

Labor Trafficking *on* Specific Temporary Work Visas

A DATA ANALYSIS 2018-2020

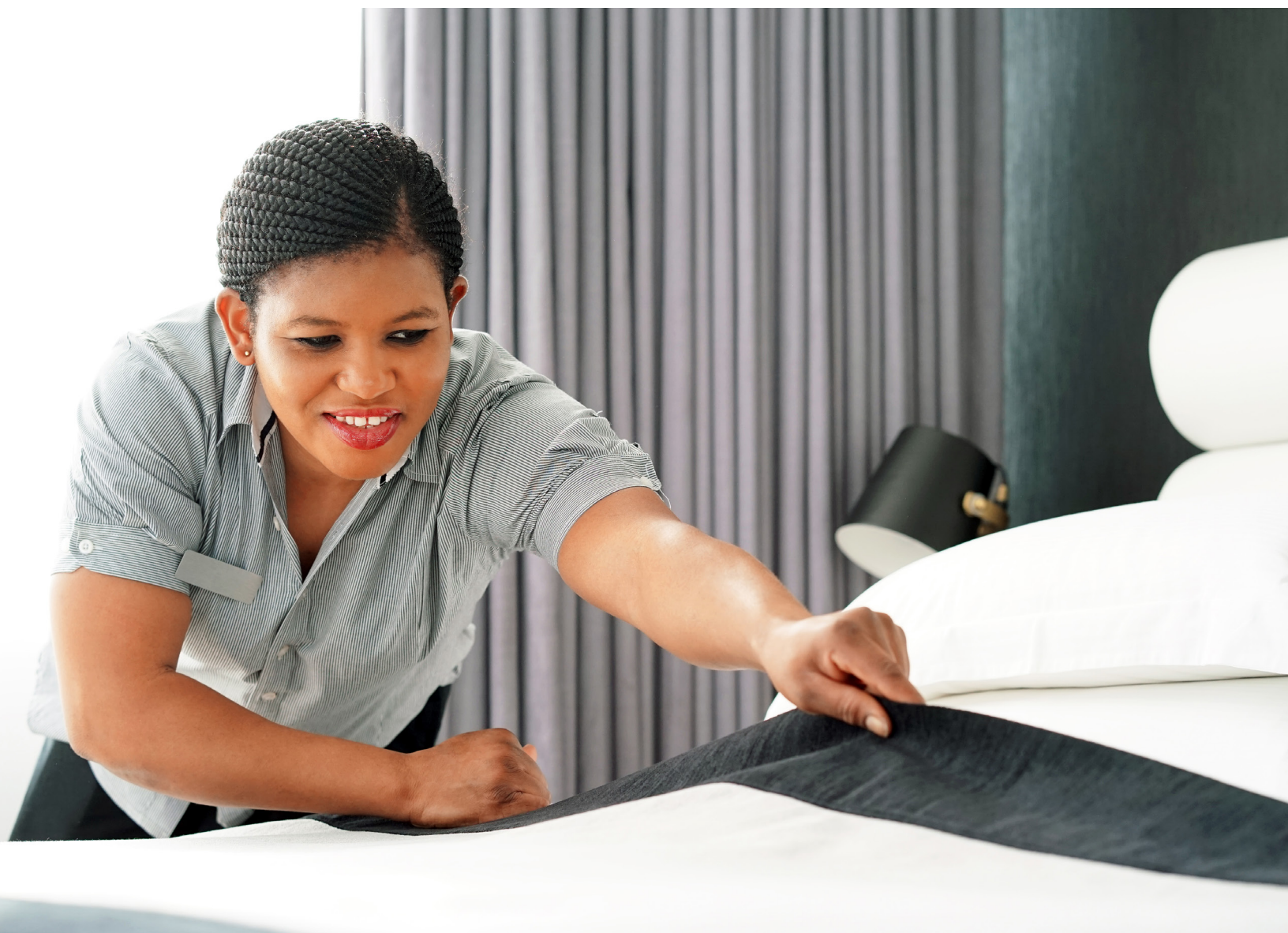


Polaris Freedom happens now.



Contents

Executive Summary	4
Introduction	7
Part 1: Overview of Labor Trafficking Involving Specific Temporary Work Visas . . .	9
Scope of Labor Trafficking Involving Temporary Work Visas	10
About the Victims	10
Venues of Labor Trafficking Involving Temporary Work Visas	12
Mechanisms of Labor Trafficking Involving Temporary Work Visas	13
Recruitment	13
<i>Recruitment Fees</i>	14
<i>Debt Bondage</i>	16
<i>Fraud: False Promises and Contract Violations</i>	16
Methods of Control	17
<i>Immigration Threats</i>	17
<i>Power Dynamics and Exploitation</i>	18
<i>Wage Theft</i>	19
<i>Isolation</i>	19
<i>Other Abuse, Discrimination</i>	20
<i>Complexity and Opacity of Employment Relationship</i>	20
Part 2: Details of Labor Trafficking Involving Specific Temporary Work Visas	22
Labor Trafficking Involving H-2A Agricultural Visas	23
<i>Who They Are</i>	25
<i>The Work They Do</i>	26
<i>Methods of Control</i>	26
Labor Trafficking Involving H-2B Temporary Non-Agricultural Worker Visas	29
<i>Who They Are</i>	30
<i>The Work They Do</i>	32
<i>Methods of Control</i>	32
Labor Trafficking Involving J-1 Cultural and Educational Exchange Visas	34
<i>Who They Are</i>	36
<i>The Work They Do</i>	37
<i>Methods of Control</i>	39
Labor Trafficking Involving A-3 and G-5 Diplomatic and International Organization Employee Visas	40
<i>Who They Are</i>	42
<i>The Work They Do</i>	42
<i>Methods of Control</i>	43
Part 3: Combatting Trafficking Involving Temporary Work Visas	45
Prevention and Support	46
Policy Solutions	47
Appendix: Methodology	49
Assessing for Trafficking	50



Acknowledgements

We would like to thank Martina Vandenberg and Agatha Tan from Human Trafficking Legal Center, Erik Nicholson from Pandion Strategy, Andrew Walchuk from Farmworker Justice, survivor leader Fainess Lipenga, Neha Misra from the Solidarity Center, and Daniel Costa from The Economic Policy Institute for reviewing and providing their insight and knowledge to this report. We would also like to express our gratitude to the survivors whose experience and resilience have inspired this report and all of the work Polaris does.



Executive Summary

Temporary work visas are intended to provide decent jobs to migrant workers while helping U.S. businesses meet their labor needs by filling mostly low-wage jobs that would otherwise sit vacant. Policymakers often refer to the migrants who come to this country as “guest workers.” But data from the National Human Trafficking Hotline shows that these guests — workers who have followed all the rules and laws and are expecting simply to earn a decent living and return home — are frequently exploited and even victimized by forced labor and other forms of trafficking. Indeed, exploitation, trafficking and abuse have become endemic to many of the visa categories.

Overall, more than half¹ of the victims of labor trafficking reported to the Trafficking Hotline during this period whose immigration status was identified were foreign nationals holding legal visas of some kind, including temporary work visas. That is no way to treat a guest — let alone hundreds of thousands of them.

The Trafficking Hotline exists first and foremost to assist victims of human trafficking. This means people seeking help are only asked to provide information that will allow the Trafficking Hotline team to offer the best possible options for support. Data collection is secondary. As a result, information about a potential victim’s visa status is not always available. For the purposes of this report, Polaris analyzed data from the four major temporary visa programs heard about most frequently on the Trafficking Hotline. Several government agencies are involved in the issuance of these temporary work visas, including the U.S. Departments of Labor, State and Homeland Security. The complexity and opacity of the various programs makes it difficult to determine exactly how many guest workers are in the United States on any given day.² The Economic Policy Institute has estimated that in Fiscal Year 2019, more than two million temporary workers were employed, or 1.2 percent of the U.S. labor force.³

Between January 1, 2018, and December 31, 2020:

15,886 victims of labor trafficking⁴ overall were identified through the Trafficking Hotline.

When nationality was known, **92 percent of those victims were foreign nationals.**⁵



Sixty percent of labor trafficking foreign national victims shared their visa status at the moment they called the Hotline.



72 percent of victims for whom visa status was known held one of these types of visas: **H-2A, H-2B, J-1 or A-3/G-5.**



The majority of victims across temporary work visa categories — 59 percent — **reported threats of immigration used to control them and keep them working against their will.**



1 During this time there were 9,811 victims of labor trafficking who were either U.S. citizens, legal permanent residents or foreign nationals whose status in the United States was identified to the Trafficking Hotline. A full 55.2 percent of these victims were foreign nationals on visas or with legal status as asylees or refugees.

2 Costa, D. (2021, February 3). Temporary work visa programs and the need for reform: A briefing on program frameworks, policy issues and fixes, and the impact of COVID-19, Economic Policy Institute. Retrieved from <https://www.epi.org/publication/temporary-work-visa-reform/>.

3 Ibid.

4 This number includes victims of labor trafficking only, as well as victims who have experienced both sex and labor trafficking.

5 There were 8,994 foreign national victims of labor trafficking, and 6,048 victims’ status was unknown.



The data also revealed significant observations about each visa category:

- Labor Trafficking of Agriculture Workers on H-2A Visas:** COVID-19 highlighted that U.S. agriculture would collapse without foreign workers, but the current system leaves those workers almost entirely unprotected from rampant abuse, exploitation and trafficking. Fifty-eight percent were threatened with immigration consequences such as deportation, and 32 percent were threatened with being blacklisted from working in the U.S. again. Additionally, 58 percent reported having to work excessive hours, and 41 percent reported that they had their wages withheld or taken.
- Labor Trafficking of Temporary Workers Hired for General Labor on H-2B Visas:** These jobs are generally low-wage, manual labor and might include construction, meatpacking, hotels, landscaping and forestry. Sixty-eight percent of victims reported threats of deportation or to report to immigration and 47 percent reported that they were given fraudulent or misinformation about the job conditions.
- Labor Trafficking of Workers on J-1 Visas:** J-1 visas are designed to promote cultural exchange and are used for a variety of jobs including seasonal work for amusement parks and as lifeguards, camp counselors, and au pairs. Victims in this data set were predominantly female (67 percent) and from the Philippines (17 percent). Industries varied, but 31 percent were in manufacturing/factories (see page 38 for an explanation of a specific case of J-1 visa abuse). Sixty percent reported having to work excessive hours at their jobs.
- Labor Trafficking of Domestic Workers Involving A-3 and G-5 Visas:** When detailed to work in the United States, diplomats and people who work in certain international agencies, like the United Nations and the World Bank, may bring household staff from their home countries on A-3 or G-5 visas. Victims in the dataset are primarily female (79 percent), and threats to report to immigration were reported as the most common method of control (64 percent). Victims reported having to work excessive working hours (57 percent); having their wages withheld or taken (57 percent); and that the jobs were misrepresented as entailing a specific amount of work, specific pay or other working conditions that were not met (50 percent).





Based on these learnings, Polaris has developed a non-exhaustive set of priority recommendations to increase transparency and accountability and more effectively protect workers on temporary visas. These policy solutions are detailed in Part 3 of the report.

- 1 **Create** real options for H-2A and H-2B visa holders to change jobs.
- 2 **Strengthen** enforcement of rules and laws for recruiters, contractors and employers who exploit workers and ensure joint employer liability for employers and contractors.
- 3 **Reform** the recruitment system of temporary guest workers.
- 4 **Increase** transparency into these opaque systems by enacting laws like the Visa Transparency Anti-Trafficking Act.
- 5 The Administration and Congress should **refrain from expanding the scope** or size of temporary visa programs until strong worker protections are put in place and robustly enforced.
- 6 Congress should **establish** protections for domestic workers by passing the National Domestic Workers Bill of Rights.
- 7 **Institute** effective protections and enforcement for A-3 and G-5 visa holders.



Introduction

Our nation's immigration system is badly broken. On this, experts, advocates and political leaders from across the political spectrum have agreed for at least a decade. But in a polarized environment, the complexity of the issue and the passions it evokes have made real reform elusive.

Against this backdrop, expanding the number of temporary work visas issued appears, on its face, to be a reasonable stopgap measure that can ease both the economic pressure driving migration south of the U.S. border while meeting the needs of American businesses for low-wage labor. Indeed, this perceived "win-win" situation is exactly why temporary work visas exist at all — and maintain a certain degree of bipartisan support at a time of profound political polarization.

Unfortunately, the reality of the U.S. temporary work visa system does not match this perception. As the number of authorized temporary worker visas has grown, so too have the challenges and controversies surrounding them. Although temporary visas do indeed provide cheap labor to U.S. businesses and, in the case of certain visas, individual families, the workers' side of the equation is deeply alarming.

As the number of authorized temporary worker visas has grown, so too have the challenges and controversies surrounding them.

This study analyzes data gathered by the Polaris-operated National Human Trafficking Hotline during the calendar years 2018-2020.⁶ In that time period, Polaris learned of **nearly 4,000⁷ individual victims of labor trafficking⁸ who were in the United States on temporary work visas.**

Overall, more than half⁹ of these victims whose immigration status was identified were foreign nationals holding legal visas of some kind, including temporary work visas. Human trafficking is notoriously underreported, meaning that the individuals whose cases were reported likely represent only a very small fraction of the number of actual victims.

The time period in question is not an anomaly. The near-epidemic level of human rights abuses perpetrated against workers holding legal work visas and brought here under government-sponsored programs has appeared year after year, since Polaris began collecting the information and analyzing the data. Similarly, a 2021 analysis of Trafficking Hotline data shows a drastic 70 percent increase in reports of trafficking of workers with H-2A visas during the worst days of the pandemic lockdowns. One-third of these victims reported that their supervisors denied them access to medical attention in the middle of the lethal global pandemic.¹⁰

Given this track record, it seems clear that expanding the number of visas issued without changing the way the visa programs are administered and overseen at virtually every level will only lead to more situations of trafficking, exploitation and abuse.

6 Polaris received \$4.5 million for fiscal year 2022 through competitive funding through the U.S. Department of Health and Human Services, Administration for Children and Families, Grant #90ZV013802. The project is currently financed with 36 percent of federal funds and 64 percent (\$8.1 million) by non-governmental sources. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by ACF/HHS, or the U.S. government. For more information, please visit the ACF website, Administrative and National Policy Requirements: <https://www.acf.hhs.gov/administrative-and-national-policyrequirements#chapter-8>.

7 The exact figure is 3,892 for visa categories represented in this report.

8 This number includes victims of labor trafficking only, as well as victims who have experienced both sex and labor trafficking.

9 During this time, there were 9,811 victims of labor trafficking who were either U.S. citizens, legal permanent residents or foreign nationals whose status in the United States was identified to the Trafficking Hotline. A full 55.2 percent of these victims were foreign nationals on visas or with legal status as asylees or refugees.

10 Polaris (2021, June 23). Labor exploitation and trafficking of agricultural workers during the pandemic. Retrieved from <https://polarisproject.org/resources/labor-exploitation-and-trafficking-of-agricultural-workers-during-the-pandemic/>.



In the Midst of a Pandemic

Jose¹¹ arrived in Florida to work on a farm with an H-2A visa. The promise of a good job and a decent salary sounded like a great deal — especially because the COVID-19 pandemic made already-scarce opportunities in his hometown in Mexico even rarer.

Those promises started to fall apart shortly after he arrived. His supervisor Pedro¹² used the pandemic as an excuse to exert excessive control over Jose and his nearly 80 coworkers. Dinner was a sandwich. Breakfast was non-existent, and the water they were supposed to drink was not potable. They could not get better food even if they could afford it because Pedro banned the workers from going to the only grocery store within walking distance.

In the summer, workers reported being given a shared jug of water to drink out of — despite the pandemic. Sometimes they used peppers cut in half as cups to stay safe. Finally, a few workers defied the boss and went to get water at a local store. Pedro then threatened to have all the workers deported and barred from ever returning.

Jose described how some of his coworkers started getting fevers and other COVID-like symptoms, but Pedro denied them medical attention with the excuse that none of them seemed to need care urgently. That was enough for Jose. He decided to tell his situation to his aunt, who contacted the National Human Trafficking Hotline and reported the farm where Jose was working.

¹¹ Name changed to protect victim's identity.

¹² Name changed to protect victim's identity.



PART 1

**Overview of Labor Trafficking Involving
Specific Temporary Work Visas**



Scope of Labor Trafficking Involving Temporary Work Visas

From 2018-2020, Polaris identified 3,892 victims of labor trafficking who held these types of visas at the time of their reports of abuse.¹³

Visa Classifications	Description
A-3/G-5	Personal attendants to diplomats and employees of international organizations
H-2A	Seasonal agricultural workers
H-2B	Temporary non-agricultural workers
J-1	Participants of cultural and educational exchange programs

Number of Labor Trafficking Victims by Visa Type



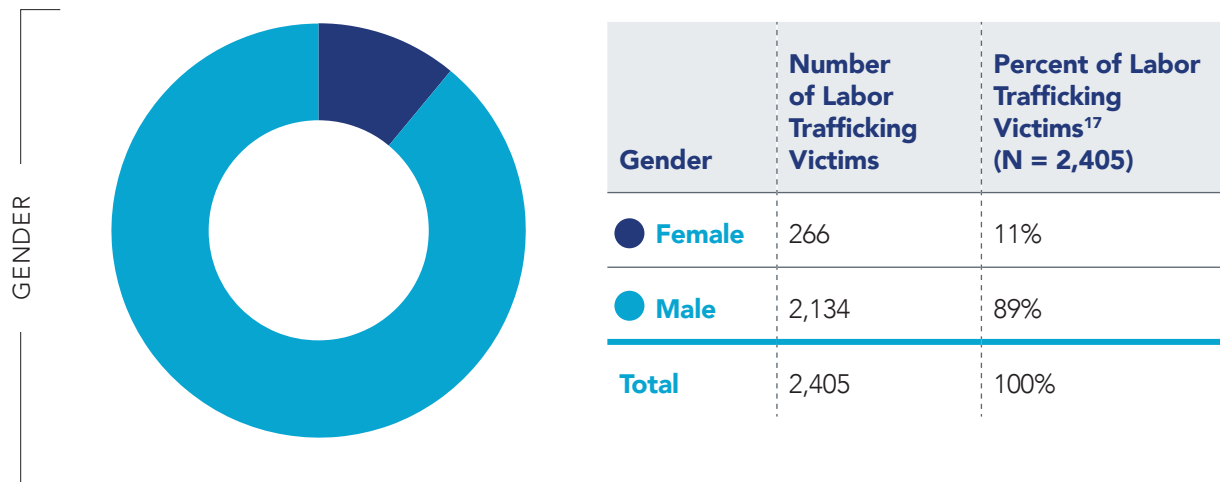
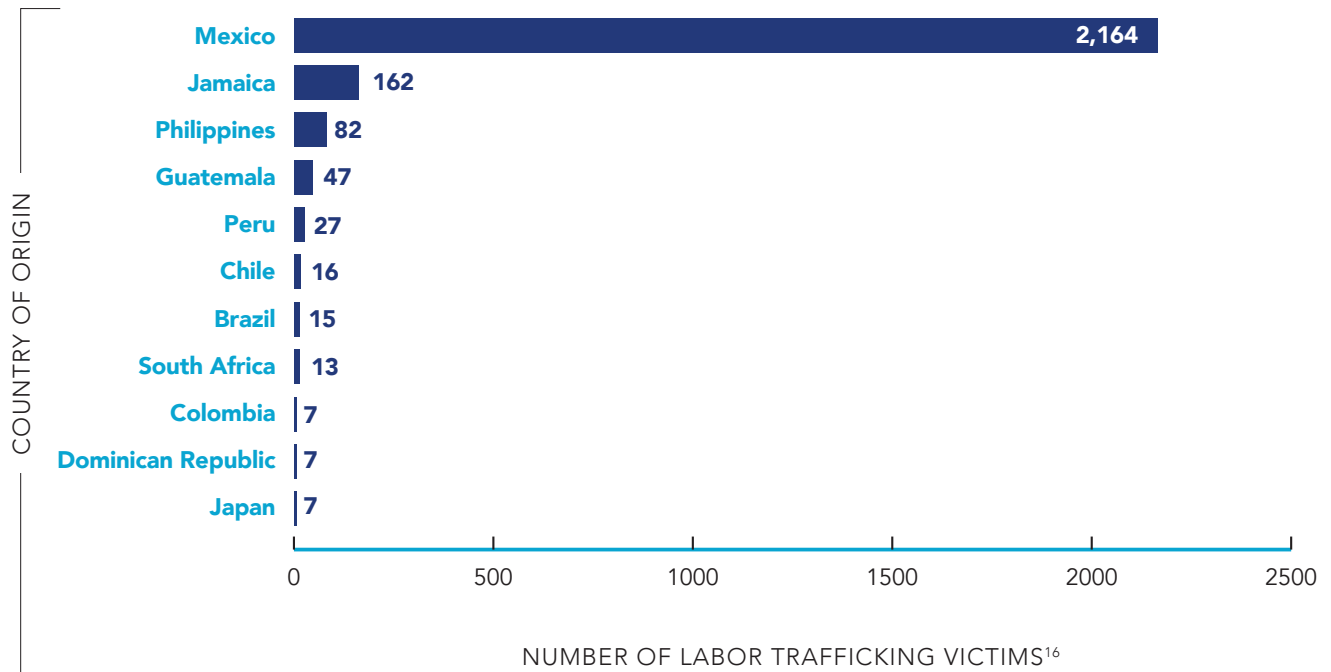
About the Victims

The majority of the victims¹⁴ in Polaris’s dataset are men, and the most significant source country is Mexico. This is consistent with the nationalities commonly issued H-2A, H-2B, J-1 and A-3/G-5 visas by the U.S. government. In 2019, 92 percent of H-2A visas and 74 percent of H-2B visas were issued for Mexican nationals.¹⁵ While the U.S. government issued A-3 and G-5 visas mainly to individuals from Asia and predominantly from the Philippines, significantly fewer visas of these types were issued overall. Lastly, there was a high number of J-1 visas issued. While only 3 percent of these visas were issued for Mexican nationals, these visas were divided by a variety of countries.

13 Polaris staff apply the U.S. federal definition of human trafficking as defined by the Trafficking Victims Protection Action (TVPA) to determine if a situation described through the Trafficking Hotline has indications of human trafficking.

14 Polaris refers to “victims” when referring to people during the time they were experiencing trafficking. The term “survivors” is applied to refer to people’s experiences after exiting the trafficking situation.

15 U.S. Department of State. Nonimmigrant visa statistics. Retrieved from <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html>.



16 These statistics are non-cumulative. People contacting the Trafficking Hotline may report multiple countries of origin, or this information may not be provided. Accordingly, percentages do not add up to 100%.

17 This data only represents instances in which victim/survivor gender is known. For 1,487 victims, gender was unreported to the Hotline Advocates. In most of these cases, a signaler reports a situation and doesn't specify or may not have enough information on the genders of the victim/victims, or reports are situations with multiple victims and do not include exact genders for all.



Venues of Labor Trafficking Involving Temporary Work Visas

Although the agriculture industry had the highest number of victims, it is far from the only industry in which labor trafficking occurs.

Type of Venue	Number of Labor Trafficking Victims
 Agriculture/Farms/Animal Husbandry	2,679
 Landscaping Services	247
 Construction	232
 Hospitality	170
 Forestry/Reforestation	95
 Aquafarming/Fishing	91
 Manufacturing/Factories	77
 Illicit Activities¹⁸	70
 Janitorial/Out-Call Cleaning Services	40
 Restaurant/Food Services	36
 Domestic Work	32
 Education	23

¹⁸ Polaris defines illicit activities as labor and services that contribute to illegal or illicit business operations. These could include financial scams, robbery or activities in the drug trade, for example.



Mechanisms of Labor Trafficking Involving Temporary Work Visas

The pervasive myth about human trafficking is that victims are kidnapped or forced at gunpoint into their situations and that they stay because they are chained up or otherwise physically unable to leave. While that certainly can be the case, it is rare that the chains involved are physical. Instead, **these victims are recruited through fraud and controlled through a complex series of other methods including threats, emotional manipulation and economic coercion.**

For workers who come to the United States to make a living, debt bondage is a common form of coercion and control. It begins with recruitment. For example, a worker from Mexico could answer an advertisement that explicitly states that he will earn \$15 an hour picking vegetables in the United States. He may even be given a contract to that effect. But when he arrives, he is paid only \$15 a day. That is fraud. Coercion or control is why he does not, given the breach of contract, simply pack up and return home (for example, because the employer confiscated his passport). The control often extends beyond the period of employment to the worker's hometown, with threats to family members coercing workers into silence once they have returned from conditions of trafficking or exploitation.

Although anyone, regardless of education level or economic status, can end up in a trafficking situation, certain conditions make certain individuals or groups more vulnerable to being abused, exploited and trafficked. These conditions are present — indeed, built into — the temporary work visa programs for low-wage workers. The workers who come to America to pick fruit or clean hotels are not here for an experience or an adventure. They come for the money, often leaving loved ones behind. Many go into substantial debt to get here, despite regulations that prohibit employers and recruiters from charging recruitment fees. Whatever goes wrong in the United States must be weighed against the reasons they leave home to take the job in the first place.

This power dynamic is made dangerous by the fact that most of the temporary visas examined here require the worker to be employed by the visa sponsor. This means that if a worker chooses to leave his or her job because of poor working conditions or for any other reason, they automatically lose their legal immigration status and become subject to being detained by immigration enforcement and deportable. If deported, those workers know it will be difficult or impossible to pay their debt and earn the money they need in the future.

Recruitment

The vast majority of labor trafficking victims — 67 percent of this dataset — were recruited through what appeared to be legitimate job offers. A small number of victims ended up in their exploitative situations through such means as familial pressure or intimate partner abuse or by traffickers offering material support to the individuals.

Workers should know the terms and conditions of their proposed employment at the time of the recruitment, including exactly what individual or entity is employing them. Many of them do not, as that information is never shared or is purposefully hidden. Not having this information makes it much harder for victims and survivors to seek and win redress. For 16 percent of labor





trafficking victims, there was enough information to identify the involvement of a foreign labor recruiter, and 36 percent of victims appeared to have been directly recruited by their employer. However, some victims had contact with both a foreign labor recruiter and their direct employer during the recruitment process, creating confusion in terms of ascertaining the relationship between the two entities. About 3 percent of labor trafficking victims obtained their jobs with the assistance of a family member who connected them to a foreign labor recruiter or direct employer. For 4 percent of victims, this role was played by a friend, coworker or other type of acquaintance.

How Victims Were Recruited	Number of Labor Trafficking Victims ¹⁹
Job Offer/Advertisement	2,595
False Promises/Fraud	627
Other	183
Coercion (Threats, Blackmail, etc.)	7
Familial	4

Recruiter Relationship to Victim	Number of Labor Trafficking Victims
Employer	1,412
Labor Recruiter/Contractor	625
Other	277
Friend/Acquaintance/Coworker	136
Family Member/Caregiver	107
Smuggler	53

Recruitment Fees

A key component of trafficking in these scenarios is indebtedness caused by recruitment fees. Technically, it is not legal to charge workers for any part of the process of obtaining an H-2A or B visa and the accompanying offer of employment. However, workers routinely report having paid for anything from the right to attend a recruitment fair to fees associated with signing contracts or for transportation.²⁰ There are a number of reasons for this, including lack of bilateral or multilateral agreements between the United States and countries sending guest workers, lack of U.S. jurisdiction to enforce restrictions abroad and limited enforcement resources. Lack of enforcement

¹⁹ These statistics are non-cumulative. People contacting the Trafficking Hotline may experience multiple methods of recruitment, or this information may not be provided. Accordingly, percentages do not add up to 100%.

²⁰ Universidad Nacional Autónoma De México (UNAM), Estados Unidos Mexicanos. Ley Federal Del Trabajo Nueva Ley Publicada En El Diario Oficial De La Federación El 1° De Abril De 1970. Retrieved from www.juridicas.unam.mx/legislacion/ordenamiento/ley-federal-del-trabajo. For the H-2A and H-2B visa, federal regulations prohibit employers from allowing workers to pay recruitment costs, employers' attorney or application fees, visa fees and border crossing fees. See 20 C.F.R. § 655.135(j); 20 C.F.R. § 655.122(h); 8 C.F.R. § 214.2(h).



coupled with the opaque, multilayered nature of the recruitment-to-job pipeline leaves victims essentially on their own to decide whether or not to pay requested amounts in order to move forward with the visa process and proffered job.

Some victims did not have to pay lump sums but instead had deductions taken out of their paychecks on an ongoing basis, which were explained as covering expenses related to recruitment, visas and transportation. Because of the confusion regarding the visa process, many victims were not sure to whom they had paid recruitment fees or why they had been required. Victims mentioned paying the fees to foreign labor recruiters, their employers or their direct supervisors at their jobs. Some specified that they were told the fees were to cover the cost of obtaining a visa, while others described the fees more vaguely as necessary “to get the job,” which may indicate a more informal and inconsistent system of exploitative practices used by some recruiters.

A study by Centro de los Derechos del Migrante (CDM) found that 58 percent of the workers sampled reported paying recruitment fees.²¹ Similarly, in a past survivor survey, Polaris found that of the 17 individuals who reported entering their trafficking situation while on a temporary visa, 83 percent (all but two) reported paying recruitment fees.²² On average, CDM found that workers paid \$590 USD in recruitment fees to come to the United States. This is consistent with victims who contacted the Trafficking Hotline and reported having to pay recruitment fees, typically ranging from \$1,000 to \$9,000.

To understand the coercive nature of these fees and payments, consider this:



** Data from the Seasonal Employment Alliance*

21 Centro de los Derechos del Migrante, Inc. Recruitment revealed: Fundamental flaws in the H-2 temporary worker program and recommendations for change. Retrieved from http://www.cdmigrante.org/wp-content/uploads/2018/02/Recruitment_Revealed.pdf.

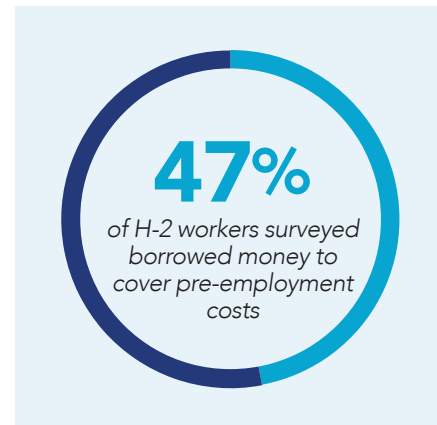
22 Polaris Project (2018, July 1). On-ramps, intersections, and exit routes: A roadmap for systems and industries to prevent and disrupt human trafficking. Retrieved from <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking.pdf>.



Debt Bondage

Having paid substantial fees in order to get the job — and often having gone into debt to do so — leaves workers with little choice but to try to recoup their losses regardless of the conditions in which they are working. The fear of subsequent retaliation in the form of blacklisting or threats of violence keeps many from reporting violations. Even if the workers complain and prevail, their debt doesn't go away. In some cases, lenders used by workers to cover recruitment fees or other pre-employment expenses charge exorbitant interest rates, anywhere from 5 percent to 79 percent.²³ Workers seeking money to pay recruiters may also be forced to turn over deeds to property or titles to cars as collateral. More than a quarter of labor trafficking victims in this dataset reported that debts or quotas were used as a way to coerce or force them into staying in exploitative working conditions. A recent report by CDM found that almost half of all H-2 workers surveyed (47 percent) reported borrowing money to cover pre-employment costs.²⁴

In a Polaris focus group, one survivor explained the situation, “When you are promised a good life, you are ready to pay the price ahead of time. There are people from where I come from who have sold their only piece of land just to buy a ticket to come here thinking that they will make money and better their lives. If they have been duped, how and where do they go back to? They need protection.”²⁵



Fraud: False Promises and Contract Violations

More than a third of labor trafficking victims — 34 percent — were defrauded or lied to about the conditions of their work or about their wages, either when they were recruited for the job or as a method of control to keep them working once they got to the U.S. Many of the victims reporting to the Trafficking Hotline had contracts with explicit stipulations that were later violated.

Contract violations varied by visa type. For example, in many H-2A cases, victims reported their contracts for agriculture work included an hourly wage. However, upon arrival at their job, victims later learned they would be paid on a piece-rate basis, making their earnings almost entirely dependent on weather and other conditions beyond their control. In cases involving J-1 visas, some victims' contracts specified they would be placed in positions where they could gain vocational experience, such as hospitality management, only to find themselves working in housekeeping at a hotel.

Contract violations that spanned visa categories included false promises of transportation between work and living sites, as well as promises of reimbursement or provision of food, living expenses, travel to the United States and the supply of uniforms or protective safety gear. Other victims never received contracts, were given contracts in a language they could not read or signed a contract but were not given a copy to reference later.

²³ Centro de los Derechos del Migrante, Inc. Recruitment revealed: Fundamental flaws in the H-2 temporary worker program and recommendations for change. Retrieved from http://www.cdmigrante.org/wp-content/uploads/2018/02/Recruitment_Revealed.pdf.

²⁴ Ibid.

²⁵ Polaris Project (2018, July 1). On-ramps, intersections, and exit routes: A roadmap for systems and industries to prevent and disrupt human trafficking. Retrieved from <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking.pdf>.



Methods of Control

Each of the 3,892 victims of labor trafficking identified indicated they experienced some form of control that constituted force, fraud or coercion, and hence had been a victim of severe forms of trafficking under the Trafficking Victims Protection Act (TVPA).

	Method of Control	Number of Labor Trafficking Victims ²⁶	Percent of Labor Trafficking Victims
Coercion	Threat to Report to Immigration	2,281	58.61%
	Withholding or Denying Needs or Wants	1,442	37.05%
	Threat to Blacklist	1,305	33.53%
	Verbal Manipulation/Abuse	1,290	33.14%
	Withholds/Destroys Documents	1,253	32.19%
	Manipulation of Language Barrier	537	13.80%
Fraud	Excessive Working Hours	2,066	53.08%
	Withholding of Earnings	1,783	45.81%
	Misrepresentation of Job	1,319	33.89%
	Debt or Quota	1,025	26.34%
Force	Limits Access to Medical Care	481	12.36%
	Monitoring or Stalking	264	6.78%
	Keeps Confined	181	4.65%
	Physical Abuse	151	3.88%

Immigration Threats

Detention and deportation are the most pervasive and effective threats traffickers use against labor trafficking victims who hold temporary work visas. In the dataset analyzed for this report, 59 percent of victims were threatened with immigration consequences. This threat, which exists to some extent in all trafficking situations involving foreign nationals, becomes a precision weapon in the hands of traffickers controlling temporary work visas tied to a single employer. In this scenario, when a worker dares to leave an abusive situation, he or she automatically becomes unprotected by legal immigration status and subject to deportation.

Moreover, unless the worker is able to effectively document and subsequently report his or her reasons for leaving, the employer may blacklist him/her or report the worker to authorities for absconding, which will make it more difficult to obtain a temporary visa in the future. In the dataset below, 34 percent of victims reported being threatened with blacklisting.

²⁶ These statistics are non-cumulative. Survivors may experience multiple methods of control, or this information may not be provided. Accordingly, percentages do not add up to 100%.



Visas	Tied to a specific employer?
A-3/G-5 - Personal Attendants to Diplomats and Employees of International Organizations	Yes ²⁷
H-2A - Agricultural Workers	Yes
H-2B - Temporary Non-Agricultural Workers	Yes
J-1 - Participants of Cultural and Educational Exchange Programs	No (although in most cases, the sponsor must approve the employer)

Power Dynamics and Exploitation

One of the most significant problems with the current rules around H-2A and H-2B workers is the power imbalance created by the fact that workers who find themselves in dangerous or abusive situations have no realistic options for leaving. The visas they hold only allow them to work for the single employer who sponsored them. If they try to find another job, they can be reported to immigration authorities, arrested and deported. In some cases, they can be barred from ever returning on other legal temporary work visas. While technically, they can report abuse and hope for legal protection, many do not know that such help is available, and realistically, many also recognize that reporting their experience to authorities is unlikely to help them manage the other issues they struggle with — notably paying off debt incurred during the recruitment process. Human traffickers recognize that this system leaves workers without any real bargaining power, encouraging traffickers to act with impunity because they are unlikely to face consequences.

Advocates have been pushing for years to change these rules and create a system that makes it possible for workers to move from abusive employment to other U.S. jobs that have openings and can legally hire them. The first step is simply allowing workers to change employers. But decoupling visas from specific employers is not nearly enough on its own and, in fact, could make the problem worse. We saw this during the pandemic when emergency regulations streamlined the process for employers to move workers to other businesses if they were no longer necessary but did not give the workers a say or even provide a mechanism to ensure workers were told of changes to their employment before they were moved. Clearly, this is not a deterrent to trafficking, exploitation or abuse. Nonetheless, the so-called portability provisions in these temporary rules were subsequently renewed,²⁸ including most recently for the H-2B visa program in May 2022.²⁹

A fairer system would make it not only legal but actually realistic or possible for workers to comparison shop and choose an employer who treats and pays them fairly. Needed protections include flexible work authorization; a visa grace period that gives workers leaving abusive workplaces legal status while they find a new job; an accessible mechanism for workers to see and apply for available H-2 jobs, such as through a revamped SeasonalJobs.gov website; and information in workers’ languages about their rights and resources available to them.³⁰

27 Justice in Motion (2020, January). Visa pages: U.S. temporary foreign worker visas: A-3/G-5 exchange visitors. Retrieved from <https://www.justiceinmotion.org/a3-g5>.

28 85 Fed. Reg. 82291 (2020, December 18).

29 87 FR 30334 (2022, May 18).

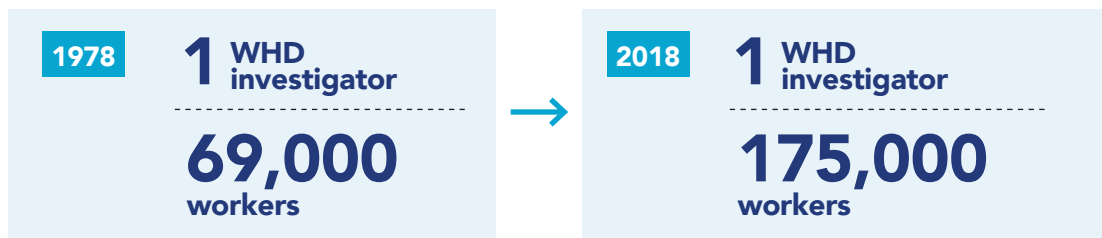
30 Migration that Works (2022, May 17). MTW’s recommendations to DHS towards ensuring mobility for H2 workers. Retrieved from <https://migrationthatworks.org/2022/05/17/mtws-recommendations-to-dhs-towards-ensuring-mobility-for-h2-workers/>.



Wage Theft

Nearly half (46 percent) of labor trafficking victims in this dataset reported that their wages were withheld or taken from them, making wage theft one of the most frequently cited methods of control. Recent cases illustrate the pervasiveness of wage theft in the temporary visa system. Analysis by The Center for Public Integrity revealed that between 2005-2020, U.S. employers were ordered to pay more than \$42.4 million in back wages owed to 69,000 H-2A and H-2B visa holders.³¹ Just one employer of H-2B visa holders in seafood processing was found to have withheld \$138,629 from 100 workers in overtime pay during the COVID-19 pandemic.³²

These cases likely only cover a fraction of workers who have been denied wages they rightfully earned. The Department of Labor’s Wage and Hour Division (WHD), responsible for enforcing employment law for temporary visa holders, is drastically underfunded, understaffed and therefore ill-equipped to protect the growing number of temporary visa holders in the United States. In 1978, each WHD investigator was responsible for 69,000 workers; by 2018, the responsibility for each investigator more than doubled to 175,000 workers.³³ In total, 780 WHD investigators were responsible for protecting 148 million employees in 2019.³⁴ This is especially troubling over the last 10 years: As the number of H-2A and H-2B visas issued by the State Department has tripled, the number of WHD wage theft investigations has remained largely steady.³⁵ By persistently underfunding WHD, Congress enables widespread wage theft in U.S. temporary visa programs.



Isolation

In almost all of the visa categories analyzed, traffickers used sometimes extreme methods of isolation and monitoring. Victims with a variety of visa types reported that their exploiters deliberately limited access to a support system, prevented or limited access to necessary medical services, and confiscated personal cell phones or denied access to various communication mediums. The means through which this was done varied based on circumstances. For instance, domestic workers with A-3 and G-5 visas reported being confined to the households in which they worked. Agricultural workers reported being left in remote areas without transportation or means of communicating with others. Overall, 12 percent reported having limited access to medical care. Seven percent reported being monitored or stalked, and five percent reported being confined/locked into a physical space.

31 Ferriss, S., & Yerardi, J. (2022, March 2). As guest workers increase, so do concerns about wage cheating. The Center for Public Integrity. Retrieved from <https://publicintegrity.org/inequality-poverty-opportunity/workers-rights/cheated-at-work/guest-workers-increase-wage-cheating/>.

32 U.S. Department of Labor. (2021, August 26). US Department of Labor finds wage violations at Southwest Louisiana seafood distributor, recovers \$138K for 100 workers. Retrieved from <https://www.dol.gov/newsroom/releases/whd/whd20210826>.

33 Costa, D., Martin, P., & Rutledge, Z. (2020, December 15). Federal labor standards enforcement in agriculture. Economic Policy Institute. Retrieved from <https://www.epi.org/publication/federal-labor-standards-enforcement-in-agriculture-data-reveal-the-biggest-violators-and-raise-new-questions-about-how-to-improve-and-target-efforts-to-protect-farmworkers/>.

34 Ibid.

35 Ferriss, S., & Yerardi, J. (2022, March 2). As guest workers increase, so do concerns about wage cheating. The Center for Public Integrity. Retrieved from <https://publicintegrity.org/inequality-poverty-opportunity/workers-rights/cheated-at-work/guest-workers-increase-wage-cheating/>.



Other Abuse, Discrimination

In addition to contract violations detailed in the recruitment section of this report, Polaris has identified workplace abuses such as discrimination, hazardous/unsafe/unsanitary workplace/living conditions, wrongful termination, and verbal and physical abuse reported to the Trafficking Hotline. Victims with employee-provided housing, typically those with H-2A or J-1 visas, often reported inadequate or squalid living quarters. Some examples of these conditions included no running water, inadequate plumbing, pest infestation, a lack of proper food storage or cooking facilities, and overcrowding. While the number of victims occupying a single residence varied widely, overcrowding was often so severe that some victims reported not having their own bed, forcing them to sleep on floors, with others or even outside.

The denial of food or other needs was a common punitive measure used against domestic workers. It was also referenced frequently in cases of H-2A and H-2B visas, often when work-related quotas were not met or the exploiter deemed the victim disobedient. Verbal abuse, degradation and emotional manipulation were common tactics used across cases. Sometimes these particular abuse methods coincided with employment discrimination based on nationality or gender.

Many H-2A and H-2B visas holders reported dangerous working conditions including lack of proper training or protective safety equipment. Of the workers who were afforded the opportunity to wear safety gear, some had to pay for their own equipment out of pocket.

Complexity and Opacity of Employment Relationship

Employers in the United States frequently work with recruitment agencies to find workers to fill positions once the visas have been approved. This complex system operates with virtually no oversight or enforcement. Additionally, local subcontractors often get paid according to how many workers they are able to sign up. Contracts may not be given to workers at all, may be shown in a language the worker is not fluent in, may be inaccurate or misleading, and may be different from the contract the worker receives once they are in the U.S.

When victims reported contract violations or other abuses to their direct supervisors, supervisors often transferred blame to corporate entities of which victims had little to no knowledge. Hotline Advocates speaking to these victims found that many were unable to definitively answer whether or not their exploiter was their direct employer. This makes it impossible for victims to ascertain who was directly responsible for wrongdoing, who was complicit in the wrongdoing and who was unaware of the exploitation.



Exploiting Hope

Timoteo³⁶ paid for his H-2A visa and was recruited under the promise to make \$11.61/hour to work in agriculture in the United States for the berry season. He thought it was a good deal that would allow him to return home to Mexico after the season with some extra money to help his family. But once he arrived in the U.S., the agreement changed. His supervisor, known only by the nickname “Flaco,” told him his salary was instead going to be based on the number of berry cartons he picked, which came out to about \$60/week when working 40 hours/week.

Timoteo had to pay \$90/week for food and housing in a motel, despite the fact that his H-2A visa required his employer to provide housing. Access to food was also an issue. Flaco provided food that sometimes made workers sick, but they were still charged for it and barred from seeking medical attention. When some workers started complaining, Flaco threatened the whole crew with deportation and blacklisting.

At that point, Timoteo and his coworkers were all confused about who to talk to about this situation. Flaco was his direct supervisor, but he also heard about some woman named Bethany, who was supposedly the main boss and the one profiting from the whole operation. When Timoteo contacted the Trafficking Hotline and described his situation, he was connected with legal services.

³⁶ Name changed to protect victim's identity.



PART 2

**Details of Labor Trafficking Involving
Specific Temporary Work Visas**



Labor Trafficking Involving H-2A Agricultural Visas

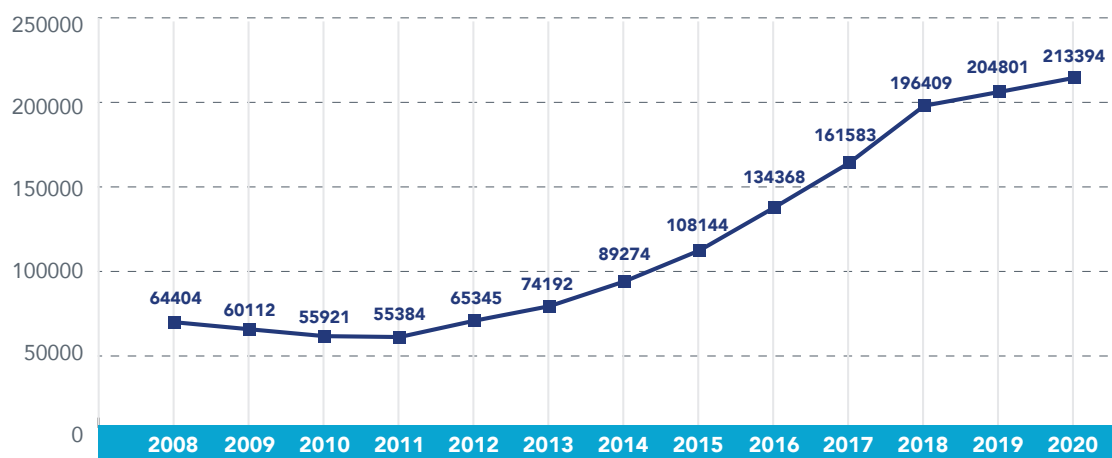
H-2A visas allow foreign nationals to work for a single designated employer who has shown that local workers are unavailable. Visas are valid for up to one year and can be extended in up to one-year increments for a maximum of three years.³⁷ As with many other temporary visa programs, there is no path to citizenship or permanent residency for workers employed on these visas.

The process of bringing workers to this country begins with employers applying to the U.S. Department of Labor for certification that they cannot find the necessary workforce. After the Labor Department certifies the need, the Department of Homeland Security reviews and adjudicates the employer's application form, either rejecting or granting permission to start recruiting foreign workers. Workers then apply to the Department of State, which processes their applications and grants visas through the respective consulates or embassies, depending on the country of origin.

While employers may be individual growers or agriculture companies, some are labor contractors who bring in large numbers of agricultural workers and contract them out to individual growers.³⁸ These labor contractors contract with labor recruiters who find workers and accompany them or give them very specific instructions about going to the U.S. consulate in their country and applying for an H-2A visa. This process is generally the same for the other entry-level temporary work visa programs. In other cases, labor recruiters also contract with growers or agricultural companies that send their staff to the countries of origin to recruit on their behalf.

Although the actual number of individuals in the United States working on an H-2A visa is unknown, one study calculated that there were 204,801 H-2A workers employed in the United States in 2019.³⁹ The number of H-2A visas issued has increased by 151 percent over the last decade, reaching 213,394 visas issued in Fiscal Year 2020.⁴⁰ This was the only visa type in this report that did not decrease in 2020 with COVID-19, as agricultural workers on H-2A visas were exempted from restrictions due to their essential status.

H-2A Visas Issued by Fiscal Year



37 U.S. Citizenship and Immigration Services (2021, November 9). H-2A temporary agricultural workers. Retrieved from <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers>.

38 U.S. Department of Labor Employment and Training Administration (2009, October 22). Foreign Labor Certifications: H-2A Temporary Agricultural Program Details. Retrieved from www.foreignlaborcert.doleta.gov/h_2a_details.cfm.

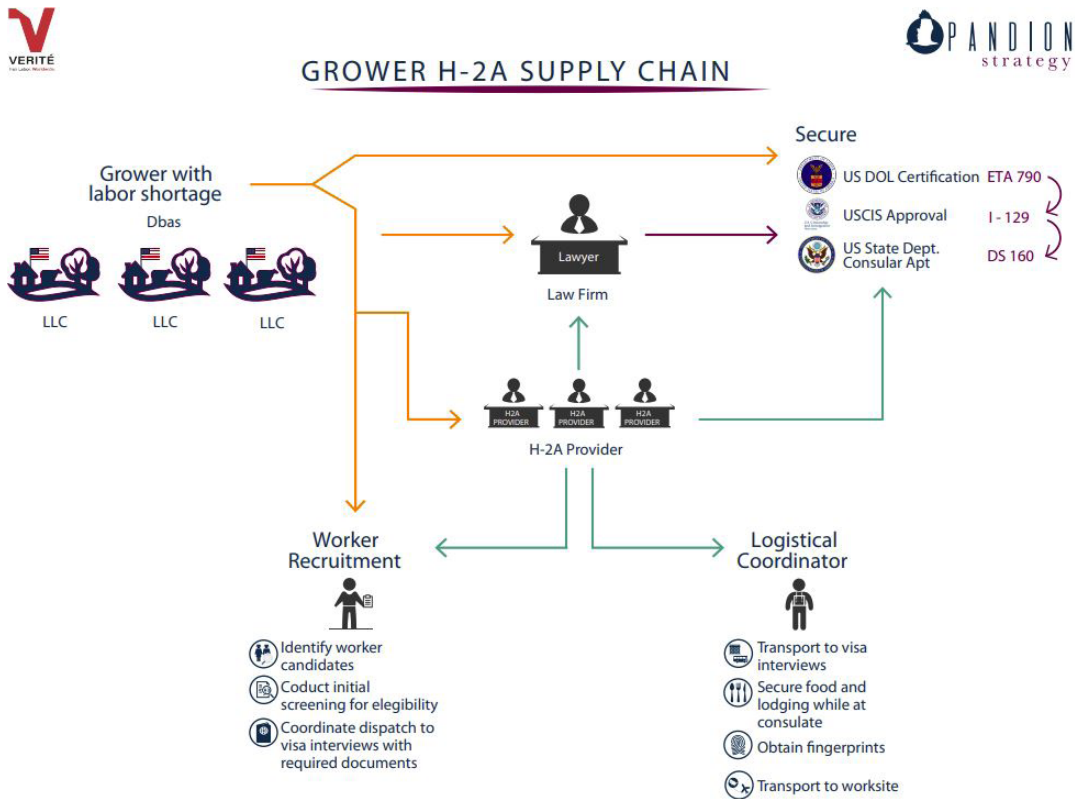
39 Costa, D. (2021, February 3). Temporary work visa programs and the need for reform. Economic Policy Institute. Retrieved from <https://www.epi.org/publication/temporary-work-visa-reform/#epi-toc-4>.

40 U.S. Department of State. Nonimmigrant visa statistics. Retrieved from <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html>.



H-2A Employment: A Complicated Picture

As noted previously, U.S. employers often work with recruitment agencies to hire workers. Indeed, an entire industry has grown up in the United States and other countries, including Mexico, around the H-2A visa program. The most significant of these are H-2A Labor Contractors (H-2ALCs). These businesses have no fixed sites of employment. They exist to provide a service to farm owners, recruiting and essentially renting out workers they have brought to the United States on temporary visas specifically for this purpose. In many cases, the H-2ALCs actually oversee or manage the workers on the jobs. Growers and/or H-2ALCs may also employ recruiters in local communities, recruitment agencies, visa processors and other middlemen to seek out workers, process paperwork, provide transportation and otherwise facilitate the cross-border process. Without oversight or enforcement, this system enables exploiters to obscure responsibility and avoid accountability for abuse.

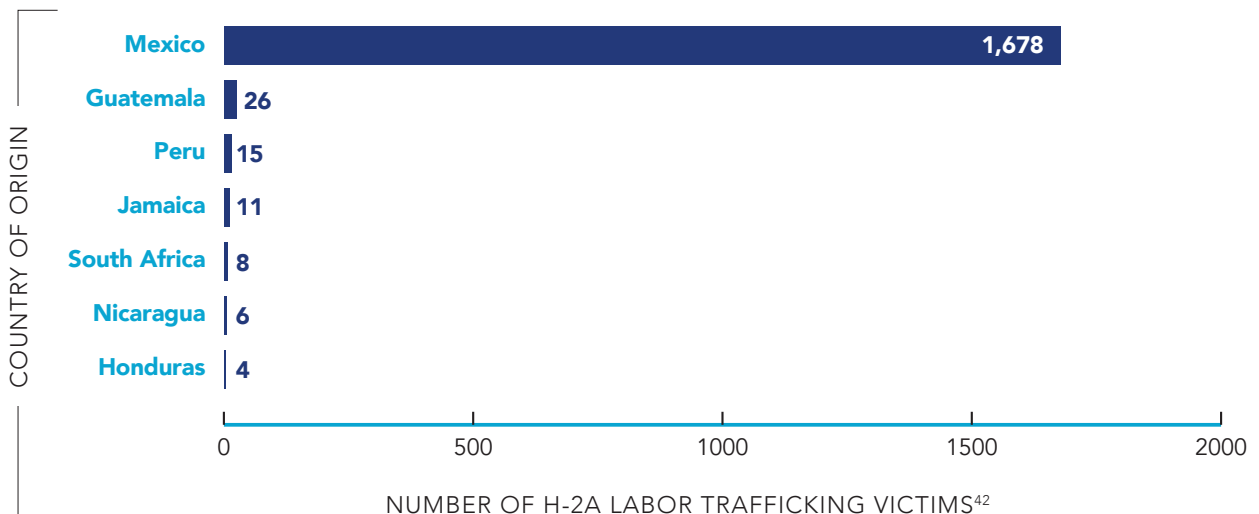
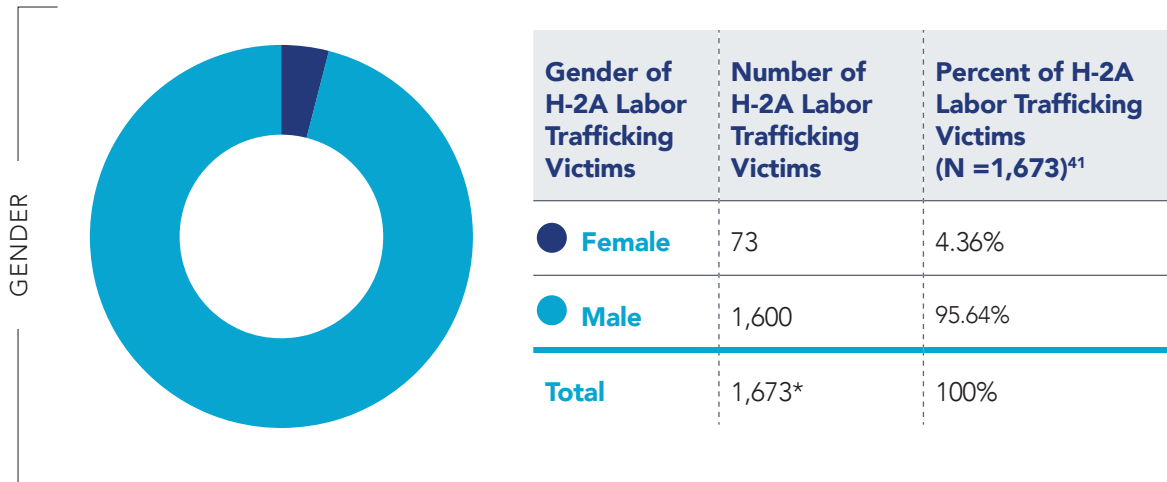


Verité Inc. and Pandion Strategy, 2022.



Who They Are

From 2018 through 2020, the Trafficking Hotline identified 2,841 H-2A visa holders who were victims of labor trafficking. The majority of these individuals were males from Mexico.



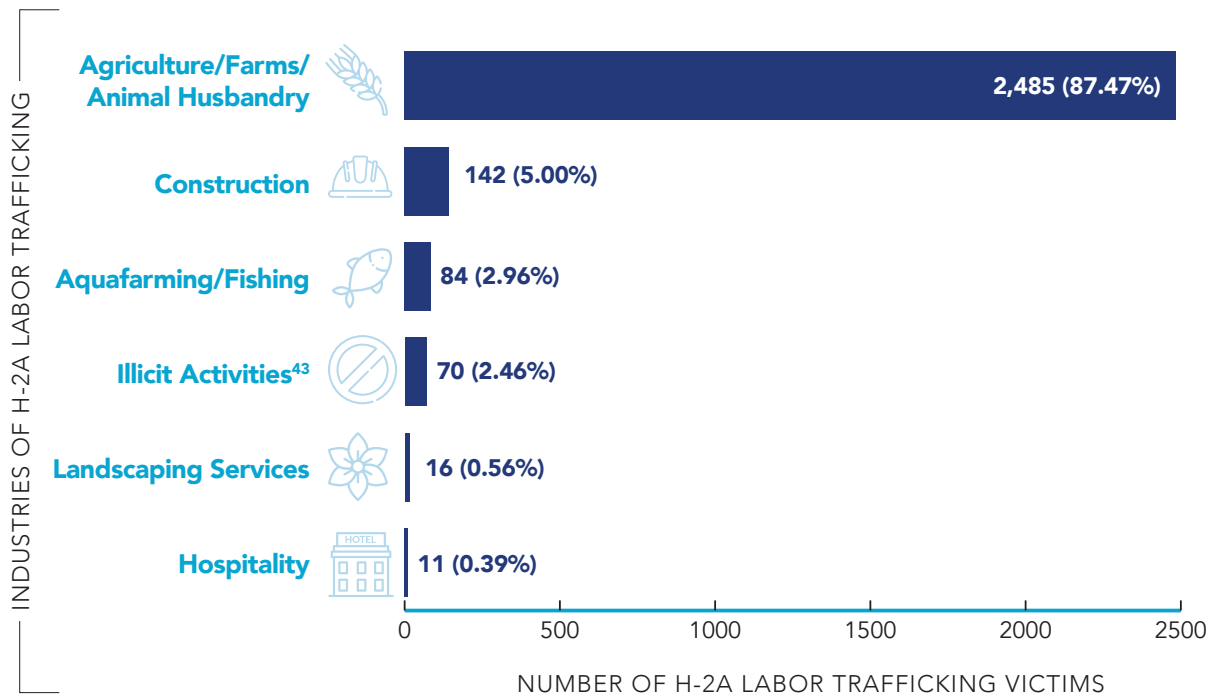
41 This data only represents instances in which victim/survivor gender is known. For 1,166 victims, gender was unreported to the Hotline Advocates. In most of these cases, a signaler reports a situation and doesn't specify or may not have enough information on the genders of the victim/victims, or reports are situations with multiple victims and do not include exact genders for all.

42 These statistics are non-cumulative. People contacting the Trafficking Hotline may report multiple countries of origin, or this information may not be provided. Accordingly, percentages do not add up to 100%.



The Work They Do

While H-2A visa holders are supposed to be hired only for traditional agricultural jobs, 13 percent of labor trafficking victims reported working in jobs outside of the industry. These include construction, aqua farming or fishing, illicit activities, landscaping and hospitality.



Methods of Control

One of the most common methods used to control workers on H-2A visas was threatening to report them to immigration authorities who would deport them if they did not fall in line with the trafficker’s demands. **A full 58 percent of labor trafficking victims on H-2A visas reported being threatened with immigration consequences such as deportation if they demanded promised wages or decent living and working conditions.** Thirty-two percent were also threatened with being blacklisted from returning to the United States to work — a significant threat to people whose survival depends on these seasonal jobs. Additionally, 58 percent of workers reported working excessive hours, and 41 percent said that their earnings were withheld or taken.

Under the terms of the H-2A program, workers are guaranteed housing and other basic necessities provided by their employers. According to regulations governing the program, housing must include basic hygienic necessities such as access to running water.⁴⁴ However, 39 percent of H-2A victims in the dataset reported being denied food, shelter, water, hygiene, transportation, appropriate clothes or necessary items.

A substantial number of victims (33 percent) reported having important documents like their IDs, immigration documents and/or passports withheld or destroyed by traffickers as a means of keeping them under control. Twenty-four percent reported that a debt or quota was used against them to force them to work.

⁴³ Polaris defines illicit activities as labor and services that contribute to illegal or illicit business operations. These could include financial scams, robbery or activities in the drug trade, for example.

⁴⁴ Agriculture Workforce Management Association. H-2A housing requirements. Retrieved from <http://www.awmalabor.com/InTheNews.html>.



	Method of Control	Number of H-2A Labor Trafficking Victims ⁴⁵	Percent of H-2A Labor Trafficking Victims
Coercion	Threat to Report to Immigration	1,636	57.59%
	Withholding or Denying Needs or Wants	1,127	39.67%
	Verbal Manipulation/Abuse	950	33.44%
	Withholds/Destroys Documents	926	32.59%
	Threat to Blacklist	918	32.31%
	Manipulation of Language Barrier	486	17.11%
	Threat to Harm Subject, Family or Other	150	5.28%
Fraud	Excessive Working Hours	1,655	58.25%
	Withholding of Earnings/ Wage Theft	1,154	40.62%
	Misrepresentation of Job	828	29.14%
	Debt or Quota	685	24.11%
Force	Limits Access to Medical Care	393	13.83%
	Monitoring or Stalking	199	7.00%
	Keeps Confined	148	5.21%
	Physical Abuse	114	4.01%

45 These statistics are non-cumulative. Survivors may experience multiple methods of control, or this information may not be provided. Accordingly, percentages do not add up to 100%.



Operation Blooming Onion Highlights Decades-Long Failures of H-2A Visa System

In late 2021, the federal government filed charges for a years-long trafficking scheme involving farm workers in Georgia, with three men convicted to date. The indictments stemming from “Operation Blooming Onion”⁴⁶ include charges against at least two dozen traffickers accused of conspiring to bring more than 100 foreign workers to the United States on H-2A visas.⁴⁷ The conspirators are alleged to have made more than \$200 million over three years.

The victims worked on onion farms throughout Georgia. According to court records, the workers were forced to dig the crop with their bare hands and were paid only 20 cents for each bucket of onions they collected. At least two workers died on the job.⁴⁸ The workers had to pay illegal fees for transportation, food and housing in violation of H-2A regulations and were threatened with guns, torture and deportation. Housing — which employers are required to provide for H-2A workers — consisted of cramped, unsanitary quarters and fenced work camps with little food, limited plumbing and no safe water.

46 Favakeh, D. (2021, December 1). Operation blooming onion: Federal indictment reveals ‘modern day slavery’ in Georgia, Savannah Morning News. Retrieved from <https://www.savannahnow.com/story/news/2021/12/01/u-s-attorney-trafficking-operation-georgia-onion-farms/8738135002/>.

47 Department of Justice. (2021, November 22). Human smuggling, forced labor among allegations in south Georgia federal indictment. Press Release. Retrieved from <https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment>.

48 Grinspan, L. (2021, December 3). ‘This has been happening for a long time’: Modern day slavery uncovered in South Georgia, Atlanta Journal Constitution. Retrieved from <https://www.ajc.com/news/this-has-been-happening-for-a-long-time-modern-day-slavery-uncovered-in-ga/SBHBTDDTTBG3BCPSVCB3GQ66BQ/>.



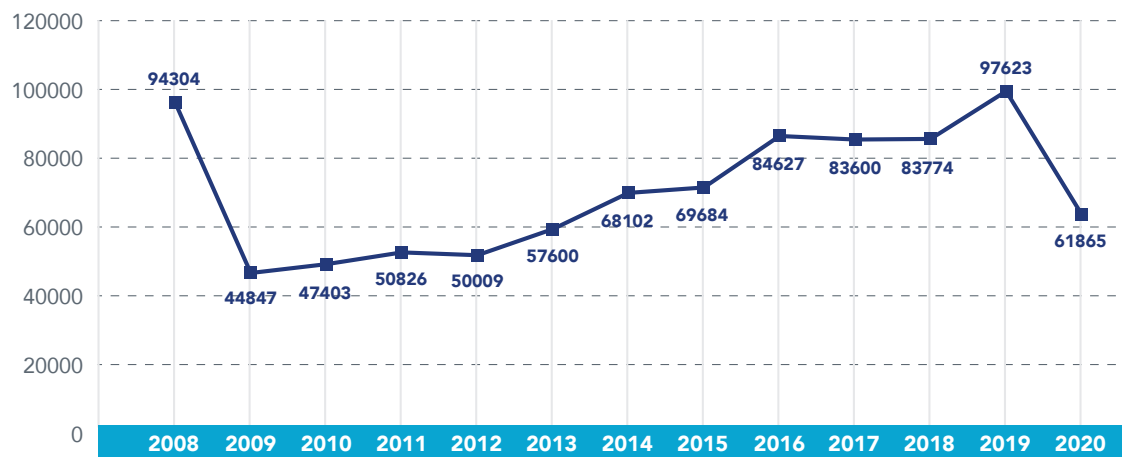
Labor Trafficking Involving H-2B Temporary Non-Agricultural Worker Visas

The H-2B visa program allows for temporary or seasonal foreign workers to hold non-agricultural jobs that do not require specific professional skills, experience or education. While there are a wide range of jobs that fall under that umbrella, most H-2B jobs are concentrated in 10 industries that offer mostly low-wage jobs.

These visas generally allow stays of up to nine months, which may be extended to one year and subsequently in one-year increments for a maximum of three years; in some cases, they may be certified for three years as a “one-time occurrence.” Annual caps are established, and these are frequently met at the beginning of the fiscal year.⁴⁹ However, every year since 2016, Congress has included language in congressional appropriations bills that allows the executive branch to increase the number of H-2B visas beyond the usual fiscal year limit of 66,000. As with H-2A visas, the hiring process involves the Departments of Labor, Homeland Security and State, which must jointly establish: 1) whether the employer has made sufficient efforts to hire legally eligible workers already living in the United States, 2) the prevailing wage for the sector and occupation and 3) if the worker meets the visa condition and immigration requirements. This visa does not offer a path to permanent residency or citizenship.

The Economic Policy Institute estimates that in Fiscal Year 2019, there were 160,410 H-2B workers present in the United States.^{50,51} Because Congress has capped the number of H-2B visas available, the number of H-2B visas issued has not increased at the same rate as its agricultural counterpart, the H-2A visa.⁵²

H-2B Visas Issued by Fiscal Year



**Visas issued for 2020 decreased substantially, but this may be due to COVID.*

49 Justice in Motion: Protecting Migrant Rights Across Borders. (2016, August). Visa pages: U.S. temporary foreign worker visas. Retrieved from https://www.justiceinmotion.org/_files/ugd/d83957_79587b76afed45c6a30bd677e9ba58ad.pdf.

50 Costa, D. (2021, February 3). Temporary work visa programs and the need for reform, Economic Policy Institute. Retrieved from <https://www.epi.org/publication/temporary-work-visa-reform/#epi-toc-4>.

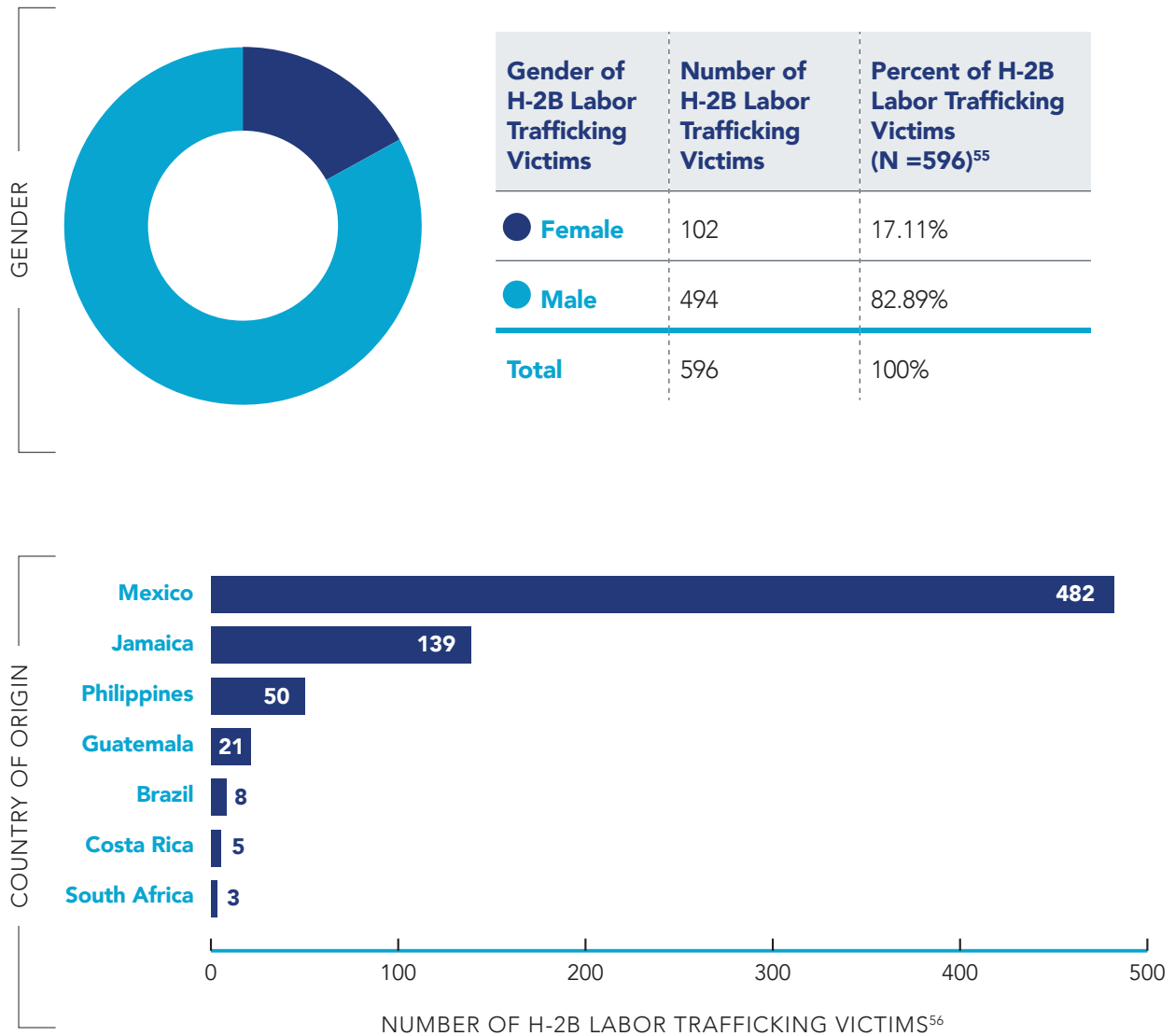
51 U.S. Department of State. Nonimmigrant visa statistics. Retrieved from <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html>.

52 U.S. Citizen and Immigration Services (2018, March 1). Cap count for H-2B nonimmigrants. Retrieved from <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-for-h-2b-nonimmigrants>.



Who They Are

According to the Department of Labor, the top five states for H-2B visas in Fiscal Year 2019 were Texas, Colorado, Florida, North Carolina and Pennsylvania.⁵³ From 2018 through 2020, the Trafficking Hotline identified 853 H-2B visa holders who were victims of labor trafficking. Mexican nationals constituted the majority of these victims with known nationality, followed by victims from Jamaica. This is consistent with State Department reports of visas issued in Fiscal Year 2019, which rank Mexico (72,339) and Jamaica (10,076) as the top two countries.⁵⁴



53 U.S. Department of Labor. H-2B temporary non-agricultural labor certification program – selected statistics, FY 2019. Retrieved from https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2b_Selected_Statistics_FY2019_Q4.pdf.

54 U.S. Department of State. Nonimmigrant visa statistics. Retrieved from <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html>.

55 This data only represents instances in which victim/survivor gender is known. For 257 victims, gender was unreported to the Hotline Advocates. In most of these cases, a signaler reports a situation and doesn't specify or may not have enough information on the genders of the victim/victims, or reports are situations with multiple victims and do not include exact genders for all.

56 These statistics are non-cumulative. People contacting the Trafficking Hotline may report multiple countries of origin, or this information may not be provided. Accordingly, percentages do not add up to 100%.



Trapped by Debt and Visas Tied to a Single Employer

Victor⁵⁷ learned that a construction company in the United States was looking for plumbers, and he thought this could be a great chance to make some money, considering that job opportunities in Guatemala were limited and not as well paid as this one in the Midwest. To secure the job, Victor and his coworkers had to pay \$200 up front to a recruiter, who also made them pay for their own flights.

Once they got their H-2B visas, they traveled to the United States, where they learned that they would also need to pay \$150 per week for housing and transportation. That housing turned out to be an old trailer for the six of them, and the salary was \$250 per week before deductions for housing and transportation. After a few weeks of work, Victor was asked to sign a contract in English without receiving a copy in Spanish. His boss, Hector, was verbally abusive and routinely threatened workers with deportation if they complained.

One night everything changed. The workers were hungry and left the trailer to buy something to eat. They returned to find themselves locked out of the trailer. An irate Hector came to open the door and started screaming and cursing at the workers. Eventually, he pulled out a gun and demanded that they hand over their phones. All the workers wanted at that point was to leave and find another job, but they knew it was impossible. They didn't have any money, and their visas only allowed them to work for that one employer.

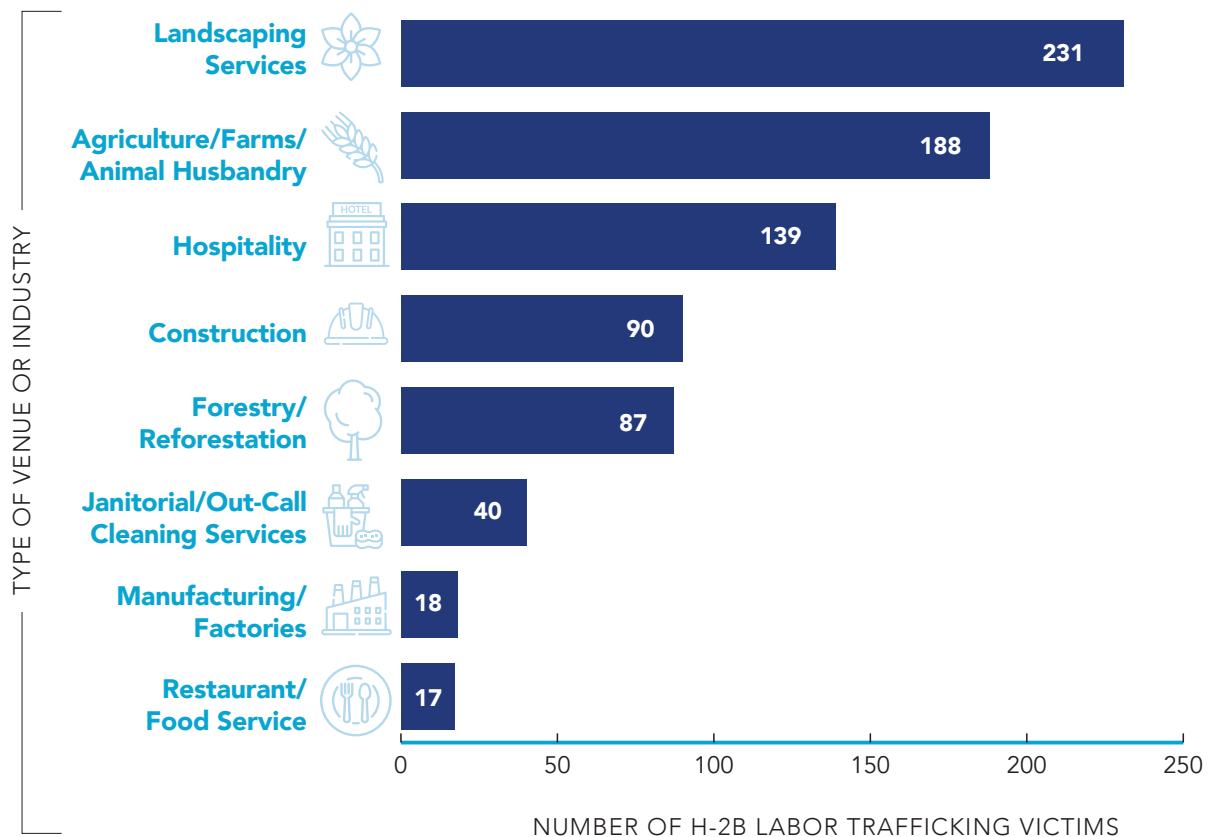
Victor was able to hide his phone and eventually called the National Human Trafficking Hotline. The Trafficking Hotline connected them with a service provider, who helped extract the workers without harm. Later, Victor and his coworkers got legal aid to navigate the application process for T-visas.

⁵⁷ Name changed to protect victim's identity.



The Work They Do

The Department of Labor’s Office of Foreign Labor Certification reported that H-2B holders most commonly worked in landscaping, forestry, housekeeping, amusement and recreation, and food production.⁵⁸ While the Trafficking Hotline classifies work only by industry and not by occupation, the industries associated with the 853 H-2B visa holders identified from 2018-2020 vary only slightly from the occupations highlighted by the Labor Department. Landscaping was the industry most frequently reported to the Trafficking Hotline, followed by hospitality, construction, forestry, janitorial or cleaning services, manufacturing or factories, and restaurant/food services. It is worth noting that 22 percent of victims worked in agriculture, which is not allowed under this visa program yet ranked as the second highest category behind landscaping services.



Methods of Control

The majority (68 percent) of labor trafficking victims with H-2B visas in the dataset reported that threats of deportation or to report to immigration were used to coerce or force them to work in exploitative and even dangerous working conditions. This was also one of the top methods of control used for H-2A workers. Among all H-2 workers (A and B), 60 percent reported that threat of deportation or to report to immigration was the top force, fraud or coercion measure used. The lack of workers-led-portability in these visas makes these immigration-related threats far more effective than they would be if the power dynamics were more even and workers could leave abusive situations without fear of repercussions.

58 U.S. Department of Labor. H-2B temporary non-agricultural labor certification program – selected statistics, FY 2019. Retrieved from https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2b_Selected_Statistics_FY2019_Q4.pdf.



Taking or withholding earnings was also reported by 69 percent of H-2B victims in our dataset. Forty-seven percent reported that fraud or misrepresentation of the job was present. Methods of control like threats to blacklist (44 percent); withholding or destroying important documents like immigration documents or passports (37 percent); verbal abuse or manipulation (36 percent); debt or quota related (36 percent); and withholding or denying needs or wants such as basic living necessities like shelter, food, water, etc. (34 percent) were commonly reported.

	Method of Control	Number of H-2B Labor Trafficking Victims ⁵⁹	Percent of H-2B Labor Trafficking Victims
Coercion	Threat to Report to Immigration	583	68.35%
	Threat to Blacklist	375	43.96%
	Withholds/Destroys Documents	315	36.93%
	Verbal Manipulation/Abuse	304	35.64%
	Withholding or Denying Needs or Wants	286	33.53%
	Manipulation of Language Barrier	63	7.39%
	Threat to Report to Police	56	6.57%
Fraud	Withholding of Earnings	587	68.82%
	Misrepresentation of Job	402	47.13%
	Debt or Quota	303	35.52%
	Excessive Working Hours	292	34.23%
Force	Moves Subjects Frequently	82	9.61%
	Limits Access to Medical Care	80	9.38%
	Monitoring or Stalking	51	5.98%
	Physical Abuse	29	3.40%
	Keeps Confined	29	3.40%

⁵⁹ These statistics are non-cumulative. Survivors may experience multiple methods of control, or this information may not be provided. Accordingly, percentages do not add up to 100%.



Labor Trafficking Involving J-1 Cultural and Educational Exchange Visas

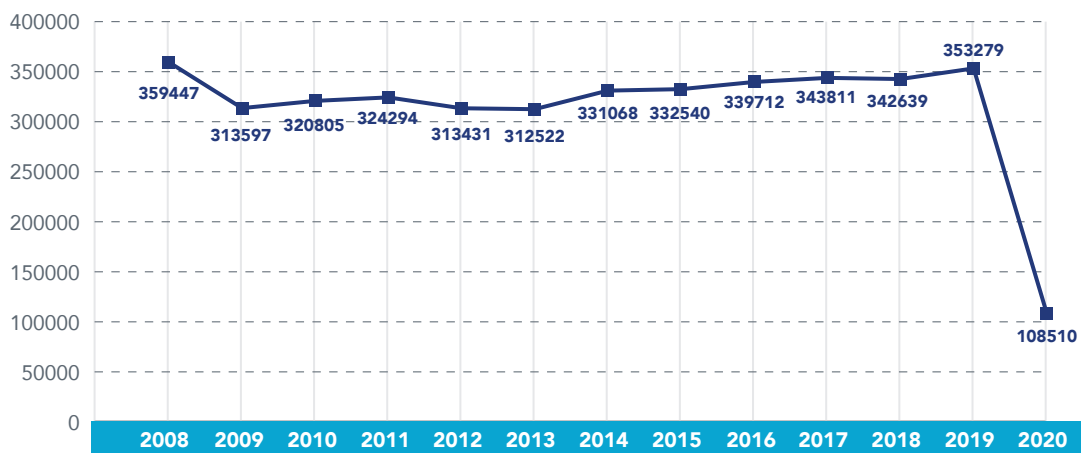
The J-1 visa is the most diverse in terms of industries referenced, victim demographics and experiences. Created to foster international understanding, the J-1 program allows foreign individuals to work temporarily in the United States for educational purposes or to facilitate cultural exchange. J-1 visas have come under increased scrutiny in recent years with emerging evidence of businesses using J-1 visas to recruit low-wage foreign workers legally while avoiding regulations and requirements imposed by other types of low-skilled programs.⁶⁰

J-1 visas can be valid for as little as three weeks for seasonal workers and up to five years for professionals, depending on the program. J-2 visas are available for family members to accompany J-1 visa holders to the United States for the duration of their employment. Unlike other temporary visa types, J-1 visa holders are not tied to a single employer but must receive approval from their original visa sponsor before changing employers.

The Department of Labor does not certify J-1 visas, as they are ostensibly designed for cultural exchange purposes and should not have an effect on the U.S. labor market. The Department of State is responsible for the approval of J-1 visas. But in reality the actual oversight is left to sponsors — often recruitment and staffing agencies, which exist solely to facilitate this program. The recruiters screen and select visitors/workers and match them to host employers and activities. These recruiting businesses are also responsible for informing workers about their rights and supposedly for monitoring labor conditions in the field and reporting abuses.⁶¹ Of course, recruiters have little incentive to report problems because doing so will make it unlikely that the business abusing the worker will hire them to recruit labor in the future.⁶²

In 2019, there were an estimated 222,597 J-1 workers employed in the United States. While the number of J-1 visas has fluctuated slightly over the last decade, an average of around 320,000 J-1 visas have been issued each year, with 353,279 issued in Fiscal Year 2019.⁶³

J-1 Visas Issued by Fiscal Year



*Visas issued for 2020 decreased substantially, but this may be due to COVID.

60 Stewart, Meredith B. (2014, February 1). Culture shock: The exploitation of J-1 cultural exchange workers, Southern Poverty Law Center. Retrieved from www.splcenter.org/20140201/culture-shock-exploitation-j-1-cultural-exchange-workers.

61 Justice in Motion (2020, January). Visa pages: U.S. temporary foreign worker visas: J-1 exchange visitors. Retrieved from <https://www.justiceinmotion.org/j1>.

62 Griebel Bowman, Catherine, and Patricia Medige. (2012, November 28). U.S. anti-trafficking policy and the J-1 visa program: The State Department's challenge from within." Intercultural Human Rights Law Review, vol. 7, pp. 104–145. Retrieved from <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ichuman7&div=10&id=&page=>

63 U.S. Department of State. Nonimmigrant visa statistics. Retrieved from <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html>.



Exploited at a Hotel with a J-1 Visa

Katrina⁶⁴ came to California from Peru on a J-1 visa. She was told her job would involve cleaning 10 hotel rooms a day, presumably with an opportunity for educational or cultural exchange. But the work turned out to be very different. The hotel fostered a party atmosphere where guests routinely left rooms trashed with spilled drinks and even broken furniture, and the 10 rooms had to be completed before 3:30 p.m. every afternoon. Katrina and her coworkers were not allowed to take promised breaks between rooms, nor were they given medical leave when they needed it. Katrina developed tendinitis, and her coworkers reported getting sick because they were using harsh cleaning chemicals without protective equipment.

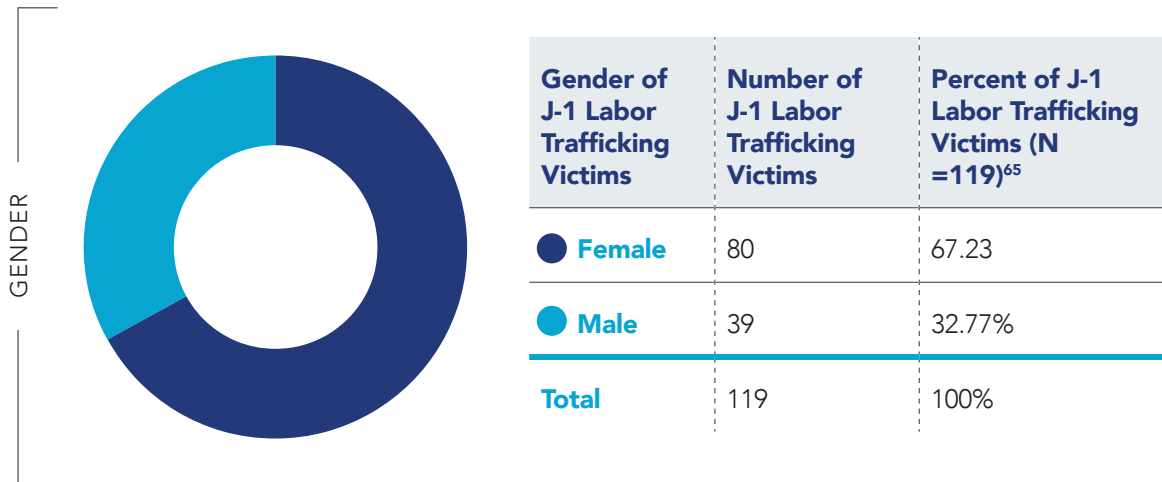
The last straw for Katrina was when a male hotel employee started sexually harassing her and the other female workers. They complained to their visa sponsor, but the sponsor did not help. Katrina's supervisor started to make threats to deport the workers if they didn't stop complaining and asking for leave. The Trafficking Hotline connected Katrina with the J-1 Emergency Unit at the Department of State and reported her situation to trained law enforcement contacts as she requested.

⁶⁴ Name has been changed to protect victim's identity.

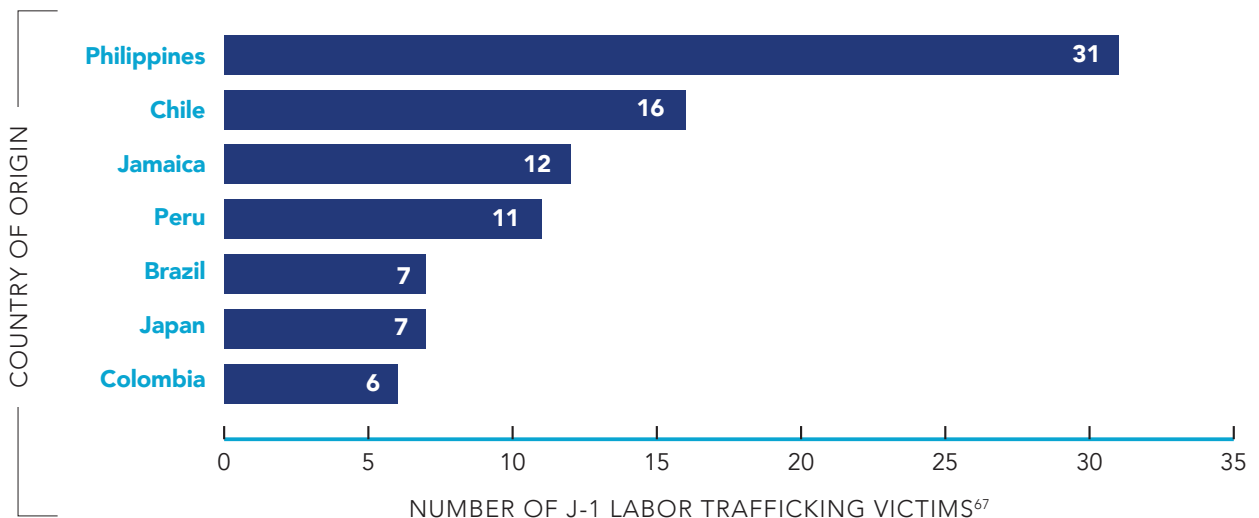


Who They Are

From 2018 through 2020, the Trafficking Hotline identified 184 victims of labor trafficking holding J-1 visas. Trafficking victims in this category are more likely to be women.



In 2019, the State Department issued 137,506 J-1 visas for workers from European countries and 88,130 for workers from Asian countries. China received the greatest number with 35,972 visas, followed by the United Kingdom, Germany, Brazil, France and Spain.⁶⁶ The Trafficking Hotline data reflects the diversity of this program, as victims identified came from a variety of different countries. The Philippines is the most significant country of origin represented in the Trafficking Hotline’s dataset.



⁶⁵ This data only represents instances in which victim/survivor gender is known. For 65 victims, gender was unreported to the Hotline Advocates. In most of these cases, a signaler reports a situation and doesn’t specify or may not have enough information on the genders of the victim/victims, or reports are situations with multiple victims and do not include exact genders for all.

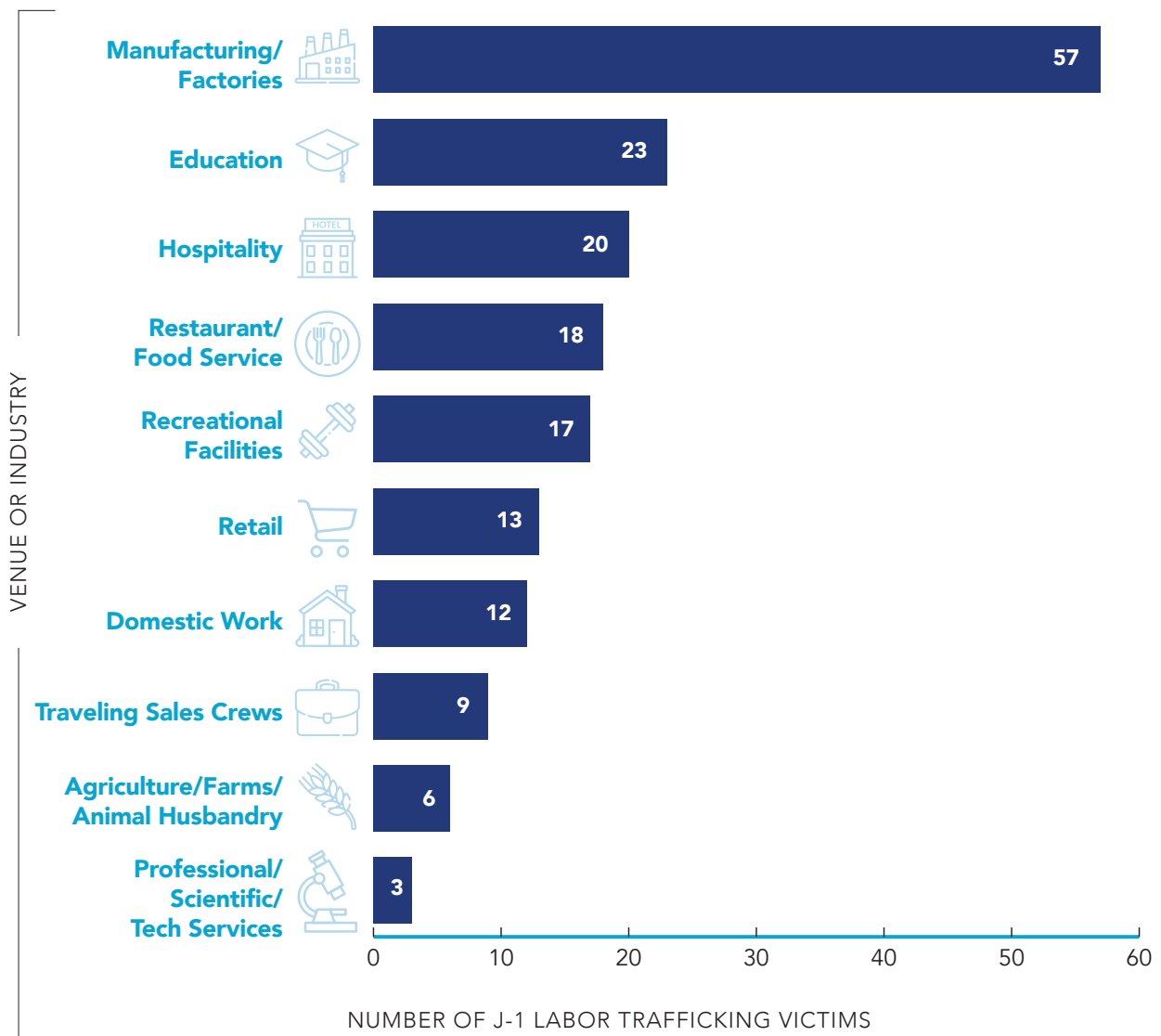
⁶⁶ U.S. Department of State. Top sending countries 2019 - BridgeUSA J1 visa basics. Retrieved from <https://j1visa.state.gov/basics/facts-and-figures/top-sending-countries-2019/>.

⁶⁷ These statistics are non-cumulative. People contacting the Trafficking Hotline may experience multiple countries of origin, or this information may not be provided. Accordingly, percentages do not add up to 100%. In order to protect the identity of the people we serve, Polaris does not provide specific information about nationalities referenced fewer than three times.



The Work They Do

The Department of State, which manages the program, has outlined distinct subcategories of qualifying J-1 visa recipients: research scholars, teachers, college and high school students, au pairs, camp counselors, international visitors, and the summer work and travel program. The summer work and travel program, the largest J-1 subcategory, allows college students to “work in jobs that require minimal training and are seasonal or temporary” for four months.⁶⁸ While J-1 visa holders conducting research are usually sponsored by universities, the other J-1 subcategories are typically sponsored by large companies whose primary focus is facilitating these exchanges in partnership with U.S. employers.



⁶⁸ U.S. Citizenship and Immigration Services. § Sec. 62.32 Summer Work Travel. (Section 62.32 Revised Effective 7/15/2011; 76 FR 23177). Retrieved from www.uscis.gov/ilink/docView/22CFR/HTML/22CFR/0-0-0-1/0-0-0-3590/Sec-62-32.html#0-0-0-851.



Educational Exploitation?

J-1 visa holders do not, as a general rule, work in manufacturing. Indeed, the typical J-1 visa holder is a young person who comes for an educational opportunity, such as working as an au pair in exchange for a small salary and an opportunity to learn a language. That was not the case for 40-60 workers from Brazil and Chile, who were brought to the United States with the promise of an education they never received.

These workers came to Western Iowa Tech, a community college in Iowa, on the promise of receiving professional education and certification in the culinary arts or robotics. They were told that during the school term they would also have internships related to their certification. Instead, when they arrived, they were put to work in factories — including one that produced dog food. Though promised a 30-hour work schedule, many reported having to work more than 50 hours a week, as well as attending classes at the college. The average wage in the facility was \$15-18 an hour, but the students were only making \$7.25 an hour, with the difference paid to the college and/or staffing company. In some cases, students reported that the college deducted money from their paychecks, and in one case, after a student found a job outside the program, they were ordered to pay some of the money they earned to the school.

In November 2019, the Department of State began investigating, and in January 2020, the program shut down — allegedly because of COVID-19. Students were given five days to vacate their apartments and one-way tickets back to their home countries. Few had the chance to complete the original certifications they came to receive.⁶⁹ Several students are now suing, and the lawsuits are pending.⁷⁰

69 Oren Smith, Z. (2020, March 16). Western Iowa Tech sending J-1 visa students home with no degrees, Iowa City Press-Citizen. Retrieved from <https://www.press-citizen.com/story/news/2020/03/16/western-iowa-tech-sending-j-1-visa-student-home-no-degree/5058837002/>.

70 Freeman, L. (2021, January 13). Additional lawsuit filed against WITCC, others over misuse of J-1 visa program, Siouxland Proud. Retrieved from <https://www.siouxlandproud.com/news/local-news/additional-lawsuit-filed-against-witcc-others-over-misuse-of-j-1-visa-program/>.



Methods of Control

Sixty percent of labor trafficking victims on J-1 visas reported having to work excessive hours. Additionally, 45 percent reported that they were given incorrect or incomplete information about what the job would entail while being recruited. Nearly 30 percent also reported being threatened with deportation or being reported to immigration. This figure — substantially lower than the same coercion tactics used with other visa holders — is telling, as J-1 visas do not restrict workers from changing employers. However, employers and traffickers are still able to use this threat because workers may not know their rights. Lastly, 19 percent of J-1 visa holders reported having a debt or quota as part of their work conditions, and 19 percent reported that they had some of their earnings taken or withheld.

	Method of Control	Number of J-1 Labor Trafficking Victims ⁷¹	Percent of J-1 Labor Trafficking Victims
Coercion	Threat to Report to Immigration	53	28.80%
	Verbal Manipulation/Abuse	33	17.93%
	Withholding or Denying Needs or Wants	25	13.59%
	Limits Access to Finances	17	9.24%
	Threat to Blacklist	11	5.98%
	Denies Access to Support	11	5.98%
Fraud	Excessive Working Hours	111	60.33%
	Misrepresentation of Job	82	44.57%
	Debt or Quota	35	19.02%
	Withholding of Earnings	34	18.48%
Force	Monitoring or Stalking	9	4.89%
	Moves Subjects Frequently	9	4.89%
	Sexual Abuse	8	4.35%
	Limits Access to Medical	7	3.80%

⁷¹ These statistics are non-cumulative. Survivors may experience multiple methods of control, or this information may not be provided. Accordingly, percentages do not add up to 100%.



Labor Trafficking Involving A-3 and G-5 Diplomatic and International Organization Employee Visas

A-3 and G-5 visa categories enable diplomats and employees of international organizations working in the United States to employ foreign domestic workers. These categories are often viewed in combination because the regulations pertaining to them are similar. Both visas tie workers to a particular employer. A-3 visas are typically given to employees of foreign diplomats or foreign government officials who typically receive A-1 or A-2 visas. G-5 visas are given to employees of individuals working for international organizations, such as the United Nations and World Bank, who are given G-1, G-2, G-3 or G-4 visas. These types of visas are valid for up to three years and can be extended in two-year increments with no maximum limit. In Fiscal Year 2019, there were only 1,261 such visas issued.⁷²

Despite constituting only 0.02 percent of all non-immigrant visas issued in the past decade, A-3 and G-5 visa categories have received attention due to several high-profile trafficking cases. These include the 2014 indictment of Indian diplomat Devyani Khobragade on charges related to trafficking and exploitation of a domestic worker. While Khobragade had diplomatic immunity, the United States government forced her to leave the country after she was indicted.⁷³ Overall, there have been 20 lawsuits filed related to diplomats and foreign officials trafficking domestic workers in the United States since 2004, according to published reports.⁷⁴ The actual prosecutions, however, lag far behind. There have been only 12 federal criminal cases and one state case filed against current or former diplomats since 2000.⁷⁵

Obtaining justice for victims of trafficking who were trafficked by diplomats is complicated because the accused are often eligible for diplomatic immunity.⁷⁶ In 2008, legislation was enacted to deny A-3 or G-5 visa privileges to any diplomatic mission or international organization that has tolerated the abuse or exploitation of such visa holders.⁷⁷ The State Department suspended Malawi in 2019 and Cameroon in 2021.⁷⁸ This list could and should be longer, however, as judgments against diplomat employers in India, the United Arab Emirates, Zambia, Burkina Faso and Ecuador remain unpaid, which should result in suspension.

72 U.S. Department of State. Nonimmigrant visa statistics. Retrieved from <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html>.

73 Thrupkaew, N. (2021, October 6). Sri Yatun's escape, Washington Post Magazine. Retrieved from <https://www.washingtonpost.com/magazine/2021/10/06/domestic-workers-diplomats/>.

74 Weiser, Benjamin. (2017, December 20). After being Indicted, diplomat is allowed to leave the country, The New York Times. Retrieved from <http://www.nytimes.com/2014/01/10/nyregion/indian-diplomat-indicted-in-employment-case.html>.

75 Thrupkaew, N. (2021, October 6). Sri Yatun's escape, Washington Post Magazine. Retrieved from <https://www.washingtonpost.com/magazine/2021/10/06/domestic-workers-diplomats/>.

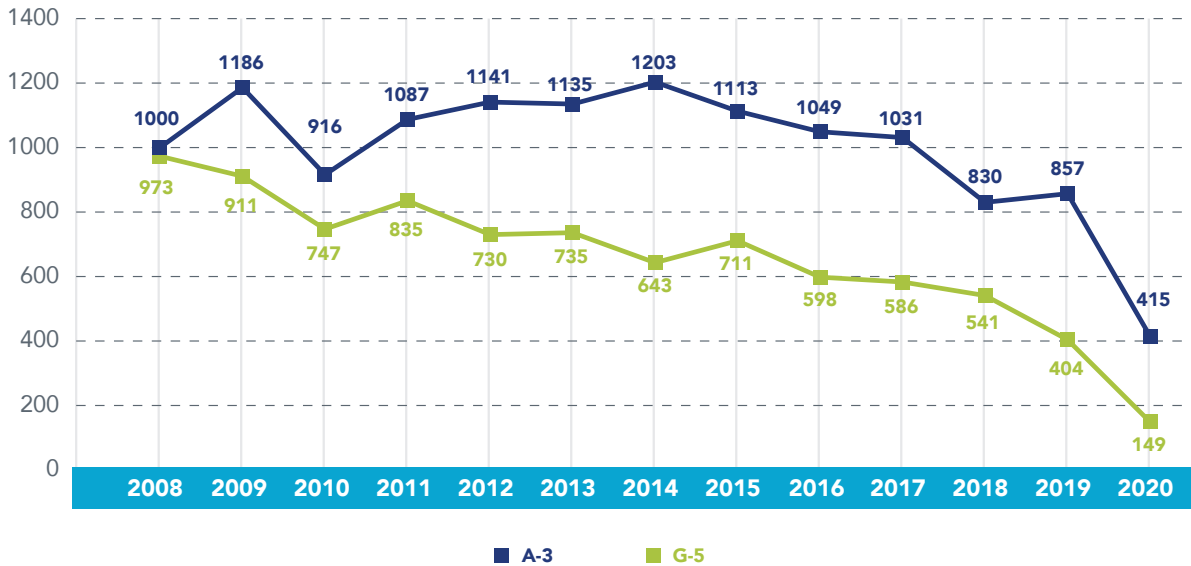
76 Since 2000, the U.S. has brought 12 criminal cases against diplomats and international organization officials for trafficking-related crimes by prosecuting officials with lesser degrees of immunity, such as consular immunity; prosecuting former diplomats; and in rare instances, requesting the waiver of diplomatic immunity. For more information, see "Diplomatic Immunity and the Abuse of Domestic Workers: Criminal and Civil Remedies in the United States," Martina E. Vandenberg and Sarah Bessell, Duke Journal of Comparative & International Law 595-633 (2016). Retrieved from <https://scholarship.law.duke.edu/djil/vol26/iss3/6/>.

77 U.S. Department of State (2006, January 10). Trafficking Victims Protection Reauthorization Act of 2005, Section 203(a)(2). Retrieved from <https://2009-2017.state.gov/j/tip/laws/61106.htm>.

78 Thrupkaew, N. (2021, October 6). Sri Yatun's escape, Washington Post Magazine. Retrieved from <https://www.washingtonpost.com/magazine/2021/10/06/domestic-workers-diplomats/>.



A-3 and G-5 Visas Issued by Fiscal Year



*Visas issued for 2020 decreased substantially, but this may be due to COVID.



Abused by a Diplomat

Rachel⁷⁹ came to the United States hopeful about her new job opportunity. Her sister was married to a well-respected diplomat, Eric,⁸⁰ who sponsored her G-5 visa, enabling her to leave her country and work for their family.

After some days, Rachel noticed Eric’s violent behavior at home and feared her sister was a victim of domestic violence. Suddenly things began to escalate: Not only was Eric not paying Rachel, but he also sexually assaulted her, then turned her whole family against her by portraying the situation as a consensual sexual relationship that Rachel had initiated. Eric also threatened Rachel with deportation if she told anyone what was actually happening. She kept quiet, thinking that nobody would believe her in light of Eric’s position of power.

Finally, after seeing that things were only getting worse, Rachel contacted the National Human Trafficking Hotline and worked with them to connect with referrals and services. Rachel also pursued a criminal complaint against Eric for both labor trafficking and sexual assault.

79 Name has been changed to protect victim’s identity.

80 Name has been changed to protect victim’s identity.



Who They Are

From 2018 through 2020, the Trafficking Hotline identified 14 victims of labor trafficking who held either A-3 or G-5 visas. Four were on A-3 visas, and 10 were on G-5 visas. All 14 victims had notable similarities: 71 percent experienced labor trafficking in the Northeast Corridor of the United States, and nearly 80 percent were female.

The Work They Do

Although the type of work these victims do within households varies from housekeeping and cooking to child care, it is all categorizable as domestic work. All 14 identified victims were employed in domestic work.



Trafficking with Diplomatic Impunity

Fainess Lipenga is still waiting for justice. Instead of punished, her trafficker was promoted. Lipenga's trafficker, a diplomat from her home country of Malawi, provided Lipenga with a contract promising a legal job as a domestic worker in the United States. Instead, the diplomat brought Lipenga to the United States on an A-3 visa and forced Lipenga to work for pennies an hour under inhumane conditions. For years, Lipenga suffered isolation, sexual assault and abuse. Lipenga broke free and today she is a powerful leader in the movement to end human trafficking and support survivors. Part of that work is ensuring that traffickers are actually held accountable for their crimes. To that end, Lipenga worked with pro bono attorneys and in 2016 won a \$1.1 million federal civil judgment against her trafficker. Not a dime has been paid. While diplomatic immunity can make prosecutions and other legal matters challenging, there are steps that the U.S. government can and must take to collect this civil judgment. Enforcement of this federal judgment would send a powerful message that traffickers cannot hide behind diplomatic immunity. Diplomats are not entitled to impunity for their crimes. While this judgment remains unpaid, Malawi is complicit with the abuse. This impunity for human trafficking and forced labor cannot stand.



Methods of Control

Consistent with almost all other visa sections, threat to report to immigration (64 percent) was the most common method of force, fraud or coercion used against A-3/G-5 labor trafficking victims in the dataset. A-3/G-5 workers also reported having to work excessive hours (57 percent) and having their wages withheld or taken (57 percent). Half reported fraud in recruitment, as their actual wages and working conditions diverged from what they were promised. More than 40 percent had important documents like immigration papers, IDs and passports withheld or destroyed by a trafficker, which impacted their ability to leave their employer and report any abuse or exploitation.

	Method of Control	Number of A-3/G-5 Labor Trafficking Victims ⁸¹	Percent of A-3/G-5 Labor Trafficking Victims
Coercion	Threat to Report to Immigration	9	64.29%
	Withholds or Destroys Documents	6	42.86%
	Withholding or Denying Needs or Wants	4	28.57%
	Manipulation or Verbal Abuse	3	21.43%
Fraud	Excessive Working Hours	8	57.14%
	Withholding of Earnings	8	57.14%
	Misrepresentation of Job	7	50.00%
Force	Monitoring or Stalking	3	21.43%
	Keeps Confined	3	21.43%
	Physical Abuse	3	21.43%

⁸¹ These statistics are non-cumulative. Survivors may experience multiple methods of control, or this information may not be provided. Accordingly, percentages do not add up to 100%.



Preventing Trafficking of Domestic Workers from Overseas

The Department of State has taken laudable steps to offer support and guidance to A-3 and G-5 visa holders. Since September 2015, all A-3 and G-5 visa holders in the Washington, D.C., area must meet with State Department officials one-on-one to discuss the details of their work contracts and receive information about labor rights in this country.⁸² Visa holders are also given information about calling the Trafficking Hotline if they believe their rights are being violated and contacting 911 in an emergency. These check-in meetings have moved to virtual platforms during COVID-19 and have expanded beyond workers in the Washington, D.C., area.⁸³ The State Department then issues A-3 and G-5 visa holders official identification cards that must be renewed annually in person. This program is an excellent example of educating a vulnerable population about their rights and opportunities to access assistance.

In 2017, the World Bank instituted a new policy that requires staff members who employ domestic workers with G-5 visas to process their payroll through a designated third-party company.⁸⁴ This policy ensures there is a formal record of wages paid and allows for greater oversight. This is a promising practice, and Polaris encourages the International Monetary Fund, Inter-American Development Bank and the United Nations to adopt similar policies.

82 U.S. Department of State (2011, May 26). Letter from U.S. Secretary of State. Received by Chiefs of Mission at the U.S. Department of State's Office of Foreign Missions ("OFM"). Retrieved from <https://2009-2017.state.gov/documents/organization/248679.pdf>.

83 Thrupkaew, N. (2021, October 6). Sri Yatun's escape, Washington Post Magazine. Retrieved from <https://www.washingtonpost.com/magazine/2021/10/06/domestic-workers-diplomats/>.

84 The World Bank Group. Request G5 visa for a prospective domestic employee residing outside the U.S. Retrieved from <https://www.worldbank.org/en/about/unit/human-resources/request-g5-visa-for-a-prospective-domestic-employee-residing-outside-the-us>.



PART 3

**Combatting Trafficking Involving
Temporary Work Visas**



The final sections of this report highlight important resources and recommendations based upon Trafficking Hotline data analysis and assessment of the current temporary work visa system. As noted throughout this report, many initial steps have been taken to help prevent guest workers from suffering exploitation and to intervene in existing abusive situations. However, much more remains to be done to significantly reduce and ultimately end labor trafficking on temporary work visas. This work includes improving access to knowledge and services that already exist to support workers, as well as changing policies and practices at the system level.

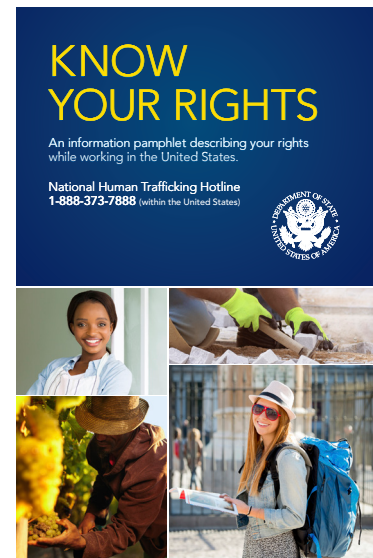
Prevention and Support

The Department of State's Know Your Rights brochure, also known as the Wilberforce Pamphlet, is provided to every individual receiving a temporary work visa in his or her native language prior to entering the United States. Launched in the fall of 2009, the pamphlet is an ambitious attempt to communicate complex labor laws across visa categories to a linguistically diverse population with wide variations in literacy. The pamphlet also contains information about how and why to contact the Trafficking Hotline.

Prior to COVID-19, temporary visa holders received this information at a consular interview. Suspended during pandemic lockdowns, the interviews have since restarted, although anecdotal reports suggest that they are not as regularized as they were before the pandemic. It is unclear how the Know Your Rights brochure is distributed to workers who do not have consular interviews.

The existence of this information and its distribution to every worker who arrives in this country with a temporary work visa are important steps toward giving workers a way to get help and exit dangerous or exploitative situations. But the pamphlet is not enough. First and foremost, it puts the entire onus for safety on workers themselves. Moreover, it fails to give workers an outlet to seek assistance for issues like wage theft and other abusive practices that may not amount to trafficking because there is no clear evidence of force, fraud or coercion. There is a clear need for services and support from the government to both recognize these abusive situations and rectify them. That translates directly into a need for more wage and hour inspectors, workplace safety and health inspectors, and professionals who can follow through on tips about wage theft and seek restitution for victims. As indicated in the pamphlet, guestworkers also have freedom of association rights once they arrive in the United States. Guestworkers should be given contact information for unions, workers centers, and migrant workers' rights NGOs in the U.S., and employers must be required to provide access to such organizations in the workers' housing or workplaces. Also, employers should be required to sign an affidavit stating that they will abide by the rights outlined in the pamphlet.

Connecting victims of labor trafficking and exploitation to services is critical to ensuring that they have every opportunity to recover from the abuse they've suffered, seek redress and rebuild their lives. Common service needs include emergency shelter, transportation, food, work to repay their debt, clothing and medical/dental examinations. Labor trafficking survivors on temporary visas should also be provided with legal assistance for immigration, criminal or civil litigation. Stable housing, as well as job training and placement, are also important long-term services for victims.





Foreign victims that are granted Continued Presence (temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking) or a T-Visa (which protects victims of human trafficking and allows them to remain in the United States to assist in an investigation or prosecution) from the U.S. government can receive a certification letter from the Department of Health and Human Services, making them eligible for public benefits and services to the same extent as refugees.

Policy Solutions

Significant reforms to the U.S. temporary visa programs are needed to combat human trafficking and forced labor. Action by Congress, the various federal agencies involved in temporary visa programs (including the Departments of Labor, Homeland Security and State) and state governments are all necessary to improve the system. Below is a non-exhaustive set of priority recommendations that, together, will increase transparency and accountability and more effectively protect workers on temporary visas from trafficking and exploitation.

1 Create real options for H-2A and H-2B visa holders to change jobs. Workers should have the right and the ability to leave abusive workplaces without risking losing their legal status and the income they have left home and family to earn. Giving workers this option — in reality, not just in theory — will help reduce the power imbalance that is currently built into the system because workers can only legally remain in the country if they are employed by the original visa sponsor.

- Specifically, federal agencies should:
 - Use existing authority to immediately develop and enforce joint regulations across the Departments of Labor, Homeland Security and State that allow workers with H-2 visas to leave abusive employers and remain in the United States with work authorization. In addition, agencies must ensure protections from deportation and retaliation for workers engaged in labor disputes or who are witnesses to labor disputes. In September 2021, DHS issued guidance on the use of prosecutorial discretion to ensure immigration enforcement is not used as a retaliatory tool for workers who assert their rights.⁸⁵ An October 2021 memo followed and included a directive to develop plans for the use of deferred action and other immigration relief for workers who are witnesses or victims of abusive and exploitative labor practices.⁸⁶ These reforms are helpful starts, but do not go far enough to mitigate the problem.
 - Provide visa holders with comprehensive information in their own language about their workplace rights and how to find new employment, including by maintaining a user-friendly, up-to-date Seasonaljobs.gov site with information on available jobs.
- Action from Congress is also necessary. Congress can prevent labor trafficking in the United States by passing legislation that reforms the H-2 visa systems by both giving workers control over their visas and facilitating the process to easily leave abusive jobs and change employers.

85 Mayorkas, A. N. (2021, September 30). Guidelines for the enforcement of civil immigration law. Memorandum from Secretary of Homeland Security to Acting Director of U.S. Immigration and Customs Enforcement. Retrieved from <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

86 Mayorkas, A. N. (2021, October 12). Worksite enforcement: The strategy to protect the American labor market, the conditions of the American worksite, and the dignity of the individual. Policy Statement 065-06. Memorandum from Secretary of Homeland Security to U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, and U.S. Customs and Border Protection. Retrieved from https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf.



2

Strengthen enforcement of rules and laws for recruiters, contractors and employers who exploit workers and ensure joint employer liability for employers and contractors.

- Congress should increase funding for the Department of Labor to ensure sufficient, trained personnel to effectively pursue investigations and inspections into potential exploitation and trafficking situations, including wage and hour and health and safety violations. Congress should also pass legislation for greater regulation of foreign labor contractors and the employers that use them, including holding foreign labor contractors jointly liable with employers for the treatment of workers.
- The Department of Labor should strengthen enforcement of worker protections by mandating that all labor contractors submit applications jointly with employers, as is already required with H-2B applications; implement a screening process at the application stage to uncover and deny temporary worker visas to employers who have a record of violating wage and hour laws and other worker rights; require H-2 program employers to pay into a workers compensation fund to give access to owed wages; and create and utilize a strong debarment process to remove employers who violate visa programs' laws and rules.
- State governments should increase penalties for wage theft and other significant employment violations and ensure that State Departments of Labor are sufficiently resourced to proactively enforce workplace protections.

3

Reform the recruitment system of temporary guest workers.

- The Department of Labor should require all foreign labor recruiters for all types of temporary visas to obtain a certificate of registration and pay a bond, and should maintain a public, updated list of all certified recruiters. The department should also ensure strong protections in recruitment and enforce vigorous oversight of recruitment activities, including bans on recruitment fees and the provision of truthful employment contracts to workers before coming to the U.S. Any employer that uses a foreign labor recruiter or contractor that has violated recruitment rules should be held jointly and severally liable for the actions of the recruiter.
- While the Administration can pursue rulemaking on foreign labor recruitment under its existing statutory authority, Congress should act to pass legislation to further strengthen protections for temporary visa workers in the recruitment process.

4

Increase transparency into these opaque systems by enacting laws like the Visa Transparency Anti-Trafficking Act, which would create a uniform system for reporting data that the federal government already collects on temporary visa programs and require that information be made publicly available. Without transparency, there is no way of knowing how many workers on temporary visas are in the United States, where they are working and if they are being paid fairly. This information would give the government and advocates powerful tools to reach out to potential victims of trafficking and forced labor. A support network is an important trafficking prevention tool.



5 The Administration and Congress should refrain from expanding the scope or size of temporary visa programs until strong worker protections are put in place and robustly enforced.

Expanding the number of visas available or the industries included in various visa programs or encouraging countries to recruit their citizens to use these programs while failing to protect workers will lead to more opportunities for sex and labor trafficking and exploitation and is an abdication of the government's responsibility to protect these workers under the law. Expansion of temporary work visa programs should not be used in place of humanitarian programs, such as asylum or temporary protected status. Temporary work visa programs should not be used to fill labor shortages for jobs that are really permanent or long-term. If jobs are long-term, foreign workers should have the right to residency and family unification.

6 Congress should establish protections for domestic workers by passing the National Domestic Workers Bill of Rights.

Domestic workers have been left out of virtually every major federal labor protection law and the often isolated, informal working conditions make them especially vulnerable to trafficking. The National Domestic Workers Bill of Rights would ensure that domestic workers are afforded basic labor rights including the provision of a written agreement on their roles and responsibilities, overtime pay, specific protections for live-in workers, and access to information about their rights.

7 Institute effective protections and enforcement for A-3 and G-5 visa holders.

- The State Department should enforce protections for A-3/G-5 visa holders and prevent impunity within the system. This includes formally and publicly barring countries whose diplomats were found to be abusing the system from accessing A-3 and G-5 visas until restitution is paid to victims. The State Department can also utilize legal processes to request and receive the civil judgment. Additionally, the State Department should identify countries who have unpaid judgements in the annual Trafficking in Persons Report. Without formal and public processes, countries have no real incentive to monitor and ensure their diplomatic team is not exploiting or trafficking workers from their home countries.
- Congress should pass legislation mandating that the State Department conduct in-person registration and check-in meetings for all A-3 and G-5 visa holders across the U.S.
- In 2017, the World Bank instituted a new policy that requires staff members who employ domestic workers with G-5 visas to process their payroll through a designated third-party company. This policy ensures there is a formal record of wages paid and allows for greater oversight. This is a promising practice, and the International Monetary Fund, Inter-American Development Bank and the United Nations should adopt similar policies.



Appendix: Methodology

The information contained in this document was obtained through interactions with individuals contacting the Polaris-operated National Human Trafficking Hotline in the period from January 1, 2018, through December 31, 2020. As individuals contacting the Trafficking Hotline told their own stories or relayed the experiences of their friends, family members or other acquaintances, Hotline Advocates noted key elements of each account. This information was later classified in standardized fields using detailed standards and definitions created by Polaris's data team.

The following caveats apply:

- The Trafficking Hotline is not a research program but is focused on helping those in need access critical support and services to get help and stay safe. Although Hotline Advocates use detailed protocols to assess indicators of trafficking (see below), they adapt their phrasing and scope of questions in response to an individual's answers and circumstances. As such, the data in this document represent only what those contacting the Trafficking Hotline chose to disclose, and the number of victims with a particular attribute or visa category would likely have been significantly higher with standardized questions.
- As noted above, victims and third parties who report situations only provide information that they know and feel comfortable sharing with staff to get the help they need. Polaris staff do not conduct proactive investigations to corroborate or verify the claims and statements made by individuals contacting the Trafficking Hotline.
- All contact with the Trafficking Hotline is confidential. In order to protect the identity of the people served, Polaris does not disclose exact statistics related to venues, industries, victim information or contact information referenced fewer than three times.
- Since awareness of both human trafficking and the existence of a victim service hotline is still limited, this dataset should be interpreted as a biased sample of actual victim data, rather than a representation of all existent victims. This data should not be compared to the findings of more academic studies that included systematic surveys.
- Many Trafficking Hotline cases evolve over time as individuals contact it again to provide new information about the same situation. When new information is provided, Polaris staff update data classifications to reflect the most current information possible. Upon request, Polaris will remove information about contacts who do not wish to be included in the dataset. For these reasons, data may change over time. The information in this report is accurate as of the date of its creation, May 2022.



Assessing for Trafficking

Hotline Advocates receive a minimum of 60 hours of training on identifying and responding to trafficking situations. They apply the U.S. federal definition of human trafficking as defined by the TVPA to determine if a situation described through the Trafficking Hotline has indications of human trafficking. Cases which fully meet the TVPA's standard are labeled as having "high-level indicators of trafficking." Cases which partially meet the TVPA's standard but are missing pieces of information needed to make an assessment are labeled as having "moderate-level indicators of trafficking." Cases which involve possible violations of labor rights laws but lack indicators of force, fraud or coercion necessary to meet the legal definition of labor trafficking are labeled as "labor exploitation." Situations that did not qualify as human trafficking or labor exploitation are not included in this document. Assessments made by Hotline Advocates are reviewed by Hotline Supervisors and/or the Polaris data team. Initial assessments may be revised as additional information is provided through subsequent contacts with the Trafficking Hotline.

For more information about Polaris, please visit <https://polarisproject.org>.

For more information about the U.S. National Human Trafficking Hotline, please visit <https://humantraffickinghotline.org>.