



**ATTORNEYS UNITED**  
*for a* **SECURE AMERICA**

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VIA Federal eRulemaking Portal: <https://www.regulations.gov>.

Kimberly Vitelli, Administrator,  
Office of Workforce Investment,  
Employment and Training Administration,  
Department of Labor, Room C-4526, 200  
Constitution Avenue NW, Washington, DC 20210

**DOL Docket No. ETA-2023-0003: Improving Protections for Workers in Temporary Agricultural Employment in the United States**

Dear Administrator Kimberly Vitelli:

Attorneys United for a Secure America (AUSA) respectfully submits the following public comment in response to the notice of public rulemaking (NPRM) issued by the U.S. Department of Labor (DOL) and published in the Federal Register as 29 CFR Part 501. See “Improving Protections for Workers in Temporary Agricultural Employment in the United States”.

AUSA is a nationwide network of attorneys, law students, investigators and paralegals who support strong enforcement of federal immigration law and protecting the United States' sovereignty. AUSA exists to put the American people's needs first when enforcing U.S. immigration law. This includes prioritizing national security, defending our country's border, and safeguarding the public across the nation from the harms and challenges posed by mass migration, both lawful and unlawful, to the United States. AUSA is a project of the Immigration Reform Law Institute (IRLI), a 501(c)(3) public interest law firm incorporated in the District of Columbia.

AUSA works to monitor and hold accountable federal, state, and local government officials who undermine, fail to respect or fail to enforce our national immigration and citizenship laws. This includes foreign labor and its impacts on American workers. AUSA also provides expert immigration-related legal advice, training, and resources to public officials, the legal community, and the general public.

## **I. Summary**

In the proposed rule change for "Improving Protections for Workers in Temporary Agricultural Employment in the United States", the U.S. Department of Labor makes several recommendations, which, while good intentioned, will create more fraud and abuse. As for employer business protections, the H2A and H4 visa programs lack oversight and are also prone to abuse.

The agriculture industry often relies on foreign workers, both legal immigrants and illegal aliens, even though increased automation of agricultural equipment usually replaces the need for workers. The H2A and H4 visa programs need more oversight regarding the data collection of H2A and H4 visa holders. The proposed regulations must require the verification and oversight necessary to protect both Americans and foreign workers as well as agricultural businesses, such as whether the foreign laborers are still working or have left the area. Without proper verification, foreign workers and agricultural businesses are at risk of various abuses and fraud. The proposed rule does nothing to curtail either. Foreign workers are often vulnerable to human trafficking and unscrupulous employers who take advantage of them. The proposed rules now also make agricultural businesses prone to abuse by unscrupulous workers and their unions. The result will be the loss of many agricultural businesses, higher prices for struggling Americans, and further destruction of the United States' fragile economy.

AUSA will address the historical context of foreign agricultural workers and immigration along with statutory interpretation explaining why this rule change should not be adopted. AUSA will also provide recommendations to achieve the U.S. Department of Labor's statutory goals.

## **II. History and Discussion of Temporary Agricultural Employment**

During the Great Depression of the 1930s, unemployed Americans worked as temporary migrant farm workers, particularly in Georgia, Florida, and California, which have longer growing and harvest seasons. Americans also worked in agricultural fields in other states to a lesser degree. "At the height of the Depression in 1933, 24.9% of the total work force or 12,830,000 people" were unemployed."<sup>1</sup> Farmers who lost their farms and homes due to the Great Depression were not counted in these unemployment figures. As such, the unemployment rate was much higher. Food shortages also increased the cost for struggling Americans. As a result, wages were lower as finding work became harder.

In 1933, the Wagner-Peyser Act<sup>2</sup> was enacted to assist Americans to find work during the Great Depression. The law was later amended several times, including by the Workforce Investment Act of 1998<sup>3</sup> and again in 2014 with the Workforce Innovation and Opportunity Act. The goal of these amendments was to increase employment opportunities, employee retention and reduce

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<sup>1</sup> <https://www.fdrlibrary.org/great-depression-facts>

<sup>2</sup> <https://www.dol.gov/agencies/eta/performance/results/wagner-peyser>

<sup>3</sup> <https://www.federalregister.gov/documents/2000/08/11/00-19985/workforce-investment-act>

welfare dependency. See 20 C.F.R., §651. All of these amendments were intended to assist U.S. workers; not foreign workers.

The proposed changes purport to "strengthen protections for workers in the event the employer must delay the start date due to unforeseeable conditions like travel delays or crop conditions at the time work is supposed to begin, and to clarify and strengthen the discontinuation of services regulation. Other changes include additional transportation safety requirements and additional disclosures of terms and conditions of employment to agricultural workers". While these are significant changes, there are no corresponding rule protections for American farm workers, creating lop-sided benefits and protections for foreign workers. Providing protections for American workers is of critical importance as temporary workers should always be treated as such and sent back to their homeland upon completion of their contracts.

DHS alleges that it will "codify USCIS's authority to conduct site visits and clarify that refusal to comply may result in denial or revocation of the petition." How will this be accomplished? As evidenced by the *Bracero* program<sup>4</sup>, government agencies often failed to conduct site visits. The proposed revisions, in order to be effective, must describe how these site visits will actually be conducted and how often or whether they leave room for government mismanagement. What recourse will the public have in ensuring the program is being run as proposed? While the revision allows farm workers to report poor labor conditions, how will the workers' complaints be verified? While employers have consequences for failing to comply with the regulations, will there be consequences for intentional false or misleading complaints? Finally, the costs of implementing the rule change appear to be underestimated. As a result, there will be higher production costs and already struggling American consumers will pay more through increased food prices.

Additionally, "DHS proposes to clarify that if an H-1B worker will be staffed to a third party, meaning they will be contracted to fill a position in the third party's organization, it is the requirements of that third party, and not the petitioner, that are most relevant when determining whether the position is a specialty occupation." There are several concerns with this. First, how are third parties verified, including verification that third parties are not human traffickers? On October 25, 2023, Senator Josh Hawley questioned Ms. Robin Dunn Marcos, HHS Administrator, under oath, about the over 85,000 missing migrant children who often end up in agriculture and forced slave labor. Adult farm workers are also prone to become victims of human trafficking. The proposed rule fails to address protections from human traffickers or the enforcement procedures to arrest these human traffickers.

### **III. Recommendations**

A potential solution to protect foreign farm workers and agricultural businesses would be re-instituting an improved version and new name for the "*Bracero*" program.<sup>5</sup> From 1942 to 1964, the *Bracero* (manual laborer) program provided opportunities for foreigners to legally work in the United States on short-term labor contracts. Companies would interview and inoculate workers in their country and then fly them to their businesses in the United States. Farm laborers

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<sup>4</sup> <https://guides.loc.gov/latinx-civil-rights/bracero-program>

<sup>5</sup> <https://guides.loc.gov/latinx-civil-rights/bracero-program>

were also provided housing, food, and medical care thus alleviating competition for housing. The intention of the *Bracero* program was for the U.S. Department of Labor (who administered the oversight and contracts), independent farmer associations, and agricultural businesses to provide this at no extra charge to the laborers. The United States and Mexico agreed on a set of protocols that would protect Braceros from discrimination and poor wages. During that time, the U.S. Department of Labor failed to properly oversee the program, and unscrupulous businesses took advantage. The program, was discontinued in 1964 due to increased mechanization which replaced the need for much of the foreign labor force.

Since agricultural mechanization has continued to increase nationwide, foreign agricultural workers are needed less. The number of unemployed Americans has risen steadily. Therefore, Americans workers, and not foreign workers, should do this work to reduce unemployment and other problems that coincide with unemployment, such as homelessness, crime, and mental health issues.

#### **IV. Summary**

This proposed rule change will become untenable and unfair to American agricultural workers and businesses. While the proposed revisions claim to stop fraud and abuse on behalf of foreign temporary workers, there are no stated protections for American workers. Any time regulations benefit foreigners over American workers, such as these proposed regulations, American wages are suppressed. The other consequence is that there are no requirements for the agricultural industry to provide housing for their workers. This will impact scarce housing resources and force Americans to compete with migrants for affordable housing. Considering the massive and historic rise in unlawful border crossings and increasing inflation with stagnant wages for Americans and lawful immigrants, this proposed rule would be the equivalent of squeezing blood out of a stone. We respectfully request that this proposed rule be withdrawn and revised to include more protections for American farm laborers and actual oversight in the hiring of temporary foreign laborers.

American businesses taking advantage of these illegal immigration influxes will also damage wages for Americans throughout the nation. Enforcement of visa overstays and the risks of visa fraud are not included in the revisions and must be to ensure success of any foreign labor program. DOL must also implement reporting of the visa totals based on state-by-state basis to determine a more accurate assessment. American agricultural workers should be the greatest priority, while also ensuring protections for foreign laborers.

Respectfully submitted,

By Mr. Samuel Whatley, ABD Ph.D. Crim. Just. -Lead.,  
On behalf of Attorneys United for a Secure America

and

By Lorraine G. Woodwark, Director of AUSA,  
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