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Protecting Migrant Rights Across Borders

March 29, 2024

The Honorable Rick Crawford  
Co-Chair, Agricultural Labor Working Group  
Committee on Agriculture  
United States House of Representatives

The Honorable Don Davis  
Co-Chair, Agricultural Labor Working Group  
Committee on Agriculture  
United States House of Representatives

Dear Co-Chairmen Crawford and Davis:

Having reviewed the March 7, 2024 Final Report with Policy Recommendations released by the Agricultural Labor Working Group (“ALWG”), we are concerned that, with a few exceptions, the recommendations reflect grower or farm owner concerns and fail to take into account the needs and challenges of farmworkers. Concerns of the agricultural community related to the Adverse Effect Wage Rate for H-2A workers and processing time for H-2A visas are understandable, but the individual workers who labor under the H-2A program and work to put food on our tables deserve equal consideration when H-2A program reform is contemplated.

We fully support the proposals in Recommendations 7, 8, and 9 that would require analysis of the H-2A program by the Government Accountability Office (“GAO”). Justice in Motion and other advocates have long observed the need for greater protections and oversight of the H-2A program.<sup>1</sup> As it has in the past, an GAO investigation will undoubtedly reveal that inadequacies persist and should be remedied. We also strongly support Recommendation 12’s suggestion to develop a sorely needed Federal Heat Standard for H-2A Workers to protect workers from dangerous working conditions exacerbated by climate change.

Recommendations 10, 14, 17, 19 and 20 attempt to address rising labor costs by modifying the application of the Adverse Effect Wage Rate (“AEWR”), capping the year-to-year increases, or adjusting the calculation of the AEWR by the Department of Labor (“DOL”). However, other stakeholders criticize the AEWR as being insufficient to provide farmworkers with a livable wage that keeps pace with inflation. Objectively, the real value of the AEWR has changed little over the past decade, indicating that H-2A farmworkers are paid relatively low wages nationwide.<sup>2</sup>

Before the H-2A program is reformed to meet the specifications of agricultural producers’ interests, or at least accompanying them, changes should be made to protect H-2A workers. Congress should afford H-2A workers the right to change employers from any of those already holding certified Temporary Labor Certifications to allow workers opportunities to leave unsafe or abusive employers. Congress should also increase accountability of employer agents for violating H-2A recruitment rules. The H-2A program is in desperate need of increased DOL

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<sup>1</sup> Justice in Motion, Visa Pages: U.S. Temporary Foreign Worker Visas, H-2A Visa (Aug. 2023), <https://www.justiceinmotion.org/h2a>.

<sup>2</sup> Economic Policy Institute, Comment on DOL Docket No. ETA-2023-0003, at 6 (Nov. 14, 2023), <https://www.regulations.gov/comment/ETA-2023-0003-0327>.

oversight and a budget sufficient to ensure that existing rules and protections are meaningful. Additional data about the H-2A program should be made available to the public and to H-2A workers themselves to provide a better understanding of the program, its weaknesses, and help identify ways to improve it for the benefit of workers.<sup>3</sup>

As mentioned above, we support several of the suggestions outlined in this report but overall find the recommendations to be reflective of the history of the H-2A program itself: a design that gives disproportionate deference to grower concerns while largely ignoring the wellbeing of the workers. The nearly 400,000 H-2A workers that labor in America's fields each year are essential to the food security of our nation and should be given equal consideration in any policy changes to the H-2A program.

Sincerely,



Keeli Sorensen  
Director, Policy and Government Affairs

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<sup>3</sup> Justice in Motion, The Case for Transparency: Using Data to Combat Human Trafficking Under Temporary Foreign Worker Visas (Sept. 2020), <https://www.justiceinmotion.org/case-for-transparency>.