



September 7, 2022

RE: AB 364– SUPPORT

Dear Governor Newsom,

I am writing in support of AB 364. This bill provides a technical fix to 2016 legislation, SB 477, to ensure that regardless of the nonimmigrant visa category used to recruit temporary workers, all foreign labor contractors (FLCs) recruiting migrants for work in California, with two narrow exceptions, are subject to SB 477's requirements.

Justice in Motion is a nonprofit working to protect migrants' rights. Our core program involves training and supporting a Defender Network comprised of human rights advocates in migrants' countries of origin. The Network educates migrants before they come to the U.S., partners with U.S. advocates on specific cases of labor exploitation, and advocates for systemic change. Justice in Motion's U.S. legal staff trains U.S. advocates on representing migrants after they return to their homes abroad, and provides advice, referrals, and case facilitation support. Justice in Motion also engages in policy advocacy, both nationally and internationally, drawing from our unique insight into how various temporary work programs operate, from the perspective of both the countries of employment and origin. We have projects in the United States, Mexico, and Central America.

Due to a drafting error, SB 477 had been interpreted by the California Labor Department as limited solely to FLCs recruiting workers under H-2B visas. This interpretation means that only a small percentage of the hundreds of thousands of temporary migrant workers coming to California annually are currently protected. AB 364 rectifies this error by clarifying SB 477's originally intended scope, specifically making it possible to regulate and oversee FLCs recruiting international migrant workers in the vast majority of temporary work visa programs (e.g., H-1B, H-2A, H-2B, L-1, O, P, and TN programs). Without this legislative fix, SB 477 becomes essentially meaningless and fails to reach the goals intended for it when originally drafted.

SB 477 has the potential to provide much needed protection to the temporary foreign workers who labor in California. Each year, California receives hundreds of thousands of foreign workers temporarily employed in the United States. For example, in 2021 California employed 32,333 H-2A workers, over ten percent of the total H-2A population employed in the U.S., and more than all but two other states.¹ As currently interpreted and without AB 364, those 30,000+ H-2A visa holders cannot benefit from the protections afforded under SB 477. Once AB 364 is enacted, the hundreds of thousands of temporary

¹ U.S. Dept. of Labor, Office of Foreign Labor Certification, *H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2021 EOY*, available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2021.pdf.

foreign workers in the H-2A, H-1B, H-2B, L-1, O, P, and TN programs will be protected from abusive recruiters and exploitative human traffickers.

The importance of regulating the conduct of these foreign labor contractors is paramount. Numerous reports confirm that the power imbalance between temporary foreign workers and those who bring them into the country often results in extreme labor exploitation, including human trafficking. While some contractors behave ethically and lawfully, others do not. Unscrupulous foreign labor contractors misuse U.S. visa programs to exploit workers, often charging exorbitant fees for their services, thereby forcing workers into debt bondage. They falsify documents, impersonate legitimate businesses, and deceive workers about the terms and conditions of proposed employment. Workers who seek to report the abuses or escape their fraudulently induced servitude are threatened with blacklisting, discrimination, and other forms of retaliation, including the imposition of additional fees and violence against themselves, family members, or their home communities.

There are concrete examples of human trafficking on almost every nonimmigrant work visa classification, documented by government auditors, advocacy groups, and news reports. The U.S. Government Accountability Office (GAO) described the vulnerabilities faced by temporary foreign workers in the H-2A and H-2B visa classifications, noting that between 2009 and 2013, 49 H-2A and 137 H-2B workers obtained nonimmigrant T visas,² which are issued to victims of human trafficking.

Polaris, a non-profit organization with a mission of eradicating human trafficking and modern-day slavery, collects data from the National Human Trafficking Hotline on the immigration status of potential trafficking victims. In a report released in May of 2022 detailing the human trafficking of non-immigrant visa holders, Polaris identified 9,811 victims of labor trafficking from 2018 through 2020. Of those labor trafficking victims, 3,892 disclosed that they were present in the U.S. on a temporary work visa.³ The trafficking cases reported to Polaris were associated with a variety of nonimmigrant work visas, running from the more commonly known H-2A, H-2B, and H-1B visas, to the lesser-known A-3 and G-5 domestic worker visas, B-1 business visitor visa, F-1 student visa, and J-1 exchange visitor visa.

Data published by the Human Trafficking Legal Center also indicate that a significant number of federal human trafficking cases involved victims holding nonimmigrant work visas. From 2003 through May of 2020, 422 civil lawsuits containing claims of human trafficking were filed in federal court. Of those, 174 alleged the trafficking of a non-immigrant visa holder. Accordingly, over 40% of the civil human trafficking federal lawsuits filed in the U.S. counted nonimmigrant work visa holders as victims.⁴ Similar to the data reported by Polaris, the civil cases filed on behalf of temporary foreign workers involve plaintiffs holding every type of visa that allows work, including those requiring technical expertise, such as the H1-B and TN visas, the investor-based EB visas, to the manual labor focused H-2 visas.

² U.S. Government Accountability Office, *H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers*, GAO-15-154, Mar 06, 2015, available at <https://www.gao.gov/products/gao-15-154>.

³ Polaris, *Labor Trafficking on Specific Temporary Work Visas; A Data Analysis 2018-2020*, May, 2022, available at <https://polarisproject.org/wp-content/uploads/2022/07/Labor-Trafficking-on-Specific-Temporary-Work-Visas-by-Polaris.pdf>.

⁴ The Human Trafficking Legal Center, *Federal Criminal and Civil Trafficking Cases Involving Legal Visas*, Sept 15, 2020, available at <https://htlegalcenter.org/wp-content/uploads/Federal-Trafficking-Cases-Involving-Legal-Visas.pdf>.

In 2014, the Urban Institute and Northeastern University studied 122 closed labor trafficking victim service records from service providers in four United States cities. The vast majority of human trafficking survivors sampled (71 percent) entered the United States on a temporary visa.⁵ The most common temporary visas were H-2A visas for work in agriculture and H-2B visas for jobs in hospitality, construction, and restaurants. The study also identified female domestic servitude victims who had arrived in the United States on diplomatic, business, or tourist visas.

Unfortunately, a lack of comprehensive and consistent federal oversight and regulation compounds the problems. Regulation of temporary visa categories is fragmented between the Departments of State, Homeland Security, and Labor. As a result of this disjointed oversight, the lure of cheap labor results in unscrupulous recruiters treating temporary workers as disposable commodities.

AB 364 corrects fragmented federal oversight and regulations by ensuring that any worker coming to California who is authorized to work temporarily in the United States and who is not recruited directly by an employer is protected from exorbitant recruitment fees, false promises, and fraud at the point of recruitment abroad. Not only does AB 364 ensure the fair treatment of all temporary workers coming to California, but its regulation of foreign labor contractors provides essential benefits to all businesses employing temporary workers. It weeds out unscrupulous contractors, eliminates unfair competitive advantages at both the contractor and employer levels, and protects employers from liability for their contractors' fraudulent practices.

Provisions in SB 477 require foreign labor contractors recruiting individuals to work in California on authorized temporary work visas to register with the Labor Commissioner and require employers to use these registered contractors. Most importantly, it prohibits these contractors from charging workers recruiting fees across all temporary work visa categories so that workers coming to California know that no recruiter should be charging them a fee for any temporary work visa. This important provision prevents vulnerable workers from going into often insurmountable debt to seek lawful employment in California. These debts range in the thousands to tens of thousands of dollars.

SB 477 further requires fair contractual terms in the recruiting and employment process; provides legal remedies for workers harmed by violations of the law by both FLCs and employers; outlaws retaliation against workers exercising their rights under the law; and imposes a bonding requirement on FLCs to provide funds to cover violations. Once AB 364 takes effect, SB 477 will provide the most comprehensive set of protections for temporary foreign workers of any federal or California law.

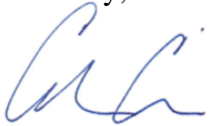
For SB 477 to be fully effective, the passage of AB 364 is essential. AB 364 will clarify that SB 477's provisions cover all foreign labor contractors who bring individuals to work temporarily in California under all temporary work visa categories with two exceptions: J-1 visas (which was excepted from SB 477 protections given arguments that it is primarily for educational and cultural exchange, and not work purposes) and talent agency recruiters (who are already regulated under a more restrictive licensing program).

⁵Colleen Owens, et al., Urban Institute, Justice Policy Center, *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*, Oct. 21, 2014, available at <https://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states>.

SB 477 was the first legislation passed in the United States to address the grave human trafficking problems associated with foreign labor contractors' abusive recruiting practices. To combat the problem in California recognized by the Governor and the California legislature, it is essential that SB 477's requirements be enforceable against all foreign labor contractors regardless of the visa category through which they recruit foreign workers.

Justice in Motion applauds this effort to better protect potential victims of human trafficking. We thus urge you to sign AB 364, recognizing that the power imbalance between temporary foreign workers and those who bring them into the country can result in extreme labor exploitation, including trafficking. Enacting this crucial legislation will give California a valuable tool to prevent the suffering and misfortunes of those subject to this modern-day form of slavery and provide a model for other jurisdictions faced with similar challenges.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cathleen Caron', with a stylized flourish at the end.

Cathleen Caron

Justice in Motion

Executive Director

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