



**New Orleans
Workers' Center for
Racial Justice**

The following is a response to the U.S. Department of State, Office to Monitor and Combat Trafficking in Persons' (G/TIP) *Request for Information for the 2010 Trafficking in Persons Report* (Public Notice 6921) submitted jointly by the following organizations:

1. American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
2. New Orleans Workers' Center for Racial Justice (NOWCRJ)
3. Centro de los Derechos del Migrante (CDM)
4. Solidarity Center

Information about each organization follows at the end of this document. This joint submission addresses human trafficking for labor exploitation in the United States (U.S.).

I. INTRODUCTION

While the U.S. government is taking measures to address human trafficking within its borders, significant problems remain in addressing trafficking for labor exploitation. In particular, migrant workers that come to the U.S. under the H-2B visa program are particularly vulnerable along a continuum of exploitation and abuse that includes human trafficking, forced labor, debt bondage and involuntary servitude.

On paper, the H-2B guestworker program is a vehicle for U.S. employers to hire workers from abroad on a temporary basis to perform work that the employer is unable to find workers in the U.S. to do, under conditions that do not undermine internationally recognized workplace standards.¹ In practice the program creates a legalized system and structure for employers to exploit their workers, and increases workers' vulnerability to human trafficking, forced labor, debt bondage and involuntary servitude.

As noted in the 2008 Department of State Trafficking in Persons Report:

[T]he number of cases reported to the Department of State has raised concerns that labor trafficking is occurring within the context of this otherwise legal form of transnational labor migration. An example of this phenomenon: A worker is recruited in his hometown in a South Asian country for a two-year construction contract in a Gulf state. The labor recruiting company tells the worker that he will earn \$250 a month in addition to overtime payments for more than 40 hours worked in a week, and he will receive free room, board, medical care, and one day off per week. Upon arrival, however, the worker discovers that he is to be paid \$120 per month with no paid overtime, and deductions of \$15 a month are to be taken from his paycheck for food. He was deceived by the labor recruiter, who collaborated with the worker's Gulf state employer, and now he is exploited by the employer who has confiscated the worker's passport and threatens to turn him over to immigration authorities as an undocumented migrant if he does not

¹ The law requires an employer certify that "qualified persons in the United States are not available and . . . the terms of employment will not adversely affect the wages and working conditions of workers . . . similarly employed." 20 CFR § 655.3

continue working. Through threatened abuse of the legal process (immigration laws) the employer has coerced the migrant worker to continue his labor on terms to which the laborer did not consent. This is trafficking in persons.²

The situation faced by the South Asian construction worker in the example above is analogous to the plight of many U.S. guestworkers under the H-2B visa program. As described below, the U.S. government has been inconsistent in its response to such cases of human trafficking and has failed to take measures to adequately address the inherent vulnerabilities for workers in the program.

Background on the Guestworker Program

The H-2 B program has been the fastest growing and most problematic immigrant labor program in U.S. recent history.³ Experts that have studied the H-2B program have concluded that the program's structural flaws have created a "modern-day system of indentured servitude."⁴ Coupled with weak labor standards enforcement, the program renders workers unable or unwilling to report violations of both criminal and civil laws as they have lost confidence in the U.S. government's ability to protect their rights. All too often workers are punished for coming forward rather than getting the protections they deserve as victims of exploitation.⁵

Among the structural flaws of the H-2B program are:

- Debts incurred for recruitment, visa, travel, and extension fees prevent guestworkers from being able to report labor violations
- Structural inequalities block workers from coming forward
- Tying guestworkers to one employer prevents them from reporting labor violations as the fear arrest, detainment and deportation
- Workers face retaliation and deportation when reporting labor violations (by both the government and employers)

The structural flaws have resulted in H-2B workers commonly suffering abuse and exploitation in the workplace, including:

- Confiscation of passports and other legal documents
- Exorbitant recruitment fees; often resulting in debt bondage
- Physical and emotional abuse or violence
- Sexual harassment, abuse or violence

² U.S. Department of State, Trafficking in Persons Report, June 2008, available at: <http://www.state.gov/g/tip/rls/tiprpt/2008/105379.htm>

³ Statement of Ross Eisenbery, Economic Policy Institute, *Reforming the H-2B Nonimmigrant Visa Program*, House Judiciary Committee, Subcommittee on immigration, Citizenship, Refugees, Border Security, and International Law, April 16, 2008.

⁴ *Close to Slavery: Guestworker Programs in the United States*, Southern Poverty Law Center, available at: www.splcenter.org

⁵ See the attached testimony of Founding Member and Organizer of the Alliance of Guestworkers for Dignity Daniel Castellanos, Executive Director of the New Orleans Workers' Center for Racial Justice Saket Soni, and grassroots labor leaders and former guestworkers Aby K. Raju and Miguel Angel on *The H-2B Guestworker Program and Improving the Department of Labor's Enforcement of the Rights of Guestworkers*, Committee on Oversight and Government Reform, Subcommittee on Domestic Policy, U.S. House of Representatives, April 23, 2009.

- Threats of deportation (if workers attempt to leave the worksite or complain about working conditions)
- Discrimination
- Intimidation
- Restrictions to the freedom of association and right to organize
- Restrictions on having visitors on the worksite
- Restriction of the freedom of movement – often workers are unable to leave fenced-off worksite by their own volition
- Dirty, unsafe, and unhealthy living conditions
- Lack of access to health or medical care
- Lack of payment or under-payment of wages
- Forced overtime

Individually, these violations constitute violations of state and federal criminal laws as well as civil worker protection laws. In extreme cases, however, the totality of the circumstances constitutes human trafficking for labor exploitation, forced labor and involuntary servitude.

The International Labor Organization (ILO) cited this vulnerability in its 2009 report *The Cost of Coercion*, which highlights conditions of forced labor, human trafficking and other forms of modern-day slavery around the world:

In the United States and Canada, there has been growing attention to the forced labour conditions that can be experienced by foreign workers in domestic service, agriculture and other sectors of the economy. In both countries the creation of new task forces and strengthened law enforcement against human trafficking has served to bring ever more cases to light . . . While many of those in forced labour are irregular migrants, concerns have been expressed that workers recruited by intermediaries under official “guestworker” programmes can end up in debt bondage situations when they are heavily indebted and when there are restrictions on their right to change employers.⁶

Debt Bondage

The abuses in the H-2B program often start long before workers arrive in the U.S. As noted by the Department of State in the 2009 Trafficking in Persons Report:

Debt Bondage Among Migrant Laborers

The vulnerability of migrant laborers to trafficking schemes is especially disturbing because the population is sizeable in some regions. There are three potential contributing factors: (1) abuse of contracts; (2) inadequate local laws governing the recruitment and employment of migrant laborers; and (3) intentional imposition of exploitative and often illegal costs and debts on these laborers in the source country, often with the support of labor agencies and employers in the destination country.

⁶ *The Cost of Coercion: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labor Organization, International Labor Conference, 98th Session 2009 Report I(B), available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_106230.pdf

Abuses of contracts and hazardous conditions of employment do not in themselves constitute involuntary servitude. But the use or threat of physical force or restraint to keep a person working may convert a situation into one of forced labor. Costs imposed on laborers for the “privilege” of working abroad can make laborers vulnerable to debt bondage. While the costs alone do not constitute debt bondage, when they become excessive and involve exploitation by unscrupulous employers in the destination country, they can lead to involuntary servitude.⁷

While the TIP Report focuses on the situation of debt bondage in countries like the United Arab Emirates and Malaysia, the situation is the same for many H-2B guestworkers in the U.S. As noted by the Southern Poverty Law Center:

U.S. employers almost universally rely on private agencies to find and recruit guestworkers in their home countries, mostly in Mexico and Central America. These labor recruiters usually charge fees to the worker — sometimes thousands of dollars — to cover travel, visas and other costs, including profit for the recruiters. The workers, most of whom live in poverty, frequently must obtain high-interest loans to come up with the money to pay the fees. In addition, recruiters sometimes require them to leave collateral, such as the deed to their house or car, to ensure that they fulfill the terms of their individual labor contract.

Significant numbers of H-2B visa program workers report having to pay excessive fees to labor recruiters. As noted by CDM, “Although U.S. law currently prohibits recruiters from charging workers fees, lax enforcement permits unscrupulous recruiters to charge exorbitant fees.”⁸ For example, NOWCRJ clients have reported paying more than \$20,000 to work in shipyards in the U.S. Gulf Coast. CDM has noted that in some cases, women workers reported paying as much as \$1,500 to work in the crab industry in Maryland.

In some cases guestworkers owe debts directly to employers that are holding them in debt bondage. Often, increasingly sophisticated trafficking rings coerce guestworkers to incur debts on the private market. Employers then manipulate the severe psychological pressure caused by the extreme debts to maintain control and power over guestworkers through threats of forced deportation back into the insurmountable debt. The U.S. government should recognize these debts as an element of control and coercion that is an indication of involuntary servitude

Debt bondage, as described above, is a modern-day form of slavery. Because of their debt, workers often cannot leave an abusive employment situation. Countries of destination, such as the United States, may respond to the debt bondage issue by saying that the violation (the collection of the recruitment fee) happens outside of their borders in the country of origin for guestworkers. Such an argument, however, ignores the role that U.S. employers and recruiters play in this process. “U.S. H-2B employers and the U.S. recruiters they hire often partner with foreign recruiters, and then deny knowledge of the foreign recruiters’ tactics when fraud and abuse are alleged.”⁹ It also ignores the context — the debt is the process and means by which workers are exploited in their workplaces in

⁷ Department of State, 2009 Trafficking in Persons Report, June 2009.

⁸ 20 C.F.R. § 655.22 (g)(2) (2009); CDM Report submitted as supplemental material.

⁹ Seminara, David. *Dirty Work: In-Sourcing American Jobs with H-2B Guestworkers*, Center for Immigration Studies, January 2010

the countries of destination (like the U.S.). As a form of coercion, debt bondage is an element of human trafficking. The U.S. government (in its laws and enforcement of laws) does not do enough to address debt bondage and labor recruitment abuses, and the H-2B program allows the practice to flourish.

Inability to change employers makes workers vulnerable to exploitation

Employers often manipulate the structural limitations in the H-2B visa program, such as the restrictions on changing employers. Well-known and respected scholars have concluded that under the Thirteenth Amendment of the U.S. Constitution, the right to quit and change employers is defined as the paramount protection from involuntary servitude.¹⁰ As described in the supporting documents to this submission, U.S. employers use the linkage of the visas to that particular job as a way to threaten and coerce migrant workers to work in exploitative situations. Furthermore, employers often block workers from the right to organize or seek outside assistance by threatening physical restraint, arrest and abuse of the legal process.

Interference and collusion among U.S. government agencies

In the United States, immigration authorities (especially from Department of Homeland Security, Immigration and Customs Enforcement (ICE)) often get involved in the enforcement of labor standards, while at the same time, the U.S. Department of Labor has not done enough to enforce labor standards in the H-2B program. The involvement of ICE in various H-2B visa program cases has resulted in significant interference in getting potential trafficking cases identified, certified and prosecuted. ICE's involvement often means that labor violations are ignored in favor of immigration enforcement.

Even more problematic is reported collusion between ICE and employers of H-2B visa program workers. As described in the attached documents, in the ongoing cases of Indian guestworkers trafficked to the U.S. to work in Mississippi and Texas shipyards as welders and pipefitters, their employer trafficked them into involuntary servitude by limiting their right to quit or change employers through the structural limits of the H-2B visa, colluded with ICE to block their attempts to organize through threats of deportation, and subjected the workers to racial subjugation.¹¹

¹⁰ James Gray Pope, *Contract, Race, and Freedom of Labor in the Constitutional Law of "Involuntary Servitude,"* 119 YALE L. J. (forthcoming 2010)(available on line at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1476521)

¹¹ Furthermore, evidence now reveals that in one of the most emblematic cases of trafficking within the guestworker program, two Department of Homeland Security Agencies-- ICE and the U.S. Customs and Border Patrol Agency (CBP)—colluded with a labor trafficker and undermining the investigation of that trafficker by other federal agencies. Documents obtained through discovery in the civil litigation David et al. v. Signal et al., No. 08-1220, U.S. Dist. Ct., E.D. La., including deposition testimony under oath by Ronald Schnoor, Signal's Chief Operating Officer and Darrell Snyder, Signal's Mississippi General Superintendent, reveal ICE and CBP misconduct from March 2007 to the present. The documents and testimony show that ICE advised Signal, a Mississippi-based defense contractor with operations in Mississippi and Texas, on how to conduct private deportations of H-2B guestworkers in order to block their attempts to organize and enforce their labor and civil rights, by forcing them out of the United States. Then, ICE and CBP colluded with the company on policies and practices that enforced coercive conditions including a further retaliatory framework to ensure that the guestworkers would cease organizing and trying to enforce their rights and would remain in involuntary servitude. Finally, ICE undermined what should have been fair investigations of the illegal conduct by independent federal agencies including the U.S.

As described below, the United States government (USG) has not taken adequate measures to reduce the vulnerability of workers to human trafficking and other severe forms of labor exploitation inherent in the H-2 visa program.

II. PROSECUTION

The U.S. government has prosecuted cases of human trafficking of guestworkers. However, significant deficiencies remain as many cases go unreported, unaddressed or ignored. While there are many reasons for this, two of the main ones are: 1) lack of understanding about human trafficking for labor exploitation among U.S. law enforcement and other government officials, as well as among employers, workers themselves, and the general population in the United States; and, 2) interference from government agencies.

The lack of understanding about human trafficking for labor exploitation has resulted in cases being dismissed as simply “visa fraud” or “immigration violation” cases. Others categorize cases that may be trafficking of guestworkers as “labor disputes” or “simple labor violations.” Such a lack of understanding in the United States is prevalent among police, immigration and customs officials, labor inspectors, prosecutors and other U.S. government officials.

While the U.S. Department of Justice Civil Rights Division, Human Trafficking Prosecution Unit and some officials at United States Citizen and Immigration Services (USCIS) have demonstrated an understanding of the human trafficking and other forms of modern-day slavery issues that arise in the H-2 visa program, other government law enforcement officials have not demonstrated a similar understanding. Cases continue to be un- or under- reported and addressed.

As noted previously, interference by ICE in cases of labor standards violations in the H-2B visa program reduces the likelihood that human trafficking, involuntary servitude or debt bondage are reported or addressed.

In addition, other USG agencies have demonstrated lax enforcement, which may result in increased vulnerability of H-2B visa holders to human trafficking. For example, “[d]espite credible allegations and even convictions for fraud and abuse of both H-2B workers and the program in general, neither the Department of Labor (DOL) nor the Department of Homeland Security (DHS) has ever barred a U.S. company from filing H-2B petitions. Some repeat offenders continue to have their petitions approved to this day

Moreover, changes to regulations governing the H2B program have made the situation of H2B workers even more precarious. In December 2008, the Department of Labor and the Department of Homeland Security amended their regulations in a way that diminished accountability for employers and recruiters who engage in fraudulent and unlawful recruiting practices.¹² Worker

Department of Justice (“DOJ”).

¹² See Labor Certification Process and Enforcement for Temporary Employment in Occupation Other than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes; Final Rule, 73 Fed. Reg. 245, 78020 (December 19, 2008), available at <http://www.foreignlaborcert.doleta.gov/pdf/H2BFinalRule.pdf>.

advocates strongly opposed those changes, and continue to urge the agencies to revoke the regulations.¹³

III. PROTECTION

International and national protocols for protecting victims emphasize that protections must be offered immediately both to support cooperation and to fulfill an important humanitarian purpose.

While U.S. anti-trafficking laws provide for “continued presence” for victims, the U.S. Department of Justice often refuses to certify many victims leaving them exposed and vulnerable during the time that they undertake the more laborious and delayed application process for long-term immigration relief. The DOJ should adopt new policies to ensure that the U.S. government provides this benefit to labor trafficking survivors immediately.

DHS should also adopt national protocols limiting enforcement actions against the detention and removal of labor trafficking survivors. Again, while the TVPA provides for administrative closure of removal cases for survivors of trafficking, in practice the implementation of this protection are inconsistently and politically applied. Furthermore, there should be specific policies limiting the detention of trafficked persons.

IV. PREVENTION

In terms of prevention of human trafficking and other forms of modern-day slavery in the H-2B visa program, the USG is not adequately addressing the issue. As described in the *Introduction*, the structure and processes of the H-2B program inherently create vulnerabilities to coercion. Among other issues, exorbitant recruitment fees and being tied to a particular employer that are part and parcel of the H-2 visa program make workers susceptible to exploitation and abuse. The USG, especially from 2000 to 2008, did little to raise awareness among USG law enforcement or other officials about human trafficking for labor exploitation. For example, the number of wage and hour inspectors decreased significantly in this decade, and only inadequate training has been given.

V. CASE EXAMPLES

The following are highlights of case examples presented in supplemental and source material accompanying this submission:

New Orleans Workers’ Center for Racial Justice

1. *Trafficking of Indian Guestworkers to the U.S. Gulf Coast*: A group of 500 Indian workers were trafficked to Signal International’s shipyards in Mississippi and Texas in the aftermath of

¹³ See DHS Docket No. USCIS-2001-0058, Comments of Low Wage Worker Legal Network, AFL-CIO, NCLR et al.

Hurricane Katrina. Pursuant to the terms of their H-2B visa, they were only permitted to work for the sponsoring employer.

The workers have collectively and credibly alleged that Signal International obtained their labor through a fraudulent, coercive, and threatening recruitment process facilitated by Signal's agents, including recruiters in the United States and India and a U.S. immigration lawyer who visited India multiple times over several years and that they were trafficked into involuntary servitude at Signal.¹⁴

Signal's recruiters promised green cards for workers and their families and stable employment in the United States. The workers have stated publicly to the U.S. and Indian governments that based on these false promises, workers risked their families' futures: they sacrificed current jobs as guestworkers in the Middle East, turned over a generation of family savings their homes, mortgaged family homes and heirloom jewelry, and incurred significant debts of up to \$20,000 U.S. each.

Guestworker Aby K. Raju has testified before Congress that after the workers arrived in the U.S. in a condition of virtual debt servitude, Signal and its agents then manipulated their indebtedness, fear, and isolation. As Mr. Raju testified, Signal reasonably convinced workers they would face serious harm, restraint and abuse of the legal process if they did not continue working for Signal. Mr. Raju further testified that when workers organized to collectively assert their rights, Signal retaliated, forcibly restraining and attempting to deport the organizers while simultaneously quashing any resistance to the existing involuntary servitude and forced labor.

Since March 2008, the workers have been cooperating in overlapping government investigations including the following:

- DOJ's investigation into human trafficking crimes (50-41-113) complained of by over 250 victims. After the FBI initially offered to interview the workers and investigate their claims, ICE took over the investigation and has served as the lead investigative agency for DOJ. See Section III herein. This investigation is ongoing. There have been no indictments.
- Equal Employment Opportunities Commission's ("EEOC") investigation of class charges ("EEOC") (420-2007-02302, Jackson Area Office) alleging discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964. The EEOC has issued a determination on the merits that reasonable cause exists that Signal's actions constitute unlawful discrimination and retaliation and offered conciliation starting at twenty-two million dollars for the class. This conciliation process between the EEOC and Signal is ongoing. This determination underscores key elements of each victim's allegations that he is a victim of a severe form of trafficking pursuant to 8 C.F.R. § 214.11(f) based in part on the effects of this discriminatory and retaliatory conduct.

¹⁴ For allegations of fact made under oath, see *David v. Signal et al.*, No. 08-1220, U.S. Dist. Ct., E.D. La. (first amended complaint filed as a class action); Congressional Testimony of Aby K. Raju on behalf of himself and similarly situated workers; Class charge form no. 420-2007-02302, Jackson Area Office submitted to the Equal Employment Opportunity Commission ("EEOC"), and other testimony submitted under oath. For proof of formal agency relationships, See, e.g., Global Services Agreements, Power of Attorney documents, and retainers of legal representation between Signal and these agents.

- Department of Homeland Security's Office for Civil Rights and Civil Liberties' ("DHS-CRCL") (09-070ICE-0070) investigation of ICE misconduct including covert surveillance of the trafficking victims in March 2008. The DHS-CRCL investigation is ongoing, and the investigator has interviewed ICE agents as well as workers who were surveilled by ICE.

The guestworkers have also filed a civil lawsuit alleging these and other specific facts, David v. Signal et al., No. 08-1220, U.S. Dist. Ct., E.D. La. and claiming violations of the Trafficking Victims' Protection Act, 42 U.S.C. §§1981 and 1985; the Civil Racketeering and Corrupt Organizations Act, 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d); the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., and other state and federal laws. Parties have conducted extensive class discovery and the hearing on class certification is scheduled for March 2010.

The guestworkers are also seeking immigration protections (such as "T-Visas") as victims of trafficking for themselves and their family members.

2. In Tennessee, while economic crisis engulfed families, a company called Cumberland Environmental Resource, Inc. defrauded the U.S. government to exploit foreign workers, excluded U.S. workers, and illegally attacked the fundamental right of all workers to organize. Cumberland submitted fraudulent applications to the U.S. government claiming that workers would be working for his company onsite in Brentwood, Tennessee. He claimed that he had these jobs and that he could not find U.S. workers to fill them. DOL certified Lang to bring workers on H-2B visas. When workers arrived, they learned that the jobs they had been promised did not exist. Workers languished for weeks, sometimes months, waiting for the work they were promised. They had plunged their families into debt to pay thousands of dollars in recruitment fees to Cumberland's agents. Some of the workers were forced to leave the deeds to their homes as collateral with recruiters, to guarantee that they would finish their contracts with Cumberland. Cumberland held the workers hostage to the hope of jobs that did not exist, while their debts grew and their desperation rose. When Cumberland did provide jobs, the work was not in Nashville. Cumberland leased the workers out to other contractors across the South. Astonishingly, these included contractors working on local, state, and federal government worksites. Workers were employed on Maxwell Air force Base in Alabama, Camp Lejuene in North Carolina, Vanderbilt Hospital in Nashville, Veteran's Hospital in Nashville, and universities across the South. Cumberland violated the terms of the H-2B contract with the U.S. government and the workers. Workers finally asked to see their contracts. Cumberland refused. When workers asked for a meeting with the head of Cumberland, they were threatened with termination and deportation. Cumberland interrogated workers about their organizing efforts, and attempted to force workers to sign away their right to organize in closed-door meetings. When workers stood up for their dignity and rights and pressed for a meeting, Cumberland retaliated by firing them. The workers have filed complaints with the Department of Labor, asking that the Office of the Inspector General investigate Cumberland for fraud.

Centro de los Derechos del Migrante (CDM)

1. Employers in the fair and carnival industry actively isolate migrant workers and threaten them with deportation if they attempt to leave the worksite or complain about working conditions. Many of the workers with whom CDM spoke reported various incidences of verbal abuse, physical violence, and discrimination by employers. Workers described being called various

racial slurs and names such as “animal,” and were threatened with physical intimidation. Throughout the industry, employers keep workers’ passports to prevent them from abandoning the job. Various workers stated that when they requested their passport, the employers simply refused to return them. Employers also prohibit the workers from having visitors on the worksite. Furthermore, workers are generally unable to leave the fenced-off worksites by their own volition. To leave, the workers must either surreptitiously crawl underneath the fence or wait until the employer takes the workers off the worksite. Workers generally lived in trailers directly on the worksite, although one worker with whom CDM spoke was forced to sleep outside on cardboard under the ride he operated and had to pay \$5 USD to use nearby shower facilities as the employer had not made housing arrangements. The provided trailers are often severely substandard with dilapidated beds and malfunctioning toilets and showers, in addition to lacking basic cooking facilities.

2. The H-2B visa workers in the carnival and fair industry are paid weekly wages ranging from \$250 USD to \$350 USD, but while the work hours can vary widely, they regularly exceed 72 hours per week and include shifts exceeding 20 hours. Thus, a worker earning \$250 USD per week for 72 hours of work earns roughly \$3.47 USD per hour—far below the current federal minimum wage to which he is entitled. However, many of the workers reported that native-born U.S. workers would be paid hourly wages for the same work. In addition to earning such meager wages, the H-2B visa workers must pay at least \$500 USD in visa, recruitment, and transportation fees before they even arrive at a U.S. worksite. Workers complain of being fined for taking short breaks, even to use the restroom. Even when these workers realize they have no possibility of earning a living wage, they face the additional bitter reality that they are not free to leave this abusive employment situation: the employer confiscated their passports.
3. For women in the crab industry, fears of losing legal status in the U.S. and employer retaliation prevent the women arriving on H-2B visas from escaping workplace violations. Women are paid as little as \$1.70 per pound of crabmeat picked, although in some areas, employers pay the women from \$2 USD to \$2.50 USD per pound of crabmeat picked. The number of hours women work fluctuates drastically, as they must depend on the seasonal fluctuation of crabs to dictate the number of hours available. However, even when 8-hour days are available, women must work more quickly than likely safe to pick enough pounds of crabmeat to earn a decent wage. At \$1.70 per pound, a woman must pick 34 pounds a day to earn the federal minimum wage. When the crabs are of decent quality, the most experienced women can generally pick approximately 30 to 40 pounds. The quick pace renders women more susceptible to cuts from both knives and crab claws, especially since most women do not wear protective gloves because this slows down the pace at which they can pick crabmeat. Therefore, the women are more susceptible to *vibrio vulnificus*, a disease with a 50-percent mortality rate once it enters the bloodstream.¹⁵

VI. RECOMMENDATIONS

The following are recommendations for the U.S. government at the national, state and local level:

¹⁵ Center for Disease Control and Prevention, *Vibrio vulnificus*, available at http://www.cdc.gov/nczved/dfbmd/disease_listing/vibriov_gi.html (last visit Nov. 20, 2009).

1. Better intra-governmental coordination among agencies (and especially among different law enforcement officials in different agencies) that deal with various aspects of the problem of trafficking for labor exploitation; for example, labor, immigration, health and human services, prosecution, etc.
2. Train government officials to recognize and address trafficking for labor exploitation in the various agencies. In particular, officials need to be trained on how to recognize the danger signs of extreme forms of labor exploitation, such as human trafficking, in the midst of other violations such as visa fraud, wage and hour disputes, etc.
3. Ensure that the Department of Homeland Security (particularly ICE and CBP) do not interfere with Department of Labor investigations of exploitation of guestworkers or other migrant workers
4. Develop partnerships with labor, workers' rights groups, and worker protection agencies at the national, state and local level.
5. Conduct research on how discrimination, racial subjugation, retaliation, and attacks on the freedom of association are indicia of involuntary servitude.
6. Develop systems for government accountability; hold government officials accountable for interference or collusion that violates human and worker rights.
7. Allocate resources to potential high-incidence areas for human trafficking – for example, in areas that have less infrastructure, high-levels of poverty, and large influxes of migrant worker populations. (e.g. post-Hurricane Katrina U.S. Gulf Coast. There have been no labor trafficking prosecutions in the five years since Katrina despite numerous complaints.
8. Assess whether task force models are leading to prosecutions and adjust participants and funding streams based on efficacy.
9. Set reasonable timelines to ensure prosecutions are vigorously pursued, and ensure that the necessary resources, such as language translation, are available.
10. Reevaluate standards to allow potential victims of trafficking to remain in the U.S. and work while their trafficking case is being investigate and prosecuted. (e.g. continued presence)
11. The U.S. government should also exercise its discretion in other areas, including using deferred action to ensure safety and cooperation of victims

VII. ORGANIZATIONAL INFORMATION

The **American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)** is a voluntary federation of 56 national and international labor organizations with a total membership of 11.5 million working men and women, including 3 million members in Working America, its community affiliate.

Centro de los Derechos del Migrante, Inc. (CDM) is a transnational non-profit organization dedicated to improving the working conditions of migrant workers in the United States. Founded in

2005, CDM is based on the premise that workers should have access to justice all along the migrant stream. In order to bring rights education and legal representation to workers in their home communities and in the U.S., CDM has offices in Zacatecas, Mexico, Juchitán, Oaxaca, Mexico, and in the Washington, D.C. metropolitan area. With locations on both sides of the border, CDM has developed an innovative approach to legal advocacy and organizing that engages workers in their communities of origin, at the recruitment site, and at their places of employment in the U.S. Believing that the border should not be a barrier to justice, CDM ensures that when workers return home, they do not leave their rights behind.

The New Orleans Workers' Center for Racial Justice is New Orleans based nonprofit dedicated to organizing workers across race and industry to build the power and participation of workers and communities. We organize day laborers, guestworkers, and homeless residents to build movement for dignity and rights in the post-Katrina landscape. **The Alliance of Guestworkers for Dignity**, a grassroots project of the New Orleans Workers' Center for Racial Justice is the only membership organization in the United States comprised of H-2B guestworkers and former guestworkers. Our hundreds of guestworker members include some of the most vital workers in the post-Katrina Gulf Coast economy-- the housekeepers and front desk clerks in New Orleans' French Quarter, the welders and pipefitters of the Mississippi Gulf Coast, construction workers across the Southeast, and the strawberry and sugar cane harvesters of Louisiana. The guestworkers come from countries around the globe, including Dominican Republic, Mexico, Peru, El Salvador, Brazil, Bolivia, and India. Although they come to the U.S. from different countries and work in different industries, Alliance members have joined together to advocate for fair treatment on the job and immigration policies in the U.S. and their home countries that allow foreign workers and families to enter the United States into dignified life and work, without being pitted against U.S. workers. The Alliance of Guestworkers for Dignity has organized hundreds of trafficking victims and their families in the United States and their countries of origin, and its legal department has represented trafficking victims in civil lawsuits, immigration applications, removal defense, raids response, and as witnesses in criminal investigations.

The **Solidarity Center** is an international non-governmental organization headquartered in Washington DC, with 27 field offices around the world and programs in over 60 countries. The Center engages in a wide range of technical assistance, educational and other activities to promote human and worker rights globally. It has more than 20 years of experience in addressing the areas of child labor, migrant worker exploitation and other extreme forms of labor exploitation, including trafficking in persons (TIP). SC is a recognized global leader in efforts to address TIP (including the root causes), and since 2001 has implemented more than 18 projects combating human trafficking in 12 countries. While the focus of Solidarity Center's work is international and not in the U.S., the Center has joined this submission as many of the workers trafficked to the U.S. come from countries of origin where the Solidarity Center works. In addition, the Center's experience with guestworker programs around the world has helped to inform this submission.

VIII. SUPPLEMENTAL DOCUMENTATION & SOURCE MATERIAL

1. Centro de los Derechos del Migrante, Inc. (CDM) statement on the H-2B program and human trafficking
2. Editorial, "A Bitter Guest Worker Story," *The New York Times*, February 4, 2010
3. Preston, Julia, "Suit Points to Guest Worker Program Flaws," *The New York Times*, February 2, 2010.

4. Testimony of Mr. Aby K. Raju, Former H-2B Guestworker with Signal International, LLC, Member, Alliance of Guestworkers for Dignity, “The H-2B Guestworker Program and Improving the Department of Labor’s Enforcement of the Rights of Guestworkers,” Committee on Oversight and Government Reform Domestic Policy Subcommittee, April 23, 2009.
5. Testimony of Mr. Daniel Angel Castellanos Contreras, Former H-2B Guestworker with Decatur Hotels, L.L.C., Organizer and Founding Member, Alliance of Guestworkers for Dignity, “The H-2B Guestworker Program and Improving the Department of Labor’s Enforcement of the Rights of Guestworkers,” Committee on Oversight and Government Reform Domestic Policy Subcommittee, April 23, 2009.
6. Testimony of Mr. Saket Soni, Executive Director, New Orleans Workers’ Center for Racial Justice, “The H-2B Guestworker Program and Improving the Department of Labor’s Enforcement of the Rights of Guestworkers,” Committee on Oversight and Government Reform Subcommittee on Domestic Policy U.S. House of Representatives, April 23, 2009.
7. The Alliance of Guestworkers for Dignity, “In Their Own Words: The Lives of Guestworkers. H-2B Visa Holders in the Gulf Coast Testify about their Reality
8. Antonio Morales vs. Bimbo Best Produce Plaintiffs’ Original Complaint
9. Antonio Morales vs. Bimbo Best Produce Ordering Staying Proceedings
10. Antonio Morales vs. Bimbo Best Produce Intervenor Complaint
11. Memo to Secretary Janet Napolitano, Department of Homeland Security regarding DHS Agencies’ Collusion with Mississippi Company to Suppress Workers’ Labor, Civil, and Constitutional Rights, February 3, 2010