working conditions, poor living conditions and interference with the students' right to organize, as well as threats and other forms of intimidation of students seeking to exercise their rights under U.S. law.[71] Several foreign-based recruitment companies funneled students to one international sponsor organization, which, through a separate job contractor, placed students with a company contracted by Hershey to operate one of its packing plants.[72] Individual students who voiced concerns to these various actors about their living and working conditions did so in vain. Students only were able to change their situation after engaging in a highly publicized sit-in at the packing plant and protest in Hershey, Pa.[73] It remains to be seen which actors will bear legal responsibility for the abuses.

Worker Profile: J-1 Intern and Trainee

Sully Fernanda Alquinga Defaz came to the United States from Ecuador in 2011 on a J-1 visa to work in the hospitality industry. She had recently graduated from college and was seeking a professional experience in the United States that would further her chosen career in hospitality management. She discovered the J-1 Intern and Trainee program through a brochure on her college campus. A local recruiter linked her to a State Department-designated sponsor for the J-1 program. The sponsor's materials boasted that participants in the J-1 program would receive "the knowledge, practical training, leadership and multicultural skills" necessary to succeed as a hospitality industry leader. Eager to jumpstart her professional career, Sully invested nearly $4,500 to participate in the J-1 Intern and Trainee program, including paying $1,500 in fees to the Ecuadorian recruiter and the J-1 sponsor collectively. Before leaving for the United States, Sully received a signed, detailed training plan from her sponsor that guaranteed her advanced training in management, leadership, supervision, scheduling and customer service.

Upon her arrival in the United States, the J-1 sponsor placed Sully in the Food and Beverage department at a hotel in Myrtle Beach, S.C. Instead of encountering the professional and cultural experience the sponsor had promised, however, Sully spent the duration of her program performing unskilled labor for substandard wages. Her primary tasks were wiping down tables, mopping, polishing silverware and sweeping. She never received any of the advanced training she was promised. She was paid with a $200 stipend every two weeks for performing at least 40 hours of work per week—a wage well below the federal minimum wage. "When I arrived to the United States and started working, I felt tricked. I would have never invested so much money in the program had I known it was not going to be a training experience. But I had spent so much money to participate that I couldn't just turn around and leave."

Sully and some of her co-workers filed complaints with the State Department and the U.S. Department of Labor against the J-1 sponsor and the hotel. The Department of Labor collected back wages on Sully's behalf for the minimum wage violations. "I'm happy I recuperated some of the money I lost, but I worry that my sponsor and other J-1 sponsors are continuing to recruit young people with false promises."

Although the government does little to provide internationally recruited workers with information about recruitment, it has taken limited measures to provide workers with information about their rights in the U.S. workplace. The Trafficking Victims Protection Reauthorization Act of 2008 requires the U.S. government to create an information pamphlet for applicants to employment- and education-based visa programs in the United States.[74] The pamphlet contains information about workers' rights in the United States generally, as well as specific information about rights under the majority of temporary work visa programs. During visa interviews with applicants for most employment-related nonimmigrant visas, U.S. consular officials must confirm the applicant has received, read and understood the pamphlet.[75] The pamphlet directs workers who think their rights have been violated to contact one of two hot lines that assist victims of human trafficking.[76] Between 2008 and 2010, calls to the National Human Trafficking Resources Center, the nongovernmental hot line listed on the pamphlet, more than doubled. During this time, the percentage of crisis calls remained steady (2% of calls); however, calls related in issue but beyond the scope of the hot line, such as sexual assault or labor exploitation, increased substantially, from 27% to 40% of all calls.[77] This data suggests a dramatic need for information that is not limited to trafficking alone.

Are You Coming to the United States Temporarily to Work or Study?
We Are Confident That You Will Have an Interesting and Rewarding Stay. However, If You Should Encounter Any Problems, You Have Rights and You Can Get Help!

You Have the Right to:

- Be treated and paid fairly;
- Not be held in a job against your will;
- Keep your passport and other identification documents in your possession;
- Report abuse without retaliation;
- Request help from unions, immigrant and labor rights groups and other groups; and
- Seek justice in U.S. courts.

Source: U.S. Department of State

Chart of Regulatory Framework

Visa	Access to Information Regarding Rights	Access to Information Regarding Recruitment Actors
A-3/G-5	Consular officials must confirm the visa applicant has received, read and understood the educational pamphlet created for employment-based nonimmigrant visa applicants.[78]	No public database exists with data about employers or any other actor involved with the A-3 or G-5 visa.[79] However, requests for A-3 and G-5 domestic workers are noted in the employers' files in the TOMIS database.
B-1	Consular officials must confirm the visa applicant has received, read and understood the educational pamphlet created for employment-based nonimmigrant visa applicants.[80]	No public database exists with data about employers or any other actor involved in the B-1 visa.[81]
EB-3	None	No public database exists.
H-1B	Consular officials must confirm the visa applicant has received, read and understood the educational pamphlet created for employment-based nonimmigrant visa applicants.[82]	Beginning July 1, 2013, redacted copies of H-1B labor certifications will be available through the iCERT visa portal system.[83] Data on foreign labor certification is available for past fiscal years. This includes information about employers, their visa petitions and their agents or attorneys.[84] The Wage and Hour Division also publishes a list of willful violators and debarred employers.[85] Information regarding foreign labor recruiters is not publicly available.
H-1C	Consular officials must confirm the visa applicant has received, read and understood the educational pamphlet created for employment-based nonimmigrant visa applicants.[86] [Pamphlet required in 2008; State Department issued notice to require it be given to all "H" visa applicants in 2009—after the H-1C visa expired.*] * The H-1C visa expired in December 2009.	No public database exists with data about employers or any other actor involved in the H-1C visa.

Chart of Regulatory Framework *(continued)*

Visa	Access to Information Regarding Rights	Access to Information Regarding Recruitment Actors
H-2A	Consular officials must confirm the visa applicant has received, read and understood the educational pamphlet created for employment-based nonimmigrant visa applicants.[87]	Beginning July 1, 2013, redacted copies of H-2A labor certifications will be available through the iCERT visa portal system.[88]
H-2B	Consular officials must confirm the visa applicant has received, read and understood the educational pamphlet created for employment-based nonimmigrant visa applicants.[89]	Beginning July 1, 2013, redacted copies of H-2B labor certifications will be available through the iCERT visa portal system.[90] Pursuant to new regulations currently enjoined, the employer must provide a copy of all agreements with any agent or recruiter in the international recruitment of H-2B workers, and the identity and location of the persons or entities. These agreements must be filed with the *Application for Temporary Employment Certification.*[91]
J-1	Consular officials must confirm the visa applicant has received, read and understood the educational pamphlet created for employment-based nonimmigrant visa applicants.[92] Additionally, sponsors must provide visa recipients with pre-arrival information, including the purpose of the program, the home-country presence requirement, housing, fees payable to the sponsor, health care and insurance, and other costs the exchange visitor is likely to incur.[93] Sponsors must provide orientation as to life and customs in the United States, community resources, health care or emergency assistance, a description of the program, rules that the exchange visitors are required to follow, contact information for the responsible officer, and contact information for the Exchange Visitor Program Services of the State Department and a copy of the Exchange Visitor Program brochure outlining the regulations relevant to the exchange visitors.[94]	No public database exists with data regarding employers or any other actor in the J-1 program. Sponsors must maintain legal status and accreditation.[95] Depending on the type of J-1 visa, limitations may apply to a sponsor's ability to contract with a staffing/employment agency. For example, sponsors are not permitted to engage or otherwise cooperate or contract with a staffing/employment agency to recruit, screen, orient, place, evaluate or train trainees or interns, or in any other way involve such agencies in an Exchange Visitor Program training and internship program or student internship program.[96] Sponsors must keep up-to-date information about all of their program participants (exchange visitors, not employers) in SEVIS, but only authorized individuals may log in to the database.[97] The State Department provides prospective applicants with lists of designated sponsor organizations in each program category.[98] To become a sponsor, entities must apply through the State Department. Sponsors may be for-profit entities that charge for their services.[99]
L-1	None	No public database exists with data about employers or any other actor involved with the L-1 visa.
O-1	None	No public database exists with data about employers or any other actor involved with the O-1 visa.
P-3	None	No public database exists with data about employers or any other actor involved with the P-3 visa.
TN	None	No public database exists with data about employers or any other actor involved with the TN visa.

Recommendations

WORKERS shall have the right to be informed in a language they understand about the recruitment process and their rights under U.S. work visa programs. To this end, workers shall have the right to:

1. be informed about their rights;
2. access information about labor contractors and employers, including information about their recruitment supply chains and compliance records;
3. receive education and materials about their rights under U.S. work visa programs; and
4. receive information about the legal and social services available to them while working in the United States.

EMPLOYERS AND LABOR CONTRACTORS shall provide information to prospective workers at the time of recruitment and to the public to achieve greater transparency in and awareness about recruitment and employment under U.S. work visa programs. To this end, employers and labor contractors shall:

1. publicly disclose their recruitment supply chain, including all contracted and subcontracted actors, at the time the worker is recruited; and
2. ensure workers receive all relevant information about the labor, employment and human rights guaranteed to them in the United States prior to applying for a visa and departure from their home country.

THE U.S. GOVERNMENT shall facilitate public knowledge about international labor recruitment and ensure workers are informed of their rights. To this end, the U.S. government shall:

1. publicly disclose employers, foreign and domestic labor contractors and information regarding their compliance records and practices;
2. establish regulations and educational programs to inform internationally recruited workers about their legal rights and obligations under U.S. work visa programs;
3. establish programs designed to give effective assistance to foreign workers in the exercise of their rights and for their protection;[100]
4. cooperate with sending country governments to thwart misleading propaganda about U.S. work visa programs;[101] and
5. provide, at the time of the consular interview, a brochure outlining their rights.

Freedom from Economic Coercion

Workers shall have the right to freedom from economic coercion in U.S. work visa programs.

Labor recruiters operating in workers' home countries often lead workers to incur significant debt. These recruiters charge exorbitant fees, frequently in lump sums, to place workers with employers, assist with immigration paperwork, arrange travel to and from the United States and in some cases arrange housing. To pay these fees, many workers obtain high-interest loans that are nearly impossible to repay by working in their home countries. Workers often are asked to provide collateral for loans, putting their homes and the finances of their extended families on the line in order to secure employment. In addition to pre-employment expenses, internationally recruited workers working in professional occupations, such as nursing, often pay a significant percentage of their yearly salaries to recruitment companies and face high fees if they breach their employment contracts. The various expenses create a strong incentive to remain on the job at all cost. Workers remain in unfair, unsafe and even forced labor conditions because the alternative—returning to their home countries where they cannot earn enough to repay pre-employment debt or breach fees—is not a viable option. As a result, workers across visa categories stay with their employers in debt bondage. Although a worker's payment of recruitment fees may be illegal under some U.S. visa categories, and although the practice is prohibited under international conventions, enforcement is lacking, and the practice continues to thrive in the United States.

The percentage of workers who pay recruitment and travel fees to obtain employment in the United States varies considerably by industry.[102] The amount paid also varies substantially, ranging from $100 to $20,000, depending on the country of origin and type of employment in the United States.[103] For example, migrant workers from Mexico in the Maryland crab industry pay recruiters roughly $750 per season for all fees and expenses necessary to participate in the program, without an explanation of what these costs cover.[104] Guatemalan H-2B workers pay an average of $2,000 in travel, visa and recruitment fees to obtain employment in the forestry industry in the United States.[105] Teachers recruited for employment in H-1B or J-1 visa programs pay fees ranging from $3,000 to $13,000 to recruiters who schedule interviews, secure

Worker Profile: H-1B Teacher

Photo: Cheryl Gerber Photographs

Ingrid Cruz is one of more than 300 teachers recruited by a Filipino recruiting firm, PARS International Placement Agency, and its sister company, Los Angeles-based Universal Placement International, to teach in public schools in Louisiana. The teachers paid more than $16,000 each (approximately four times what they would earn in the Philippines annually) to obtain jobs in the United States.

Things quickly deteriorated for the teachers once they landed at Los Angeles International Airport. After a wearying journey to the United States, the teachers were presented with a second recruitment contract that required 10 percent of both their first and second year salaries in fees, despite the fact they only had been granted one-year visas and they already had paid PARS 20 percent of their first year's salary in cash before leaving the Philippines.

"On the first day we stepped foot in this country, I can still remember how hurtful it was to sign a one-sided contract under duress stipulating another round of placement fees, fees to be paid to the agency if we were fired, prohibitions of having other people review our contract, and other provisions favorable only to the agency," Cruz said. "Anyone who tried to question the contract was threatened to be sent immediately back home. We were left with no choice but to sign."

Once in Louisiana, where their jobs were based, they learned the recruiter had signed leases on their behalf, without their consent, for shared apartments at a run-down apartment complex. The recruiter overcharged them rent, obtaining a hefty cut for herself. Teachers had to devote much of their salary to debt and rent payments—in some instances the loan payments ate up nearly all of the monthly paycheck. The recruiter also controlled the renewal of their visas and exacted heavy fees for those processing services.[106]

visas and arrange transportation and housing.[107] The J-1 students who participated in the highly publicized strike at the Hershey processing plant in Hershey, Pa., paid between $2,000 and $6,000 in pre-employment expenses, depending on their country of origin and recruitment agency.[108] Fees can be the first aspect of coercion that enslaves people in human trafficking situations. In one highly publicized human trafficking case, prosecutors alleged that the recruitment company Global Horizons Manpower Inc. charged more than 400 Thai H-2A workers up to $21,000 each to work on farms in Hawaii and Washington and held them in forced labor conditions.[109]

In addition to thwarting complaints that could lead to a retaliatory firing, pre-employment fees discourage workers from simply terminating employment in situations of unsafe or illegal working conditions. To pay the fees, workers borrow from friends and family or obtain high-interest private loans, sometimes through the same person who recruited them.[110] In some cases, recruiters require worker to leave the deeds to their homes or cars as collateral.[111] Mexican and Guatemalan H-2B workers in the forestry industry reported 20% monthly interest rates on pre-employment debt,[112] and Mexican H-2B workers in the crab industry in Maryland reported rates of 10 to 15%.[113] Many participants in the J-1 visa program incur pre-employment debt before they secure employment in the United States. The J-1 program allows a subset of participants to enter the country to search for job opportunities.[114] Participants who have incurred debt to procure a visa, pay a program host and travel to the United States have enormous incentives to accept employment on any terms in order to repay their expenses.

A Risk-Free Program

No Cost. Absolutely none…at any time! Our teacher candidates pay all costs and expenses involved that are allowed by Federal Regulations.
No Obligations. You are not required to hire any minimum amount of teachers through our service.
No Problems. Our teachers have an almost 100% retention rate after their first year at US schools!

Teacher's Council, "International Staffing," www.teacherscouncil.org/IntlStaffing/InternationalStaffing.html

Sample of Recruiter Fees Across Visas, Countries of Origin and Industry

$750	H-2B, Mexico, Maryland crab industry[115]
$2,000	H-2A, Chile, sheep and cattle herding[116]
$5,000 + portion of salary for three years	H-1B, India and the Philippines, public school teachers[117]
$20,000	H-2B, India, specialized construction work, Mississippi post-Hurricane Katrina[118]

Recruiters also subject workers to coercive economic penalties to ensure they remain on the job. In extreme cases, workers' pay is withheld until they return to their home countries.[119] For workers in professional occupations, recruiters routinely structure breach fees into employment contracts. Recruiters also may act as intermediaries between the worker and employer for the duration of the employment contract in order to monitor the employee's work. For example, recruitment agencies contracting with nurses typically require a two- to three-year commitment. Most recruiter contracts include a "buy-out" or breach fee the worker must pay if she resigns prior to the end of the contract. These fees range from $10,000 to $50,000.[120] The recruitment company Teacher Placement Group recruited teachers from India to work in U.S. school districts and required its recruits to pay the company $15,000 if they returned to India during the first year of the contract, $10,000 if they returned during the second year and $7,500 if they returned during the third year.[121]

The U.S. government does not have policies to prevent the economic coercion that keeps international workers in abusive working conditions in the United States. Although several visa programs prohibit the use of unlicensed recruitment agencies, require disclosure of employer-recruiter contracts and prohibit employers from knowingly using recruiters who charge fees to workers, these regulations are rarely enforced. Recruitment agencies often operate outside of the United States and therefore are able to hide their activities from government monitoring. The visa programs that hold employers responsible for reimbursing workers' recruitment, visa processing or travel costs similarly are inadequate since the U.S. government has not implemented any mechanisms to monitor whether an employer has paid for or reimbursed these expenses.[122] Rather than monitor or investigate employers, the Department of Labor relies almost exclusively on worker-driven private legal action as a means of enforcement. Internationally recruited workers face enormous difficulty accessing legal assistance and bringing private lawsuits in the United States to recuperate these costs.[123] The current enforcement structure, where the cost of noncompliance is low, leaves workers vulnerable to employer abuses and exploitation.

Chart of Regulatory Framework

Visa	Recruitment and Breach Fees	Visa Cost	Travel Expenses	Housing	Enforcement
A-3	Not regulated	No costs are assessed for visa processing.[124]	Employer cannot deduct travel expenses from wages.[125]	Employer may not charge for housing, cannot deduct for meals.[126]	Suspension of employers or organizations with a history of noncompliance w/ U.S. law or terms of the program.[127]
B-1	Not regulated	Not specified	Varies; in some instances employer provides airfare to and from the United States.[128]	Varies; in some cases benefits are what normally would be required for U.S. workers.[129] In other cases, free room and board is provided.[130]	Employees whose rights have been violated are directed to contact the National Trafficking Resource Center hot line.[131]
EB-3	Not regulated	Not regulated	Not regulated	Not regulated	Not regulated
G-5	Not regulated	No costs are assessed for visa processing.[132]	Employer cannot deduct travel expenses from wages.[133]	Employer may not charge for housing, cannot deduct for meals.[134]	Suspension of employers or organizations that have a history of non-compliance w/ U.S. law or terms of the program.[135]
H-1B	Not regulated	Employer must pay petition and fraud fees.[136]	Employer must pay worker's return travel costs if terminated prematurely.[137]	Not regulated	Employers who violate attestations can be denied future visas.[138]
H-1C	Not regulated	Not regulated	Not regulated	Not regulated	A hospital that is non-compliant with the terms of the H-1C visa program can be fined or disbarred from the program. Compliance is not related to worker protection from economic coercion because that area is not regulated by the terms of the program.[139]
H-2A	Employer and its agents cannot seek or receive payment of any kind for any activity related to obtaining H-2A labor certification, including recruitment costs (does not include costs primarily for benefit of the worker, such as government-required passport fees). Employer must contractually forbid any foreign labor contractor or recruiter (or agent thereof) to seek or receive payments or other compensation from workers.[140]	H-2A worker pays any government-mandated passport, visa or inspection fees to the extent that the payment of such costs and fees by the H-2A worker is not prohibited by statute or other laws.	Workers who complete half the season at 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 for their transportation costs of returning home.[141]	Employers are required to provide housing free of charge.[142]	Employers with a history of noncompliance can be suspended, sanctioned and disbarred from the program.[143]

Chart of Regulatory Framework *(continued)*

Visa	Recruitment and Breach Fees	Visa Cost	Travel Expenses	Housing	Enforcement
H-2B	Employers and agents are prohibited from charging recruitment fees.[144] Workers who reveal to the U.S. consulate they paid illegal recruitment fees risk being denied passage to the United States.[145]	Not regulated under current rules. However, visa fees may be reimbursed under FLSA in first workweek.[146] Enjoined rules would require employer to reimburse the H-2B worker for all visa, visa processing, border crossing and other related fees, including those mandated by the government, incurred by the H-2B worker, during the worker's first week of work.[147]	New regulations, currently enjoined and not in effect, would require an employer to reimburse the worker for the full amount of inbound travel costs when the worker completes 50% of the employment contract. Employers would provide outbound transportation costs to workers who complete the employment contract or who are dismissed for any reason before the contract ends.[148]	None provided	Under current rules, WHD may recommend debarment to ETA after a final determination; ETA must debar within two years of the violation.[149] Under the enjoined rules, WHD has independent authority to debar employers, agents and attorneys. The new regulations also broaden the offenses that may be grounds for debarment; debarment period is between one and five years.[150] OFLC can impose assisted recruitment on employers that violate program rules,[151] revoke temporary labor certifications[152] and debar employers who willfully violate the rules of the H-2B program.[153] Certifications will not be granted to employers who have not complied with sanctions imposed by final agency actions under the H-2B program.[154]
J-1	Not regulated	Not regulated	Not regulated	Requirements vary among types of J-1 visas; for example, sponsors must ensure trainees and interns have sufficient finances to support themselves, including housing and living expenses;[155] sponsors must ensure the host family has adequate financial resources to undertake hosting obligations and is not receiving needs-based government subsidies for food or housing;[156] and sponsors must consider the availability of suitable, affordable housing and reliable, affordable and convenient transportation to and from work when making job placements for summer work travel visitors.[157] Moreover, for employers who provide housing and/or transportation to and from work for summer work travel visitors, job offers must include details of all such arrangements, including the cost to participants; whether such arrangements deduct such costs from participants' wages; and the market value of housing and/or transportation in accordance with the Fair Labor Standards Act regulations set forth at 29 CFR part 531, if they are considered part of the compensation packages.	The State Department sanctions and suspends sponsors for violations of the regulations.[158]

Chart of Regulatory Framework *(continued)*

Visa	Recruitment and Breach Fees	Visa Cost	Travel Expenses	Housing	Enforcement
L-1	Not regulated	Not regulated	Not regulated	Not regulated	Not regulated
O-1	Not regulated	Not regulated	If employment ends for any reason other than voluntary resignation, employer must pay return travel costs to last place of residence outside the United States.[159]	Not regulated	Not regulated
P-3	Not regulated	Not regulated	If employment terminates for reasons other than voluntary resignation, the employer and petitioner are responsible for the P-3's return travel costs.[160]	Not regulated	Not regulated
TN	Not regulated	Not regulated	Not regulated	Not regulated	Not regulated

Recommendations

WORKERS shall have the right to freedom from economic coercion in U.S. work visa programs. To this end, workers shall have the right to:

1. NOT pay administrative, transportation, lodging or recruitment costs;
2. begin work in the United States free of debt associated with the U.S. work visa program; and
3. receive labor contracts that do not economically coerce them to remain employed by their sponsoring employers.

EMPLOYERS AND LABOR CONTRACTORS shall be fully responsible for all costs related to the recruitment and employment of workers under U.S. work visa programs.To this end, employers and labor contractors shall:

1. ensure workers do not pay recruitment fees for employment in the United States;[161]
2. pay for transportation and lodging from the worker's home to the worksite in the United States, including costs incurred from travel to the place of recruitment, the U.S. consulate and the worksite in the United States;
3. arrange and pay for all return transportation from the U.S. worksite to the worker's home;
4. NOT provide loan services to workers; and
5. NOT sell services, such as insurance or housing, to workers at costs above market price.The employer is responsible for ensuring no workers pay any costs listed above.

THE U.S. GOVERNMENT shall monitor recruitment and employment of workers under U.S. work visa programs to ensure workers are not subjected to economic coercion. To this end, the U.S. government shall:

1. establish programs and processes to monitor the compliance of employers and labor contractors with their obligations;
2. pursue civil or criminal prosecutions or other sanctions against noncompliant employers and labor contractors, including barring noncompliant employers and labor contractors from U.S. work visa programs;
3. require employers to pay for return transportation costs from the worksite in the United States to the worker's home; and
4. prohibit employers and labor contractors from providing loan services to workers.

Right to Receive a Contract with Fair Terms and to Give Informed Consent

Workers shall have the right to a legal employment contract that respects their rights and the right to provide informed consent before being hired.

All workers, including internationally recruited workers, have the right to be fully informed about the terms and conditions of employment before they enter into a contract with an employer. However, unjust contract practices are pervasive in the international labor recruitment process. Employers frequently fail to provide workers with the terms and conditions of employment in a form that is appropriate, verifiable and easy to understand. Employers and recruiters also present terms that are false or misleading, employ coercive tactics to force workers to sign unfavorable contracts, and disregard the written contracts they provided to the government during the labor certification application process. These practices interfere with a worker's ability to give informed consent and increase the worker's likelihood of encountering abusive conditions in the workplace.

The U.S. work visa programs facilitate these unjust practices through vague and inconsistent regulations and a near total lack of enforcement. The majority of temporary work visa programs do not require the employer to execute a formal, written employment contract with a worker who travels to the United States for the sole purpose of working for that employer.[162] Of the programs that do require written contracts, few specifically require that the contract be executed in a language the worker understands.[163]

Program requirements vary considerably. Several visa programs' regulations do not require employment contracts.[164] Others require the employer to provide the government, not the worker, with a written description of the terms of employment.[165] Contractual requirements even are inconsistent within the J-1 program's employment categories. Teachers must receive and accept a written offer of employment with an employer or staffing company, and au pairs must receive a copy of the written terms of employment signed by the host family.[166] However, the regulations do not require specialists, camp counselors and participants in the summer work travel program to receive any contract at all.[167]

Worker Profile: EB-3 Nurse[168]

When asked about her experience as a nurse recruited from the Philippines to work in the United States, Archiel Buagas said, "I was so scared of going to work that before my shift, I would be crying, I'd be [vomiting] because of anxiety and nervousness. I would have diarrhea. . . . [T]he only thing that made me sleep was the fact that I'm so tired . . . . I wanted to go home."

Archiel was one of a group of 27 Filipino nurses who resigned from their jobs in several nursing homes in New York State on April 26, 2006, citing unfair working conditions. Among the many complaints they lodged against their recruiters were problems with work permits, low pay, high patient load and inadequate orientation. According to Archiel, problems began when she was still in the Philippines. "I wanted to get a copy of the contract, but they didn't want it [to be] taken out and photocopied. So I just left it there. They said over time they would send us papers. There were lots of papers that we signed and I just couldn't keep track of what they were about."

Although the nurses were told by the recruiter in the Philippines that if they didn't feel comfortable, their orientations would be extended, this was not the case for Buagas. "I was afraid to go to work, because I was afraid that I would do more harm than good to my patients," she said. "I felt like I needed more orientation, but they wouldn't give it because they needed people on the floor, to be there."

Archiel also said she and the other nurses she lived with were asked to work long hours and on their days off, often without adequate compensation for the overtime. She worked in a long-term care facility and cared for an average of 30 to 60 patients per shift, and sometimes as many as 100, working as the medication, treatment and charge nurse all at the same time. "We were also regularly floated to units we were not [familiar with]," she said.

After leaving her job along with the other nurses, Archiel was out of work for three months before finally getting a job as a nurse on a city hospital psychiatric unit. She said she was scared on her first day, but when she noticed that here the nurses actually took breaks, she went into the bathroom and cried.

The most robust contractual protections are offered to A-3, G-5 and B-1 domestic workers. The regulations specify a number of terms that must be included in the contract. However, the B-1 program lacks key provisions that are required by the A-3 and G-5 programs, such as whether the employee has the right to overtime compensation.[169] The H-2A program also requires written contracts.[170]

Regulatory inconsistency is just one aspect of the problem. The government fails to provide contractual protections to several categories of international workers and also fails to enforce the protections it does provide. In the absence of a formal written contract, it is unclear whether a worker legally can hold an employer liable for the information provided by the employer to the government in order to obtain the labor certification. Federal courts have ruled differently with respect to this issue.[171]

Unjust contract practices are widespread, regardless of visa category or employment sector. Employers routinely fail to provide workers with appropriate contracts in a language they understand.[172] In addition, there are documented cases of recruiters or employers using coercive tactics to force workers to sign contracts with highly unfavorable terms.[173] Employers also routinely disregard contracts they provide to the government,[174]

leaving international workers vulnerable to exploitation, such as pre-employment debt.

For example, after incurring substantial debt to pay recruitment, visa and travel fees, teachers who were recruited for the H-1B program arrived in the United States and were forced by their recruiter to sign a contract stipulating another round of placement fees, breach fees and a clause prohibiting a third party from reviewing the contract. The recruiter threatened teachers who tried to question the contract that they would be sent home immediately, without the opportunity to earn money to pay the debt they already had incurred.[175] Domestic workers also have reported their employers explicitly told them their employment contracts were signed to satisfy the U.S. government requirements only, were not binding and would be ignored. Employers then paid the workers a drastically reduced wage from the wage the employers initially had promised the workers.[176]

Chart of Regulatory Framework

Visa	Written Contract Required?	In Worker's Native Language?	Description of Any Contract and Terms Required
A-3/G-5	Yes[177]	Yes[178]	Contract must be signed by the employer and the employee, including an agreement by the employer to abide by all federal, state and local laws in the United States; a guarantee the employee will be compensated at the federal or state minimum or prevailing wage, whichever is greater; information on the frequency and form of payment, work duties, weekly work hours, holidays, sick days and vacation days; a statement by the employee that he or she will not accept any other employment while working for the employer; a statement by the employer that he or she will not withhold the passport, employment contract or other personal property of the employee; and a statement indicating both parties understand the employee cannot be required to remain on the premises after working hours without compensation. Note: deductions may not be withheld from wages for housing, meals, travel, insurance or medical care.[179]
B-1	Yes	No	Applicant for visa must present a contract signed by employer and employee at the time of interview and again at the port of entry.[180] The employer must provide employee with a contract that complies with U.S. law.[181] Employment contract requirements are listed in the pamphlet that must be provided to domestic worker visa applicants at U.S. consulates.[182]
EB-3	No	No	Not applicable
H-1B	Not specified	Not specified	Not applicable
H-1C	Not specified	Not specified	Not applicable
H-2A	Yes[183]	Yes[184]	Worker must receive a copy of the employment contract by the time the worker applies for a visa with the U.S. consulate or embassy.[185]
H-2B	No; job order required in enjoined regulations.	No; job order in language understood by the worker required in enjoined regulations.[186]	No employment contract or job order required. Enjoined regulations would require the worker to receive a copy of the job order in a language understood by the worker.[187]

Chart of Regulatory Framework *(continued)*

Visa	Written Contract Required?	In Worker's Native Language?	Description of Any Contract and Terms Required
J-1	Contract requirements vary among J-1 visa types.[188]	Contract requirements vary among J-1 visa types.[189]	*The following are some examples of contract requirements:* *Teacher:* Written offer for a teaching position, return a written acceptance. Can be employed directly by staffing company instead of a school.[190] *Specialist:* No contract required by visa program. *Physician:* Contract required by visa program.[191] *Au Pair:* Prior to au pair's departure from home country, the sponsor must provide au pair with a signed agreement with the host family that details the terms of the program.[192] *Summer Work Travel:* No contract required by visa program.
L-1	No	No	The petition must contain evidence that the beneficiary will be employed, including a detailed description of the services to be performed and evidence the beneficiary has worked at least one of the past three years with a qualifying organization.[193]
O-1	No[194]	No	I-129 petition must be accompanied by copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed.[195]
P-3	No[196]	No	I-129 petition must be accompanied by copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed.[197]
TN	No	No	Evidence of an offer of employment by submission of an employment letter. The employment letter must describe in detail the duties that are to be performed in order to show the alien will be employed in one of the professional occupations.[198]

Recommendations

WORKERS shall have the right to a legal employment contract that respects their rights and the right to provide informed consent before being hired. To this end, workers shall have the right to:

1. receive a legal and binding employment contract that respects their human and labor rights, U.S. law and their home country's laws on labor recruitment. The contract shall describe:[199]
   a. the name and contact information of the employer, the worker and any foreign labor contractor(s);
   b. the type of visa under which the foreign worker is to be employed;
   c. the address of the usual workplace(s);
   d. the start and end date of employment;
   e. the type of work to be performed;
   f. the pay, method of calculation and period of payments;
   g. the normal hours of work;
   h. daily and weekly rest periods, and any annual leave;
   i. the provision of food and accommodation;
   j. any costs for which the worker will be responsible;
   k. any probationary or trial period;

l. the terms and conditions under which the visa will be renewed, with a clear statement of whether the employer or the worker will secure renewal, listing any costs associated with renewal;
m. terms and conditions relating to the termination of employment; and
n. the terms of repatriation.

2. be informed of the terms and conditions of their employment in an appropriate, verifiable and easily understandable manner before consenting to employment in the United States;[200]
3. receive a full disclosure of the actors involved in their recruitment process; and
4. receive two copies of their employment contract, one each in English and their native language, to keep for their records.

EMPLOYERS AND LABOR CONTRACTORS shall provide workers with an employment contract that respects their rights and ensures workers have the information and understanding necessary to provide informed consent before being hired. To this end, employers and labor contractors shall:

1. provide workers with a legal and binding employment contract that respects their civil, labor and human rights, U.S. law and the laws of their home country (see paragraph 1. a.–n. above for a description of the contract's required contents);
2. provide workers with two copies of their contract, one each in English and the worker's native language;
3. NOT submit workers to employment contracts that include unconscionable terms or otherwise require workers to forfeit their civil, labor or human rights;
4. NOT submit workers to employment contracts that waive their right to seek civil remedies upon breach of contract;
5. provide workers with educational materials describing their rights during recruitment and employment in the United States; and
6. provide workers with information about actors involved in the worker's recruitment process so workers can give informed consent to their employment contract.

THE U.S. GOVERNMENT shall ensure workers recruited under U.S. work visa programs receive contracts and are able to give informed consent. To this end, the U.S. government shall:

1. require that all employee applicants to U.S. work visa programs include a copy of their employment contract;
2. establish programs to monitor the compliance of employers and labor contractors with the regulations related to contracts;
3. establish mechanisms to ensure workers are provided with information about the recruitment process, their employment contract and their rights and obligations under the visa program, so they can give informed consent to their employment contract; and
4. pursue civil or criminal prosecutions or other sanctions against noncompliant employers and labor contractors, including barring noncompliant employers and labor contractors from U.S. work visa programs.

Employer Accountability

Workers shall have the right to be recruited for work in the United States under a system that holds the employer accountable for any and all abuses suffered during their recruitment or employment.

Under the existing system, employers rarely are held accountable for the abuses suffered during recruitment or employment. Most glaringly, employers frequently are not held liable for fraudulent, deceptive and illegal practices employed in the recruitment supply chain by contracted and subcontracted actors. The lack of employer accountability for abuses suffered during recruitment lends itself to an environment of impunity in which employers are able to shift recruitment costs to workers.

The recruitment of international workers begins overseas in workers' home countries, with the vast majority of employers relying on private, international recruiters.[201] Often, there are multiple levels of recruiters, including international labor brokers that employers select, national recruitment agencies and community-level agents who compile recruitment lists.[202] However, workers have no way of determining if recruiters are tied to a U.S. employer with certified positions. The State Department does not have an official policy or regulation requiring the collection of information about recruiters or end-beneficiary employers.[203]

Laws regulating H-2A and H-2B programs prohibit employers from knowingly charging or permitting agents to charge workers recruitment fees. Regulations require employers to attest they will not shift recruiting costs to H-2A workers and will "contractually forbid any foreign labor contractor or recruiter whom with the employer engages…to seek or receive payments from prospective employees."[204] However, employers evade these laws by claiming they are unaware their workers were charged recruitment fees.

Without laws to hold employers accountable for the actions of recruiters in the recruitment supply chain and staffing agencies, workers are unable to seek redress. Courts have been reluctant to find an agency relationship between the employer and the recruiter.[205] However, lower courts have held employers responsible for recruitment

fees in some cases. These courts have found that when the employer was aware the recruiters charged workers a fee, the recruitment fee falls within the FLSA's "primarily for the benefit of the employer" exception, meaning employers can be held liable.[206] Staffing agencies can further obscure the employment relationship. For example, nurses face discrimination in shift assignments at hospitals, but the hospital is not the direct employer and can escape liability for discrimination.

In addition to employers not being held liable in court for the actions of recruiters in the supply chain, the U.S. government has admitted its own laws and regulations designed to protect internationally recruited workers are inadequate. According to a 1990 GAO report, "regulations governing J visa programs are too vague and not comprehensive enough to ensure that participants and their activities are consistent with the intent and purpose of the 1961 act," they "are not adequate to ensure the integrity of the program" and "provide little guidance as to what constitutes legitimate educational and cultural exchanges."[207]

The legal protections that do exist are inadequate when the U.S. government relies completely on employer attestation for monitoring and enforcement or when approval is automatic. For example, in the hiring of an H-1B worker, the employer first must file a Labor Conditions Application (LCA, Form ETA 9035) with the Department of Labor through an online system.[208] Approval of the LCA is automated and is granted within minutes of submission as long as the information provided is complete.[209] A 2006 GAO report exposed the problems associated with automatic approval, finding the DOL had certified applications even when the wage rate on the application was below prevailing wage for H-1B workers.[210]

Currently, there are some protections for workers, but many times they are not enforced or are inadequate. For example, U.S. law does not establish mandatory employment conditions for migrant domestic workers. Instead, they are established as employment contract requirements in the State Department's Foreign Affairs Manual (FAM), which delineates the agency's internal policy code.[211] Reliance on the State Department's use of the FAM remains problematic because the State Department maintains it is "not in a position to enforce" the contracts once parties are in the United States.[212]

Thus, although a prospective employer must agree to the FAM's mandatory employment conditions during the application process, no governmental agency is responsible for enforcing the terms of the agreement during the employment relationship itself.[213] Even if the State Department becomes aware that an employer has breached the terms of the contract, the law does not prohibit the State Department from issuing future visas to the same employer.[214] The DOL does not review applications for domestic worker visas, which it does for many other visa categories, nor does the DOL monitor or investigate employer compliance with the program requirements. The only contact the DOL has with migrant domestic workers is through complaints that occasionally are filed with the DOL's Wage and Hour Division.[215]

In addition to employers not being held liable in court for the actions of recruiters in the supply chain, the U.S. government has admitted its own laws and regulations designed to protect internationally recruited workers are inadequate.

The lack of oversight by the DOL with regard to U.S. workers is an example of the general problems that exist with the way the work visa programs are managed. Responsibility for oversight of the work visa programs is spread throughout numerous government agencies. The State Department and the Department of Homeland Security's Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) are charged with overseeing visas, as well as entry into the United States. Meanwhile, the DOL certifies employers to participate in work visa programs and monitors payment and working conditions.[216] The Office of the Inspector General of the DOL found the "ETA [Employment and Training Administration] could improve its initial application reviews, post-adjudication processes and monitoring activities to better protect the interests of U.S. workers under the regulations by which the program currently operates."[217]

Chart of Regulatory Framework

Visa	Is Supply Chain Disclosure Required?
A-3/G-5	No
B-1	No
EB-3	No
H-1B	No
H-1C	No
H-2A	No
H-2B	No. Regulations that would have required disclosure of foreign recruiters have been enjoined.[218]
J-1	For some types of exchange visitors, sponsors must ensure compliance of third parties with regulations governing the program. Additionally, third parties must have an executed written agreement with the sponsor to act on behalf of the sponsor, outlining the obligations and full relationship between the sponsor and third party. Failure by any third party to comply with the regulations or with any additional terms and conditions governing Exchange Visitor Program administration will be imputed to the sponsors engaging such third party.[219]
L-1	No
O-1	No
P-3	No
TN	No

Recommendations

WORKERS shall have the right to be recruited for work in the United States under a system that holds the employer accountable for any and all abuses suffered during their recruitment or employment.

EMPLOYERS AND LABOR CONTRACTORS shall be responsible for their labor recruitment supply chain. To this end, employers shall:

1. be responsible for understanding and overseeing the recruitment practices in their supply chains in the United States and abroad; and
2. be liable for all fraudulent, deceptive and illegal practices employed in their recruitment supply chain by both contracted and subcontracted actors.

THE U.S. GOVERNMENT shall ensure employers are held responsible for their recruitment supply chains in the United States and abroad. To this end, the U.S. government shall:

1. regulate and monitor the recruitment of foreign workers to the United States;
2. investigate potentially unlawful activity committed by employers and labor contractors;
3. conduct randomized audits of foreign and domestic recruiters and U.S. employers; and
4. pursue civil or criminal prosecutions or other sanctions against noncompliant employers and labor contractors, including barring noncompliant employers and labor contractors from U.S. work visa programs.

Freedom of Movement

Workers shall have the right to move freely and change employers while working in the United States.

U.S. work visa programs are plagued with incidents of employers keeping internationally recruited workers in conditions of slavery, severely restricting the ability of these individuals to move freely.[220] There are a number of ways in which recruiters and employers succeed in confining internationally recruited workers, starting from the very beginning of the recruitment process.

Although not addressed with respect to recruiters, the State Department has directly addressed the problem of employers confiscating passports. Since February 2000, employment contracts for G-5 and A-3 domestic workers must include "a statement by the employer that he or she will not withhold the passport, employment contract or other personal property of the employee" and "a statement […] that the employee cannot be required to remain on the employer's premises after working hours without compensation."[221] Unfortunately, when employers do not follow the law and workers find themselves in abusive working conditions with their passports confiscated, workers must choose between enduring the abuses or attempting to leave the country without their passports. In addition to confiscating personal documents, employers also routinely circumscribe where the workers are permitted to go during nonwork hours or deny the workers the right to leave the employer's premises. To enforce these limitations, employers may misrepresent U.S. law and culture, exaggerate the dangers of the U.S. streets or use other forms of intimidation.[222] When an employer confiscates passports and other forms of identification, threats that a worker may be deported if he or she leaves the premises become much more real.

These issues are exacerbated by the fact the majority of temporary worker visas bind a worker to a single employer. The worker's immigration status ultimately is dependent on continued employment with the employer in whose name the visa has been issued. Where a worker holds a visa that is linked to a single employer and that employer is abusive, the worker is left with few options. The worker either must endure the mistreatment or return home immediately. For many, returning is not an option because they have arrived in the United States indebted from recruitment expenses. The worker effectively is in a situation of forced labor, a victim of human trafficking unable to leave a situation of abuse.

A recent case, *Chellen v. John Pickle Co.*, exemplifies the issue of restriction of personal mobility. John Pickle Co. confiscated the workers' passports, visas, tickets and I-94s and locked these documents in a safe. A company manager told the workers they faced possible arrest, investigation or deportation if they left the property without the proper documentation. In order to leave John Pickle Co. premises, the workers were required to obtain permission, and an armed security guard was placed at the main gate. Eventually, a number of workers crawled under a gate to escape.

Chart of Regulatory Framework

Visa	Change Employers?
A-3/G-5	The ability for A-3 and G-5 domestic workers to change employers is extremely restricted or not available at all. First, domestic workers must transfer to a new qualified employer prior to the expiration of the time period for which she was initially admitted and within generally 30 days after leaving her original employer.[223] However, if the domestic worker is working for a member of the World Bank or IMF, the employment contract states that "if the domestic employee's employment by a staff member is terminated for any reason, the domestic employee will not be legally permitted to remain in the United States and will be required to leave the country promptly."[224]
B-1	Very difficult to change employers. Depending on the classification of the employer, in some cases the B-1 visa holder only may be employed by one employer.[225] In other instances, the B-1 visa holder may possibly change employment.[226]
EB-3	Yes, visa is portable so long as the worker's application for adjustment of status has been filed and remained unadjudicated for 180 days or more and so long as the new job is in the same or a similar occupational classification as the job for which the petition initially was filed.[227]
H-1B	Yes, if an H-1B visa holder wishes to change employers and is in the United States, the prospective employer must file a petition on Form I-129 requesting classification and an extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition.[228]
H-1C	No, an H-1C nonimmigrant may not change employers.[229]
H-2A	Very difficult to change employers. If an H-2A visa holder wishes to change employers and is in the United States, the prospective employer must file a petition on Form I-129 requesting classification and an extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition.[230]
H-2B	Very difficult to change employers. If an H-2B visa holder wishes to change employers and is in the United States, the prospective employer must file a petition on Form I-129 requesting classification and an extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition.[231]
J-1	A J-1 nonimmigrant exchange visitor may accept employment after receiving authorization from USCIS.[232] The nonimmigrant may change from one designated program to another after approval of Form DS-2019 and notification of the State Department.[233]
L-1	Yes, provided that another employer was willing to sponsor a visa.[234]
O-1	A new employer must file a new I-129 petition and a request to extend the alien's stay.[235]
P-3	A new employer must file the I-129 petition and the employee is not allowed to work for the new employer until the I-129 has been approved.[236]
TN	A new employer must file the I-129 petition and the employee is not allowed to work for the new employer until the I-129 has been approved.[237]

Recommendations

WORKERS have the right to move freely while working in the United States. To this end, workers shall have the right to:

1. possess their passports and other migration or identity documents at all times;
2. move freely during nonwork hours;
3. sever contracts that violate the law, the principles in this document or their basic human rights without penalty; and
4. leave an abusive employer and seek other employment.

EMPLOYERS AND LABOR CONTRACTORS shall not restrict the movement of their workers under any circumstance. To this end, employers and labor contractors shall NOT:

1. hold their workers' passports or other migration or identity documents at any time; and
2. restrict in any way the ability of workers to move freely during nonwork hours.

THE U.S. GOVERNMENT shall ensure workers under U.S. work visa programs are not restricted in their movement. To this end, the U.S. government shall:

1. establish laws and programs to protect the workers' right to move freely;
2. assist workers when their employment does not meet minimum standards or they are recruited in a noncompliant manner, to find suitable substitute employment or secure the worker's return home, at the worker's option;[238] and
3. pursue civil or criminal prosecutions or other sanctions against noncompliant employers and labor contractors, including barring noncompliant employers and labor contractors from U.S. work visa programs.

Worker Profile: B-1 Domestic Workers

Alejandra Ramos and Maria Onelia Maco Castro, citizens of Peru, were hired by Key Biscayne residents Javier Hoyle and Patricia Perales, an IBM executive and spouse, to work as nannies. Alejandra worked for the family for five years before she escaped. Maria Onelia worked for the family for two years. The family initially told Alejandra that she would be working eight hours a day for $7 an hour. However, Alejandra worked 19-hour days for the couple and was forced to sleep in a converted closet. The couple took the women's passports and immigration papers. Their food was restricted. Maria Onelia was instructed not to speak with people who had encouraged Alejandra to leave their home. The couple threatened both women with detention and deportation if they tried to escape and threatened to encourage and urge law enforcement and immigration officials to pursue them.

After a lawsuit was filed, the couple accused Alejandra of sexually abusing their child in retaliation. These accusations were found to be baseless. A federal jury in Miami found in favor of Alejandra's and Maria Onelia's claims against the couple. The jury found the couple violated federal human trafficking laws by threatening the women with deportation and withholding their passports.[239]

Freedom of Association and Collective Bargaining

Workers shall have the right to form and join unions and to bargain and advocate collectively to promote their rights and interests.

Currently, internationally recruited workers have limited ability to freely associate and bargain collectively. In order to defend and further their rights, workers must be able to join and form labor unions and other worker organizations of their choosing. Workers must be able to do so without fear or threat of retaliation.

International conventions dictate that workers must have the ability to organize and join labor unions with the support of the U.S. government and without fear of retaliation. The United States joined the United Nations International Labour Organization (ILO)[240] in 1934.[241] In 1944, the General Conference of the ILO reaffirmed the fundamental principles upon which the ILO is based, including freedom of association and collective bargaining.[242] In 1998, the ILO Declaration on Fundamental Principles and Rights at Work established that in freely joining the ILO, all members, including the United States, endorsed the principles and rights set out in the Constitution and Declaration of Philadelphia.

As a party to the ILO, the United States must protect the right of workers to freely associate, and the effective recognition of the right to collective bargaining.[243] In addition to being a member of the ILO, the United States has ratified the International Covenant on Civil and Political Rights.[244] This Covenant states "everyone shall have the right to freedom of association with others, including the right to form and join trade unions."[245]

When unions are established, internationally recruited workers are better able to fight against abuses in recruitment and throughout employment. Unions provide a mechanism for workers to monitor conditions in the workplace and to enforce standards through a collective bargaining agreement, which supplements governmental enforcement of employment standards and allows workers to privately remedy disputes through their union.

The Farm Labor Organizing Committee (FLOC), which was founded in the mid-1960s, is an example of a union

formed to benefit temporary workers.[246] Under a FLOC agreement, employers are responsible for all recruitment costs, even where paid at the local level to recruiters not directly affiliated with the employer.[247] In 2004, FLOC was able to organize Mexican H-2A workers in North Carolina and execute a contract with growers, the first union contract for H-2A workers.[248] FLOC's victory had a profound effect on working conditions. According to Miguel, an H-2A farmworker in North Carolina, "For the first few years, we didn't have any break besides lunch at noon. But afterwards, with the help of the union, they gave us a break in the morning, the lunch hour, and a break at 3 p.m."[249] In 2005, FLOC opened an office in Monterrey, Mexico, to communicate with their members across the border. FLOC started receiving threats soon after. The U.S. government should ensure this type of criminal activity and intimidation does not continue to occur.

Workers often are afraid to speak out against abuses because they are scared of retaliation against themselves or family members. This fear makes it difficult to prove recruiter abuses. If workers were union members, they would have a support network and would be more willing to confront abuses. Collective bargaining helps prevent abuses by institutionalizing protections and empowering workers to set, monitor and enforce many of the conditions of their employment.

Chart of Regulatory Framework

Visa	Right to Form or Join a Union	Covered by the NLRA[250]	Do Employers Have the Ability to Hire Internationally Recruited Workers During a Strike?
A-3/G-5	No[251]	No[252]	Not applicable
B-1	No[253]	No[254]	Not applicable
EB-3	Yes[255]	Yes[256]	Not specified
H-1B	Yes[257]	Yes[258]	No[259]
H-1C	Yes[260]	Yes[261]	No[262]
H-2A	No.[263] Farmworkers in some states are covered by state laws regulating some aspects of organization and collective bargaining.[264]	No[265]	No[266]
H-2B	Yes[267]	Yes[268]	No[269]
J-1	For teachers, any such position shall be in compliance with any applicable collective bargaining agreements, where one exists.[270]	Yes[271]	For summer work travel, sponsors must confirm at the beginning of the season that host employers have not experienced layoffs in the past 120 days and do not have workers on lockout or on strike.[272] Other types of J-1 visas do not specify.
L-1	Yes[273]	Yes[274]	No. Petition may be denied if there is a labor dispute or strike where the beneficiary is to be employed.[275] However, participation in a strike will not result in deportation unless the beneficiary violates the INA or overstays her visa.[276]
O-1	Yes[277]	Yes[278]	No[279]
P-3	Yes[280]	Yes[281]	No[282]
TN	Yes[283]	Yes[284]	No[285]

Recommendations

WORKERS shall have the right to freedom of association and to bargain and advocate collectively to promote their rights and interests. To this end, workers shall have the right to:

1. join or form labor unions or other labor organizations; and
2. participate in labor unions or other labor organizations without fear or threat of retaliation or penalty.

EMPLOYERS AND LABOR CONTRACTORS shall not restrict the right of their employees to freely associate as members of labor unions or other labor organizations.To this end, employers and labor contractors shall NOT:

1. prohibit or interfere with the workers' right to freedom of association;
2. use coercive methods to control the workers' choice of labor union or labor organization;
3. limit the ability of the workers to participate in the activities of their labor union or labor organization; or
4. retaliate against or otherwise punish workers for choosing to be a member of or participate in a labor union or labor organization.

THE U.S. GOVERNMENT shall protect workers who wish to exercise their right to freely associate by joining or forming a labor union or other labor organization. To this end, the U.S. government shall:

1. protect workers who exercise their freedom of association; and
2. pursue civil or criminal prosecutions or other sanctions against noncompliant employers and labor contractors, including barring noncompliant employers and labor contractors from U.S. work visa programs.

Worker Profile: H-2B Seafood Worker

Juana Reyes came to the United States on an H-2B visa. She was 53 three years old and came from a small fishing community in Mexico. Life in her village was hard. She had eight children and three grandchildren who depended on her to provide for them. She had to work on the fishing boats and in the fields in order to survive. At times they did not have enough to eat.

Juana decided to come to the United States to work for Viet Seafood Inc. She dreamed of earning enough to help her family get ahead. She borrowed approximately $1,000 in order to work for the company. She worked 12-hour days for five months, with only one half-hour break for lunch, picking crab and peeling crawfish. Even working that much, she and other co-workers were called lazy Mexicans. At times her checks were as low as $35 for a whole week's work.

She and her co-workers decided to ask for a raise so they at least could earn minimum wage. She was scared the boss would cancel her visa and deport her or blacklist her so she could not come back to the United States. She and the other workers went to talk to the boss; when he didn't listen, they went on strike. The workers then were fired for their attempted negotiation and strike.

Juana left for Mexico empty-handed—but remained committed to her work in the hopes conditions would improve for workers in the future.[286]

Access to Justice

Workers shall have the right to access justice for abuses suffered under U.S. work visa programs.

Internationally recruited workers are limited in their ability to seek justice when they suffer abuse at the hands of unscrupulous employers and labor recruiters. When they denounce abusive or illegal work situations, they face reprisals from employers and labor recruiters. For example, a Carnegie study found that "blacklisting of H-2A workers appears to be widespread, is highly organized and occurs at all stages of the recruitment and employment process. Workers report that the period of blacklist now lasts three years, up from one year earlier in the decade."[287] Human Rights Watch also found evidence of a "campaign of intimidation" against workers to discourage any exercise of freedom of association by the workers.[288]

Even if workers overcome their fear of blacklisting and decide to pursue a case, litigating in the transnational arena poses many difficulties. One of the main difficulties is returning or remaining in the United States to pursue action against an abusive employer or recruiter. Many times, U.S. courts and compensation commissions require a worker to be present in order to bring a claim and in order to deliver testimony.[289] Therefore, if a worker has left the United States to return to his or her home country, he or she must obtain either a tourist visa or humanitarian visa in order to re-enter the United States for a deposition, trial, hearing or medical examination.

A tourist visa is difficult to obtain, as it requires proof of economic solvency and a $140 USD application fee.[290] It is also difficult for an internationally recruited worker to obtain a humanitarian visa because an applicant again must pay a filing fee and complete multiple forms.[291] After an applicant files all the necessary paperwork and pays the required fees, the final determination as to whether a visa will be issued is at the discretion of the agency.[292] Therefore, even if the DOL wants to enforce the laws on behalf of an internationally recruited worker, it is difficult to bring a worker to the United States for a deposition or to testify because visas are not consistently issued. In one well-documented case, a woman who worked as a maid was subpoenaed by prosecutors to testify against her abusive employer but was denied a visa to return to testify after she left the United States to attend her mother's funeral in Jakarta.[293] When the DOL complaint process fails to protect workers, they are forced to pursue other avenues to justice.

Workers in the majority of visa categories are unable to access legal services providers that have been funded by the U.S. government. Even if an internationally recruited worker is able to access federally funded legal services, many of these organizations are underfunded and understaffed.

When internationally recruited workers are unable to access federally funded legal services, they turn to private attorneys to take their case. However, many times this is not a viable option, because low-wage workers generally cannot afford such services. Even if a worker can afford an attorney, few private attorneys accept low-wage worker cases due to language barriers, the low dollar value of cases even when they are egregious, the slim chance that losing employers will pay attorneys' fees (the law usually does not require that they do so), rural isolation of the client and the workers' inability to remain in the local area during litigation.[294]

In many ways, international workers are uniquely disadvantaged in contrast to U.S. domestic workers when seeking justice for abuse and mistreatment. As strangers in a foreign land, the myriad obstacles they face are particularly daunting. Internationally recruited workers face possible blacklisting and retaliation from recruiters or employers for seeking out legal assistance. They also face numerous difficulties during the transnational litigation process. Further, internationally recruited workers face the additional threat of deportation for seeking out legal assistance.[295] For these reasons, it is particularly important that laws pertaining to internationally recruited workers be enforced effectively and that unnecessary hindrances to their access to justice be eliminated.

Chart of Regulatory Framework

Visa	Complaint Process	Eligible for Federally Funded Legal Services	Private Right of Action (Under the Program)
A-3/G-5	Employees who feel that their rights have been violated are directed to contact the National Trafficking Resource Center hot line.[296]	No[297]	No
B-1	Employees who think their rights have been violated are directed to contact the National Trafficking Resource Center hot line.[298]	No[299]	No
EB-3	Not specified	No[300]	No
H-1B	Local WHD office[301]	No[302]	No
H-1C	Local WHD office[303]	No[304]	No
H-2A	Local WHD office[305]	Yes[306]	No[307]
H-2B	Local WHD office[308]	Only forestry workers[309]	Majority no[310]
J-1	Local WHD office	No[311]	Camp counselors (Regulations lack any enforcement provisions, remedies or a private right of action)[312]
L-1	Not specified	No[313]	No
O-1	Contract violations may be investigated by the WHD	No[314]	No
P-3	Contract violations may be investigated by the WHD.	No[315]	No
TN	Not specified	No[316]	Not specified

Recommendations

WORKERS shall have the right to access to justice for abuses suffered under U.S. work visa programs. To this end, workers shall have the right to:

1. denounce abusive or illegal work situations without fear of retaliation from employers or labor contractors; workers shall have full whistle-blower protections;
2. bring private civil actions to enforce their rights in U.S. courts of competent jurisdiction;
3. otherwise enforce their rights from their home country after returning from work in the United States; and
4. return to or remain in the United States to pursue legal or other action for abuse or wrongdoing.

THE U.S. GOVERNMENT shall protect workers who desire to seek justice and facilitate the workers' ability to access justice. To this end, the U.S. government shall:

1. protect workers who denounce or seek to denounce abusive or illegal employment conditions or recruitment practices without fear of reprisals from employers or labor contractors;
2. facilitate workers' access to justice from abroad after they have returned from work in the United States;[317]
3. facilitate workers' access to temporary visas to return to the United States to pursue justice against an abusive employer or labor recruiter;
4. seek restitution for workers when it is available; and
5. allow all workers under U.S. work visa programs to access federal legal aid.

Appendices

Appendix A: Members of the International Labor Recruitment Working Group Who Authored and Endorse This Report

The **AFL-CIO** is the umbrella federation for U.S. unions, with 56 unions representing more than 12 million working men and women. It is dedicated to improving the lives of working families, bringing fairness and dignity to the workplace and securing social equity.

AFT is a union of professionals that champions fairness, democracy, economic opportunity and high-quality public education, health care and public services for students, their families and their communities. The union is committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work its members do. AFT represents 1.5 million women and men in a wide range of professions, including pre-K–12 teachers, paraprofessionals and school-related personnel; higher education faculty and professional staff; early childhood educators; federal, state and local government employees; and nurses and other health care professionals.

Centro de los Derechos del Migrante, Inc. (CDM) is a transnational migrant workers' rights organization with offices on both sides of the Mexico-U.S. border. CDM supports Mexico-based migrant workers to defend and protect their rights as they move between their home communities in Mexico and their workplaces in the United States. Through its programs—Outreach, Education and Leadership Development; Intake, Evaluation and Referral; Litigation Support and Direct Representation; and Policy Advocacy—CDM addresses the geographic and legal barriers that typically prevent migrant workers from exercising their rights.

The mission of the **Coalition to Abolish Slavery and Trafficking (CAST)** is to assist persons trafficked for the purpose of forced labor and slavery-like practices and to work toward ending all instances of such human rights violations. CAST's activities are interconnected by a client-centered approach that seeks to empower trafficked persons to fully realize their individual potential while advancing the human rights of all trafficked persons. CAST's policy advocacy stems from its on-the-ground activities working directly with survivors of trafficking through its comprehensive legal and social service programs.

The **Department for Professional Employees (DPE)** is a coalition of 21 national unions affiliated with the AFL-CIO that represent more than 4 million highly skilled professional and technical workers. DPE unions include professionals in more than 300 separate and distinct occupations in many sectors, including health care and education; science, engineering and technology; journalism, entertainment and the arts; public administration; and law enforcement.

The **Economic Policy Institute's (EPI)** mission is to inform and empower individuals to seek solutions that ensure broadly shared prosperity and opportunity. EPI researches, analyzes and reports on the economic condition of low- and middle-income Americans and their families. The organization proposes policy solutions aimed at lifting the living standards of the 99%. EPI's researchers and economists work on issues relating to federal budgets, labor law and labor standards, race and ethnicity, education, international trade, immigration, retirement security, health insurance, unemployment insurance and industrial policy.

The **Farm Labor Organizing Committee (FLOC)** began in the mid-1960s, when a small group of migrant farmworkers in northwest Ohio came together for their common good. It took several years for FLOC to build a base among farmworkers in the area. Since then, FLOC has built a membership of tens of thousands of migrant farmworkers by lifting farmworkers' voices in the decisions that affect them and bringing all parties to the table to address industrywide problems.

Farmworker Justice is a national, nonprofit advocacy and education organization that works to improve working and living conditions for migrant and seasonal farmworkers and their families. For 30 years, Farmworker Justice has monitored the H-2A program, litigated violations of the

program's statutory requirements and engaged in policy advocacy for improvements in the H-2A program.

Global Workers Justice Alliance ("Global Workers") combats worker exploitation by promoting portable justice for transnational migrants through a cross-border network of advocates and resources. The group's core work is to train and support a Defender Network, composed of human rights advocates in migrant sending countries, to educate workers on their rights before they migrate, to work in partnership with advocates in the countries of employment on specific cases of labor exploitation and to advocate for systemic changes. Programs are currently in operation in the United States, Canada, Mexico and Central America, regularly providing advice and referral for cases around the world.

Founded in 2007, the **National Domestic Workers Alliance (NDWA)** is the nation's leading voice for the millions of domestic workers in the United States, most of whom are women. NDWA is powered by 39 local, membership-based affiliate organizations of more than 10,000 nannies, housekeepers and caregivers for the elderly located in 14 states and the District of Columbia.

The **National Employment Law Project (NELP)** is a nonprofit research and advocacy organization with more than 40 years of experience advocating for the employment and labor rights of low-wage and unemployed workers, including workers in nonstandard, contingent or subcontracted jobs. NELP seeks to promote access to and retention of good jobs for workers, to ensure that labor standards are enforced and to bolster the economic security of working families, who bear more risks than ever in the current economy. We promote policies that protect U.S. workers' access to decent jobs and that defend labor and human rights of temporary workers, with a special concern about the use of subcontractors to recruit these vulnerable immigrant workers.

The **National Guestworker Alliance (NGA)** is a membership organization representing thousands of workers across sectors and industries who enter the United States through the U.S. guestworker programs. NGA is a project of the New Orleans Workers' Center for Racial Justice, and was formed as the Alliance of Guestworkers for Dignity in the aftermath of Hurricane Katrina, when thousands of guestworkers were brought to the United States to work on the Gulf Coast and were subjected to forced labor. Organizing in labor camps across the Gulf Coast, these guestworkers formed an organization to help expose the impact of guestworker programs on workers, their families and the industries in which they work. Today, NGA is a rapidly expanding national organization of guestworkers across many industries, including metal work, construction, landscaping, factory work, food processing, janitorial services and hospitality. NGA members are committed to working in partnership with U.S. workers in the same sectors to transform their workplaces from exploitative to dignified, change the terms of migration and expand the right to organize for all excluded workers—thereby reversing a long legacy of retaliation against workers who organize to win dignity and freedom.

For 34 years, **Safe Horizon** has been at the forefront of helping victims of crime and abuse in New York City. Established in 2001, Safe Horizon's Anti-Trafficking Program (ATP) is one of the largest service providers for survivors of human trafficking in the United States. The ATP's services are open to women and men, including transgender individuals as well as children who have been compelled to work against their will.

SEIU is the fastest-growing union in the Americas that has come to represent 2.2 million workers in Canada, the United States and Puerto Rico, more than 25% of whom identify as immigrants—a constant tribute to the union's roots. From the start, SEIU has embraced its heritage as a union of immigrants and has stood on the front line of immigrant justice and workers' rights. Focused on uniting workers in health care, public services and property services, SEIU members are driven by their belief in the dignity and worth of workers and the services they provide and are dedicated to improving the lives of workers and their families and creating a more just and humane society.

The **Solidarity Center** is a nonprofit organization that works with unions, nongovernmental organizations (NGO) s and community groups worldwide to advance worker rights and achieve equitable and sustainable economic development. In nearly 60 countries, the organization supports programs that help workers build independent trade unions, exercise their rights and improve their working and living conditions. The Solidarity Center uses its expertise to combat some of the worst forms of labor exploitation, including forced labor, human trafficking and migrant worker exploitation.

The **Southern Poverty Law Center (SPLC**) is a civil rights organization promoting racial and social justice through litigation, education and advocacy. The Immigrant Justice Project of the SPLC focuses on the employment and civil rights of migrant farmworkers and other low-wage immigrants. The project represents workers and other immigrants in high-impact cases in nine states in the South.

UNITEHERE! is an international union representing more than 300,000 workers in the hospitality, food service, gaming and laundry industries in the United States and Canada. UNITEHERE!, affiliated with the AFL-CIO, has been a leading agent in the advocacy for comprehensive immigration reform in the United States and for the protection of all workers.

Verité aims to make globalization work for poor and vulnerable people around the world. The organization works to ensure that powerful institutions, and particularly the private sector, take responsibility for solving human rights problems where goods are made and crops are grown. The impact of their work is tangible: more income for workers and harvesters; increased opportunities for women, minorities and migrants; protection for children and those in forced labor; safer working conditions in factories, farms, fisheries and mines; and empowerment for workers and harvesters.

Appendix B: Additional Organizations That Endorse This Report

Free the Slaves liberates slaves, helps them rebuild their lives and changes the economic, legal and social systems that allow modern slavery to exist. Through innovative grassroots community organizing projects, rigorous evaluation and groundbreaking research, targeted advocacy, and compelling communications and public engagement, Free the Slaves is helping to show the world that ending slavery is possible.

Polaris Project is one of the leading organizations in the global fight against human trafficking and modern-day slavery. Named after the North Star "Polaris," which guided slaves to freedom along the Underground Railroad, Polaris Project is transforming the way individuals and communities respond to human trafficking in the United States and globally. By successfully pushing for stronger federal and state laws, operating the National Human Trafficking Resource Center hot line (1-888-373-7888), conducting trainings and providing vital services to victims of trafficking, Polaris Project creates long-term solutions that move our society closer to a world without slavery.

Vital Voices Global Partnership is the pre-eminent nongovernmental organization (NGO) that identifies, trains and empowers emerging women leaders and social entrepreneurs around the world, enabling them to create a better world for us all. We are at the forefront of international coalitions to combat human trafficking and other forms of violence against women and girls. We enable women to become change agents in their governments, advocates for social justice and supporters of democracy and the rule of law.

ENDNOTES

1 The term “work visa” includes any visa through which the visa holder can be legally employed in the United States. This includes visas that have multiple purposes if at least one purpose is to allow the visa holder to be legally employed in the United States.
2 In this document, the term “internationally recruited worker” refers to employed persons and those who intend to become employed in the United States. For example, the term “internationally recruited worker” is applied to prospective migrant workers while still in their country of origin.
3 The term “recruiter” is used here to mean any individual, group of individuals, company or its agents that acts in any way to further the process of advertising, locating, hiring, obtaining visas and transporting workers for the end employer or agents of the employer. This includes placement agencies and job contractors. In some cases, several different companies and individuals are involved in the process of hiring a migrant worker. These companies form a chain of subcontracting that serves to further insulate the end employer from liability and makes accountability and transparency more difficult.
4 In a case of Filipino teachers recruited to teach in Louisiana on H-1B visas, the workers were charged up to $15,000 in recruitment fees and forced to sign contracts that ceded 10% of their monthly salary to the recruitment agency, Universal Placement International. With such high debt, workers could not afford to be fired and sent home without the ability to repay loans. Department for Professional Employees, *Gaming the System: Guest Worker Visa Programs and Professional and Technical Workers in the U.S.* 49 (2012); Centro de los Derechos del Migrante, Inc., *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change* 5 (2013) (finding that 58% of H-2 workers surveyed reported paying a recruitment fee), *available at* www.cdmigrante.org/publications/.
5 *See Recruitment Revealed, supra* note 4, at 5 (finding that 47% of workers surveyed took out a loan to cover pre-employment expenses), *available at* www.cdmigrante.org/publications/. A 2010 study of H-2B workers found that most workers had taken out loans to cover recruitment expenses, paying interest rates as high as 15%. Centro de los Derechos del Migrante, Inc., and the American University Washington College of Law, *Picked Apart: The Hidden Struggles of Migrant Worker Women in the Maryland Crab Industry* (2010), www.cdmigrante.org/wp-content/uploads/2012/01/PickedApart.pdf. Teachers recruited from the Philippines to work in Texas reported taking 18-month loans from their recruiter with 5% interest rates (compounded monthly). They faced 15% interest for late payments. *See* Department for Professional Employees, *supra* note 4, at 53.
6 Nurses recruited to work in the United States often are forced to sign two- or three-year contracts with “breakage fees” as penalties if they fail to complete the full contract period. Breakage fees can range from $8,000 to $50,000. In many cases, these nurses are hired by staffing agencies that contract their labor to hospitals at salaries far below the industry standard. *See* Patricia Pittman, et al., *U.S.-Based International Nurse Recruitment: Structure and Practices of a Burgeoning Industry* 13, 22 (AcademyHealth 2007).
7 One-third of farmworkers interviewed for a 2011 study on North Carolina’s tobacco industry reported they felt forced to work at some point during their labor experience. Many said they decided to continue working despite dangerous and unhealthy conditions because of economic pressures and obligations to their families in Mexico. *See* Oxfam America and Farm Labor Organizing Committee, *A State of Fear: Human Rights Abuses in North Carolina's Tobacco Industry* 28, 32 (2011).
8 Domestic workers employed in the households of foreign diplomats on A-3 and G-5 visas routinely have had their passports confiscated and been forbidden from leaving their work premises or speaking with strangers, making them virtual prisoners in the home. *See generally* Human Rights Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States* (June 2001), *available at* www.hrw.org/reports/2010/03/17/hidden-home. Additionally, not a single farmworker interviewed in a 2011 study complained about compensation irregularities, despite widespread reported wage theft. Workers explained that a fear of retaliatory firing kept them from filing a complaint. *See* Oxfam America and Farm Labor Organizing Committee, *supra* note 7, at 23.
9 “Nonimmigrant” visa programs are temporary in nature, meaning that the visa holder is not immigrating permanently to the United States. The visas are issued for a specific duration of time, and the terms of the visa require the worker to return to his or her home country when the employment ends. See INA § 101(1)(15)(A)–(V).
10 *See* Global Workers Justice Alliance, *Visas, Inc.* (2012), *available at* www.globalworkers.org/sites/default/files/visas_inc/index.html (providing an overview of nonimmigrant employment visas).
11 *See Compliance Assistance Materials*, *Foreign Workers,* U.S. Department of Labor, www.dol.gov/compliance/audience/foreign_workers.htm (last visited Jan. 24, 2013); 20 C.F.R. § 665.0(a).
12 Terry E. Boswell, "A Split Labor Market Analysis of Discrimination Against Chinese Immigrants, 1850–1882," *American Sociological Review* 51, No. 3 (1986). By 1882, an estimated 300,000 Chinese had emigrated from China to the United States; Brian Niiya, ed. *Japanese American History: An A-Z Reference from 1868 to the Present* (New York: Facts on File, 1993).
13 Yen Le Espiritu, *Filipino American Lives* (1995). The termination of Japanese immigration in 1924 led to the arrival of 44,000 Filipinos in the second half of the 1920s.
14 Manuel García y Griego, “The importation of Mexican contract laborers to the United States, 1942–1964: antecedents, operation, and legacy,” in *The Border That Joins: Mexican Migrants and U.S. Responsibility*, ed. Peter G. Brown and Henry Shue (Totowa, N.J: Rowman and Littlefield, 1983).
15 There is no definitive number of H-2A workers since agencies use different methodologies to assess the numbers. *See generally* Farmworker Justice, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers* (2011)(describing abuses in the H-2A program).
16 Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States* 7 (2007), *available at* www.splcenter.org/sites/default/files/downloads/Close_to_Slavery.pdf, Immigration Reform and Control Act, Pub. L. 99-603, 100 Stat. 3359 (Nov. 6, 1986).
17 INA § 101(a)(15)(H)(i)(c). The H-1C program expired in 2009 but could be reauthorized.
18 See INA § 101(a)(15)(O), (P); AFT, *Importing Educators: Causes and Consequences of International Teacher Recruitment* 11–12 (2009).
19 INA § 101(a)(15)(B); 9 FAM §41.31 N6.3.
20 Daniel Costa, *Guestworker Diplomacy: J Visas Receive Minimal Oversight Despite Significant Implications for the U.S. Labor Market* 3, 9 (2011).
21 Ruth Ellen Wasem, Congressional Research Service, RL32030, *Immigration Policy for Intracompany Transfers (L Visa): Issues and Legislation* 1 (2006).
22 In the case of the L-1 visa, which does not require a prevailing wage or that recipients be paid equal wages to their domestic counterparts, wage discrimination is systemic. Although the L-1 visa was intended to allow intracompany transfers of executive- and managerial-level staff, the visa has been used increasingly to transfer rank-and-file workers who can be paid significantly lower

wages than domestic workers of those recruited on the H-1B visa. Since much of the information required in the petitions for L-1 visas is nearly impossible to authenticate, consular officers approve petitions at a very high rate. The striking increase in the number of approved L-1 visas over the past several decades suggests more employers are using the L-1 visa to circumvent H-1B wage requirements and to undercut domestic worker wages. *See* Department for Professional Employees *supra* note 4 at 9; Office of Inspector General, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program* 11 (2006).
23 *See* Global Workers Justice Alliance, *supra* note 10, at 11–13.
24 This is not an exhaustive list of U.S. nonimmigrant temporary visas and includes the EB-3, an immigrant visa.
25 *See* State Department, "Nonimmigrant Visa Statistics, Detail Table by Visa Class and Nationality for FY2011," www.travel.state.gov/pdf/FY11NIVDetailTable.pdf.
26 The State Department figure is not a complete number of all H-2A workers, as it excludes Jamaican and some other Caribbean farmworkers.
27 *See Close to Slavery supra* note 16, at 26; Farmworker Justice *supra* note 15, at 27.
28 *See Close to Slavery*, *supra* note 16, at 36.
29 *See id.*; *see also* Global Workers Justice Alliance, *H-2A Visa Issuance Patterns by Age and Gender; H-2B Visa Issuance Patterns by Age and Gender*, www.globalworkers.org/country-data-countries/united-states/department-state (compiling information received in response to a Freedom of Information Act request to the State Department)(original documents on file with Global Workers Justice Alliance).
30 *See Picked Apart*, *supra* note 5, at 32.
31 *Olvera-Morales v. Sterling Onions*, 322 F. Supp. 211 (N.D.N.Y. 2004).
32 *See Close to Slavery*, *supra* note 16, at 34-35.
33 *See Reyes-Gaona v. North Carolina Growers Association*, 250 F.3d 861 (4th Cir. 2001)(finding that the North Carolina Growers Association's policy to hire only new H-2A workers under the age of 40 not to be actionable under the Age Discrimination in Employment Act, despite a finding of explicit age discrimination, because the hiring choice had been made outside of the United States); *H-2A Visa Issuance Patterns by Age and Gender*, *supra* note 29.
34 *See Picked Apart*, *supra* note 5, at 32.
35 8 C.F.R. § 214(h).
36 *See Close to Slavery, supra* note 16, at 16; AFT, *supra* note 18, at 16; Colleen P. Breslin et al., *Report of the August 2011 Human Rights Delegation to Hershey Pennsylvania* 24 (2011), *available at* www.brandeis.edu/ethics/pdfs/internationaljustice/Hersheys.pdf.
37 Southern Poverty Law Center, *Beneath the Pines: Stories of Migrant Tree Planters* 9 (2006).
38 *See* Oxfam America and Farm Labor Organizing Committee, *supra* note 7, at 7.
39 *See* Farmworker Justice, *supra* note 15, at 11, 17, 31; Human Rights Watch, *supra* note 8, at 3.
40 *Close to Slavery*, *supra* note 16, at 17.
41 *See* Oxfam America and Farm Labor Organizing Committee, *supra* note 7, at 7.
42 Colorado Legal Services, Migrant Farm Worker Division, *Overworked and Underpaid: H-2A Herders in Colorado* 9 (2010).
43 U.S. Government Accountability Office, GAO/HEHS-98-20, *Changes Could Improve Services to Employers and Better Protect Workers* 61(1997).
44 *See Close to Slavery*, *supra* note 16*,* at 30 (citing *Recinos-Recinos v. Express Forestry, Inc.*, 2006 U.S. Dist. LEXIS 2510 (E.D.La. 2006)).
45 *See Beneath the Pines*, *supra* note 37, at 9.
46 *See Recinos-Recinos v. Express Forestry, Inc.*, 2006 U.S. Dist. LEXIS 2510 (E.D.La. 2006)).
47 *See* Human Rights Watch*, supra* note 8, at 34.
48 *See Picked Apart, supra* note 5, at 15.
49 *Id.*
50 *See Close to Slavery*, *supra* note 16, at 34 (discussing *Reyes-Gaona v. NCGA*, 250 F.3d 861 (4th Cir. 2001)).
51 *See Picked Apart*, *supra* note 5, at 15.
52 William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457, Sec. 203(c) (2008).
53 *Id.*
54 20 C.F.R. § 655.731(c)(3).
55 20 C.F.R. § 655.801 (2012); *see also* U.S. Department of Labor, "Work Authorization for non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1, and E-3 Visas)," *Employment Law Guide*, www.dol.gov/compliance/guide/h1b.htm.
56 20 C.F.R. § 655.1200(d).
57 20 C.F.R. § 655.135(h).
58 20 C.F.R. § 655.20(n)(2012).
59 *See Bayou Lawn & Landscape Services v. Solis,* No. 12-cv-00183-RV-CJK (N.D. Fla. 2012).
60 The term "employer" includes all joint employers. Moreover, many "labor contractors" also are "employers." The term "labor contractor" also can encompass recruiters.
61 See ILO Convention 111, *Discrimination (Employment and Occupation)*, Art. 1 § 1(a) (1958); *see also* ILO Convention 181, *Private Employment Agencies*, Art. 5 (1997).
62 *See* ILO Convention 111, *Discrimination (Employment and Occupation)*, Art. 1 § 2.
63 *See* ILO Convention 158, *Termination of Employment*, Part 2, Division A, Art. 5(c) (1982); *see also* ILO Convention 98, *Right to Organise and Collective Bargaining*, Art 1; Art. 2 § 1 (1949).
64 *See* U.S. Department of Labor, *H-1B Willful Violator List of Employers*, (Sept. 30, 2012), www.dol.gov/whd/immigration/H1BWillfulViolator.htm; U.S. Department of Labor, *H-1B Debarred/Disqualified List of Employers*, (Sept. 30, 2012), www.dol.gov/whd/immigration/H1BDebarment.htm.
65 U.S. Government Accountability Office, GAO-10-1053, *Closed Civil and Criminal Cases Illustrate Instances of H-2B Workers Being Targets of Fraud and Abuse* 7, 10 (2010).
66 *See, e.g.,* Verité, *Help Wanted: Hiring, Human Trafficking and Modern Day Slavery in the Global Economy*, 63 (2010) (reporting that a recruiter charged approximately 60 Guatemalan workers approximately $3,000 in recruitment, visa and travel fees for visas to work in the forestry industry in the United States. To pay the fees, workers borrowed money at high interest rates and signed over the deeds to their homes. The jobs never materialized and the workers were not refunded).
67 *See Recruitment Revealed*, *supra* note 5, at 5 (finding that 52% percent of workers surveyed were not shown an employment contract).
68 *See* Amended Complaint at ¶¶ 19-20, *Rosales v. Geren Rides, Inc.*, No. 1:09-cv-01390-CAP (N.D. Ga. May 22, 2009).

69 *See* U.S. Government Accountability Office, GAO-10-1053, *supra* note 65 at 4.
70 *See* Verité, *supra* note 66, at 20–21.
71 *See* Colleen P. Breslin et al., *supra* note 36, at 6.
72 *See id.* at 5.
73 *Id.*
74 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, Sec. 202.
75 U.S. Department of State, "Corrected Copy—Pamphlet and Training for the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008," Reference Document: 067921, 06/09, *available at* http://travel.state.gov/visa/laws/telegrams/telegrams_4543.html.
76 U.S. Department of State, "Are You Coming to the United States Temporarily to Work or Study?" (TVPRA pamphlet) http://travel.state.gov/visa/temp/pamphlet/pamphlet_4578.html (last visited Jan. 24, 2013) (available for download in English, Spanish, Arabic, Chinese, Creole, Portuguese, Russian, Tagalog and Ukrainian).
77 *See* Polaris Project, "Hotline Statistics," www.polarisproject.org/resources/hotline-statistics (last visited Jan. 24, 2013).
78 William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457 (2008); *see also Consular Officer Responsibilities Under the William Wilberforce Trafficking Victims Protection Act*, 9 FAM 41.21 N6.5, 6.5-2, *available at* www.state.gov/documents/organization/87174.pdf (although the language of the TVPRA requires that employment and education-based visa applicants receive a pamphlet of their rights, the Foreign Affairs Manual interprets the TVPRA to apply only to A-3, G-5, H or J visas, as well as any personal or domestic servant).
79 *See Picked Apart*, *supra* note 5, at 2.
80 *See* 9 FAM 41.21 N6.5, 6.5-2.
81 *See* Centro de los Derechos del Migrante, Inc., *Monitoring International Labor Recruitment: A Cross-Visa Exploration of Regulatory Challenges* 2 (2011).
82 *See* 9 FAM 41.21 N6.5, 6.5-2.
83 *See* Notice, 78 Fed. Reg. 5210 (Jan. 24, 2013).
84 U.S. Department of Labor, Office of Foreign Labor Certification, "H-1B Program Data," www.flcdatacenter.com/CaseH1B.aspx. This website provides downloadable spreadsheets that contain information about all employer applicants to the H-1B program for fiscal years beginning in 2001.
85 U.S. Department of Labor, *H-1B Willful Violator List of Employers* (Sept. 30, 2012), www.dol.gov/whd/immigration/H1BWillfulViolator.htm; *H-1B Debarred/Disqualified List of Employers*, U.S. Department of Labor (Sept. 30, 2012), www.dol.gov/whd/immigration/H1BDebarment.htm (Sept. 30, 2012).
86 *See* 9 FAM 41.21 N6.5, 6.5-2.
87 *See id.*
88 *See* Notice, 78 Fed. Reg. 5210 (Jan. 24, 2013).
89 *See* 9 FAM 41.21 N6.5, 6.5-2.
90 *See* Notice, 78 Fed. Reg. 5210 (Jan. 24, 2013).
91 20 C.F.R. § 655.20(aa)(2012)(enjoined).
92 *See* 9 FAM 41.21 N6.5, 6.5-2.
93 *See* 22 C.F.R. § 62.10(b).
94 *See* 22 C.F.R. § 62.10(c).
95 *See* 22 C.F.R. § 62.9(b)-(c).
96 *See* 22 C.F.R. § 62.22(j)(3), 62.23(j)(3).
97 *See* 22 C.F.R. § 62.70.
98 *See* 22 C.F.R. § 62.2 (defining sponsor as "[…] a legal entity designated by the Secretary of State of the State Department to conduct an exchange visitor program); *see also* U.S. Department of State, "Find Designated Sponsor Organizations," J-1 Visa Exchange Visitor Program, http://j1visa.state.gov/participants/how-to-apply/sponsor-search/.
99 *See id.*
100 *See* ILO Convention 143, Part II, Art. 12(c). *But see id.* at Part II, Art. 11 § 2(e) (This part of the Convention may not apply to migrants on temporary work visas. However, as the United States has not signed, much less ratified, any of the Conventions herein cited, this point is largely moot.)
101 *See* ILO Convention 97, *Migration for Employment (Revised)*, Art. 3 § 1-2 (1949).
102 100% of Mexican H-2B workers in the Maryland crab industry who were interviewed for a report by CDM had paid lump-sum fees to a recruiter to obtain and travel to work in the United States. *See Picked Apart*, *supra* note 5, at 14. In contrast, a CGFNS survey of recruiters in
the nursing industry found that 18% of recruitment firms charge an upfront fee to nurses. However, nurses may pay so-called "breach" fees. *See* Patricia Pittman, *U.S.-Based International Nurse Recruitment: Structure and Practices of a Bourgeoning Industry* 4 (2007).
103 *See Close to Slavery*, *supra* note 16, at 9.
104 *See Picked Apart*, *supra* note 5, at 15.
105 *See Close to Slavery*, *supra* note 16, at 10.
106 Greg Toppo and Icess Fernandez, "Teachers trapped in a maze: Filipino educators held in 'servitude' to agency that got them U.S. jobs, federal complaint says," *USA Today*, Oct. 28, 2009 at 1D.
107 *See* AFT, *supra* note 18, at 15.
108 *See* Colleen P. Breslin et al., *supra* note 36, at 16.
109 *See* Farmworker Justice, *supra* note 15, at 23.
110 *Picked Apart, supra* note 5, at 23; *Close to Slavery, supra* note 16, at 10 (specifically discussing H-2B workers from Mexico and Guatemala).
111 *Close to Slavery*, *supra* note 16, at 9; *No Way to Treat a Guest*, *supra* note 15, at 23; *Beneath the Pines*, *supra* note 37, at 4.
112 *Beneath the Pines*, *supra* note 37, at 4.
113 *Picked Apart*, *supra* note 5, at 15.
114 *See* Global Workers Justice Alliance, *supra* note 10, at 21.
115 *See Picked Apart*, *supra* note 5, at 15.
116 *See* Verité, *supra* note 66, at 94.
117 AFT, *supra* note 18, at 15.
118 Second Amended Complaint, *David v. Signal International LLC*, (filed 11/23/2010 in E.D. La., federal case still pending).
119 *See* Colorado Legal Services, *supra* note 42, at 19.

120 *See* Patricia Pittman, *supra* note 6, at 4.
121 *See* AFT, *supra* note 18, at 15-16.
122 The Fair Labor Standards Act requires reimbursements of costs "primarily to the benefit of the employer" to be reimbursed up to the minimum wage in the week they were incurred. The DOL and several U.S. courts take the position that recruitment fees, travel expenses and visa processing fees are "primarily for the benefit of the employer" and therefore must be reimbursed to the extent that not doing so would result in the employee earning below the minimum wage in a given week. This is particularly relevant to low-wage international temporary workers whose pre-employment expenses frequently bring their first week's pay well below the minimum wage. *See* U.S. Department of Labor, Wage and Hour Division, Field Assistance Bulletin 2009-2, *Travel and Visa Expenses of H-2B Workers Under the FLSA* (Aug. 21, 2009), *available at* www.dol.gov/whd/FieldBulletins/; *Arriaga v. Florida Pac. Farms, L.L.C.,* 305 F.3d 1228, 1243-44 (11th Cir. 2002). In addition, several visa programs require reimbursement of the full cost of pre-employment related expenses as well as the cost of return travel.
123 *See* Michael J. Saks, *Do We Really Know Anything About the Behavior of the Tort Litigation System?,* 140 U. PA. L. REV. 1147, 1190-91 (1992) ("[L]awyers usually do not accept a case unless they see an acceptable probability of economic success for themselves in doing so" and generally "will avoid cases with…only a small margin between the cost of litigating the case (the value of the attorney's time and the opportunity cost of taking the case) and the expected fee from the case."); Tal Finney and Joel Yanovich, *Expanding Social Justice Through the "People's Court"*, 39 LOY. L.A. L. REV. 769, 772-73 (2006) ("If a case goes to trial, attorney fees alone can easily exceed $20,000.").
124 *See* 9 FAM 41.21 PN11 (2012); *see also* 9 FAM 41.26 N4 (b)(exempting A-3 and G-5 visa categories from visa processing fees).
125 *See* 9 FAM 41.21 N6.2(a)(2) (2012).
126 *See id.*
127 *See* William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457, Sec. 203(a)(2).
128 *See* 9 FAM 41.31 N9.3-2.
129 *See* 9 FAM 41.31 N9.3-1.
130 *See* 9 FAM 41.31 N9.3-2.
131 *See* State Department, "Are You Coming to the United States Temporarily to Work or Study?" (TVPRA pamphlet) http://travel.state.gov/visa/temp/pamphlet/pamphlet_4578.html (last visited Jan. 24, 2013).
132 9 FAM 41.21 PN11; *see also* 9 FAM 41.26 N4 (b) (exempting A-3 and G-5 visa categories from visa processing fees).
133 *See* 9 FAM 41.21 N6.2(a)(2) (2012).
134 *See id.*
135 *See* William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457, Sec. 203(a)(2) (2008).
136 *See* 20 C.F.R. § 655.731(c)(9)(ii); 9 FAM 41.53 N27.1 (2012); Department of Labor, Wage and Hour Division, Factsheet #62H (Aug. 2009).
137 *See* 8 C.F.R. § 214.2(h)(4)(iii)(E).
138 U.S. Department of Labor, "Work Authorization for non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H1B1, and E-3 Visas)," Employment Law Guide, www.dol.gov/compliance/guide/h1b.htm (last visited Jan. 24, 2013).
139 *See* Nursing Relief for Disadvantaged Areas Act, Pub. L. 106-95, § 2(b)(2)(E)(iii)-(v)(1999).
140 20 C.F.R. § 655.135(j).
141 20 C.F.R. § 655.122(h)(1); 20 C.F.R. § 655.122(h)(2).
142 20 C.F.R. § 655.122(d).
143 20 C.F.R. § 655.135(n).
144 20 C.F.R. § 655.22(j)(2009).
145 8 C.F.R. § 214.2(h)(6)(i)(B).
146 *See* U.S. Department of Labor, Wage and Hour Division, Field Assistance Bulletin 2009-2, *Travel and Visa Expenses of H-2B Workers Under the FLSA* (Aug. 21, 2009), *available at* www.dol.gov/whd/FieldBulletins/.
147 *See* 20 C.F.R. § 655.18(a)(15).
148 *See* 20 C.F.R. § 655.20(l) (2011), 29 CFR § 503.16(l).
149 *See* 20 C.F.R. § 655.23(2008).
150 *See* 29 C.F.R. §503.24.
151 *See* 20 C.F.R. § 655.71(a).
152 *See* 20 C.F.R. § 655.72(a)(1)-(4).
153 *See* 20 C.F.R. § 655.73.
154 *See* 20 C.F.R. § 655.51(c).
155 *See* 22 C.F.R. § 62.22(e)(2).
156 *See* 22 C.F.R. § 62.25(j)(6).
157 *See* 22 C.F.R. § 62.32(g)(9).
158 *See* 22 C.F.R. § 62.50.
159 *See* U.S. Citizenship and Immigration Services, *O-1: Individuals with Extraordinary Ability or Achievement*, www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b9930b89284a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=b9930b89284a3210VgnVCM100000b92ca60aRCRD (last visited Jan. 24, 2013).
160 *See* 9 FAM 41.56 N13.3 (2011).
161 *See* ILO Convention 97, Annex 1, Art. 4 § 2.
162 *See Chart of Regulatory Framework*, *infra* at page 44.
163 *See* 9 FAM 41.22 N4.4 (noting the requirements related to employment contracts for A-3 and G-5 visa applicants).
164 J-1 categories except teachers and au pairs, H-1C, H-1B, O-1, P-3 and TN. *See Monitoring International Labor Recruitment*, *supra* note 81.
165 *Id.*
166 *Id.*
167 *Id.*
168 Amy M. Collins, ed., *One of the "Sentosa 27" Tells Her Story*, Online-only content for Patricia Pittman, "U.S.-Based Recruitment of Foreign-Educated Nurses: Implications of an Emerging Industry," *American Journal of Nursing* 38–48 (June 2010).
169 J-1 categories except teachers and au pairs, H-1C, H-1B, O-1, P-3 and TN. *See Monitoring International Labor Recruitment*, *supra* note 81.
170 20 C.F.R. § 655.122(q).
171 *See Garcia v. Frog Island Seafood*, 644 F. Supp. 2d 696 (E.D.N.C. 2009).

172 *See* Colorado Legal Services, *supra* note 42, at 20. A herder reported, "He made me sign the contract in English. How would I know?" when asked if he thought his employer was complying with the work contract.
173 *See* Department for Professional Employees, *supra* note 4, at 31.
174 *See generally* Human Rights Watch, *supra* note 8.
175 *See* Department for Professional Employees, *supra* note 4, at 31.
176 *See* Human Rights Watch, *supra* note 8, at 24-25.
177 William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457, Sec. 203(a) (2008).
178 *See* 9 FAM 41.22 N4.4.
179 *See id.*; *see also* 9 FAM 41.21 N6.2 (a).
180 *See* 9 FAM 41.31 N9.3-1.
181 *Id.*
182 *See* Department of State, "Are You Coming to the United States Temporarily to Work or Study?" (TVPRA pamphlet) http://travel.state.gov/visa/temp/pamphlet/pamphlet_4578.html (last visited Jan. 24, 2013).
183 *See* 20 C.F.R. § 655.122(q) (2012).
184 *See id.*
185 *See id.*
186 20 C.F.R. § 655.20(l)(2012); 29 C.F.R. § 503.16(l).
187 20 C.F.R. § 655.20(I) (2012).
188 *See* 22 C.F.R. Part 62.
189 *See id.*
190 *See* 22 C.F.R. § 62.24(e).
191 *See* 22 C.F.R. § 62.27(b)(7).
192 *See* 22 C.F.R. § 62.31 (e)(5).
193 *See* 8 C.F.R. §241.2(l)(3)(ii)-(iii).
194 *See* 8 C.F.R. § 214.2(o)(2)(ii)(B).
195 *See id.*
196 *See* 8 C.F.R. § 214.2(p)(2)(ii)(B).
197 *See id.*
198 8 C.F.R. § 214.6(d)(3)(ii); *see also* 9 FAM 41.59 N.4.3.
199 *See* ILO Convention 97, Annex 1, Art. 5 § 1(a)-(b)
200 *See* ILO Convention 189, *Domestic Workers*, Art. 7 (2011).
201 *See Close to Slavery*, *supra* note 16, at 19 (referencing H-2A and H-2B workers and mostly in Mexico and Central America).
202 *See Recruitment Revealed, supra* note 5, at 12.
203 *See generally*, 9 FAM 41.53; Global Workers' Justice Alliance, *Why Transparency in the Recruiter Supply Chain is Important in the Effort to Reduce Exploitation of H-2 Workers: Sept. 2011*.
204 Temporary Agricultural Employment of H-2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement, 73 Fed. Reg. 77,110, 77,154-55 (Dec. 18, 2008).
205 *See Arriaga v. Florida Pac. Farms*, L.L.C., 305 F.3d 1228, 1245 (11th Cir. 2002)(finding no agency relationship because the employers were unaware the agent they hired had contracted independently with the local village recruiters to hire its workforce).
206 *See Rivera v. Brickman Group, Ltd.,* 2008 WL 81570 (E.D. Pa. 2008) at 13–14.
207 *See* Daniel Costa, *supra* note 20, at 16.
208 There are four requirements for LCA approval: (1) Employers must pay H-1B workers the greater of the actual wage rate or the prevailing wage; (2) The hiring of H-1B workers must not negatively affect the working conditions of similar workers in the area in which the H-1B worker would be employed; (3) The employer cannot be involved in a strike or lockout at the time of filing the LCA; and (4) The bargaining representative in the occupation area in which the H-1B workers will be employed has to be notified of the LCA's filing. If there is no bargaining representative, notice should be posted in at least two noticeable locations for 10 consecutive days within 30 days of submission.
209 *See* AFT, *supra* note 18, at 11–12.
210 *See* U.S. Government Accountability Office, GAO-06-901T, *H-1B Visa Program: More Oversight by Labor Can Improve Compliance with Program Requirements* 7 (2006), *available at* www.gao.gov/new.items/d06901t.pdf.
211 *See* Human Rights Watch, *supra* note 8, at 23.
212 *Id.*
213 *Id.* at 24.
214 *Id.* at 25.
215 *Id.* at 22.
216 *Id.*
217 U.S. Department of Labor, Office of the Inspector General, Report No. 17-12-001-03-321, *Program Design Issues Hampered ETA's Ability to Ensure the H-2B Visa Program Provided Adequate Protections for U.S. Forestry Workers in Oregon* (Oct. 17, 2011), available at www.oig.dol.gov/public/reports/oa/2012/17-12-001-03-321.pdf.
218 29 C.F.R. § 503.16(aa)(enjoined).
219 22 C.F.R. § 62.22(b)(3)(g).
220 *See Mairi Nunag-Tañedo v. East Baton Parish School Board*, Complaint, (C.D. Cal.) 6 (charging that the recruiters pressured and coerced H-1B teachers into signing contracts promising to pay an additional fee, and then confiscated the teachers' passports and visas to ensure the fee would be paid); *see also* Verité *supra* note 66, at 48 (describing how Imperial Nurseries charged that agents of Imperial confiscated Guatemalan H-2B workers' passports to prevent their escape; forced them to work nearly 80 hours a week for far less than minimum wage; denied them emergency medical care; and threatened them with jail and deportation if they complained).
221 *See* 9 FAM 41.21 N6.2 (a)(5), (6).
222 *See* Human Rights Watch, *supra* note 8, at 13.
223 The time period for which the worker is admitted is set forth on her I-94 form. *See* 22 C.F.R. 41.112(d)(2)(i).
224 The World Bank Group Code of Conduct Regarding Employment of G-5 Domestic Workers, Dec. 13, 1999, Article II, Sect. 12. The International Monetary Fund Code of Conduct Regarding Employment of G-5 Domestic Workers, Dec. 10, 1999, Article II, Sec. 12.
225 *See* 9 FAM 41.31 N9.3-2.
226 *See, e.g.*, 9 FAM 41.31 N9.3-1 (2012), 9 FAM 41.31 N9.3-3.

227 *See* 8 U.S.C. § 1154(j).
228 *See* 8 C.F.R. § 214.2(h)(2)(i)(D)("If the alien is in the United States and seeks to change employers, the prospective new employer must file a petition on Form I-129 requesting classification and extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition. The validity of the petition and the alien's extension of stay shall conform to the limits on the alien's temporary stay that are prescribed in paragraph (h)(13) of this section. The alien is not authorized to begin the employment with the new petitioner until the petition is approved.")
229 *See* 8 C.F.R. § 214.2(h)(2)(i).
230 *See* 8 C.F.R. § 214.2(h)(2)(i)(D).
231 *See id.*
232 8 C.F.R. § 214.2(j)(1)(v)(A).
233 22 C.F.R. § 62.42.
234 *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, *L-1A Intracompany Transferee Executive or Manager*, *available at* www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=64d34b65bef27210VgnVCM100000082ca60aRCRD&vgnextchannel=64d34b65bef27210VgnVCM100000082ca60aRCRD (last visited Jan. 24, 2013).
235 *See* 8 C.F.R. § 214.2(o)(2)(iv)(C).
236 *See* 8 C.F.R. § 214.2 (p)(2)(iv)(C).
237 *See* 8 C.F.R. § 214.6(i).
238 *See* ILO Convention 97, Annex 1, Art. 10.
239 *Ramos v. Hoyle*, 08:21809, 2008-12-19 (S.D. FL 2008); Judge's Order Denying Motion to Dismiss (citing the first amended complaint); *Key Biscayne couple ordered to pay $125,000 in wages, damages to Peruvian nannies*, Aug. 11, 2009, *Sun Sentinel*.
240 *See generally* About the ILO, www.ilo.org/global/about-the-ilo/lang--en/index.htm (last visited Jan. 24, 2013). The ILO is the international organization responsible for creating and overseeing international labor standards and bringing together representatives of governments, employers and workers to jointly shape policies and programs promoting decent work for all.
241 *See Brief History and Timeline: ILO–US Milestones*, www.ilo.org/washington/ilo-and-the-united-states/brief-history-and-timeline/lang--en/index.htm (last visited Jan. 24, 2013).
242 International Labour Organization (ILO), *ILO Declaration Concerning the Aims and Purposes of the International Labour Organization (Declaration of Philadelphia*), May 1944, *available at* www.ilo.org/asia/decentwork/dwcp/WCMS_142941/lang--en/index.htm.
243 International Labour Organization (ILO), *ILO Declaration on Fundamental Principles and Rights at Work* (June 1988), *available at* www.unhcr.org/refworld/docid/425bbdf72.html.
244 United Nations International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967), ratified by the United States June 8, 1992.
245 *Id*. at art. 22.
246 *See* Farm Labor Organizing Committee, *About Us*, www.supportfloc.org/Pages/aboutus.aspx.
247 Farm Labor Organizing Committee, AFL-CIO, *Labor Recruitment in "Guest Worker" Programs* (2007).
248 Jacob Wedemery, *Of Policies, Procedures, and Packing Sheds: Agricultural Incidents of Employer Abuse of the H-2B Nonagricultural Guestworker Visa*, 10 J. Gender Race & Just. 143, 190.
249 Oxfam America and Farm Labor Organizing Committee, *supra* note 7, at 42.
250 29 U.S.C. § 157 (Section 7 of the National Labor Relations Act) stipulates "Employees shall have the right to self-organization and to bargain collectively through representatives of their own choosing." The NLRB was created to enforce these rights.
251 29 U.S.C. § 152(3) (Section 2 of the NLRA) states "The term 'employee' shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual having the status of an independent contractor, or any individual employed as a supervisor."
252 *Id.*
253 *Id.*
254 *Id.*
255 29 U.S.C. § 157.
256 *See id.*
257 *See id.*
258 *See id.*
259 *See* U.S. Department of Labor, *Work Authorization for non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1, and E-3 Visas),* www.dol.gov/compliance/guide/h1b.htm (last visited Jan. 25, 2013).
260 *See* Nursing Relief for Disadvantaged Areas Act, Pub. L. 106-95, § 2(b)(5)(c)(1999).
261 29 U.S.C. § 157
262 *See* Nursing Relief for Disadvantaged Areas Act, Pub. L. 106-95, § 2(b)(5)(c)(1999). Applications will be denied if there is an active strike, lockout or labor dispute at the facility. The hospital may not lay off any employees during the period beginning 90 days before and ending 90 days after the date of filing of any visa petition.
263 *See* Farmworker Justice, *supra* note 15, at 31. Currently, it is very difficult for international workers to form or join a union. Agricultural workers who come to work in the United States under H-2A visas are excluded from the National Labor Relations Act, which leaves them vulnerable to being fired for joining a union.
264 *See* Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States and International Human Rights Standards* (2000)(listing Arizona, California, Kansas, Massachusetts, New Jersey, Oregon, South Dakota and Wisconsin).
265 Section 2 of the NLRA states "The term 'employee' shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual having the status of an independent contractor, or any individual employed as a supervisor."
266 20 C.F.R. §655.125(b).
267 *See* 29 U.S.C. § 157.
268 *See id.*
269 *See* 20 C.F.R. § 655.20(u).
270 *See* 22 C.F.R. § 62.24(e).
271 *See* 29 U.S.C. § 157.
272 *See* 22 C.F.R. § 62.32(n)(3)(iii).
273 *See* 29 U.S.C. § 157.
274 *See id.* Recipients of the L-1A for intracompany managerial transfers would not be eligible.

275 *See* 8 C.F.R. § 214.2(l)(18)(i).
276 *See id.*
277 *See* 29 U.S.C. § 157.
278 *See id.*
279 *See* 9 FAM 41.55 N7.
280 *See* 29 U.S.C. § 157.
281 *See id.*
282 *See* 9 FAM 41.56 N5.
283 *See* 29 U.S.C. § 157.
284 *See id.*
285 *See* 8 C.F.R. § 214.6(k); 9 FAM 41.59 N8 (2012). A TN visa may be denied if a labor dispute exists involving workers for the same labor classification in the same place of work.
286 *See Leveling the Playing Field*, National Guestworker Alliance 13 (2012) *available at* www.guestworkeralliance.org/wp-content/uploads/2012/06/Leveling-the-Playing-Field-final.pdf.
287 Demetrios G. Papademetrious and Monica S. Heppel, *Balancing Acts: Toward a fair bargain on the seasonal agricultural workers,* International Migration Policy Program, Carnegie Endowment for International Peace 13 (1999).
288 *See* Verité, *supra* note 66, at 49–50.
289 *See Picked Apart*, *supra* note 5, at 7.
290 *See* U.S. Department of State, *Fees for Visa Services*, http://travel.state.gov/visa/temp/types/types_1263.html#temp (last visited Jan. 24, 2013).
291 Department of Homeland Security, U.S. Citizenship and Immigration Services, *Humanitarian Parole*, www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=accc3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextchannel=accc3e4d77d73210VgnVCM100000082ca60aRCRD (last visited Jan. 24, 2013).
292 8 U.S.C. § 1201(a)(1).
293 Blaine Harden, "Case of Princess Accused of Pushing Maid Down Stairs Reveals a Failing of a New Law," *The New York Times,* July 2, 2002, at A.14.
294 *See* Farmworker Justice *supra* note 15, at 25–26.
295 Caron, Cathleen, "Portable Justice, Global Workers and the United States," *Clearinghouse REVIEW Journal of Poverty Law and Policy* 552 (January–February 2007).
296 *See* William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457, Sec. 202(b)(5) (2008); U.S. Department of State, Bureau of Consular Affairs, *Visas for Diplomats and Foreign Government Officials*, http://travel.state.gov/visa/temp/types/types_2637.html#misrepresentation (last visited Jan. 25, 2013); U.S. Department of State, Bureau of Consular Affairs, *Visas for Employees of International Organizations and NATO*, http://travel.state.gov/visa/temp/types/types_2638.html/ (last visited Jan. 24, 2013).
297 *See* 45 C.F.R. § 1626.
298 William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457, Sec. 202(b)(5) (2008); U.S. Department of State, Bureau of Consular Affairs, *Visas for Diplomats and Foreign Government Officials*, http://travel.state.gov/visa/temp/types/types_2637.html (last visited Jan. 24, 2013).
299 *See* 45 C.F.R. § 1626.
300 *See id.*
301 U.S. Department of Labor, *Work Authorization for Non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1 and E-3 Visas),* Employment Law Guide (May 2011).
302 *See* 45 C.F.R. § 1626.
303 *See* U.S. Department of Labor, *Work Authorization for Non-U.S. Citizens: Registered Nurses (H-1C Visas),* Employment Law Guide (May 2011).
304 *See* 45 C.F.R. § 1626.
305 U.S. Department of Labor, *Work Authorization for Non-U.S. Citizens: Temporary Agricultural Workers (H-2A Visas),* Employment Law Guide (May 2011).
306 *See* 45 C.F.R. § 1626.11; Immigration Reform and Control Act of 1996, Pub. L. No. 99-603, § 305, 100 Stat. 3359, 3434 (1986) (codified as 8 U.S.C. § 1101 (1994)).
307 *See Nieto-Santos v. Fletcher Farms*, 743 F.2d 638 (9th Cir. 1984) (interpreting *Cort v. Ash* to hold that H-2A workers do not have a private right of action to enforce rights provided under the program).
308 *See* U.S. Department of Labor, *Work Authorization for Non-U.S. Citizens: Temporary Nonagricultural Workers (H-2B Visas),* Employment Law Guide (May 2011).
309 *See* 45 C.F.R. § 1626; *see also*, Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504, 110 Stat. 1321, 1350 § 504(a)(11)(1996) (listing the categories of noncitizens who may receive LSC services, but not including H-2B workers); Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, § 540, 121 Stat. 1844, 1934 § 504(a)(11)(E) (2008) (granting LSC-funded nonprofit legal aid programs the ability to assist H-2B forestry workers).
310 All H-2A workers and most H-2B workers also are excluded from the additional protections of the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. §§ 1801-72 (2006), which includes a private right of action and provides for actual or statutory damages.
311 *See* 45 C.F.R. § 1626.
312 *See* 22 C.F.R. § 62.30.
313 *See* 45 C.F.R. § 1626.
314 45 C.F.R. § 1626.
315 *Id.*
316 *Id.*
317 *See* ILO Convention 143, *Migrant Workers (Supplementary Provisions)*, Art. 5 (1973; *see also* ILO Recommendation 151, *Migrant Workers*, I, Art. 8(4) *and* III, Art. 34(2).

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The International Labor Recruitment Working Group

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