

A MEXICAN PERSPECTIVE ON THE H-2 VISA SYSTEM:

*Abuses committed in supply
chains across four
migration corridors.*



PROYECTO DE DERECHOS ECONÓMICOS, SOCIALES Y CULTURALES A.C.

A Mexican perspective on the H-2 Visa System:

Abuses committed in supply chains across four migration corridors.

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EXECUTIVE SUMMARY

Since its inception, the H-2 Visa program – the United States’ temporary work program – has been rife with systematic human and labor rights violations against Mexican migrant workers. These violations begin in the recruitment process and continue to occur in the workplace after arriving in the U.S.

Such abuses have been documented for decades, and policymakers have developed proposals to improve the system, but also to make it even more precarious for workers. However, what is far less discussed is the role that economic conditions and the labor market itself play in facilitating these abuses, as well as the underlying dynamics of production supply chains and labor supply chains.

Global brands seek to profit from both the product supply chains and the supply chains of temporary workers who produce these products in extremely precarious conditions. To keep product supply chains cheap, corporations outsource labor, which

can be found for cheaper internationally. This formula disproportionately benefits global brands by keeping costs very low across both the production supply chain and in the labor supply chain.

This system of inequality in globalized production creates incentives for brands and companies to move work to countries with precarious salaries, predominantly in the Global South, to ensure that they, as corporations, make greater profits. However, there are also production processes taking place in the wealthier countries of the Global North, which tend to hire workers from countries of the Global South under temporary work visa systems, essentially making these workers into a cheap, easily replaceable form of labor.

These two kinds of supply chains – production supply chains and labor supply chains – are at the center of the global economy. Due to the pressures on brands to create a low-cost production process, companies recruit workers across international labor supply chains.

In the Mexico-United States context, the governments of both countries are tied by business interests, to the detriment of decent working conditions for workers. This situation has led to the creation, and strengthening, of processes designed to defend and enforce the rights of temporary migrant workers both in Mexico and the United States. ProDESC,¹ a Mexico-based transnational hu-

¹ The Economic, Social and Cultural Rights Project (ProDESC) is a human rights organization based in Mexico City that works on the national level. It was founded in 2005 by Alejandra Ancheita, a human rights lawyer that has received the Martin Ennals Award (2014) and an honorary doctorate from the University of Paris Nanterre (2019). The objective of ProDESC’s work is to contribute to the enforcement and enjoyment of economic, social, and cultural rights, particularly the rights to freedom of union association, collective bargaining for labor and land, territory, and natural assets. ProDESC provides support to agrarian and indigenous communities, as well as groups of workers, through a comprehensive defense methodology composed of strategic litigation, strengthening of organizational processes, corporate research, political advocacy and communication.



In the Mexico-United States context, the governments of both countries are tied by business interests, to the detriment of decent working conditions for workers.

man rights organization, has facilitated binational justice meetings, documented cases of violations of labor and human rights against migrant workers, and, since 2012, has partnered with and advocated for a group of temporary migrant workers in the state of Sinaloa.

In 2013, with the support of ProDESC, this group of Sinaloan workers established the Coalition of Sinaloan Temporary Migrant Workers (hereafter the “Coalition of Workers,” or simply “the Coalition”) – the only organization of its kind – to provide support to migrant workers who seek to migrate temporarily to the U.S. each year under the H-2A and H-2B visa system.

Through its partnership with the Coalition and its work to defend human and labor rights, ProDESC has garnered insight into the experience of migrant workers across the Mexico-U.S. migration corridor. Between 2012 and 2019, the organization conducted extensive desk research, field work, and participant observation to assess the problems faced by temporary migrant workers both in the recruitment process and in the workplace. This report offers analysis of four key topics of this research, examined from a Mexican perspective:

- The U.S.’ H-2 visa system and the human rights violations that temporary migrant workers face.
- The economic and human rights implications of labor migration structures across four migration corridors between Mexico and the U.S.: the Sinaloa-Louisiana corridor; the Hidalgo-Mississippi corridor; the Oaxaca-California corridor; and the San Luis Potosí-Georgia corridor.
- How the mechanisms of supply chains lead to abuses against temporary migrant workers both in the recruitment process and in the workplace; how the brands’ business behaviors are legitimized by corporate capture.²
- How coordination across state, private and civil society actors both in Mexico and the U.S. is essential in order to respond to and prevent the labor and human rights abuses committed against temporary migrant workers.

This document concludes with a series of recommendations directed towards the governments of Mexico and the U.S., as a pathway of how to address human and labor rights abuses across supply chains:

- 1. Adopt of a national legislative framework** that includes a focus on the human and labor rights of temporary migrant workers.
- 2. Review and renegotiate the H-2 A/B visa system** through bilateral coordination between the Mexican and American governments.
- 3. Mandate the participation of Mexico’s National Employment Service** in the H-2 visa system recruitment process.

² Corporate capture “refers to the ways in which the economic elite undermine compliance with human and environmental rights by exercising undue influence on national and international political leaders over public institutions” (ESCR-RED, 2021). <https://www.escr-net.org/corporateaccountability/corporatecapture>.



4. Demand that corporations be held accountable for human rights due diligence across the labor supply chain in the recruitment processes of temporary migrant workers.

5. Incorporate a gendered and intersectional approach when analyzing and implementing actions directed towards temporary migrant workers.

6. Promote the creation of transnational and national temporary migrant workers' support organizations, such as the Coalition of Sinaloa Temporary Migrant Workers.

7. Generate mechanisms for dialogue between temporary migrant workers, civil society organizations, trade unions, and academics.

8. Create mechanisms for intergovernmental collaboration and communication between state governments, municipal governments, and different intragovern-

mental government institutions that address the issue of temporary migrant work (such as the National Institute of Migration, Ministry of the Interior and Ministry of Labor and Social Welfare, and Ministry of Foreign Relations) with the purpose of coordinating actions aimed at guaranteeing the human and labor rights of the temporary migrant population.

9. Establish media campaigns about the rights of temporary migrant workers.

10. Advocate for discussion of temporary migrant work from a human and labor rights perspective on the national political agenda.

An abstract painting with a central circular motif. Inside the circle is a profile of a person's head with dark skin and curly hair, facing right. The background of the circle is green with small blue and yellow dots. A yellow, swirling, smoke-like shape emerges from the right side of the head. The overall background is a mix of red, purple, yellow, and white, with various textures and brushstrokes. In the bottom right corner, there are silhouettes of people walking, one in a red coat and another in a striped shirt.

CHAPTER 1

CORPORATE CAPTURE AND SUPPLY CHAINS: IMPACTS ON THE H-2 VISA SYSTEM

Traditionally, temporary worker programs are established when private sector companies place pressure on federal governments with the goal of creating migration policies that enable the temporary import of labor. This translates into policies that tend to have greater flexibility for employers and policies that are more rigid for migrant workers (Díaz, 2013: 34).

Temporary migration flows are structured in a way that is intended to benefit the economic growth of the receiving countries. For example, in the case of Mexican migration to the United States, temporary migrant labor is a resource to reduce costs and increase competitiveness in the global market (Díaz, 2013: 40).

Another trend common across countries that receive migration flows *is the proliferation of racist and xenophobic attitudes, which are exacerbated by governments and their anti-migration policies*³ Temporary migrant workers find themselves at the juncture of anti-migration policies and a culture of racism and xenophobia and are faced with employment systems that restrict human and labor rights.

It is important to note that temporary worker systems worldwide were created with the intent of benefiting the economies of migrant-receiving countries. This is designed as a way to have cheap, available labor, without the obligations to respect labor rights like would be mandated for a receiving country's own citizens. In this sense, temporary work systems are designed to skirt the labor rights regulations: Temporary migrant workers are

intermediary actors in the recruitment processes, and the corporations that engage in fraudulent and corrupt practices often do not face repercussions from the state.

In the U.S.' H-2 visa system,⁴ there are two major factors that operate in parallel to create a precarious situation for temporary migrant workers:

First, subcontracting and relocating production to meet the needs of the global economy; and

Second, segmenting the U.S. labor market and subsequently replacing it with temporary migrant labor.

It is important to emphasize that the creation of work systems like this coincides with the worldwide adoption of the neoliberal economic model.

One characteristic of the neoliberal model is labor deregulation, characterized by a tendency to make the labor market more flexible. Labor flexibility means that production in large factories becomes decentral-

³ See the U.S. Immigration and Nationality Act (IRCA or the Simpson-Rodino bill of 1986).

⁴ H-2 visas were created for workers both with or without prior experience (non-professionals without an academic degree) to work temporarily in the United States. These visas are based on an I-129 petition, meaning that an American employer must submit an application to employ temporary workers, and obtain a Labor Certification from the United States Department of Labor, as well as a petition approval for the Department of Homeland Security (IHS)' I-797 form. There are two main types of H-2 visas:

H-2A – trabajadores agrícolas (siembra y cosecha de plantíos)

H-2B – trabajadores no agrícolas (ejemplo: jardinería, construcción, bosques, sembrar o cortar, personal para servicio de limpieza de hotel) (Embajada y consulado de Estados Unidos en México)

ized, and certain areas of employment are replaced with subcontracted services, serving as a flexible mechanism to respond to production changes in the face of shifting demand and production diversification. When it comes to the payment of wages, labor flexibility makes it possible to have more differentiated labor qualifications, as well as new forms of individualized workforce management and the hiring of a temporary workforce (Chávez Ramírez, 2001)

Globalization has also led to development of transnational corporations, which own and control

production facilities in more than one country. In this production scheme, local labor laws are perceived as obstacles to growth and efficiency, as well as barriers to workers' collective organizing efforts.

One form of labor flexibility is subcontracting, in which a corporation hires one or more other companies to carry out part of their production process (Chávez Ramírez, 2001).

Labor and product supply chains are another result of the labor flexibility enabled by the neoliberal economy. **A product supply chain, broadly speaking, refers to the process of large transnational companies expanding operations to countries of the Global South with the aim of reducing the costs of production and employee wages.**⁵ Typically, large brands hire a subcontracted company to manage supply chain logistics and obtain the necessary resources at a lower cost.

⁵ ProDESC, 2020.

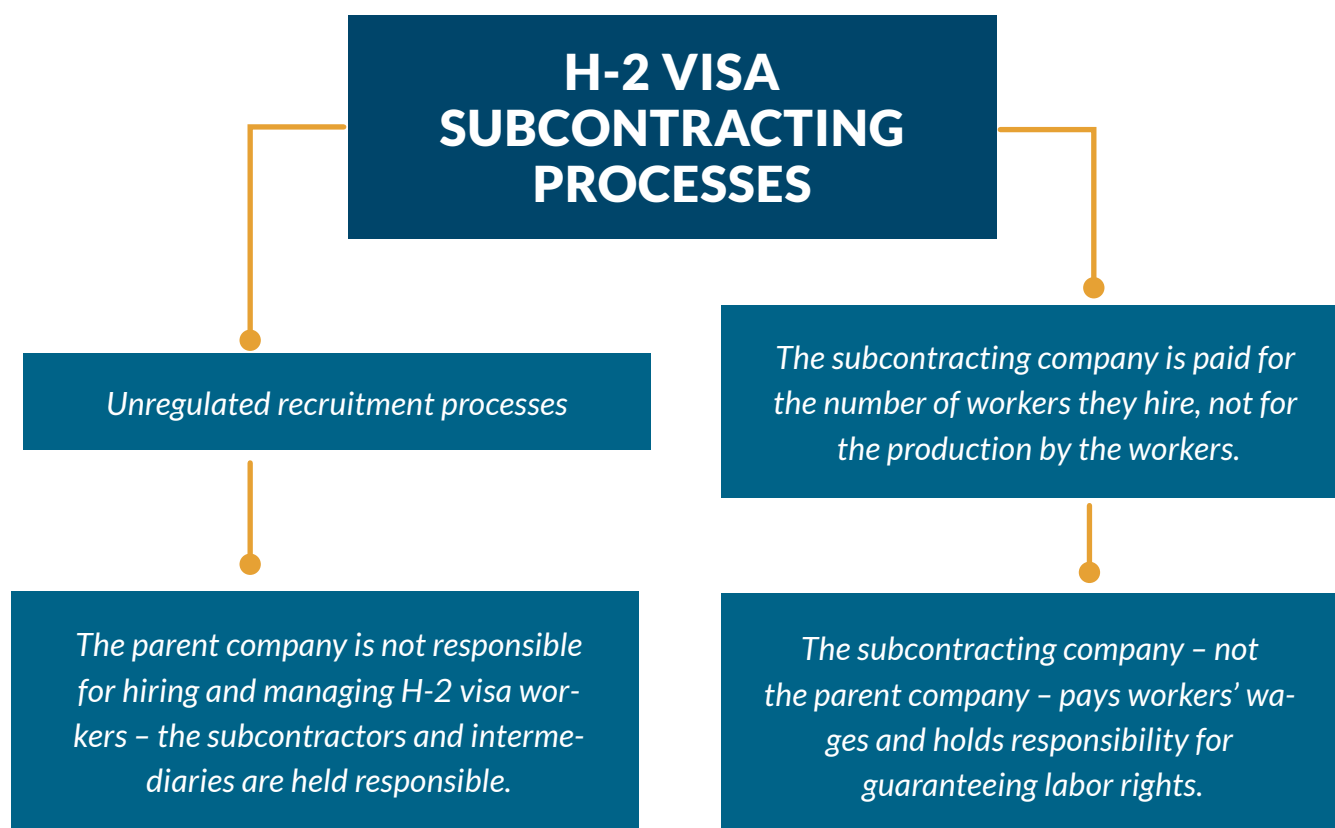


Labor supply chains, on the other hand, are about the movement of people: countries in the Global North hire workers from the Global South with the intent of speeding up production, keeping costs low, and evading workers' labor and human rights.⁶

The two kinds of supply chains (labor and product) are at the center of the global economy, intertwined within the same logic. The pressure to reduce costs during the production process impacts how business strategies are designed and intended to keep the costs of hiring and working conditions as low as possible.

As Gordon (2015) describes labor recruitment processes present regulation challenges due to the

way in which industries and supply chains are structured. When the supply chains of transnational companies are not located in the company's home country, companies are able to skirt some of their responsibilities when it comes to protecting the workplace rights of their employees. As internationally subcontracted workers – as defined by the ILO – workers in the H-2 visa system face the risk of having their workplace rights violated.



▲SCHEME 1 Outsourcing processes for the H-2 Visa System

Source: ProDESC

⁶ ProDESC, 2020.

In this context, the governments of the migrant-sending countries have very little capacity to regulate the entire labor supply chain. Theoretically, temporary work schemes such as the H-2 visa system are intended to create regulatory processes and guarantee labor rights. However, as Gordon (2015) points out, in practice, the design and implementation of this system occurs without the involvement of other relevant actors such as civil society organizations, trade unions and employers' organizations who seek to protect workers' rights.

The way that Mexican migrant workers have been incorporated into the American labor market reflects the logic of labor segmentation and labor replacement (Gioruli 2007; Sánchez 2015; Sánchez, 2019). Segmentation refers to how the labor market is divided into two levels: the primary and secondary sectors. In primary sectors, employ-

ees have relatively high salaries, good working conditions, possibilities for advancement, equity and established procedures for implementing labor laws. In the secondary sectors, workers face precarious working conditions and with little opportunity to advance.

It is in the secondary sector where the migrant population under the H-2 Visa system lies. Labor replacement, in general terms, refers to how recently arrived migrant groups occupy the most precarious rungs of the labor market (Sánchez, 2019).

1.1. DESCRIPTION OF THE H-2 VISA SYSTEM

Temporary work is based on a visa authorization process, which is created to enable those with or without experience to work in the temporarily in the U.S. Although there are a wide array of temporary work visas in the U.S. context, this report will focus on H-2A and H-2B visas.



H-2A visas are given to temporary agricultural workers to carry out activities such as planting and harvesting, while H-2B visas are designed for non-agricultural workers, including those in landscaping, construction, forestry, hotel cleaning services, and others.

To obtain these visas, a U.S. employer must submit a request to the U.S. Department of Labor (DOL), and the petition must be approved by the U.S. Department of Homeland Security (DHS) in order to obtain a Labor Certification for temporary workers. According to the U.S. Department of Labor, the US government issued 213,394 H-2A visas and 61,865 H-2B visas in 2020.

This report will offer a deeper analysis of specific cases and context across several U.S.-Mexico migration corridors to explain how the H-2 visa system leads to structural dynamics of migrant workers' rights violations.

1.1.1. STRUCTURE OF THE RECRUITMENT PROCESS

The H-2 visa scheme operates unilaterally – meaning that it is managed by the United States with only marginal participation on the part of the Mexican government.

What involvement the Mexican government does have is through the National Employment Service (SNE), a public institution that provides information, linkages to employers, and occupational guidance services. The SNE is coordinated by the Ministry of Labor and Social Welfare (STPS), and has a program called Labor Mobility Mechanism through which opportunities with the H-2 work system are promoted.

In 2015, the U.S. Embassy in Mexico and the STPS initiated coordinating actions to link workers with American employers with the intention of preventing fraudulent employment. In theory, this collaboration would lead the greater participation by the Mexican government in the recruitment process, however, as the ILO describes, this is not the case:

“The placement rate registered by [the Labor Mobility Mechanism] is still low (21.5 percent) as compared to other active labor market programs managed by the SNE, which reflects the precarious economic situation that many regions of Mexico are going through, as well as the limited employment opportunities they have. Between 2012 and 2016, 33,629 were placed through this program” (ILO, 2018: 17).

In this sense, the bulk of recruitment processes do not have any interaction with the Mexican government. They therefore lie in the hands of private intermediaries, which means that the collection of undue fees and other fraudulent practices can occur more easily. The interactions between agents and people seeking to obtain work visas are faced with a historical legacy of structural inequality: The average income of a person working for an American company is four times what can be earned in Mexico, a condition that is used by intermediaries

justify collecting fees during the recruitment process.⁷

However, although the H-2 visa system was not designed or regulated by the Mexican government, Article 28-A was added as part of Mexico's 2012 Labor Reform, which establishes the following guidelines (Sánchez- Castañeda, 2014):

General working conditions must be dignified and equal to those granted to workers in the country where they work;

When the visa or work permit is issued by the consular or immigration authority of the country where the service will be provided, it is understood that said authority is aware that an employment relationship is established between a worker and a specific employer. The rights held by workers in the United States are the same as any worker in the United States.⁸

- Fair wage and in the established times;
- Additional pay for overtime;

- Right to non-discrimination;
- Right not to suffer sexual harassment and sexual exploitation;
- Right to request support from immigrant union and labor rights groups;
- Leaving an abusive employment situation;
- Failure to pay fees to a job recruiter;

Receive a work order in writing and in a language that is understandable to the worker, which must contain detailed information about wages, duration of work, hours, benefits such as transportation, housing, meals and any deduction applied to your paycheck.

Given this context, ProDESC carried out assessments to analyze the labor, legal and economic impacts that the H-2 visa system has on migrant workers in partnership with the Coalition of Sinaloan Temporary Migrant Workers. Recruitment is the first step in the H-2 visa hiring process. The Federal Labor Law in Mexico takes into account that Mexican citizens may be hired to work abroad, and notes that all expenses involved in hiring and transfer must be covered by the employer or contracting agent (Art 28). However, in practice, most workers use their own resources to pay for transportation costs.

⁷ “[...] it supposes that in society there are certain groups that have been systematically and historically excluded from the enjoyment and exercise of their rights. It generally involves three features: i) It is based on a social order that is independent of individual wills; ii) It is constituted as a process of accumulation of disadvantages, both throughout the course of life and between generations and, iii) It has broad consequences at the social level, since it affects the enjoyment of fundamental rights and reproduces social inequality. Therefore, it is the duty of the States to avoid the deepening of said historical exclusion conditions and to reverse their effects for the effective guarantee of rights” (Solís, 2017)

⁸ U.S. Embassy and Consulates in Mexico: <https://mx.usembassy.gov/es/h-2-visa-information-es/#:~:text=los%20Estados%20Unidos>

In Mexico, there is no strong system that regulates the recruitment of temporary migrant workers, and this absence of government control enables informal and illegal recruitment processes. Recruiters have the ability to operate freely, which creates an “employer-recruiter-employee” hiring cycle – a process that involves uncertainty and a lack of clarity about the working conditions that workers will face in the United States.

Through its support and advocacy work with temporary workers in Sinaloa, Oaxaca, Chiapas and Sonora, ProDESC identified and documented an array of labor and human rights violations, including:

- Companies offering piecework pay.
- Working hours often exceeding 12 hours a day (including night hours, and in some cases without sufficient rest)
- Precarious wages (without overtime pay)
- Lack of health insurance
- Women facing situations of sexual harassment, humiliation and discrimination.
- Little clarity regarding the employment contract
- Unsanitary and unsuitable conditions in temporary accommodation sites (trailers accommodating 15 to 16 people with 2 bathrooms, a stove and a refrigerator)



This information was documented from direct sources and was followed by a legal analysis to assess labor and human rights violations and to understand the logic of the labor and migration policies that exist in both countries to address the situations.

There are two national legal instruments in Mexico that encompass the fundamental frame of reference when it comes to defending the labor rights of temporary migrant workers: The Political Constitution of the United Mexican States (la Constitución Política de los Estados Unidos Mexicanos)⁹ and the

⁹ Art. 123, section XXVI: “Every employment contract entered into between a Mexican and a foreign employer must be legalized by the competent municipal authority and endorsed by the consulate of the nation where the worker has to go, in the concept that, In addition to the ordinary clauses, it will be clearly specified that the repatriation expenses are the responsibility of the contracting employer.

Federal Labor Law (la Ley Federal del Trabajo).¹⁰

It is important to note that the reason that private employment agencies are regulated is due to the fact that Mexican workers who are hired to to work abroad have suffered abuses ranging from poor working conditions, to social security theft, to inadequate housing.

It is also understood that if the working and social security conditions abroad are greater than those established in Mexico, then Mexican workers who are employed abroad must have the ability to enjoy them.

However, the greatest barrier in realizing these ideal conditions is the role of the General Labor Inspectorate.¹¹ This is because the Inspectorate has neither the resources nor the extraterritorial powers to monitor compliance with the regulations in the destination country. Furthermore, it does not have collaboration protocols established with the Mex-

ican consulates in the U.S. to enable the consulates to support this function once workers are in the U.S.

Stemming from this fact, and as stipulated in the Federal Labor Law reform of 2012, the Mexican government has responsibility to monitor the recruitment process and also the working conditions of the workers. However, as will be explored later in this report, adequate structures are not yet in place to deal with this problem efficiently.

On the U.S. side, the main player is the Department of Labor, which acts as an intermediary for companies during the H-2 visa application process.¹² The H-2 visa regulations clearly stipulate that neither recruiters nor employers should collect payment during the recruitment process. *The question remains how, despite the regulations and legislative advances to make the recruitment process clear for workers applying for H-2 visas, there are still violations of their labor rights – almost always starting with a series of wrongful charges made by the recruiter, and in some cases, also by the employer.*

Tracking the recruitment process in general is complicated because in many cases, the collection of undue fees and/or fraudulent practices occur in Mexico by intermediaries who are not registered with recruitment agencies in Mexico or the U.S. This means that there is no public information to formally monitor the hiring dynam-

10 Art. 28: "a) The employer is obliged to pay the repatriation expenses, b) The worker has the right to decent and hygienic housing conditions, c) The worker has the right to medical care and (where appropriate) for his family, d) The worker must receive information about the consular and diplomatic authorities to which a worker can go when his rights are violated, e) The contract must be approved by the Federal Board of Conciliation and Arbitration, f) The Employer You must present an address for legal purposes in the Mexican Republic, g) If it is hired through a contracting agency, it must be registered and authorized (the registration is before the STPS), h) The agency must make sure of the truthfulness of working conditions and living conditions, which are dignified and do not imply discrimination; i) If the working conditions offered by the agency are not true, the agency has the obligation to pay the worker's repatriation expenses.

11 Dirección General de Inspección Federal del Trabajo, STPS. http://www.stps.gob.mx/bp/secciones/conoce/quienes_somos/quienes_somos/inspeccion/Inspeccion_federal.html.

12 United States Federal Code, Employees Benefits, 20 CFR § 655.135 - Assurances and obligations of H-2A employers.



ics. In addition, historically, there has been minimal government intervention by both countries when it comes to monitoring violations of the labor rights of workers, despite the fact that they have the legal responsibility to do so. This lack of government intervention combined with the privatization of the recruitment process is seen as a practice of corporate capture within the framework as temporary migrant labor. The concept of corporate capture will be explained in the section below.

intermediary/contractor/recruiter is one who exercises control, and there is no regulated mechanism to guarantee that labor and human rights are respected.

The Mexican government does not have an institutional mechanism to monitor the hiring processes of migrants.

1.2. CORPORATE CAPTURE IN THE FRAMEWORK OF TEMPORARY MIGRANT LABOR

From its origins, the H-2 visa system has prioritized economic and business interests, leaving the guarantee of workers' rights as a secondary factor. The regulation of the system places the hiring processes directly in the hands of the employers and their economic interests. In this process, the

The system is usually presented as an opportunity to regularize the Mexican migration to the U.S.; however, the wide array of violations that workers experience from the beginning of the hiring process to the end of their working hours is omitted from this narrative.

Corporate capture is a concept that is useful to analyze how global dynamics factor into this framework of systematic violations of temporary migrant workers' labor and human rights. Corporate capture "re-



fers to the ways in which the economic elite undermine compliance with human and environmental rights by exercising undue influence on national and international political leaders over public institutions” (ESCR-RED).

Corporate capture manifests differently in different geographic contexts in the Global North and the Global South, but in general, it leads to a tendency to hold economic and business interests over human rights interests. As Durand (2019) argues, corporate capture leads to a growing influence of private market forces over the state.

In the U.S’ H-2 temporary work system, business interests take precedence over guaranteeing the labor human rights of temporary migrant workers. The very structure of the H-2 visa system reproduces these dynamics during the recruitment and hiring process, excluding many of the actors who are responsible for guaranteeing the rights of workers.

Typically, employers and recruitment agencies in the U.S. request a certain number of visas from the U.S’ Department of Labor, however there is no effective government involvement to ensure that this process promotes decent employment conditions for workers. In other words, although this structure is convenient for business interests that seek cheap labor from countries in the Global South, effective mechanisms to protect workers’ rights are not promoted.

To demonstrate the detrimental impact of corporate capture on temporary work systems like the H-2 visa system, ProDESC offers analysis of temporary migrant work across the four most important migration corridors between Mexico and the U.S. We seek to provide clear examples not only of the problems that exist, but also of possible answers to continue building support for global labor migration.

A close-up photograph of two hands, one from a person wearing a dark blue long-sleeved shirt, reaching into a tomato plant. The hands are carefully picking a small, green, unripe tomato. The plant has many green leaves and several other green tomatoes hanging from the stems. The background is slightly blurred, showing more of the plant and some other greenery.

CAPÍTULO 2

**ANÁLISIS COMPARATIVO DE
INDUSTRIAS Y CORREDORES
DE MIGRACIÓN LABORAL.**

Between 2012 and 2019, ProDESC extensively documented and analyzed the problems faced by temporary migrant workers both in the recruitment process and in the workplace through desk research, field work and participant observation (see Methodology, Annex II).

This section will offer an overview of four labor migration corridors based on this research: Sinaloa-Louisiana; San Luis Potosí-Georgia; Hidalgo-Mississippi; and Oaxaca-California. The analysis of the migration dynamics between the different corridors takes into account the wide array of social and cultural backgrounds that migrant workers come from, as well as gender, place of origin in Mexico, and the social and economic characteristics of the workers' destination state in the U.S.

Through an Economic, Social and Cultural Rights (ESCR) framework,¹³ the analysis presented below reflects how multiple violations of basic rights – such as access to social security, health and adequate housing – are reinforced by corporate capture. Particularly in the workplace, a lack of guaranteed rights persists around the rights to freedom of collective labor bargaining, clear contracts that are accessible in the language of the worker, and fair payment for the hours worked.

CORREDOR SINALOA – LOUISIANA

CONTEXTO MIGRATORIO Y DE LA INDUSTRIA

One of the major corridors for temporary labor migration between Mexico and the U.S. runs between Sinaloa and Louisiana, a state located in the southeastern U.S. on the Gulf of Mexico. On the Sinaloa side, the information provided in this study is part of the documentation of cases that ProDESC has carried out since 2012 in the communities of Topolobampo, Gabriel Leyva Solano, El Colorado and Los Mochis. According to the 2019 Economic Censuses,¹⁴ most of the residents of these localities work in activities related to shrimp fishing, retail trade in grocery stores and trade in supermarkets.

In the case of Topolobampo, for example, most of the fishermen are part of local cooperatives that in turn are united in the Regional Federation of Cooperatives of the northern region of Sinaloa. According to the interviews carried out in 2019 by ProDESC with workers in the region, who are part of these cooperatives, workers expressed that they must wait an average of up to 12 days to receive payment after they sell their products.

At the other end of the corridor in Louisiana. According to data from the U.S. Department of Labor, there were 1,020 H-2A visa applications in Louisiana, with an aver-

¹³ Economic, Social and Cultural Rights refer to “human rights related to the basic social and economic conditions necessary for a life in dignity and freedom, and referring to basic issues such as work, social security, health, education, food, water, housing, an adequate environment and culture”(Red-DESC, 2007)

¹⁴ Instituto Nacional de Estadística y Geografía, Censos Económicos 2019 https://www.inegi.org.mx/programas/ce/2019/#Datos_abiertos

age wage of \$11.88 per hour, and 219 H-2B visas with wages ranging from \$10 to \$15 per hour.

In interviews with ProDESC, residents of Sinaloa described how the historical relationship of temporary workers with the seafood industry in Louisiana dates back to the 1990s with the establishment of an American jaibera (a crawfish processing facility) based in the Gabriel Leyva Solano community. In addition to processing crab, it was also used as a training center for workers from the region before being hired in the plants located in Louisiana. With this background, other Louisiana companies began hiring people from the region on the recommendation of the owners of the jaibera.

However, over time the demand for workers grew, exceeding the supply the town of Leyva could offer – which is why residents of Topolobampo and El Colorado began to be hired.

Currently, around 20 companies have been identified that employ around 1,500 workers with H-2A and H-2B visas from the Topolobampo, Los Mochis, Gabriel Leyva Solano and El Colorado regions.

- The Louisiana seafood industry is important to the American economy for a variety of reasons:
- The state of Louisiana fishes approximately 25% of the total seafood consumed in the U.S. and is the largest producer of shrimp and oysters in the entire country.¹⁵

• The seafood industry includes male and female workers under the two temporary work visa systems: H-2A for “cultivation” of crawfish, and H-2B for processing.

- Louisiana companies are part of the supply chain for big brands like Walmart.¹⁶

Employers in this industry also form industry coalitions to influence their interests at various levels. For example, in 2011 the H-2B visa rules were subject to a series of modifications that included wage increases for workers. It was then that associations such as the Crawfish Processors Alliance and the American Shrimp Processors Association, among others, filed a lawsuit against the U.S. Department of Labor to block the implementation of the new rules.¹⁷

At the same time, Louisiana State Agricultural Commissioner Mike Strain and Representative Charles Boustany were publicly advocating for the cancellation of the new rules, arguing that wage adjustments in the H-2B visa system would bankrupt small seafood processing busi-

¹⁵ Louisiana Economy: https://web.archive.org/web/20131012132147/http://doa.louisiana.gov/about_economy.htm

¹⁶ Guestworkers at Gulf Coast Walmart seafood supplier: “We feel like we are slaves”, <https://www.facing-south.org/2012/06/guestworkers-at-gulf-coast-walmart-seafood-supplier-%E2%80%98we-feel-like-we-are-slaves%E2%80%99>

¹⁷ Louisiana groups seek to block immigrant wage increases. <https://neworleanscitybusiness.com/blog/2011/09/14/louisiana-groups-seek-to-block-immigrant-wage-increase/>



nesses in the U.S.¹⁸ Employers also pressured a group of representatives and senators to block access to the budget for the Department of Labor in order to prevent the implementation of the new rules until the case is resolved in court.¹⁹

The situation in Louisiana is representative of the phenomenon of corporate capture: It offers an example of how when companies place

political pressure on decision makers *in governments, the outcomes tend to benefit the companies, which is often a detriment of the protection of labor and human rights. In this particular case, it most greatly impacts temporary migrant workers.*

COMMON ABUSES IN THE RECRUITMENT PROCESS

According to the experiences shared by the Coalition workers, one of the most common practices across the Sinaloa-Louisiana corridor is the collection of recruitment fees by recruiters and employment agencies. *These charges are often justified as payment of their services, or covering the costs of visas, bureaucratic procedures, employment contracts, transportation to the consulate or to the workplace, or simply to be put on a waiting list for future hiring.* Between 2018 and 2019, the Coalition documented charges from 2,000 to 28,000 pesos per person (about \$100 to \$1,400 USD). The Coalition also reported that some recruiters ask women for sexual favors in exchange for a job. Gender- and age-based discrimination are also common practices during recruitment.

In addition, the Coalition reported that to pay the recruiter's fees, many migrant workers opt to take out high-interest loans. This effectively reduces their expected earnings in the United States as they attempt to cover both illegal charges and the interest generated by their debts.

¹⁸ Louisiana government and media defend immigrant guestworker exploitation and abuse. <https://www.facing-south.org/2012/06/louisiana-government-and-media-defend-immigrant-guestworker-exploitation-and-abuse>

¹⁹ Statement by Mary Bauer, attorney at Southern Poverty Law Center, records of the U.S. House of Representatives Committee on Education and Workforce, and the Subcommittee on Workforce. <https://books.google.com.mx/books?id=ZqhMAQAAMAAJ&dq=examining%20the%20role%20of%20lower%20skilled&hl=es&pg=P-P3#v=onepage&q&f=false>

An important element to consider is asymmetrical power relations between recruitment agencies and workers who, after reporting or questioning the legitimacy of recruitment practices, become the target of retaliation. The most common form of this retaliation is being excluded for future hiring opportunities (known practice as “blacklisting”). There are at least 10 members of the Coalition who were the object of this practice in addition to threats, extortion and discrimination.²⁰

RECRUITMENT FRAUD

ProDESC and the Coalition have documented two types of fraud: low-level fraud (2000 pesos / \$100 USD) with promises of high earnings in the U.S., and more serious high-level fraud in which the alleged recruiters charge exorbitant fees and then disappear. Once workers migrate it is extremely difficult to find and identify the responsible recruiters, as recruiters often provide false information and phone numbers that are later discarded.

In 2013, ProDESC also identified recruiters whose offers were real, but who charged fees to a larger number of applicants for available job positions. ProDESC has documented at least three cases of such fraud against workers in this corridor in which recruiters request money in exchange for the promise of work in the U.S.²¹ ProDESC has been able to identify numerous attempts of such a practice on social media, which typically consists of a person with a false Facebook profile who publishes on job board and

marketplaces groups advertising for employment in the U.S., Canada, or even European countries without providing the details of the job offer, claiming that such details can only be provided by phone, private message, or in a local office.²² In order to secure the job offer, prospective workers are usually required to make a payment in advance.

WORKPLACE CONDITIONS

Temporary workers' rights violations are not limited to the recruitment process. Although the housing and workplace conditions under the H-2A and H-2B visas are strictly regulated, the minimum standards established are not guaranteed to be implemented in practice.²³ *In the Coalition's experience, employers do not always meet the minimum standards or the terms set forth in the employment contract.²⁴* In particular, female members of the Coalition report that their payments are measured piece rate and not by the hour, which means that it requires more work

²⁰ Data collected through a ProDESC investigation in 2016.

²¹ Data collected through a ProDESC investigation in 2016.

²² These profiles tend to be private accounts that do not contain photos of the person or any other form of verifiable data.

²³ The minimum standards for housing are met when 15 people share two toilets (29 CFR 1910.142 (d) (5)), and with a shower (29 CFR 1910.142 (f) (1) (ii)) and a stove (29 CFR 1910.142 (b) (10)) shared between ten people.

²⁴ In the agricultural sector, the ETA 790 form completed by the employers as part of the H-2A worker request process is usually accepted as a contract.

to obtain the wage that had been agreed at the beginning.

There is no clear justification why women and men receive different salaries, and it is not stipulated in the employment contracts.

ProDESC also documented cases in which the employer charges workers for the materials and tools

needed to carry out work, contrary to the regulations of the H-2A and H-2B visas.²⁵ Peeling shellfish, for example, requires gloves that protect the skin; however, the Coalition reports that employers often charge for gloves that are poor quality and prone to breakage. This results in many of the workers opting to not use them, which can lead to subsequent health risks.

Another abuse reported by the Coalition is the sexual harassment of working women, including cases where a supervisor asks for sexual favors in exchange for allowing them to work the hours they were promised when hired. Cases have also been reported in which male and

²⁵ As stated for H-2A visas in CFR 20 §655.122 (f) and for H-2B visas in CFR §655.20 (k): “The employer must provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned.”



female workers are forced to carry out activities outside of those established in the contract and without any payment, in addition to having their passports withheld or locked up in the workplace or home.

Coalition workers report that there are surveillance processes by employers and managers to deter collective organizing among temporary migrant workers as a way to prevent them from demanding improvements in the labor conditions.

Now, in the context of the Covid-19 pandemic, the Coalition and ProDESC have documented how various workplaces across the corridor have not maintained adequate health safeguards for migrant workers: in numerous cases, workers are not provided with face masks, nor are they regularly tested to make sure they are not infected. There are cases in which sick people and people who are not are kept crammed into the same space.

The information provided on protective measures against Covid-19 is not clear, and instructions are not provided in the workers' language. In general, the pandemic has exacerbated the precarious working conditions in which temporary workers find themselves.

On March 18, 2020, visa procedures were suspended indefinitely in the U.S. However, on April 20, 2020, the U.S. Citizenship and Immigration Services (USCIS) published a provisional final rule to amend certain H-2A visa requirements for the benefit of American agricultural employers in order to avoid agricultural-related job interruptions. The U.S. government's communication regarding H-2A visas did not stipulate specific





measures on health precautions for workers in the context of COVID-19.

The U.S. government's decision on the H-2A visas was linked to an effort to maintain the food supply chain and the production processes that uphold the country, yet there was no initiative to guarantee the rights of the temporary migrant workers in this context.

The situation faced by temporary migrant workers in this corridor offers an example of corporate capture in action: the Mexican and U.S. governments prioritized the productive

needs of the companies that employed the workers, even when that involved serious violations of workers' labor and human rights.

HIDALGO- MISSISSIPPI CORRIDOR

CONTEXT: MIGRATION AND INDUSTRY

The state of Hidalgo is a region characterized by growing levels of migration across indigenous, peasant and urban populations (Durand and Massey, 2009). Migration in this



region had its first peak in the 1980s, and continued to grow in the 1990s as the number of locations in the U.S. recruiting migrant workers expanded.

There is a tradition of internal migration in Hidalgo from rural areas to cities such as Tula and Pachuca, as

well as a migration from Hidalgo to other areas of Mexico including Mexico City, Guadalajara, Monterrey, Tijuana and Cancun. However, starting in 1985, migration to the U.S. began to pick up with greater intensity (Rivera and Quezada, 2011).

At the other end of the corridor from Hidalgo is Mississippi, a state located in the southeastern U.S. According to 2021 data on H-2A visas from the U.S. Department of Labor's Office of Foreign Work Certification Mississippi approved 430 visas.²⁶

The average wage offer for this group of workers was \$12.68 USD per hour. In the case of H-2B visas, 50 were approved, with an average wage of \$14 per hour.²⁷

Sweet potato is one of the most important crops in the state of Mississippi. According to figures from the Department of Agriculture, Mississippi is the third leading producer of sweet potatoes in the nation.²⁸ Edmondson Farm, located in the city of Vardaman, is one of the main sweet potato cultivation and marketing brands.²⁹ A 2018 ProDESC investigation identified Edmonson as a com-

26 US Department of Labor, Office of Foreign Labor Certification, 2021. <https://www.dol.gov/agencies/eta/foreign-labor/performance>

27 US Department of Labor, Office of Foreign Labor Certification, 2021. <https://www.dol.gov/agencies/eta/foreign-labor/performance>

28 US Department of Agriculture. *US Sweet Potato Production Swells*. <https://www.usda.gov/media/blog/2017/01/05/us-sweet-potato-production-swells>

29 Edmondson Farm is a brand that operates 19 family businesses across Vardaman, Mississippi, Oak Grove, Louisiana and Fair Bluff, North Carolina. The company produces sweet potatoes, soybeans, cotton, grain sorghum and wood and is also involved in the packaging, storage and sale of sweet potatoes (Corporate Research, ProDESC, 2018).

pany that lacks a code of conduct and corporate social responsibility policies.

Edmondson Farm operates farms in at least six counties in Mississippi and has numerous processing facilities, primarily in the Vardaman region. Through its agricultural producers association, 4 E Farms Partnership and Pure Harvest LLC, Edmondson hires around 300 H-2A temporary migrant workers each

year to carry out the sweet potato harvest.

Because Edmondson is a family business that is not listed on the stock market, it is not obliged to publish its financial information. Yet ProDESC's corporate research on Edmondson's supply chains revealed that its main buyers include Military Produce Group, Magnolia Medley Farms, Penick Produce Company, and brands such as TESCO, ALDI, and Walmart.³⁰

Like in the Sinaloa-Louisiana corridor, Edmondson Farm and other employers in the region are organized into the Mississippi Sweet Potato Council, the United States Sweet

30 Corporate research, ProDESC, 2018



Potato Council, the American Sweet Potato Marketing Institute, and the Mississippi Fruit and Vegetable Association. Through these organizations, employers in the region win million-dollar contracts for their supply chains, such as the one that the Fruit and Vegetable Association obtained with the Ryan's Steakhouse restaurant chain for 3 million pounds of sweet potatoes per year.³¹

The United States Sweet Potato Council has publicly positioned itself in favor of the Seasonal Farm Workers Act, an initiative introduced and promoted several years ago by Republican Representative Bob Goodlatte. This bill would involve expanding the H-2A visa system to other industries such as dairy, as well as reducing the obligations that employers have to protect the rights of workers with H-2A visas.³²

COMMON ABUSES IN THE RECRUITMENT PROCESS

Between February and November 2018, ProDESC interviewed a group of workers from Pisaflores, Hidalgo and other towns in the Huasteca region of Hidalgo who had worked several seasons in Vardaman, Mississippi to cultivate and harvest sweet potatoes.³³ The abuses found in the recruitment process are described below – mainly related to the collection of recruitment fees.

The workers interviewed had several years of experience in sweet potato cultivation and harvesting, as well

as in some other crops such as tobacco, watermelon and cantaloupe. Of the almost 200 workers recruited by the company they worked in Vardaman, only those from Nuevo León had access to higher-level positions – such as drivers or supervisors – because they had familial relations to the recruiter.

Before the start of the season, interested workers contact the recruiter by phone, who was located in the U.S.. *A few weeks before each departure (scheduled in February, May and August), the recruiter would send the list of workers to be hired to a contact in Monterrey, who supposedly worked for a recruiting agency called North American Labor Service. This agency is not officially registered in Mexico or in the U.S.*

This contact in Monterrey would schedule the appointments for the consular interview in Monterrey and, although they did not charge the workers for the interview, workers had to bear the costs of travel, lodging and food. They were asked to save receipts for reimbursement by the recruiter (who is also a supervisor at the workplace) once they arrived in the U.S. Workers reported that refunds were generally not

31 MMA MEP. (sf). *Mississippi Fruit and Vegetable Association AAL Expands Product Line.* http://www.mma-web.org/MEP/Success_Stories/Mississippi_Fruit_and_Vegetable_Association.aspx?WebsiteKey=369f2fe5-f1b7-478c-a2b1-2c9be7630366

32 Supporters of the Agricultural Guestworker Act. Disponible en: https://republicans-judiciary.house.gov/wp-content/uploads/2018/09/091018_National-and-Regional-Ag-Act-Supporters.pdf

33 Field notes, ProDESC, 2018.



made until the season ended, and were not always paid.

The recruiter charged a recruiting fee of \$200 to \$1,000 USD each season. Generally, workers who did not pay recruitment fees were hired for the shorter season (August through November).

The workers were notified of the collection of fees before arriving at the workplace, but payments were

not made until the end of the season, when the workers had already saved money in dollars. The recruiter did not collect in person, but would send other trusted colleagues to collect the money.

The workers mentioned that it was possible to refer others to be included in the hiring list for the following year. In that case, the recruiter would charge a reduced fee of \$500 to the person who referred the new worker, and there were cases where the worker who made the referral would charge a newly recruited worker \$500 or even more to cover their own costs. In the event that the new worker left the workplace before the end of the sea-

son, the recruiter would charge the person who referred them \$1,500.

RECRUITMENT FRAUD

Amongst the cases of fraud against migrant workers from Hidalgo that reported in local and national press, there are several types of fraud that stand out.³⁴

The majority of recruitment occurs through informal recruiters, who come to the communities to announce H-2 visa job offers in the U.S. In the Huasteca region and nearby municipalities, these recruiters generally look for people who are highly trusted in the community so that a person who has already been convinced by the recruiter can gather more people who can then pay the recruitment fee requested. When recruiters succeed and leave the community, the responsibility for the fraud is usually left on the person who was convinced in the first place and brought the others.

Based on the interviews that ProDESC conducted during the visit to Pisaflores with workers from the region, another recruitment scheme was identified in which recruiters would set up an office in the town and request an amount between 5,000 and 7,000 pesos to cover their recruitment expenses.

Once around 100 people had paid, the recruiters would tear down the office and disappear. Other cases were reported in which recruiters would rent a truck to supposedly take the workers to the consular interview



in Monterrey, charge the prospective workers fees once they were inside the vehicle, and once they have the money, the recruiters would get off the truck and leave the workers in the middle of the road.

34 For further reference, see: Persisten fraudes en la Huasteca, AM noticias, 2018. Available at: <https://www.am.com.mx/hidalgo/noticias/Persisten-fraudes-en-la-Huasteca-ofrecen-trabajo-en-EEUU-a-cambio-de-dinero-20190126-0009.html>

Defraudan a mexicanos que buscaban empleo temporal en EU, Animal Político, 2018. Available at: <https://www.animalpolitico.com/2018/11/trabajadores-mexicanos-empleo-eu-fraude-visa/>

WORKPLACE CONDITIONS

The workers interviewed by ProDESC reported working up to 16-hour days in sweet potato cultivation and harvesting. They worked in different fields for the same company, but sometimes were transferred to other work centers in other counties owned by the same company. Workers often did not know the names of the places they were taken to. The drivers who took them to the fields often served as their supervisors in other fields or workplaces. In all cases, the person recruited back in Hidalgo serves as a company em-

ployee and acts as a mayordomo, or a supervisor of the workers.

The climate in Mississippi can be extreme, and workers were not provided with adequate protection against changes in temperature or prolonged exposure to the sun and rain, which, to offer an example, can cause foot injuries during rainy seasons. The work equipment required for planting and harvesting is not provided by the employer, but is sold to the workers by the mayordomo.

When it comes to housing, several of the fields are located two hours from the housing accommodation. For this reason, most of the time, workers only have time to bathe and sleep for just a few hours, taking into account that they work days of up to 16 hours.

The houses have thin metal roofs that get very hot in the sun, and do not have air conditioning. In each room there are



about 8 bunks with old and dusty mattresses. They do not have sheets, blankets, pillows or towels. Workers share a bathroom, a stove and a refrigerator. Fire extinguishers and other safety devices are only placed by the mayordomo when there is an inspection. In the season from August to November, when there are more than 200 workers, the interviewees report that the houses are completely full.

Hygiene conditions and access to health services are not adequate. Workers reported that the drinking water in the fields is dirty, and they have even found it to be brown when it comes out of the tap. There are no glasses or bottles to drink the water, so the workers collect bottles thrown in the field and use them to hold the water. During several seasons, there have been cases of an upset stomach and vomiting after consuming water. When there is an accident at work, the mayordomo takes them to the nearest hospital, but the workers must bear all the medical expenses.

The precarious working conditions identified by ProDESC across the Hidalgo-Mississippi exemplify how workers live in spaces that do not meet the minimum health conditions: they are essentially concrete boxes that have been made invisible, both by the governments involved and by the employers. ProDESC's efforts to expose such conditions are part of an effort to establish accurate data in order to demand that governments promote policies that ensure dignified working conditions for people employed under the H-2 visa systems. Collaboration between state and private actors is needed to ensure that temporary workers have the right to organize and demand necessary improvements for decent and safe working conditions.

OAXACA-CALIFORNIA CORRIDOR

CONTEXT: MIGRATION AND INDUSTRY

California is a state located in the western U.S. along the Pacific coast that shares a border with Mexico. In 2015, California had 40 million residents, with an average income of \$55,758 USD per year – significantly



higher than the national average of \$48,978 USD. In economic terms, it had a GDP of \$2.428 billion dollars, the highest in the U.S., and accounted for 14% of the total U.S. GDP.³⁵

According to the 2021 data from the U.S. Department of Labor's Office of Foreign Work Certification (OFLC), California approved 578 H-2A visas with an average wage of \$12.68 USD per hour. There were 135 certified H-2B visas with wages ranging from \$11 to \$16 USD per hour.³⁶

Both Oaxaca and California are characterized as places where agricultural activity plays a major role in the economy. In the 1980s there was a significant flow of Mexican migrants to California with IRCA.³⁷ The population that initially migrated to this area were mainly men from the states of Michoacán, Jalisco and Zacatecas. Starting in the 1980s, the migration from Oaxaca began to increase, notably among women (Sánchez, 2007).

As part of a 2019 ProDESC investigation on the situation of the H-2A

and H-2B Visas in Napa County and Sonoma County in California, ProDESC identified the California wine industry is a central aspect of the economy in relation to temporary migrant workers, and is deeply bound up with global economic processes.³⁸ It should be noted that throughout the state of California, there are multiple industries linked to temporary migrant work.

Wine production in the area requires a fragmented labor market to carry out different parts of the wine production process: pre-harvest, post-harvest and semi-specialized jobs. When production demands are at their highest, the greatest number of workers, and the greatest number of temporary workers, are required.

Previously, the wine industry's labor demand was predominantly filled by the undocumented population from Mexico. However, changes in production processes and the dynamics of the segmented labor market have led to a greater use of the H-2A visa system to cover the wine industry's labor demands.

California's wine production represents 90% of the total wine production in the entire U.S. (McLean, 2013), and takes place in 45 of the 58 counties in the state (Sánchez, 2019). California is the main wine producer in the U.S. and the fourth in the world after Italy, France and Spain.³⁹

³⁵ GBP by State 2021, US Department of Commerce, Bureau of Economic Analysis, <https://www.bea.gov/data/gdp/gdp-state>

³⁶ US Department of Labor, Office of Foreign Labor Certification, Annual Report, 2016 https://www.foreign-laborcert.doleta.gov/pdf/OFLC_Annual_Report_FY2016.pdf

³⁷ Immigration Reform and Control Act (IRCA).

³⁸ Notas de campo de ProDESC 2019.

³⁹ California Association of Winegrape Growers- Industry. Disponible en: https://www.cawg.org/Wine1/About/Industry/Shared_Content/About/Industry.aspx?hkey=d993db02-bd40-49dd-94fb-6a94ca89fe5a

One central characteristic of California's wine industry is what is called the flexibilization process, which involves different companies taking charge of the different stages of production (Palerm and Santos, 2018). In the wine industry, workforce recruitment happens at all phases, from vineyard design to grape harvest to processing.

For example, in Santa Barbara County, California – where there is significant wine production – the Estero Winery hires other companies to maintain and care for its vineyards, ex-

emplifying the diversity of intermediaries that may exist in the wine production process (Palerm and Santos, 2018). Likewise, Estero Winery has a fixed staff of workers (around 40), and in harvest season, between 350 to 400 additional workers are hired.

These workers are managed through farm labor contractors,⁴⁰ and may be employed in more than one role:

⁴⁰ People who handle the processes of hiring, supervising, managing workers, and payment of salaries. The most important activity in their role is to act as an intermediary between employers and workers (Vaupel, Suzanne and Martin, Philipp, 1986).



because of the flexibility associated with the H-2 visa, they may fill different labor needs for the wine industry throughout the year.

Producers in this industry are also organized into associations, the most important being the California Association of Winegrape Growers. The association has a Political Action Committee and a Legislative Action Center, through which they map and identify elected officials and candidates to fund their work or campaigns in exchange for supporting the California wine industry.⁴¹ Like the Mississippi associations, this association also spoke out in favor of the initiative presented by Republican Representative Bob Goodlatte to reduce the obligations that employers have to protect the rights of workers with H-2A visas.⁴²

In central California, Fresno County and Madera County in central California are located in an agricultural area where indigenous Oaxacan migrants have worked for decades. These migrants have been primarily employed in the cultivation of grapes, strawberries, blackberries, peaches, pistachios, melons and asparagus. *According to Hernández (2012), Oaxacan indigenous migrants face some of the most extreme discrimination and inequality in the Oaxaca,*



and in California, they also occupy the lowest rung of the state's labor market.

COMMON ABUSES IN THE RECRUITMENT PROCESS

Temporary workers across the Oaxaca-California corridor frequently experience the illegal collection of recruitment

⁴¹ California Association of Winegrape Growers- CAWG PAC. Disponible en: https://www.cawg.org/Wine1/Advocacy/CAWG_PAC/Shared_Content/Advocacy/CAWG_PAC.aspx?hkey=228ccb14-b572-4ac1-81c2-4a0517705c21

⁴² Supporters of the Agricultural Guestworker Act. https://republicans-judiciary.house.gov/wp-content/uploads/2018/09/091018_National-and-Regional-Ag-Act-Supporters.pdf



fees. Particularly in northern California – where ProDESC conducted its investigation – it is a common practice for workers to be subject to charges during the H-2A visa application process for transportation and/or for other general expenses involved in hiring.⁴³ There are cases in which there are no official labor contracts, and in cases where contracts do exist, they are often written using unclear terminology that are not accessible in the worker's native language.

Furthermore, ProDESC documented how the indigenous population hired under an H-2 visa are often those

who occupy the most precarious jobs in the system.⁴⁴ These Oaxacan workers are faced with a process known as ethnic replacement in which the workers who have more recently entered the labor market are given the most precarious jobs – without contracts, with lower hourly pay, without protective equipment and in conditions where a lot of physical effort is required (Sánchez, 2013).

RECRUITMENT FRAUD

Through social media research, ProDESC documented how alleged recruitment agencies located mostly in Mexico publish jobs and request money to transport migrant workers people to workplaces in the U.S.⁴⁵ One of the most common means of publishing job offers is through social networks – most notably on Facebook. In these cases, tracking is difficult because they are pages created for short periods to protect the identities of those involved in the fraudulent recruitment scheme.

The Oaxacan Institute for Migrant Assistance has documented several cases of fraud by entities registered Central Valley region of California, as

⁴³ November fieldnotes, ProDESC 2019.

⁴⁴ November fieldnotes, ProDESC 2019.

⁴⁵ Documentation of media on temporary migration in the United States, ProDESC, 2019

well as in the districts of Etna, Zaachila, Zimatlán, and in the Mixteca region in the districts of Tlaxiaco, Huajuapán, Nochixtlán. To portray their legitimacy, alleged companies and/or recruiters show falsified documents from the Ministries of Labor, Economy, Foreign Relations. Once they successfully collect payments, they disappear and settle in other municipalities (Diario Oaxaca, 2016).

Another case in California occurred in Ventura County, in which potential workers were charged \$3,000 USD to obtain their H-2A visas. They were told that the permits

would last for three years, when they were in reality only valid for year (La Opinion, 2018)

The U.S. Consulate in Monterrey also warned of a possible fraud of a company that offered work in the tobacco and apple industries in North Carolina and California in exchange for payment for 4,776 pesos. The Consulate confirmed that the company did not have any type of permit to process H-2 Visas.

WORKPLACE CONDITIONS

The conditions of workplaces vary depending on the type of work, production, industry, employed population



and region. In California's Napa and Sonoma counties, some of the most common practices in workplaces are charging for necessary work equipment, transportation to the workplace when workers are not living on the premises, food and lodging.⁴⁶

Workers are in constant contact with fertilizers, pesticides and insects due to the nature of the job. California's safety regulations, particularly the Pesticides Regulation in California (2017), indicate that the basic protection measures include training processes and clear warnings about the possible damages that can occur through exposure to any of the pesticides. Numerous Napa and Sonoma workplaces are often noncompliant or partially compliant with these regulations, and workers are not aware of the risk they are exposed to on a daily basis.

There were three common practices around housing accommodations.⁴⁷

In the first, workers are housed at their workplace, and are crammed into separate spaces for men and women where an average of 10 to 15 people share a single bathroom. In the second common practice, women and men are housed in separate housing units, in which contact between genders is prohibited even between couples.

The third scenario involves workers being housed in apartments far from the workplaces, which in some cases, means that workers have to pay the costs of transportation to work – and rent in Napa, Sonoma and Modesto counties can be about \$2,000 USD per month.

In some cases, payment for food, lodging and transportation services is made possible through a weekly stipend. In other cases, the employer or a trusted personnel is the one who directly pay for the housing accommodations.

According to testimonies, workers – primarily those who are undocumented – indicated that they are at times separated and isolated from other workers in the workplace. The advocacy organization North Bay Jobs with Justice (2020) reported that some managers implemented workplace practices including isolation, prevention from going out to shop and communicating with other colleagues, and the restriction of cell phone use outside of working hours. If someone wanted to make a call, sometimes, they had to hide because it could result in misunderstandings and rumors about what information was being circulated. Because of this isolation and stringent environment, it has become difficult to support workers' organizing processes.

Additionally, various organizations have documented how women experience sexual harassment and assault on a daily basis during working hours.⁴⁸ These practices are carried out by both the contractors and other migrant workers.

⁴⁶ Field notes, ProDESC, 2019.

⁴⁷ Field notes, ProDESC, November 2019.

⁴⁸ California Rural Legal Assistance, Líderes Campesinas and a report by Richard Mines, Sandra Nichols y David Runstein: "Los trabajadores indígenas en California" 2010.

California has the highest levels of agricultural activity in the U.S., which creates an incentive to employ cheap and migrant labor. The uptake of the H-2 visa system represents how business interests have influenced the decision-making of the U.S. government. Even though the Oaxaca-California corridor plays a major role in the economy of both countries, ProDESC's documentation shows that no effort is made to improve the working conditions of H-2 visa workers.

SAN LUIS POTOSÍ- GEORGIA CORRIDOR

CONTEXT: MIGRATION AND INDUSTRY

The migration history of San Luis Potosí aligns with the general trend of back-and-forth migration across the Mexico-U.S. corridor, as has occurred over the last twenty years (Durand

and Massey, 2009). An analysis by Cuevas and Vázquez (2009) offer an analysis of the migration from San Luis Potosí to the U.S. that describes how the Bracero Program had a strong impact on the state that has made a lasting mark on the migration history of the region.

In Georgia, a state located in the southeastern United States, there were 358 H-2A visas approved in 2021 according to the U.S. Department of Labor's Office of Foreign Work Certification.⁴⁹ *These workers earned an average wage of \$12.68 USD per hour. There were 138 H-2B visas issued with an average wage running from \$10 to \$15 USD per hour.*

The agricultural industry is the main economic activity in Georgia, with an economic impact of approximately \$75 billion each year.⁵⁰ Georgia leads the nation in the production of pecans, peanuts, blackberries and rye. Brands sourcing produce in Georgia include Ben & Jerry's, Chick-fil-A and Hershey's⁵¹

Given that agriculture is the main economic activity in the state, there are a significant number of agricultural industry employers' associations in Georgia.

The Georgia Fruit and Vegetable Grower Association and the Georgia Agribusiness Council stand out as two of the largest and most powerful: the former has a broad legislative lobbying agenda regarding migration, with the aim of ensuring that there are incentives for employers to take advantage of the H-2A visa system.⁵²

49 US Department of Labor, Office of Foreign Labor Certification, Annual Report, 2016 https://www.foreign-laborcert.doleta.gov/pdf/OFLC_Annual_Report_FY2016.pdf

50 Agribusiness- Georgia Department of Economic Development. Disponible en: <https://www.georgia.org/industries/agribusiness>

51 For more information, see <https://migrantjustice.net/news/16-cities-across-the-nation-call-on-ben-jerrys-to-take-next-step-towards-ensuring-dairy-workers>, <https://www.georgia.org/industries/agribusiness>, https://www.thehersheycompany.com/en_us/whats-inside/the-core-four.html

52 Georgia Fruit and Vegetable Growers Association: <https://www.gfvga.org/page/Legislative>

COMMON ABUSES IN THE RECRUITMENT PROCESS

The information for this section comes from a ProDESC investigation on cases involving the illegal collection of recruitment fees from workers coming from Tamazunchale, San Luis Potosí, to work in Adel, Georgia, in the cultivation and harvest of watermelon.

Workers report having paid recruitment fees of between 1,000 and 10,000 pesos to a recruiter in Mexico to be included in a list of potential hires. According to this recruiter, 50% of this fee goes to the Georgia-based workplace, and 50% goes to the recruiter himself.

In one season, the recruiter told 10 workers that they would not be able to return to work because they were sanctioned. After the workers confronted the manager in Georgia, the manager told them that they were not in fact sanctioned. The workers later learned that the company hired 10 new workers, and charged them a higher recruiting fee.

The workers also reported that there were other recruiters in Tamazunchale and in other nearby towns who said they worked for recruitment agencies in Monterrey, Nuevo León. *These recruiters also charged fees, which is fairly standard in the region, and after workers are charged, they are asked to keep secret that they had paid them at all.*

RECRUITMENT FRAUD

According to local media reports, most cases of recruitment fraud occur in the southern Huasteca region.⁵³ In several cases, workers were charged around 8,000 pe-



sos, or the equivalent of \$5,000 USD, and risked not only the theft of their money, but also of their official identification documents – most notably their passport.

The most common form of fraud occurs when informal agents appear in the communities to announce job offers in the U.S., collect paperwork, and once the payment is made, they disappear with the money of workers. Some of these agents claim to work for recruitment agencies located in Monterrey, Nuevo León.

In another case of fraud in Tamazunchale, a group of workers were first invited to join a club (Club Sociedad Mexicana Transfronteriza Desarrollo Social Sin Fronteras) based in Monterrey, Nuevo León. The charges included club member-

⁵³ Potosinos, víctimas de fraude en trámite de visas, GlobalMedia, 2017. <https://www.globalmedia.mx/articles/Potosinos-v%C3%ADctimas-de-fraude-en-tr%C3%A1mite-de-visas>
Previenen fraude con visas de trabajo, PulsoSLP, 2019.: <https://pulsoslp.com.mx/slp/previenen-fraudes-con-visas-de-trabajo/899324>

ship (2,500 pesos), visa procedures (2,000 pesos) and lodging and meals in Monterrey in order to attend the consular interview (900 pesos). They were made to sign promissory notes for the remaining amount of the processing of the visa, which they would pay once they were in the U.S. When the workers arrived at the supposed time of their appointment at the U.S. Consulate in Monterrey, they realized that they had been defrauded.⁵⁴

WORKPLACE CONDITIONS

As found in ProDESC investigations, there are a wide variety of human and labor rights violations across Georgia's agricultural workplaces.⁵⁵ Generally, the fields where planting or harvest takes place do not have accessible water, food or shelter.

The workers are not provided with adequate equipment to protect themselves from weather conditions, and furthermore, workers frequently come across animals such as snakes, without being trained by employers or supervisors on specific ways to eliminate pests.

Work days last between 12 and 14 hours, and workers are by piece rate and not by the hour. This means that women are often paid lower amounts, and in some cases, the wage is so low that it is not enough to cover the initial recruitment costs they owe.

The housing conditions are unsanitary. The housing consists of "trailers" where six to eight people live without air conditioning or heating. Workers find pests in the housing (such as poisonous spiders), and in addition, workers are charged \$35 per week in rent for housing.⁵⁶ In the cases of work accidents, the workers do not have compensation or medical insurance.

Female workers are subjected to sexual harassment and even physical violence. The Southern Poverty Law Center reported a case in which the recruiter (and workplace supervisor) physically assaulted the workers and attempted to sexually abuse several of them.⁵⁷

54 Muñoz Paniagua, Lidia Esther, *Permanentemente temporales*, Un análisis sobre las prácticas de contratación del sistema de visas de trabajo temporal H-2 en México. Tesis de maestría. CIESAS, 2016. Disponible en: <https://ciesas.repositorioinstitucional.mx/jspui/bitstream/1015/329/1/Lidia%20Esther%20Mun%cc%83oz%20Paniagua%20Tesis%20final%20Permanentemente%20Temporales%20Agosto%202016.pdf>

55 Documentary research, ProDESC, 2018.

56 Ibid.

57 <https://www.splcenter.org/news/2019/05/31/guest-worker-sexually-harassed-gunpoint-cheated-out-pay-and-forced-live-dilapidate-0>



A photograph of a coastal town built on a hillside overlooking the ocean. The town is densely packed with colorful buildings, and the ocean waves are crashing against the shore. The sky is clear and blue.

CHAPTER 3

THE RADAR PROGRAM: AN ALTERNATIVE METHOD TO PROMOTE CORPORATE RESPONSIBILITY IN RECRUITMENT PROCESSES

Amidst the realities of corporate capture, global processes that exacerbate social inequalities, and the abuses that temporary migrant workers face across migration corridors, ProDESC developed the RADAR Program. The RADAR Program is designed to serve as a way to hold responsible all the actors that participate in the labor supply chain throughout the H-2 visa recruitment process.⁵⁸

In 2007, ProDESC incorporated transnational justice for temporary migrant workers as one of its central lines of work. Subsequently, beginning in 2013, ProDESC began supporting the Coalition of Sinaloa Temporary Migrant Workers, which is made up of Mexican people who travel to the U.S. each year to work under the H-2 visa system.

The RADAR Program was created by ProDESC in 2015 to build upon the work with the Coalition, with the objective of combatting abuses that occur in the recruitment processes of migrant workers in the H-2 visa system. The RADAR Program is a step towards holding employers in the U.S. accountable for abuses committed by their recruiters in Mexico and fosters transparency and accountability throughout the labor and product supply chains.

The RADAR Program focuses on the legal concepts of 'knowledge' and 'joint employment' by various actors that are established in the H-2A and H-2B visa regulations and noted in the Fair Labor Standards Act (FLSA).

The H-2A and H-2B visa regulations state that employers must prohibit any recruiter or contractor they work with directly or indirectly from charging recruitment fees. Under the provisions of the FLSA, employers

⁵⁸ The RADAR Program is a project of ProDESC (Proyecto de Derechos Económicos, Sociales y Culturales) in collaboration with Professor Jennifer Gordon of Fordham University Law School.



can be held liable for their recruiter's actions if they are directing them. However, in practice, it is notoriously difficult to verify that an employer is aware of the actions of its recruiter in another country.

The RADAR Program addresses this problem as follows:

1. ProDESC registers and maintains a database on recruitment abuses in the H-2 visa system.
2. ProDESC investigates supply chains between the worker and the employer (labor supply chain) and between employers and the brands that ultimately sell the product/service to the consumer (product/service supply chain). This information is made available to our partners through the database.
3. ProDESC notifies actors in the supply chain, as well as others, in order to:
 - **Ensure that employers are aware of abuses committed by recruiters** in their labor supply chain so that they can take effective measures against future abuses;

- **Ensure that recruitment agencies have knowledge**

of abuses committed by its agents or sub-agents, so that it can take effective measures against future abuses. Under the Federal Labor Law in Mexico, recruitment agencies are responsible for the actions of their agents and sub-agents.

- **Ensure that companies and brands in the product/service supply chain have corporate social responsibility (CSR) policies** that prohibit abusive practices in recruitment and work, as a method to force their suppliers to comply with such policies.

4. ProDESC informs the Mexican Ministry of Labor and Social Welfare to ensure that it complies with its obligation to carry out labor inspections in the recruitment agencies involved.
5. ProDESC continues to monitor the behavior of all stakeholders.



THEORETICAL FOUNDATION OF THE RADAR PROGRAM

ProDESC promotes interdisciplinary dialogue between diverse actors with the aim of delving into the structural causes that lead to inequality and discrimination faced by temporary migrant workers. This dialogue has been driven primarily by the academic Jennifer Gordon and the executive director of ProDESC Alejandra Ancheita, which has led to pivotal reassessment on the link between the supply chains of products and violations of human and labor rights in temporary migrant work.^{59 60}

At the highest levels, brands typically hire a logistic company to manage their supply chain. *The company sources the materials it needs in its production process from the countries where they can be obtained for the cheapest price.* Simultaneously, an outsourcing process begins in which cheaper labor is also hired. As a strategy to minimize production costs, the brand is located in the

Global North, while materials and labor are located in the Global South.

The system of global inequality that persists between countries creates incentives for brands and companies to move work to countries where wages are lower. However, there are also production processes that require work to be carried out in the Global North. In these cases, hired workers are brought from the Global South to the Global North.

There is a global free trade regime, and, at the same time, there are many restrictions on the ability of migrants to cross borders.

ProDESC has worked to reflect on the connection between the product supply chain and the labor supply chain. Based on a structural framework around the theory of joint liability, ProDESC finds that it is possible to hold those at the highest levels of supply chains responsible.⁶¹

THE RADAR PROGRAM AND THE RELEVANCE OF JOINT LIABILITY

Under the H-2 visa system the supply chain begins when an American company seeks to hire foreign labor. In the recruitment process, intermediaries emerge, and private agents begin to mediate the hiring process.

⁵⁹ Relevant texts by Jennifer Gordon: Gordon, Jennifer, "Global labour recruitment in a supply chain context", International Labour Organization, 2015. ; Gordon, Jennifer, "Towards Transnational Labor Citizenship: Restructuring Labor Migration to Reinforce Workers Rights, Fordham Law School, 2009.

⁶⁰ Relevant texts by Alejandra Ancheita: Ancheita, Alejandra y Lisa, Gisele, "¿Quo Vadis? Reclutamiento y contratación de Trabajadores Migrantes y su Acceso a la Seguridad Social: dinámicas de los sistemas de trabajo temporal migratorio en Norte y Centroamérica", Instituto de Estudios y Divulgación sobre Migración, 2013.

⁶¹ "Under joint and several liability schemes in the employment context, the direct employer and other actors that have the ability to prevent the legal violation or harm in question may each be held responsible and sanctioned for it. In most cases, a victim may seek damages from any one of the involved parties" (Gordon, 2015:20)

Interactions between recruitment agents and people who walk to obtain work visas reflect the nature of historic structural inequalities: the income from working in a U.S. company is four times what could be earned by a migrant in Mexico, and this reality is leveraged by intermediaries to collect fees in the recruitment process.

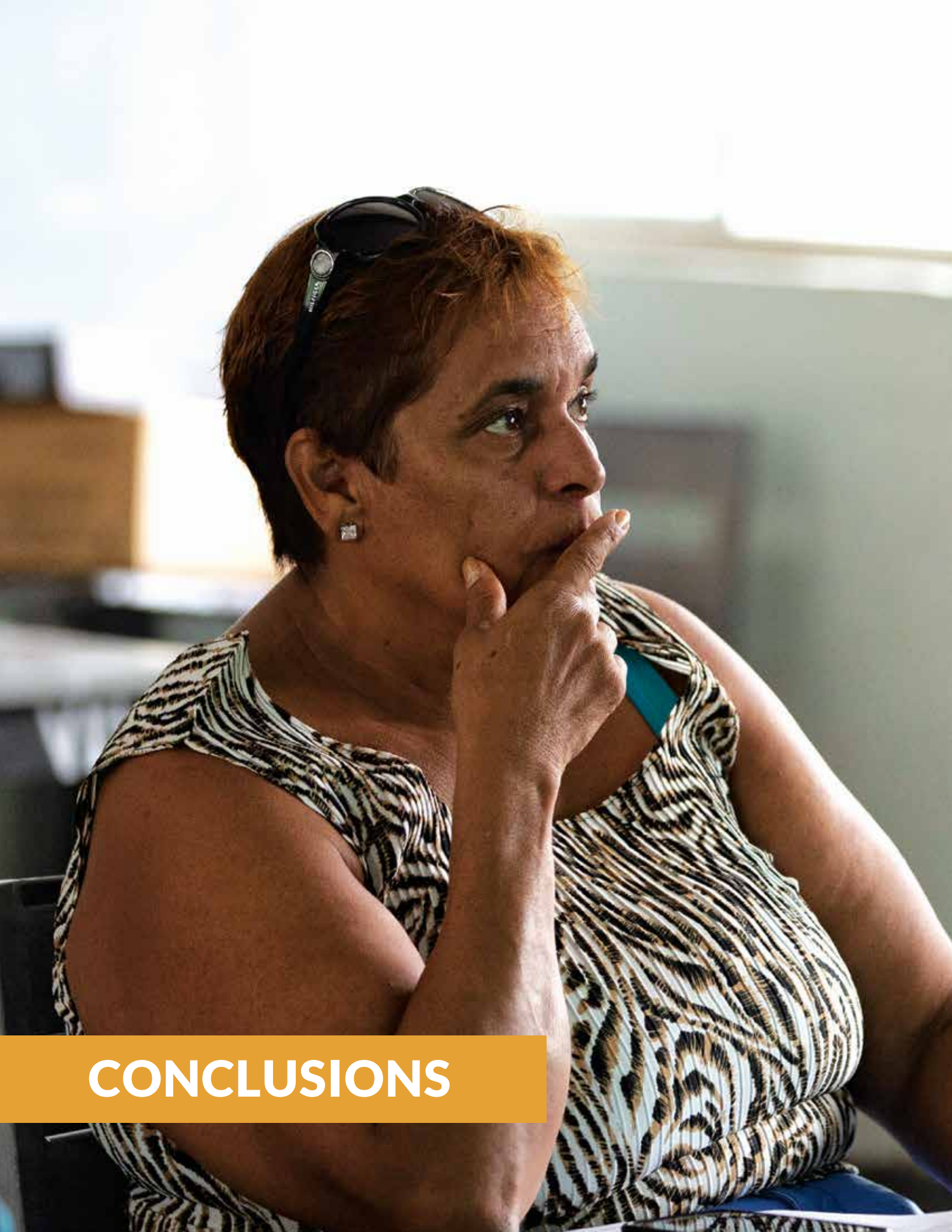
The pervasiveness of these structural inequalities led Jennifer Gordon and ProDESC to advocate for the implementation of joint liability in the migration process and design strategies to address the problem at its origin. This would serve as a way to hold those in the highest positions of product and labor supply chains accountable for abuses that take place in recruitment processes and at the workplace. In partnership with migrant workers, the RADAR program seeks to introduce enforceability and accountability mechanisms that force the actors who benefit the most from the structure to commit to guaranteeing human rights at work.

The RADAR Program combines corporate research with employer engagement to: (1) enable employers to do what



is morally and legally right; (2) build evidence for possible litigation of H-2 cases in the U.S.; and (3) create accountability for recruitment violations in Mexico. Confidentiality is a central tenet of this work. Such an approach will play an important role in deterring future abuses in the recruitment of migrant workers and in promoting advocacy and due diligence processes for business and government actions.





CONCLUSIONS

Through an investigation of four industries across four Mexico-U.S. migration corridors,⁶² this report analyzed the link between global economic structures and the systematic human rights violations faced by temporary workers in the U.S.' H-2 visa system.

It is important to mention that the model for recruitment, hiring and working conditions under the H-2 visa system exist within a globalized economic model that enables corporations to influence legislation and policy.⁶³ Corporate capture, as this phenomenon is commonly known, has enabled employers to push for restrictions on labor rights protections, primarily through industry employers' associations.

In addition to depicting the impacts of corporate capture, ProDESC's comparative analysis across migration corridors provides us with evidence of systematic patterns of labor and human rights at all stages of work, from the recruitment process in the communities of origin in Mexico through the arrival at the workplace in the U.S.

The H-2 visa system is designed to control migration flows without regulating the companies involved in supply chains, and throughout the analysis of the four corridors – Sinaloa-Louisiana; Hidalgo-Mississippi; Oaxaca-California; and San Luis Potosí-Georgia – the consequences of the H-2 system's labor flexibility were apparent. Companies implement subcontracting processes that blur the worker-employer relationship across the entire production supply chain and make it difficult for

temporary migrant workers to collectively organize.

ProDESC identified how women faced job insecurity, an idea that was starkly apparent in the Oaxaca-California and Sinaloa-Louisiana corridors. In these corridors, women received piece rate payment while men earned hourly pay. *Across the Sinaloa-Louisiana and San Luis Potosí-Georgia corridors, there are observable patterns of gender discrimination, harassment, and sexual abuse.*

In the Sinaloa-Louisiana and Oaxaca-California corridors, workers reported that both supervisors and managers intentionally impeded communication between workers and hindered workers' collective organizing efforts, contrary to the right of freedom of association. Notably, in the Oaxaca-California corridor, supervisors and managers even intentionally fostered divisions between temporary and undocumented workers.

Another relevant finding relates to the influence that migration networks have on the social status within the U.S. labor market. For example, the indigenous population holds more precarious jobs, which reflects social factors including the length

⁶² Sinaloa-Louisiana (shellfish processing), Hidalgo-Mississippi (cultivation and harvest of sweet potatoes); Oaxaca-California (wine industry) and San Luis Potosí-Georgia (cultivation and harvest of vegetables).

⁶³ De acuerdo con las características de la captura corporativa enumeradas por la Red-DESC, la interferencia legislativa y en políticas "se refiere a la presión ejercida sobre las legislaturas y los responsables políticos por las empresas y sus representantes para proporcionar mejores oportunidades de negocios, o eliminar/debilitar la regulación de las actividades corporativas, que en última instancia socavan la protección de los derechos humanos." Consultar: <https://www.escri-net.org/es/derechoshumanosyempresas/capturacorporativa/caracteristicas>

of time they have migrated, the language they speak, the way that migration networks are established. Because the indigenous – primarily Oaxacan – population has been migrating for less time, they face greater human and labor rights violations.

The non-indigenous populations from the states of Michoacán, Jalisco, and Zacatecas were the first to begin temporarily migrating to the U.S. for work, and there are more established networks and professional processes from these places that lead to more labor mobility and better working conditions. As people migrate from places with less of a history of temporary migration, including those from Oaxaca and Hidalgo, they are placed in more precarious jobs and are more likely to interface with H-2 visa recruiters in their effort to migrate to the U.S. This situation was prevalent across the Oaxaca-California and Hidalgo-Mississippi corridors.

There are two major logics that underlie migrants' experiences across these migration corridors: profit maximization and structural discrimination. In the former, the needs of migrant workers are subordinate to the needs of transnational companies. The latter reflects the historic experiences of subjugation that Mexican migrants in the U.S. have faced.⁶⁴



Gender and ethnic differences shape the experiences of temporary migrant workers in the U.S. Furthermore, in addition to human rights violations at work, there are other underlying social conditions that can aggravate the precariousness and vulnerability that they already face on a daily basis.

⁶⁴ According to the National Council to Prevent Discrimination (CONAPRED), structural discrimination is a “[...] set of practices, informal or institutionalized, that deny equal treatment or produce unequal results for certain social groups and that have the consequences of deprivation or the impairment in access to rights and the reproduction of social inequality” (Solís, 2017: 27)



Corporate capture and structural discrimination also impact influence the lack of transparency about the recruitment and hiring processes on the part of both the Mexican and American governments. Access to information is an empowering tool for temporary migrant workers to be able to ensure that their rights are being enforced, yet information is only one element among many

that are required to develop strategies that ensure that rights are enforced and put into practice.

The following table offers a synthesis of the comparison between the four migratory corridors analyzed as a way to identify commonalities in lived experiences of H-2A and H-2B temporary migrant workers.

COMPARISON ACROSS M

MIGRATION CORRIDOR	MIGRATION AND INDUSTRY CONTEXT	IN (GE
SINALOA-LOUISIANA	<p>Approximately 25% of the U.S.' total seafood consumed comes from Louisiana. It is the largest shrimp and oyster producing state in the entire country.</p>	<p>Companies th piece rate an equality, whe</p> <p>Women expo H-2A and H-2</p>
HIDALGO- MISSISSIPI	<p>In the 1990s, a migration boom to the United States began.</p> <p>Sweet potato is among the most important crops in the state of Mississippi.</p>	<p>Indigenous a ficant propor the U.S. for w</p>

MIGRATION CORRIDORS	
INTERSECTIONAL ANALYSIS (GENDER AND ETHNIC ORIGIN)	HUMAN AND LABOR RIGHTS VIOLATIONS
<p>Employers that hire temporary migrants pay women by the day and not by the hour. This represents wage inequality as men are paid more than women.</p> <p>Women experience sexual harassment as part of the recruitment and hiring process.</p>	<p>Recruitment fees are charged to the costs of the visa, bureaucratic procedures, employment contracts, transportation to the consulate or to the workplace or to enter a waiting list for potential employment.</p> <p>Reporting and/or questioning of recruitment fee charges leads to retaliation, such as being excluded from future hiring.</p> <p>Necessary and adequate materials and protective gear are not provided to carry out the work.</p> <p>Employers use surveillance to prevent collective organizing processes.</p>
<p>Indigenous and peasant populations account for a significant portion of those who temporarily migrate to work.</p>	<p>Recruitment fees are collected.</p> <p>Working hours last up to 16 hours in the cultivation and harvest of sweet potatoes.</p> <p>There are cases in which workers are taken to work centers that are different from those that were initially hired.</p> <p>Workers are not given uniforms or protection amidst changing weather conditions.</p> <p>Work equipment for the harvest is sold to workers for a high cost.</p> <p>Workers are paid by the bucket and not by the hour.</p>

MIGRATION CORRIDOR	MIGRATION AND INDUSTRY CONTEXT	IN (GE
OAXACA- CALIFORNIA	<p>Agricultural activity is central to the economies in both California and Oaxaca.</p> <p>Oaxaca migration to the U.S. intensified in the 1980s, significantly among the indigenous population.</p> <p>California's wine industry demands a high amount of temporary migrant labor, and represents 90% of the total wine production in the entire U.S.</p>	<p>The population of Zacatecas who arrive in the U.S. are originating in Oaxaca, that were previously in Jalisco and Z...</p>
SAN LUIS POTOSÍ-GEORGIA	<p>The agricultural industry is the main economic activity in Georgia, with an economic impact of approximately \$75 billion each year. Georgia leads the nation in the production of pecans, peanuts, blackberries and rye.</p>	<p>The payment of... with women...</p> <p>Cases have been subjected to violence.</p>

▲SCHEME 2: Comparison Across Migration Corridors

INTERSECTIONAL ANALYSIS (GENDER AND ETHNIC ORIGIN)	HUMAN AND LABOR RIGHTS VIOLATIONS
<p>on of the states of Michoacán, Jalisco and were the first temporary labor migrants to area. The indigenous population, mainly ori- axaca, is placed in the most precarious jobs previously occupied by those from Michoacán, acatecas (known as ethnic replacement).</p>	<p>Recruitment fees are change based on the place of origin and destination (charges transportation and other speci- fic charges are demanded in order to be hired).</p> <p>Lack of formal employment contracts.</p> <p>Charges made for work equipment.</p> <p>Charges are made for transportation when workers are not living on the workplace premises.</p> <p>Protection measures surrounding working with fertili- zers and pesticides are not implemented and go against the recommended guidelines of California's pesticide re- gulations.</p>
<p>t is made by piece rate and not by the hour, receiving lower amounts than men.</p> <p>been recorded where female workers are sexual harassment, abuse, and physical vio-</p>	<p>Recruitment fees are collected.</p> <p>Non access to water and shelter at the workplace.</p> <p>Workers do not have adequate work equipment for the weather conditions in the region.</p> <p>Unsanitary living conditions.</p> <p>Working hours last between 12 and 14 hours.</p>

As indicated in the previous table, the four migration corridors analyzed have commonalities related to human and labor rights violations, particularly regarding the collection of unjust recruitment fees and poor workplace conditions, which is contrary to the stipulations of the Guiding Principles of Business and Human Rights.⁶⁵

From the perspective of state responsibility, the governments from both countries need to identify how they can implement effective measures that guarantee the human rights of workers. Strategies may include culturally relevant mass communication campaigns, and dialogues between both countries on the structure of the H-2 Visa system with substantive debate on the regulations.

Intergovernmental communication strategies are also needed to determine the responsibilities for all actors involved and to make the process more transparent through open dialogue with civil society, including unions and migrant worker organizations. The context of immigration reform in the U.S. and the implementation of the United States-Mexico-Canada Agreement (USMCA) – which for the first time includes a section about labor and provisions on migrant workers⁶⁶ – are opportunities to broaden the discussion on improving working conditions for temporary migrant workers.

When it comes to matters of labor, the USMCA recognizes the right of workers to enjoy freedom of association, collective bargaining, and a workplace that is free from violence, threats and intimidation (see article 23.3). In this context, it is necessary to monitor how the public administration and the legislative branch will implement actions to ensure the effectiveness of these measures, particularly when it comes to the H-2 visa work system.

Furthermore, the USMCA recognizes the vulnerability of migrant workers with respect to labor protections (see article 23.8). However, there is no precise definition of the type of vulnerability and how compliance with labor rights would be guaranteed, particularly regarding the role that the business sector has played in the systematic violation of human and labor rights.

Given the current political climate and the historical context in which temporary migration exists, it is important to recognize that both state and business actors can contribute to improving the recruitment and hiring conditions for temporary migrant workers across product supply chains. It is necessary to advocate not only for mechanisms of transparency and open access to government information, but also to promote corporate accountability processes throughout supply chains, as proposed by ProDESC's RADAR Program.

It is also important to take into account the political agendas created by temporary migrant workers themselves. There are numerous organizational models, such as the Coalition of Sinaloan Temporary Migrant Workers and their creation of their own Migrant Worker Assistance, Counsel, and Support Center, which serve as examples of how grassroots organizations of workers can bring their collective power to demand the guarantee, protection and promotion their labor rights.

⁶⁵ "States must adopt additional measures of protection against human rights violations committed by companies that they own or under their control, or that receive important support and services from state agencies, such as official export credit agencies and official agencies. insurance or investment guarantee, requiring, where appropriate, due diligence on human rights" (UN, 2011)

⁶⁶ Final text USMCA, Chapter 23, Labor. <https://www.gob.mx/cms/uploads/attachment/file/465805/23Laboral.pdf>

ANNEX I: RECOMMENDATIONS TO DECISION MAKERS.

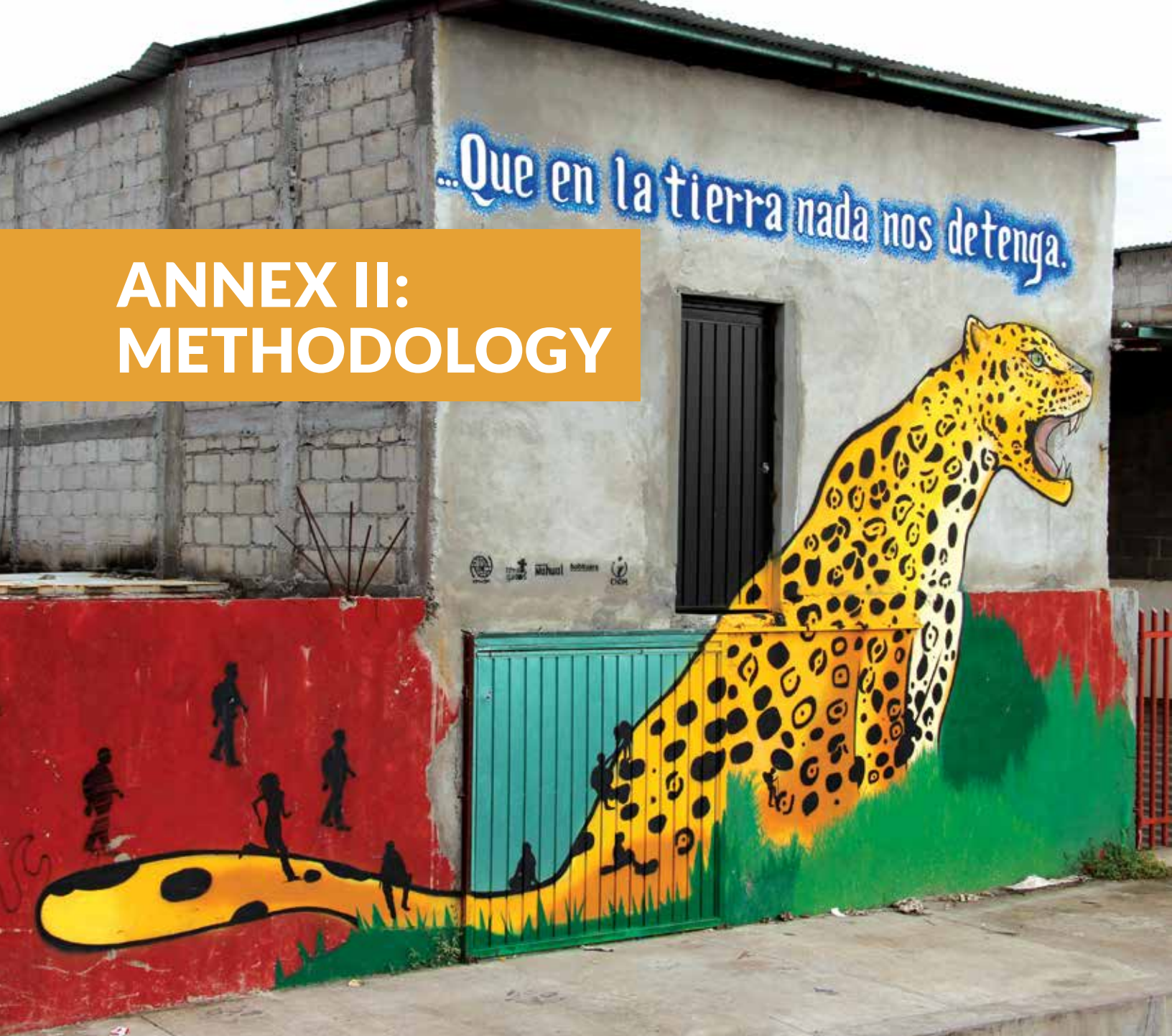


As evidenced throughout this report, temporary migrant work under the H-2 visa system is embedded in a series of structural dynamics that lead to human and labor rights violations that reinforce precarious employment and living conditions. This exacerbates situations of inequality and exclusion for migrants in both Mexico and the U.S.

ProDESC proposes a series of recommendations aimed at government-level decision makers in order to improve the working conditions of temporary migrant workers of Mexican origin:

- **Adopt of a national legislative framework that includes a focus on the human and labor rights of temporary migrant workers.**
- **Review and renegotiate the H-2 A/B visa system** through bilateral coordination between the Mexican and American governments.
- **Mandate participation of Mexico's National Employment Service** in the H-2 visa system recruitment process.
- **Demand that corporations be held accountable for human rights due diligence across the labor supply chain in the recruitment processes of temporary migrant workers.**
- **Incorporate a gendered and intersectional approach** when analyzing and implementing actions directed towards temporary migrant workers.
- **Promote the creation of transnational and national temporary migrant workers' support organizations**, such as the Coalition of Sinaloa Temporary Migrant Workers.
- **Generate mechanisms for dialogue between temporary migrant workers**, civil society organizations, trade unions, and academics.
- **Create mechanisms for intergovernmental collaboration and communication** between state governments, municipal governments, and different intragovernmental government institutions that address the issue of temporary migrant work (such as the National Institute of Migration, Ministry of the Interior and Ministry of Labor and Social Welfare, and Ministry of Foreign Relations) with the purpose of coordinating actions aimed at guaranteeing the human and labor rights of the temporary migrant population.
- **Establish media campaigns about the rights of temporary migrant workers.**
- **Advocate for discussion of temporary migrant work** from a human and labor rights perspective on the national political agenda.

ANNEX II: METHODOLOGY



The process of preparing this report consisted of two activities:

Desk research: Gathering, organizing and analyzing information from registries, databases, studies and research that have addressed the problem of labor migration and its public documentation in Mexico and the United States, and;

Field work and participant observation: Conducted during the peri-

od of 2012-2019 through direct observations, field surveys, and through interviews with temporary migrant workers, organizations and legal services agencies in the United States.

There are four key elements addressed through the quantitative and qualitative analysis of the characteristics and problems identified across the four corridors:

1) Migration and industry context: We describe, in quantitative and qualitative measures, the labor market and industry characteristics across the U.S. and Mexican regions that make up the corridors in order

to identify factors that promote labor migration from Mexico, as well how industries profit in the destination states in the U.S.

2) Common abuses in the recruitment process: We identify cases of human rights violations that arise in the recruitment process, such as the collection of fees, threats, sexual harassment, or blacklists.

3) Recruitment fraud: We describe the most common practices carried out by agencies or recruiters to attract workers with false job offers in the United States.

4) Workplace conditions: We document the abuses and labor rights violations that occur after workers arrive at U.S. workplaces, primarily those related to safety, hygiene, housing, wages and other benefits, as well as sexual harassment and abuse against working women.

In the Sinaloa-Louisiana corridor, ProDESC held interviews and a workshop with members of the Coalition of Sinaloan Temporary Migrant Workers and conducted additional documentary and database research.

In the case of Hidalgo-Mississippi, ProDESC held interviews and a workshop with a group of workers from Pisaflores, Hidalgo and other municipalities of the Huasteca

region of Hidalgo who go to Vardaman, Mississippi every year to work in sweet potato cultivation and harvest of sweet potato. Desk and database research was also conducted, and information was also collected from Southern Migrant Legal Services.

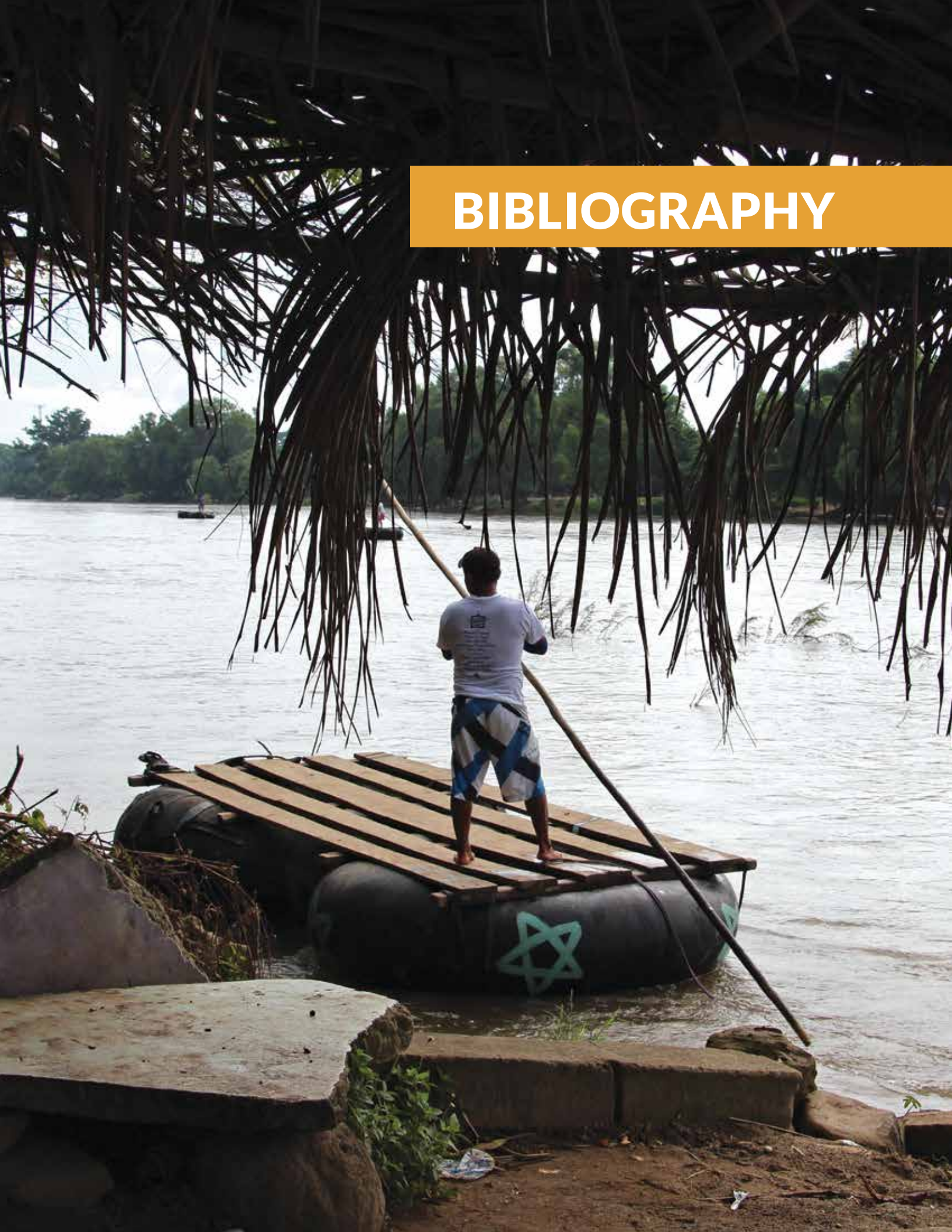
For the San Luis Potosí-Georgia corridor, ProDESC documented cases of workers from Tamazunchale, San Luis Potosí who go every year to southern Georgia to perform agricultural work. ProDESC also conducted documentary and database research, and analyzed information provided by the Georgia Legal Services Program and the Southern Poverty Law Center.

In the case of the Oaxaca-California corridor, a documentary and database investigation was carried out, as well as interviews and information gathering in California. The information gathering process was carried out in northern California, particularly in Sonoma County, through open interviews with the migrant population and with personnel in charge of non-governmental organizations that are involved with the various problems faced by the Mexican migrant population in the region.

In addition, ProDESC attended the worker assemblies of the Graton Day Labor Center in West Sonoma County, in which workers (both undocumented and with temporary work visas) exposed a variety situation they faced in the region. ProDESC attended weekly meetings with the ALMAS group (Alianza de Mujeres Activas y Solidarias) at Graton Day Labor Center, which consists of workers in domestic and agricultural work. During the meetings, they exposed the particularities of their day-to-day work experiences.

Open interviews were conducted with the organizations North Bay Jobs with Justice, California Legal Rural Assistance, and De Colores, three organizations that are directly involved with the issue of migrant labor rights.

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