

COMPREHENSIVE RECOMMENDATIONS
FOR THE PRESIDENTIAL TRANSITION TEAM ON

Preventing Abuses of Internationally Recruited Workers

NOVEMBER 2020



Migration that Works





Migration that Works

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Migration that Works was formed in 2011 and initially known as the International Labor Recruitment Working Group (ILRWG), the following organizations and academics are members of this coalition:

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I MIGRATION THAT WORKS

Migration that Works¹ is a coalition of labor, migration, civil rights, and anti-trafficking organizations and academics working to address abuses in international labor recruitment across visa categories and industry sectors. Since 2011, Migration that Works has undertaken a thorough investigation of the current regulatory and enforcement framework to identify the shortcomings and gaps in worker protections. This transformative analysis makes clear that recruitment abuses in the temporary work visa programs (“guestworker programs”) are systemic, rather than visa specific, and that our current patchwork of disparate rules and lax enforcement allows and even incentivizes recruiters and employers to abuse workers.

Effective policies and oversight must be comprehensive, addressing the core issues common across the worker recruitment experience, from the country of origin to the worksite and back again. The temporary work visa programs are rooted in historically racist policies. Ultimately, the federal government must create a new temporary work visa framework that corrects power imbalances, responds to established labor market needs, promotes direct hiring, limits employer control over the migration process, recognizes and respects workers’ desires to live with their families, and allows workers to self-petition for citizenship. Although comprehensive restructuring of our employment-based immigration system will require legislation, in the short-term, the Administration of Joseph R. Biden, Jr. and Kamala D. Harris can fix many of the systemic flaws within the temporary work visa programs and improve conditions for internationally recruited workers and domestic workers through Executive action— including interpretation of current law, by issuing guidance, policy memoranda, and rulemaking.

This memorandum recommends practical, immediate solutions to level the playing field for migrant and domestic workers as well as the businesses that employ them. The global pandemic has exacerbated the problems with the programs that have been well documented by advocates for too long. Effective policies and oversight must be comprehensive, addressing core issues common across the temporary work visa programs.

INTRODUCTION

Each year there are approximately 700,000-900,000 migrant workers entering the U.S. with a temporary work visa, each visa with its own rules and requirements. Yet the average American is not aware of the role these workers play in ensuring that food, medicine, technology, and more are available, even amidst a global health emergency. Internationally recruited workers are subject to a temporary work visa system (“guestworker programs”) that is rife with worker abuses, including fraud, discrimination, economic coercion, and forced labor. Migrant workers can find themselves in difficult situations when they do decide to raise a complaint against their employer because their work authorization and visa, and therefore their status in this country, are attached to their employer. Too many migrant workers have become victims of human trafficking as a result of these structural flaws in the programs. Over the past five and a half years, more than 4,315 victims of labor trafficking who held temporary work visas were reported to the U.S. National Human Trafficking Hotline (NHTH) operated by Polaris.² In addition to the thousands of laborers whose citizenship and visa status were reported, the NHTH learned of nearly 13,000 labor trafficking victims whose citizenship or visa status was not known. Because the NHTH does not ask a standardized set of questions about immigration and visa status and only records this data when it is disclosed incidentally, it is likely that many of these 13,000 laborers were also temporary work visa holders who were subject to similar methods of recruitment.³ Current law is inadequate for protecting internationally recruited workers from such abuses. Adding to the dire situation is the COVID-19 pandemic, which has exacerbated the risks and dangers migrant workers face every step of the way, from recruitment to travel to actual working conditions in the U.S.

Migration that Works seeks to ensure the protection of this vital workforce by providing both guiding principles and specific recommendations for administrative and legislative action. We stand with a broad cross-section of immigrant, civil and worker rights groups and coalitions throughout the country in calling for an immediate roll-back of the relentless xenophobic, racist and anti-immigrant rules and policies the Trump administration has implemented. This document will focus on recommendations specific to migrant workers who come to the U.S. with a temporary work visa.

A. Core Guiding Principles

Migration that Works recommends that the following principles guide policymaking in the new Administration and beyond.

(1) FREEDOM FROM DISCRIMINATION AND RETALIATION.

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

Employers and recruiters in the temporary work visa programs all too frequently engage in discriminatory recruiting and hiring practices. Discrimination begins with recruitment when companies share discriminatory announcements seeking a particular type of worker profile. This type of practice occurs across all visa categories. An employer may select an entire workforce comprised of a single nationality, gender, or age group. For example, workers recruited for the H-2A program are almost exclusively young men. In 2019, approximately only six percent of H-2A agricultural workers were women.⁴ Many of the few women who are recruited to work in the U.S. are funneled into the H-2B non-agricultural visa program. As H-2B visa recipients, these women lack access to employer provided housing and free legal services, benefits afforded to the almost exclusively young male workers admitted under the H-2A program. In contrast, the great majority of nurses and domestic workers recruited for the H-1C, B-1, A-3 or G-5 programs are young women.⁵ Advocates also note a trend within the J-1 visa program, where employers seek young white workers for “front shop” jobs such as store clerks while placing brown and black workers in the “back of house,” such as the restaurant kitchen.

Retaliation and blacklisting are prevalent in the temporary work visa programs in the U.S. Employers wield tremendous power over their workers, as those workers are dependent on their employers for their work authorization and immigration status. Employer control of workers’ immigration status prevents many workers from coming

forward with worksite complaints. When workers do assert their workplace rights, employers use their power over a workers’ immigration status to retaliate against those workers, often labeling the workers as “uncooperative” and declining to select them for a job the following work season. This might also mean that the worker will not be able to access any other job with any other employer because they will be blacklisted. In the context of dual intent visas, employers dictate whether a worker can stay in the country and achieve permanent residence.

Lack of oversight and accountability essentially allow employers and recruiters to use the temporary work visa programs to circumvent U.S. hiring standards. The U.S. government conducts little meaningful monitoring of foreign labor recruiters, and the single-employer structure of most temporary work visas facilitates immigration retaliation by U.S. employers.

(2) RIGHT TO KNOW.

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

Fraud and misrepresentation are all too common in the temporary work visa programs. Workers are often shown one set of terms of employment at the time of recruitment but discover an entirely different reality once they arrive at the work site in the U.S. Moreover, workers lack reliable information about legal immigration and hiring practices in the temporary work visa programs.

Internationally recruited workers should be able to ascertain the veracity of a job offer and access basic information about the jobs for which they are being recruited. This information includes the identity of all the actors in the recruitment process, as well as the visa terms and visa renewal information. Workers should also be given time to review the terms of employment and access to a government database to view



a visa petition's status. Workers should also be apprised of their labor and employment rights. For internationally recruited workers this information is critical to making an informed decision about whether to leave their families for months or years at a time to work for an employer in the U.S. on a temporary work visa. Agencies should publicly disclose in real time information regarding the compliance records and practices of employers and recruiters, the countries where recruiters contract workers, the type of non-immigrant visas issued, and the numbers of workers authorized.

(3) FREEDOM FROM ECONOMIC COERCION.

Workers shall not be charged recruitment fees and shall have the right to freedom from economic coercion in temporary work visa programs.

Employers that hire international workers increasingly rely on foreign labor recruiters to facilitate the migration of workers from home countries to the U.S. The recruitment of these workers can happen in many different ways; often including various recruiter intermediaries.⁶ This attenuated chain of recruitment—which is poorly regulated—obscures the relationships between employers and workers as well as the abuses that occur in recruitment, such as charging workers recruitment fees. While many foreign labor recruiters behave lawfully, others do not. Recruiters often charge workers up to several thousands of dollars to access U.S. jobs. In addition to recruitment fees, workers may pay extensive upfront travel costs and visa processing fees. To pay these fees, many workers obtain high interest loans that are nearly impossible to repay by working in their home countries. This debt creates an obstacle for workers to complain about workplace abuse.

International standards and norms increasingly call for a ban on fees, and a 2019 report issued by the International Labour Organization (ILO) shows a clear correlation between the need to borrow money for the payment of recruitment fees and the risk of ending up in forced labor.⁷

Although several temporary work visa programs prohibit employers from knowingly using recruiters who charge fees to workers, these regulations are rarely enforced. Weak government regulation and lax oversight facilitates the opportunistic recruitment practices of foreign labor recruiters. The current enforcement structure leaves workers vulnerable to economic coercion.

Workers should begin work in the U.S. without program debt and free of economic coercion.

(4) RIGHT TO RECEIVE A CONTRACT WITH FAIR TERMS AND TO GIVE INFORMED CONSENT.

Workers shall have the right to a legal employment contract that respects their rights and ensures their informed consent before hiring.

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

Workers should receive a legal and binding employment contract that respects their labor and employment rights, U.S. law, and their home country's laws on labor recruitment. This contract should present clear terms and conditions along with the names and information of the various actors involved in the recruitment process. Furthermore, a copy of the contract should be provided to the worker in their native language.

(5) EMPLOYER ACCOUNTABILITY. Workers shall have the right to be recruited for work in the U.S. under a system that holds the employer accountable for any and all abuses suffered during their recruitment or employment.

Legal protections work only when they are adequately and consistently enforced. Employers and recruiters participating in any of the temporary work visa programs who do not abide by U.S. law very rarely face consequences. For example, federal records show that the Department of Labor (DOL) debar very few companies, and in at least one year did not debar a single one in the entire country. In the 2014 fiscal year, DOL identified violations in 82% of the H-2 visa cases it investigated, making clear just how widespread abuses are within the programs.⁸ In 2019, DOL investigations revealed 431 violations in 1,125 investigations, a 150% increase since 2014.⁹

Accountability for a clean labor supply chain must rest on the employers who hire foreign labor recruiters to arrange workers' migration to U.S. jobs. Employers have the knowledge and the power to require their agents and subcontractors to maintain clean supply chains, and the government must hold employers accountable for any abuses, regardless of the employer's use of labor contractors. Employer accountability is essential for the integrity of our country's temporary work visa programs and also necessary to protect good actor employers.

Workers shall have the right to be recruited for work in the U.S. under a system that holds the employer accountable for any and all abuses suffered during recruitment or employment. To this end, workers must have the right to hold their employers or recruiters accountable via a private, civil action for fraudulent, deceptive, and illegal practices in the employer's recruitment supply chain.

(6) FREEDOM OF MOVEMENT.

Workers shall have the right to move freely while working in the U.S.

The majority of temporary work visas bind a worker to a single employer. A worker's work authorization and visa depends on

continued employment with the employer in whose name the visa has been issued. In this situation, a worker is left with few options when contemplating leaving a job. The worker can stay on the job and endure mistreatment; return home immediately; or, fall out of legal status and jeopardize obtaining a temporary work visa in the future. For the many of workers, leaving their job is not an option because they most likely have arrived in the U.S. indebted from recruitment expenses. When a worker is unable to leave an abusive employer, the worker is effectively in a situation of forced labor.

Workers should have the right to move freely while working in the U.S. This means that workers should have the right to maintain possession of their passports and other vital documents at all times. Additionally, workers should have the freedom to leave abusive employers without the fear of repercussions.

(7) FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING.

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

Currently, internationally recruited workers' right to freedom of association is limited by numerous structural factors. In order to defend and assert their rights and address existing gaps in legal protections, workers must be able to join and form labor unions and take part in other forms of labor organization. Moreover, workers must be able to do so without fear of retaliation. Threats of adverse action, whether of deportation or termination, prevent workers from joining together to collectively demand improved workplace policies.

The U.S. joined the United Nations International Labour Organization (ILO)¹⁰ in 1934. As a party to the International Labour Organization (ILO), the U.S. must protect the rights of workers to freely associate and recognize their rights to collective bargaining.¹¹ Workers who join and form unions are in a stronger position to prevent and fight against retaliation and other abusive workplace conditions.



(8) ACCESS TO JUSTICE.

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

In many ways, temporary work visa program participants are uniquely disadvantaged in contrast to U.S. workers when attempting to seek legal redress. With the exception of the H-2A program and only under certain limited exceptions, federally funded legal services under the purview of the Legal Services Corporation (LSC) are prohibited from providing legal services to workers with a temporary work visa. Currently, governmental agencies with the power to enforce workplace protections are critically underfunded and understaffed. Accessing an unknown legal system is a huge challenge for migrant workers.

If a worker does access legal services, pursuing a legal case poses incredible difficulties. First, a worker may find themselves in their home country and without government permission they cannot legally enter the U.S. to participate in their case. Many times, U.S. courts and compensation commissions require a worker to be present in order to bring a claim and in order to deliver testimony. A worker who has left the U.S. to return to his or her home country, faces the difficult task of obtaining a tourist visa or humanitarian parole in order to re-enter the U.S. for a deposition, trial, hearing or medical examination. Additionally, geography, technology limitations, and language may be hurdles for many workers trying to navigate a complicated foreign legal system.

B. Overview of the Current System**CURRENT LAW LEAVES WORKERS VULNERABLE TO ECONOMIC COERCION.**

Foreign labor recruiters charge workers exorbitant fees, frequently in lump sums, to place workers with employers, assist with immigration paperwork, arrange travel to and from the U.S., and in some cases arrange housing. To pay these fees, many workers obtain high interest loans that are nearly impossible to repay by working in their home countries. Workers remain in unfair, unsafe, and even forced labor conditions because the alternative—returning to their home countries where they cannot earn enough to repay pre-employment debt or breach fees — is not a viable option. Although a worker's payment of recruitment fees may be illegal under some U.S. temporary work visa categories, and although the practice is prohibited under international conventions, enforcement is lacking or may even create a disincentive to report fees, and the practice continues to thrive. The result of these fees is that workers arrive in the U.S. already in debt, making them even more vulnerable to workplace abuses.

CURRENT LAW FAILS TO PROHIBIT DISCRIMINATION AND RETALIATION.

Discrimination and retaliation against workers who assert their rights are pervasive across visa categories and employment sectors. Although the U.S. government's anti-discrimination laws aim to convert the U.S. workplace into an engine for social equality, work visa programs re-classify entire sectors of the U.S. workforce by race, gender, national origin, and age. These programs also allow employers to discriminate against workers who speak out against unlawful employment practices, assert their rights under the law, or organize for better working conditions. Moreover, because workers are often bound by their visa to a particular employer, they are particularly vulnerable to unchecked harassment, including sexual, racial, and national origin-based harassment, as well as leaving them open to exploitation and trafficking. The U.S. government has failed

to enforce anti-discrimination protections under Title VII and other laws. The temporary work visa programs lack measures to prevent discrimination and retaliation against workers in the recruitment process.

CURRENT LAW LACKS TRANSPARENCY.

The current system of international labor recruitment is not transparent and does not provide workers with sufficient information about the jobs they are accepting or the relationship between their recruiters and employers. The majority of temporary work visa programs do not require that employers execute a formal, written employment contract with a worker who travels to the U.S. for the sole purpose of working for that employer. Recruiters and employers frequently fail to provide workers with the terms and conditions of employment in a form that is appropriate, verifiable, and easy to understand. More often than not, employers and recruiters also present terms that are false or misleading and employ coercive tactics to force workers to sign unfavorable contracts. These unregulated practices interfere with a worker's ability to give informed consent and increase the worker's likelihood of encountering abusive conditions in the workplace. Without this information, workers are ill equipped to protect themselves from fraudulent recruitment practices and unlawful employment conditions. U.S. temporary work visa programs allow these unjust practices through vague and inconsistent regulations and a near total lack of enforcement.

CURRENT LAW FAILS TO HOLD EMPLOYERS ACCOUNTABLE.

Employers are rarely held accountable for the abuses suffered during the recruitment or employment of internationally recruited workers. Often, the chain of recruitment includes multiple levels of recruiters, such as international labor brokers, national recruitment agencies, and community-level agents who compile recruitment lists. Moreover, many labor contractors and staffing agencies not only participate in the recruitment of the workers, but are also the petitioners for workers, whom they bring to different employers. Without

laws to hold employers accountable for the actions of staffing agencies and recruiters in the recruitment supply chain, workers are left with limited options to seek redress.

C. Comprehensive Recommendations

(1) PROHIBIT CHARGING WORKERS FEES:

Ban employers and recruiters across visa categories from charging workers recruitment fees and passing costs on to workers. Create requirements for employers to pay back any unlawful fees or costs paid by workers and to ensure workers are hired for the intended employment. Create and enforce meaningful public and private remedies and enforce public remedies. Ensure that workers are not penalized for raising concerns in their recruitment or employment.

(2) EXTEND WORK AUTHORIZATION AND RETALIATION PROTECTION TO WORKERS:

During the pandemic, a number of workers have been left stranded without a job or a way to return to their home country because of border closures. Many workers fear raising worksite complaints about worker safety because their work authorization is attached to their job. Ensure that workers can raise workplace complaints without fear of losing their work authorization and economic stability.

(3) PROVIDE IMMIGRATION RELIEF AND WORK AUTHORIZATION FOR WHISTLEBLOWERS:

Grant immigration relief and work authorization to workers on temporary visas who report abuses in the recruitment process or in their employment in the United States or who participate in labor and employment investigations.

(4) REVIVE AND FORMALIZE INTERAGENCY TASK FORCE:

Revive and formalize the interagency process on international labor recruitment as a task force with representatives from all relevant agencies (DOS, DOL, DHS, EEOC, NLRB),



with the goal of seeking solutions to systemic problems in international labor recruitment across industries and to promote coherence and enforcement of high standards across visa categories.

(5) IMPROVE TRANSPARENCY OF TEMPORARY WORK VISAS:

Collect data to monitor international labor recruitment and guide effective policymaking. The Departments of Homeland Security, Labor, and State should collect and share consistent data about nonimmigrant visas that authorize employment, including who is recruiting whom, for what jobs, under which terms, wage rates, and on what visas. These data should be made available in real time in a searchable database on a public website. The website should enable workers to ascertain the veracity of a job offer, identify all actors in the chain of recruitment, review the terms of employment, and view a visa petition's status. The website should be accessible to workers in multiple languages.

(6) OVERHAUL TEMPORARY WORK VISA PROGRAMS:

Overhaul visa classifications across categories and industry sectors to move toward consistent regulation under a single framework. Rules, usage data, and worker protections should be transparent and consistently applied regardless of visa category or industry sector. Levels and types of new worker entry should be determined by an independent commission of labor market experts, rather than employers or their industry lobbyists. Meaningful job portability should be available to internationally recruited workers to protect against exploitation. Workers of all wage and skill levels should have the ability to live with their nuclear families and should be offered a pathway to citizenship. Base wages should be set high enough that migrant workers are paid fairly and equally and temporary work visas do not adversely affect wages and working conditions for U.S. workers, backed by meaningful public and private enforcement.

(7) CREATE AN OFFICE OF INTERNATIONAL LABOR RECRUITMENT CERTIFICATION AND OVERSIGHT WITHIN THE DEPARTMENT OF LABOR:

The Office should generate a structure to monitor international labor recruitment practices and to enforce regulations across all visa categories and industry sectors. Housed in the Wage and Hour Division (WHD), the Office should consolidate WHD's enforcement role with the functions of the Office of Foreign Labor Certification, such as certifying visas, wage rates, and recruiters. The Office should be charged with creating and maintaining a database of all labor recruiters, and should have the power to block program violators from accessing visas. The Office should receive delegated authority to enforce regulatory protections under those visas currently housed in the Department of State. The Office should be adequately staffed and funded to achieve this critical mandate.

(8) IMPROVE EMPLOYER ACCOUNTABILITY:

Employers should be held accountable for actions of labor contractors, recruiters, and agents of recruiters and should ensure that workers are provided with applicable labor and employment protections. There must be joint liability between labor contractors, staffing agencies, or other third-party employers and the ultimate beneficiaries of the labor. To ensure joint liability, labor contractors/staffing agencies should only be able to participate in a visa program if they file a visa petition in which the owner/operator of the business to which they will supply workers agrees to be jointly liable to workers.

(9) IMPROVE EDUCATION AND ACCESS TO INFORMATION:

Ensure that all internationally recruited workers have the full protection of U.S. labor and employment laws and that this is clear and accessible to workers and employers. Clarify federal regulations and official documents to ensure that they are easy to understand. Establish educational programs

to inform internationally recruited workers about their legal rights and obligations under U.S. temporary work visa programs. Cooperate with governments and agencies in countries of origin to thwart misleading propaganda about U.S. temporary work visa programs. At consular interviews, provide program participants with updated information on internationally recruited workers' rights under law and information on organizations that are available to help.

(10) INCREASE RESOURCES FOR ENFORCEMENT:

Significantly enhance the resources available for the enforcement of worker protections across temporary work visa programs, including protections against discrimination in recruitment. The drastic and long running underfunding of the DOL, NLRB, EEOC, and similar enforcement agencies charged with responding to violations of worker rights has resulted in a lack of capacity to timely respond to complaints. Instead, agencies are forced to focus on targeted enforcement and deterrence theory. Currently, DOL's Wage and Hour Division (WHD) has approximately 1,000 investigators to protect 143 million workers.¹² The resources should reflect the importance of guaranteeing a level playing field, and enable the effective realization of our comprehensive recommendations. In addition to significant new authorizations and appropriations, the Administration should work with Congress to allow DOL to retain resources from visa fees under the H-2A program and impose fees on the H-2B program.

(11) ENSURE MIGRANT WORKERS ARE NOT EXCLUDED FROM EMPLOYMENT RIGHTS AND BENEFITS:

Migrant workers face a patchwork of exclusions from employment rights. Depending on their visa and the nature of their work, workers may be excluded from workers' compensation. Migrant workers should be able to access all the rights and benefits of employment and be protected from abuses on the job.



PROTECTING MIGRANT WORKERS IN A GLOBAL PANDEMIC

The 1.6 million migrant workers in the United States employed through temporary work visa programs are on the front lines of the nation's COVID-19 response.

We are seeing a rising number of workers being infected with COVID-19 on the job, resulting in many preventable deaths and with a disproportionate impact on workers of color. Thousands of workers are falling ill due to unsafe and dangerous work sites where they are not provided with personal protective equipment or paid sick leave. They face retaliatory action if they raise a complaint about their work conditions, yet there is no action from the agency that is supposed to be workers' health and safety watchdog—the Occupational Safety and Health Administration (OSHA). In March, as various shelter-in-place orders were beginning to be issued throughout the country, our attention as advocates shifted immediately to, "What is going to happen to those already here, or about to come, with a temporary work visa?" The COVID-19 pandemic will have long-lasting impacts on our country and the entire world. As offices and businesses continue to shift to a work-from-home model, there are industries and workers that do not have the same flexibility. Framing historically undervalued work as "essential" without accompanying essential protections, such as personal protective equipment, reliable health coverage, or workplace guidelines to minimize the risk of coronavirus infection places workers at grave risk.

Workers involved in the food production industries have been particularly impacted. Workers in the H-2A and H-2B temporary work visa programs work in agriculture, seafood processing, poultry, meatpacking, and forestry, among other industries. A large number of these workers are recruited from Mexico, and they tend to be from impoverished communities. The importance of these workers for the American economy is clear as they were exempted from the numerous immigration orders suspending foreign entry into the country during the pandemic. The H-2A program provides approximately 10% of all farmworkers in the U.S. These workers face numerous challenges throughout their experience in the temporary visa program that have become more severe during the pandemic. All of these conditions have made these workers particularly vulnerable to the coronavirus.

Those in the H-1B and L-1 temporary work visa programs have been impacted by the pandemic as well. This group consists of approximately 800,000 workers in health, education, and high-tech fields throughout the country. Doctors with temporary work visas are on the front lines in the pandemic, working in crowded and understaffed hospitals. Teachers on these visas face an uncertain future as schools and universities switch to virtual learning. These workers are most often employed by staffing firms sending them to third-party worksites as temporary contractors, which makes them vulnerable to disparate treatment.

Recruitment of migrant workers abroad is already poorly regulated and lacking in transparency in normal times, but these are not normal times. Workers must be provided clear and accurate information about COVID-19 in a language they understand and must be given clear guidance on how to protect themselves while traveling to, working, and residing in the U.S. Throughout the pandemic, migrant workers with a temporary work visa have reported being displaced from jobs for which they were recruited. In some cases, those workers are unable to leave the country because the borders of their home countries are now closed. The Departments of Labor and Homeland Security should carefully scrutinize employers that try to access the temporary work visa programs during an economic downturn.

The incoming Administration needs to take immediate action to protect migrant workers on the frontlines from this virus:

- Issue an OSHA Emergency Temporary Standard providing regulations to protect workers against coronavirus exposure in the workplace.
- Provide migrant workers with free testing, prompt medical care and treatment if they experience COVID-19 symptoms or test positive for the virus.
- Issue enforceable housing and transportation guidelines that minimize exposure and risk of contracting COVID-19.
- Ensure workers' compensation protections for migrant workers who contract the coronavirus because were it not for their job they would not have fallen ill.
- Ensure workplace retaliation complaints are promptly investigated.

Migrant workers are supporting our critical infrastructure and each day this country accepts benefits of their labor. Now is the time to do something to protect them from this deadly virus.

WORKER STORY

Maribel and Reyna,¹ two workers on H-2B non-agricultural visas from northern Mexico, saw about 100 of their coworkers fall sick with COVID-19 in a crawfish plant in Louisiana. Both workers reported having to work elbow-to-elbow without masks and having to live in a crowded house with 40 other coworkers. They noticed that even as the outbreak began, their employer did not take adequate steps to protect workers. One day, Maribel and Reyna started developing COVID-19 symptoms, they had trouble breathing and could not get out of bed.

Their employer fired them and reported them to immigration authorities when they sought medical treatment at a hospital. Eventually both women filed complaints with the Occupational Safety and Health Administration (OSHA) and the National Labor Relations Board (NLRB).

¹ CDM, "Maribel and Reyna were fired for going to the hospital—now they are calling on OSHA to do its job," (June 2020) <https://cdmigrante.org/maribel-and-reyna-were-fired-for-going-to-the-hospital-now-they-are-calling-on-osha-to-do-its-job/>; also discussed in HuffPost, "Guest Workers Describe Coronavirus Nightmare on Louisiana Crawfish Farm," (June 17, 2020) https://www.huffpost.com/entry/migrant-workers-describe-coronavirus-nightmare-on-louisiana-crawfish-farm_n_5ee926fac5b67912c6a870b3



IV RECOMMENDATIONS FOR THE FIRST 100 DAYS

The Administration of Joseph R. Biden, Jr. and Kamala Harris has an opportunity to take bold action to enact executive orders and rescind harmful action taken by the prior administration. The first 100 days of the incoming Administration will come at a time of acute public health risks as the pandemic persists during the flu season. Because many of the regulations that have been harmful to migrant workers came in the form of presidential proclamations and agency rulemaking procedures, the new Administration can and should rescind them through their own executive orders and rulemaking.

We recommend the following actions in response to various aspects of the Trump agenda that affect migrant workers:

Rescind:

- All executive orders suspending immigration or banning entry for workers from specific countries
- Limits placed on Department of Labor certifications of U and T visa applicants' cooperation with law enforcement¹³
- Public charge rule and forms that impose a wealth test for immigrants and nonimmigrants
- DOL final rule changing the Adverse Effect Wage Rate (AEWR) methodology for the H-2A program

Desist:

- Worksite immigration raids
- Social media data collection for immigrant and nonimmigrant visa applicants
- Issuance of Social Security "no match" letters to employers¹⁴
- Utilizing Congressionally-ceded authority to expand the annual statutory limitation on H-2B visas¹⁵

Scuttle:

- Pending proposed rule to eliminate employment authorization for H-4 spouses of H-1B visa holders¹⁶
- Pending proposed rule to overhaul the H-2A program in ways that would negatively impact domestic workers and migrant workers¹⁷
- Pending proposed rule to carve out J-1 au pairs from state and local labor standards and preempt their eligibility for higher minimum wages laws¹⁸
- Guidance on accrual of unlawful presence for student visa holders¹⁹

Revisit, with stakeholder input:

- DOL rules shifting to online recruitment for H-2A and H-2B programs to assess effectiveness²⁰
- USCIS rules temporarily granting employers more flexibility in H-2A and H-2B hiring to determine whether continuation is warranted²¹
- DOL rule increasing H-1B prevailing wages to protect current H-1B workforce and prevent misclassification²²
- DHS rule addressing the prevalence of third-party employment in the H-1B program to mitigate any potential harm to workers²³
- DHS rule creating a wage prioritization system for H-1B visa allocation to ensure that it will withstand legal challenge²⁴

Restore:

- USDA Farm Labor Survey to set H-2A wage rates²⁵
- Duration of status admission for J and F visa holders²⁶
- Deference to prior visa-holders for renewals²⁷
- Reasonable exceptions to in-person interview requirements for employment-based visa applicants²⁸
- CBP adjudications for intracompany transferees with specialty knowledge²⁹
- Computer programmer eligibility for H-1B visas³⁰
- Economists eligibility for TN visas³¹



WORKER STORY

Jayson De Guzman¹, a construction worker in the Philippines and a survivor of trafficking, was offered an opportunity to work in the U.S. by one of his employers. Believing the offer was a chance of a lifetime, Jayson immediately accepted it without even asking what type of work he would be doing or how much he would be paid. Jayson thought he would be working in construction and placed all his trust in the woman who offered him the position. However, once he arrived in the U.S. he became a victim of human trafficking.

In the U.S., Jayson and his co-worker were forced to work at a retirement home for the elderly. They had to take care of seven residents, the majority of them suffered from dementia. His duties included bathing and feeding the residents and he also had to do construction work and maintenance on the property. Jayson was forced to work 18 to 20 hours a day and had to sleep on the floor in the hallway. During this time, he was only given chicken bones and table scraps to eat. Jayson's trafficker told him that he owed her a great amount of money and that he would have to work for her for 10 years before she would let him go. His trafficker also threatened him with deportation and accusations of theft if he tried to escape.

When a neighbor noticed that neither he nor his coworker ever had a day off, the neighbor notified the FBI. The FBI and the Coalition to Abolish Slavery and Trafficking (CAST) assisted Jayson in leaving his trafficker. When the Federal Agents assisted Jayson and the other victims, a social worker with the Coalition to Abolish Slavery and Trafficking (CAST) and emergency response coordinator who spoke Tagalog were there to support them. Jayson received social and legal services while he continued to assist the investigation. Their trafficker accepted a plea bargain and received a 5-year prison sentence.

Jayson is now a father and works as a food prep manager at Los Angeles International Airport (LAX). He is a member of the CAST Survivor Advisory Caucus, and the National Survivor Network, a group of survivors who are learning leadership and advocacy skills in order to raise awareness and influence policies to better protect and help survivors of human trafficking. Jayson has travelled to New York and Seattle to present at national conferences, providing feedback to service providers and other stakeholders about how to better improve protections and services for survivors of human trafficking.

¹ Migration That Works, "Jayson De Guzman: Survivor of Trafficking," <https://migrationthatworks.org/testimonies/>

V KEY RECOMMENDATIONS FOR AGENCIES

Creating a functional work visa system that prevents abuses of migrant and domestic workers is even more vital now as workers have been deemed “essential” and are exposed to COVID-19 in their worksites without meaningful protections. This requires a coordinated effort by federal agencies. Agencies should strengthen protections for workers across visa categories by improving transparency in the recruitment process, creating accountability in employment relationships, ensuring access to justice, regulating the causes of economic coercion, and prohibiting discrimination and retaliation. These reforms will ensure that temporary work visa programs are not abused and workers can report potential problems without fear of recrimination.

These policy recommendations apply to workers with visas from the subparagraphs of section 1101(a)(15) of the Immigration and Nationality Act (INA) that permit employment in the U.S. under any circumstances, including training, exchange, or business activities, which result in compensation of any kind from any source.

Recommendations for Executive Agencies, Homeland Security, Labor and the National Labor Relations Board

(1) PROHIBIT CHARGING WORKERS FEES:

Ban employers and recruiters across visa categories from charging workers recruitment fees and passing costs of the job to workers. Create requirements for employers to pay back any unlawful fees or costs paid by workers and to ensure workers are hired for the intended employment. Create and enforce meaningful public and private remedies and enforce public remedies.

Departments of State, Homeland Security, Labor and National Labor Relations Board:

- Through regulation, require that all recruitment-related costs be borne by the employer, unless otherwise expressly authorized by statute. Convey a consistent policy prohibiting worker-paid fees regardless of visa category or industry sector.

Departments of State, Homeland Security, and Labor

- Correct the disincentive for workers to report recruitment fees in programs in which fees are banned. Implement a policy that workers will not be denied visas because of recruitment fee payment. Ensure that a worker is reimbursed by the employer for any recruitment fees paid by the worker. Bring enforcement actions against employers who fail to reimburse recruitment fees. If recruitment fees are not reimbursed or the worker otherwise faces retaliation, ensure the worker receives entry with work authorization. If no similar visa or job is available, work with U.S. Citizenship and Immigration Services (USCIS) to ensure



the worker is able to apply for humanitarian parole and work authorization for a period of one year so that the worker can seek work and recoup the fees that he or she has paid.

- Share with other agencies and publicly disclose information about which employers work with which recruiters in any visa category. Share and disclose data about employers and recruiters involved in charging workers fees.

Department of State:

- Commit to establishing and expanding mobile operations in foreign countries so that foreign workers can apply for and receive visas outside of capital cities, thereby reducing workers' reliance on recruiters or others who process visas for fees.
- Establish mechanisms to coordinate between the Diplomatic Security Service and domestic labor enforcement agencies to support the regulation of recruiters.
- Clarify regulations to ensure that all J-1 visa participants are protected by labor and employment statutes. Exercising the right to engage in protected activity, including the right to strike, is fully consistent with J-1 status.

Department of Homeland Security:

- Issue regulations banning recruitment fees in all temporary work visa categories that allow work. Require petitioners to repay any recruitment fees paid by the first work week or earlier, enforced by litigation and debarring of noncompliant petitioners. Remove regulatory language in H-2A/B visa programs resulting in denial of visa to workers who paid recruitment fees.
- Grant humanitarian parole and work authorization for a period of one year to workers who paid illegal fees so that the worker can seek work and recoup the fees that he or she has paid.

Department of Labor:

- Issue guidance clarifying that the Fair Labor Standards Act (FLSA) requires repayment of recruitment fees in the first work week across visa categories to the extent necessary to bring wages up to the minimum. Reimbursements and repayment cannot be in the form of a loan to workers.
- Issue a memo reminding field offices of the Wage and Hour Division's authority to enforce the FLSA with regard to any covered worker, regardless of visa category, even when there is no specific regulatory authority with respect to specific visa program rules.

(2) IMMIGRATION RELIEF AND WORK AUTHORIZATION FOR WHISTLEBLOWERS:

Grant immigration relief and work authorization to workers on temporary visas who report abuses in the recruitment process or in their employment in the United States or who participate in labor and employment investigations.

Department of State:

- Implement intake and referral process for workers who experience labor exploitation, trafficking, discrimination, retaliation, or recruitment abuses while abroad. Designate staff at consulates to coordinate responses with the Departments of Labor, Justice, and Homeland Security and serve as point person for communicating with workers.
- Publish signed letter stating that the U.S. consulates do not and will not deny visas because workers pay fees, talk to legal services, or otherwise exercise their rights.

Department of Homeland Security:

- Protect whistleblowers who pay recruitment fees and/or denounce labor violations by maintaining their work authorization in the U.S.
- Approve requests for deferred action or humanitarian parole (including employment authorization) when workers seek to enforce labor and employment or civil rights protections.
- Increase the number of continued presence (CP) accordingly given the number of human trafficking open investigations.

Department of Labor:

- Issue regulations that include whistleblower protections to ensure that workers who acknowledge having paid fees are not fired from their current job and that the acknowledgement does not prevent them from being hired for future work, either with the same employer or other employers.
- Include a statement in the labor certification application that the petitioners and any agents or subagents will comply with U.S. law during recruitment and consent to be subject to U.S. jurisdiction should any violations of U.S. anti-retaliation laws occur in recruitment and hiring.
- Inform employers and workers about anti-retaliation provisions and the consequences of any violations.

Department of Labor and National Labor Relations Board:

- Request deferred action for internationally recruited workers who seek to enforce labor and employment or civil rights protections through private lawsuits, complaints with state or federal agencies, NLRB charges, or other action to assert workplace rights.



(3) REVIVE AND FORMALIZE INTERAGENCY TASK FORCE:

Revive and formalize the current interagency process on international labor recruitment as a task force with representatives from all relevant agencies (DOS, DOL, DHS, EEOC, NLRB), with the goal of seeking solutions to systemic problems in international labor recruitment across industries and to promote coherence and enforcement of high standards across visa categories.

Departments of State, Homeland Security and Labor,
Equal Employment Opportunity Commission, and
National Labor Relations Board:

- Collect and coordinate sharing of information about visa applications and beneficiaries so that all agencies share and publish information about recruiters, applicants, beneficiaries, and employers regardless of visa classification or industry sector.
- Collaborate between agencies to share and publicly disclose data about employers and recruiters involved in charging workers fees. Develop interagency processes that facilitate the disclosure, in real time, of the names of recruiters who have charged workers illegal fees, as well as the name of the employers using those recruiters and certifications linked to those recruiters.

Department of Labor:

- Leverage interagency channels to vigorously support workers' requests for deferred action (including employment authorization) from DHS when workers seek to enforce labor or civil rights.

(4) IMPROVE TRANSPARENCY OF TEMPORARY WORK VISAS:

Collect data to monitor international labor recruitment and guide effective policymaking. The Departments of Homeland Security, Labor, and State should collect and share consistent data about nonimmigrant visas that authorize employment, including who is recruiting whom, for what jobs, on which terms, and on what visas. These data should be made available in real time in a searchable database on a public website. The website should enable workers to ascertain the veracity of a job offer, identify all actors in the chain of recruitment, review the terms of employment, and view a visa petition's status. The website should be accessible to workers in languages they understand.

Departments of State, Labor and Homeland Security:

- Share and publish key information about work-authorized visas, including the number of visas authorized in each visa classification, the names of the employers that hire temporary foreign workers, the occupations and locations where nonimmigrants will be employed, demographic information about workers, hourly wage rates, and terms of the work. Publish information on visa beneficiaries' age, gender, and sending communities.

Departments of State and Labor:

- Collect consistent data regardless of visa classification, including for the J-1 program where the public currently lacks this annual reporting.

Departments of Labor and Homeland Security:

- Make employer applications for internationally recruited workers publicly available online permanently and searchable so that information on employers' agents (including employers and both principal recruiters and their agents) is available.

Department of State:

- Share information regarding fees charged and the employers, recruiters, and other agents involved in the chain of recruitment with governments in workers' countries of origin.
- Maintain a list of recruiters accessible to the Departments and consulates to verify recruiters.



(5) OVERHAUL WORK VISA PROGRAMS:

Overhaul visa classifications across categories and industry sectors to move toward consistent regulation under a single framework. Rules, usage data, and worker protections should be transparent and consistently applied regardless of visa category or industry sector. Levels and types of new worker entry should be determined by an independent commission of labor market experts, rather than employers or their industry lobbyists. Meaningful job portability should be available to internationally recruited workers to protect against exploitation. Workers helping to build our country should have the ability to live with their nuclear families and should be offered a pathway to citizenship. Base wages should be set high enough that temporary work visas do not adversely affect living wages and working conditions for U.S. workers, backed by meaningful public and private enforcement.

Departments of State, Labor, and Homeland Security:

- Collect consistent data regardless of visa classification.

Departments of State and Labor:

- Collaborate to oversee the work-related aspects of the J-1 visa program. Jointly assess with the Department of Labor the impact of the program on the domestic workforce and implement regulations to protect all workers and raise labor standards for impacted industries.

Department of State:

- Prevent J-1 visa workers from being overworked and require that the program fulfill its original mission of cultural exchange to the J-1 visa program participants.

Department of Labor:

- Assume authority to monitor and enforce labor and employment rights for visas administered in whole or part by DHS and DOS.
- Stop certifying weekly wages. This practice is misleading to workers about the terms and conditions of their employment.

(6) CREATE AN OFFICE OF INTERNATIONAL LABOR RECRUITMENT CERTIFICATION AND OVERSIGHT WITHIN THE DEPARTMENT OF LABOR:

The Office should generate a structure to monitor international labor recruitment practices and to enforce regulations across all visa categories and industry sectors. Housed in the Wage and Hour Division (WHD), the Office should consolidate WHD's enforcement role with the functions of the Office of Foreign Labor Certification, such as certifying visas, wage rates, and recruiters. The Office should be charged with creating and maintaining a database of all labor recruiters, and should have the power to block program violators from accessing visas. The Office should receive delegated authority to enforce regulatory protections under those visas currently housed in the Department of State. The Office should be adequately staffed and funded to achieve this critical mandate.

Departments of State, Labor, and Homeland Security:

- Establish mechanisms to coordinate with law enforcement agencies that maintain overseas presence, particularly DOS Diplomatic Security Service, to support the regulation of recruiters. Ensure enforcement of violations when they occur in the country of origin and consider cooperating with governments in countries of origin to encourage additional legal action.

Departments of Labor and Homeland Security:

- Require an applicant for labor certification or temporary work visa to disclose beneficial ownership information about the employer and recruiter, in order to prevent bad-apple employers or recruiters from changing company names to avoid debarment or other enforcement actions.
- Prohibit labor contractors and staffing agencies from participating in work visa programs unless business operator/ultimate employer files as a joint employer.

Department of State:

- Sub-delegate to the Department of Labor authority to test the labor market for non-humanitarian visas administered in part by the Department of State.

Department of Labor:

- Develop a recruiter registry through binational or multinational cooperative agreements with sending countries, building off of the existing consular partnership program.
- Issue guidance asserting DOL's extraterritorial scope of authority in the context of enforcing worker protections, particularly focused on the regulation of foreign labor recruiters.



(7) IMPROVE EMPLOYER ACCOUNTABILITY:

Employers should be held accountable for actions of labor contractors, recruiters, and agents of recruiters and should ensure that workers are provided all applicable worker protections. There must be joint liability between labor contractors, staffing agencies, or other third party employers and the ultimate beneficiaries of the labor. To ensure joint liability, labor contractors/staffing agencies should only be able to participate in a visa program if they file a petition in which the owner/operator of the business to which they will supply workers agrees to be jointly liable for workers.

Departments of State, Homeland Security and Labor:

- Collaborate to share and publicly disclose in real time the names of employers and recruiters who have charged workers illegal fees as well as the related certification.

Department of State:

- Sub-delegate to Department of Labor enforcement authority for J-1 visa beneficiaries.
- Share with other agencies and publicly disclose information about which employers work with which recruiters in any visa category. If information surfaces that a recruiter appears to be charging workers fees or otherwise abusing the recruitment process, in collaboration with DHS, notify other employers using the recruiter about the abusive recruitment practice with the goal of putting other employers on notice that they should not hire through that recruiter.
- Rescind the (currently in progress) J-1 Au Pair Program regulation seeking to carve out au pairs from state and local worker protection laws.³²

Department of Homeland Security:

- Develop training, in coordination with DOL, for local law enforcement to understand labor exploitation and civil labor law.
- After receiving information that a recruiter may have charged a worker fees, DHS, in collaboration with DOS, should issue letters to all employers who may have used that particular recruiter. The notice should discourage employers from working with that particular recruiter.

Department of Labor:

- Vigorously enforce labor laws to remedy abuses that contribute to the worker vulnerability that underlies labor trafficking. Aggressively enforce workplace rights of internationally recruited workers both while workers are in the United States and after they have returned to their countries of origin.
- Increase enforcement in labor certifications by debarring noncompliant companies.
- Create an expedited investigation process for workers on temporary work visas to ensure that all witness testimony and evidence is preserved given the short-term nature of the visas.

- Mandate that regional and local offices of the Wage and Hour Division (WHD) are permitted to make international phone calls in furtherance of investigations.
- Clarify situations where the recruiter may be considered an employer, for example, when the employer performs foreign labor contracting activity wholly outside of the United States, and clarify definition of foreign labor contracting for these purposes.
- Where recruitment fees or back pay are recouped for international workers, review the practice of mailing U.S. checks to workers in countries where cashing these checks is nearly impossible. Mexico is an example where the current DOL practice does not work.
- Seek restitution for workers when it is available.

National Labor Relations Board:

- Allow interviews of workers who have returned to their countries of origin.
- Review practice of mailing U.S. checks to workers in countries where cashing these checks is nearly impossible. Mexico and Central America are examples.

(8) IMPROVE EDUCATION AND ACCESS TO INFORMATION:

Establish educational programs to inform internationally recruited workers about their legal rights and obligations under U.S. temporary work visa programs. Cooperate with governments and agencies in countries of origin to thwart misleading propaganda about U.S. work visa programs. At consular interviews provide program participants with information on internationally recruited workers' rights under the law and information regarding organizations workers can contact if they experience a violation of their rights.

Departments of State, Homeland Security, Labor and National Labor Relations Board:

- Interview witnesses in their native languages and in culturally appropriate ways.

Department of State:

- Ensure each worker has a copy of the approved labor certification during the worker's interview at the consulate, and provide one if none has been provided yet.
- Ensure that prospective employers disclose their foreign labor contractors and chain of subcontractors; whether the contractors will receive any economic compensation, and how much; and the person or entity who will pay the compensation. Employers seeking to hire through visa programs should disclose this information to consulates. Consulates should secure this information and post it publicly in real time.
- Increase public awareness about fraudulent recruiters and recruitment fraud through communication campaigns including notices at consulates.
- Revise the video shown to all nonimmigrant visa holders in consulates to be in-language and accessible to workers with limited literacy, include migrant



workers' experiences and survivors' voices, address issues of retaliation against workers who report recruitment and employment abuses, and describe available remedies.

- Make the approved labor certifications permanently and publicly available online in real time.
- Revise the Willberforce anti-trafficking brochure to provide more detailed and accurate information. Revise the language regarding protections under the visa programs and regarding recruitment fees. Divide the brochure into separate brochures by visa category and improve the accessibility of the brochure for workers with limited literacy.

Department of Homeland Security:

- Create a publicly searchable database of recruiters and employers based on information included in the I-129s and I-797s, the countries where they are recruiting, and the numbers of workers authorized.

Department of Labor:

- Ensure workers are able to enforce their rights while fulfilling their opportunity to work in the United States. Assist workers, when their employment does not meet minimum standards or they are recruited in a noncompliant manner, to find suitable substitute employment.

National Labor Relations Board:

- Ensure that all internationally recruited workers have the full protection of U.S. labor and employment laws and that this is clear and accessible to workers and employers. Clarify federal regulations and official documents to ensure they are easy for workers to understand.

(9) INCREASE RESOURCES FOR ENFORCEMENT:

Significantly enhance the resources available for the enforcement of worker protections across visa programs, including protections against discrimination in recruitment. The drastic and long running underfunding of the DOL, NLRB, EEOC, and similar enforcement agencies charged with responding to violations of worker rights has resulted in a lack of capacity to timely respond to complaints. Instead, agencies are forced to focus on targeted enforcement and deterrence. Currently, the WHD has approximately 1,000 investigators to protect 143 million workers. The resources should reflect the importance of guaranteeing a level playing field, and enable the effective realization of our comprehensive recommendations. In addition to significant new authorizations and appropriations, the Administration should work with Congress to allow DOL to retain resources from visa fees under the H-2A program and impose fees on the H-2B program.

Department of State:

- Require consulates to respond to government and worker inquiries about

recruiters and recruitment fraud. Consulates should provide information as to whether the employer is approved, the name of the principal recruiter, and a copy of the USCIS Form 797.

- Facilitate tourist visas for workers who need to return to testify in depositions or court hearings.

Department of Homeland Security:

- Facilitate workers' return to the U.S. for hearings or court dates after they have returned to their countries of origin by approving requests for humanitarian parole.

National Labor Relations Board:

- Require appropriate staff to undergo training on issues specific to temporary work visas, including deferred action requests, U Visa certifications, visa sponsorship remedy, fraud in foreign labor contracting, and recruitment abuse.

Department of Labor:

- Require all federal Wage and Hour investigators, and those of other agencies who may receive delegated authority, undergo training on issues specific to temporary work visas, including deferred action requests, U visa certifications, T visas, visa sponsorship remedy, fraud in foreign labor contracting and recruitment abuse. Work with state workforce agencies to train state investigators in every state.
- Prioritize complaints that allege retaliation. Issue guidance and update the Field Operations Handbook and training to ensure that WHD investigators apply a broad interpretation of retaliation when determining when to undertake enforcement actions in response to a complaint, including general retaliation for exercising worker voice.
- Delegate certification authority to all DOL agencies, including OSHA, for all U visa qualifying crimes and for T visas. The new agency systems should be one cohesive and streamlined effort to avoid application review backlogs.
- Ensure appropriate funding to WHD enforcement to protect workers who denounce or seek to denounce abusive or illegal employment or recruitment practices so that they do not fear reprisals from employers or labor contractors. Provide whistleblower and FLSA protections for workers seeking re-recruitment.

(10) ENHANCE INFORMATION PROVIDED DURING CONSULAR PROCESSING OF TEMPORARY WORK VISAS:

The Department of Homeland Security should provide information to U.S. Consulates to give to workers in their home countries during the visa application process explaining any current restrictions as well as general information on how to protect oneself from COVID-19. This information should be posted on the Department of State website.



(11) EXPAND LABOR AND EMPLOYMENT PROTECTIONS TO MIGRANT WORKERS:

Migrant workers are at the frontlines of this pandemic and yet they have little to no protections.

Department of Labor:

- Prioritize guaranteeing protections for migrant workers that are in line with current public health laws.
- Ensure group housing provided to migrant workers meets health and safety standards and Centers for Disease Control (CDC) guidelines. Migrant workers tend to live in overcrowded housing that does not permit social distancing as recommended by the CDC. These workers often sleep, cook, and use the bathroom in close proximity to others.
- Ensure transportation into and within the United States complies with CDC guidelines.
- Require employers to have a plan for preventing and responding to COVID-19.
- OSHA must investigate complaints and carry out worksite inspections to ensure migrant workers are working in safe environments.

WORKER STORY

Ingrid Cruz¹, a teacher with an H-1B visa from the Philippines, was one of more than 300 teachers recruited by a Filipino recruiting firm, PARS International Placement Agency, and its sister company, Los Angeles-based Universal Placement International, to teach in public schools in Louisiana. The teachers paid more than \$16,000 each (approximately four times what they would earn in the Philippines annually) to obtain jobs in the U.S. Things quickly deteriorated for the teachers once they landed at Los Angeles International Airport. After a wearying journey to the U.S., the teachers were presented with a second recruitment contract that required 10 percent of both their first and second year salaries in fees, despite the fact that they had only been granted one year visas and they had already paid PARS 20 percent of their first year's salary in cash before leaving the Philippines.

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

¹ Migration That Works, "Ingrid Cruz: Teacher on a H-1B Visa," <https://migrationthatworks.org/testimonies/>

VI LEGISLATIVE RECOMMENDATIONS – NEW LABOR MIGRATION MODEL

A New Labor Migration Model Is Needed

MTW proposes a new framework for labor migration that shifts control over the labor migration process from employers to workers, elevates labor standards for all workers, responds to established labor market needs, respects family unity, ensures equity and access to justice, and affords migrant workers an accessible pathway to citizenship. The MTW model incorporates (1) worker control over the labor migration process with (2) meaningful government oversight and (3) rigorous vetting of employers.

Worker Control

Rather than being recruited by an informal chain of recruiters, workers would self-petition for visas and connect directly with certified employers on a multilingual, government-hosted database of available jobs. Workers would be entitled to petition for their families. The simple and accessible self-petition process would eliminate the need for recruiters and root out the abuses they perpetuate, from charging fees to discrimination to threats of retaliatory non-hiring in subsequent years. Through the government's job-matching database, workers would also be able to change employers. Workers would be able to petition for citizenship.

Employer Certification

Rather than subcontracting with recruiters to solicit workers, employers would apply for certification from the federal government in order to post job opportunities on the government's job-matching database. Once certified, employers would select workers through a blind process that would focus on job competencies and would eliminate discrimination based on race, age, gender, national origin, and other bases.

Government Oversight

Rather than piecemeal oversight of the current visa programs, the federal government would maintain a single database of certified employers containing a job-matching component in order to facilitate the direct hiring of migrant workers. The government would certify employers, thoroughly monitor compliance with the laws protecting all workers across all industries, and revoke certifications of noncompliant employers, fining them for violations. The government would hold employers jointly liable for abuses at all stages of the labor migration process. Additionally, the government would establish an independent commission to determine labor market need and establish prevailing wage rates. The job-matching database would post only those positions that were responsive to demonstrated shortages and offering market wages.

Legislation that Advances a New Labor Migration Model

The following legislation would create fair and more functional temporary work visa programs, resulting in safer workplaces, living-wage jobs that can support more families, and a level playing field for employers who follow the rules. The incoming Administration should work to advance the following legislation:



Fair Labor Recruitment Act ("FLR")

Originally introduced as part of the 2013 Immigration Reform package, the FLR would strengthen regulation of foreign labor recruiters (foreign labor contractors) to prevent human trafficking and forced labor.

KEY PROVISIONS

- Prohibition of recruitment fees across all visa categories;
- Disclosure of job terms and conditions;
- Whistleblower protections for workers that raise complaints on the job;
- Transparency in the creation of a registry of recruiters that workers, advocates and employers would be able to access in real time;
- Joint employer liability for recruitment violations;
- Allow workers to legally remain in the U.S. to participate in legal proceedings where the worker has raised a complaint against an employer or recruiter, including wage theft, discrimination, and forced labor;
- Enforcement against unscrupulous foreign labor recruiters.

Seasonal Worker Solidarity Act

This legislation is expected to be introduced during the 117th U.S. Congress. The Act strengthens the H-2B non-agricultural temporary work visa program for migrant workers and domestic workers.

KEY PROVISIONS

- Creates a pathway to citizenship after 18 months of work in an H-2B position, and allows retroactive eligibility for long-term H-2B workers;
- Creates an online jobs database that allows domestic and migrant workers to apply for positions directly or through their unions;

- Mandates prevailing wages and payment for all hours promised in H-2B contracts;
- Allocates visas to employers who pay the highest wages and treat their workers well;
- Prohibits charging workers fees that lead to debt bondage;
- Holds employers accountable for recruitment abuses, while also charging employers fees to fund effective auditing and enforcement by the Department of Labor;
- Puts workers in control of their visas and extends protective visas to workers who exercise their right to organize collectively or file claims;
- Creates an H-2B Equal Opportunity Advocate position within the Department of Labor to address issues of diversity.

Trafficking Victims Protection Reauthorization Act

The reauthorization of the TVPRA should be strengthened and leveraged to incorporate key worker protection elements outlined in this report. The recent reauthorizations have focused too much on law enforcement and prosecutions, leaving grants and programs for victims underfunded or not legally mandated. The necessary fixes needed in immigration to increase worker protections for trafficking survivors have been left uncorrected. We strongly urge the incoming Administration to support prioritizing provisions of the TVPRA that focus more on prevention and the rights of survivors and victims of trafficking.

Establish Path to Citizenship

Support Congress in establishing a path to citizenship for all workers and their families in the temporary work visa programs.

VII CONCLUSION

Migration that Works looks forward to working with the incoming Administration. We appreciate your attention to our recommendations and would welcome the opportunity to meet with you regarding these issues. Protections for migrant workers go a long way towards ensure a stabilized economy that relies on essential workers.



Migration
that Works



APPENDIX A: A NON-EXHAUSTIVE LIST OF TEMPORARY WORK VISAS

Category	Description	Industry	History
A-3	Personal employees, attendants and servants of A visa holders (foreign diplomats)	Domestic work	
B-1	Personal or domestic employees	Domestic work	Created in 1952
F-1	Student visa	On-campus work during first academic year. Curricular Practical Training, Optional Practical Training, or STEM Optional Practical Training in subsequent years.	Created in 1952
G-5	Personal employees, attendants and servants of G visa holders (foreign government representatives or employees of certain international organizations)	Domestic work	
H-1B	Specialty occupations	Architecture, engineering, mathematics, physical sciences, social sciences, biotechnology, medicine and health, education, law, accounting, business specialties, theology, and the arts	Created in 1990, based on a similar program initiated in 1952
H-1C	Registered nurses in shortage areas	Nursing	Created in 1990 or 1999, expired in 2009, may be renewed
H-2A	Seasonal agricultural workers	Agriculture	Created in 1986, based on a program created in 1943
H-2B	Seasonal non-agricultural workers	Landscaping, forestry, seafood, meat/poultry, carnivals, construction, carpentry, housekeeping, restaurant worker	Created in 1986 when the H-2 program was divided into H-2A and H-2B programs.
J-1	Exchange visitor program	A wide range of professional industries such as higher education, research, and medicine to low wage industries such as domestic work, restaurants, amusement parks, and dairy farms	Created in 1961 as an outgrowth of earlier scientific exchange programs
L-1	Intra-company transferee executive or manager	Science, technology, engineering, math	Established by Congress in 1970
O-1	Individuals of extraordinary ability of achievement	Sciences, arts, education, business, athletics, television and cinema	Created in 1990
P-3	Artists or entertainers coming to be part of a culturally unique program	Entertainment and the arts	Created in 1990
TN	NAFTA professionals	The profession must appear on the list of approved NAFTA professions, which are divided into the following four categories: General, Medical/Allied Professional, Scientist, and Teacher	Created in 1994

APPENDIX B: MIGRATION THAT WORKS NEW LABOR MIGRATION MODEL

Rights	Current Temporary Work Visa Programs	Proposed New Labor Migration Model
Freedom of Movement	Workers are tied to one employer, cannot control where they live, and often have their passports and documents confiscated.	Workers would have their work visas, free to choose their housing, and change jobs or industry sectors. Workers maintain control of their documents at all times.
Freedom from Economic Coercion	Recruiters charge workers recruitment fees, employer contracts include breach fees, and workers have to pay for their travel, lodging and meals forcing them to take out loans and remain in abusive working condition.	Employers pay recruitment fees and costs. Workers arrive at the job site free of recruitment-and-work-related debt.
Self Determination and Secure Employment	Work visas are time-limited, and workers must return home when their visas expire. Political participation is limited.	Workers have a pathway to citizenship, can exercise their political views, and pursue economic, social, and cultural development. Work visas no longer facilitate precarious work.
Migration as a Family	Workers generally cannot migrate with their families. Even when family members can migrate, they are not granted equal rights or work authorization.	Workers migrate with their families. All family members have equal rights, including access to work authorization.
Equal Labor Protections	Labor protections are limited. Workers are paid less than U.S. workers, which undercuts wages and working conditions for all workers. Employers use work visas to displace existing workers.	Workers are guaranteed high labor standards and just and favorable working conditions, including equal pay for equal work compared to both other migrant and U.S. workers. Genuine need is established before posting job opportunities.
Organize	Workers face barriers when they attempt to organize and join unions. Workers who do organize can face retaliation. The prevalence of staffing agencies and other third-party contractors prevents workers at the same job site from having the same employer.	Workers freely join trade unions and other worker-led organizations. Third-party employers are not eligible for certification, clarifying the employment relationship and reducing discrimination.
Non-Discrimination	Employers and recruiters hire and assign job duties based on discriminatory bases.	Workers are free from discrimination in hiring, job placement, and re-hiring.
Whistleblowers Protections, Personal Security, and Freedom from Intimidation	Employers and recruiters retaliate against workers, threaten to blacklist workers who complain, and attack workers.	Workers freely report abuses without retaliation, intimidation, threats, or attacks.
Access to Justice	The border acts as a barrier to justice. Complaint mechanisms are not accessible. Some hearings require in-person testimony, and access to visas to pursue claims is restricted. Legal services are only available to some workers	All persons are equal before the courts, tribunals, and decision making bodies. Workers access fair and just processes and remedies, as well as legal services.
Access to Benefits and Services	Workers have difficulty accessing health care and other support services. Government benefits to which workers are entitled are difficult, if not impossible, to access across borders.	Workers have access to health care, mental health care, child care benefits, workers' compensation, Social Security (including survivors' benefits), and retirement benefits across borders



APPENDIX C: NOTABLE PUBLICATIONS

Breaking the Shell: How Maryland's Migrant Crab Pickers Continue to be 'Picked Apart' (2020)
<https://cdmigrante.org/breaking-the-shell/>

Ripe for Reform: Abuse of Agricultural Workers in the H-2A Visa Program (2020)
<https://cdmigrante.org/ripe-for-reform/>

J-1 Shining a Light on Summer Work report (2019)
<https://cdmigrante.org/shining-a-light-on-summer-work/>

Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment (2019)
<https://cdmigrante.org/fake-jobs-for-sale/>

Shortchanged: The Big Business Behind the Low Wage J-1 Au Pair Program (2018)
<https://cdmigrante.org/shortchanged/>

The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse (2013)
https://cdmigrante.org/wp-content/uploads/2018/02/American_Sale.pdf

No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers (2012)
<https://www.farmworkerjustice.org/resource/no-way-to-treat-a-guest-why-the-h-2a-agricultural-visa-program-fails-u-s-and-foreign-workers/>

Endnotes

- 1 More information on Migration that Works can be found at <https://migrationthatworks.org/>
- 2 National Human Trafficking Hotline, "Hotline Statistics," <https://humantraffickinghotline.org/states>
- 3 See Id.
- 4 Centro de los Derechos del Migrante, Inc., "[Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program](#)," April 2020. Nonimmigrant Admissions by Selected Classes of Admission and Sex and Age, Department of Homeland Security, (June 6, 2019), <https://cdmigrante.org/ripe-for-reform/>
- 5 Farmworker Justice, "[No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers](#)," 2012.
- 6 See Centro de los Derechos del Migrante, Inc., "[Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change](#)" (2013), available at https://cdmigrante.org/wp-content/uploads/2018/02/Recruitment_Revealed.pdf
- 7 International Labour Organization, "[Ending child labour, forced labour and human trafficking in global supply chains](#)," (2019) Accessed at: https://www.ilo.org/ipcc/Informationresources/WCMS_716930/lang--en/index.htm
- 8 Bissinger, K., Garrison, J., and Singer-Vine, J. "[The Pushovers](#)," Buzzfeed (May 12, 2016). Accessed at: <https://www.buzzfeednews.com/article/kenbensinger/the-pushovers>
- 9 See NBC News, "H-2A visa program for farmworkers is surging Under Trump – and so are labor violations," August 12, 2020. In 2014, investigations revealed 173 violations in 1,430 investigations. See U.S. Wage and Hour Division, "Agriculture," <https://www.dol.gov/agencies/whd/data/charts/agriculture>
- 10 The ILO is the international organization responsible for the oversight of international labour standards and bringing together representatives of governments, employers and workers to jointly shape policies and programs to promote Decent Work for all. "About the ILO" <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>
- 11 International Labour Organization (ILO), ILO Declaration on Fundamental Principles and Rights at Work, June 1988, available at, <http://www.unhcr.org/refworld/docid/425bbdf72.html> see also United Nations International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967), ratified by the United States June 8, 1992 (International Covenant on Civil and Political Rights, ratified by the United States, "everyone shall have the right to freedom of association with others, including the right to form and join trade unions.").
- 12 See U.S. Wage and Hour Division, "Career Opportunities in the Wage and Hour Division," <https://www.dol.gov/agencies/whd/recruit>
- 13 U.S. Department of Labor, Wage and Hour Division. "Memorandum of Certification of Supplement B Forms of U Nonimmigrant and T Nonimmigrant Visa Applications." Issued July 1, 2019. Available at: https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab2011_1-addendum2.pdf
- 14 Social Security Administration, "Program Operations Manual System—RM 01105.027 Educational Correspondence (EDCOR) and Decentralized Correspondence (DECOR) Letters Mailed When Names and SSNs Do Not Match Our Records—DECOR Letters to Employees, Self-Employed Workers, and Employers," updated March 22, 2019
- 15 U.S. Department of Homeland Security and U.S. Department of Labor, "Exercise of Time-Limited Authority to Increase the Fiscal Year 2017 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program," Federal Register 82, no. 137 (July 19, 2017): 32987–33000; DHS and Department of Labor, "Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program," Federal Register 83, no. 105 (May 31, 2018): 24905–19.
- 16 U.S. Department of Homeland Security, "Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization" (proposed rule 1615- AC15, Fall 2017).
- 17 U.S. Department of Labor, "Temporary Agricultural Employment of H-2A Nonimmigrants in the United States," Federal Register 84, no. 144 (July 26, 2019): 36168-36301.
- 18 U.S. Department of State, "Exchange Visitor - Au Pair Federal Regulation Preemption of State and Local Law." Office of Information and Regulatory Affairs. Published Spring 2020. <https://www.reginfo.gov/public/do/eAgendaViewRule?publd=202004&RIN=1400-AF12>
- 19 U.S. Citizenship and Immigration Services, "Accrual of Unlawful Presence and F, J, and M Nonimmigrants" (policy memorandum, USCIS, Washington, DC, August 9, 2018). (Policy enjoined from taking effect. See *Guilford College v. Chad Wolf*, Case No. 1:18-cv-00891-LCB-JEP (U.S. District Court for the Middle District of North Carolina, February 6, 2020). ICE, "Practical Training—Determining a Direct Relationship Between Employment and a Student's Major Area of Study" (policy guidance, ICE, Washington, DC, September 27, 2019).
- 20 U.S. Department of Labor, Employment and Training Administration, "Modernizing Recruitment Requirements for the Temporary Employment of H-2A Foreign Workers in the United States," Federal Register 84, no. 183 (September 20, 2019): 49439–57; USCIS, DHS, and Department of Labor, Employment and Training Administration, "Modernizing Recruitment Requirements for the Temporary Employment of H-2B Foreign Workers in the United States," Federal Register 84, no. 221 (November 15, 2019): 62431–47.
- 21 U.S. Citizenship and Immigration Services, "Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due to the COVID-19 National Emergency," Federal Register 85, no. 76 (April 20, 2020): 21739–45. USCIS, "Temporary Changes to Requirements Affecting H-2B Nonimmigrants Due to the COVID-19 National Emergency," Federal Register 85, no. 94 (May 14, 2020): 28843–51.
- 22 U.S. Department of Labor, "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States," Federal Register 85, no. 196 (Oct. 8, 2020).
- 23 U.S. Department of Homeland Security, "Strengthening the H-1B Nonimmigrant Visa Classification Program," Federal Register 85, no. 196 (Oct. 8, 2020): 63918- 63965.
- 24 U.S. Department of Homeland Security, "Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions," Federal Register 85, no. 212 (Nov. 2, 2020): 69236- 69265.
- 25 U.S. Department of Agriculture, "Notice of Revision to the Agricultural Labor Survey and Farm Labor Reports by Suspending Data Collection for October 2020," Federal Register 85, no. 190 (September 30, 2020): 61719.
- 26 U.S. Department of Homeland Security, "Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media," Federal Register 85, no. 187 (Sept. 25, 2020): 60526- 60598.
- 27 U.S. Citizenship and Immigration Services, "Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status" (policy memorandum, USCIS, Washington, DC, October 23, 2017).
- 28 U.S. Citizenship and Immigration Services, "USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants" (news release, August 28, 2017).
- 29 U.S. Citizenship and Immigration Services, "Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM)" (policy memorandum, USCIS, Washington, DC, November 15, 2018).
- 30 U.S. Citizenship and Immigration Services, "Rescission of the December 22, 2000 'Guidance Memo on H1B Computer Related Positions'" (policy memorandum, March 31, 2017).
- 31 U.S. Citizenship and Immigration Services, "TN Nonimmigrant Economists Are Defined by Qualifying Business Activity" (policy memorandum, USCIS, Washington, DC, November 20, 2017).