



THE CASE FOR TRANSPARENCY

**Using Data to Combat Human Trafficking
Under Temporary Foreign Worker Visas**

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About Justice in Motion

Justice in Motion is a U.S.-based nonprofit that advocates for migrant rights across borders.

Farmworker lawyer and human rights advocate Cathleen Caron founded Justice in Motion in 2005 to address a growing crisis in our globalizing economy: abused migrant workers were shut out of the justice system after returning to their country of origin. These abuses ranged from unsafe working conditions to human trafficking and often left survivors with few options. She recognized that this was a global phenomenon, and saw a solution. Human rights lawyers and NGOs could work together, across borders, to secure access to justice for those migrant workers.

To make justice across borders a reality, Justice in Motion connects advocates in the United States and Canada to the Justice in Motion Defender Network of on-the-ground human rights defenders in Mexico, Guatemala, El Salvador, Honduras, and Nicaragua. Together, we work on individual cases and advocate to stop abuses before they begin.

Now, we work to defend the rights of thousands of migrants from across the region each year -- from parents separated from their children at the U.S. border to migrant workers exploited by U.S. employers.

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Introduction

Over the past several decades, millions of temporary foreign workers have come to the United States through nonimmigrant visa programs.¹ Their importance and use in the United States economy is only expected to grow. Workers who hold nonimmigrant visas, known as “temporary foreign workers” or “guestworkers,” come as seasonal workers, technical specialists, executives, interns, domestic servants, and are employed in numerous occupations and industries. Unfortunately, many guestworkers are exploited, abused, and even trafficked² due to systemic program flaws that create imbalances in favor of employers.

Anti-trafficking and labor rights advocates, researchers, and policymakers are working creatively and tenaciously to prevent trafficking under nonimmigrant visas, support trafficking survivors, and advance reforms to protect workers and reward good employers. However, their efforts are hampered because they cannot access accurate, up-to-date, and holistic data about those programs. The U.S. government already collects a considerable amount of data about these programs, but that information is dispersed between different agencies and not shared in a uniform manner. Moreover, much of the data is inaccessible to the public, except through the lengthy and unreliable process of requesting data through the Freedom of Information Act.

The dizzying array of temporary foreign worker visa classifications is still little understood.³ Without better information, workers cannot distinguish between legitimate job offers and trafficking schemes; advocates cannot effectively design and implement targeted prevention campaigns; and policymakers cannot accurately assess the impacts of these programs and develop reforms to improve them. Data transparency will put data that is already collected in the hands of the workers and advocates who need it to combat trafficking. Transparency is a commonsense first step toward eliminating the scourge of human trafficking under U.S. guestworker visas.





Trafficking Under Temporary Foreign Worker Visa Programs

Nonimmigrant visa programs play a substantial and ever-growing role in the U.S. labor market. The Economic Policy Institute (EPI) estimates that in 2013, 1.4 million temporary foreign workers were employed in the United States under the major nonimmigrant visa classifications, making up approximately one percent of the U.S. labor force at the time. Temporary foreign worker visa programs continue to grow. For the H-2A agricultural worker program alone, the number of visas issued has more than doubled since EPI's estimates, from 89,274 visas in 2014 to 204,801 in 2019.⁴

According to the Congressional Research Service, there are currently 24 major nonimmigrant visa categories, and over 70 specific types of nonimmigrant visas for entry into the United States.⁵ "Nonimmigrant" visas are temporary, meaning the foreign-born person holding the visa may not remain in the country indefinitely. Of those nonimmigrant visas, many permit working in the United States; holders of these visas are therefore considered "temporary foreign workers" or "guestworkers."

Unfortunately, many participants in temporary foreign worker visa programs are exploited, abused, and even trafficked due to systemic program flaws that create imbalances in favor of employers. First, visas are tied to a specific employer for a specific period of time, and

the ability of each guestworker to maintain a visa is contingent on continued employment with the original visa-sponsoring employer. This means that, in most cases, if a guestworker’s employment ends prematurely for whatever reason, they become instantly deportable.⁶ This rule is a weighty disincentive to any complaint about workplace conditions, either to the employer or to the authorities. Second, although it is illegal for labor recruiters to require a fee in most U.S. programs, many temporary foreign workers are coerced into paying significant fees, up to tens of thousands of dollars, to access temporary jobs in the United States, often contracting large debts to pay those fees. Losing or leaving a job cuts off a guestworker’s opportunity to pay back the debts they owe. This combination of employer control and indebtedness expose temporary foreign workers to exploitation and human trafficking.

There are concrete examples of trafficking on almost every nonimmigrant work visa classification, documented by government auditors, advocacy groups, and news reports. The U.S. Government Accountability Office (GAO) recently described the vulnerabilities faced by temporary foreign workers in the H-2A and H-2B visa classifications, noting that between 2009 and 2013, 49 H-2A and 137 H-2B workers obtained nonimmigrant T visas,⁷ which are issued to victims of human trafficking.⁸

Polaris, a non-profit organization with a mission of eradicating human trafficking and modern-day slavery,⁹ collects data from their National Human Trafficking Hotline¹⁰ on the immigration status of potential trafficking victims. From January 1, 2015 – December 31, 2017, Polaris recorded:

some 800 individual victims of human trafficking... who were [in the United States] and working under temporary work visas. Overall, nearly half of the victims of labor trafficking reported to the National Hotline during this period whose immigration status was identified were foreign nationals holding legal visas.¹¹

Alleged Human Trafficking Cases per Visa Type

Visa Type	Civil Cases
A-2/G-2	0
A-3	21
B-1	20
B-2	8
B-1/B-2	7
DV	1
E-2	4
EB-1/EB-2/EB-3	2
F-1	2
G-5	16
H-1B	22
H-2A	31
H-2B	37
H-4	1
J-1	5
Multi-entry	1
R-1	1
TN	1
TOTAL	180

The trafficking cases reported to Polaris were associated with a variety of nonimmigrant work visas, ranging from the more commonly known H-2A, H-2B, and H-1B visas, to the lesser known A-3 and G-5 domestic worker visas, B-1 business visitor visa, F-1 student visa, and J-1 exchange visitor visa.¹²

Data published by the Human Trafficking Legal Center also indicates that a significant number of federal human trafficking cases involved victims holding nonimmigrant work visas. From 2003 through May of 2020, 422 civil lawsuits containing claims of human trafficking were filed in federal court. Of those, 174 alleged the trafficking of a non-immigrant visa holder. Accordingly, over 40% of the civil human trafficking federal lawsuits filed in the U.S. counted nonimmigrant work visa holders as victims.¹³ Similar to the data reported by Polaris, a look at the civil cases filed on behalf of temporary foreign workers involve individuals holding every type of visa that allows work, including those requiring technical expertise, such as the H-1B and TN visas, the investor-based EB visas, to the manual labor-focused H-2 visas.

In 2014, the Urban Institute and Northeastern University studied 122 closed labor trafficking victim service records from service providers in four United States cities. The vast majority of trafficking survivors sampled (71 percent) entered the United States on a temporary visa. The most common temporary visas were H-2A visas for work in agriculture and H-2B visas for jobs in hospitality, construction, and restaurants. The study also identified female domestic servitude victims who had arrived in the United States on diplomatic, business, or tourist visas.¹⁴

Data from The Human Trafficking Legal Center,
Federal Criminal and Civil Trafficking Cases
Involving Legal Visas (May, 2020)

H-2B Workers Claim Human Trafficking

Castro v. Midwest Rides

In 2015, 29 workers were hired by Midwest Rides to operate games, rides, and food concessions at fairs and carnivals in the states of Minnesota, Iowa, Oklahoma, Kansas, Arkansas, Louisiana, and Texas. Midwest hired a recruiter to find workers in Mexico to participate in the H-2B visa program. At the time of recruitment, the workers were required to pay recruitment fees and instructed to lie about making such payments during their visa application process. Once they arrived in the U.S., they became subject to regular abuse. The workers lived in terrible conditions. Housed in trailers with no bathrooms, air conditioning, or refrigeration, they would go up to 2-3 days without electricity. Up to 50 workers were forced to share one or two portable toilets. The workers received a flat weekly rate of \$200 regardless of the number of hours worked, even when the workweek amounted to 60–100 hours. Non-Hispanic employees did not experience these conditions. Additionally, the workers were subjected to racial insults and threats of deportation and physical harm. Finally, after a physical altercation between some of the workers and management, the workers were finally able to escape.

Castro v. Midwest Rides, 0:16-cv-00014, U.S. District Court for the District of Minnesota





How Lack of Data Contributes to Guestworker Trafficking

Despite clear evidence of human trafficking taking place under nonimmigrant visas, workers, anti-trafficking advocates, and policymakers alike face an alarming dearth of information about these visa programs. The sprawling, employer-driven web of visa categories is little understood, and lack of unified and transparent data about visa programs increases worker vulnerability to trafficking, hampers prevention efforts, and blocks policymakers from crafting effective, bipartisan reforms to improve guestworker programs.

Lack of Data Makes Workers Vulnerable to Trafficking

Without access to reliable data about temporary foreign worker programs, migrant workers are less able to identify and avoid human trafficking schemes. Workers in foreign countries seeking temporary employment in the United States have virtually no way to assess the accuracy of advertised job offers. Migrants usually have no reliable source of information they can turn to in order to verify job offers, check if the employer listed on the offer actually exists, and see whether the employer obeys the law and pays workers.¹⁵ Temporary foreign workers who have been trafficked and exploited often report that the reality did not match the job that was promised before they left their country of origin. Temporary foreign workers often arrive

to find a different occupation, in a different location, with a different employer, and a much lower salary than they were promised.¹⁶ Data that connects specific employers with a job location, job description, and wage rates would allow workers to vet job offers for legitimacy.

Lack of Data Hinders Trafficking Prevention

Lack of data also makes trafficking prevention work less effective. Human trafficking can be reduced or prevented if advocates can reach out to workers during the recruitment stage or once they are in the United States. However, without specific, accurate, and holistic data, it is difficult for anti-trafficking organizations and advocates to identify trends and develop targeted campaigns. For example, the age and gender of the foreign workforce are key pieces of data. A foreign workforce that is significantly demographically distinct from its U.S. counterpart may be an indicator about whether human trafficking is taking place. The government already collects these demographic data but does not make them publicly available; without them, governments (foreign, state, and local) and advocates are missing key pieces of information they can analyze and utilize in their efforts to combat human trafficking. In order to conduct effective, targeted worker outreach and education, anti-trafficking advocates also need access to the names of the employers and businesses that are hiring temporary foreign workers, the occupations temporary foreign workers are employed in, as well as their countries of origin and promised salaries. With this information, advocates could identify anomalies that may indicate abusive situations and craft thoughtful outreach strategies that contemplate the industries that workers are laboring in, and the cultural context that workers are coming from.

Lack of Data Impedes Policy Reforms

Finally, lack of data on temporary foreign worker programs hinders policymakers' and advocates' abilities to craft informed, bipartisan reforms to the visa system. As a result of the numerous scandals that have come to light, including human trafficking and worker exploitation, nonimmigrant work visa programs are the subject of scrutiny from anti-human trafficking advocates, the media, and policymakers. Effective scrutiny that leads to meaningful reforms is almost impossible, however, because too little is known about how the programs are used and what their impacts are. Employers may make claims about nonimmigrant work visa classifications, while advocates may offer other views and critiques about how they are used and the impacts on workers that reflect the realities they come across every day in their work. Unfortunately, many of the claims made by all sides are difficult to verify without access to better quality data and information that are more reliable, so that all stakeholders can make an honest assessment of the vulnerabilities the programs create and how to fix them. This is especially important in the human trafficking context—where many of the work visa programs that have facilitated trafficking are a black box—with only three federal agencies knowing bits and pieces of information about which employers use the programs and where potential victims are located and employed.

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Without access to more information, better solutions cannot be crafted to protect potential trafficking victims and migrant and U.S. workers alike, and honest policy discussions cannot take place.

After seeing reports of human trafficking of nonimmigrants by employers and of U.S. workers being replaced by vastly underpaid temporary foreign workers with nonimmigrant visas, some members of the public rightly have little faith that nonimmigrant work visa programs are a credible option for U.S. employers that will safeguard labor standards for all workers. Without access to more information, better solutions cannot be crafted to protect potential trafficking victims and migrant and U.S. workers alike, and honest policy discussions cannot take place.

Human trafficking is a global problem that will require a wide range of innovative efforts to combat. Making information about nonimmigrant work visas available can make a major impact at a nominal cost, because the U.S. government already collects significant amounts of valuable information that it does not publish. The U.S. government also already possesses the infrastructure to begin making the information widely available and easily accessible to law enforcement, advocacy groups, researchers, and policymakers.¹⁷

G-5 Visa Holder Claims She Was Trafficked

Elat v. Ngoubene

In late 2005, Elat was living in Cameroon and finishing high school. That year, she was persuaded by her uncle to obtain a G-5 visa and go to the United States, where she was told she would attend nursing school. However, when Elat arrived in the U.S. in 2006, she was not allowed to enroll in nursing school and made to work as a domestic worker for her uncle. She was forced to wake up before 6 AM to make breakfast, clean, maintain the entire 7-bedroom, 2-kitchen, 4-bathroom house. She also had to do the laundry, wash the cars, and go shopping for groceries. She was only allowed to eat leftovers, could not seek medical help, and was isolated from the outside community. Her uncle and his family constantly threatened her with threats of deportation and physical abuse. After enduring years of abuse, Elat managed to escape in 2008.

Elat v. Ngoubene, 993 F. Supp. 2d 497 - Dist. Court, D. Maryland 2014

Alleged Trafficking of an H-1B Visa Holder


Saiyed v. Archon, Inc. et al.

Saiyed is an Indian national who was recruited to work in the U.S. under the H-1B visa program. He was promised that he would be paid around \$48,000 yearly. When he arrived, his employers began to consistently demand that Saiyed return cash to them from his already reduced paychecks, more than halving his actual take-home salary. They also forced Saiyed to pay all the fees and costs associated with his visa application. When Saiyed balked at his diminished salary, his employers threatened to cancel Saiyed's visa and leave him without legal status. Saiyed was also threatened with discharge and physical harm. To further intimidate Saiyed, his employers would also show up at his home unannounced to inspect the premises. When he would no longer comply with their coercion, he was terminated. Officers of the company then went to Saiyed's house and threatened him, saying that he needed to either return to India or commit suicide. They also threatened to harm him and his loved ones. Finally, to harass Saiyed further, the employers sued him under a non-compete agreement.

Saiyed V. Archon, Inc. et al, 2:14cv6862, U.S. District Court for the Eastern District of New York







Data Already Collected on Guestworker Visa Programs

Three U.S. government agencies—the departments of State, Labor, and Homeland Security—currently collect a significant amount of data on nonimmigrant visas that authorize employment through various applications and administrative forms.

DOL Data

There are some examples of data that are published on nonimmigrant work visa applications, which provide the public with limited insight into how a small number of nonimmigrant work visa programs—only the H-visa programs—are used by employers. The website of the U.S. Department of Labor’s (DOL) Office of Foreign Labor Certification (OFLC) hosts a number of reports, statistics, and fact sheets, as well as downloadable “disclosure data” on Excel spreadsheets based on applications made by employers for labor certifications for H-2A and H-2B visas, and labor condition applications (LCA) submitted for H-1B visas.¹⁸ This data includes summaries of petition data, how many applications were received and how many were certified, how many positions were requested and how many were certified, how many prevailing wage determinations were completed, and a breakdown of the top sending countries, receiving states, employing corporations, and job types according to visa category.

USCIS Data

United States Citizenship and Immigration Services (USCIS) collects key information on many of the major nonimmigrant work visas, particularly through information provided by employers on Form I-129, Petition for a Nonimmigrant Worker. Most of the data from the Form I-129 that are made public are available on the Buy American, Hire American page on USCIS's website,¹⁹ which was created in 2017, as well as *Characteristics of H-1B Specialty Occupation Workers* reports and *Characteristics of H-2B Nonagricultural Temporary Workers* reports,²⁰ although some other bits of information are scattered in USCIS's website. Data is available that describes both employers (company name, location, and denial approval) and visa holders (gender, country of origin, and job type). However, the information is not uniform between visa type. For example, gender information is available for H-1B holders, but not for H-2Bs.

ICE Data

U.S. Immigration and Customs Enforcement (ICE) collects key information on M-1, F-1, and J-1 nonimmigrant visas through the Student and Exchange Visitor Information System (SEVIS).²¹ Some nonimmigrants in these visa classifications are either eligible to be employed under the terms of their visa or eligible to receive Employment Authorization Documents from USCIS. The biggest and most significant groups are the Optional Practical Training (OPT) program, science, technology, engineering and mathematics (STEM) OPT program, and the Curricular Practical Training (CPT) program which allows employment required as part of the program of study. ICE's SEVIS data are published on the Student and Exchange Visitor (SEVP) Data Library page of their website, and the information provided includes aggregated information on the total number of EADs issued to F-1 nonimmigrants in OPT, STEM-OPT, and CPT, and the top employers of F-1 nonimmigrants in OPT, STEM-OPT, and CPT. However, individual-level data are not published.

DOS Data

The U.S. Department of State (DOS)—as the lead federal agency that processes and issues both permanent and nonimmigrant visas to migrants who are located abroad—collects a large amount of information and data on nonimmigrant work visas. Some of the information DOS has is published on the Nonimmigrant Visa Statistics page on its [website](#). There, it publishes the number of nonimmigrant visas issued by classification, and by classification and nationality. Also published are the number of visas that were refused and the number of refusals that were waived or overcome. DOS, however, does not publish the names of the employers hiring workers on the nonimmigrant visas it issues. This makes it difficult to know much about the employers who ultimately hire workers in the different nonimmigrant visa classifications.

CBP Data

U.S. Customs and Border Protection (CBP) is a sub-agency of DHS that is its largest federal law enforcement agency. CBP is charged with policing the U.S. border, and with

respect to nonimmigrant visas, one of the agency's main functions is to either permit or deny entry to persons holding nonimmigrant visas wishing to enter the United States after presenting themselves for inspection at a port of entry. A person entering the United States with a nonimmigrant visa is counted as an "admission" and CBP compiles the number of admissions into the United States on an annual basis, by broad nonimmigrant visa classification, and DHS publishes the totals in its annual reports.²²

Digitized Records Facilitate Transparency and the Collection and Sharing of Data

The ability of agencies to collect the key information on nonimmigrant work visas, and ultimately make that information public, is getting easier over time thanks to efforts to make more immigration applications electronic rather than paper-based, which will streamline the process and keep expenses low. This has occurred in part due to the efforts of former USCIS director Francis Cissna, who stated publicly that his "top priority" was to convert USCIS into an agency that is paperless when it comes to the agency's intake forms, which will include electronic applications and petitions. Director Cissna told Bloomberg Law in an interview that "it's going to happen before the end of 2020."²³ This has not yet become a reality, but if it does, since a large share of the most valuable information on nonimmigrant work visas comes from the USCIS Form I-129, transitioning to an electronic Form I-129 will ensure that most of the key data on nonimmigrant visas is collected and stored electronically. That in turn will reduce the need for staff time to be spent on preparing annual reports on nonimmigrant visa data, inclusion in a nonimmigrant visa database, or compiling spreadsheets to respond to Freedom of Information Act requests.

Transparency has been a declared priority for the federal government at different points in the last few administrations. The Obama administration announced in January of 2009 that transparency would be a priority going forward. The President declared that the government should be transparent, participatory, and collaborative. With the idea that openness strengthens democracy and promotes efficiency and effectiveness in government, Obama ordered all executive departments and agencies to employ new technology to disseminate information about operations and decisions on the internet, easily accessible to the public.²⁴ Though these goals weren't entirely accomplished during Obama's time as president, they were marked as priorities during those eight years. On April 18, 2017, President Trump signed the Buy American and Hire American (BAHA) Executive Order, with the declared purpose of protecting American workers.²⁵ As described above, on the BAHA website data is published on the H-1B, H-2B, and L-1 guestworker programs, even though publication is not an explicit requirement of the Executive Order.²⁶ These initiatives show that transparency and the use of the technology necessary for transparency are not new ideas and do enjoy some bipartisan support across vastly different administrations.







Government Data is Not Accessible to Anti-Trafficking Advocates

The breadth of data already collected on nonimmigrant work visa programs is considerable, and measures are already in place to digitize data collection and storage. At present, however, much of these data are not collected uniformly or shared between federal agencies. Furthermore, most are not published in annual reports or otherwise made publicly available. Data transparency is a commonsense step toward preventing human trafficking under nonimmigrant work visa programs. Much of the information advocates, policymakers, and workers themselves need is already collected and stored. Once those data are publicly available, advocates can put it to work and more effectively combat trafficking of temporary foreign workers.

FOIA Requests: Inefficient, Expensive, and Unreliable

In the absence of transparent, holistic data about nonimmigrant work visa programs, advocates are forced to request data through Freedom of Information Act requests to the appropriate agency (or agencies) and hope that their request is granted. The lengthy, inefficient FOIA process is burdensome for requestors and government agencies alike. The processing time and uncertainty surrounding FOIA requests present substantial obstacles for advocates, researchers, journalists, and other stakeholders seeking

information about these public programs. At USCIS and other agencies, for example, responses to FOIA requests can sometimes take an entire year or more to process, and the requests might still be denied. These delays and the possibility of denial make it difficult for advocates to put the requested information to good use within a reasonable amount of time.

The FOIA process often ends up being very expensive as well. Processing FOIA requests requires the full-time effort of hundreds of employees. At DHS in 2017, the equivalent of 552 full-time employees were dedicated to receiving, processing, and releasing FOIA requests. Inevitably, the government rejects some portion of the FOIA petitions. In order to obtain information requested, some portion of FOIA petitioners file suit against the agency that denied that request. Defending those FOIA lawsuits is an expensive proposition. In the case of the DHS, a report is released every year detailing the costs of litigating FOIA lawsuits. In 2017, FOIA litigation cost the DHS nearly \$3.4 million dollars. Together with general administration costs of FOIA requests, the DHS spent \$56.6 million in 2017.²⁷ The FOIA process as currently constructed is incredibly expensive for the federal government.

Even when FOIA requests are granted, there may be problems with the data released by the government that make the information less than useful. For example, the federal agency may redact key bits of information, claiming a privacy exemption, or some of the data may appear unreliable, inconsistent, or difficult to interpret. The record-keeping practices of the agency may also be an obstacle. One example is USCIS, which stores much of the information it collects on nonimmigrant work visas on paper files, rather than electronically. As a result, even when USCIS grants a FOIA request, it may only be able to release the parts that have been transferred to an electronic format.

Case Study: Requesting J-1 Data using FOIA

One researcher’s prolonged efforts over three years serve well to illustrate how arduous and inefficient the process can be. Researcher Cate Bowman began a request for two years (2012-2014) of J-1 Summer Work Travel data in 2015. She first requested information from the Department of Homeland Security (DHS). That request was denied by DHS, citing DOS as the controlling agency of the requested data since the DOS administers the program. DHS therefore told Bowman to request the data from DOS instead. Thirteen months after Bowman submitted the FOIA request to DOS, that agency also denied her request, stating that J-1 Summer Work Travel data was housed in a system that was “owned and maintained” by DHS (Student and Exchange Visitor Information System – SEVIS). After being shuttled back and forth between the two agencies, Bowman elected to submit a new request to DOS, this time requesting only one year of data. The data finally arrived on a compact disk. Unfortunately, it was presented as a scanned Portable Document File (PDF) document that was more than 2,600 pages in length. Bowman and her team were forced to spend the following year and a half transferring that information to a useable spreadsheet format. In total, obtaining the data via FOIA request required waiting over 18 months and more than 500 hours of work to convert the data into a format useful to any kind of analysis.²⁸

Obtaining even the most basic information on nonimmigrant work visas through FOIA requests is unreliable and ad hoc, especially for organizations and advocates that need key data on nonimmigrant visas to aid advocacy and trafficking prevention efforts. In an era of big data, the current situation is inexcusably inefficient. Obscuring information and releasing it only through litigation is draining resources from government agencies and civil society organizations that should be collaborating closely to prevent trafficking, protect trafficking victims, and punish traffickers.

2017 DHS FOIA COSTS

Number of “Full-Time FOIA Employees”	386.15
Number of “Equivalent Full-Time FOIA Employees”	166.04
Total Number of “Full-Time FOIA Staff”	552.19
Processing Costs	\$53,298,043.08
Litigation - Related Costs	\$3,371,007.54
Total Costs	\$56,669,050.62
Total Amount of FOIA Fees Collected	\$13,502.07
Percentage of FOIA Costs Covered by FOIA Fees	0.03%

Department of Homeland Security, *2017 Freedom of Information Act Report to the Attorney General of the United States and the Director of the Office of Government Information Services*, (February 2018), <https://www.dhs.gov/sites/default/files/publications/FY%202017%20DHS%20FOIA%20Annual%20Report.pdf>

H-2A Farmworkers Assert They Were Trafficked

Alvarado-Flores v. Garcia-Pineda

The Garcias were granted a petition to bring 80 H-2A guestworkers from Mexico to cultivate and harvest tobacco, cucumber, and sweet potatoes during the 2015 growing season in North Carolina. The Garcias promised their recruits a wage of at least \$10.32 per hour. Through third party agents, the Garcias recruited Mexican workers who they required to pay large recruitment fees before they were hired, ranging from \$850-\$1500 USD. In July 2015, the workers arrived in North Carolina but found that instead of working for the employer listed in the H-2A petition, they were sent to various farms throughout the state. The workers were housed in a remote and hidden labor camp with no running water, adequate lighting, or safe walkways. The Garcias also confiscated the workers' personal documents including passports and denied them any chance to seek out medical care. One worker broke his ribs in a workplace accident but was denied sufficient medical attention and was later unable to receive workers' compensation because the Garcias failed to complete the necessary paperwork. The Garcias also employed intimidation tactics to ensure worker compliance. Workers were ridiculed, verbally berated, and physically threatened. The workers described feeling hopeless and very afraid, and eventually filed a civil suit against the Garcias in federal court to seek redress for the poor treatment they received.

Alvarado-Flores v. Garcia-Pineda, 5:17-cv-00369, U.S. District Court for the Eastern District of North Carolina



The Case for Transparency

The U.S. government already possesses a vast amount of data on nonimmigrant work visas, but most of this data is not published. Anti-trafficking advocates and researchers must instead try to access data through an inefficient and burdensome FOIA request process, which drains their resources as well as those of the government. The inaccessibility of data on guestworker visa programs is harmful to trafficking prevention efforts and, ultimately, the integrity of nonimmigrant work visa programs. Moreover, it is unnecessary: government agencies already collect the data that advocates need. All that remains is to make it publicly available.

Increased access to existing nonimmigrant visa data that is already collected as part of the application process for work visas would bring a much-needed dose of transparency to the U.S. immigration system. Transparency would drastically improve the ability of anti-trafficking advocates to protect vulnerable migrants before and after they arrive in the United States. Increased access to nonimmigrant visa data would also improve the quality of public policy debates surrounding guestworker programs, including their benefits and their flaws.

Conclusion

Cases of human trafficking under nonimmigrant work visa programs represents a shameful abuse of the U.S. immigration system and often involve numerous violations of labor law. Combatting trafficking and improving these visa programs requires holistic, accurate, and up-to-date data, and that data must be available to those who need it most, whether they are migrants considering a job offer to work on a temporary visa, advocates attempting to target their prevention campaigns, or policymakers seeking to improve temporary foreign worker programs. Without access to reliable data about guestworker programs, worker advocates, policymakers, and the general public will lack the evidence they need to devise trafficking survivor outreach and prevention plans, or to improve public policies relating to the employment of temporary foreign workers. Outreach and prevention efforts will be hindered if advocates don't know which employers use nonimmigrant work visa programs and where temporary foreign workers are located.

Transparency can help to put the guestworker system on the path to modernization, integrity, and credibility. Transparency and fairness are bipartisan concerns. Members of Congress from both parties and on all sides of the immigration debate should come together to support increased access to guestworker data – to protect workers from human trafficking, and to build fair and credible temporary work visa programs where migrants are paid fairly and treated with dignity.

Appendix A


Temporary Foreign Worker Visa Categories

Temporary foreign workers participate in a wide range of industries and sectors of the economy, including seasonal occupations like agriculture (**H-2A**),²⁹ landscaping, forestry, hospitality, and seafood processing (**H-2B**),³⁰ and technical fields like technology and medicine (**H-1B**).³¹ Other visas, like the **TN** visa (for Canadian and Mexican professionals),³² **L-1** (for intracompany transfers, specifically management and employees with “specialized knowledge”),³³ and **O-1** (for persons with extraordinary ability) also allow holders to work.³⁴ Some nonimmigrant visas, like the **F-1** (for university students)³⁵ and the **J-1**, (intended to facilitate cultural or educational exchange), also permit work, but employment is not their primary purpose.³⁶ The **B-1** visa for “business visitors” generally does not allow employment, but there are certain exceptions.³⁷ B-1 holders can be employed as construction supervisors,³⁸ domestic workers,³⁹ and in occupations that would normally require the nonimmigrant to obtain an H-1B or **H-3** visa.⁴⁰

For more information on the nonimmigrant visas allowing work, please see Justice in Motion’s online resource *Visa Pages*, accessible at <https://www.justiceinmotion.org/visa-pages>.

Appendix B

FOIA Request Timeline: Requesting J-1 Visa Data Using Freedom of Information Act Process

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- Researcher Cate Bowman submitted a Freedom of Information Act (FOIA) request to Department of Homeland Security (DHS) for demographic and employment placement data for participants in the J-1 Summer Work Travel Program, for the years 2012-2014 on April 6, 2015. This request was denied, with the rationale that “information pertaining to J-1 SWT program participants is under the purview of DOS.”
 - Bowman then submitted a second FOIA request to the Department of State (DOS) for the same data at the same time she appealed the DHS’s denial of her initial FOIA request.
 - On May 15, 2015, the DHS upheld its denial of the original FOIA request.
 - DOS also denied the FOIA request on June 30, 2016, explaining that the data was housed in the Student and Exchange Visitor Information System (SEVIS), which was “owned and maintained” by DHS. DOS therefore recommended that the request be directed to DHS.
 - In August of 2016, Bowman made a second request for J-1 Summer Work Travel data from DOS, this time restricting their request to 2015 data only. She also appealed the DOS denial of the original two-year data request.
 - On October 17, 2016 the 2015 data requested from DOS arrived on a compact disk, presented as a 2,639-page, scanned Adobe Portable Document Format (PDF) document. Researchers then spent 18 months working to convert the PDF data into a usable spreadsheet format.
 - In April of 2018, the data was finally completely converted into spreadsheets that could be analyzed and used for an academic study.⁴¹

Endnotes

1 This report uses “nonimmigrant visa programs” to refer to visas issued by the United States for individuals who wish to enter the U.S. on a temporary basis (see <https://www.cbp.gov/travel/international-visitors/visa-waiver-program/requirements-immigrant-and-nonimmigrant-visas>). Many of these nonimmigrant visa programs allow work; participants in these programs are commonly known as temporary foreign workers or “guestworkers.” Some advocates find the term “guestworker” an unacceptable euphemism for programs under which, in practice, many workers have been abused. However, “guestworker” is a term frequently employed by journalists and anti-trafficking advocates (see, for instance, American University Washington College of Law International Human Rights Law Clinic and Centro de los Derechos del Migrante, *Picked Apart: The Hidden Struggles of Migrant Worker Women in the Maryland Crab Industry* (2010); Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States* (2013); and Polaris, *Human Trafficking on Temporary Work Visas: A Data Analysis 2015-2017* (2018)). In alignment with common usage, this report therefore employs “temporary foreign worker” and “guestworker” interchangeably and refers to overall programs as “nonimmigrant work visa programs” “temporary foreign worker visa programs,” “temporary foreign worker programs,” and “guestworker programs,” also interchangeably.

2 Human Trafficking is a crime that involves exploiting a person for labor, services, or commercial sex. The Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations define human trafficking as: a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 22 U.S.C. § 7102(9); see generally 18 U.S. Code Chapter 77—Peonage, Slavery, and Trafficking in Persons, §§ 1581-97.

3 See Appendix A. For more information on the distinctions between nonimmigrant visas allowing work, please see Ashwini Sukthankar, *Visas Inc.*, Global Workers Justice Alliance (now Justice in Motion), 2012, accessible at <https://bit.ly/3gXAWFF>. *Visas, Inc.* is one of the first attempts to describe the complicated and fragmented system that is the U.S. temporary foreign worker system.

4 Daniel Costa and Philip Martin, *Coronavirus and farmworkers: Farm employment, safety issues, and the H-2A guestworker program*, Economic Policy Institute (March 24, 2020), <https://www.epi.org/publication/coronavirus-and-farmworkers-h-2a/>, Figure B; citing U.S. Department of Labor, Office of Foreign Labor Certification, OFLC Performance Data, and U.S. Department of State, Bureau of Consular Affairs, *Nonimmigrant Visa Statistics*.

5 Ruth Ellen Wasem, *Immigration: Visa Security Policies*, Congressional Research Service (November 18, 2015), <https://fas.org/sgp/crs/homesec/R43589.pdf>.

6 A few visa classifications for college educated guestworkers

or those with extraordinary ability permit a 60-day grace period allowing the worker to remain in the United States to find new employment.

7 T nonimmigrant status is a temporary immigration benefit permitting victims of a severe form of human trafficking, and qualifying family members, to remain in the United States for having assisted the investigation or prosecution of human trafficking crimes. Qualifying T nonimmigrants are eligible for employment authorization and certain federal and state benefits and services and may become lawful permanent residents. See U.S. Citizenship and Immigration Services, *Victims of Human Trafficking: T Nonimmigrant Status*, <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

8 U.S. Government Accountability Office, *H-2A and H-2B Programs: Increased Protections Needed for Foreign Workers*, March 2015 (revised on May 30, 2017), <https://www.gao.gov/assets/690/684985.pdf>.

9 Polaris website, <https://polarisproject.org/>.

10 The National Human Trafficking Hotline attempts to connect human trafficking victims and survivors to critical support and services to get help and stay safe, and to equip the anti-trafficking community with the tools to effectively combat all forms of human trafficking. It is a national, toll-free hotline, available to answer calls, texts, and live chats from anywhere in the United States, 24 hours a day, 7 days a week, in more than 200 languages. See <https://humantraffickinghotline.org>.

11 Polaris, *Human Trafficking on Temporary Work Visas: A Data Analysis 2015-2017*, <https://polarisproject.org/human-trafficking-temporary-work-visas-data-analysis-2015-2017>.

12 See Appendix A.

13 The Human Trafficking Legal Center, *Federal Criminal and Civil Trafficking Cases Involving Legal Visas* (May, 2020), available by request at <http://www.htlegalcenter.org/resources/case-database/>.

14 Colleen Owens et al., *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*, Urban Institute (October 21, 2014), <https://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states>.

15 Efforts do exist to provide resources to close this information gap. One example is *Contratados*, a peer-informed review service for both recruiters and employers using the U.S. temporary foreign worker program. *Contratados* is operated by Centro de los Derechos del Migrante, and focuses primarily on international recruitment in Mexico. See <https://contratados.org>.

16 For examples, please see: International Labor Recruitment Working Group, *Shining A Light on Summer Work: A First Look at the Employers Using the J-1 Program*, July 30, 2019, <https://fairlaborrecruitment.files.wordpress.com/2019/07/shining-a>

[light-on-summer-work.pdf](#), (J-1 Summer Work Travel participants report finding wages, work conditions, and housing that are sub-standard and less than promised at their recruitment); Stephanie Hanes, Modern slavery: Labor Trafficking is Everywhere and Nowhere, October 26, 2015, Christian Science Monitor, <https://www.csmonitor.com/World/2015/1026/Modern-slavery-Labor-trafficking-is-everywhere-and-nowhere>, (H-2B carnival workers were made to endure illegal work and living conditions, earning less than a quarter of their promised wage); Kevin C. Hall, Moultrians charged in human trafficking case in Wisconsin, May 30, 2019, https://www.moultrieobserver.com/news/local_news/moultrians-charged-in-human-trafficking-case-in-wisconsin/article_1c722254-82e7-11e9-a665-bbd82c100fa9.html, (H-2A workers contracted to work in Georgia were moved illicitly to farms in Wisconsin).

17 See for example, the data and reports posted on the Department of Homeland Security's Office of Immigration Statistics webpage, <https://www.dhs.gov/office-immigration-statistics>, the USCIS's Buy American Hire American page, <https://www.uscis.gov/legal-resources/buy-american-hire-american-putting-american-workers-first>.

18 OFLC Performance Data, Office of Foreign Labor Certification, U.S. Department of Labor, <https://www.foreignlaborcert.doleta.gov/performance/cfm>.

19 "Buy American and Hire American: Putting American Workers First," USCIS website, <https://www.uscis.gov/legal-resources/buy-american-hire-american-putting-american-workers-first>.

20 See USCIS, "Reports and Studies," <https://www.uscis.gov/tools/reports-studies/reports-and-studies>.

21 U.S. Immigration and Customs Enforcement, Student and Exchange Visitor Program, <https://www.ice.gov/sevis>.

22 See DHS Office of Immigration Statistics, Annual Flow Report, Nonimmigrant Admissions (October 2018), https://www.dhs.gov/sites/default/files/publications/Nonimmigrant_Admissions_2017.pdf.

23 Laura Francis, "Paperless Intake Is Immigration Agency Director's Top Priority," Bloomberg Law (Oct. 17, 2018), <https://news.bloomberglaw.com/daily-labor-report/paperless-intake-is-immigration-agency-directors-top-priority>.

24 The Obama White House, Transparency and Open Government Memorandum for the Heads of Executive Departments and Agencies (January 21, 2009), <https://obamawhitehouse.archives.gov/the-press-office/transparency-and-open-government>.

25 The Trump Administration, Presidential Executive Order on Buy American and Hire American, (April 18, 2017), <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-buy-american-hire-american/>.

26 "Buy American and Hire American: Putting American Workers First," USCIS website, <https://www.uscis.gov/legal-resources/buy-american-hire-american-putting-american-workers-first>.

27 Department of Homeland Security, 2017 Freedom of Information Act Report to the Attorney General of the United States and the Director of the Office of Government Information Services, (February 2018), <https://www.dhs.gov/sites/default/files/publications/FY%202017%20DHS%20FOIA%20Annual%20Report.pdf>.

28 For a detailed timeline of this FOIA request, see Appendix B. See also International Labor Recruitment Working Group, Shining A Light on Summer Work- A First Look at the Employers Using the J-1 Summer Work Travel Visa (June, 2019), available at <https://fairlaborrecruitment.files.wordpress.com/2019/07/shining-a-light-on-summer-work.pdf>.

29 See Justice in Motion, Visa Pages: H-2A Visa, <https://bit.ly/2Whwji3>.

30 See Justice in Motion, Visa Pages: H-2B Visa, <https://bit.ly/2WzMUOj>.

31 See Justice in Motion, Visa Pages: H-1B Visa, <https://bit.ly/3j39GHO>.

32 See USCIS, TN NAFTA Professionals, <https://www.uscis.gov/working-united-states/temporary-workers/tn-nafta-professionals>.

33 See Justice in Motion, Visa Pages: L-1 Visa, <https://bit.ly/32tUiFt>.

34 See USCIS, O-1 Visa: Individuals with Extraordinary Ability or Achievement, <https://www.uscis.gov/working-united-states/temporary-workers/o-1-visa-individuals-extraordinary-ability-or-achievement>.

35 See Justice in Motion, Visa Pages: F-1 Visa, <https://bit.ly/3fsXLRx>.

36 See Justice in Motion, Visa Pages: J-1 Visa, <https://bit.ly/2OpzH5X>.

37 See Justice in Motion, Visa Pages: B-1 Visa, <https://bit.ly/38UaFFD>.

38 9 FAM 402.2-5(E)(1)(b) - (U) Commercial or Industrial Workers; 8 CFR 214.2(b)(5); 22 CFR 41.31(b)(1).

39 9 FAM 402.2-5(D) - (U) Personal Employees/ Domestic Workers.

40 9 FAM 402.2-5(F) - (U) Aliens Normally Classifiable H1 or H3; 9 FAM 402.2-5(F)(4) - (U) H-3 Trainees.

41 Correspondence with Cate Bowman. See also Catherine Bowman, Flexible Workers, Fissured Workplaces: Cultural Exchange for Hire in An Era of Precarious Labor, Ph.D. dissertation (2019), University of Colorado.



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