

Congress of the United States
House of Representatives
Washington, DC 20515-1013

December 14, 2021

The Honorable Charlotte Burrows
Chair
United States Equal Employment
Opportunity Commission
131 M Street NE
Washington, D.C. 20507

The Honorable Ur M. Jaddou
Director
United States Citizenship and
Immigration Services
111 Massachusetts Avenue NW
Washington, D.C. 20529

Dear Chair Burrows and Director Jaddou,

I write with serious concern over the continued abuse of agricultural workers in the H-2A Guest Worker Visa Program. The inhumane labor practices being perpetrated by a small number of bad actors is deeply troubling and a clear violation of migrant workers' legal rights. The gravity of this situation is underscored by a recent federal indictment, which included 24 co-conspirators and their associates, found to have orchestrated an international forced labor trafficking and money laundering scheme in South Georgia, which culminated in the deaths of two individuals. In light of this incident, it is more urgent than ever that the U.S. Equal Employment Opportunity Commission (EEOC) and U.S. Citizenship and Immigration Services (USCIS) aggressively expand monitoring and enforcement powers in order to protect seasonal and migrant workers.

According to the U.S. Attorney's Office for the Southern District of Georgia, the federal indictment may be one of the largest-ever human trafficking and visa fraud investigations in the country.¹ Once they arrived on U.S. soil, more than 100 foreign workers were threatened with deportation if they did not pay unlawful fees or work off illegal smuggling debt. In addition, workers were required to perform physically demanding work for little or no pay, constrained to live in crowded and unsanitary conditions, and forced to surrender all passport and identification documents. These findings are all in direct violation of the H-2A program guidelines, which require employers to provide no-cost accommodations, sanitation facilities, and fair labor standards that comply with federal regulations.²

As you know, the H-2A program is vital to the success of Georgia's agriculture industry. The program provides visas for roughly 300,000 migrant workers, including more than 27,000 allocations for Georgia in 2020—the state with the second largest participation rate in the nation.³ Georgia consistently ranks first in the nation's production of poultry, peanuts, and pecans, and is

¹ *U.S. v. Patricio et al.*, Indictment, No. 1:10-CR-521 (Southern Dist. GA., filed 5 October 2021). Accessed at: <https://www.justice.gov/usao-sdga/press-release/file/1450546/download>

² 20 CFR § 655.135.

³ Office of Foreign Labor Certification, *H-2A Temporary Agricultural Labor Certification Program - Selected Statistics*, FY20, U.S. Department of Labor, Available at: https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2020_Q4.pdf

also a top producer of eggs, cotton, tobacco, snap beans, blueberries, and peaches.⁴ Without the invaluable labor of seasonal and migrant guestworkers, there would not be sufficient U.S. workers who are able, willing, qualified, and available to perform this work. However, while the H-2A program has expanded over the years, it has left more workers vulnerable to abuse. Extensive reporting of forced labor, “slave-like” working conditions, and widespread migrant exploitation has exacerbated the systemic problems that exist within the H-2A program today.⁵

Given the importance of ensuring the protection of human life, I respectfully request that you provide me with a joint briefing no later than December 29, 2021 to answer the following:

1. When was the last time your agency conducted a review of, or investigation into, H-2A visa program abuses by employers and their recruiting associates? What recommendations, if any, were made?
2. What steps are being taken to provide oversight of contractors or agents who facilitate agreements between H-2A foreign workers and U.S. employers, and what does that oversight entail? What steps are being taken to ensure workers understand the protections afforded to them?
3. How often, if ever, does your agency review the recruiting practices of H-2A employers and their recruiting agents? Specifically, with what frequency does your agency review the prevalence of H-2A employers charging workers recruitment fees and instructing that workers lie to consular officers about paying recruitment fees at the time they apply for an H-2A visa?
4. In the last year, how often has your agency conducted periodic reviews of employers who have been shown to violate immigration laws, wage requirements, housing inspections, and worker safety? If never, why?
5. The federal Fair Labor Standards Act and corresponding state laws require employers to maintain accurate payroll records. Does your agency inspect H-2A employer payroll records for compliance with wage provisions? If so, how often? If never, why?

It is vital that the H-2A program be administered in a way that guarantees guestworkers are protected from abuse, upholds human rights, and ensures that employers who commit these crimes take no place in the program. Thank you in advance for your attention to this important matter and I look forward to your responses.

Sincerely,



David Scott
Member of Congress

⁴ Economic Research Service, *Cash Receipts by Commodity State Ranking* – Year 2020, U.S. Department of Agriculture, Available at: https://data.ers.usda.gov/reports.aspx?ID=17844#P193a48287c5b410ebacc370866f5d62a_8_251iT0R0x32

⁵ *Latest Slavery Indictments Expose Exploitive Nature of H-2A “Guestworker” Program*, (October 5, 2021), Accessed at: <https://ciw-online.org/blog/2021/10/latest-slavery-indictments-expose-exploitive-nature-of-h-2a-guestworker-program/>



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

December 30, 2021

The Honorable David Scott
U.S. House of Representatives
Washington, DC 20515

Dear Representative Scott:

Thank you for your December 14, 2021 letter to U.S. Citizenship and Immigration Services (USCIS) regarding the H-2A nonimmigrant agricultural worker program. We share your concern over the tragic events, including the deaths of two H-2A workers, that led to the recent federal indictment and agree with you that no H-2A worker should be subjected to similar or other forms of abuse.

On October 12, 2021, Secretary Mayorkas issued Policy Statement 065-06 "Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual." This memorandum recognizes the Department of Homeland Security's (DHS's) critical role in ensuring that our Nation's workplaces comply with our laws. To best achieve this goal, the Secretary directed USCIS, as well as Immigration and Customs Enforcement and Customs and Border Protection, to adopt immigration policies that facilitate the important work of federal and state government agencies to enforce wage protections, workplace safety, labor rights, and other laws and standards.

USCIS is dedicated to ensuring the integrity of the immigration process and works tirelessly to deter and detect fraud in all immigration programs. USCIS' principal role in the H-2A process centers around determining initial and continued eligibility for H-2A classification and ensuring that the requirements for H-2A classification have been satisfied. The Department of Labor (DOL), in turn, has primary enforcement authority over the H-2A program and, specifically, over the labor certification process. USCIS routinely collaborates with DOL as well as other partner agencies when fraud, waste or abuse is suspected and will continue those efforts to help ensure noncitizen workers performing essential services are not exploited or forced into labor. USCIS will continue to work with DOL and other partner agencies on this important issue but defers further questions on H-2A enforcement authority and process to DOL.

There are a number of mechanisms in our immigration laws that can offer protection from removal and employment authorization to worksite victims and witnesses. These include the T and U visa programs (for victims of human trafficking and certain crimes, respectively), as well as discretionary authorities such as parole and deferred action that allow for the exercise of prosecutorial discretion for workers who are victims of, or witnesses to, workplace exploitation, on a case-by-case basis, weighing all relevant facts and circumstances, including the legitimate enforcement interests of a federal or state government agency.

We appreciated the opportunity to participate in a briefing with your office about the H-2A nonimmigrant agricultural worker program on December 29, 2021. USCIS also provides responses to your questions below:

1. When was the last time your agency conducted a review of, or investigation into, H-2A visa program abuses by employers and their recruiting associates? What recommendations, if any, were made?

Although USCIS has not conducted a formal study or review of H-2A visa program abuses, USCIS collaborates with DOL and partner agencies when fraud or abuse is suspected. An example of such collaboration is the multiagency investigation called "Operation Blooming Onion," as described by the U.S. Department of Justice. <https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment>.

USCIS remains focused on ensuring the integrity of the immigration process and works to detect and deter fraud in all immigration programs. Employment-based immigration programs require coordination with partner agencies, including DOL. Congress has vested special enforcement authority with the Secretary of Labor to ensure U.S. employers follow all steps in the temporary labor certification process designed to protect U.S. workers from displacement by noncitizen workers and prevent adverse effects on the wages and working conditions of similarly employed U.S. workers. Please see section 218 of the Immigration and Nationality Act, as amended, 8 § U.S.C. 1188 and DOL's implementing regulations.

While USCIS is the final arbiter of eligibility over the H-2A classification, submission of the temporary labor certification is required and incorporated as part of the H-2A petition. USCIS respectfully defers to DOL for a more detailed response on their review or investigation of abuse of the H-2A classification and the temporary labor certification process. USCIS conducts administrative reviews and collaborates with partner agencies, as needed, to address specific instances of suspected fraud or abuse identified when adjudicating H-2A eligibility.

2. What steps are being taken to provide oversight of contractors or agents who facilitate agreements between H-2A foreign workers and U.S. employers, and what does that oversight entail? What steps are being taken to ensure workers understand the protections afforded to them?

Congress has vested authority to, among other agencies, DOL to enforce provisions designed to protect H-2A workers from abuse. USCIS respectfully defers to DOL for information on any specific oversight process or activities. USCIS does not routinely communicate with noncitizen workers when evaluating H-2A eligibility for petitions filed by U.S. employers on their behalf. Should it come to USCIS' attention that such abuses may have occurred, USCIS will share this information with appropriate law enforcement agencies, while taking all reasonable efforts to keep such information confidential in order not to discourage foreign workers from coming forward to report such abuses out of fear of retaliation.

3. How often, if ever, does your agency review the recruiting practices of H-2A employers and their recruiting agents? Specifically, with what frequency does your agency review the prevalence of H-2A employers charging workers recruitment fees and instructing that workers lie to consular officers about paying recruitment fees at the time they apply for an H-2A visa?

Recruiting practices are evaluated both as part of the temporary labor certification process as well as the petition process. USCIS respectfully defers to DOL for specific information on DOL's processes as they relate to the adjudication of applications for temporary labor certifications. USCIS conducts administrative reviews and collaborates with partner agencies, as needed, to address specific instances of suspected fraud or abuse, including potential violations of DHS regulations, identified when adjudicating initial or continued H-2A eligibility.

4. In the last year, how often has your agency conducted periodic reviews of employers who have been shown to violate immigration laws, wage requirements, housing inspections, and worker safety? If never, why?

Although USCIS has not conducted a formal study of H-2A employers, USCIS collaborates with DOL and partner agencies when fraud or abuse is suspected to share information and aid enforcement of labor and immigration laws. Congress has vested authority to, among other partner agencies, DOL to enforce specific provisions designed to protect H-2A workers from abuse. USCIS is dedicated to ensuring the integrity of the immigration process, and works collaboratively with our partners to address specific instances of suspected fraud or abuse identified when adjudicating initial or continued H-2A eligibility.

5. The federal Fair Labor Standards Act and corresponding state laws require employers to maintain accurate payroll records. Does your agency inspect H-2A employer payroll records for compliance with wage provisions? If so, how often? If never, why?

USCIS does not generally inspect payroll records relating to H-2A workers to ensure compliance with the Fair Labor Standards Act and any corresponding state laws relating to wages because it does not have the authority to enforce those provisions. Congress vested enforcement authority with DOL. USCIS conducts administrative reviews and collaborates with partner agencies, as needed, to address specific instances of suspected fraud or abuse identified when adjudicating initial or continued H-2A eligibility.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal flourish line.

Ur M. Jaddou
Director