

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

May 3, 2022

The Honorable Jon Ossoff
United States Senate
Washington, DC 20510

Dear Senator Ossoff:

Thank you for your March 1, 2022 letter regarding misuse of the H-2A program.

I share your concern over the tragic events, including the deaths of two H-2A workers, that led to the recent federal indictment, and agree that no worker should be subjected to similar or other forms of abuse. We are proud of the investigative work done by U.S. Immigration and Customs Enforcement (ICE) agents related to this operation and are focused on ensuring that nothing like this happens again.

On October 12, 2021, I issued Policy Statement 065-06 “Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual.” The memorandum recognizes the harms that unscrupulous employers inflict on the noncitizen workers they exploit, the business competitors they undercut, and the U.S. workers they undermine. It also underscores the critical role the Department plays in ensuring that our nation’s workplaces comply with our laws. In response to my memorandum, ICE, U.S. Citizenship and Immigration Services (USCIS), and U.S. Customs and Border Protection (CBP) have developed—and are rapidly implementing—action plans that deliver more severe consequences to exploitative employers, increase the willingness of workers to report violations of law, and broaden collaboration with federal, state, and local labor enforcement agencies. Moreover, the Department plans to undergo rulemaking to reform the H-2A and H-2B programs, with a focus on addressing aspects of the program that may result in the exploitation of persons seeking to come to this country as H-2A and H-2B workers.

DHS is dedicated to ensuring the integrity of the immigration process and works tirelessly to deter and detect fraud and abuse in all immigration programs. USCIS routinely collaborates with the Department of Labor and other partner agencies when fraud or abuse is suspected and will continue those efforts to help ensure noncitizen workers are not exploited or forced into labor.

Thank you again for your letter and attention to this critically important issue. I look forward to working together to ensure that H-2A and H-2B guestworkers in our country are treated lawfully and with the dignity they deserve.

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Enclosed, you will find more detailed answers to the questions you posed in your letter. Should you require any additional assistance, please contact me, or have your staff contact the DHS Office of Legislative Affairs at (202) 447-5890.

Sincerely,

A handwritten signature in black ink, appearing to read "Alejandro N. Mayorkas". The signature is fluid and cursive, with the first name being the most prominent.

Alejandro N. Mayorkas
Secretary

Enclosure

**The Department of Homeland Security's Response to
Senator Jon Ossoff's March 1, 2022 Letter**

1. What actions are your agencies taking to expose similar cases and prevent these abuses in the future?

On October 12, 2021, I issued Policy Statement 065-06 "Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual." In response to this memorandum, U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) are undertaking several actions to better protect vulnerable workers against exploitative businesses. For instance, CBP is providing information to H-2 entrants about their rights as workers in the United States, and ICE is updating its worksite enforcement priorities to focus on unscrupulous employers. Together with the DHS Center for Countering Human Trafficking (CCHT), the ICE Homeland Security Investigations (HSI) Labor Exploitation team has also developed a counter-trafficking strategy involving new trainings and greater resources focused on forced labor cases. In addition, USCIS and ICE are supporting labor enforcement agency investigations by considering, on a case-by-case basis, requests for immigration relief for victims of, and witnesses to, labor exploitation.

2. Has the government revoked or suspended the H-2A licenses of the employers accused of wrongdoing by the Operation Blooming Onion indictment? If not, why not?

DHS defers to the Department of Labor (DOL) on action taken against these employers for labor violations. However, we do note that the petitions related to the indicted parties have already passed their validity dates.

3. How and when will your agencies revise the H-2A program regulations to address the problems exposed by Operation Blooming Onion?

DHS plans to issue a notice of proposed rulemaking that will reform the H-2A and H-2B nonimmigrant worker programs. The proposed rule will incorporate policies that produce program efficiencies, address aspects of the program that may result in the exploitation of persons seeking to come to this country as H-2A and H-2B workers, build upon existing protections against prohibited payments and fees or salary deductions by H-2A and H-2B workers in connection with recruitment and/or employment, and protect the rights of both U.S. and noncitizen workers.

4. Given that the H-2A program involves multiple agencies, what steps are you taking to improve interagency communication during the application process and as problems arise? Have you considered the establishment of an interagency taskforce to identify issues in the H-2A program to help ensure the prevention of trafficking cases and other worker abuses?

On December 3, 2021, President Biden released the updated National Action Plan to Combat Human Trafficking. The National Action Plan outlines a three-year comprehensive plan for a whole-of-government approach to combat human trafficking, including actions to strengthen prosecution of traffickers, enhance victim protections, and prevent trafficking from occurring within our borders and abroad. The federal agencies of the President's Interagency Task Force to

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Monitor and Combat Trafficking in Persons, a statutorily created cabinet-level task force, are committed to implementing the National Action Plan consistent with their roles and authorities, individually and collaboratively. Through implementation of the National Action Plan, federal agencies seek to identify improvements in the H-2A program, including recommending statutory changes to Congress.

For instance, in response to the action plan, the interagency has established a working group to analyze the rights and protections granted to workers admitted in temporary employment-based nonimmigrant visa classifications and will work to develop solutions for addressing gaps in those protections. The National Action Plan also calls for DHS, DOL, and the State Department to identify what procedural improvements can be made so that temporary foreign workers may leave potentially exploitative situations while retaining their employment flexibility. If the improvements that can be identified go beyond that which is permissible by statute, the agencies will recommend statutory changes to Congress.

As the United States continues to collaborate with countries in the region to address the acute and long-term drivers of irregular migration, it must simultaneously ensure our efforts to expand legal migration pathways are viable and safe. As part of this collaborative effort, U.S. federal agencies, while advocating to expand legal migration pathways, are at the same time seeking to ensure legal pathways do not exacerbate vulnerabilities that traffickers exploit. Such efforts include encouraging countries to strengthen laws and policies that prohibit the charging of worker-paid recruitment and certain other employment-related fees, as well as other unscrupulous recruitment and employment-related tactics that increase vulnerability to trafficking. Efforts should also include increasing resources to respond to the anticipated influx of vulnerable migrant workers, expanding oversight of labor recruiters and employers, and strengthening enforcement of related laws and regulations.

DHS is dedicated to ensuring the integrity of the immigration process and works tirelessly to deter and detect fraud in all immigration programs. In addition to DHS's general enforcement authority to ensure compliance with U.S. immigration law, including the integrity of the H-2A petition process, *see, e.g.*, 8 U.S.C. § 1103(a), we note that in the case of H-2A visas, Congress specifically vested additional enforcement authority with the Secretary of Labor, *see* 8 U.S.C. § 1188. DOL and USCIS are both important players in enforcing laws related to the H-2A program, and as such, the two agencies collaborate, as necessary, in addressing specific instances where U.S. employers fail to comply with the terms and conditions of an H-2A petition and/or the underlying supporting temporary labor certification. USCIS routinely collaborates with DOL and other partner agencies when fraud, waste, or abuse is suspected and will continue those efforts to help ensure noncitizen workers are not exploited or forced into labor.

We note, as well, that the Immigrant and Employee Rights Section of the Department of Justice's Civil Rights Division (DOJ IER) is responsible for civil enforcement action against employers who unlawfully discriminate against U.S. workers to hire noncitizen workers. *See* 8 U.S.C. § 1324b. USCIS continues to collaborate with both DOL and DOJ IER, as well as the U.S. Department of State, when fraud or abuse is suspected. However, DHS defers to these agencies for more detailed responses regarding their enforcement authorities.

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5. Are there any laws, regulations, practices, or procedures that hinder interagency cooperation to identify, investigate, stop or prevent exploitation of H-2A workers?

Consistent with the previously mentioned Policy Statement 065-06, DHS, including USCIS, is actively reviewing existing laws, regulations, practices, and procedures to identify ways in which it can facilitate the important work of federal and state government agencies to enforce wage protections, workplace safety, labor rights, and other laws and standards.

6. Will the Administration work to quickly implement reforms to improve oversight, increase interagency coordination, and establish a better way for workers to report abuse, if it expands the H-2A program?

DHS is actively exploring reforms, both short-term and long-term, to improve oversight over the H-2A program and facilitate the participation of H-2A workers in labor exploitation investigations.

7. What additional actions will the Administration take to protect potential H-2A workers both during recruitment and once they have arrived and are working in the U.S.?

Beyond the actions outlined above in response to question #1, DHS is actively reviewing existing laws, regulations, practices, and procedures to identify ways in which it can facilitate the important work of federal and state government agencies to enforce wage protections, workplace safety, labor rights, and other laws and standards.

8. What plans do you have to ensure H-2A workers are aware of and able to access this protection?

During the visa interview or prior to receiving a visa, H-2A nonimmigrant visa applicants should receive a pamphlet advising them of their legal rights and resources available if they experience mistreatment, abuse or exploitation, available at the following url: <https://travel.state.gov/content/dam/visas/LegalRightsandProtections/Wilberforce/Wilberforce-ENG-100116.pdf>. In addition, CBP has begun providing this pamphlet directly to H-2 entrants at ports of entry with significant H-2 traffic.

USCIS also provides resources for vulnerable and exploited populations on our webpage *Resources for Victims of Human Trafficking and Other Crimes*, available at the following url: <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/resources-for-victims-of-human-trafficking-and-other-crimes>

9. Under what circumstances would victims of the Defendants' abuse be eligible to apply for and get full and fair consideration for a T or U visa?

T nonimmigrant status (commonly referred to as the T visa) provides temporary immigration status to eligible trafficking victims for up to four years. To qualify for T nonimmigrant status, applicants must demonstrate to USCIS that they: (1) are or have been a victim of a severe form of

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trafficking in persons; (2) are physically present in the United States, the Commonwealth of the Northern Mariana Islands, or American Samoa, or at a port of entry to the United States, on account of such trafficking; (3) have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking (or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime), unless they are less than 18 years old or are unable to cooperate due to physical or psychological trauma; (4) would suffer extreme hardship involving unusual and severe harm upon removal from the United States; and (5) are admissible to the United States or qualify for a waiver of any applicable grounds of inadmissibility.

U nonimmigrant status (commonly referred to as the U visa) provides temporary immigration status to certain victims of qualifying crimes who assist law enforcement in the detection, investigation, prosecution, sentencing, or conviction of those crimes. To qualify for U nonimmigrant status, petitioners must demonstrate to USCIS that they: (1) have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity; (2) possess information concerning the qualifying criminal activity; (3) have been helpful, are being helpful, or are likely to be helpful to law enforcement or other officials in the investigation or prosecution of the qualifying criminal activity; (4) the qualifying criminal activity occurred in the United States (including Indian country, military installations, possessions and territories), or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court; and (5) are admissible to the United States or qualify for a waiver of any applicable grounds of inadmissibility.

USCIS reviews each T visa application and U visa petition on its own merits, under the any-credible-evidence standard.

10. If a victim applies for a T or U visa, what are you doing to ensure those applications are processed fairly and quickly? Will you commit to ensuring eligible applicants can schedule timely and efficient appointments with your Department?

On October 20, 2021, USCIS issued updated policy guidance in Volume 3, Part B and Volume 9, Part O of the Policy Manual. The T Visa Policy Manual update provides comprehensive guidance on eligibility requirements, evidentiary standards, burdens of proof, admissibility determinations, travel considerations, and confidentiality protections. The T Visa Policy Manual update also clarifies many agency policies for victims of trafficking while emphasizing the victim-centered approach and reducing barriers for noncitizen victims of trafficking seeking immigration relief.

Beginning on June 14, 2021, USCIS began to conduct U bona fide determination (BFD) reviews authorized by statute at INA 214(p)(6). This new process provides employment authorization documents (EADs) and deferred action to noncitizens in the United States with pending, bona fide petitions for U nonimmigrant status who merit a favorable exercise of discretion. Recognizing the vulnerability of victims during the lengthy period petitioners wait to receive a U visa, which are limited by statute to 10,000 per fiscal year, the implementation of the BFD review better aligns the U program with its dual purpose as envisioned by Congress: stabilizing victims of crime and serving as a tool for law enforcement. *See USCIS Policy Manual Volume 3, Chapter 5, Bona Fide*

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Determination Process.

In addition, USCIS regularly evaluates processing improvements to ensure timely and efficient adjudication of T visa applications and U visa petitions.

Finally, USCIS schedules biometrics appointments as part of the intake process to ensure applicants and petitioners are afforded ample opportunity to satisfy biometric requirements.