



September 20, 2019

Adele Gagliardi  
Administrator, Office of Policy Development and Research  
Employment and Training Administration  
U.S. Department of Labor  
200 Constitution Avenue NW, Room N-5641  
Washington, DC 20210

Re: Temporary Agricultural Employment of H-2A Nonimmigrants in the United States  
RIN 1205-AB89

Dear Ms. Gagliardi,

The Agricultural Justice Project submits these comments to oppose most of the proposed changes to the H-2A temporary foreign agricultural worker program. The Agricultural Justice Project is a collaboration of many food system stakeholders and advocacy organizations, including farmworkers, farmers and other food chain workers. Our mission is to work toward a food and agricultural system that is based in empowerment, justice, and fairness for everyone who labors in the food system from field to retail. The food system we have today is based in the opposite: exploitation, disempowerment, and disparities that are facilitated by lack of transparency, corporate concentration, a profit-driven value system, and cultural divisiveness. This system hurts many and only benefits a few. Farm labor in this country enjoys relatively few rights and protections as compared to other employment sectors and is subjected to low wages and violations for even those few protections that do exist. The mechanisms that allow for these systemic trends include the predominately foreign-born farm labor pool on US farms that live in a policy context, steeped in racism for the purpose of profit-making, that restricts their bargaining rights and their freedom and ability to address abuses and violations. Many foreign-born workers are put in a position of incurring large debts to secure jobs and often employers have power over their housing and either their legal status or their risk of detention. This all contributes to farmworkers being in a position vulnerable to exploitation. The proposed changes to the H2A program do not address the structures that promote unjust and inhumane conditions for farmworkers; rather, most of the proposed changes will create worse conditions. The Administration's proposed regulations are devastating to farmworkers because they would decrease their wages, increase their costs, worsen their housing conditions, and weaken oversight of program protections, in addition to the already existing problems of the current H-2A program. Farmworkers' conditions, including the conditions under the H-2A program, are already exploitative and need to be improved, not worsened.

The entire system of food production in the United States relies on an immigrant workforce and has a long history of being steeped in racism since the time of slavery, perpetuated by the exclusion of farmworkers from labor protections passed during the New Deal and extending to the present day. The majority of farmworkers in the U.S. are immigrants, and approximately half of all farmworkers are undocumented. Anti-immigrant rhetoric and actions by the current Administration have exacerbated an already untenable situation for farmworkers. At a time when the Administration is conducting worksite

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raids, separating families, and limiting opportunities for legal immigration, it is also seeking to weaken protections in the H-2A agricultural worker visa program.

In order to work towards a food and agricultural system that is good for all people and the planet we need to dramatically change the protections and rights of all farmworkers in this country, including those in the H2A guestworker program, those working without legal status and those working with legal status. This must include creating pathways to full citizenship and full labor protections enjoyed by other professions for the many farmworkers who feed each of us and our families every day. This must not include expanding an already exploitative guestworker system to expand the pool of mothers, fathers, brothers, sisters, sons and daughters who have few ways (due to high debt, few accessible resources, few legal rights, and lack of respect for the life-giving work they do) to fight abuse, discrimination, exploitation, poverty wages, unsafe work conditions, and poor housing.

The H-2A program is a guestworker program that allows employers to bring in foreign workers for temporary or seasonal agricultural work if they cannot find domestic farmworkers. Workers in the H-2A temporary foreign agricultural worker program have often paid significant sums to recruiters to obtain jobs, visas, and transportation. H-2A visa workers are dependent on their employers not just for their employment, but also for their presence in the U.S. As a result, they are vulnerable to exploitation and reluctant to speak out. Moreover, H-2A workers hold temporary “nonimmigrant” visas with no pathway to immigration status or citizenship. There is no cap on the number of workers who may be brought in under the program, which has tripled in size in the last decade and is expected to continue to grow exponentially. We oppose any changes to the H-2A program rules that would lower wages or otherwise reduce worker protections or DOL oversight for H-2A workers and domestic workers. The proposed change to this program do all of this.

Unfortunately, this proposal will increase uncertainty regarding farmworkers’ wages and will likely result in wage decreases for many workers. Guestworkers generally lack bargaining power to demand higher wages, due to their restricted non-immigrant, temporary status and other factors, including the debt they often owe upon arriving in the U.S. The program currently includes an “adverse effect wage rate” (AEWR), which is intended to ensure that the hiring of guestworkers does not undermine (“adversely affect”) the wage standards for U.S. farmworkers. The proposal includes changing the methodology for the AEWR, which will likely lead to wage decreases for the majority of workers, while adding complexity and uncertainty. For low-wage farmworkers, these could be very harmful pay cuts.

Additionally, the proposal would shift home country transportation costs unto workers. The H-2A program currently requires employers to reimburse workers for their long-distance travel costs to the place of employment. Now, DOL proposes to only require employers to pay the costs of transportation for H-2A workers to and from the U.S. consulate or embassy in their home country, rather than their homes. Yet workers often live far from these locations and are recruited where they live. This change will drive many foreign workers further into debt. This cost should continue to be covered by employers, not workers.



The proposal would also reduce the frequency of inspections for farmworker housing and allow employers to “self-inspect” their housing, despite high profile stories of dangerous and substandard housing under the H-2A program. H-2A workers and many U.S. workers depend on their employers for housing. It is deeply troubling that DOL could allow H-2A workers to live in housing that has not been inspected annually by a responsible government entity.

One modest improvement in the proposal is an increase in the bond amounts required to be posted by H-2A labor contractors (H-2ALCs), though the increase should be greater to provide full coverage. This is important because H-2A labor contractors are often undercapitalized and unable to pay back workers for labor violations. However, improvements are also needed to help victimized workers access the bonds. Also, the Administration fails to address a number of other significant challenges workers face with H-2ALCs, and the already troubling lack of transparency with H-2ALCs will be exacerbated by the proposed changes. Too often farm operators seek to keep their labor costs low by hiring H-2ALCs and seeking to use the H-2ALCs as a shield to escape responsibility.

This proposal, if finalized, would facilitate the further conversion of the farm labor force into a more expansive system of captive guestworkers who can be exploited and easily replaced, and have no opportunity to become citizens or even fight for the few rights they do have under the law. The answer to America’s need for immigrant agricultural workers and the US family and community farm labor crisis is not to make wages and working conditions worse for U.S. farmworkers and guestworkers. For too long, our agricultural labor system has relied on depriving workers of their voice and political power. As long as agribusiness is ensured a limitless supply of workers -- be they undocumented or temporary “guestworkers” -- without access to a permanent immigration status, farmworkers will continue to face immense barriers to improvements in workplace conditions and farm labor and farm work in general will continue to lack the respect it should have that would elevate the ability for anyone working the fields or farming and competing against corporate agriculture to earn living wages, work in humane conditions, and experience dignity in their work to feed us. If agriculture needs additional labor, workers both within and outside the U.S. should be given the opportunity to obtain immigration status and citizenship and family and community farmers should not be forced into competing against farms that take advantage of the exploitative farm labor system that is perpetuated by immigration policy and existing guestworker programs. Farms that treat their workers well, grant them full protections and living wages should be viewed as providing a public service. Compensation and support to these farms should reflect their elevated value to our nation.

Sincerely,

*Leah Cohen*

on behalf of  
The Agricultural Justice Project



