



# Freedom Network USA

Special Rapporteur on Trafficking in Persons, Especially Women and Children

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VIA EMAIL

January 31, 2022

Ms. Mullaly-

Freedom Network USA (FNUSA) (<https://freedomnetworkusa.org/>) submits the following comments for your report on forced labor in the agriculture sector. FNUSA is the US' largest coalition of service providers and advocates working directly with human trafficking survivors. We are committed to the human rights based approach to human trafficking, placing a trafficked person's priorities and narrative at the center of our work. FNUSA and our 90+ members include Survivors, legal and social service providers, academics, and advocates.

The US agriculture industry is among the most dangerous industries in the US<sup>1</sup>. Laws that consolidate power in employers and fail to protect workers are layered onto an economy that relies on undocumented workers and invests in enforcement activities that harm workers<sup>2</sup>. Added to that, the emergence of climate change and COVID push more vulnerable workers into isolated areas where they are more likely to get sick. In summary, US laws allow and encourage abuse and exploitation of agricultural workers, the government fails to sufficiently investigate or prosecute their trafficking, and the US fails to provide them sufficient services and support.

## **Key Issues:**

### **1. Migrant seasonal workers and migrant worker visa regimes**

The US migrant and seasonal worker visas are designed to disempower workers and leave them at the mercy of abusive employers. The visas are typically tied to the employer, denying workers the ability to change jobs if they are mistreated. The US Government engages in little oversight to ensure that employers are complying with the terms of the visas. FNUSA's Policy Papers on H-2<sup>3</sup> and J<sup>4</sup> visas detail these systemic issues. Further analysis of the reforms needed in the H-2A Visa Program are found in the Centro de los Derechos del Migrante (CDM) report: Ripe for Reform<sup>5</sup>. Recent labor trafficking prosecutions including Operation Blooming Onion (extensive labor trafficking in agriculture in the southern US abusing H-2A visas)<sup>6</sup>. Trafficking into shepherding in Colorado has also been documented<sup>7</sup>.

DHS and the State Department fail to publish data about all employment based visas (including J visas, not typically granted for agricultural work, but sometimes exploited by the agricultural sector). Much of this data is collected but not made available to the public, limiting the ability of NGOs to analyze the use and abuse of these visas. The International Labor

Recruitment Working Group's reports, *Shining a Light on Summer Work*<sup>8</sup> and *Shortchanged*<sup>9</sup>, detail more on this issue for J-1 Visas.

Immigrants and migrants working in the cannabis industry, in both lawful and unlawful growing operations, face unique vulnerabilities<sup>10</sup>. While cannabis is legal under some state and local laws, it remains criminalized under federal law. Foreign national workers fear that they will lose their chance at lawful immigration status, or will be deported, for seeking support and assistance for harms experienced in the cannabis industry. The US must legalize the cannabis industry to protect workers from ongoing abuse and exploitation.<sup>11</sup>

The US should strengthen protections for all work-related visas, including visa portability with a path to citizenship, prohibition of worker-paid fees, publication of visa information in a searchable database (including the number of visas authorized in each classification, names of employers, occupations, and wages promised), and private rights of action to give workers access to federal court. Additional recommendations are available from Migration that Works<sup>12</sup>.

## **2. Gender, migrant workers and exploitation in the agriculture sector**

Women are disproportionately represented in sectors rife with abusive working conditions. Additionally, women in all sectors face gendered violence. The CDM report, *Breaking the Shell*<sup>13</sup>, details abuse of migrant women crab pickers. The Atlantic reported on the widespread harassment and sexual assault of women working in the fields.<sup>14</sup> Female migrant workers have submitted a petition to the USMCA for protection from gender discrimination.<sup>15</sup> Agricultural workers are isolated by geography, language, long hours, and little time off. Services and support need to be brought to the workers, in their own languages, and provided promptly in culturally appropriate ways.

## **3. Enforcement: labor standards, recruitment, and supply chains**

Labor protections are almost exclusively civil matters in the US, and primarily rely on workers bringing forward complaints as the mechanism of enforcement. A patchwork of local, state, and federal laws are confusing for workers and lead to piecemeal protections. Workers with little bargaining power, interrupted access to education, limited English proficiency, lack of familiarity with the US legal system and protections, and working in remote locations are unlikely to be able to enforce their rights. The federal DOL, and their counterparts at the state and local levels, have enforcement authority, but a chronic shortage of capacity and political support. Changing this dynamic to increase legal protections, workplace and wage standards, and enforcement by government officials at the federal, state and local levels would increase safety for all workers.

Stricter regulation of labor recruiters is needed to protect migrants from exploitation. Migrant workers routinely pay high recruitment fees to secure jobs. Regulations of H-2 nonimmigrant visas purport to ban recruitment fees, but they are rarely enforced and enforcement actions have led to workers being charged fees rather than the employer or recruiter. In addition, inconsistent regulations on recruitment fees across work-authorized nonimmigrant

visa classifications complicate and confuse enforcement. Strengthened anti-trafficking provisions in the Federal Acquisition Regulation governing federal contractors went into effect in 2019, including bans on recruitment fees, confiscating passports, and misleading recruitment. We urge transparency and adequate enforcement of these regulations to protect migrants. The US should extend protections set out in the FAR to all migrants that: require labor recruiters to disclose the terms and conditions, including visa terms; bar charging workers any fees; prohibit labor recruiters from knowingly providing workers with false or misleading information; require recruiters to pay a bond and register; and make employers (and not workers) liable for any violations of these protections.

#### **4. Accountability: trade sanctions, investigations and prosecutions, prevention program challenges**

There is no systematic effort to identify and address labor trafficking in the US. Agriculture is excluded from most labor protections due to racism- a post-reconstruction reliance on formerly enslaved workers that have been replaced by migrants. DOL and EEOC have engaged in small scale operations and have provided some training and support for their staff, but their funding is insufficient to tackle the problem. For more details, read FNUSA's Policy Paper on Farmworkers.<sup>16</sup>

As reported in the *2021 Trafficking in Persons Report: United States*<sup>17</sup>, in FY2020, DOJ initiated 210 federal human trafficking prosecutions, only 14 of which were labor trafficking cases. This focus on sex trafficking stands in stark contrast to the reports from US government-funded service providers. 23% of survivors served by DOJ-funded providers were labor trafficking victims, and 7% were victims of both labor and sex trafficking. 66% survivors served by HHS-funded foreign national serving providers were victims of labor trafficking and 12% were victims of both labor and sex trafficking.

The US sees labor trafficking as a supply chain issue occurring primarily outside of the US, as indicated by the recently published *National Action Plan to Combat Human Trafficking*<sup>18</sup>. The Prevention pillar of the plan includes outreach to and education of vulnerable communities and increased identification of trafficking in supply chains referencing efforts to address trafficking outside of the US. Notably absent are any specific commitments to fundamentally change the policies that allow employers to profit from trafficking beyond a vague plan to review migrant worker visas and increasing awareness among visa holders.

#### **5. Trafficking of persons from minority communities, indigenous peoples, internally displaced persons and refugees in the agricultural sector**

Undocumented workers in the United States are especially vulnerable to exploitation. DOJ-funded studies found that over 30% of unauthorized Spanish-speaking migrant workers in San Diego CA<sup>19</sup> and over 18% of migrant farmworkers in North Carolina<sup>20</sup> were likely victims of labor trafficking and much higher percentages (55% and 25%) were victims of lesser forms of

labor abuses. The US must normalize the immigration status of its undocumented workforce to decrease their substantial vulnerability to abuse and exploitation.

Indigenous people are increasingly migrating to the US<sup>21</sup> due to climate change and face increased risk of trafficking and a lack of services and support in their languages. The US government does not provide outreach and support materials in Indigenous languages, does not provide interpretation in immigration offices, and does not adequately support the health and safety needs of these migrants. The US has dismantled the asylum system and continues to deny entry based on Title 42 and continues MPP which puts asylum-seekers in danger. The US fails to provide sufficient support and protection<sup>22</sup> to unaccompanied minors seeking safety in the US<sup>23</sup>.

#### **6. Rights of persons with disabilities and trafficking in the agriculture sector: effective prevention, protection and partnership measures**

People with disabilities are vulnerable to trafficking in a range of industries, including agriculture. For a comprehensive overview, see HTLC Fact Sheet, *Trafficking of Persons with Disabilities in the US*.<sup>24</sup> The US government must provide more comprehensive services and support, including legal and social services assistance, to ensure that people with disabilities are not abused and exploited.

#### **7. Child trafficking in the agriculture sector: effective prevention and protection strategies**

The US fails to comprehensively address the labor trafficking of children and youth. The FNUSA Policy Paper, *Child Trafficking for Labor*<sup>25</sup>, and this report on trafficking of children submitted to the UN in April 2021<sup>26</sup> provide details about this ongoing problem. The US failure to identify and respond to the labor trafficking of youth is exemplified by the exclusion of labor trafficking from the Preventing Sex Trafficking and Strengthening Families Act. The US must expand its efforts by including labor trafficking whenever, and wherever, sex trafficking of youth is addressed.

The trafficking of unaccompanied children (UACs) in the US is especially complex. UACs often report that they are exploited in their home countries, on their journey to the US, at migrant camps in which they are forced to wait for entry into the US, or while crossing into the US. US law provides a different level of protection and services depending on where and when the exploitation occurred, leaving many children vulnerable to ongoing abuse and exploitation. For more analysis of the current challenges faced by UACs, read the recent report from KIND<sup>27</sup>.

#### **8. Sustainability, climate change and human trafficking in the agricultural sector**

As documented by the US government, climate change is driving migration patterns and increasing risk of trafficking.<sup>28</sup>

## 9. Roles of trade unions, workers' associations and civil society in combating trafficking in the agricultural sector

Farmworkers are excluded from labor protections under most state laws in the US, including the right to organize and bargain collectively. New York, for example, has recently extended overtime and collective bargaining rights to farmworkers, but implementation is lagging<sup>29</sup>. US law should protect all farmworkers and protect their right to organize.

Funding for services for trafficking survivors continues to be insufficient to meet the needs as schools, child welfare systems, and legal and social service providers increase their capacity to identify trafficking victims. Agricultural workers are isolated and struggle to access healthcare and legal services, as exemplified during COVID, agricultural workers were excluded from health care and cash benefits<sup>30</sup>. The US must continue to increase the funds available for trafficking victim service providers, and to make those services available to all victims regardless of their age, gender, nationality, sexual orientation, gender identity, or type of trafficking.

## 10. Promising practices to combat human trafficking in the agricultural sector

Worker-driven social responsibility<sup>31</sup> shows promise when the government refuses to act. CIW and Fair Food Program<sup>32</sup> and Milk with Dignity<sup>33</sup> are two examples of successful implementation of this approach in agricultural sectors in the US. Additionally, California's Little Hoover Commission has issued a series of reports laying out what should be done at the state level to identify labor trafficking<sup>34</sup>, coordinate a state-wide response<sup>35</sup>, and help victims<sup>36</sup>.

Thank you for your consideration of these comments.

Sincerely,



Jean Bruggeman  
Executive Director  
Freedom Network USA

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