

DIGNITY OR EXPLOITATION

WHAT FUTURE FOR FARMWORKER FAMILIES IN THE UNITED STATES?



The Oakland Institute

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Cover Photo: Poplar, CA 2020, Maria Madrigal picks persimmons in a field near Poplar, in the San Joaquin Valley, in a crew of Mexican immigrants. Many workers wear facemasks or bandannas as a protection against the coronavirus.

Back Cover Photo: Nash County, NC 2011, migrant families, including children, live in the Strickland labor camp and work in the fields of tobacco and sweet potatoes.

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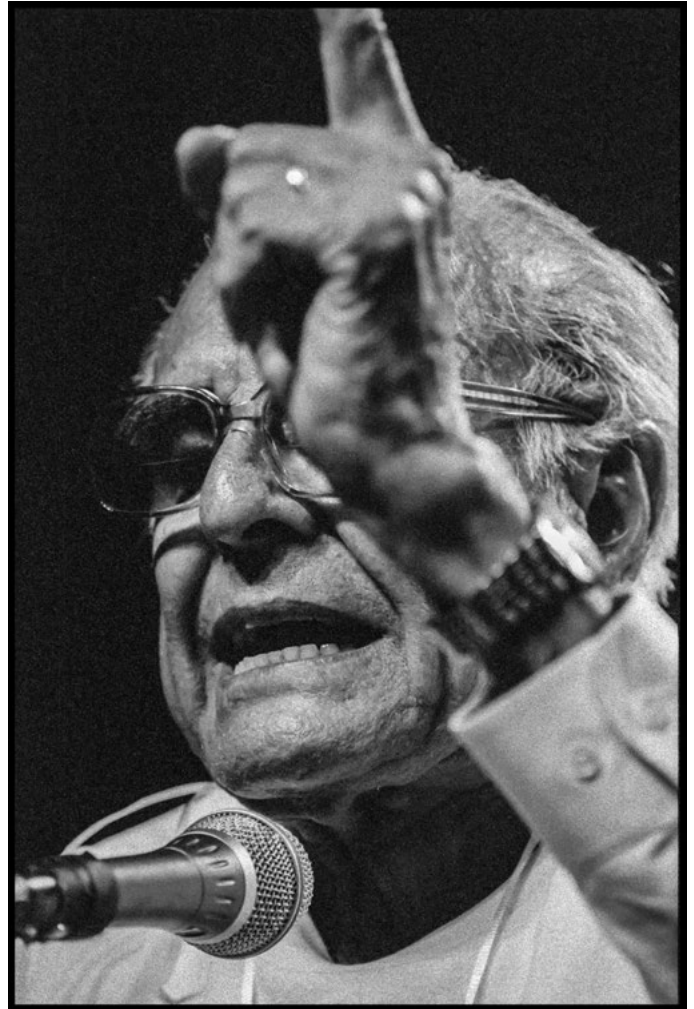
Executive Summary

The intention of the U.S. guest worker program for agriculture, called the H-2A program, couldn't have been stated more clearly than it was by Agriculture Secretary Sonny Perdue in a speech to growers in 2019.¹ He wanted, he said, “to separate immigration, which is people wanting to become citizens, [from] a temporary, legal guest-worker program. That’s what agriculture needs, and that’s what we want. It doesn’t offend people who are anti-immigrant because they don’t want more immigrant citizens here. We need people who can help U.S. agriculture meet the production.”

By separating the immigration of families, in which migrants become community members and eventually citizens, from the recruitment of migrants solely for their labor power, in which they work and then leave, Perdue was restating a goal of U.S. immigration policy that has existed from its inception. In opposition to that goal, the civil rights movement among Mexican and Asian-Americans proposed an alternative and ultimately forced Congress to enact a law in 1965 that enshrines it. Immigration policy, civil rights leaders believed, should favor the unification of families and the strengthening of communities.

The Immigration and Nationality Act of 1965² was a high point, however. In the years that followed the use of migration as a labor supply program in U.S. agriculture has grown enormously. This growth has taken place under both Democratic and Republican administrations. The Trump administration, however, made the growth of the H-2A program a priority. While ending family-based migration through an emergency executive measure, it issued order after order making the H-2A guest worker program more attractive to agribusiness.³ The Biden administration will have to decide, not only which of those administrative orders it intends to revoke, but the direction for U.S. immigration policy in general.

The movement of people from country to country, displaced by war, insecurity, and neoliberal economic policies, is enormous and growing. The U.S. government, like all others, develops its policy within that context. The U.S. Congress and administrations do not debate the means for ending this flow of people, despite the often poisonous anti-migrant rhetoric. Nothing can stop this global movement, short of a radical reordering of the world’s economy and politics. Instead, political debate in the U.S. centers over



Los Angeles, CA 1999, Bert Corona is the father of the modern immigrant rights movement. He spoke to unions in an enormous rally, where he was honored for his history of fighting for workers' rights.

how directly this flow should be used for its ability to create wealth for those who employ it, and over the legal status and rights of migrants themselves.

U.S. industrial agriculture has its roots in slavery and the brutal kidnapping of Africans, whose labor developed the plantation economy, and the subsequent semi-slave sharecropping system in the South. For over a century, especially in the West and Southwest, industrial agriculture has always depended on a migrant workforce, formed from waves of Chinese, Japanese, Filipino, Mexican, and more recently, Central American migrants. Today a growing percentage of farmworkers are Indigenous People speaking languages other than Spanish, an indication that economic dislocation has reached far into the most remote parts of Mexico's countryside.



Repeated waves of immigration raids and deportations are not intended to halt migration. Immigrant labor plays such a critical part in the economy that the price of stopping migration would be economic chaos. The intention of immigration policy since the Chinese Exclusion and Alien Land Acts of the late 1800s is managing the flow of people, and determining their status in the U.S. in the interest of those who put that labor to work.

The political fault lines that divide the U.S. immigrant rights movement are determined by decisions to either support this general trend in policy, and its political advocates in Washington DC, or to oppose it and create a social movement for equality and rights based in the communities of migrants themselves. Those fault lines were set in place 35 years ago when the Immigration Reform and Control Act of 1986⁴ criminalized work for undocumented migrants and resurrected the contract labor programs that were ended in 1964 with the abolition of the bracero program. Current debates over immigration policy still must choose between these alternatives, and those choices will govern immigration policy under a new Biden administration.

This report analyses the growth of the largest U.S. guest worker program, the recruitment of migrants by agribusiness through the H-2A work visa. It highlights the historical roots of the current H-2A program in the earlier bracero program of the Cold War period, from 1942 to 1964. The exploitative conditions and vulnerability of migrants who came under that program are very close to those of the H-2A program today.

During the bracero period, immigration enforcement by a growing Border Patrol and government bureaucracy was used to create labor shortages, which then provided the rationale for the vast expansion of the recruitment of contract labor – the braceros. Today the impact of immigration enforcement is very similar. Raids and the use of employer sanctions (prohibiting the employment of people without legal immigration status) are directly used to require the substitution of an H-2A workforce for undocumented workers.

The H-2A program does not just provide a replacement for undocumented labor. It also impacts farmworkers already in the U.S., both documented and undocumented. The program is used repeatedly to replace workers with residence visas or who are U.S. citizens. Legal protections against such replacement are ineffective and the report details the virtual absence of enforcement of those protections by the Department of Labor.

The report profiles some of the largest recruiters of H-2A workers and details the influence they have over immigration policy and its enforcement. With no limits on the number of visas issued annually, their recruitment of workers has mushroomed from 10,000 in 1992 to over 250,000 in 2020 – a tenth of the U.S. agricultural workforce.⁵

A system in which workers with H-2A visas are placed into competition with a domestic labor force depresses the wages of all farmworkers. Even mild protections that should provide a wage floor are easily swept aside, as the Trump administration's orders did in 2020. The growth of the H-2A program has exacerbated the existing housing crisis for rural workers and impacted their living conditions. While some states seek to limit grower access to government housing subsidies, other states encourage growers to use them to build more barracks for contract workers.

Through a series of case studies, the report details the ways guest workers are pressured to speed up their work, which then increases pressure on the other farmworkers around them. When H-2A workers try to organize to change exploitative conditions, the H-2A visa allows employers to terminate their employment and end their legal visa status, in effect deporting them. Workers can then be legally blacklisted, preventing their recruitment to work in future seasons.

Although farmworkers were officially declared “essential workers” during the COVID-19 pandemic, the declaration did not increase workers' rights, provide protection from the virus, nor result in a living wage. Instead, H-2A workers were particularly vulnerable to contracting the virus because of the structure of the program, in which they live in congregate housing and travel to and from work in close proximity. The power of the growers and contractors using this program was clearly demonstrated by their successful effort to maintain dangerous housing conditions in Washington State and the lack of regulation for those housing conditions in California. The coronavirus crisis only added extreme health risks to a bedrock of the inequality and exclusion suffered by H-2A workers generally.

The gross imbalance of power between H-2A workers and growers makes it impossible to implement meaningful worker protections. Yet efforts to expand the H-2A program have garnered political support among both Democrats and Republicans. The report details some of those proposals and outlines their potential impact. The Farm Workforce Modernization Act,⁶ the most important of these bipartisan efforts, would likely lead to half the farm labor workforce



in the U.S. laboring under the H-2A program within a few years, five times the already large number of H-2A workers currently.

Intensifying a race to the bottom for all farmworkers in the U.S., the consequences would be disastrous as it would likely limit any growth in wages, increase workers' vulnerability to employer pressure, undermine their bargaining power, and increase the already heavy obstacles to independent worker organization and unions.

Real change for H-2A and resident farmworkers requires upsetting the balance of power between workers and growers, and the government that protects them. The choice confronting the incoming Biden administration, therefore, is whether to expand an immigration program prioritizing grower profits over workers' and immigrants' rights, or instead to reinforce the immigration system based on family reunification and community stability, while protecting the wages, rights, health, and housing of farmworkers – the alternative advanced by the civil rights movement over half a century ago.



Royal City, WA 2018, an H-2A farm worker ties branches of young apple trees to wires guiding their growth.



Introduction

Just days before the November election, President Donald Trump made a desperate bid to maintain the support of some of his most loyal supporters – corporate fruit and vegetable growers. He told the U.S. Department of Agriculture not to collect the information needed by states to set the minimum wages for a quarter of a million guest workers on U.S. farms.⁷ If the Federal government does not set these wages, workers receive only the minimum wage in each state. For farmworkers, this means their wages would be slashed. For growers, this means additional profit.

In Washington State, apple growers (among the nation's largest) produced 138 million 40-pound boxes in 2019, worth about \$2.5 billion. Some 50,000 workers (including 17,500 guest workers on H-2A visas) picked them – each worker producing about half a million dollars of fruit.⁸ That year the Federal government determined, through USDA's information-collecting process, that their minimum wage should be \$15.03 per hour.⁹ The state minimum wage was \$12.00.¹⁰

Had the higher wage not been in effect, workers would have earned \$3 less per hour. For six months of picking, that reduction would have amounted to \$3,000 apiece – a big part of a year's earnings. Washington State apple growers would have saved over \$52 million.

A suit by the United Farm Workers and Farmworker Justice,¹¹ a Washington DC-based advocacy organization, won a preliminary injunction preventing USDA from cancelling the survey. But then the U.S. Department of Labor (DoL), the day before the election, announced a new formula for calculating the guest worker minimum (called the Adverse Effect Wage Rate), freezing it for two years before indexing it to inflation. DoL itself estimated that, as a result, growers would have pocketed \$178 million per year that they'd otherwise have had to pay workers, and over ten years, \$1.68 billion.

The Department of Labor was then sued by Familias Unidas por la Justicia, the new union for Washington State farmworkers. The union's president, Ramon Torres, argued that lowering the wage for H-2A workers would impact all farmworkers. Because DoL refused to set a minimum piece rate, he said his own wages for picking cherries would drop by 17 percent, costing him \$3,400.¹²

One of the first decisions the incoming Biden administration made, on its first day in office, was to withdraw two Trump administration orders – one freezing the AEWR and another making changes to the H-2A program benefitting growers at the expense of farmworkers,¹³ President Biden issued eight executive orders countermanding other anti-immigrant measures taken under Trump.¹⁴ There will many such



Wapato, WA 2016, Sara N. Sanchez de Lustre thins fruit on red delicious apple trees, so that the remaining apples will grow to a large size.



decisions, and among them further decisions about guest workers.

The Trump administration made numerous changes to the country's agricultural guest worker program in the year before the election. In April, President Trump announced that, while stopping almost all kinds of legal immigration for at least two months, he was placing no limits on the continued recruitment of H-2A guest workers by growers.¹⁵ He claimed the spreading COVID-19 pandemic made his order necessary, but cited no evidence to show that a ban covering legal immigration, including all forms of family-based migration, would stop the virus' spread, while leaving employer-based migration in agriculture unchanged would not.

Instead, Yakima Valley health authorities, in the heart of Washington State's apple growing district, reported over 200 cases of COVID-19 among farmworkers, almost all concentrated in eight outbreaks among H-2A workers.¹⁶

The schizophrenic nature of Trump's immigration order was instead a response to employer pressure to exempt agricultural guest worker programs from the administration's assault on immigrants. Agriculture Secretary Sonny Perdue announced in January 2020 that he wanted "to separate immigration, which is people wanting to become citizens, [from] a temporary, legal guest-worker program. That's what agriculture needs, and that's what we want. It doesn't offend people who are anti-immigrant because they don't want more immigrant citizens here. We need people who can help U.S. agriculture meet the production."¹⁷

Both measures – restricting family migration and expanding guest worker programs in agriculture – were more than temporary political favors, however. They lead towards expanding a captive workforce in agriculture, based on a program notorious for abuse of the workers in it, and for placing them into low-wage competition with farmworkers already living in the U.S.

They are also steps into the past. Family preference migration, in which immigrants can get residence visas (green cards) based on their family relationships with people living in the U.S., was a victory won by the civil rights movement. Activists like Bert Corona, Cesar Chavez, and others convinced Congress to end the bracero program in 1965, a guest worker program notorious for its abuse of migrants, by repealing Public Law 78. In its place, they won an immigration policy based on family unification, instead of one based on growers' need for a labor supply at low wages. That was codified in the Immigration and Naturalization Act of 1965, also known as the Hart-Celler Act.¹⁸

Trump announced a suspension to the family preference system through Twitter in April 2020. The H-2A program, now growing rapidly, is a direct descendent of the old bracero regime. Unless the new administration moves to halt it, the program will continue to mushroom, given its history of support in a Congress much more conservative than that of the 1960s.

President Biden announced on his first day in office that he will propose an immigration reform bill in Congress, whose major provision would allow 11 million undocumented people to apply for legal immigration status, and eventually citizenship. His proposal would also improve the functioning of the family-based immigration system, but also the employment-based system – the guest worker visa programs.¹⁹ The proposal would have to go through the same process in Congress which led in the past to comprehensive reform bills with very large expansions of guest worker programs and restrictions on the family preference system. While the H-2A program has mushroomed over the past two decades, the family preference system has become a restricted obstacle course in which married children in Manila or Mexico City wanting to join their parents in the U.S. must wait over two decades for a visa.²⁰

Restoring the family preference system and halting or restricting the H-2A program are two of the most important decisions that will face the incoming administration in regards to the direction of U.S. immigration policy.

Restoring the family preference system and halting or restricting the H-2A program are two of the most important decisions that will face the incoming administration in regards to the direction of U.S. immigration policy. They will have enormous consequences for the nation's farmworkers. The U.S. can become a society dependent on unfree labor to harvest its food by expanding a guestworker program under which immigrants have few labor rights, no political rights, and are economically vulnerable. Or advocates and policymakers can reach back to the civil rights and workers movements of the 1960s, and put a premium on the welfare of farmworker families and communities. The history of the bracero program, as well as the documented impact of the current H-2A program, make the stakes of this choice clear.



The Bracero Roots of the H-2A Program

In Chicano and Mexican families throughout the Southwest, the grandfathers who came to the United States as braceros are mostly gone now. From the program's inception in 1942 to its abolition in 1964, bracero labor produced enormous wealth for the growers who used it.²¹



Blythe, CA 2002, Amelia and Rigoberto Garcia, with the contracts he signed as a bracero on the table in front of them.

That wealth came at a price. Braceros were almost all young men, recruited into a program that held them in labor camps, often fenced behind barbed wire, separate from the people around them. When their contracts ended, they were summarily shipped back to Mexico. Growers used braceros to replace local farmworkers, themselves immigrants from Mexico and the Philippines, in order to keep wages low and often to break strikes. To bring their families here, braceros had to work many seasons for a grower who might finally help them get legal status. Others left the camps and lived without legal status for years.

In 1958, economist Henry Anderson charged in a report²² (for which growers demanded the University of California fire him),²³ “Injustice is built into the present system, and no amount of patching and tinkering will make of it a just system ... Foreign contract labor programs in general will, by their very nature, wreak harm upon the lives of the persons directly and indirectly involved, and upon the human rights our Constitution still holds to be self-evident and inalienable.”

Anderson's call helped lead to the abolition of the bracero program, but his warning cannot be buried safely in the past. Today, contract labor in agriculture is mushrooming again, with workers brought mostly from Mexico, but also from Central America and the Caribbean. Debate over the impact of the program unfolds in a virulently anti-immigrant atmosphere, much like that of the 1950s.

In the Cold War era, the U.S. government mounted huge immigration raids. Farm labor activists of that era charged they were intended to produce a shortage of workers in the fields. Fay Bennett, executive secretary of the National Sharecroppers Fund, reported that in 1954, “the domestic labor force had been driven out ... In a four-month period, 300,000 Mexicans were arrested and deported, or frightened back across the border.”²⁴

All told, 1.1 million people were deported to Mexico that year, in the infamous “Operation Wetback.”²⁵ As the raids drove undocumented workers back to Mexico, the government then relaxed federal requirements on housing, wages, and food for braceros.

In 1956 alone, 445,197 braceros were brought to work on U.S. farms, 153,000 just in California. They made up almost a quarter of the 2.07 million wage workers on U.S. farms that year, according to the Department of Agriculture. “The availability of braceros held down farmworker earnings,” says University of California, Davis, agricultural economist Philip Martin. In the decade of the 1950s, median farm wages rose from 85 cents an hour to \$1.20, while wages in the cities took a bigger jump, from \$1.60 to \$2.60.²⁶

“The availability of braceros held down farmworker earnings.”

—Philip Martin, agricultural economist,
University of California Davis

By law, bracero wages were not supposed to undermine wages for resident workers, and growers were supposed to offer jobs to local workers before they were allowed to bring in braceros. These are still provisions of the current H-2A program. But activists of the era “accused certain large growers of offering wages lower than domestic migrants will accept, in order to create an artificial labor shortage and justify a request for Mexican nationals,” wrote H.B. Shaffer in a 1959 report. The bracero program “tends to displace those [resident] workers rather than meet real labor shortages.”²⁷

Bennett agreed: “The alleged domestic labor shortage in the [rural] area is artificially created by pay rates too low for decent living.” The activists of those years who protested included future leaders of the United Farm Workers Cesar Chavez, Dolores Huerta, and Larry Itliong, as well as leading community organizers Bert Corona and Ernesto Galarza.

Today's labor picture on U.S. farms has changed surprisingly





San Joaquin Delta, California 1996, a bathroom in the barracks of a labor camp for braceros.

little from that of the 1950s. Industrial agriculture in the Southwest and along the Pacific coast relies on Mexican labor, as it has for a century. Mexican workers are now a majority of the farm workforce in the South, the East, and the Midwest as well. About 2.4 million people presently work for wages in U.S. agriculture, a slight increase from 1956. Mexicans made up the majority of farmworkers then, and today are two-thirds of the workforce.²⁸ U.S. immigration law and its enforcement have never eliminated Mexicans from the workforce, but indirectly control the conditions under which they live and work. Mexican academic Jorge Bustamante argues that a primary purpose of U.S. immigration law historically has been – and still is – to regulate the price of Mexican labor in the United States.²⁹

Depending on the period, farmworkers come across the border with visas or without them. Especially since the enactment of the North American Free Trade Agreement (NAFTA) in 1994, the economic forces displacing people in Mexico, pushing them across the border, have made migration a necessity for survival for millions of families. During times of heavy enforcement, hundreds die on the border each year. In that earlier period, Woody Guthrie sang,

“We died in your hills, we died in your deserts ... Both sides of the river, we died just the same.”³⁰

The bracero program channeled that flow of people into a cheap and convenient system for growers. Today the H-2A visa program serves the same function. Although the bracero program was abolished in 1964, the H-2A visa on which it was based was never eliminated. In 1986, Congress again authorized an organized farm labor importation program and created the H-2A visa.

Growers recruiting H-2A workers, mainly from Mexico, must apply to the Department of Labor, specifying the type of work, living conditions, and wages workers will receive. The company must provide transportation and housing. Workers are given contracts for less than one year, and must leave the country when their work is done. While in the U.S., they’re tied to the grower that recruits them. Workers in this system can be easily pressured to work to exhaustion. If they get sick or disabled they can be sent home. If workers protest mistreatment, or if they go on strike or organize, they can be legally fired and must leave the country.³¹



In theory, growers must advertise for local workers first, and can only bring in guest workers if too few locals are available. Currently, every state is required to survey wages every year to establish an Adverse Effect Wage Rate (AEWR) – a minimum wage for H-2A workers that theoretically won't undercut the wages of local farmworkers. It is set state by state, just slightly higher than each state's legal minimum wage. California's AEWR in 2020 is \$14.77 per hour, and its minimum wage is \$12.00. Texas' AEWR is \$12.67 and in Florida, Georgia, South Carolina, and Alabama it's \$11.71.³²

Even without the Trump order to stop collecting data for setting the AEWR, farmworker advocates have pointed out

that instead of protecting local wages, it puts a ceiling on them. Growers can simply respond to demands for wage increases by hiring H-2A workers instead. Nevertheless, the AEWR calculations are critical. In 2018, the Washington Farm Labor Association (WAFLA), one of the country's largest H-2A labor contractors, convinced authorities to remove a minimum piece rate for H-2A workers picking apples. That effectively lowered the harvest wage by as much as \$6 an hour. WAFLA President Dan Fazio boasted, "This is a huge win and saved the apple industry millions. Really glad we could help."³³ The change announced by the Trump administration in the hourly minimum has the same impact of lowering H-2A wages.

An Abusive H-2A Program for a Captive Workforce

Legal-service agencies, farmworker unions, and advocates have criticized the H-2A program for years, calling it "close to slavery."³⁴ A host of articles document violations of the program's weak protections. Farmworker Justice says it creates "a captive workforce that is deprived of economic bargaining power and the right to vote."³⁵ The United Farm Workers warned against Trump administration proposals to further weaken the regulations "that require U.S. citizens and legal residents to be offered these jobs first ... This drastic move could replace local U.S. workers with foreign H-2A workers."³⁶

"A captive workforce that is deprived of economic bargaining power."

—Farmworker Justice

Isolation binds guest workers to their jobs. They are often housed in barracks on the grower's property, miles from the nearest town, with no transportation of their own. That isolation is reinforced by everything from barbed wire fences to threats. A third of the workers interviewed by the Centro de los Derechos de Migrantes (CDM – the Migrant Rights Center) for a recent report said they couldn't leave the housing or worksite. Many H-2A workers "told of threats made by supervisors that they would be reported to ICE or law enforcement."³⁷

Threats are only one fetter in the chain. "Between recruitment costs and unreimbursed travel expenses, the vast majority of workers start their H-2A jobs deeply in debt," the CDM reported, and pay bribes to get the visa. All

the workers interviewed suffered violations of basic labor laws, including minimum wages, breaks, and others. Eighty-six percent reported that companies wouldn't hire women, or paid them less when they did. Half complained of bad housing, and a third said they were not provided needed safety equipment. 43 percent were not paid the wages promised in their contracts.

Growers have little to fear for such basic violations of labor laws and protections. In 2019, out of 11,472 employers using the H-2A program, the Department of Labor only filed cases of violations against 431 (3.73 percent), and of them, only 26 (0.25 percent) were barred from recruiting for three years, with an average fine of \$109,098.³⁸

As was the case in the 1950s, however, U.S. immigration policy today is intended to impede the entry of undocumented



Royal City, WA 2017, barracks in central Washington built to house contract workers brought to the U.S. by growers under the H-2A visa program, surrounded by a chain link fence and razor wire. These barracks belong to the Green Acres company.





Mexicali, Baja California, under the watchful eyes of a Border Patrol agent, undocumented workers are deported back into Mexico through the gate at the border crossing in El Hoyo in Mexicali.

migrants, and use the resulting shortage to force growers into using the H-2A visa program.

Increased Deportations Parallel Growing Use of H-2A Workers

Under Presidents Reagan and Bush, whose administrations were in office when the H-2A program was put in place, the average number of people deported each year ranged from 21,046 (Ronald Reagan) to 33,332 (George Bush Sr.). Under the Clinton administration, it tripled to 108,706, as the border was militarized and laws criminalizing aspects of undocumented status were passed. Under George Bush Jr. it jumped again, to 251,567 per year, and under President Barack Obama it peaked at 383,307. President Donald Trump, through ferocious enforcement and detention programs, brought the need for deportations down to 275,725.³⁹

The growth of the H-2A program paralleled the increase in deportations. For many years, the H-2A program saw little use by growers: In 1992, fewer than 10,000 visas were issued. That number had tripled by 2005, and under Presidents Obama and Trump it mushroomed. In 2019, growers were certified to bring in 257,667 H-2A workers – a tenth of the U.S.’s total agricultural workforce and an increase of more than 100,000 since 2014, when the number of such workers was 139,832. In 2019, Georgia brought in 29,480, compared

with its non-H-2A workforce of 48,972, according to the Department of Agriculture. Florida brought in the most, 33,598, compared to 96,247 non-H-2A farmworkers. California’s 18,908 H-2A workers are fewer in comparison to its huge workforce of 377,593, but that was an increase of 23 percent in just one year.⁴⁰

California farm sales reached over \$50 billion in 2019 – an enormous production of food that has little to do with agribusiness’ oft-declared goal of “feeding the nation.” Almost half of what’s grown here leaves the country, in exports worth \$20 billion.⁴¹ Growers claim that because of increased border enforcement, the number of available farmworkers is falling, although the industry employed virtually the same number, 724,000, 20 years ago.

“There is a severe ag labor shortage and it’s only going to get worse,” wrote Tom Nassif, president of the Western Growers Association on the WGA webpage.⁴² “Changing demographics and stringent regulatory barriers are causing the flow of workers crossing the border to dramatically slow down.” According to the National Agricultural Workers Survey, about half of the country’s 2.4 million farmworkers are undocumented, and in California the percentage is higher.⁴³



Unemployment in California's farmworker towns, however, is always much higher than in urban areas. In March 2020, for instance, the unemployment rate in Imperial County was 15.3 percent, in Merced County 10.2 percent, and Monterey County 9.4 percent. In Los Angeles it was 4.1 percent and San Francisco 2.4 percent.⁴⁴ Yet according to Nassif, "increased pay and overtime benefits aren't going to attract any additional workers to the field. Those extra workers don't exist."⁴⁵

While growers' use of the H-2A program has increased sharply, immigration raids in rural areas of California increased as well, especially following the election of President Trump. The high visibility of the Border Patrol in farmworker towns was dramatized by the deaths of an immigrant couple in Delano in 2018,⁴⁶ who crashed their van while fleeing in terror from immigration agents. The Department of Homeland Security initiated document checks leading to the firing of hundreds of workers at several large San Joaquin Valley farms, including Pitman Family Farms and Poindexter Nut Company in Sanger, Bee Sweet Citrus in Fowler, and Fresh Select in Dinuba.⁴⁷

Growers' concern about maintaining a stable workforce was exacerbated by threats from the President to build more

border walls and to use the E-Verify database to identify undocumented workers for termination or deportation. Western Growers Association President Tom Nassif, who belonged to Trump's agricultural advisory board, argued that increased immigration enforcement restricted the number of immigrant workers. That complaint, in turn, provided a rationale for expanding the H-2A program and reducing its protections and requirements.

United Farm Workers vice-president Armando Elenes condemned the political agenda combining increased immigration enforcement with rising use of the H-2A program. "ICE does audits and raids, and then growers demand changes that will make H-2A workers even cheaper by eliminating wage requirements, or the requirement that they provide housing. Reducing the available labor and the increased use of H-2A are definitely connected. Growers don't want to look at how they can make the workplace better and attract more workers. They just want what's cheaper."⁴⁸

"Reducing the available labor and the increased use of H-2A are definitely connected."

– Armando Elenes, United Farm Workers (UFW)



Daly City, CA – 2010, Teresa Mina was a San Francisco janitor when she was fired because the company said she didn't have legal immigration documents. Mina worked cleaning downtown office building for four years, and sent money to her mother and three children in Veracruz, Mexico, to support them. After losing her job she was forced to return to Mexico.



In one celebrated case under the Obama administration in 2010, federal immigration authorities used the E-Verify system (a Department of Homeland Security database for identifying workers without valid immigration documents) to identify 550 undocumented farmworkers on the huge Gebbers ranch in eastern Washington. Citing the legal prohibition on employing them, authorities forced Gebbers to fire them all. The company was then required to use the H-2A program to recruit workers from Mexico, and even Jamaica, to replace those who had lost their jobs.⁴⁹

Many immigrant rights activists viewed the Gebbers action as a trial run for an enforcement tactic that has become common, one that legislation proposed periodically would make mandatory on every U.S. farm. Its purpose is not to deny labor to growers. It is to return to an earlier system for managing it.

As the flow of workers across the border was reduced by immigration enforcement under Presidents Bush and Obama, and continued under President Trump, finding labor became an increasing problem for growers.

Trump's tirades against migrants and his drive to build a border wall created the impression that he sought to restrict

immigration across the board. But when growers appealed for workers, his response was different. At a Michigan rally in February 2018, he told supporters, "For the farmers ... it's going to get good ... We're going to have strong borders, but we have to have your workers come in ... We're going to let them in 'cause you need them ... We have to have them."⁵⁰

Trump, however, is far from the only politician in both major parties to promote the H-2A program. After Trump's April 2020 order suspending family migration and other work visa programs, growers feared he might also restrict H-2A recruitment. California Democratic Senator Dianne Feinstein wrote Secretary of State Mike Pompeo, "Interrupting the issuance of H-2A agricultural visas – particularly for returning workers who have no inadmissibility concern – harms our national interests and may cause an interruption to our food supply in the midst of a global pandemic."⁵¹ At the same time that so-called "essential" workers in agriculture and meatpacking were suffering COVID-19 infections at a rate far greater than the general population, she added, "I respectfully request that the State Department recognize H-2A visas as 'essential.'"

Who Brings the Workers?

During the *bracero* program, workers were employed directly by growers and hired through grower associations. Today, however, the three largest employers of H-2A workers are labor contractors. The North Carolina Growers Association last year accounted for 11,223 workers; the Washington Farm Labor Association (WAFLA) accounted for 4,369, and Fresh Harvest for 4,812.⁵² Some employers with operations in Mexico, like Fresh Harvest and Driscoll's (the world's largest berry company), offer H-2A visas to workers they first employ in fields south of the border. Other large H-2A employers include Washington State's Zirkle Fruit Company, which alone brought in 3,400 pickers in 2019.⁵³

Fresh Harvest calls itself "one of the largest H-2A employers in the Western United States."⁵⁴ Its website has a special section where potential recruits in Mexico can register, with a schedule of recruitment events at offices in San Quintin, Baja California, and Zamora, Michoacán. Fresh Harvest

manages the recruitment, certification and visa processing for growers, sets up housing, trains workers, files all government reports, and provides worker transportation. "We insist on taking an active role in the in-field/job site management of our employees," the site claims.

The website for Elkhorn Packing, another large H-2A contractor (2,653 workers), describes the company as "a leading custom harvester with operations in the Salinas Valley, Santa Maria, El Centro, and Yuma regions."⁵⁵ With a contract labor force of thousands of H-2A workers dispersed that widely, it is unlikely that the individual growers whose fields it harvests have each determined separately that no local workers are available.

WAFLA started as the Washington Farm Labor Association, a program of the Washington State Farm Bureau, where its founder, Dan Fazio, was a director. Initially based in Washington, WAFLA expanded south into Oregon, and then





Wapato, WA 2017, Dorian Lopez, an H-2A guest worker from Mexico, in barracks in central Washington that belong to the Green Acres company. Lopez got married just before coming to the U.S., and had to leave behind his new wife in Ajutla in Oaxaca, Mexico. H-2A workers must come without families, and the barracks are only for single men.

into Michigan where it provided the model for the Great Lakes Ag Labor Services, LLC.⁵⁶

WAFLA and its employees are very close to the state government. Craig Carroll, the agency's agricultural program director overseeing H-2A certification, spoke at the group's "H-2A Workforce Summit" in January 2017, sharing the stage with numerous WAFLA staff members and Roxana Macias. Macias worked for Washington's Employment Security Department for two years, then for WAFLA for three years, and now is the Director for Compliance at a WAFLA partner that recruits the workers in Mexico, CSI.⁵⁷

In central Washington, the new barracks springing up for H-2A workers all look the same – dusty tan prefab buildings built around a common grass area. Billboards next to rural roads advertise the services of companies like "H-2A Construction, Inc." This is a product of WAFLA's growth. "Our goal is to have 50,000 H-2A workers on the West

Coast three years from now," WAFLA's director Dan Fazio told Michigan apple growers in 2015.⁵⁸

In 2016, WAFLA took in \$7.7 million in fees for its panoply of H-2A services.⁵⁹ For growers in its recommended Gold program it handles the Federal Department of Labor application and compliance, provides transportation, recruits the workers and gets their visas processed, and conducts on-site meetings with them. WAFLA's annual reports feature advertising by the companies who help provide those services, including its recruiter CSI, construction companies like Blueline, which touts "housing designed to provide strength and longevity, while offering comfortable amenities for a grower's workforce," the Moss Adams Foreign Worker Tax Service, two bus companies – Transportes Fronteras del Norte and Turimex International, and WAFLA's legal partner in San Diego, Malitz Law, Inc. – "available when issues arise."⁶⁰



Racism and Dehumanization at the Washington Farm Labor Association (WAFLA)

Two complaints brought against the Washington Farm Labor Association (WAFLA)'s director Dan Fazio have revealed an atmosphere of racism and dehumanization among some of the labor contractors. According to Melina Mendoza,⁶¹ who was fired from her job processing visas applications in 2012, after filing suit over sexual harassment, Fazio routinely used the "N-word." He bragged he used to fight with African-Americans growing up in New York and referred to women as "bitches" he would "bang." In housing the workers, he told her to divide them up "by however many Mexicans we can slam in one room," and "Where one Mexican fits 10 more can squeeze in, isn't that how you guys roll?" After she complained, her phone, keys, and other employer-provided property was taken away. WAFLA withheld promised bonuses, threatened and intimidated her, and then made her train her replacement and fired her.

"Wait, who's skin is darker? That's the one who should be doing all the work."

—Dan Fazio, Washington Farm Labor Association

In another complaint, Dawn Dobbins,⁶² WAFLA's former human relations manager, charged that when she asked for help in her job, Fazio said, "Wait, who's skin is darker? That's the one who should be doing all the work." He regularly insulted women, and when she asked him to stop he yelled at her, "You are so fucking stupid!" and "I should beat you with a stupid stick!"

Unlike the *bracero* era, when recruitment was jointly managed by the U.S. and Mexican governments, recruitment today is also privatized. No one knows for sure who all the recruiters are, how they recruit people in Mexico, or their arrangements with U.S. growers. The largest recruiter may be CSI (Consular Solutions Inc.), formerly Manpower of the Americas, which claimed to have recruited 30,000 Mexican workers in 2017 and is closely tied to WAFLA.⁶³ In the 1990s, Manpower of the Americas maintained a legal blacklist of workers who would be denied employment – including those who'd been involved in worker activism, who protested bad conditions, or who just worked too slowly.⁶⁴

The company was created to bring workers from Mexico for what is today the largest H-2A employer – the North Carolina Growers Association. The group was founded in 1989 by Stan Eury, who formerly worked for North Carolina's unemployment office, The Division of Employment Security. Eury's past ties there enabled him to play a key role in gaining H-2A certification for the association's members.⁶⁵

Eury also created the North Carolina Growers Association PAC, a political action committee that donates almost exclusively to Republicans. Under pressure from Eury, courts have concluded that anti-discrimination laws don't apply to H-2A workers. Employers are allowed to recruit men almost entirely. In 2001, the Fourth Circuit Court of Appeals ruled that the Age Discrimination in Employment Act does not cover workers recruited in other countries,

leaving employers free to give preference to young workers able to meet high production quotas. In 2009, he challenged Obama administration efforts to strengthen H-2A worker protections.⁶⁶

North Carolina Legal Aid battled Eury for years over complaints of wage theft, discrimination, and bad living and working conditions, until he signed a collective bargaining agreement with the Farm Labor Organizing Committee in 2004. Despite his political clout, however, in 2015, Eury was forced to plead guilty to two counts of defrauding the U.S. government, fined \$615,000, and was sentenced to 13 months in prison.⁶⁷ Nevertheless, the North Carolina Growers Association has been allowed to continue; in 2019, the Department of Labor approved its applications for 11,223 workers.⁶⁸

Meanwhile, CSI became a recruitment behemoth, supplying workers far beyond North Carolina. A CSI handout for employers says, "CSI has designed a system that is able to move thousands of workers through a very complicated U.S. Government program."⁶⁹ Today, the CSI website warns, "CSI shares candidate [worker] records with companies to select whomever they see fit."⁷⁰ Workers recruited through CSI must sign a form acknowledging that their employer can fire them for inadequate performance, in which case they will have to return to Mexico. "The boss must report me to the authorities," it warns, "which can obviously affect my ability to return to the U.S. legally in the future."⁷¹



H-2A Leads a Race to the Bottom for Farmworkers

The premise behind the H-2A program is that it allows recruitment of workers by an individual grower who demonstrates it can't find people to hire locally. Workers are then bound to the grower, and supposedly don't function as a general labor pool. But a labor pool is exactly what WAFLA advertises. Its "shared contract model" allows multiple growers to share the same group of workers during the same harvest season, sometimes coordinated through the growers' packing house. Workers might work for one grower one day, and for another the following day, at widely separated fields. The "sequential model" lets a grower bring in workers for one harvest, and then pass them on to another grower for another harvest.⁷²

While Washington's Employment Security Department (ESC) is charged with enforcing the rules regarding H-2A contracts, it stopped collecting the data needed to show

statistically whether or not H-2A workers were displacing local farmworkers. ESC's website states: "The agriculture employment and wage report will no longer be provided beginning with the May 2014 report due to a decline in funding."⁷³ The department did request an investigation by the state attorney general into charges by Columbia Legal Services that WAFLA had tried to fix low wage rates, but that investigation was never resolved.

Joe Morrison, an attorney with Columbia Legal Services, notes that H-2A workers are inherently vulnerable. "Virtually all have had to get loans to support their families until they can begin sending money home, as well as to cover the cost of visas and transportation," he explains. "That basically makes them indentured servants. They have the least amount of legal protection, even less than undocumented immigrants."⁷⁴



Santa Maria, CA 2018, Francisco Lozano, a Mixtec farm worker and community activist, with his wife at home in Santa Maria.



"They have the least amount of legal protection, even less than undocumented immigrants."

—Joe Morrison, Columbia Legal Services

H-2A workers are also excluded from the Migrant and Seasonal Agricultural Worker Protection Act and beholden to one employer. "Even undocumented workers can vote with their feet if they don't like the job," Morrison says. "If H-2A workers complain, they get fired, lose their housing, and have to leave the country."

In 2013, representatives of WAFLA showed up at a large Washington State winery, Mercer Canyons. Garrett Benton, manager of the grape department and viticulturist, was then given a plan by the company owners for hiring workers for the following season.

"The plan separated out work to be done by the H-2A workers and work to be done by the local farmworkers," Benton recalled in a declaration for a suit filed by Columbia Legal Services.⁷⁵ "It left very little work for the local farmworkers. Based on the plan and the presentation by the WAFLA people, I believed it was a done deal that the company would be bringing in H-2A workers in 2013."

The rules governing the H-2A program require employers to first advertise the jobs among local residents. Local workers must be offered jobs at the same pay the company plans to offer H-2A workers and the H-2A workers must be paid at a rate that supposedly will not undermine the wages of local workers. But there is virtually no policing of the requirement that growers demonstrate a lack of local workers, or any

efforts to hire them beyond a notice at the unemployment office.

Benton said many of Mercer Canyons' longtime local workers were told there was no work available, or were referred to jobs paying \$9.88/hour while H-2A workers were being hired at \$12/hour. The company, he said, even reduced the hours of those local workers it did hire in order to get them to quit.

"Working conditions got so bad for the local workers that they eventually went on strike on May 1, 2013," Benton stated. "They felt strongly that they were being given harder, less desirable work for less pay.... Mercer Canyons was doing everything it could to discourage local farmworkers from gaining employment." The class-action lawsuit involving more than 600 farmworkers was settled in 2018, and Mercer Canyons agreed to pay workers \$545,000 plus attorneys' fees, for a total of \$1.2 million.⁷⁶

"H-2A is a kind of modern slavery."

—Francisco Lozano, Mixtec farmworker and community activist

Francisco Lozano, a Mixtec farmworker and community activist in Santa Maria, California, explains how the H-2A scheme concretely undermines workers' bargaining power with their employers. "Mixteco farmworkers used to organize short strikes at the beginning of every picking season to push up piece rates and wages. Now people are afraid that if we do that the growers will bring in H-2A workers. I think H-2A is a kind of modern slavery."⁷⁷

Forced to Work at an Inhuman Pace

The U.S. Department of Labor allows growers to put production quotas into the contracts under which workers are recruited to come to the U.S., and to fire workers for not meeting them. If H-2A workers get fired before the end of their contract, not only do they lose its guaranteed weeks of work and pay, but also become immediately deportable. The grower doesn't even have to pay their transportation to the border, much less to the town they came from. Employers and their recruiters are allowed to maintain lists of workers who are eligible for rehire, and those who are not – in effect, a blacklist.

That gives a grower a lot of leverage to get workers to work at an inhuman pace. And because the H-2A workers can be forced into it, workers who are living in the U.S., and laboring at the same job, get pressured into it as well. Humiliation, firings, and even heart attacks are the result.

Tomato grower Harry Singh had an idea for speeding up the harvest in the fields he rents at the Camp Pendleton Marine Base near San Diego. His foreman told Serafin Rincon, 61 years old, to pick beside two imported contract workers in their 20s. In the summer heat, Rincon was told to run. He could hardly keep up.⁷⁸



Rincon had come to work with his friends Santiago Bautista and Rufino Zafra. They were all longtime farmworkers in the area – Bautista had been working in San Diego since 2003, and Zafra since 1975. All day they had to listen to “gritos” and insults from their boss Celerino when they fell behind. “Stupid donkey, you’re old now,” he shouted at them. “You can’t make it anymore!”

The three even started trying to hold it when they had to go to the bathroom, after being yelled at for going too often. Not that using those bathrooms was a pleasant experience. The toilet paper ran out so often they started bringing their own from home. Zafra would even wipe down the filthy portapotty with paper towels. The drinking water tasted like “hot soup,” Batista said.⁷⁹ He had a heart attack at work, but still the foreman wouldn’t let him stop working. A medical examiner said later the attack was caused by his working conditions. Finally, Rincon was fired, and the three sued

Harry Singh’s company, West Coast Tomato, over the abuse.

“Many of the younger workers whom our plaintiffs had to keep pace with were H-2As,” explained Jennifer Bonilla, of California Rural Legal Assistance (CRLA).⁸⁰ She introduced expert testimony of Dr. Kenneth Silver, who tied the speedup to the production requirements given the younger H-2A workers.⁸¹

Singh was one of the first growers to bring young, male H-2A workers to California. Another CRLA case against Harry Singh dramatized the way West Coast Tomato could pit H-2A workers against local laborers to reinforce low wages and unsafe working conditions. The suit accused the company of evading two legal requirements – that it hires local residents before recruiting H-2A workers and that it pay local workers at least as much as it pays the imported laborers.⁸²



Near Camp Pendleton, CA 2009, behind this gate H-2A guest workers working for grower Harry Singh sleep in a labor camp on Singh's ranch, keeping them isolated from the surrounding community. If they leave their jobs, they lose their visa and have to return to Mexico.



CRLA's plaintiffs included Elisa Valerio, Guillermina Bermudez, and Felix Gomez, experienced local farmworkers, employed in the West Coast Tomato packing shed. Once tomatoes are picked they're brought into a hot cavernous building where they're sorted on high-speed conveyor belts. The three workers described intense pressure to maintain a very fast work pace, much like what Rincon experienced in the fields.

Both local and H-2A workers did the same work. West Coast Tomato, however, called the H-2A workers "packers" and the resident workers "sorters." Its application to the Department of Labor claimed it couldn't find local "packers" and therefore needed to fill jobs in the shed with H-2A workers. West Coast would only hire local workers as "sorters." Then the company paid sorters less than the H-2A wage, the Adverse Effect Wage Rate. In 2014 in California, it was set at \$11.01/hour. The three workers, however, were paid the minimum wage – \$8/hour until July 2014, and \$9/hour afterwards – because they were "sorters" and not "packers."

Both the older local workers and younger H-2A contract laborers had to meet high production quotas. If the line stopped, the three plaintiffs said, the company docked their pay until it began again (a violation of state law). And when it was running they couldn't leave to use the bathroom. Valerio, Bermudez, and Gomez couldn't keep up and were fired in August 2014.

U.S. District Court Judge Thomas Whelan rejected West Coast's classification scheme, saying it allowed the company "to hire H-2A workers as 'tomato packers' without a legitimate shortage of qualified Americans and pay them more per hour than its American equivalent 'tomato sorters.'"⁸³ CRLA Litigation Director Cynthia Rice charged, "it's good that we can win these cases and get justice for some workers, but it's a small number compared to the total number of H-2A and affected resident workers in the California workforce. The authorities who are supposed to enforce the regulations, including the U.S. Department of Labor and the state Employment Development Department, are doing almost nothing."⁸⁴



Graton, CA 2010, Fabian Calderon and Gustavo Villagomez came from Tlazazalca, Michoacan, and live in a labor camp on the Martinelli ranch. They are H-2A guest workers, brought from Mexico under contract for six months to pick grapes and apples.



Speeding Up Work – King Fuji

In February 2018, a group of H-2A workers at the King Fuji ranch contacted the new union for farmworkers in Washington State, Familias Unidas por la Justicia. Union president Ramon Torres and Edgar Franks, political director, went to Mattawa to talk with them. According to Franks, “It was freezing and they couldn’t feel their feet or hands,” he said. “Some workers had pains in their arms and hands, but were afraid to go to the doctor because they might get written up, and with three written warnings they’d be fired.”⁸⁵ The company required them to thin 12–15 sections per day, which workers said was an impossible demand.



Mattawa, WA 2019, a worker on strike at the King Fuji apple ranch. Photo by Edgar Franks.

Workers listed other complaints as well. They had to pay for their own work gear, including \$60 for work boots. They didn’t get paid rest breaks. Both are violations of the regulations governing the H-2A program. Franks and Torres were told by the workers that when they were hired they were made to sign an eight-page contract in English, which they did not speak.

At the end of April 2018, the union got another call from Mattawa. Four laborers had been diagnosed with the mumps, and over 100 had been quarantined.⁸⁶ The H-2A workers were told to stay in their barracks on the company ranch. They were allowed to leave during the day to work, but could no longer go into town to buy food or supplies. They couldn’t send money to their families in Mexico, who were depending on regular remittances. Health workers from the Grant County Health District came out to the labor camp and vaccinated over a hundred people.⁸⁷ Because symptoms usually appear in less than 25 days after exposure, it is unlikely that the workers brought the mumps virus with them from Mexico, since they’d been in the U.S. for much longer. According to the District’s Theresa Adkinson, if workers refused to be vaccinated they were told they wouldn’t be permitted to work.

A month later the company instituted another scheme to pressure them to work harder. “They told us,” Torres recalled, “that managers had begun giving them grades like in school – A, B, C, D, and F, according to how much they produced. Workers in the F category would be sent back to Mexico, and wouldn’t be hired again next year. A lot of people were frightened by this threat, but 20 decided to act.”⁸⁸

“We even have bedbugs, and now they want to grade us on how clean our barracks are,” worker Sergio Martinez fumed. “At work some of the foremen shout at us, and accuse us of not working well or fast enough. And when we do work fast, they cut the piece rate they’re paying us so we can’t earn as much.”⁸⁹

—continued



In June of 2018, 21 guest workers at the King Fuji ranch in Mattawa, Washington, didn't file into the company orchards as usual, to thin apples. Instead, they stood with arms folded outside their bunkhouses, on strike and demanding to talk with company managers. According to Martinez, "we're all working as fast as we can, but the company always wants more. When we can't make the production they're demanding they threaten us, telling us that if we don't produce they won't let us come back to work next year. We want to speak with the company, so we're not working until they talk with us."⁹⁰

Martinez voiced a complaint common among H-2A guest workers. Pressure to work harder and faster is permitted by the U.S. Department of Labor, often written into the certifications that allow growers to import workers. The job order approved by DoL for King Fuji Ranch, Inc. lists the first reason why a worker can be fired: "malingers or otherwise refuses without justified cause to perform as directed the work for which the worker was recruited and hired." If a worker's productivity doesn't improve after "coaching" then "the Worker may be terminated."⁹¹

Coaching at King Fuji, according to Martinez, means "they threaten to send us back to Mexico." Another worker, who preferred not to give his name, explained that "they give you three tickets [warnings], and then you get fired. They put you on the blacklist so you can't come back next year. Workers who were fired last year aren't here this year."⁹²

The blacklist was effective. Although workers went back to work in 2018, after winning some improvements, Franks says that when he revisited the ranch the following season none of the active strike participants were there anymore.⁹³



Oxnard, CA 2009, the family of Lino Reyes are Mixtec migrants from San Martin Peras in Oaxaca. He and his wife work in the strawberry fields and live in the garage of a house on the outskirts of town.



Cheating Workers – Jose Vasquez

In 2013, a pair of recruiters showed up in the Mexican state of Michoacán, promising jobs in California with free housing and transportation. To get the jobs, however, recruits had to pay a deposit of \$1,500 each into the bank account of labor contractor Jorge Vasquez.⁹⁴



Santa Maria, CA 2018, this complex at 1316/1318 Broadway, was listed as the housing for 160 workers by Big F Company, Inc. and Savino Farms. It was formerly senior housing, and the contractor built a wall around it, with a gate controlling who enters and leaves. Bars on the windows of the complex at 1316/1318 Broadway.

for housing and food – another legal violation. Vasquez told them they couldn't leave the residence except to go to work, threatening them with deportation and saying he could hurt their families in Mexico. Every day they were dropped off at the fields at 4AM, and worked until 3-5PM. They picked 30-35 boxes of berries a day, at \$1 per box, but their first week's pay was only \$200. They were paid in cash, with no pay records. At the AEWR wage at the time, they should have been paid \$721.

The second week they weren't paid at all. Instead, they were told their pay was going towards their \$1,500 "debt." When Chavez asked to leave, Diego told him that he had to continue working until the debt was paid. Finally one of them escaped. The other three worked for two more weeks. After each deposited \$1,500 into Vasquez' account they were fired and thrown out of the house.

Jorge Vasquez, Melquiades Jacinto Lara, and Ricardo Mendoza Oseguera were eventually indicted by a federal grand jury for mail and visa fraud for charging workers for visas and living expenses. They pled guilty. Vasquez was fined \$135,389 and sentenced to a year in prison.⁹⁵

Charging recruitment fees is a violation of federal H-2A regulations. Nevertheless, Jose Gonzalez, Efrain Cruz, Ana Teresa Cruz, and Rosaura Chavez paid the money and went to Tijuana to wait for their visas. There they were taken to a house where twelve recruits slept in each room. The workers waited a month before they finally crossed the border. Then their passports were taken away. Their recruiter, Vasquez' nephew Diego, said they'd get them back only after they paid an additional \$1,500.

The four wound up in Santa Maria picking strawberries, housed in a 2-bedroom residence with 14-16 other H-2A workers. Each paid \$80 a week

Undermining the Living Conditions of All Farmworkers

Bad housing conditions for H-2A workers are not unusual. In October 2017, the city of Santa Maria, California, filed suit against a local slumlord, Dario Pini, over extreme violations of health and housing codes in hundreds of apartments in eight complexes.⁹⁶ One of them, the Laz-E-

Daze Boardinghouses at 1318 and 1324 North Broadway, is used as housing for H-2A workers. The city inspectors cited Pini for "deteriorated concrete walkways, accumulated trash, abandoned inoperable vehicles, plumbing leaks, unpermitted construction work, bedbug infestation,



cockroach infestation, lack of hot water, faulty and hazardous electrical systems, and broken windows and missing window screens.”

Two H-2A labor contractors list 1318 North Broadway as company housing in their applications for certification by the Department of Labor. Big F Company says 80 workers live there, and Savino Farms has 60 more. Other certification forms list even more questionable housing. La Fuente Farming, Inc. lists one small dwelling at 403 W. Creston St. as housing for 14 workers. A completely derelict trailer next to a strawberry field at 1340 Prell St. is listed as housing for six workers, also by La Fuente Farming.⁹⁷ There is no record that the Department of Labor or the Employment Development Department actually examined the housing employers said they were providing.

Rents are rising in Santa Maria. According to CRLA attorney Corrie Arellano, growers and contractors bring about 800 workers into the Santa Ynez Valley each year. “At first they filled up almost all the inexpensive motel rooms in town,” she said. “Now they’re renting out houses and apartments, and pushing up rents.”⁹⁸ Francisco Lozano, a Mixtec farmworker and longtime Santa Maria resident, says his rent for a two-bedroom apartment has gone from \$1,000 to \$1,300 in three years.⁹⁹ He also explains the frustration of the local Mixteco community – “We struggled with the school district to get them to hire a Mixtec-speaking translator for

our children, some of whom don’t speak Spanish. But the new H-2A workers are all single men who leave after the harvest is over, so they have no stake in the schools or our families.”

“They’re renting out houses and apartments, and pushing up rents.”

—Corrie Arellano, California Rural Legal Assistance (CRLA)

Similar community concerns are reflected in a study of housing conditions in Salinas made by demographer Rick Mines, “The Social Impact of the H-2A Program in the Salinas/Pajaro Valleys.”¹⁰⁰ “There is a growing competition between the new migrants (the H-2A) and the old (the settled Mexican families),” he says. “This competition affects the availability of housing as the older migrants face higher prices and increased crowding in the apartments where most live. But, more importantly perhaps, the older settled workers will be getting less work as their younger co-nationals (the H-2A) replace them in the fields.” By one estimate, half of the strawberry workers in the Salinas–Watsonville area are H-2A workers. According to Philip Martin at the University of California, fair-market rent for a two-bedroom house in Salinas is \$1,433, while the current state minimum wage only produces \$1,920 a month.¹⁰¹



Santa Maria, CA 2018, this trailer, at 1340 Prell St., was listed as the housing for six workers by La Fuente Farming, Inc.





Royal City, WA 2017, a sign advertises the services of a contractor in Central Washington who specializes in building barracks for H-2A workers. Each unit houses about 50 workers in rooms in which four workers sleep in bunkbeds.

In Salinas two of California's largest vegetable growers, Tanimura & Antle and the Nunes Company, built new worker housing in 2018. These complexes are similar to those being rapidly constructed by growers in Washington State for their H-2A workers. While the Tanimura complex, with 800 beds, was made available to local residents, and the Nunes family says it may do the same with its 600 beds, both complexes eventually will likely become housing for H-2A workers. Tanimura already brings 800 H-2A workers into Yuma, Arizona, every year.¹⁰²

With the number of H-2A guest workers mushrooming in California, labor contractors and growers are packing them into motels and houses in working class neighborhoods. In 2017, Future Ag Management was fined \$168,082 for providing housing in Salinas for 22 people and had them sharing one shower and a bathroom infested with insects.¹⁰³

Soledad, in the Salinas Valley, put a moratorium on H-2A housing in September 2020, after the local Motel 8 was converted into living quarters for contract workers. At the same time, residents complained that they were evicted from a rental complex when owners found it preferable to

rent the apartments to H-2A contractors.¹⁰⁴

California set up the Joe Serna Farmworker Housing Grant Program in 2010 to provide subsidies for building farmworker housing, and in 2018 voters passed Proposition 3, which allocated \$300 million to fund it. AB 1783, passed by the state legislature in 2018, set regulations over how this money can be used.

It creates a streamlined process for funding growers who build farmworker housing on part of their land. The housing would have to be administered by a qualified affordable housing organization, and must be used for affordable farmworker housing for 55 years. The bill also bars "dormitory housing" – the kind of housing used for H-2A workers. The legislature's bill analysis states it "does not preclude utilization of the H-2A program or the development of housing for H-2A visa-holders. However, it does make such housing ineligible for state funding for its planning, development, or operation of such housing."¹⁰⁵

"We've had a hundred years of labor camps in California," responds Giev Kashkooli, legislative director for the United



Farm Workers, which supported the bill.¹⁰⁶ “Building housing for families should get what funding the state can provide. This is really about the future of farmworker families. We want a food system that allows them to survive and find housing and lead a dignified life.” The California bill’s author, Assembly member Roberto Rivas (a son and grandson of UFW members) argued that his bill “phases out state support of the federal H-2A program. These types of programs – such as the Bracero programs, which aimed to secure a temporary agricultural workforce – have historically limited farmworker rights and been criticized for abuse.”¹⁰⁷ The bill passed and was signed by Governor Gavin Newsom.

Washington State, however, helps WAFLA by allowing it to use state subsidies for low-income farmworker housing to build barracks. This includes the ninety-six-bed Ringold Seasonal Farmworker Housing in Mesa, Washington. Subsidies were used to build another grower association’s \$6 million, 200-bed complex called Brender Creek in Cashmere, Washington.¹⁰⁸

“10 percent of Washington farmworkers were living outdoors in a car or in a tent”

–Daniel Ford, Columbia Legal Services

Daniel Ford at Columbia Legal Services complained about these handouts to the Washington Department of Commerce, noting that the state’s own surveys showed that 10 percent of Washington farmworkers were living outdoors in a car or in a tent, and 20 percent were living in garages, shacks, or “places not intended to serve as bedrooms.”¹⁰⁹ Corina Grigoras, the department’s Housing Finance Unit managing director, responded that she couldn’t “prohibit H-2A farmworkers residing in housing funded through the Housing Assistance Program,” or even “require that housing assistance program housing be rented to H-2A employers only at market rates.”¹¹⁰ Growers got access to subsidized housing, while farmworkers who the subsidies were intended to help continued to live in garages.

Congressman Dan Newhouse (R-WA) a conservative Republican from Washington’s Yakima Valley, then attempted to place a waiver into the 2018 appropriations bill to allow growers, for the first time, to use federal subsidies for farmworker housing to house H-2A workers. “There are many farmworkers who are living outdoors in cars, in garages and many other places,” responded Farmworker Justice’s Bruce Goldstein. “Any available subsidies to develop farmworker housing should be used to address the shortage for U.S. farmworkers and their families.”¹¹¹

Honesto Silva Died Picking Blueberries

On August 7, 2017, Honesto Silva Ibarra died in a Seattle hospital. Silva was an H-2A worker brought to the U.S. under contract to pick blueberries – first in Delano, California, and then in Sumas, Washington, next to the Canadian border. In a suit filed in U.S. District Court in Washington State in January 2018, Columbia Legal Services charged that Sarbanand Farms, Silva’s employer, “violated federal anti-trafficking laws through a pattern of threats and intimidation that caused its H-2A workforce to believe they would suffer serious harm unless they fully submitted to Sarbanand’s labor demands.”¹¹²

Sarbanand Farms belongs to Munger Brothers, LLC, a family corporation in Delano, California. Since 2006, the company has brought over 600 workers annually from Mexico under the H-2A visa program, to harvest 3,000 acres of blueberries in California and Washington. Munger has been called the world’s largest blueberry grower and is the driving force behind the Naturipe growers’ marketing cooperative.

In 2017, Munger Brothers brought Silva and the other H-2A workers first to Delano. After harvesting blueberries there, it transferred them to Sarbanand Farms in Washington. Although the company omitted the requirement on its DoL application, workers were told by Nidia Perez, a Munger supervisor, that they had to pick two boxes of blueberries an hour or they’d be sent back to Mexico.¹¹³ In July and August, they were working 12-hour shifts. The complaint says

–continued



managers routinely threatened to send them home if they failed to meet the quota, and to blacklist them afterwards, preventing them from returning to the U.S. to work in subsequent years. One manager told them, “You came here to suffer, not for vacation.”¹¹⁴

Laboring under the hot sun, breathing smoke in the air from forest fires, many workers complained of dizziness and headaches. Perez had told them, however, that “unless they were on their death bed,” they could not fail to come to work.¹¹⁵ Silva told a supervisor he was sick. In an interview another worker, Miguel Angel Ramirez Salazar, charged, “they said if he didn’t keep working he’d be fired for ‘abandoning work,’ but after a while he couldn’t work at all.”¹¹⁶



Bellingham, WA 2019. Farm workers and their supporters march to protest the H-2A guestworker program and the death of Honesto Silva, on the anniversary of his death two years earlier. The march was organized by Community2Community and the new union for Washington farm workers, Familias Unidas por la Justicia

One of Silva’s coworkers, Raymond Escobedo [name changed to protect his identity], remembered the day he died. “I could see he wasn’t feeling well, and he asked to leave work. They wouldn’t give him permission, but he went back to the barracks to rest anyway. Then the supervisor went and got him out, and forced him back to work. Honesto continued to feel bad, and finally had to pay someone to take him to the clinic. When he got to the clinic he was feeling even worse, and they took him to the hospital in Seattle. And so he died.”¹¹⁷

CSI Visa Processing, the firm that recruited the workers in Mexico for Munger, later posted a statement on its website saying “the compañero who is hospitalized, the cause was meningitis, an illness he suffered from before, and is not related to his work.”¹¹⁸ Nidia Perez was the liaison between Munger Farms and CSI.

In February 2018, the Washington State Department of Labor and Industries announced that he had died of natural causes and that the company was not responsible. The department said it had investigated conditions there and had found no workplace health and safety violations. Sarbanand Farms was fined \$149,800 for not providing required breaks and meal periods, and a judge later cut the penalty in half. “We were unable to substantiate the concern regarding the quality or quantity of the food provided,” ESD’s Craig Carroll wrote in an email.¹¹⁹

Rosalinda Guillen of the farmworker advocacy group Community2Community, commented bitterly, “We completely reject the idea that Silva’s life was worth \$75,000. No amount of money can pay for the life of a farmworker.”¹²⁰

Lack of Basic Labor Rights

While Honesto Silva was in the hospital, 60 of his coworkers decided to protest. On August 4, 2017, they stayed in the labor camp instead of leaving for work. In addition to the production quota and threats, they were angry about the food. They were being charged \$12.07 a day for meals, yet, according to the complaint, sometimes the food ran out, leaving some workers unfed. When they lined up for meals, each worker had an X marked on the hand to prevent him

from going back for more. They were forbidden to bring food to eat in the field.¹²¹

“From the time we came from Mexico to California we had complaints,” Escobedo explained.¹²² “There was never enough to eat, and often the food was bad. Some of the food was actually thrown out. Still, they took money for it out of our checks. They took out money for medical care too, but we





Mattawa, WA 2019, a worker on strike at the King Fuji apple ranch protests against threats to fire strikers, forcing them to leave the country, and to blacklist them, preventing them from returning to work in future seasons. Photo by Edgar Franks.

never got any. The place they had us stay was unsafe and there were thefts. Some workers in California protested and the company sent them back to Mexico.

“We thought that when we got to Sumas things would get better,” Escobedo recalled. “But it was the same. There still wasn’t enough to eat, and a lot of pressure on us to work faster. But what really pushed us to act was what happened to Honesto, when he got sick and there was no help for him.”

“I think we have to get organized,” striker Miguel Angel Ramirez Salazar said at the time of the walkout.¹²³ “I’m willing to work hard, but they put such pressure on us – that’s the biggest problem. They’re really exploiting us. I have a sixteen-year-old son back home in Mexico. What would happen to him if I died here, like Honesto did?”

Those accounts are at odds with a statement Sarbanand Farms gave to Univision following Silva’s death. The company claimed, “it is always our goal to provide them with the best working and living conditions.” It called the barracks “state of the art facilities” and described the food as “catered meals at low cost.” Silva himself “received the best medical care and attention possible as soon as his distress came to our attention. Our management team responded immediately.”¹²⁴

As the protestors sat in the camp one worker called the U.S. Department of Labor, which sent out an inspector. The next day, when they tried to go back to work, company supervisors called out strikers by name and fired them for “insubordination.” Perez told them they had an hour to get out of the labor camp, or the police and immigration authorities would be called. One supervisor even stood in front of the barracks, periodically calling out how much time was left.¹²⁵

“Workers may not leave assigned areas without permission of the employer or person in charge, and insubordination is cause for dismissal,” a statement by Sarbanand said.¹²⁶ “Their H-2A employment contracts specifically state that they are not covered by a collective bargaining agreement, and H-2A regulations do not otherwise allow for workers engaging in such concerted activity.” When employees quit or are terminated, “the employer is not responsible for the worker’s return transportation or subsistence cost, and the worker is not entitled to any payment guarantees.”

“If you get deported for collective activity that’s basically saying you have no enforceable labor rights.”

—Lynn Dodson, Washington State Labor Council

Lynne Dodson, former secretary treasurer of the Washington State Labor Council, responded, “If you get deported for collective activity that’s basically saying you have no enforceable labor rights. No right to organize. No right to speak up on the job. No right to question working conditions without being deported.”¹²⁷ This creates a threat, she charged, that goes beyond farmworkers. “When H-2A workers become very vulnerable, employers bring them in rather than hiring workers living and working in the area. What’s to stop that from becoming the norm in every industry? Here in a state with almost 20 percent of the workers organized, we see a farmworker who died and others fired because they tried to organize. If this happens here, imagine what can happen in other states.”





Yakima, WA 2020, strikers at the Allan Brothers apple packing shed hold signs with one of their strike's demands – that the company protect workers during the coronavirus pandemic – because shed workers had become infected, and one had died. Photo by Edgar Franks.

COVID-19 and H-2A Workers

Low wages across the board exert enormous pressure on all farmworkers to go to work, even during the coronavirus crisis. Although farmworkers have been officially declared “essential workers,” the declaration did not increase their rights, provide protection from the virus, nor result in a living wage. Farmworker families are among the poorest in the U.S., with an average annual income between \$17,500 and \$20,000 – below the official poverty line.¹²⁸

Instead, declaring agriculture “essential” means that the government will not stop farms from functioning during the pandemic, nor growers from hiring workers. And poverty and economic desperation force people to work, even as they fear the virus. While this is not quite forced labor, it isn’t really free labor either. Not working means that families can’t pay rent and face immediate homelessness, and that mothers or fathers or children in Mexico waiting for remittances go hungry.

Increasing that pressure during the COVID-19 crisis is the fact that half of the country’s 2.4 million farmworkers – those without legal status – have been written out of all the relief programs passed by Congress.¹²⁹ That means no relief payments, no unemployment (much less extended unemployment), no food stamps, no sick leave, no leave to care for family members, and no benefits for about 1.25 million people. Congress passed another relief package two days after Trump’s April immigration Tweet suspending the family preference system. Once again those without papers were excluded completely.¹³⁰

To Oswaldo Cisneros, a broccoli cutter in Salinas, California, “it’s just a slap in the face. We’re on the front lines. We’re taking risks every day, and we never stop. It’s not just the money. The fact that we do this work that people depend on should earn us the right to stay here.”¹³¹ Luis Jimenez, head of the Alianza Agrícola in New York State, added, “The



bosses say we're essential to giving food to the country. It is unjust to exclude us because we don't have good Social Security numbers. We all pay taxes. We don't know what will happen to those who get sick. How will we pay our bills and send money to help our families survive?"¹³²

A quarter of a million H-2A workers were written out of the relief bills as well. Even before the pandemic, "H-2A workers often expressed reservations about injustices they experienced," the CDM report said, "that they were required to work very long hours, days, and weeks without overtime pay ... Some workers expressed dismay that they had worked for many years for an employer but would never be entitled to Social Security or retirement benefits."¹³³

The coronavirus crisis has only added extreme risk to a bedrock of inequality and exclusion. Like everyone, H-2A workers must try to maintain the recommended six feet of distance between people in housing, transportation, and working conditions. But the CDM report concludes: "That will be impossible under conditions H-2A workers typically experience in the United States." There is no mandatory testing for them as they enter the country nor while they're here (unfortunately the situation for farmworkers in general). At the same time, the miserable conditions in which they live and work heighten their risk of exposure.

According to researcher Ed Kissam, "Although the H-2A guestworkers make up only 10 percent of the U.S. farm labor force, their risk of COVID-19 infection is particularly high due to the Department of Labor's requirement that employers provide them with housing. In order to comply as cost-effectively as possible, almost all housing provided by employers is congregate housing – where, typically, a number of workers share bedrooms or sleep in barracks-style quarters, as well as sharing cooking facilities and bathrooms."¹³⁴

"Their risk of COVID-19 infection is particularly high."

—Ed Kissam, Researcher

Mary Bauer, former CDM general counsel, added in an interview, "it is unclear how workers will access medical care or be able to self-isolate if conditions require them to do so. Employers are not currently required to provide housing which allows workers to be quarantined where necessary."¹³⁵ Employers are not required to provide health insurance to H-2A workers. If they stop working because they get sick, the conditions of their visa require them to leave the country. Once in Mexico they then have to find

medical care, while their families and communities face the danger of a transported infection.

In the spring of 2019, Community2Community, Familias Unidas por la Justicia, and other farmworker advocates convinced the Washington State legislature to pass a bill to force state agencies to require protections for H-2A workers. The bill, SB 5438, "concerning the H-2A Temporary Agricultural Program," was signed by Democratic Gov. Jay Inslee.¹³⁶ It funded an oversight office and advisory committee to monitor labor, housing, and health and safety requirements for farms using the H-2A program. It also required employers to advertise open jobs to local workers. Representatives from Familias Unidas por la Justicia, the United Farm Workers, legal and community advocates, and representatives from corporate agriculture were appointed to the committee.

When the coronavirus crisis began in early 2020, worker advocates asked the Department of Labor and Industries to issue regulations to guarantee the safety of the H-2A workers. Washington state, however, only issued "guidelines" that were not legally enforceable. Familias Unidas por la Justicia, Community2Community, the United Farm Workers, Columbia Legal Aid, and the Northwest Justice Project then filed suit against the state, demanding enforceable regulations.¹³⁷

Skagit Superior Court Judge Dave Needy gave the state a deadline of May 14, 2020 to answer the suit, and the Department of Health finally issued the emergency regulation permitting bunk beds the day before the deadline.¹³⁸ The unions sharply criticized the new regulation. Ramon Torres, from Familias Unidas por la Justicia, said, "We do not agree with this. They are treating us as disposable, as just cheap labor."¹³⁹ Erik Nicholson, vice-president of the United Farm Workers, said, "We are disappointed that the rules remain ambiguous and don't provide the scope of protections that farmworkers living in these camps need to protect themselves from the COVID 19 virus."¹⁴⁰

"They are treating us as disposable, as just cheap labor."

—Ramon Torres, Familias Unidas por la Justicia (FUJ)

On March 12, 2020, an H-2A visa guest worker living in a Stemilt Growers barracks in Mattawa, Washington, began to cough. He called a hotline, was tested, and found out he had COVID-19. He and five of his coworkers were then kept in the barracks for the next two weeks. A month later, three Stemilt H-2A workers in a barracks in East Wenatchee began





Ferndale, WA 2019, marchers gather in front of the immigrant detention center in Ferndale to protest immigration raids and the death of H-2A worker Honesto Silva.

to cough too. Before their tests even came back, three more started coughing. Soon they and their roommates were all in quarantine.¹⁴¹ Doctor Peter Rutherford of the Confluence Health Clinic called Stemilt and suggested that they test all 63 workers in the barracks. 38 tested positive. Then the virus spread even to workers who'd tested negative.

The novel coronavirus continues to spread throughout Central Washington. By mid-May rural Yakima County had 1,203 cases – 122 reported on May 15 alone – and 47 people had died. The county had the highest rate of COVID-19 cases on the West Coast – 455 cases per 100,000 residents.¹⁴²

While over time the rest of Yakima County was able to reduce the number of cases with lockdowns, social distancing, and the use of masks, cases became concentrated among H-2A workers. Of the eight clusters discovered among them, four affected workers were living in a huge motel rented by growers to house them, the Fairbridge Inn. Several outbreaks were detected in September, and the Yakima Health District

tested all 850-900 workers living there, finding 28 active infections. Three motel staff tested positive as well. Four other virus clusters broke out among workers staying in company-provided housing.¹⁴³

Despite this record of illness and the obvious danger to workers, a regulation handed down by Washington State's departments of Health and of Labor and Industries permits housing conditions that would cause the virus to spread rapidly. Sleeping in bunk beds in dormitories, according to these state authorities, is an acceptable risk. Yet according to Chelan-Douglas Health District Administrator Barry Kling, farmworkers are more vulnerable to getting COVID-19 because they live in these very close quarters.¹⁴⁴ "The lives of these workers are being sacrificed for the profit of growers," Rosalinda Guillen of Community2Community charged.¹⁴⁵

The barracks for infected H-2A workers, like those housing thousands of others, are divided into rooms around a common living and kitchen area. Four workers live in each



room, sleeping in two bunk beds. Stemilt says that it has 90 such dormitory units in central Washington, with 1,677 beds. Half are bunk beds.¹⁴⁶

According to Drs. Anjum Hajat and Catherine Karr, two leading epidemiologists at the University of Washington, “People living in congregate housing such as the typical farmworker housing ... are at unique risk for the spread of COVID-19 because they are consistently in close contact with others ... crowding increases the risk of transmission of influenza and similar illnesses. If individual rooms are impractical, the number of farmworkers per room should be reduced and beds should be separated by six feet. Bunk beds that cannot meet this standard should be disallowed.”¹⁴⁷

Washington’s state agencies ignored Hajat and Karr’s testimony, however. The state’s new rule for housing those workers says “Both beds of bunk beds may be used,” for workers in a “group shelter,” consisting of 15 or fewer workers who live, work, and travel to and from the fields together.¹⁴⁸ Most Washington State growers would have little trouble meeting this requirement since their barracks arrangement normally groups four bedrooms in the same pod. Stemilt also has vans that normally hold 14 people, conveniently almost the same number as in the bed requirement. A work crew of 14 to 15 workers would not be unusual.

In contrast, the same scientific analysis was the basis for a decision by Oregon’s Occupational Safety and Health Administration banning bunk beds.¹⁴⁹ Oregon, however, isn’t even among the top 10 states importing H-2A workers. California growers last year were certified to fill 23,321 farm labor jobs with H-2A recruits, yet no agency keeps track of the number of workers sleeping in bunk beds less than six feet apart.¹⁵⁰

By framing the bunk bed requirement in this way, Washington’s Department of Health effectively told growers that they did not have to cut the number of workers in each bedroom, and in each dormitory, in half. The rules of the H-2A program require growers to provide housing. If the number of workers safely housed in each dormitory were halved, growers would have two options. They could build or rent more housing, which would be an additional cost. Stemilt, with 850 bunk beds, would have to find additional housing for over 400 workers, and Zirkle perhaps even a thousand.

“The logic of declaring bunk beds acceptable is that some degree of infection and some deaths will happen, and that this is an acceptable risk that must be taken to protect the profits of these growers and this industry,” Rosalinda

Guillen charges. “And what makes it acceptable? Those getting sick, and who may die, are poor brown people, and the families and communities who will mourn them live in another country two thousand miles away.”¹⁵¹

WAFLA’s Dan Fazio called restrictions on beds to keep workers safely separated “catastrophic” and “a political stunt by unions and contingency-fee lawyers.”¹⁵² If the number of H-2A workers were cut in half because of the bunk bed requirement, however, Fazio and WAFLA would lose money, since their income is based on the number of workers they supply to growers. In 2019, WAFLA brought 12,000 H-2A workers to Washington, charging growers for each worker (although it doesn’t disclose publicly how much).

The price of the bunk bed restriction was paid by two workers at Gebbers Farms. One H-2A worker from Mexico, Juan Carlos Santiago Rincon, died July 8 and a second from Jamaica, Earl Edwards, died on July 31, both from COVID-19. Gebbers had already been fined \$13,200 by Washington Labor and Industries Department as a result of a May investigation that found that Gebbers had not maintained adequate social distancing in its workforce. The state only found out about Santiago’s death from anonymous phone calls from workers, and then issued an order on July 26 telling the farm to comply with its rules. Nevertheless, five days later Edwards died.

Ernesto Dimas, another Gebbers worker, told the Seattle Times¹⁵³ that the company sent workers into the orchards even when they showed symptoms of illness. “You could hear people coughing everywhere,” he said. By July, 120 workers had tested positive and another 156 showed symptoms. Hundreds of workers were sleeping in bunkbeds, and the state’s requirement that they be separated into groups of 15 was routinely ignored.

“You could hear people coughing everywhere.”

—Ernesto Dimas, worker at Gebbers Farms

The company was not concerned with any prospect of enforcement. The state Department of Labour and Industries’s Assistant Director Ann Soiza charged, “Gebbers continually failed to comply, even after the first worker died and our repeated presence at the farm.” Gebbers spokesperson Amy Philpott responded that, “Gebbers has always had a COVID-19 prevention program in place to





Royal City, WA 2017, H-2A contract worker B. Mendoza Vasquez in the room he shares with three other workers in the barracks where they live in central Washington. The grouping of the beds makes it impossible for workers to maintain a distance of six feet between them, the mandated minimum distance during the pandemic.

protect employees.” It was fined another \$2 million and said it would appeal.¹⁵⁴

Meanwhile, the virus spread among H-2A workers across the country. In California, as of October 13, 2020, 12 cases were reported at Rancho Nuevo Harvesting, 91 at Alco Harvesting (including one death), 9 at Elkhorn Packing, 204 at just one camp operated by Venegas Farming and Royal Oak Ag Services, 28 at Magaña Labor Services and 16 at Wawona Packing.¹⁵⁵

On the East Coast, Lipman Family Farms, which brought 2,658 workers in 2020 to pick its tomatoes, locked down its workforce fearing the spread of the virus.¹⁵⁶ The company claimed that none of its workers were infected, except six who it claimed had arrived with the virus. Nevertheless, it refused an offer by the Eastern Shore Health District in Virginia to test all Lipman employees. Lipman provides no sick pay or health insurance, so the H-2A workers feared admitting they had symptoms, according to the New York

Times.¹⁵⁷ Since it fired workers who left its labor camps, it brought in check-cashing outlets and grocery vans, which charged high prices for basic food items.

One H-2A worker told the *Times*, “You put up with a lot already. I never expected to lose my freedom.” Lipman got its tomatoes harvested nonetheless, which was the concern of the Trump administration in demanding that growers and other food suppliers keep their operations going, come what may.

In a Memorandum of Understanding on May 19, however, the US Department of Agriculture and the Food and Drug Administration warned that even regulations like the bunk bed ruling might be too much. Federal agencies, they said, may invoke the Defense Production Act to override any state actions that cause “Food resource facility closures or harvesting disruption [that] could threaten the continued functioning of the national food supply chain.”¹⁵⁸



The Choices Ahead

During the Trump administration, several H-2A expansion bills were authored by Rep. Bob Goodlatte (R-VA), chair of the House Judiciary Committee, which would have eliminated most of the program's very limited worker protections. Originally Goodlatte introduced a stand-alone bill in 2017, the Agricultural Guest worker Act. Although that bill didn't get a vote in Congress, its main provisions were folded into a much larger, comprehensive bill Goodlatte tried to pass a year later, the Securing America's Future Act, HR 6136. That bill failed by a vote of 193 to 231.¹⁵⁹

Following the failure of the stand-alone bills, Congressman Newhouse inserted a proposal into the budget bill for the Department of Homeland Security. That would have allowed growers to employ H-2A workers without being limited to temporary contracts of less than a year.¹⁶⁰ While the bill wasn't passed, the Trump administration then changed the program's regulations to allow growers to employ H-2A workers beyond the one-year limit.

But the most far-reaching bill dealing with H-2A workers was introduced in Congress in 2019 by Zoe Lofgren, a

Democrat from Silicon Valley, together with Dan Newhouse. The Farm Workforce Modernization Act of 2019 essentially ties legalization for undocumented farmworkers and guest worker programs together.¹⁶¹ This compromise bill would guarantee growers a labor supply at a price they want to pay, while at the same time providing a pathway to legal residence for many undocumented farmworkers.

The House passed this bill, and it died in the Senate. Under a new Biden administration, the pressure from growers and Washington lobbyists will be intense to revive it as the centerpiece of its immigration agenda. Representative Raul Ruiz told the Los Angeles Times that the administration was developing a package of executive orders and Congressional bills that would incorporate provisions from legislation already passed by the Democrat-controlled House of Representatives. Included was the Farm Workforce Modernization Act.¹⁶²

Today, about half the agricultural workforce, or 1.25 million people, are undocumented¹⁶³ and would be able to apply for legal immigration status (the "green card") if they have done



Royal City, WA 2017, Jaime Solorio is an H-2A contract worker recruited in Mexico. He digs a hole for a post anchoring wire supports for planting apple trees.



farm work for two years before the bill's passage. Those who have lived in the U.S. more than ten years would have to wait four years before getting a green card, and those with less than ten years would have to wait eight years. Other requirements include fines, fees, and record checks.¹⁶⁴

Applicants, while they could get jobs outside of farm labor, would have to put in a minimum of 100 days a year in the fields while they wait to be accepted into the program. That might not be easy, since many farmworkers struggle to find that much work in the course of a year.

The bill would have made it mandatory that growers use the E-Verify database to detect and turn away future job applicants who might not have legal status. With the mandatory use of E-Verify, growers would have two choices. They could increase wages and encourage direct, year-round employment to make their jobs attractive to workers living in rural communities. Or they could use the H-2A program much more extensively to fill their labor needs.

That database has been criticized for many years for inaccuracy, and for providing a pretext for refusing to hire

people based on race and nationality. Employers also have a long history of accusing workers of lacking immigration status as a pretext for firing them because of union and workplace activism.¹⁶⁵

Since half of current workers have no legal status, an even more predictable impact of the mandatory use of E-Verify would be to make it harder for employers to find workers they can legally hire. The half of the workforce that is currently undocumented would eventually shrink as people applied for green cards, gained legal status, and found better-paying jobs elsewhere. The other half of the workforce – people who are citizens or have legal immigration status – will shrink as well over time, particularly because the average age of farmworkers has increased from 28 in 2000 to 38 today.¹⁶⁶

The Farm Workforce Modernization Act had several provisions to make the H-2A program more attractive. One, suspending for one year the increase in the Adverse Effect Wage Rate, was already announced by President Trump the day before the election.¹⁶⁷ After ten years, the AEWR would be evaluated and could be abolished altogether. The net



Los Angeles, CA 2011, janitors protest the firing of immigrant workers by Able Building Maintenance, which questioned their immigration status even though they'd been cleaning the buildings for many years. In protest, workers marched through downtown at lunch hour and sat down in an intersection, stopping traffic.



effect would be to bring down H-2A wages closer to the minimum wage. That would affect H-2A workers directly, but also make it more difficult for resident farmworkers to raise their own wages. An incoming Biden administration could at least be expected to reverse this wage theft.

The bill would allow growers to use federal programs for farmworker housing to build barracks for guest workers, much as Congressman Newhouse advocates. Subsidizing H-2A housing encourages the program to expand while limiting those subsidies restrains it. Washington state's Department of Commerce rule that growers could use state farmworker housing funds for barracks is a significant factor of the program's rapid growth there.

The old justification for both the bracero and H-2A programs was that growers needed workers on a temporary basis to fill transitory labor needs, and therefore didn't threaten the more permanent jobs of local workers. The Farm Workforce Modernization Act alters this assumption by setting a three-year duration for the H-2A visa, moving it more toward a visa for longer-term employment. The Trump administration has already made significant moves in this direction by regulation.¹⁶⁸

The bill did contain some pro-worker changes in the H-2A program. Ten thousand holders of H-2A visas per year would be able to transfer from the employer that recruited them to another employer, which is presently not allowed. H-2A workers would be covered by the Migrant and Seasonal Agricultural Workers Protection Act (AWPA), offering some protection from abuses. Employers could sponsor 40,000 farmworkers, including both undocumented and H-2A workers, for green cards each year. Many workers want residence status badly, but giving employers the power to petition also makes workers more vulnerable to threats and pressure.

Predicting all the long-term impacts of a bill like this is impossible, but some effects are very likely. The pressure on people in Mexico to migrate will still push people to come since the conditions that displace people are very deep, and changing them would require reordering the relationship between the U.S. and Mexico. As early as 1949, Ernesto Galarza, pioneering farmworker organizer, author, and scholar, argued that the Mexican migrant "is forced to seek better conditions north of the border by the slow but relentless pressure of United States agricultural, financial and oil corporate interests on the entire economic and social evolution of the Mexican nation."¹⁶⁹ That pressure has only grown stronger in the past 70 years.

The Mexican migrant "is forced to seek better conditions north of the border by the slow but relentless pressure of United States agricultural, financial and oil corporate interests."

—Ernesto Galarza

Increasing wages substantially in U.S. fields would make jobs more attractive to resident farmworkers, and perhaps lead to a mixed workforce of both local residents and migrants. Proposals like Lofgren/Newhouse, however, effectively keep farmworker wages close to the minimum. That, together with the impact of E-Verify and turnover in the workforce, is a recipe for pressing employers, willingly or unwillingly, to use the H-2A system. Last year's total number of certified H-2A applications was a quarter of a million, which could easily increase at the rate seen in the last ten years.¹⁷⁰

An agricultural system in which half the workforce would eventually consist of H-2A workers is not unlikely. Florida, Georgia, and Washington are already approaching this situation.¹⁷¹

What makes the likely expansion of the H-2A program a risk worth taking for some farmworker advocates is the prospect that more than one million people could gain legal status from the bill's legalization provisions. For many farmworkers living in fear of taking their kids to school or making a trip to the grocery store, the need for legal status is overwhelming and immediate. Farmworker Justice and the United Farm Workers, which both criticized the program when the Trump administration announced prospective rule changes, helped negotiate the Farm Workforce Modernization Act with growers and Republicans.¹⁷²

Other farmworker unions and advocates were opposed, however. Rosalinda Guillen, director of Community2Community, argued that proposals expanding H-2A "don't address the needs of most farmworkers who are already here. They shift agriculture in the wrong direction, which will lead to the eventual replacement of domestic workers and create even more of a crisis than currently exists for their families and communities."¹⁷³

Ramon Torres, president of Familias Unidas por la Justicia, says his experience helping H-2A workers protest labor violations makes him doubt the bill will change their situation. "Employers will continue to have the power to punish and deport these workers if they resist," he says.¹⁷⁴ "We know they'll do this because it's what they're doing now. Growers complain they can't find enough workers,





Yakima, WA 2017, members of the Yakama Nation of Native Americans join farmworkers and other immigrants to celebrate May Day and protest continued deportations and detentions.

but the reason they can't is that conditions and wages are so bad we have people living in garages and sleeping under trees. Organizing the union is the only thing that has worked to change conditions here for the better, but there is no protection for the right to organize in this bill."

The most radical pro-immigrant and pro-worker proposals were made in the course of the Democratic primary. Two candidates wanted changes that go far beyond the bill's legalization provisions. Julián Castro advocated for "an inclusive roadmap to citizenship for undocumented individuals and families who do not have a current pathway to legal status."¹⁷⁵ He recommended taking down current barriers to immigration, including strengthening the family reunification program. Restrictionists and some employers have argued for years that family reunification visas should be replaced by ones that allow people to enter the country based only on their ability to work and the need for their labor. Those proposals, incorporated in comprehensive immigration reform bills, got support from Democrats as well during the Obama administration and before.

Castro supported changes to "strengthen labor protections for guest workers and end exploitative practices, which hurt residents and guest workers, provide work authorization to spouses of participating individuals, and ensure guest workers have a fair opportunity to become residents and citizens." He would "reconstitute the U.S. Immigration and Custom Enforcement (ICE)" and begin examining the roots of forced displacement and migration.

Bernie Sanders called for "a path to legal residency or citizenship for most undocumented immigrants in the country today."¹⁷⁶ He was critical of guest worker programs,

saying he "rejects the exploitation of workers and the use of visas for cheap, foreign labor. We must increase opportunities for qualified individuals to take steps towards permanent residency."

Sanders asserted that guest workers "have been routinely cheated out of wages, held virtually captive by employers who have seized their documents, forced to live in unspeakable inhumane conditions, and denied medical benefits for on-the-job injuries." He voted against creating ICE, and against the Comprehensive Immigration Reform Act of 2007 because it expanded guest worker programs.

As Congress began discussing bailout and relief packages, however, unions and community organizations began drafting proposals and demands. 36 groups signed a letter to the administration drafted by the Washington DC advocates Farmworker Justice, calling for more protections for H-2A workers.¹⁷⁷ Recommendations included safe housing with quarantining facilities, safe transportation, testing of workers before entering the U.S., social distancing at work, and paid treatment for those who get sick.

Some groups went further. The Food Chain Workers Alliance, a coalition of worker groups in food production and distribution, called for hazard pay at time-and-a-half for food workers, who "must have the right to organize so they can meaningfully exercise their labor rights and protect themselves and their communities."¹⁷⁸ In addition, the Alliance advocated for supplemental income and unemployment benefits, 15 paid sick days per year and, free healthcare for all workers. Several immigrant rights organizations have called for eliminating immigration status as a barrier to benefits, and ending immigration enforcement against the undocumented and H-2A workers during the pandemic crisis.

Eventually, the pandemic will abate. But the changes to the H-2A program put in place by the Trump administration during the pandemic only increased the existing vulnerability of guest workers in agriculture. The program's rules, in any case, were hardly effective in protecting workers before the crisis. 14 years ago the same conditions experienced by H-2A workers today were described in a report by the Southern Poverty Law Center, "Close to Slavery."¹⁷⁹ Mary Bauer authored that report. "I haven't seen any significant improvement in 30 years," she charged.¹⁸⁰

Real change for H-2A and resident farmworkers requires upsetting the balance of power between workers and growers, and the government that protects them. "Abuse is



baked into a structure in which workers are vulnerable,” she says, “and where there’s always a new supply of workers to replace the old, the sick, or those who complain and protest. A program that gives workers virtually no bargaining power creates a perfect storm of vulnerability.”

“Regulations cannot overcome the profound power imbalance between employer and worker under the H-2A program.”

– Centro de los Derechos de Migrantes
(CDM – the Migrant Rights Center)

“The problem with protecting workers merely by promulgating regulations,” the CDM report emphasizes, “is that regulations cannot overcome the profound power

imbalance between employer and worker under the H-2A program.”¹⁸¹ This statement could easily describe the old bracero program. The answer given by the Chicano civil rights movement of the 1960s was not to regulate it, but to abolish it. In its place activists fought for, and won, an immigration system based on family unification.

The Farm Workforce Modernization Act itself was overtaken by election politics, but Republicans and centrist Democrats can be expected to reintroduce its main elements, putting before the Biden administration the basic question of the direction for U.S. immigration policy. The flow of many Mexican and Central American migrants across the border will either be increasingly imprisoned in a system of cheap and disposable labor by growers, or it will be integrated into families and communities able to fight for rights, legal status, unions, and a better standard of living.



Salinas, CA 2018, migrant farmworkers and their supporters march to protest immigration raids. The march was organized by the United Farm Workers union.



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