


# Measures of Assistance and Protection for Victims of Trafficking for Labour Exploitation in the Agricultural Sector

Daniel Werner  
Deputy Director  
Immigrant Justice Project  
Southern Poverty Law Center  
Atlanta, Georgia  
USA



# 5-Minute Primer on Labour Protections (USA)

- General Protections
- Special Farm Labour Protections

# Primer on Labour Protections (USA)

- General Protections

- Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”)
- Fair Labor Standards Act (“FLSA”)
- Racketeer Influenced and Corrupt Organizations Act (“RICO”)
- Employment Discrimination Laws
- Alien Tort Claims Act (“ATCA”)
- Occupational Safety and Health Act (“OSHA”)

# Primer on Labour Protections (USA)

- Special Farm Labour Protections
  - Migrant and Seasonal Agricultural Worker Protection Act (“AWPA”)
  - State laws
  - Guestworker regulations

# Key Factors Leading to Farm Labour Trafficking/Exploitation (USA)

- Exclusion from certain labor laws
- Immigration status
- Isolation/Inaccessibility of information & advocates
- Seasonality
- Migration
- Non-enforcement
- Multiple dependencies
- Discrimination in workplace and communities
- Language

# Exclusion from Certain Labour Laws

- Federal collective bargaining/unionization protections
- Federal overtime requirements
- More lenient federal child labour laws
- H-2A guestworker exclusion from AWPAs
- Some state laws, including some workers' compensation (workplace injury insurance) laws.

# Immigration Status

- Irregular/undocumented migrants
- Guestworkers
- Permanent residents/U.S. Citizens

# Immigration Status

- Irregular/undocumented migrants
  - Covered by labour laws and full access to courts.
  - Undocumented status kept secret in most proceedings.

BUT

- Heightened immigration enforcement forces undocumented migrants into shadows.
- Ineligible for federally-funded legal services (except trafficking victims)



# Immigration Status

- Irregular/undocumented migrants

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

04 DEC -2 PM 4:26

UNITED STATES OF AMERICA :

U.S. DISTRICT COURT  
WESTERN DISTRICT

-v- :

MARIA I. GARCIA, :

02-CR-110-S

Defendant. :

## PLEA AGREEMENT

The defendant, MARIA GARCIA, and the United States Attorney

# Immigration Status

- Guestworkers
  - H-2A visa holders (“H-2A workers”)
  - H-2B visa holders (“H-2B workers”)

# Immigration Status

- Guestworkers
  - H-2A visa holders (“H-2A workers”)
    - Seasonal agricultural workers
      - Traditional field/orchard work
      - Some secondary agriculture (packing, irrigation, etc.)
      - Some livestock work
    - No portability
    - Often high recruitment fees
    - Extensive regulatory protections/No AWPA coverage

# Immigration Status

- Guestworkers
  - H-2A visa holders (“H-2A workers”)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
CASE NO. \_\_\_\_\_**

Muangmol Asanok, Bunthom Fakthaisong, )  
Manat Inthirit, Waeo Kaewsang, Sonthaya )  
Kamonkhorn, Worawut Khansamrit, Jaroon )  
Kitjakan, Chinnawat Kompeemay, Thongsuk )  
Manichantha, Poochit Naentaisong, Suradet )  
Phaengbutdee, Thana Phakhokthom, Bunmee )  
Phaniphat, Montree Phothi, Pornpot )  
Phromchuen, Suppachai Phromwong, Nathee )  
Simluang, Somboon Teebnoidee, Surachai )  
Wannasiri, Pradit Wiangkham, Narin )  
Yiamcharoen, and Surachi Yot On, )

Plaintiffs, )

vs. )

Million Express Manpower, Inc., Seo )  
Homsombath, Roy Raynor, Sombourne )  
Chinlasith, Howell Farms, Inc., Million )  
Express Manpower, Ltd., and Tsai Rong-Fa, )

Defendants. )

**COMPLAINT**

# Immigration Status

- Guestworkers
  - H-2A visa holders (“H-2A workers”)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-01043-WYD-MJW

ELIESER YAEL VELASQUEZ CATALAN, et al.,

Plaintiffs,

v.

VERMILLION RANCH LIMITED PARTNERSHIP, et al.,

Defendants.

---

**ORDER REGARDING  
PLAINTIFFS’ MOTION FOR PROTECTIVE ORDER PURSUANT TO  
FED. R. CIV. P. 26(C) (DOCKET NO. 104)**

# Immigration Status

- Guestworkers
  - H-2B visa holders (“H-2B workers”)
    - Temporary/seasonal “non-agricultural” workers
      - Forestry
      - Nurseries
      - Some packing sheds
      - Seafood processing
      - Landscaping
    - Often high recruitment fees
    - No portability
    - Few regulatory protections/AWPA coverage for some

# Immigration Status

- Guestworkers
  - H-2B visa holders (“H-2B workers”)

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

AGUILAR, ET AL	:	
Plaintiffs,	:	
	:	CIVIL ACTION NO.
v.	:	3-07-cv-193 (JCH)
	:	
IMPERIAL NURSERIES, ET AL	:	MAY 28, 2008
Defendants.	:	

## **RULING RE: PLAINTIFFS MOTION FOR DEFAULT JUDGMENT (DOC. NO. 67)**

The court found defendants Pro Tree Forestry Services, William Forero, and Hernando Aranda (collectively “defendants”) in default on November 1, 2007 for failure

# Recommendations

- Equal access to courts
- Regularization/social services for trafficking victims
- Equal coverage under labour laws
- Portability
- Monitoring/licensing of labour contractors and recruiters
- Grower liability



# Contact Information

Daniel Werner  
Immigrant Justice Project  
Southern Poverty Law Center  
233 Peachtree Street, Suite 2150  
Atlanta, Georgia 30303  
United States of America  
Tel: +1(404) 221-5834  
Fax: +1(404) 221-5835  
[daniel.werner@splcenter.org](mailto:daniel.werner@splcenter.org)