



**U.S. Citizenship
and Immigration
Services**

September 20, 2016

Bruce Goldstein
President
Farmworker Justice
1126 16th Street NW, Suite 270
Washington, DC 20036

Dear Mr. Goldstein:

Thank you for your June 24, 2016 letter. Secretary Johnson asked that I respond on his behalf.

While the Department of Labor (DOL) is in the best position to respond substantively to the important issues you raise, I would like to take this opportunity to share with you the progress and steps that the Department of Homeland Security (DHS) is taking to address the issue of workers' rights.

DHS recognizes the challenges you have identified, and we are working with our federal partners to identify solutions and opportunities for progress. U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement Homeland Security Investigations (ICE HSI), the DHS Office for Civil Rights and Civil Liberties, the Citizenship and Immigration Services Ombudsman, and the DHS Office of Immigration Policy regularly participate in and lead interagency discussions to enhance temporary worker protections to combat exploitation and labor trafficking. Such interagency efforts include those conducted through the Blue Campaign, the Department's unified voice for combating human trafficking. Additionally, DHS has a lead role, alongside DOL and other partners, in the Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment, and Immigration Laws, which was established by the Administration on November 20, 2014, to identify policies and procedures that promote the consistent enforcement of those laws and to protect all workers in the United States.

Further, through the Blue Campaign, the Department continues to offer resources and training for identifying and reporting suspected instances of human trafficking, as well as victim assistance. Additionally, when appropriate, USCIS provides T non-immigrant status to eligible victims of trafficking, and U non-immigrant status to eligible victims of workplace-based crime, including certain individuals who entered the United

States on H-2A non-immigrant visas and who were victimized within the scope of their employment. ICE may also grant “Continued Presence” to individuals identified by law enforcement as being victims of human trafficking during the ongoing investigation into the trafficking-related crimes committed against them. Through ICE HSI, the Department also supports labor trafficking investigations in state and local communities.

In addition, DHS has long been seriously concerned with the practice of requiring H-2A workers to pay recruitment and employment-related fees. In this regard, DHS regulations provide that, as a condition to approval of an H-2A petition, no job placement fee or other compensation (either direct or indirect) may be collected at any time from a beneficiary of an H-2A petition by a petitioner, agent, facilitator, recruiter, or similar employment service entity as a condition of employment. *See* 8 CFR 214.2(h)(5)(xi). Failure to comply with these requirements will, with certain exceptions, result in denial or revocation of an H-2A petition and debarment from the H-2A program, even if the employer itself is not the one that collected such prohibited fees from the H-2A worker.

DHS regulations further require petitioners to notify USCIS of an H-2A worker’s payment of, or agreement to pay, prohibited fees to a recruiter, facilitator, or similar employment service entity within two workdays of gaining knowledge of such payment or agreement. *See* 8 CFR 214.2(h)(5)(xi)(A)(4). Failure to reimburse H-2A workers in full for any such fees generally will result in the employer being barred from participating in the H-2A program for a period of 1 year, unless the employer can provide proof that it has failed, despite its good faith efforts, to locate any such affected workers. To protect workers in such cases, DHS regulations allow an affected worker a 30-day period of time to look for alternate employment or depart from the United States. *See* 8 CFR 214.2(h)(5)(xi)(B).

Protection of H-2A workers is a multi-agency concern. In this regard, DHS has partnered with both DOL and the Department of State (DOS) to enforce the regulatory bar on payment of prohibited fees. For instance, by regulation, DHS will defer to DOL in determining whether certain fees are prohibited. DOL, in turn, has its own regulations ensuring against the payment of such prohibited fees. *See e.g.*, 20 CFR 655.135(j); 20 CFR 655.182(a). DHS also relies on reports from DOS consular officers in determining whether petitioners have complied with the terms and conditions set forth in their H-2A petitions. If, during the course of the consular interview, a consular officer determines that the beneficiary of an H-2A petition paid a prohibited fee, or that the petitioner may have committed fraud or willfully misrepresented a material fact, DOS may return the petition to USCIS for further review and possible revocation.

In addition to these protections, USCIS is currently engaged in ongoing efforts with DOS and DOL to find other constructive ways to prevent labor recruitment violations in the H-2 programs and to possibly provide workers who are victimized with a means of recourse. As part of this ongoing initiative, DHS welcomes the input of

members of the public, and organizations such as yours, in determining ways to better protect H-2A workers who are victims of abuse.

Finally, with respect to combatting fraud in the H-2A program, if an adjudicator determines that there is an articulable basis for believing that a petitioner has engaged in fraud or has willfully misrepresented a material fact, such as the actual number of H-2A workers needed, or use of such workers in locations other than those specified in the DOL-approved temporary labor certification and/or H-2A petition, the H-2A petition will be forwarded for further review and possible referral to ICE HSI for investigation.

Thank you again for your letter and interest in this important issue. Please share this response with the organizations that co-signed your letter. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "León Rodríguez", written in a cursive style.

León Rodríguez
Director

cc: Portia Wu
Assistant Secretary for Employment
and Training
U.S. Department of Labor

David Weil
Wage and Hour Division Administrator
U.S. Department of Labor