



Mexican H2A Farmworkers in the U.S.:  
The Invisible Workforce

---

## EXECUTIVE SUMMARY

### JORNALEROS SAFE REPORT



**Mexican H2A Farmworkers in the U.S.:  
The Invisible Workforce**

---

## **EXECUTIVE SUMMARY**

**JORNALEROS SAFE  
REPORT**

# EXECUTIVE SUMMARY

The following five organizations from Mexico and the United States have been working together to investigate the labor and hiring conditions of temporary agricultural workers (jornaleros) with H-2A visas:

The Centro Independiente de Trabajadores Agrícolas (CITA), Dimension Pastoral de la Movilidad Humana (DPMH), Global Workers Justice Alliance (GWJA), United Farm Workers (UFW), and Catholic Relief Services (CRS).

The Jornaleros SAFE project began in May 2010. Participating organizations and their allies built a network of labor rights defenders in nine states of Mexico. Jornaleros SAFE has used the following strategies:

- **Research and Documentation:** Gathered testimonies from the workers by interviewing them in their communities of origin, to obtain first-hand information about what happens during the recruitment process to go work in the United States.

- **Training:** Give workers basic information about their rights and alternatives to exercising those rights.

- **Networking:** Talk about the situation of agricultural guest workers with other interested parties in order to reinforce and strengthen project strategies.

- **Raising awareness:** Disseminate information and create awareness to help people learn about the reality of temporary workers with H-2A visas.

- **Advocacy:** Inform the governments of the United States and Mexico about the problems documented and advocate for improved.

So far, Jornaleros SAFE has been able to train more than 10,000 temporary agricultural workers directly and has reached more than 100,000 people in diverse migrant-sending communities through community radio programs that inform people about their rights as agricultural laborers. It has also provided legal assistance on labor matters to guest workers and has supported people who have been subject to fraudulent practices in their attempts to work in the US.

## Methodology

This particular investigation obtained 538 registered occurrences<sup>1</sup> by interviewing people in 135 communities of 41 municipalities in seven states of Mexico: Baja California, Guanajuato, Guerrero, Oaxaca, San Luis Potosí, Sonora, and Veracruz. Information was also gathered from Aguascalientes, Hidalgo, and the State of Mexico from emigrants from those states who were in Monterrey, Nuevo León at the time of the interviews.

The technique used was a semi-structured interview complemented with “snowball sampling” in order to include more diversity and the largest possible number of informants.

<sup>1</sup> 538 registered occurrences came from 382 individual interviews. This was possible because many migrants reported more than one occurrence.

## What is the H-2A Visa?

H-2A visas allow US employers to hire temporary foreign workers for agricultural jobs in the United States as long as there are not enough local US workers available to do those jobs. An employer must go through three main steps to acquire H-2A visas:



Guest worker Visa in the U.S. Photo: Gloria Marvic

1. Approval from the Department of Labor (DOL)
2. Approval from the Department of Homeland Security (DHS)
3. Acquisition of visas from the State Department (DOS)

## Problems Found During the Investigation

A number of anomalies were found in various stages of the process for obtaining an H-2A visa, but the most alarming ones have to do with recruitment of the agricultural workers in Mexico.

We found four different models for recruiting workers in Mexico. The model most often used in the cases of those we interviewed (94.5%) was a traditional **contracting** model; where a recruiter representing an employer arrives in the local community and offers a job opportunity to go work in the U.S. under a tempo-

rary work H2A visa. This was also the model in which we found the most abuses by contractors, sub-contractors, and recruiters.

Other models for recruiting workers include: the individual initiative, the community initiative, and the community self-protection model. In the *individual initiative* the worker communicates directly with the employer in the U.S., at an agreed time prior to the beginning of the season, and provides his availability to work; in the *Community initiative* we have communities with a prior history of sending their members to work, therefore, the community decides jointly which members get selected to travel and work in the current season. Finally, in the *Community Self-protection* model we have municipal agents, as the authority figure, who engages the traditional contractor/sub-contractor recruiting individuals; in other words, the contractor/subcontractor must first approach the municipal agent with the terms/conditions of the job offer and the agent reviews, modifies and at times, sets their own conditions prior to allowing the recruiter to enter and engage the community members. Since, these models either bypass the contractor completely, or the contractor is under the supervision of local authorities or non-governmental organizations, workers who used these models experienced dramatically fewer abuses.

## Types of Abuses Experienced by Agricultural Workers in the H-2A Visa Program

95% of the migrant workers interviewed had experienced one or more violations of their rights. Only 5% reported having experienced no abuses, but it was due to the fact that they were not hired under the traditional contracting model. Most of the abuses reported were perpetrated by traditional contractors or sub-contractors.

53% of those interviewed indicated that no one had provided them with information about their labor rights as workers with H-2A visas; a little more than 31% said they had received information from the US government, and less than 11% received information about their rights as workers from their employers or contractors.

79% of the agricultural workers interviewed either had never been given a written contract at all or did not understand the contract



because it was provided only in English. For a worker to obtain a visa, a written contract should be presented, but a little more than 21% of the workers said they had not received a contract or work offer. This is because even if they signed a contract, they never received their own copy of that contract, so they were unaware of the conditions of the hiring. It is harder for workers to demand their contractual rights if they are unaware of those rights.

62% of the H-2A migrants interviewed had to pay for either all or part of their transportation costs in spite of the fact that the program states that this cost must be covered or reimbursed by the employer.



The agricultural laborers assume the costs of their visas and passports every year. Photo: Gloria Marvic

## Methods of Control used by Recruiters

Power in the recruiting system is based on certain methods of controlling people and information. The most deep-rooted problems with the H-2A visa process are the use of two different kinds of lists: “waiting lists” and “black lists.”

### Waiting Lists

Workers who are hoping to be chosen to work in the United States register to be placed on a “waiting list.” The project documented many cases in which workers are being charged upfront to be placed on these lists paying up to 2,000 pesos (approximately \$160 USD) in cash. This does not guarantee them work, simply inclusion on the list from which the workers will be chosen, yet other workers simply become victims of fraud and never get a job.

The study shows that nearly half (42%) of the temporary agricultural workers interviewed had to pay to receive a job offer or to be included on a waiting list.

### Black Lists

Black lists are ways of excluding workers who have expressed some sort of disagreement with the process or working conditions. When workers are placed on this list, they are punished by not being offered work again. These threats indicate serious tensions in labor relations: the workers say that with this kind of pressure, they prefer to just keep working even if they are unhappy with the working conditions or the way they are treated.

Black lists are a way of exercising a particular kind of control over the workers, whose primary objectives are to work and support their families. Workers fear that if they report a problem or a violation of their rights by a supervisor or by the contractor who got them their job, they may not ever be able to work in the US again.

“A person came to our small town—someone not anyone our community knew—and he began to offer people work in the United States with a work visa. Several men in the community accepted the recruiter’s offer and they went to the capital to get their passport. But what the people in our town didn’t know at first was that the recruiter was going to ask them for money to get them the job. He also warned them that if anyone asked them if they

had paid money to get the job, they shouldn't say anything if they wanted to continue to be invited to work in the United States. [...]

"The next season, one of the workers decided to talk to the company people himself, and the person in charge there told him to get a group of people who wanted to work. When the recruiter found out, he threatened the worker, so that season, no one from the community went because the recruiter did not invite them to work." (Testimony taken in Guerrero)

"There is also a social worker who comes and makes recommendations on how to get to the United States and how one should behave there. He also deals with health. Where we live, there are four of us, and if one of the four behaves badly, they fire all of us. That's why we have to tell the social worker what the other people are doing so that we don't get fired from the company." (Testimony taken in Oaxaca)

## The Costs Associated with Going to Work in the United States

In addition to transportation, which (according to the interviews) costs about one hundred dollars, the worker has to cover other costs including: the costs of a 3-year passport (about \$38 including the agricultural worker discount) and the cost of the visa (\$196). That is a \$234 total, which is a serious expense for these workers who come from states and communities with high levels of poverty. To earn that amount, a person would have to work for one month, if they can find employment at all.

42.6% of those interviewed for this study reported having to pay to receive an offer or obtain a job. In spite of the fact that it is illegal to charge someone for hiring them, almost half of all contractors continue to do so, charging amounts from \$31 to nearly \$350.

Many are forced to take out personal loans of \$300 to \$1,000 and, in some cases it is the recruiter himself who loans the money. The amount of loan most frequently reported is between \$350 and \$500.<sup>2</sup> 35% of those interviewed had to take out a loan with interest they will have to pay when they return to their communities. In a couple of cases, we discovered interest rates as high as 10% monthly.

---

### Fraud

One of the biggest problems we found was fraud. While illegal recruiting fees are also a type of fraud, those instances were recorded separately since each problem area has their set of circumstance. Five types of fraud were detected.

### Fees for getting on a waiting list

This type of fraud involves charging people for getting on a list of names, from whom some workers will be selected to work in the United States. In some cases, the lists were used later to demand payment for being selected as a temporary agricultural worker with an H-2A visa.

---

<sup>2</sup> An amount in this range was mentioned 27 times, though it must be noted that interviewees were often reluctant to talk about their loans because of high levels of insecurity and mistrust that prevail in the areas where the interviews were done.

“The recruiter told me: ‘Give me 2,000 pesos to speed up the paperwork and you’ll be sure to move through the process fast.’”<sup>3</sup>

## Fees for being chosen as a H-2A worker

In this type of fraud, recruiters ask the aspiring workers to pay them something in order to ensure that they will be chosen to work in the US. They may collect the fee before the process begins, when the contract is signed, or moments before going into the consulate. They may even collect the money after the worker gets his first wage payment. If a worker makes a payment before he receives his H-2A visa, he is at greater risk because his visa could be denied at the consulate interview, and then he would lose not only the opportunity to work, but also the money he paid the recruiter.

## Fraud related to illegal fees

Some recruiters use a variety of fraudulent practices together. They may arbitrarily increase the number of workers beyond the number they actually need and charge everyone the fee for being chosen. When the paperwork begins, or when it is time to travel to the consulate to obtain the visa, one group of workers is left waiting for the phone call. They are assured that they will be called soon and that they will be leaving with the next

group. Therefore, the recruiters defraud both those who do receive a visa by charging them an illegal fee, and also defraud the others by charging them the fee even though they know they will not receive a job offer. This is one of the most serious abuses, and workers tend not to report it. By seeing that some of the workers on the list did get to go to the US, they hope they will be chosen next time.

## Fraud involving the sale of a visa “libre”

Sometimes, a “recruiter” does not actually offer work in the United States, but simply sells an H-2 visa “libre,” a visa that allows the worker to enter the United States safely without the risk of having to walk in the desert, cross rivers, or climb walls, and once in the U.S. is able to work “legally” with his visa in any job. This type of fraud is the most expensive for the worker, since they are charged around 24,000 pesos (approximately \$1,846) and clearly no such visa exists. While this visa “libre” offer is not

---

3 Testimony taken in the Municipality of Abasolo, Guanajuato, in March 2011.

exclusively tied only to the H-2A visa process, the same people who offer authentic work visas have sold them.

**Fraudulent promises  
of work**

In this type of fraud, someone charges workers an amount of money and promises them work in the US with an H-2A visa, knowing that there is no such job offer. This is the most common form of fraud found, and it tends to occur in communities where migrants have successfully used the H-2A and H-2B visa to

Date	People Interviewed	# of Fraud victims <sup>4</sup>	Amt of money <sup>5</sup>	Type of fraud
Total	42	200	725,800 pesos (US\$56,703)	11 instances detected

work in the United States. In those communities, people are more likely to trust that the offer is a good one. The amounts shown here represent only a fraction of the fraud that we discovered, but not all cases were included since people were afraid to discuss it for fear of retaliation.

**Why does this  
occur?**

The problems we found in the study exist for a number of reasons:

● The employer does not control or supervise the actions of the contractors.

- The relationship between the employer and the recruiter is contractual and recruiter responsibilities are related only to fulfilling the contract.
- The recruiter wields significant power in both the hiring of workers and in the type of work itself.
- The recruiter may solicit workers even when there is no need for those workers.

4 The number of fraud victims comes from the testimonies of those interviewed. Since fraud is massive and many people from the same community are victims, each informant reported other cases of workers from their communities who had been victims of fraud. The number of victims and the quantities given were calculated by projecting the information of those interviewed.

5 This amount is approximate. We do not have exact numbers and rely on the testimonies of those interviewed. A large part of the money given to the contractors came from small loan programs or from family members. The exchange rate used here was 12.8 pesos per dollar.

- It is not obligatory for the recruiter to be present in the process of doing the paperwork to bring workers to the United States or to be present for the actual hiring of workers in Mexico.
- No US or Mexican agency is responsible for supervising the actions of the contractors in Mexico. The employers' controls are only secondary, and so responsibility is diluted.
- Lack of knowledge about the rights that come with an H-2A visa and lack of information about the conditions in which the workers will be working have made it easier for contractors and deceptive contractors to commit abuse.
- There is a close relationship between workers knowing the rights associated with the visa and the abuses recorded. Only 15% of the agricultural workers we interviewed who said that they did know their rights had also experienced some type of abuse. However, 66% of those who said that they did not know their rights said that they had experienced abuses.

## CONCLUSIONS

The lack of attention to the process of hiring workers in Mexico has created a vacuum that deceptive recruiters have taken advantage of to obtain millions of dollars by offering non-existent work in the US or visas to cross safely into the United States. Communities with history of migrating for work are the primary targets of these criminals.

The results of this investigation reinforce other studies by showcasing the inconsistencies of a scheme that has gotten out of control because it has been left in the hands of individuals. In this context, the negligence of the US and Mexican governments reinforces

a structure that exploits guest workers who should be protected by the law because of their status as guests.

This indifference and silence turns government institutions and authorities into involuntary accomplices and strengthens a criminal and illegal system that supports trafficking in human beings and hiring workers with or without documents. Workers fall prey easily to these networks of contractors or subcontractors.

This investigation has contributed to a larger body of research documenting the violation of the human rights and labor rights of agricultural guest workers in the United States, a responsibility that is shared bi-nationally and internationally.



## Proposals for Change

Increase the amount of information requested from employers, and include information about recruiters.

- The U.S. Department of Labor should ask for the names of all people involved in the process of recruitment (recruiters, sub-recruiters, and intermediaries).
- The names of the communities where agricultural workers will be recruited should be included on the forms.
- The U.S. Department of State should compare information requested of the employer or recruiters when visas are being issued to see if the information given can be verified.

Improve mechanisms for disseminating information about the hiring of H-2A agricultural workers.

- The Department of State and the Department of Labor must do a better job of disseminating the job terms/conditions, as well as the names of contractors and other intermediaries.
- The Department of State and the Department of Labor must require a written contract that is signed by the worker and ensure that each worker has a copy of that contract.

Improve mechanisms for reporting fraud and for sanctioning recruiters and employers.


- Promote efficient mechanisms for reporting recruiters who have violated worker's rights.
- Ensure that agricultural workers who have reported problems will still be able to work in the system.

Improve mechanisms for the control and supervision of recruiters

- Both the Department of State and the Department of Labor should create oversight mechanisms for contractors and subcontractors who work in both countries.
- The Mexican government should be asked to supervise contractors who live in Mexico and to oversee their work and actions.



**DON'T JUST GET INFORMED.  
GET INVOLVED!**

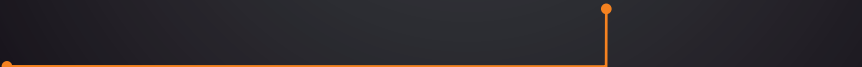


Recommend this document. All of the information can be downloaded from:

**<http://www.globalworkers.org/our-work/publications/jornaleros-safe>**

The organizations that participate in Jornaleros SAFE rely on volunteers to support their work. For more information at:

**<http://www.ufw.org/>**  
**<http://www.globalworkers.org/join-us/opportunities>**  
**<http://www.citafarmworkers.com/>**





**JORNALEROS  
SAFE**



**DPMH**

*Dirección Pastoral de la Migración Humana*  
**Área Pastoral de Migrantes**  
Comisión Episcopal para la Pastoral Social  
Conferencia del Episcopado Mexicano



**CITA**  
Centro Independiente  
De Trabajadores Agrícolas



**CRS**  
CATHOLIC RELIEF SERVICES