

*The Save our Small and Seasonal Businesses Act of 2015 (S. 2225)*¹

On Friday, October 30, 2015, U.S. Senators Thom Tillis (R-N.C.), Barbara Mikulski (D-Md.), Mark Warner (D-Va.), and Bill Cassidy (R-La.) introduced the *Save our Small and Seasonal Businesses Act of 2015* (S. 2225). This bill represents a flawed approach that would deprive U.S. workers of job opportunities, lower already poor wages for guestworkers and domestic workers, and allow exploitative conditions in the workplace.

The bill proposes significant changes to the H-2B temporary work visa program, which allows U.S. employers to hire foreign workers to fill low-wage seasonal jobs in industries such as landscaping, forestry, seafood processing, hotels and hospitality, carnivals and construction. The H-2B program is notoriously abusive as cited in numerous reports and legal cases.² Typically, H-2B workers are charged illegal recruitment fees for the opportunity to work in the United States. Because the workers arrive indebted, they are desperate to work to repay their debt. The workers are tied to a single employer for an entire season and must leave the country when the job ends, hoping that the employer will request a visa for them in a following year. All of these factors leave workers

¹ The following organizations and individuals are members of the International Labor Recruitment Working Group (ILRWG): AFL-CIO; American Federation of Teachers (AFT); Janie Chuang and Jayesh Rathod from the American University, Washington College of Law; Centro de los Derechos del Migrante, Inc. (CDM); Coalition to Abolish Slavery and Trafficking (CAST); Department for Professional Employees (DPE); Economic Policy Institute (EPI); Farmworker Justice; Farm Labor Organizing Committee; Friends of Farmworkers; Jennifer Gordon from Fordham University School of Law; Patricia Pittman and Susan French from George Washington University; Global Workers Justice Alliance; National Domestic Workers Alliance; National Employment Law Project; National Guestworker Alliance, New Orleans Workers' Center for Racial Justice; Polaris; Safe Horizon; Service Employees International Union; Solidarity Center; Southern Poverty Law Center; UniteHere! International Union; Jennifer Hill from the University of Miami, School of Law; and Verité.

² See Centro de Los Derechos del Migrante, Inc. and American University, Washington College of Law, *Picked Apart: The Hidden Struggles of Migrant Worker Women in the Maryland Crab Industry* (2011), available at <http://www.cdmigrante.org/wp-content/uploads/2012/01/PickedApart.pdf>; Centro de los Derechos del Migrante, Inc., *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Programs and Recommendations for Change* (2013), available at http://www.cdmigrante.org/wp-content/uploads/2013/01/Recruitment-Revealed_Fundamental-Flaws-in-the-H-2-Temporary-Worker-Program-and-Recommendations-for-Change.pdf; Centro de los Derechos del Migrante, Inc. and American University, Washington College of Law, *Taken for a Ride: Migrant Workers in the U.S. Fair and Carnival Industry* (2013), available at http://www.cdmigrante.org/wp-content/uploads/2013/02/110145_Taken_for_a_Ride_Report_Final.pdf; Southern Poverty Law Center, *Beneath the Pines*; Southern Poverty Law Center, *Close to Slavery*; Jessica Garrison, *The New American Slavery: Invited to the US, Foreign Workers Find a Nightmare*, Buzz Feed, July 24, 2015. See also *David v. Signal Int'l, LLC*, 257 F.R.D. 114 (E.D. La. 2009) (H-2B visa welders and fitters trafficked to Gulf Coast); *United States v. Askarkhodjaev*, No.4:09-CR-00143 (W.D. Mo. May 27, 2009) (H-2B hospitality workers); *United States v. Manuel Baldonado*, 9:10-cr-80057-KAM (S.D. Fl. 2010); *Moodie v. Kiawah Island Inn Co.*, No. 15-1097 (D.S.C. 2015) (H-2B hospitality workers).

extremely vulnerable to abuses that go unreported due to fear of retaliatory firing and deportation.

If passed, the proposed legislation would roll back critical protections for U.S. and H-2B workers alike. Among other damaging provisions, the legislation would:

- Expand the size of the H-2B program while reducing oversight;
- Reduce wages and hours to H-2B workers and the U.S. workers working alongside them;
- Reduce requirements for recruitment of U.S. workers so U.S. workers get the first chance at jobs;
- Eliminate transparency in international labor recruitment;
- Eliminate the minimal protections in the H-2B program;
- Limit employer accountability during the international labor recruitment process;
- Increase upfront costs borne by workers, resulting in their prolonged indebtedness on the job; and
- Remove protections for workers who seek to access legal support.

In sum, the bill would drive down wages and working conditions for U.S. workers and guestworkers alike and leave H-2B workers vulnerable to recruitment abuses, workplace rights violations, and human trafficking.

Following years of litigation, the Departments of Labor and Homeland Security published new rules for the H-2B program in April 2015. The new regulations establish *basic* protections for H-2B workers and U.S. co-workers of H-2B workers by guaranteeing a baseline wage and number of hours for workers, requiring employers to cover visa and travel fees to prevent workers from falling into debt, and creating minimal transparency in the labor recruitment process with the goal of reducing recruitment fraud and the practice of charging workers illegal fees. The proposed legislation would repeal these essential protections.

Now that the Department of Labor has implemented these rules, the employers are complaining that the program is too burdensome. Instead of taking DOL's recommendations to lobby Congress for increased appropriations and fees that DOL can use to administer the program more effectively, employers are recommending that DOL's participation be scrapped entirely, so they can have a cheaper source of labor. S.2225 would allow some H-2B employers to pay lower wages, undercutting law-abiding employers who try to offer good jobs and decent wages in these industries.

The workers who plant our trees, care for our lawns, process our seafood, and build our homes should not be treated like commodities and deprived of our nation's economic and democratic freedoms. If the U.S. needs immigrant workers in these industries, the workers should be extended strong labor protections.