

# ILR

INTERNATIONAL  
LABOR  
RECRUITMENT  
WORKING GROUP

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The Honorable Thomas Perez  
Secretary of Labor  
Office of the Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW, Room S-2018  
Washington, DC 20210

The Honorable Jeh Johnson  
Secretary of Homeland Security  
Office of the Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528

March 11, 2015

Dear Secretary Perez and Secretary Johnson:

The International Labor Recruitment Working Group (ILRWG),<sup>1</sup> a coalition of organizations and individuals working to protect the rights of internationally recruited workers across industries and visa categories, calls upon your offices to urge you to immediately jointly issue an interim final rule that contains the substance of *Temporary Non-Agricultural Employment of H-2B Aliens in the United States*, 77 Fed. Reg. 10038 (Feb. 12, 2012) (henceforth “2012 H-2B rule”). DOL and DHS’s joint issuance of the substance of the 2012 H-2B rule would cause the important protections in the 2012 H-2B rule to go into effect, has precedent in DOL’s joint promulgation with DHS of the 2013 Interim Final Rule, 78 Fed. Reg. 24,047 (Apr. 24, 2013), and would prevent further disruption in the H-2B visa program.

### ***Now Is the Time to Act***

In 2014, a district court in the Northern District of Florida vacated and enjoined the 2012 regulations nationwide based on the DOL’s purported inability to promulgate such rules. See *Bayou Lawn & Landscape Services v. Solis*, 3:12-cv-00183-MCR-CJK (N.D. Fla. Dec. 18, 2014). More recently, in *Perez v. Perez*, No. 3:14-cv-682 (N.D. Fla. Mar. 4,

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<sup>1</sup> See more at <http://fairlaborrecruitment.wordpress.com/about-ilrwg/>. The current organizational members of the ILRWG include: AFL-CIO, American Federation of Teachers (AFT), Centro de los Derechos del Migrante, Inc. (CDM), the Coalition to Abolish Slavery and Trafficking (CAST), Department for Professional Employees (DPE), Economic Policy Institute (EPI), Farm Labor Organizing Committee (FLOC), Farmworker Justice, Global Workers Justice Alliance, National Domestic Workers Alliance (NDWA), National Employment Law Project (NELP), National Guestworker Alliance (NGA), Polaris, Safe Horizon, Service Employees International Union (SEIU), Solidarity Center, Southern Poverty Law Center (SPLC), UNITE HERE!, and Verité.

2015) the same court enjoined the 2009 regulations of the H-2B visa program. The net effect of these two cases is that the H-2B program is suspended. Employers have been calling DOL's enforcement power into question. Given these developments, it is imperative that DOL and DHS immediately jointly issue an interim final rule with the substance of the 2012 rule.

### ***The 2012 H-2B Rule Protects Migrant and U.S. Workers***

In order to reduce the fees and debt that often make migrant workers vulnerable to abuses on the job, the 2012 H-2B rule provides for reimbursement for visa and travel costs and fees. Many migrants fall victim to fraudulent or exploitative recruiters abroad; the 2012 H-2B rule would address recruitment fraud by requiring employers to provide workers with job contracts in languages they understand before they enter the U.S. Employers would also provide DOL with copies of all agreements with any agent or recruiter they engage. Contracts with recruiters would also specifically prohibit international labor recruitment fees. Workers filing complaints, who are currently subject to retaliation and blacklisting, would have protections under the substantive requirements of the 2012 H-2B rule. Finally, to prevent over-recruitment and benching of workers, the 2012 H-2B rule requires H-2B employers to pay workers at least three-quarters of the hours promised in the work contracts in a specified time period.

Additionally, the 2012 H-2B rule would require longer and timelier recruitment periods of U.S.-based workers to assure that U.S.-based workers had a fair chance at the job. It would also give local workers a chance to apply for jobs up to within 21 days of the date of need. These types of provisions and others would help the domestic workforce.

### ***H-2B Visa Program Needs Regulation with Strong Worker Protections***

The abuse of H-2B visa holders is well documented and has been brought to light by recent publications and cases. On March 6, 2015, the GAO issued the report *H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers*<sup>2</sup> and found the following: the charging of prohibited fees during recruitment may increase the likelihood of workers tolerating abuse during employment; some workers experience abuses; and workers may have disincentives to report abuses due to fears of retaliation. The GAO report calls for more protections for workers in the H-2B visa program, including that DOL increase its enforcement efforts. In 2014 the Urban Institute issued its report, *Hidden in Plain Sight: Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*<sup>3</sup> and provided many examples of labor trafficking in the H-2B visa program.

Furthermore, the National Human Trafficking Resource Center (NHTRC), a hotline operated by the organization Polaris (a member of the ILRWG) with funding from the U.S. Department of Health and Human Services, has received hundreds of calls from H-2B visa holders in distress. Many of these calls involved indicators of labor exploitation and/or human trafficking, such as employers withholding passports and

<sup>2</sup> GAO, available at <http://www.gao.gov/products/GAO-15-154>.

<sup>3</sup> Urban Institute, available at <http://www.urban.org/UploadedPDF/413249-Labor-Trafficking-in-the-United-States.pdf>.



wages, outstanding debts to recruiters and others, fear of physical harm if one attempted to leave, and severely limited freedom of movement. Since 2007, the NHTRC received over 1,400 calls from H-2B visa holders with strong indicators of labor exploitation. Most concerning, also since 2007, Polaris has received more than 150 calls from H-2B visa holders with strong indicators of human trafficking.

Indeed, a recent jury verdict in a case in the Eastern District of Louisiana underscores the vulnerability and high-level of exploitation faced by some H-2B visa holders. *See Verdict Form, David v. Signal International, LLC*, No. 08-1220 (E.D. La. Feb. 12, 2015), ECF No. 2268-2. In the case of *David v. Signal International, LLC*, recruiters lured H-2B guestworkers from India with false promises of permanent U.S. residency. The workers paid tens of thousands of dollars per person to obtain temporary jobs at Gulf Coast shipyards only to find themselves forced into involuntary servitude and living in overcrowded, guarded labor camps. After a seven-year legal battle culminating in a four-week trial, a jury awarded \$14.1 million in compensatory and punitive damages to five guestworkers. Other cases against the company are pending. The U.S. Equal Employment Opportunity Commission has also taken legal action against Signal International. While these legal precedents are groundbreaking and significant, they do not and cannot replace the need for comprehensive regulation that includes strong worker protections.

### ***Conclusion***

The 2012 H-2B rule strikes the appropriate balance between the overlapping and sometimes competing needs of stakeholders affected by the H-2B visa program. The 2012 H-2 rule as drafted and vetted through the public notice-and-comment process would improve worker protections, transparency and accountability in the H-2B visa program, while also combating waste, fraud and abuse in the legal immigration system and providing critical protections for the U.S. labor market and H-2B visa holders. DOL and DHS should act quickly to issue an interim final rule that includes the substance of the 2012 rule.

Thank you for your time and attention to this important matter. Please do not hesitate to contact the ILRWG with further questions.

Sincerely,

s://Rachel Micah-Jones

Rachel Micah-Jones  
Executive Director, Centro de los Derechos del Migrante, Inc.  
Chair/Convener of the International Labor Recruitment Working Group

cc:// Esther Olavarria, Deputy Assistant Secretary of Homeland Security for Policy;  
Matthew Colangelo, Chief of Staff, Department of Labor; Maria M. Odom, USCIS  
Ombudsman & Chair of the DHS Blue Campaign



Employment  
and  
Training  
Administration



U.S. Citizenship  
and Immigration  
Services

MAR 31 2015

Rachel Micah-Jones  
Executive Director  
Centro de los Derechos del  
Migrante, Inc.  
519 North Charles Street, Suite 260  
Baltimore, MD 21201

Dear Ms. Micah-Jones:

Thank you for your correspondence to Secretary of Labor Thomas Perez and Secretary of Homeland Security Jeh Charles Johnson regarding the continued operation of the H-2B temporary nonagricultural worker program. As you are aware, on March 4, 2015, the U.S. District Court for the Northern District of Florida, in the case of *Perez v. Perez*, No. 3:14-cv-682, vacated U.S. Department of Labor (DOL) regulations from 2008 governing the H-2B program. The court vacated those regulations on the ground that DOL lacks authority under the Immigration and Nationality Act to engage in unilateral legislative rulemaking concerning the H-2B program. The court further vacated and enjoined DOL from enforcing the rule, and DOL was forced to immediately discontinue processing applications for temporary labor certifications in the program. The U.S. Department of Homeland Security (DHS) suspended H-2B adjudications while it reviewed and assessed the district court's decision.

DOL and DHS share your interest in the continued operation of the H-2B program and have taken prompt actions to address the problem. On March 16, 2015, DOL filed an unopposed motion to stay the district court's order until April 15, 2015. The court granted that motion on March 18, 2015. As a result, DOL immediately resumed issuing labor certifications and prevailing wage determinations under the 2008 H-2B rule. The court has since taken further action that has stayed its order while it reviews pleadings recently submitted concerning this litigation. DOL has published frequently asked questions on its website at [www.foreignlaborcert.doleta.gov](http://www.foreignlaborcert.doleta.gov) in order to assist employers and other stakeholders in understanding the scope and effects of the court's order.

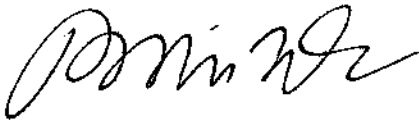
In addition, in conjunction with the filing of DOL's motion on March 17, 2015, DHS resumed adjudications of H-2B petitions based on temporary labor certifications previously issued by DOL. Given the volume of cases received during the current suspension of H-2B adjudications, DHS has suspended premium processing of H-2B petitions until further notice. Once DHS has completed data entry of the pending petitions and reassessed its ability to deliver

appropriate levels of service to premium and non-premium filings, DHS will determine when to accept new premium processing requests.

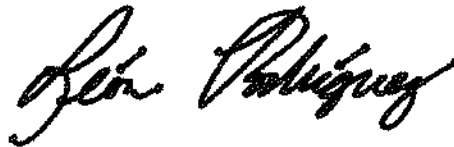
DOL and DHS are also moving expeditiously to fill the regulatory gap resulting from the district court's order. The Departments intend to promulgate a joint interim final rule by the end of April.

Thank you again for your letter. DOL and DHS will continue to keep the affected public informed of developments with respect to the H-2B program.

Respectfully,



Portia Wu  
Assistant Secretary  
Employment and Training Administration  
U.S. Department of Labor



León Rodríguez  
Director  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security