



May 10, 2022

The Honorable Jon Ossoff
United States Senate
Washington, DC 20510

Dear Senator Ossoff:

Thank you for your recent letter to Secretary of Labor Martin J. Walsh, Secretary of State Antony Blinken, and Secretary of Homeland Security Alejandro Mayorkas. In your letter, you express concern about abuses of the H-2A visa program uncovered by Operation Blooming Onion and described in the indictments obtained by the United States Attorney for the Southern District of Georgia on November 22, 2021. In your letter, you encourage the Department of Labor (Department) to take immediate action to prevent further abuses and to work with you and your colleagues to create long-term solutions, including revisions to the H-2A regulations and increased oversight of the H-2A visa program. Your letter was forwarded to the Department's Wage and Hour Division (WHD) for response.

No one should suffer the exploitation that is alleged in the Blooming Onion indictments, and we welcome this opportunity to share our efforts to protect farmworkers and detect and refer human trafficking when we encounter it in our workplace investigations. WHD, along with colleagues across the Department, recognize the particularly egregious and brutal nature of this case, and the urgency for full accountability and remedy. With that in mind, Secretary Walsh would be honored to join you in Georgia to meet with farmworkers and the agricultural community to discuss the H-2A visa program.

WHD is responsible for administering and enforcing some of our nation's most fundamental labor laws related to agricultural employment, including the Fair Labor Standards Act (FLSA), which includes minimum wage, overtime, and child labor standards; portions of the H-2A provisions of the Immigration and Nationality Act (INA); the Migrant and Seasonal Agricultural Worker Protection Act (MSPA); and, in certain states, the housing safety and field sanitation standards under the Occupational Safety and Health Act (OSH Act). WHD is deeply committed to protecting agricultural workers, including workers in the H-2A visa program.

Workers in the H-2A visa program are particularly vulnerable to workplace abuses due to their dependence on their employer for housing, transportation, access to food and other necessities, as well as their ability to work temporarily in the country. WHD investigators receive the training and guidance to ensure they are aware and sensitive to the susceptibility of these workers to exploitation. WHD investigators take steps to protect the confidentiality of workers who participate and cooperate with our investigations. WHD investigators are also trained to remain alert in identifying signs of labor exploitation, including forced labor, intimidation, retaliation, and abuse.

WHD regularly refers suspected criminal activity to the Department's Office of Inspector General (OIG) and participates in the National Action Plan to Combat Human Trafficking, as well as in a number of state and local human trafficking task forces. For instance, WHD and OIG participated in the investigation of Operation Blooming Onion. WHD may also refer suspected unlawful activity to other federal agencies, such as the Department of Homeland Security – Homeland Security Investigations, the Department of Justice – Human Trafficking Prosecution Unit, the Department of State, the Equal Employment Opportunity Commission, the Department of the Treasury, and other non-governmental organizations, such as legal services organizations able to assist victims with private civil claims or other avenues to justice. WHD also works closely with governmental and non-governmental partners to ensure that victims have access to the vital services they need. Moreover, WHD assists victims of trafficking and other severe crimes by regularly exercising its discretionary authority to issue certifications supporting their applications for U and T visas. WHD regularly communicates with criminal law enforcement agency partners to ensure efficiency and consistency of operations.

The agriculture industry employs some of our country's lowest-paid workers who are vulnerable to retaliation due to their lack of access to resources and their dependence on employers for their housing and immigration status, among other things. The H-2A program prohibits employers from retaliating against workers for exercising their rights. Prohibited conduct includes any adverse action that could dissuade an employee from raising a concern about a possible violation or engaging in other protected activity, such as filing a complaint or cooperating in a WHD investigation. These adverse actions can take many forms, including termination; confiscating a worker's passport or other immigration documents; disciplinary actions; threats to employees, their families or co-workers; reduction of work hours or rate of pay; shift changes or elimination of premium pay; and blacklisting.

Preventing and addressing retaliation against employees is a top priority of WHD, and any person may file a complaint with WHD of alleged retaliation. In recognition of the severe gravity of these violations, WHD recently published Field Assistance Bulletin (FAB) 2022-2: *Protecting Workers from Retaliation*. The FAB provides examples of retaliation under the FLSA, the H-2A program, and MSPA and instructs field staff to treat an employer's immigration-based threats to a worker on account of their protected activity as unlawful retaliation. It also makes clear that, when WHD finds that an employer has retaliated against any person for filing a complaint or asserting their legal rights, we will take vigorous action that may include litigation, pursuit of damages, and/or debarment.¹

In recognition of the unique vulnerabilities faced by farmworkers, WHD collaborates with community groups, state agencies, local officials, and organizations such as Georgia Legal Services and the Coalition of Immokalee Workers to ensure that workers are aware of their rights. WHD staff maintain productive relationships with State Monitor Advocates and State Workforce Agencies to facilitate information sharing and referrals. In addition, the Department is committed to supporting worker organizing as part of the White House Task Force on Worker

¹ See FAB 2022-2: Protecting Workers from Retaliation: <https://www.dol.gov/sites/dolgov/files/WHD/fab/fab-2022-2.pdf>.

Organizing and Empowerment chaired by Vice-President Kamala Harris and Vice-Chaired by Secretary Walsh. WHD welcomes additional partnerships and collaborative opportunities. WHD does extensive outreach to ensure that workers and their advocates understand the protections provided under the law and know how to reach us.² Every WHD District Office includes a Community Outreach & Resource Planning Specialist whose job is to leverage limited resources to maximize impact and create long lasting compliance changes in communities by organizing, facilitating, and conducting compliance assistance and outreach. They focus on building partnerships and interacting with local stakeholders to get our information into the hands of those who need it.

To achieve the greatest impact possible, WHD has launched a national initiative to focus enforcement and outreach efforts on the agricultural industry.³ This initiative augments WHD's consistent and ongoing enforcement efforts of the H-2A provisions. Since the start of this administration, WHD has concluded 573 H-2A investigations, resulting in over \$9 million in back wages for more than 10,000 workers. Additionally, the agency has assessed over \$8.8 million in civil money penalties for H-2A violations. Recent notable cases include the investigation of several Mississippi fish farms in which WHD recovered over \$100,000 in back wages for 123 agricultural workers and imposed nearly \$70,000 in civil money penalties;⁴ and the investigation of a sugarcane grower in Louisiana in which the agency obtained a court order to prevent further retaliation after the employer refused water to workers in the field and threatened them when they complained.⁵

When egregious violations are found, WHD uses every tool at its disposal, including program debarment, to protect workers and ensure that employers are held accountable. Since the beginning of this Administration, the agency has debarred several employers, including a North Carolina H-2A labor contractor that failed to pay the required wage rate; failed to provide safe housing and transportation; and failed to reimburse workers for recruitment fees, visa-related fees, and transportation expenses.⁶ Continuing to strengthen and emphasize debarment – especially through press releases and other publicity – is a critical part of effective enforcement. When applicable, WHD also seeks to hold entities which jointly employ H-2A workers, such as the fixed site growers that utilize the services of H-2A labor contractors, responsible for program violations.

When back wages are owed, WHD ensures that it is recovering those wages for vulnerable H-2A workers through all available means. Too often, farm labor contractors are undercapitalized, making back wage recovery difficult. In order to address this problem and facilitate back wage recovery, WHD's regulations require every H-2A labor contractor to obtain a surety bond. Each bond is payable to the WHD Administrator and obligates the surety to pay any sum, up to the face value of the bond, for wages and benefits owed to an H-2A worker or worker engaged in corresponding employment, or to a U.S. worker improperly rejected, laid off, or displaced based

² See How to File a Complaint: <https://www.dol.gov/agencies/whd/contact/complaints>.

³ See DOL news release: <https://www.dol.gov/newsroom/releases/whd/whd20210325> and <https://www.dol.gov/newsroom/releases/whd/whd20220328-0>.

⁴ See DOL news release: <https://www.dol.gov/newsroom/releases/whd/whd20211221>.

⁵ See DOL news release: <https://www.dol.gov/newsroom/releases/whd/whd20211028-0>.

⁶ See DOL news release: <https://www.dol.gov/newsroom/releases/whd/whd20210316>.

on a final decision finding H-2A violations. In calendar year 2020, the Department liquidated more than \$250,000 in employer surety bonds to secure back wages owed to workers from H-2A labor contractors.

Another critical component of ensuring agricultural worker rights and safety is the registration of farm labor contractors that is required under the Migrant and Seasonal Agricultural Worker Protection Act and is applicable to H-2A labor contractors. To legally operate as a farm labor contractor, an individual or company must register with the Department and receive specific authorization to house, transport, or drive a migrant or seasonal agricultural worker. Housing must comply with federal and state safety and health standards, and a written statement of the terms and conditions of occupancy must be posted at the housing site where it can be seen or be given to the workers. Similarly, vehicles used to transport workers must be properly insured, operated by licensed drivers, and meet federal and state safety standards with functional safety equipment. These authorizations set minimum standards that must be met and are vitally important to protecting the health, safety, and wellbeing of agricultural workers.

In addition to its enforcement efforts, WHD also seeks to prevent future abuses by educating employers, agents, and recruiters on their obligations, and by ensuring that workers and advocates have the information they need to stand up for workers' rights. Since the start of this administration, the agency has conducted over 500 outreach events addressing H-2A program requirements. These included nearly 250 outreach events with consulates, including presentations to the Honduran, Salvadoran, and Guatemalan consulates and to contractors working with USAID in El Salvador. WHD also recently provided a presentation on H-2A protections to the Embassy of the Philippines that included participation from prospective H-2A workers and employers. WHD has long understood that enforcement alone is not enough to achieve compliance – education is every bit as critical. With that in mind, WHD continues to develop and share new H-2A outreach materials in both English and Spanish.⁷

Finally, the Department is engaged in an ongoing rulemaking in which it proposed enhanced worker protections for workers in the H-2A program in a Notice of Proposed Rulemaking.⁸ Upon the publication of any final rule, the Department will provide significant outreach and guidance on the regulation's requirements.

Thank you for contacting us about this matter. The Department is dedicated to enforcing the law and regulations governing the administration and enforcement of the H-2A program. WHD is available for a follow-up meeting should your office have additional ideas on oversight and

⁷ See Protections for U.S. Workers under the H-2A Program in English and Spanish:

<https://www.dol.gov/sites/dolgov/files/WHD/publications/WH1401.pdf>

and <https://www.dol.gov/sites/dolgov/files/WHD/publications/WH1401SPA.pdf>;

Key Protections for H-2A workers in English and Spanish: <https://www.dol.gov/sites/dolgov/files/WHD/h2a/key-protections-h2a.pdf> and https://www.dol.gov/sites/dolgov/files/WHD/h2a/key-protections-h2a_Spanish.pdf; and

Notice of Vaccine Rights for H-2A workers in English and Spanish:

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH1046H-2ACOVIDPOSTER.pdf> and

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH1046SPAH-2ACOVIDPOSTER.pdf>.

⁸ See H-2A NPRM: <https://www.federalregister.gov/documents/2019/07/26/2019-15307/temporary-agricultural-employment-of-h-2a-nonimmigrants-in-the-united-states>

coordination. We welcome all opportunities for collaboration in those efforts and look forward to continuing to work with you in the future.

Sincerely,

Jessica Looman

Jessica Looman
Acting Administrator