# Culture Shock

## THE EXPLOITATION OF J-1 CULTURAL EXCHANGE WORKERS

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## THE EXPLOITATION OF J-1 CULTURAL EXCHANGE WORKERS

J-1 workers are promised the opportunity to experience American culture. Too often, they are exploited for cheap labor.

# EXECUTIVE SUMMARY

They come to experience all America has to offer.

They hope to pay their way by working a summer job as they experience a new culture and learn English. They work in our hotels, restaurants, fast-food chains and amusement parks. They work for companies with names synonymous with the United States: McDonald's, Disney, Hilton and more.

They're J-1 guest workers.

Many of them are college students participating in the J-1 visa Summer Work Travel Program. Others come here to train in their career field as part of the J-1 Trainee and Intern Program. Together, these two J-1 visa categories account for more than 130,000 foreign workers arriving in the U.S. each year to work full-time as part of the wider J-1 Visa Exchange Visitor Program.

Congress created the program more than 50 years ago "to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange."[1] Foreign youths pay American job placement agencies designated by the Department of State — called "sponsors" — to be placed with U.S. employers in jobs that offer cultural exchange opportunities and, for trainees and interns, professional job training.

But the workers in the Summer Work Travel and the Intern and Trainee programs often discover that the promise of "cultural exchange" is an empty one.

Employers are using the program to fill labor needs, transforming a program designed to foster international goodwill into a source of cheap, exploitable labor. For the employers, the program offers a way to cut labor costs. Employers do not have to pay payroll taxes for J-1 workers.[2] The savings an employer can realize by not paying an employee's Medicare, Social Security or federal unemployment tax — around 8 percent on its total payroll expenses — have led staffing agencies to promote the program as an inexpensive labor force.[3]

The sponsors and their overseas partners — the groups that recruit and screen participants — also are reaping a windfall by charging J-1 workers hundreds or even thousands of dollars in fees to participate in the program. These fees are completely unregulated, and students and their families often fall into debt to pay them and other travel expenses. This recruitment

**The undeniable conclusion is that these J-1 programs, initiatives once envisioned as tools of diplomacy, have become little more than a source of cheap labor for employers.**

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debt leaves students vulnerable to exploitation. Faced with pressure to pay off loans, students and interns may opt to endure workplace abuse until they can return home.

J-1 workers often discover the cultural experience they invested in does not exist. They are frequently placed in low-paying jobs with little or no opportunity for cultural exchange. Students told the SPLC that their experience is dominated by work without the opportunity to enjoy American culture. This is true even after the State Department, which oversees the program, began requiring sponsors in 2012 to place J-1 students in jobs that ensure they have cultural exchange opportunities on and off the job. From students' experiences, it's clear this cultural exchange requirement too often exists only on paper.

When these workers aren't on the job, they are often forced to live in overcrowded housing with other J-1 workers. They are frequently paid less than the minimum wage after their employer makes excessive deductions for housing, uniforms, transportation and other expenses. Some J-1 workers discover they must work a second job just to survive.

But this is more than a story of debt and disappointment. It has put some young students at risk of human trafficking and other nefarious activity.[4] The State Department's 2013 Trafficking in Persons Report noted that vulnerabilities in the J-1 program can "potentially facilitate human trafficking."[5]

When these workers complain or try to stand up for their rights, they find few places to turn. The State Department claims it has no authority to sanction employers and typically does little to help workers with employment-related issues. J-1 workers cannot access federally funded legal services to help them address workplace violations. And few private lawyers are willing to take a complicated case that involves internationally recruited workers.

U.S. workers also suffer from the program's weak regulation. Employers aren't required to recruit U.S. workers before hiring J-1 workers. There are no meaningful regulations that prevent employers from paying J-1 workers a wage that undercuts U.S. worker wages. This lack of protection is particularly harmful to young U.S. workers who are facing high youth unemployment rates.[6]

It should be no surprise that efforts to reform this program have been met with stiff opposition by those profiting from it. When the U.S. Senate passed anti-trafficking provisions to regulate overseas recruiters in 2013 — including a ban on recruitment fees charged to workers seeking temporary work visas — J-1 sponsors and employers persuaded lawmakers to carve out an exception for the J-1 visa.[7]

This report is based on hundreds of interviews with J-1 Summer Work Travel participants and interns and trainees working across the South, primarily in the hospitality industry. These interviews revealed that regardless of the worker's country of origin or whether they participated in the Summer Work Travel Program or the Trainee and Intern Program, the experience is the same. The undeniable conclusion is that these J-1 programs, initiatives once envisioned as tools of diplomacy, have become little more than a source of cheap labor for employers.

Based on the SPLC's investigation, it is clear, in fact, that the program suffers from the same flaws as other guest worker programs. The SPLC has represented thousands of guest workers in lawsuits to protect them from wage theft, discrimination, illegal recruitment practices and other abuses. As evidenced by these lawsuits, temporary foreign workers are extremely vulnerable to recruitment and workplace abuse.[8]

The J-1 program, however, is much larger than the nation's other major low-wage guest worker program — the H-2 temporary worker program.[9] But the J-1 program lacks many of that program's worker protections.[10] Perhaps more troubling is that the U.S. government and its sponsors globally advertise the J-1 program as a cultural exchange — not a temporary work program — even though that is clearly what the Summer Work Travel and the Trainee and Intern categories have become.

Without true reform, our nation will continue to send disillusioned young people home every year with stories about U.S. employers and their insatiable appetite for cheap, exploitable labor.

"I would never have come had I known the job was going to be so bad," said Joom, a Thai student who spent almost all of her "cultural exchange" scrambling to clean 20 hotel rooms a day in Louisiana. "Housekeeping is hard work — my body hurt. This was not the cultural experience that we paid for."

Our nation can no longer continue to break its promise with foreign workers such as Joom. The J-1 program must return to its original mission of cultural exchange. It also must have mechanisms in place to protect young U.S. workers in the job market. Recommendations for reform are offered at the end of this report.

# What is the J-1 Visa Exchange Visitor Program?

The J-1 Visa Exchange Visitor Program was created by Congress more than 50 years ago to encourage diplomacy and to "strengthen the ties which unite us with other nations" through cultural exchange.[11]

The program has 14 categories of visitors, including professors and research scholars, college and university students, camp counselors and au pairs. Nearly 300,000 workers enter the United States each year on J-1 visas in one of the various categories.

This report focuses on two categories that have been particularly susceptible to exploitation: the J-1 Summer Work Travel Program (SWT), which promises college students an opportunity to work and travel in the United States, and the J-1 Trainee and Intern Program, which promises students and recent graduates an opportunity for work experience that will help sharpen the skills necessary for the participant's chosen profession. Both categories promise opportunities for cultural exchange.

## Key points to know about the J-1 program

- More than 130,000 workers participate in the SWT and Trainee and Intern programs, combined, each year. Participants are generally between the ages of 18 and 30. They work in all 50 states in the U.S. and are in the country for up to four months for SWT participants or up to 12 to 18 months for trainees and interns.[12]

- The J-1 program is overseen by the State Department. Other temporary foreign worker programs for jobs in similar occupations (i.e., "guest worker" programs) are overseen by the Department of Labor, which has far greater experience regulating work programs.

- Workers who want to participate in the SWT and Trainee and Intern programs must connect with a State Department-designated sponsor, which can be a governmental or nonprofit organization or for-profit corporation. The sponsor places the students or interns in jobs with U.S. employers.[13]

- Sponsors rely on overseas recruiters to find and screen potential J-1 workers. Sponsors and recruiters charge fees to workers that range from hundreds to thousands of dollars. This process is entirely unregulated, and there is no limit on the fees that can be charged.

- Sponsors are responsible for the well-being of the participants, including vetting potential jobs and ensuring participants receive cultural exchange opportunities. The State Department relies on these sponsors to monitor employers' compliance with program regulations.[14]

SECTION ONE

# Foreign students deceived, exploited with little recourse

The flashy websites, flyers and sales pitches are often difficult for students to resist.

Recruiters promise the opportunity of a lifetime to students overseas — a chance to live and work in the United States for several months while learning about American culture and improving their English. They promise good wages and show photos of attractive jobsites and housing.

It's all part of a pitch that sells a specific experience. After hearing it, many students reach the same conclusion: Working in the United States is an investment in a better future, one that is worth paying hundreds or thousands of dollars in recruiter fees and other costs.

Recruiters, of course, have a financial incentive to make the jobs seem as attractive as possible. Sponsors and recruiters claim that the fees they charge cover the cost of administering the program,[15] but it is clear they are reaping a windfall. A 2010 investigation by The Associated Press found that the Summer Work Travel (SWT) program generates millions of dollars in revenue for sponsors and recruiters.[16]

The fees that foreign recruiters and sponsors charge students are completely unregulated, and J-1 students often borrow money to pay them. In Jamaica, for example, where the minimum wage is $49.20 for a 40-hour week,[17] or $1.23 an hour, students reported to the SPLC that it is not unusual for their parents to remain mired in debt after paying $2,000 in recruitment and placement fees. As in other guest worker programs for low-skill workers, this debt leaves students extremely vulnerable to exploitation and even human trafficking.

Too often, the experiences these students encounter do not resemble the pictures on the glossy brochures and websites. Many discover, after they

Orla Hurley, a Summer Work Travel student from Ireland, worked 13 hours a day, six days a week, without overtime pay at a T-shirt shop in Myrtle Beach, S.C. She felt unsafe walking home every morning at 1 a.m. "I get scared walking home at night. The guys here say things that make me uncomfortable."

Instead of exploring American cities and tourist destinations, J-1 workers have reported cultural exchange experiences dominated by work.

have invested in the program, that their U.S. employer and sponsor care largely about cheap labor and feel little obligation to live up to the promises that were made.

These students often report feeling deceived about their job, their housing, their earnings and the cultural exchange opportunities. As Katerina, a J-1 student from Bulgaria, said, "Back home they don't tell you that you'll have to get a second job because you won't be able to afford to live on just one."

Students interviewed by the SPLC also said recruiters charged exorbitant fees, forced them to sign fraudulent contracts, ignored complaints or even retaliated against them when they lodged complaints about their sponsors or employers.

The State Department, which oversees the program, acknowledges that misleading information in the recruitment process can be a problem because "the foreign entities' initial outreach to the potential program participants sets the stage for participants' expectation about the Summer Work Travel Program."[18] Nevertheless, the government does not regulate recruiters, and abuse and fraud continue to flourish as a result.[19] Given that there are nearly 1,000 international recruiters involved in the SWT program, this lack of regulation is extremely problematic.[20]

> "When I signed up for the J-1 program, I had the impression it would be a cultural exchange with people from other countries where I would meet people and practice my English, but that wasn't the case."
>
> CHRISTIAN, A J-1 STUDENT FROM PERU

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**'Essentially work programs'**

The cultural exchange goals of the program are routinely overshadowed by the program's work component. Students reported to the SPLC that sponsors frequently placed them in low-wage jobs with little or no opportunity for cultural interaction and failed to offer opportunities for cultural exchange during non-work hours as the regulations require.

"When I signed up for the J-1 program, I had the impression it would be a cultural exchange with people from other countries where I would meet people and practice my English, but that wasn't the case," said Christian, a J-1 student from Peru who cleaned hotel rooms at a Mississippi casino resort.

The State Department requires sponsors to place participants in jobs that have a cultural exchange component — jobs that "have opportunities to work alongside U.S. citizens and interact regularly with U.S. citizens to experience U.S. culture during the workday portion of their Summer Work Travel programs."[21]

The regulations also lay out a number of jobs that are barred for participants, including jobs that are not seasonal or that require a substantial amount of work on the graveyard shift (10 p.m. to 6 a.m.), when opportunities for cultural interactions would be minimized. The department expanded the list of prohibited jobs in 2012 to ensure participant safety and access to cultural exchange.[22]

But the State Department's Office of the Inspector General (OIG) noted in a 2012 report that the department has failed to seriously enforce the program's cultural exchange component. The report recommended either discontinuing the program altogether or changing the designation of these visas so they are no longer considered to offer cultural exchange opportunities.

"The OIG team questions the appropriateness of allowing what are essentially work programs to masquerade as cultural exchange activities,"[23] the report noted.

Volodymyr Gasii, an engineering student from the Ukraine who

participated in the SWT program in summer 2013, learned this firsthand. He worked as a food preparer at two restaurants in Gulf Shores, Ala., sometimes as many as 84 hours per week just to sustain himself. He had little time to seek out the cultural experience he was promised.

Workers and advocates also have exposed the program's cultural exchange goals as a pretext.

In 2011, J-1 workers at a Pennsylvania plant that packed Hershey's chocolates organized with the National Guestworker Alliance (NGA) and went on strike to protest work conditions. "The work is very hard there, and we couldn't do anything else after — maybe take a shower, eat something and go to sleep, that's it. It was terrible," Cosmin Isvoranu, a mechanical engineering student from Romania, told Public Radio International.[24]

Two years later, J-1 workers at a McDonald's in Harrisburg, Pa., joined with the NGA and protested their work conditions. "All the days it was double shift, double shift," said Fernando Acosta of Paraguay, whose workday often began at 7 a.m. and didn't end until 11 p.m.[25]

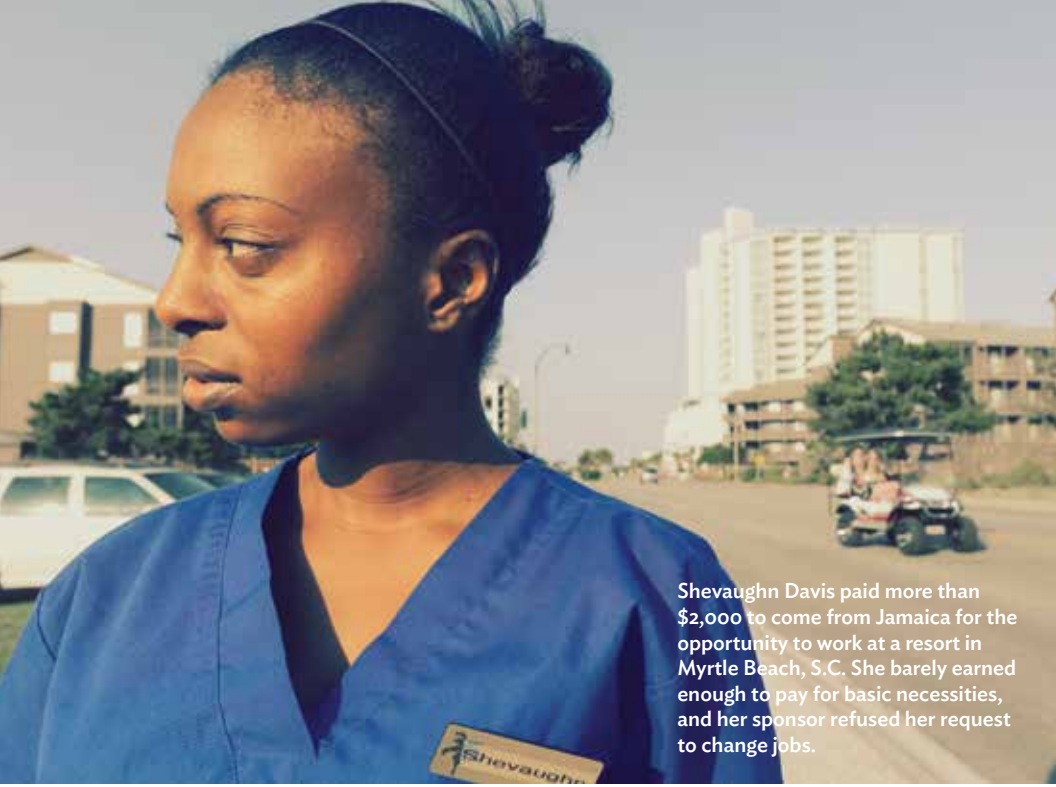
**Complaints to sponsors may fall on deaf ears**

A key problem with the J-1 program is that the State Department relies on sponsors to monitor recruiters and employers for violations of the program's regulations.[26] The State Department claims it only has the authority to sanction *sponsors,* not employers, for program violations. Even when an employer fails to pay students the minimum wage, it is the sponsor — and only the sponsor — that the State Department says it can hold accountable.

This approach all but guarantees limited oversight. Sponsors' revenue largely depends on their ability to collect fees from students for placing them with employers. Sponsors build relationships with employers to ensure they have jobs for their fee-paying J-1 participants. Therefore, it is unlikely that the sponsor will jeopardize its business relationship with the employers and open itself to sanctions by reporting employer misconduct.[27]

Students reported to the SPLC that their sponsors often were unresponsive to complaints about workplace problems and program violations. Students also described incidents of sponsors creating roadblocks when they attempted to change jobs.

When Shevaughn Davis, a student from Jamaica who was barely sustaining herself cleaning 22 hotel rooms a day for $8 per hour with no cultural interaction, asked her sponsor to transfer her to a new job, the sponsor refused. Program regulations only allow students to work for employers that are approved by the sponsor.[28] If the sponsor is reluctant to make waves with the current employer, it may not permit the student to transfer to a new job. This dynamic effectively prevents students from leaving abusive employers.



Shevaughn Davis paid more than $2,000 to come from Jamaica for the opportunity to work at a resort in Myrtle Beach, S.C. She barely earned enough to pay for basic necessities, and her sponsor refused her request to change jobs.

The sponsor oversight model also discourages sponsors from breaking ties with a misleading recruiter when that recruiter is continuously supplying it with fee-paying students. This is especially problematic because, even though sponsors are required to look after the student, many students reported to the SPLC that they turn to their recruiter — not their sponsor — as the first point of contact when problems arise. According to the students, it is not unusual for recruiters to provide students with bad advice or completely ignore their complaints. The students' reliance on their recruiter to address problems is more evidence that recruiters need to be regulated.

The overall lack of oversight within the J-1 program is one reason many students return to their countries with stories for their family and friends of broken promises, debt and exploitation that benefited only the bottom line of sponsors and employers.

**Inadequate oversight**

Even when students report sponsors or employers to the State Department, there is little hope the department will address their concerns.

The majority of SWT students interviewed for this report said that when they called the department's hotline to complain about their sponsor they received either an inadequate response or no response at all. This

is consistent with the experience of the SPLC and other advocates who have submitted formal complaints on behalf of students to the department.

While the State Department's enforcement actions against sponsors have increased in recent months, they are overall still infrequent and many of the sponsors sanctioned received the mildest sanction available — a letter of reprimand and a "corrective action plan."[29] Given these actions, the department is not wielding much of a "stick" to ensure sponsors comply with the program regulations.

Since 1990, the Government Accountability Office and the State Department's Office of Inspector General (OIG) have expressed concerns over the State Department's inadequate oversight of the J-1 program.[30] These reports found the department's overreliance on sponsor disclosures, inadequate staffing and resources, and lack of on-site reviews of sponsors to be critical failures in its enforcement strategy.[31]

A 2012 report by the OIG charged that the department struggles to provide adequate oversight of sponsors.[32] The report was issued after the department apparently strengthened its enforcement of SWT sponsors' compliance by conducting additional on-site reviews and issuing tighter regulations in 2011.

Because the department claims it has no jurisdiction over employers, J-1 workers whose workplace rights have been violated are forced to turn to another federal agency, such as the Department of Labor, or they must hire a private lawyer to find meaningful relief. J-1 exchange visitors are not eligible for federally funded legal services, and they often lack the resources to hire private counsel. Lawyers also are reluctant to take cases involving international litigation, especially when such cases involve claims that might not be as lucrative given the short amount of time the students work in the United States.

Without an effective way to enforce the few worker protections the program regulations offer, companies will continue to use the J-1 program as a source of cheap labor even if the State Department takes steps to re-establish it as a cultural exchange program.

### U.S. workers have few protections when employers hire J-1s

The J-1 program regulations offer few protections to U.S. workers. Unlike other guest worker programs, employers are not required to recruit U.S. workers before hiring J-1 workers, and they are not required to pay the J-1 workers a wage that the government has determined will not drive down the wages of U.S. workers — a "prevailing wage."

"This program is a scam. It is not a cultural-exchange program," Sen. Bernie Sanders, I-Vt., said during the immigration debate in 2013. "It is displacing young American workers at a time of double-digit unemployment

among young people, and it is putting downward pressure on wages at a time when the American people are working longer hours for lower wages."[33]

The regulations require sponsors to ensure that host employers pay at least the applicable minimum wage or the wages and benefits offered to their U.S. counterparts, whichever is higher.[34] But, unlike other guest worker programs, they do not have to pay a wage that is certified by the Department of Labor to protect the wages of U.S. workers. It is left to the sponsor and the employer, which is likely hoping to pay the lowest wage possible, to determine a wage equal to that of a U.S. worker.

The State Department also leaves it up to the sponsor to determine whether employers are displacing U.S. workers by using the J-1 program. Sponsors do not have the expertise to fulfill this duty, and they only have to assess whether U.S. workers are being displaced "at the beginning of each placement season."[35] There's no requirement for sponsors to follow up on how U.S. workers are being affected.

In other guest worker programs, the Department of Labor has the authority to enforce key labor market regulations such as wages and the displacement of U.S. workers.

**The J-1 program is regulated by the State Department, which claims no authority to cite employers or recruiters for deceptive practices or other abuses.**


SECTION TWO

# Summer Work Travel students end up cleaning rooms with no cultural exchange opportunities

While the State Department does not disclose information regarding the occupations Summer Work Travel (SWT) students hold, the SPLC's investigation into the hospitality industry in the South indicates that housekeeping is one of the program's leading occupations.

But the stories J-1 students tell about their work experience make it clear that housekeeping should be added to the department's list of banned SWT occupations. Housekeeping jobs afford little, if any, opportunity for on-the-job cultural exchange while taking a physical toll on these students. And — as the State Department admits — housekeeping jobs are frequently associated with human trafficking.[36] Given the inherent risks and the lack of cultural exchange opportunities, there is no legitimate reason for placing SWT students in these jobs.

Many students placed in housekeeping jobs work alone or in teams of two cleaning rooms all day, and often must meet a high quota of rooms to avoid suspension or firing. Cultural exchange takes a backseat to the pressure of meeting these quotas and making enough money simply to survive. Many students say they did not have the energy to seek out cultural exchange activities after work.

Medalit, a J-1 SWT student from Peru who cleaned hotel rooms at a high-end resort casino in Biloxi, Miss., complained of back pain, skin rashes and overwhelming physical exhaustion that prevented her from doing anything after work.

"My paycheck for 67 hours of work was only for $189.29 because my employer deducted $300 for housing," she said. "I wanted to take a break from the job, but I couldn't. There was no opportunity to rest when you make so little money. We needed to work hard and clean a lot of rooms to make enough money to survive."

Samantha (not her real name), a student from Jamaica, worked in teams of two with other J-1 students at a Microtel hotel in Gulf Shores, Ala. The students had to clean 22 rooms per day. She spent long hours cleaning bathrooms and mopping floors. Her ankles were swollen from standing all day. Her wrists hurt from lifting mattresses and changing sheets. She received only a 10-minute break for lunch — just enough time to buy something from a vending machine.

Her wage of $7.25 per hour barely covered basic necessities. She had little money left to enjoy cultural experiences, such as seeing a movie or shopping. She was even forced to find a second job to make ends meet and help her parents pay the loans they had taken out to pay the program's fees.

As these students' experience shows, housekeeping work is physically debilitating. A peer-reviewed study of injury rates in the hotel industry found that housekeepers have a higher rate of injury and sustain more severe injuries than most other service workers.[37] According to the study, housekeepers are 40 percent more likely to be injured on the job than other service workers.[38]

As one J-1 student from the Eastern European country of Moldova said, "It's like they just want us for the hard jobs that don't pay a lot of money; they don't care we're studying engineering or computer science, they just want us to clean."

**Laura Franco** and her sister, Adela, believed they had found a life-changing opportunity.

After meeting with a labor recruiter and spending hours browsing through a website, both were convinced that leaving the Dominican

> "We felt uncomfortable and isolated, and our sponsor would not help us."
>
> — LAURA FRANCO, A J-1 STUDENT FROM THE DOMINICAN REPUBLIC

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Republic to work in Tennessee as J-1 guest workers was a great way to spend their summer break from college in 2012.

According to the recruiter, their jobs would be simple: cleaning rooms in a "fancy hotel" and tending to guests for eight hours a day, six days a week. They were promised a monthly salary of $1,300. Room and board would be free.

Although housekeeping didn't have any connection to their studies, they saw it as an opportunity to improve their English and meet people from other cultures. It also would be a dream come true to become the first members of their family to visit the United States.

That dream became a nightmare.

Even before Laura and Adela arrived in the United States, the cost to participate in the program exceeded $4,000 once visa fees, embassy interview fees, immigration document processing, recruiting fees and airfare were paid. Laura and Adela used their savings, borrowed money from family members and even used a lending cooperative to pay for the trip.

After a successful interview at the U.S. embassy, their passports were mailed to the recruiter's office. To get their passports, the recruiter asked the sisters to bring two relatives to "vouch" for them. Laura brought her mother and aunt to the office. The women were handed a document. They were told that if they did not sign it, the sisters would not be allowed to travel to the United States.

Laura's mother and aunt believed they were simply signing character fitness statements. The reality was much different: The document was framed as a loan agreement that claimed Laura and her sister had borrowed $7,000 from the recruiter. Laura's family was required to put up their homes as collateral that would be collected in the event the sisters failed to return.

When the sisters finally arrived in Tennessee, they were shocked by what they found. They wouldn't be sleeping in the "fancy" hotel they were told about. Instead, they were ordered to sleep with the horses in the resort's stables. They also were expected to tend to the horses and maintain the stables in addition to cleaning rooms.

Opportunities for "cultural exchange" were virtually impossible. The hotel was isolated, far from places where they could meet Americans who weren't hotel guests. Their employer didn't provide transportation, leaving

Sisters Laura and Adela of the Dominican Republic were forced to sleep in these stables at a resort in Tennessee after being promised free room and board at a "fancy" hotel.

the women practically stranded. The sisters were forced to walk long distances to buy food and telephone calling cards.

Adela began having panic attacks. The sisters left Tennessee and began looking for work elsewhere — a decision that put their visas in danger of being revoked because their sponsor did not approve them to work anywhere else.

"I felt like we had no choice," Laura said. "We had paid so much money to come here and have a decent job and cultural exchange experience. What we got was not what we signed up for. We felt uncomfortable and isolated, and our sponsor would not help us. But we couldn't go home because we had taken out loans to come to the U.S. and we had to pay back our debt."

Laura was unable to return to the Dominican Republic by the recruiter's deadline. She stayed behind to earn enough money to pay off her debt. The recruiter is now suing her to enforce the contract.

Laura and her family fear they may lose their homes and possessions.

## "I would never have come had I known the job was going to be so bad."

— CHAKKVI "MAAX" SUKSAWAS, A J-1 STUDENT FROM THAILAND

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**Chakkvi "Maax" Suksawas**, before starting a career in engineering, wanted to visit the United States, experience its culture and improve his English in the process.

A recruiter in Thailand introduced the 24-year-old student to the J-1 program. Maax was promised a good job and the cultural exchange opportunities he had hoped to find. It sounded great. He paid the recruiter a fee of nearly $1,500 and then spent another $1,500 for airfare.

When he arrived, the sponsor found work for him as a housekeeper at L'Auberge Casino Resort in Lake Charles, La. Rather than working directly for the resort, Maax and other J-1 students worked for one of the casino's subcontractors along with a large group of H-2B guest workers (a foreign worker program with no cultural exchange component) cleaning hotel rooms.

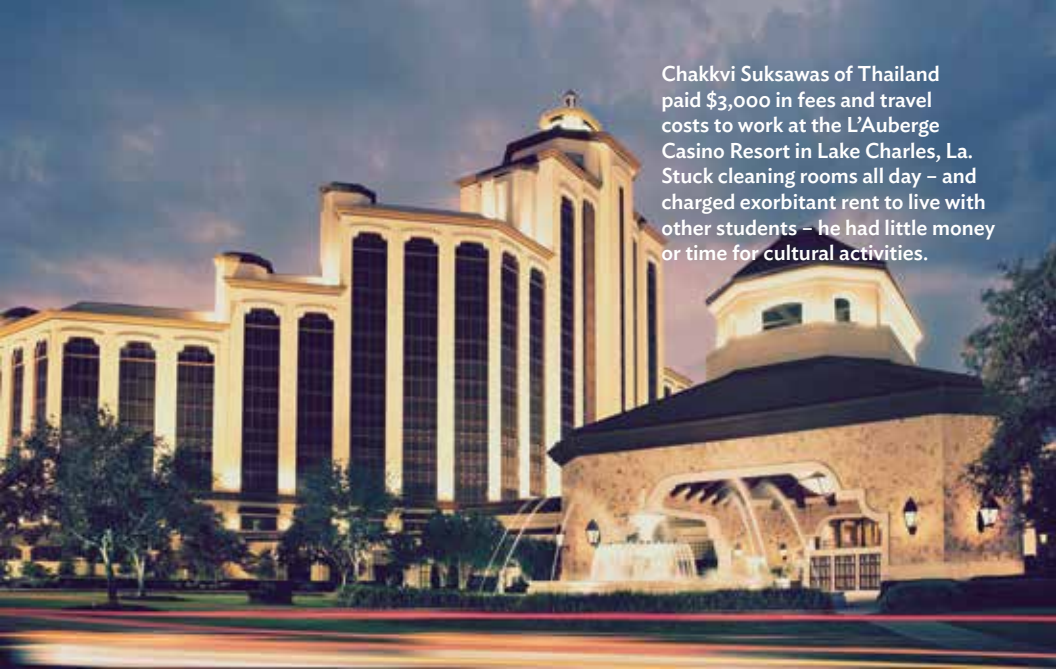
The J-1 students were required to clean 16 to 20 rooms per day, and had only 15 to 30 minutes to clean each one. If they did not meet the quota, they were threatened with disciplinary action or firing. They were paid $8 per hour, even though the recruiter's website promised $8.50 per hour.

Maax's wages shrank after his employer deducted expenses from his check. These expenses included a $350 monthly deduction for rent, which, when collected from four other students living in the apartment, amounted to more than double the fair rental value of the apartment. His employer deducted another $70 each month for transporting Maax to work. These deductions often pushed his pay below minimum wage.

Maax was left with little money to purchase basic necessities, let alone participate in cultural exchange activities. Throughout his stay, Maax wrote to the Thai recruiting agency and his American sponsor to lodge complaints but received no response.

He was eventually fired for leaving work early due to illness. He returned to Thailand before his program ended and never recovered the money he spent for the program.

"I borrowed money from my mom to pay for the program," he said. "But after I came back from the United States I was only able to give her $300; it's not enough to pay her back. I would never have come had I known the job was going to be so bad."



Chakkvi Suksawas of Thailand paid $3,000 in fees and travel costs to work at the L'Auberge Casino Resort in Lake Charles, La. Stuck cleaning rooms all day – and charged exorbitant rent to live with other students – he had little money or time for cultural activities.

**Shevaughn Davis** thought she had found the perfect opportunity to earn money for her school tuition.

A recruiter in her home country of Jamaica told her about the J-1 program. She was promised at least 40 hours of work per week at a U.S. hotel, manageable workloads and a high-quality cultural exchange experience. She was told it would be an easy way to save money for school.

She paid the Jamaican recruiter, International Recruiting Staffing Solutions, $1,100 to work in the housekeeping department at the Avista Resort in Myrtle Beach, S.C. She spent an additional $965 for program and visa fees and roundtrip airfare. Though the costs were adding up, she thought it would be worth it.

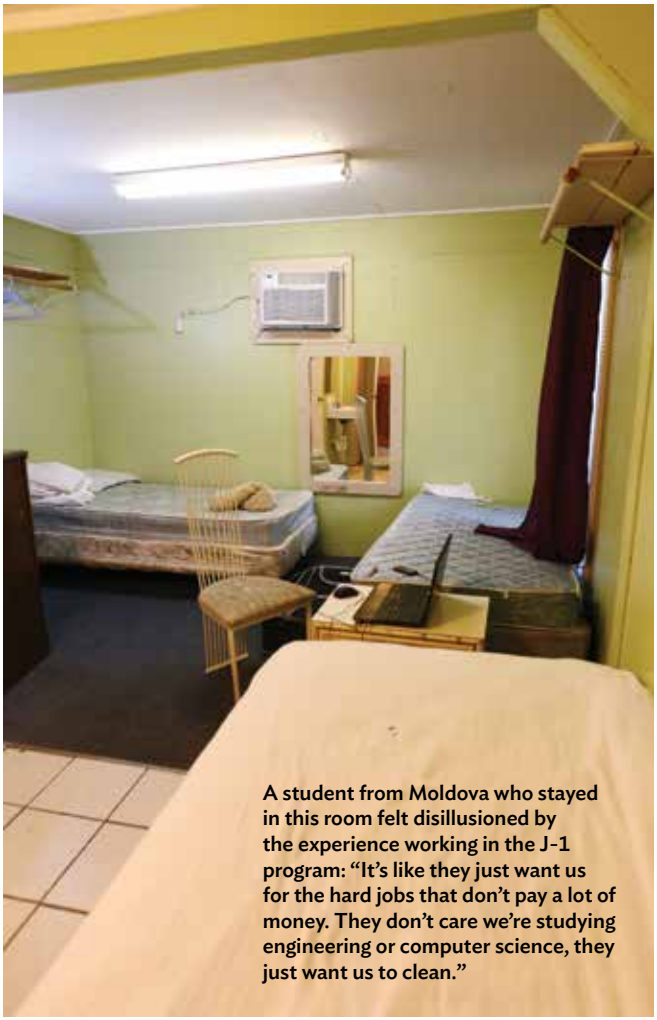
The truth fell far short of the recruiter's promises.

Once in Myrtle Beach, Shevaughn was expected to clean up to 22 hotel rooms during a seven-hour shift. Other Jamaican J-1 students were asked to clean two to three condominiums and three to four additional hotel rooms during a six-hour shift. The students who failed to meet these quotas saw their work hours cut the next day. When Shevaughn asked to be placed with a different employer, her sponsor said it was not possible.

Shevaughn earned between $8 and $8.40 per hour. After paying rent, there wasn't much money left to save for school. Her sponsor had placed the J-1 workers in overpriced housing. Each student paid $316 per month for a two-bedroom apartment shared by four to six workers. There was little

opportunity for cultural exchange as Shevaughn was barely able to cover basic necessities.

"We work so hard, for so little pay, and all of it goes to rent and to pay back the money that my mother paid so that I could come here," Shevaughn said. "Had I known the job was not going to be a true cultural exchange experience, I would have never come."



**A student from Moldova who stayed in this room felt disillusioned by the experience working in the J-1 program: "It's like they just want us for the hard jobs that don't pay a lot of money. They don't care we're studying engineering or computer science, they just want us to clean."**


Katerina felt deceived about her job, earnings and cultural exchange opportunities after leaving her home in Bulgaria for a J-1 job.

SECTION 3

# Interns and trainees misled, used as cheap labor

More than 30,000 students participate in the J-1 Trainee and Intern Program each year.[39] Through this program, college students, graduates and others can receive 12 to 18 months of work and training experience in the United States. [40]

Unlike the J-1 Summer Work Travel Program, these workers cannot be placed in jobs that only require "unskilled or casual labor." They must be placed in jobs that will provide structured training to "enhance the skills and expertise of exchange visitors in their academic or occupational fields."[41]

This program also has a cultural exchange goal of increasing the participants' understanding of American culture and society, an experience that will allow them to "share their experiences with their countrymen."[42]

“If the program had stayed true to its original purpose, I have no doubt it would have benefited all of us. But I didn’t have to come to the U.S. to learn how to make beds. I could have done that at home and not borrowed thousands of dollars from my family.”

— HUONG TRAN, A J-1 TRAINEE FROM VIETNAM

Unfortunately, many of these workers share stories of deceit at the hands of recruiters and sponsors after discovering they will be performing menial, unskilled labor for the duration of their internships in the United States.

“If the program had stayed true to its original purpose, I have no doubt it would have benefited all of us. But I didn’t have to come to the U.S. to learn how to make beds,” said Huong Tran, a J-1 trainee from Vietnam. “I could have done that at home and not borrowed thousands of dollars from my family.”

As in the Summer Work Travel Program, these workers are typically recruited by overseas agencies that connect them with U.S. sponsors. Participants often pay hundreds or thousands of dollars in fees to the sponsors and recruiters to cover registration and other program costs. They also must pay their own travel costs.

Before departing to the United States, interns and trainees receive a Training/Internship Placement Plan. It includes the work location and training strategy, which often involves rotating the worker through various departments. The plan details the skills that workers will acquire in each rotation and how much they will be paid. It is signed by the employer, sponsor and participant.

Many interns and trainees expect this plan to serve as a contract guaranteeing their training experience, and they rely on it when they invest thousands of dollars to make the trip to the United States. Part of the plan’s purpose is to distinguish between bona fide training programs and casual work.

There are a number of positions the State Department classifies as unskilled or casual labor, including hotel and motel cleaners, janitors and dining room attendants, that should not be included in a J-1 intern or trainee’s work.[43] Unfortunately, J-1 workers in the Intern and Trainee Program

report being placed in prohibited jobs, such as maids or busboys, for the duration of their internship. Even worse, worker complaints about program violations have been met with threats of deportation or other forms of retaliation from sponsors and recruiters.

The State Department problematically relies on sponsors to ensure employers comply with the program regulations. Sponsors are even responsible for ensuring employers actually provide a training experience.[44] The State Department can sanction the sponsors for placing workers in unsuitable jobs, but sanctions are infrequent and the majority of the sponsors sanctioned in the past seven years received the weakest sanction available — a letter of reprimand.[45]

The program's weak regulation comes at the expense of not only the foreign interns and trainees but U.S. workers as well. Although sponsors are required to certify that neither they nor any host employer will displace American workers, it is unclear how this certification is evaluated for compliance by the State Department, if it is evaluated at all.[46]

**Lhan Kassemwattan** came from Thailand in 2011 on a J-1 visa to work at a hotel in Orlando, Fla., for a year.

She applied to the J-1 Intern and Trainee Program because it promised to provide training and a certificate in hospitality management — a potential boon to her career. She also looked forward to the opportunity to improve her English.

Lhan paid the Thai recruiters and the U.S. sponsor $8,000 to get the job — more than one year's salary in Thailand. She borrowed the money from her mother, believing that she would be able to pay it back. After all, the recruiter said she would make $1,000 each month.

After arriving in the United States, however, the employer told her and the other J-1 students that the jobs were not yet available. Lhan and the others had to borrow more money from their families to pay rent and buy food in the meantime.

After a month, the hotel placed Lhan in housekeeping. The workers repeatedly asked about switching to positions promised by the training plan, but the hotel never took them out of housekeeping. Lhan spent her entire internship making beds and cleaning toilets. She never made the $1,000 per month she was promised.

Lhan's experience isn't unique. Many interns and trainees invest thousands of dollars to come to the United States to receive professional training, only to spend their internship doing unskilled labor.

"What the sponsor and recruiter told me about the internship turned out to be a lie," she said. "If I had known I was only going to be cleaning hotel rooms, I would not have paid so much money for the job."

Lhan complained many times to the Thai recruiter, but nothing changed. After she complained, the U.S.-based agency working with her sponsor threatened to terminate her program, cancel her visa and deport her.

"The money to come here is a lot, but it is not just the money, it is our lives and hopes for the future," she said. "Our families put all their hopes and dreams and money into our future and hope that we will get training here and then better ourselves and return home to make a better life. Instead, our dreams were shattered."

**Fernanda Alquinga Defaz** was looking for an opportunity to jumpstart her career in hospitality management.

She discovered the J-1 Trainee and Intern Program through a brochure at her college in Ecuador. A recruiter introduced her to a sponsor, whose materials boasted that J-1 workers would receive "the knowledge, practical training, leadership and multicultural skills" necessary to succeed as a hospitality industry leader.

It sounded like the big break she'd been seeking. It was not only an opportunity to get the training she needed, but she would receive it at an American resort.

Lhan Kassemwattan of Thailand was promised training in hospitality management at a hotel in Orlando. But after paying $8,000 as part of the J-1 Trainee and Intern Program, she spent her entire internship making beds and cleaning toilets – and never earned the $1,000 per month she expected.

> **"What the sponsor and recruiter told me about the internship turned out to be a lie. If I had known I was only going to be cleaning hotel rooms, I would not have paid so much money for the job."**
>
> — LHAN KASSEMWATTAN, A J-1 TRAINEE FROM THAILAND

• • •

Fernanda paid nearly $3,000 for the opportunity, including $1,500 in fees to the Ecuadorian recruiter and the J-1 sponsor. Before leaving for the United States, she received a signed, detailed training plan from her sponsor. It guaranteed advanced training in management, leadership, supervision, scheduling and customer service.

It appeared as if everything was on track.

After Fernanda arrived in the United States in 2011, the sponsor placed her in the food and beverage department at the Embassy Suites Oceanside Resort in Myrtle Beach, S.C. She spent her time wiping down tables, mopping, polishing silverware and sweeping — a far cry from the management training she was promised.

She never received any advanced training.

"When I arrived to the U.S. and started working, I felt tricked," she said. "I would have never invested so much money in the program had I known it was not going to be a training experience. But I had spent so much money to participate that I couldn't just turn around and leave."

Her pay was below the federal minimum wage. She was paid a $200 stipend every two weeks for performing at least 40 hours of work each week.

Fernanda and some of her co-workers filed complaints against the J-1 sponsor and the hotel with the Departments of State and Labor. The Department of Labor collected back wages on Fernanda's behalf for the minimum wage violations. Despite this success, Fernanda knows other J-1 interns and trainees may not be so fortunate.

"I'm happy I recouped some of the money I lost, but I worry that my sponsor and other J-1 sponsors are continuing to recruit young people with false promises," she said.


EXIT
EXIT

SECTION FOUR

# J-1 workers vulnerable to trafficking, other dangers

The failure of the J-1 program is more than a story of debt and disappointment. It has put young students from foreign shores at risk of human trafficking and other nefarious activity.[47]

Even the State Department concedes that housekeeping jobs, which are common jobs for Summer Work Travel students, are frequently associated with human trafficking.[48]

The department's 2013 Trafficking in Persons Report noted that vulnerabilities in the J-1 program — reports of fraudulent job offers, inappropriate employment, canceled jobs and problems with housing and transportation — can "potentially facilitate human trafficking."[49]

Trafficking experts have even contended that the State Department's management of the J-1 program — a work program with well-documented vulnerabilities — compromises the department's ability to carry out its global anti-trafficking goals.[50]

The dangerous failures of this program were evident in 2011, when a sponsor placed a group of Summer Work Travel students from Peru in housekeeping jobs at a casino hotel in Biloxi, Miss.

The sponsor placed them in these jobs even though the casino and a subcontractor employing the students had been sued just three months earlier by H-2B guest workers. The lawsuit had accused the employers of violating the Trafficking Victims Protection Act and the Fair Labor Standards Act.[51]

The former H-2B guest workers worked in the same casino, performed the same jobs and lived in the same apartments as the J-1 students. Though this lawsuit should have raised red flags, the sponsor did not inform the J-1 students.

> "It was almost normal that [our store manager] screamed, that we worked 14 hours, that we ate on the floor. That was our America."
>
> — LULIIA BOLGARYNA, A J-1 WORKER FROM THE UKRAINE

• • •

"When we discovered that our employers had been sued for labor exploitation, we were really angry and sad," said Christian, one of the J-1 students. "We had spent so much money to participate in the program. Now we were going to have to spend even more money to find a new placement and new housing to get away from our host employer."

**J-1 workers flood charities**

Other J-1 workers have found themselves struggling just to find a meal.

In Maryland, an Associated Press investigation found that the Ocean City Baptist Church served more than 1,700 J-1 workers from 46 countries who sought free meals during the summer of 2010 — an apparent symptom of the meager wages paid to the workers.[52]

In Virginia Beach, Va., one homeless shelter experienced such an influx of J-1 workers seeking a meal that it began running out of food, forcing shelter officials to take the step of limiting the frequency that students could eat there, according to the AP investigation.

Luliia Bolgaryna, a J-1 worker from the Ukraine who worked at a souvenir store in Surf City, N.C., was forced to eat her meals on the floor of her manager's house, where she and two other women paid $120 a week in rent.[53] The manager wouldn't let the women sit with him at the table. "It was almost normal that he screamed, that we worked 14 hours, that we ate on the floor," Bolgaryna said. "That was our America."[54]

Even the seemingly ideal situation of working at a beachfront store can become a harrowing ordeal for J-1 workers, the SPLC has found. Aisha Matarneh and Reem Husein Shajrawi came to the United States from Jordan in 2009 on a Summer Work Travel visa after paying between $2,000 and $3,000 each for such a job.

Once in the United States, their sponsor put them in the care of a man named Vladimir. The women were told he would find housing and jobs for them in Gulf Shores, Ala. He placed them in a two-bedroom house with 10 other J-1 students who were forced to share twin beds or sleep on the floor.

The back view of living quarters for several J-1 workers in Myrtle Beach, S.C.

Vladimir denigrated the young women with anti-Arab epithets and refused to give them a job because he claimed he hated Jordanians. He eventually relented. He said they were "hot girls" and would be good cocktail waitresses. He put them to work at a night club.

Both students thought the job was inappropriate but felt they had no choice. They had to find some way to pay back the debt they had accumulated to participate in the program. Reem eventually refused the job — a decision that resulted in her being told to leave her housing.

Despite complaining to their sponsor several times about their situation, Aisha was told she was just experiencing "culture shock."[55] No one seemed to care about their plight. The women reached the SPLC and another advocacy group that informed them of their rights. Unfortunately, as many workers will attest, not all J-1 students are so fortunate. For those students, the program's weaknesses could have devastating consequences.

When J-1 housing in Myrtle Beach, S.C., became overcrowded, the seats in this bus were removed so that it could house student workers.

RECOMMENDATIONS

# New laws, regulations required to protect J-1 foreign exchange students and U.S. workers

The J-1 Exchange Visitor Program has veered from its original mission of cultural exchange. Far from tools of diplomacy, the Summer Work Travel and Trainee and Intern programs in particular have become expansive and virtually unregulated low-wage guest worker programs that are spinning out of control as employers use them as sources of cheap and vulnerable labor.

As demand for J-1 workers in low-wage employment increases, so will incidents of abuse and fraud. This result will come at the expense of both J-1 workers and the U.S. workers they displace. It will also harm the international reputation of the United States. Congress and the State Department must make fundamental changes to the program to break this cycle and return the program to its original mission of cultural exchange.

## RECOMMENDATIONS FOR THE SUMMER WORK TRAVEL AND TRAINEE AND INTERN PROGRAMS

### I. Recommendations for Congress:

- Place a statutory cap on the number of exchange visitors who can enter the United States in the J-1 Summer Work Travel category. This cap should be adjusted annually and correspond to the youth unemployment rate.
- Require employers seeking to use J-1 guest workers to first recruit U.S. workers for the jobs and certify that no U.S. workers are available before hiring J-1 workers.

- Require employers to pay J-1 guest workers a prevailing wage established by the Department of Labor. This requirement will prevent J-1 workers from depressing the wages of U.S. workers.

- Authorize the Department of Labor to oversee and regulate the work aspects of the J-1 exchange visitor program.

- Regulate the recruitment of J-1 guest workers. Regulations, for example, should prohibit sponsors and international labor recruiters from charging fees to potential participants and require more transparency in the recruitment process. Fees that are currently charged to participants should be shifted to the employers that ultimately benefit from the J-1 guest workers' labor.

- Require employers to bear all the costs of recruiting and transporting J-1 guest workers to the United States to prevent workers from arriving deeply in debt.

- Implement statutes that protect J-1 workers from retaliation when they organize or complain about working conditions.

- Grant J-1 guest workers a private, federal cause of action to enforce the promises in their job order as well as their contracts with recruiters, sponsors and employers.

- Make J-1 workers eligible for federally funded legal services so they have meaningful access to justice in the United States.

**II. Recommendations for the Department of State and other federal agencies administering the J-1 program:**

- The Department of State and Department of Labor should engage in joint and active enforcement of program rules governing recruiters, sponsors and host employers.

- The cultural exchange aspects of the program should be expressly defined by regulation and the acceptable jobs for Summer Work Travel participants need to be enumerated in the regulations. Sponsors should not be permitted to place students in jobs outside of the established list.

- Housekeeping and other jobs with little opportunity for cultural exchange should be added to the list of banned occupations for the Summer Work Travel Program.

- Regulations should establish a minimum level of cultural activity that a sponsor is required to provide to program participants outside of the workplace.

- J-1 workers should be guaranteed a minimum number of work hours to ensure they have sufficient income to defray their costs and partake in cultural activities without having to get a second job.

- Sponsors should be required to independently verify that any housing costs or deductions are consistent with the fair rental value in the area, and submit confirming documentation to the departments.

- Employers should be prohibited from simultaneously using the J-1 program and the H-2 guest worker programs. They should also be barred from employing J-1 guest workers if the employer has been certified for H-2 workers to perform the same or similar work in the past three years or if it has been found to have violated program rules in any other guest worker visa category, is being investigated by any federal agency for alleged violations, or is party to an ongoing lawsuit related to the alleged violations.

- Sponsors and employers should be required to certify to the Department of State and the Department of Labor that they complied with all program regulations and applicable federal and state laws before each placement season begins.

- Information about the J-1 program (including the occupations J-1 workers are employed in and the wages paid to them) should be made publicly available and easily accessible to ensure that the program and its impact on the U.S. labor market can be monitored and that the regulating agencies can be held accountable by stakeholders and the public.

### III. Recommendations for Trainee and Intern Program regulations:

- Regulations should require that all internships and training programs meet the requirements of the Fair Labor Standards Act. Payment schemes, such as stipends, that result in an hourly wage rate below the federal minimum wage should be expressly prohibited.

- Regulations should establish a minimum amount of on-the-job training that employers or sponsors must provide to interns and trainees.

- Regulations should bar housekeeping, janitorial work, dining room attendants or other unskilled work from mandatory rotations in the hospitality industry.

- Regulations should require sponsors and host employers to certify to the Department of State and Department of Labor that they will not place interns or trainees in casual or unskilled labor, as currently defined by the regulations, in addition to certifying that they will comply with the program regulations, before the internship or training program begins.

**These J-1 students walk to work at a Microtel hotel in Gulf Shores, Ala. They each had to clean 22 rooms a day.**

## ENDNOTES

1 22 U.S.C. § 2451.

2 26 U.S.C. §§ 3121(b)(19), 3306(c)(19).

3 *See, e.g.,* Seasonal Staffing Solutions, www.seasonalstaff.org/Tax-Benefits-For-Employers-Hiring-J1-Foreign-Staff.html ("American Employers can legally save 7.79% off their total payroll expenses simply by promoting cultural exchange and hiring J1 students.") (last visited Nov. 7, 2013).

4 *See, e.g., United States v. Trucchio, et al.,* No 11-cr-00614-VM (S.D. N.Y. filed Nov. 17, 2011) (J-1 SWT students forced to work as exotic dancers in New York); *USA v. Berman, et al.,* 3:07-cr-00114-LC-2 (N.D. Fla. filed Sept. 18, 2007) (J-1 SWT students used in labor trafficking scheme in the Florida panhandle).

5 U.S. Dep't of State, *2013 Trafficking in Persons Report,* 385-86, www.state.gov/documents/organization/210742.pdf.

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26, 2013, www.usatoday.com/story/news/politics/2013/06/26/immigration-bill-carveouts-counselors-au-pairs-alaska-seafood/2460785/.

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11 22 U.S.C. § 2451.

12 State Department, J-1 Visa Exchange Visitor Program, j1visa.state.gov/basics/facts-and-figures// (last visited Nov. 7, 2013).

13 22 C.F.R. § 62.3.

14 *See generally* 22 C.F.R. §§ 62.22 (Trainee and Intern program regulations), 62.32 (Summer Work Travel program regulations).

15 Fredreka Schouten, *Au Pair Groups, Other Fight Senate Immigration Rules,* USA Today, June 19, 2013, www.usatoday.com/story/news/politics/2013/06/19/lobbying-cultural-exchange-visas-au-pairs/2437589/.

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17 *Increase in Minimum Wage Takes Effect Today,* Jamaican Info. Serv., Sept. 3, 2012, jis.gov.jm/increase-in-minimum-wage-takes-effect-today/.

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19 *See generally* International Labor Recruitment Working Group, *The American Dream Up for Sale, A Blueprint for Ending International Labor Recruitment Abuse,* (Feb. 2013), fairlaborrecruitment.files.wordpress.com/2013/01/the-american-dream-up-for-sale-a-blueprint-for-ending-international-labor-recruitment-abuse1.pdf.

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27 *See Guestworker Diplomacy, supra,* at 38 (discussing the conflict of interest inherent in the SWT program).

28 22 C.F.R. § 62.32(g)(2).

29 U.S. State Dep't, *Closed Sanction Cases Covering the Period 2006 to Date,* j1visa.state.gov/wp-content/uploads/2013/09/Closed-Sanction-cases-2006-to-Date-Master_Final.pdf (last visited Nov. 7, 2013).

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42 22 C.F.R. § 62.22(b)(1)(i).

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55 Information supplemented by interviews with Patricia Medige.

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