



Policy solutions that work for low-income people

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RE: Docket No. ETA-2025-0007 / RIN 1205-AC25; Comments in Opposition to Proposed Rule Rescinding Worker Protections in the H-2A Program

The Center for Law and Social Policy (CLASP) writes in opposition to the harmful new rescission of the Department of Labor's ("DOL" or "Department") proposed rule rescinding worker protections for migrant farmworkers in the H-2A program. We respectfully submit this comment urging the Employment and Training Administration to withdraw this rescission of the proposed rule.

Established in 1969, CLASP is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions for people with low incomes. With deep expertise in a wide range of programs and policy ideas, longstanding relationships with anti-poverty, child and family, higher education, workforce development, and economic justice stakeholders, and over 50 years of history, CLASP works to amplify the voices of directly-impacted workers and families and help public officials design and implement effective programs. CLASP also seeks to improve job quality for low-income workers. That includes increasing wages and providing access to paid sick days, paid family and medical leave, and stable work schedules. Quality jobs enable

individuals to balance their work, school, and family obligations – promoting economic stability as well as career advancement.

Background

The H2-A visa program was created through the Immigration Reform and Control Act (IRCA) of 1986. As there was stricter border control as part of the IRCA, which would result in a decrease in undocumented migration, the H-2A program was meant to help labor shortages as an alternative source of labor in the agriculture and farm industries. The passage of the H2-A visa program included labor protections to prevent discrimination, low wages, and displacement of U.S. workers and improve the labor certification process.

The number of H-2A visas has expanded since its inception, with the Department of Labor (DOL) certifying 79,000 visas in 2010, to over 200,000 in 2017, and over 350,000 in 2022. The number of employers using H-2A workers has also more than doubled over the last 10 years.¹ The importance of the agriculture industry to service the United States with increasing demand, protecting these workers is vital to the national economy and ensure the strength of the agriculture industry.

History of Exclusion: The Agriculture Industry

Workers in the agriculture industry have long been excluded from fair wages and labor protections. The Fair Labor Standards Act, which was implemented in 1938, left out minimum wage protections for all workers in the farmwork, agriculture, and domestic industries. Almost seventy years later, Black and Hispanic workers continue to be overrepresented in these low-wage fields: in 2022, 78 percent of U.S. agriculture workers identified as Hispanic, 34 percent of whom were women.² Without proper protections, farmworkers continue to earn 40 percent less than non-agriculture jobs.³

Similarly, the National Labor Relations Act of 1935, or the Wagner Act, guaranteed workers the right of collective bargaining and also established a new independent agency: The National Labor Relations Board (NLRB). This agency was given enforcement power to protect workers' right to collectively bargain, certify employee union elections that were based on majority rule and representation. Additionally, the NLRB outlawed the use of "company unions" used by employers to flout worker unions, as well as outlawed unfair labor practices such as discriminatory firings, blacklisting, and strikebreaking.⁴

However, the Wagner Act excluded more than 300 million agricultural workers from the right to organize and allowed unions to discriminate against workers of color. Agricultural workers were originally excluded because in the 1930s, they were thought of as a "helping hired hand" for small farmers.⁵ Although this has been largely untrue in the last 50 years of American farming. In fact, the Human Rights' Watch has found that agricultural workers experience low wages, bad housing, poor health outcomes, workplace hazards, and abusive working conditions on a massive scale in the American economy.⁶

Recission of The Rule for H2-A Workers will Harm Domestic Workers in the United States

In 2024, the median U.S. wage for all workers is \$23.80 per hour.⁷ However, because of the exclusion of labor protections and overrepresentation of workers of color in the agriculture industry, the median wage for miscellaneous agriculture workers in 2024 was \$17.29 per hour.⁸ In fact, because of this downward pressure of wages in the industry, the number of farm workers that have been employed through the H-2A programs has significantly increased in recent years.

The original 2024 rule extending labor protections to H-2A workers stood under the Department of Labor's statutory authority. Effectively, this means that in order for temporary workers to come into the United States workforce through H-2A visas, the Department must certify that the introduction of these workers will not affect the working conditions of domestic workers in the agricultural industry. This is made clear in the Department's own language in the Immigration and Nationality Act (INA) of 2010, "The employer must pay all covered workers at least the highest of the following applicable wage rates in effect at the time work is performed: the adverse effect wage rate (AEWR), the applicable prevailing wage, the agreed-upon collective bargaining rate, or the Federal or State statutory minimum wage."¹

Therefore, the recission of this rule will hurt and depress working conditions for *all* workers, since the wage floor will be pushed further down. This is undoubtedly true since foreign workers who come to the United States for work, have a better sense of workers conditions and wages abroad which tend to be lower than those in the U.S. Additionally, foreign workers take great financial risks coming into the country such as taking out high interest loans, putting homes up as collateral. Since they are willing to put themselves in such financial and economic risks, they are willing to take hazardous jobs, abusive working conditions, and lower wages for the sake of having a job.⁹

All these conditions are under the Department statutory authority and have an adverse impact on domestic workers: domestic workers must be offered what temporary H-2A workers are offered in terms of wages and working conditions. Therefore recission of this rule violates the adverse effect wage and conditions of domestic, agricultural workers and the use of H-2A workers altogether. In the Department of Labor's employer contractual obligations of the H-2A visa program and recruitment of U.S. workers, the following states: "In order for the Department of Labor to certify that there are not sufficient U.S. workers qualified and available to perform the labor involved in the petition and that the employment of the foreign worker will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers, employers must demonstrate the need for a specific number of H-2A workers."¹⁰

Rights Affected by the Recission of the 2024 Rule to U.S workers and H2-A Workers

As mentioned above, any termination of labor protections for H2-A workers will affect the labor protections of U.S. workers, this is not limited to the right to organize or lower wages but the following:

- **Right to Just Cause Termination:** the rule appropriately applies a definition of "termination for cause," by adopting five criteria that must be satisfied to ensure that termination processes are justified and reasonable. This protects workers from unfairly terminating

¹ United States Department of Labor, Wage and Hour Division, *Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)*, February 2010, <https://www.dol.gov/agencies/whd/fact-sheets/26-H2A>

workers under the H-2A program.

- **Enhanced Transparency for Job Opportunity and Foreign Labor Recruitment:** the rule included disclosure of foreign labor recruitment to protect vulnerable agriculture workers from abuse and exploitation. By the Department having a record of the identity, geographic locations of workers, hired by or working for the foreign labor recruiter and any of the agents or employees of those persons and entities who will recruit or solicit prospective H-2A workers.
- **Disclosure of Applicable Wage Rates and Overtime Opportunities:** to require employers to offer and advertise on the job order any applicable prevailing piece rate, the highest applicable hourly wage rate, and any other rate the employer intends to pay, and to pay workers the highest of these wage rates, as calculated at the time work is performed. explicitly require the employer to specify in the job order any applicable overtime premium wage rate(s) for overtime hours worked and the circumstances under which the wage rate(s) for such overtime hours will be paid. This helps ensure that agricultural workers are fully and timely compensated for their work.
- **Preventing Confiscation of ID, Passport, and Immigration Documents:** The rule prohibits employers from holding or confiscating a worker's passport, visa, or other immigration or government identification documents. This is a necessary protection as employers have been known to confiscate these documents as a form of retaliation against workers who report labor abuses and wage theft.
- **Joint Employer Protections:** Since many farm agricultural employers work through various contractors or entitles, the rule adopted the joint employer rule which will protect workers and their rights from all types of employers including farm labor contractors or agents.
- **Expands protections for Engaging in Workers' Rights:** Although the rule does not provide collective bargaining rights, the rule ensures that workers have a right to exercise their rights at the state and local levels, provides representation in disciplinary proceedings, and ensures access to key service providers for workers to gain information of their own rights.¹¹

Conclusion: Recission of the rule will harm the United States Economy

According to the United States' Department of Agriculture, the United States' agriculture and food industry added \$1.537 trillion to the U.S. economy.¹² The exponential growth of workers on the H-2A program is the only way that the industry can reach demand in the industry since there are labor shortages for farm work across the country.

For these reasons, CLASP urges the Department to withdraw its proposed rescission of 20 CFR parts 651, 653, 655, 658, and 501. For further information or any questions, please contact Lorena Roque, Interim Director of Education, Labor, and Worker Justice at the Center for Law and Social Policy, at Iroque@clasp.org.

- ¹ *United Farm Workers Recommendations to USDA on the Farm Labor Stabilization and Protection Pilot Program*, USDA, 2024, https://www.fsa.usda.gov/sites/default/files/documents/usda_pilot_program_report_final_9_22_23.pdf
- ² Marcelo Castillo, Skyler Simnitt, and Steven Zahniser, *Farm Labor*, Updated July 7th, 2025, <https://www.ers.usda.gov/topics/farm-economy/farm-labor#:~:text=Average%20age%20in%20years,22>
- ³ Daniel Costa, *The Farmworker Wage Gap: Farmworkers Earned 40 percent less than comparable nonagricultural workers in 2022*, Economic Policy Institute, October 5, 2023, <https://www.epi.org/blog/the-farmworker-wage-gap-farmworkers-earned-40-less-than-comparable-nonagricultural-workers-in-2022/>
- ⁴ Franklin D. Roosevelt Presidential Library and Museum, *FDR and the Wagner Act*, 2016, <https://www.fdrlibrary.org/wagner-act>
- ⁵ Michael H. LeRoy and Wallace Hendricks, *Should "Agricultural Laborers" Continue To Be Excluded from the National Labor Relations Act?*, 48 Emory Law Journal 489 (Spring 1999) (hereafter "'Agricultural Laborers'") <https://experts.illinois.edu/en/publications/should-agricultural-laborers-continue-to-be-excluded-from-the-national-labor-relations-act/>
- ⁶ Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards*, VI. Legal Obstacles to U.S. Workers' Exercise of Freedom of Association" (New York: 2000), https://www.hrw.org/reports/2000/uslabor/USLBR008-08.htm#P1878_453219
- ⁷ U.S. Bureau of Labor Statistics, *May 2024 National Occupational Employment and Wage Estimates United States*, 2025, https://www.bls.gov/oes/current/oes_nat.htm
- ⁸ *Ibid.*
- ⁹ Centro De Los Derechos Del Migrante, Inc. *Recruitment Revealed: Fundamental Flaws in the H-2A Temporary Worker Program*, https://cdmigrante.org/wp-content/uploads/2018/02/Recruitment_Revealed.pdf
- ¹⁰ United States Department of Labor, Wage and Hour Division, *Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)*, February 2010, <https://www.dol.gov/agencies/whd/fact-sheets/26-H2A>
- ¹¹ Federal Register, *Improving Protections for Workers in Temporary Agricultural Employment in the United States*, A Rule by the Employment and Training Administration and the Wage and Hour Division, April 29, 2024, <https://www.federalregister.gov/documents/2024/04/29/2024-08333/improving-protections-for-workers-in-temporary-agricultural-employment-in-the-united-states>
- ¹² U.S. Department of Agriculture, Economic Research Service, *Farm and Farm Income*, August 29, 2025, [https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income#:~:text=Gross%20cash%20farm%20income%20\(GCFl,by%202.9%20percent%20in%202025.](https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income#:~:text=Gross%20cash%20farm%20income%20(GCFl,by%202.9%20percent%20in%202025.)