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AGRICULTURAL LABOR TRAFFICKING IN THE U.S.: AN EXCHANGE NETWORK ANALYSIS

Dr. Gary J. Kowaluk*
ABSTRACT

Labor trafficking occurs when individuals are forced to work by force, fraud, or coercion. In the United States, agricultural labor trafficking is both widespread and underreported. It is often carried out by farm labor subcontractors, who conduct the labor trafficking on behalf of U.S. companies. Labor trafficking in U.S. agriculture continues year after year, as trafficked immigrant workers fear being further punished if they attempt to redress their workplace grievances. The H-2A visa system is designed to protect workers from labor trafficking abuses, but the system is ineffective and in need of reform. To learn more about agricultural labor trafficking and its relation to the H-2A visa system, our research team examined all the criminal and civil federal labor trafficking cases that took place from 2017 to 2021 as part of a year-and-a-half-long research project funded by the Department of Homeland Security in conjunction with the Criminal Investigative and Network Analysis (CINA) Center at George Mason University. After collecting data from legal documents associated with each case, we conducted a qualitative analysis to reconstruct the labor trafficking process in each case. We then applied exchange network theory to analyze the labor trafficking processes we found. We closed by critically evaluating the H-2A visa system and suggesting reforms to decrease the amount of labor trafficking each year based on the exchange network analysis we conducted. Given the lack of research on agricultural labor trafficking, our research was exploratory. It was also descriptive, in that we described how labor trafficking is carried out in the U.S, and it was explanatory, in that we closed with a theoretical explanation for labor trafficking.

INTRODUCTION

Agricultural labor trafficking involves the exploitation and coercion of immigrant workers, or the inability of workers to quit their jobs due to some form of force, fraud, or coercion. Described as “modern day slavery,” it is a major problem in the U.S. Our research focuses on labor trafficking by U.S. farmers and labor subcontractors who, under pressure to make profits, often commit forced labor crimes. Typically, the farmers or subcontractors portray themselves as legitimate employers and illegally charge immigrants fees in exchange for visas in their home country and transportation to work on a U.S.

2 Id. at 518-19; David Hess, Modern Slavery in Global Supply Chains: Toward a Legislative Solution, 54 CORNELL INT’L L. J. 247, 247-48 (2021); SOUTHERN POVERTY LAW CENTER, CLOSE TO SLAVERY: GUESTWORKER PROGRAMS IN THE UNITED STATES 1 (2013).
farm. More often than not, the immigrants will mortgage their family farms in order to secure loans to pay the recruiter fees. Once in the U.S., the farmers or subcontractors will then confiscate the immigrants’ visas and threaten to deport them if they do not meet the employers’ demands. Since most Mexican agricultural workers, for example, make less than $5 a day and only $1,200 a year in Mexico, they have no way of paying off these debts other than working the job offered to them in the U.S. Afraid they will be deported and lose their family farms, workers are then coerced into working long hours without pay and forced to work while undernourished and living in dirty, cramped housing. Immigrants are often subjected to verbal and physical abuse, including sexual assault and murder.

The crux of the matter is that the success of America’s agriculture industry is directly tied to immigrant labor. Generally, U.S. workers will not accept farm jobs offered to them by state agencies. Unlike other industries, U.S. agriculture is dependent on immigrant labor. Farmers can lose valuable crops without workers to harvest them, particularly if the crops are fresh

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7. Asbury, supra note 8, at 473 (discussing the high percentage of domestic workers referred by state agencies who did not accept the job offered to them); Bier, supra note 6.

8. Asbury, supra note 8, at 472 (discussing the dependence of agriculture on immigrant labor).
fruits and vegetables.\textsuperscript{11} Immigrant labor in agriculture is vital to both the U.S. and Latin American economies.\textsuperscript{12} In 2022, agriculture, food, and related industries contributed 5.5 percent to U.S. gross domestic product (GDP) and provided 10.4 \% of U.S. employment.\textsuperscript{13} Latin American countries also depend on the proceeds from immigrant labor.\textsuperscript{14} Most immigrant agricultural workers, both documented and undocumented, send money they earn in the U.S. back to their families in their countries of origin.\textsuperscript{15} In 2022, the International Monetary Fund reported that these transfers, called remittances, represented 4.2 \% of Mexico’s GDP and one-fifth of the national output in El Salvador, Haiti, Honduras, and Jamaica.\textsuperscript{16} In all, twelve countries in Latin America and the Caribbean receive at least five percent of their GDP through remittances from immigrant workers in the U.S.\textsuperscript{17}

Agricultural labor trafficking is a form of exploitation that results from the shortcomings of the U.S. government’s H-2A agricultural visa program, which provides the legal framework for admitting migrant workers.\textsuperscript{18} The program is set up to provide the U.S. agricultural sector with a steady supply of migrant labor to do the temporary jobs needed to harvest and market goods profitably.\textsuperscript{19} Designed to help migrant workers by providing them with assurance that U.S. Immigration and Customs Enforcement (ICE) agents will

\begin{footnotesize}
\begin{enumerate}
\item Dr. Ying Chen, \emph{Strengthening Immigration Support for Agricultural Labor Migration and Ending Modern Day “Harvest of Shame” A Comparative Study of the American and Australian Approaches}, 45 \textit{L. A. INTL. \\ & \textit{COMPARATIVE L. REV.}}, 19, 43 (2022) (discussing the struggle farmers are facing to find labor which results in rotting fruits and vegetables).
\item \textit{See Mexico Now Receives More Remittances Than China}, \textit{THE ECONOMIST} (Apr. 1, 2023), https://www.economist.com/the-americas/2023/03/30/mexico-now-receives-more-remittances-than-china?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=17210591673&ppcadID=&utm_campaign=a.22brand Plymouth&utm_content=conversion.direct-response.anonymous&kgad_source=1&gclid=Cj0KCQjiw0_WyBHdMARIsAL1VZa8u9NyJ42GqJ981WYUHoQSARIItmPnyGvwCnBYKSum0jYT8N6yVBaoAft3EALw_wcb&gclidEa=aw.ds.
\item \textit{Id.}
\item \textit{Mexico Now Receives More Remittances Than China, supra note 14.}
\item \textit{Id.}
\item See \textit{Bier, supra note 6.}
\end{enumerate}
\end{footnotesize}
not detain them, deport them, or separate them from their families, the H-2A visa system requires that employers pay immigrant workers minimum wages and provide them with free transportation to the work site from their home country and free accommodations.\textsuperscript{20}

While it promises to help immigrant workers, the H-2A visa system favors U.S. employers.\textsuperscript{21} For example, while U.S. Citizenship and Immigration Services (USCIS) makes the falsification of worker documents illegal, it also deems that employers who present documents that reasonably appear genuine will not be prosecuted.\textsuperscript{22} As a result of the loose USCIS regulations, many employers take a “don’t ask, don’t tell” attitude toward the migrant workers.\textsuperscript{23} Under the “don’t ask, don’t tell” rules, to avoid prosecution, employers often use immigrant subcontractors to manage their farm labor.\textsuperscript{24} The subcontractors often begin the illegal labor trafficking process by hiring recruiters or “coyotes” to sign up workers by misleading them about job opportunities and benefits while charging exorbitant job placement fees.\textsuperscript{25} In addition, American agricultural employers find the program bureaucratically complicated, lengthy, and expensive.\textsuperscript{26} Only about fifty percent of U.S. farmers use the H-2A visa system, while the other fifty percent use undocumented workers.\textsuperscript{27} Despite the shortcomings of the H-2A visa system, if given a choice, most immigrant agricultural workers would prefer to come into the country legally as documented workers with H-2A visas than to come as undocumented workers.\textsuperscript{28} Greater use of the H-2A visa system means less illegal immigration and fewer illegal border crossings.\textsuperscript{29}


\textsuperscript{22} Chen, supra note 11, at 34.

\textsuperscript{23} Id.

\textsuperscript{24} Id.


\textsuperscript{27} Id.

\textsuperscript{28} Bier, supra note 6.

\textsuperscript{29} See id.; but see Gomber-Muñoz supra note 15, at 50-51.
Our research focused on the relationship between the H-2A visa system and agricultural labor trafficking. In all, our research was part exploratory, part descriptive, and part explanatory. Since there are not many studies that specifically address agricultural labor trafficking, it was exploratory in nature. It was also descriptive, in that we determined how and by whom labor trafficking is carried out in the U.S. Lastly, our study was explanatory: after reconstructing these labor trafficking processes, we applied exchange network theory to our results to find the underlying causes for agricultural labor trafficking and their relationship to the H-2A visa system. While we researched agricultural labor trafficking to the U.S. from all countries, with over ninety percent of agricultural workers each year coming from Mexico, our research emphasized how the H-2A visa system affects agricultural labor trafficking between Mexico and the U.S.\textsuperscript{30}

I. METHODOLOGY

A. Data Collection

Our study extracted data from court documents generated by all federal agricultural labor trafficking cases that took place between 2017 and 2021. With the help of the Criminal and Investigative Networking Analysis (CINA) Center, we obtained our case lists from the Human Trafficking Institute (HTI), which, along with the CINA Center, is in Fairfax, Virginia.\textsuperscript{31} The HTI, which keeps a record of all federal human trafficking cases, provided us with the names and identifying numbers for all the federal agricultural labor trafficking cases filed between 2017 and 2021.\textsuperscript{32} The case names and numbers

\textsuperscript{30} Laura Sanchez Ley, \textit{Organized Crime Sells Migrants in the US for $700 to Enslave Them}, MILENIO (Jan. 7, 2022), https://www.milenio.com/politica/eu-crimen-vende-migrantes-700-dolares-esclavizarlos (translated from Spanish with Google Translate); see Bier, supra note 6 (H-2A workers are predominantly Mexican) (In 2022, based on an investigation of judicial documents from ten recent federal illegal labor trafficking cases, Milenio, a Mexican News Organization, found that organized crime organizations or "mafias" were responsible for most of the illegal Mexican labor trafficking. Finding 34 leaders of criminal groups that trafficked labor from Mexico to in Georgia, Wisconsin, Florida and Texas, Milenio was upset that most of the traffickers had Mexican surnames. In all, the Milenio investigation revealed the modus operandi of the mafias that trade with the migrant workers: after they cross the border, they often steal identification, personal papers and collect information about their families in Mexico or other countries to intimidate them so they don’t escape. To further control the workers, they keep them in fields with electrified fences, they are not paid, and they are given little water.).


\textsuperscript{32} LINDSEY LANE ET AL., HUM. TRAFFICKING INST., 2022 FEDERAL HUMAN TRAFFICKING REPORT 12 (2023).
allowed us to access the electronic court documents for each case through the Public Access to Court Electronic Records ("PACER"), a federal database that contains court documents for all federal cases. Using PACER, we retrieved documents from the following nine criminal and nineteen civil agricultural labor trafficking cases, for a total of twenty-eight cases:

Table 1: Criminal Cases

<table>
<thead>
<tr>
<th>Case Name</th>
<th>PACER Number</th>
<th>Court</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States v. Moreno et al.</td>
<td>8:21-cr-00313</td>
<td>Florida Middle</td>
<td>2021</td>
</tr>
<tr>
<td>United States v. Maria Leticia Patricio et al.</td>
<td>5:21-cr-00009</td>
<td>Georgia Southern</td>
<td>2021</td>
</tr>
<tr>
<td>United States v. Yordon Velazquez Victoria</td>
<td>2:21-cr-00013</td>
<td>Georgia Southern</td>
<td>2021</td>
</tr>
<tr>
<td>United States v. Elizabeth Balcazar</td>
<td>3:21-cr-00834</td>
<td>South Carolina</td>
<td>2021</td>
</tr>
<tr>
<td>United States v. Alejandro Hernandez Melchor</td>
<td>2:21-cr-00200</td>
<td>Wisconsin Eastern</td>
<td>2021</td>
</tr>
<tr>
<td>United States v. Medina</td>
<td>2:20-cr-00050</td>
<td>Georgia Southern</td>
<td>2020</td>
</tr>
<tr>
<td>United States v. Camposeco-Montejo</td>
<td>9:19-cr-80147</td>
<td>Florida Southern</td>
<td>2019</td>
</tr>
<tr>
<td>United States v. Garcia</td>
<td>2:19-cr-00096</td>
<td>Wisconsin Eastern</td>
<td>2019</td>
</tr>
<tr>
<td>United States v. Antonio Francisco-Pablo et al.</td>
<td>3:17-cr-05128</td>
<td>Washington Western</td>
<td>2017</td>
</tr>
</tbody>
</table>

Table 2: Civil Cases

<table>
<thead>
<tr>
<th>Case Name</th>
<th>PACER Number</th>
<th>Court</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gonzalez-Rodriguez et al. v. Gracia et al.</td>
<td>5:21-cv-00406</td>
<td>North Carolina Eastern</td>
<td>2021</td>
</tr>
<tr>
<td>Santiago v. Canela</td>
<td>5:21-cv-00061</td>
<td>Georgia Southern</td>
<td>2021</td>
</tr>
<tr>
<td>Cortez-Romero et al. v. Marin J Corp et al.</td>
<td>2:20-cv-14058</td>
<td>Florida Southern</td>
<td>2020</td>
</tr>
<tr>
<td>Rodriguez v. City of Pinestraw and Harvesting</td>
<td>2:20-cv-00093</td>
<td>Georgia Southern</td>
<td>2020</td>
</tr>
<tr>
<td>Reyes-Trujillo v. 4 Star Greenhouse</td>
<td>5:20-cv-11692</td>
<td>Michigan Eastern</td>
<td>2020</td>
</tr>
<tr>
<td>Janse van Rensburg et al. v. Hood et al.</td>
<td>3:19-cv-00008</td>
<td>Arkansas Eastern</td>
<td>2019</td>
</tr>
<tr>
<td>Ovando v. Barajas</td>
<td>5:19-cv-00464</td>
<td>Florida Northern</td>
<td>2019</td>
</tr>
<tr>
<td>Gonzalez Leiva v. Clute</td>
<td>4:19-cv-00087</td>
<td>Indiana Northern</td>
<td>2019</td>
</tr>
<tr>
<td>West v. Butikofer</td>
<td>2:19-cv-01039</td>
<td>Iowa Northern</td>
<td>2019</td>
</tr>
<tr>
<td>Alcaraz v. RC Orchards</td>
<td>1:19-cv-03192</td>
<td>Washington Eastern</td>
<td>2019</td>
</tr>
<tr>
<td>Arreguin et al. v. Sanchez</td>
<td>2:18-cv-00133</td>
<td>Georgia Southern</td>
<td>2018</td>
</tr>
<tr>
<td>Perez v. Huerta Farms et al.</td>
<td>1:18-cv-16255</td>
<td>New Jersey</td>
<td>2018</td>
</tr>
</tbody>
</table>

34 Table 1 is a cumulative reflection of the author’s research and findings, as discussed throughout this article. This information will be utilized for author observations and conclusions throughout the remainder of this article.
35 Table 2 is a cumulative reflection of the author’s research and findings, as discussed throughout this article. This information will be utilized for author observations and conclusions throughout the remainder of this article.
B. Data Analysis

Using the qualitative data analysis software ATLAS.ti, we began our research by coding descriptions of the labor trafficking process in legal documents from the twenty-eight federal cases.\textsuperscript{36} To identify the roles individuals took in the agricultural labor trafficking process, we developed the codes based on a general description of labor trafficking provided by the Organization for Security and Co-operation in Europe’s (OSCE) Business Model of Trafficking in Human Beings.\textsuperscript{37} These roles were: (1) investors, (2) recruiters, (3) transporters, (4) corrupt public officials, (5) informers, (6) guides and crew members, (7) enforcers, (8) debt collectors, (9) money launderers, and (10) supporting personnel.\textsuperscript{38} We then coded the court documents to find evidence of abuse in the agricultural labor trafficking process by using categories found in all types of labor trafficking described in the International Labor Organization’s 2012 Report on Labor Trafficking.\textsuperscript{39} The categories were: (1) abuse of vulnerability, (2) deception, (3) restriction of movement, (4) isolation, (5) physical and sexual violence, (6) intimidation and threats, (7) retention of identity documents, (8) withholding of wages, (9) debt bondage, (10) abusive working and living conditions, and (11) excessive overtime.\textsuperscript{40}

C. Legal Framework

After identifying the labor trafficking process in each case, we analyzed the relationship between the labor trafficking identified and the laws that were violated. Looking at the laws that were violated in each case allowed us to determine if any differences in labor trafficking existed between the criminal and civil cases, and to examine what aspects of the labor trafficking process violated the law in each case and why. The Trafficking Victims Protection Reauthorization Act, codified under 18 U.S. Code Chapter 77, makes all human trafficking and forced labor illegal.\textsuperscript{41} Based on the statutory definition

\begin{table}[h]
\centering
\begin{tabular}{|l|l|l|}
\hline
Case & Docket No. & Court & Year \\
\hline
Arauco-Lapa v. Wentz et al. & 2:18-cv-00095 & Oregon & 2018 \\
Rosas et al. v. Sarbanand Farms, LLC et al. & 2:18-cv-00112 & Washington Western & 2018 \\
Bernal v. Coleman & 1:18-cv-00088 & Kentucky & 2018 \\
Zevallos et al. v. Stamatakis et al. & 2:17-cv-00253 & Utah & 2017 \\
\hline
\end{tabular}
\caption{Cases analyzed for labor trafficking}
\end{table}

\textsuperscript{37} ALEXIS ARONOWITZ ET AL., ANALYSIS OF THE BUSINESS MODEL OF TRAFFICKING IN HUMAN BEINGS TO BETTER PREVENT THE CRIME 22 (Sept. 30, 2010), https://www.osce.org/cthb/69028.
\textsuperscript{38} Id.
\textsuperscript{39} ILO INDICATORS OF FORCED LABOUR, supra note 3.
\textsuperscript{40} Id. at 2.
of forced labor as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery,” all twenty-eight of the cases we studied involved some type of forced labor violation.\textsuperscript{42} 18 U.S. Code Chapter 77 contains numerous criminal and civil forced labor offenses.\textsuperscript{43} Criminal laws against forced labor include 18 U.S.C. § 1589, which bans forced labor itself. Specifically, 18 U.S.C. § 1589(a) makes illegal:

knowingly provid[ing] or obtain[ing] the labor or services of a person by any one of, or by any combination of, the following means—
(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
(2) by means of serious harm or threats of serious harm to that person or another person;
(3) by means of the abuse or threatened abuse of law or legal process; or
(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.\textsuperscript{44}

Other forced labor criminal statutes include: 18 U.S.C § 1590, which bans peonage, slavery, involuntary servitude, or forced labor; 18 U.S.C. § 1592, which makes “unlawful conduct with respect to documents in furtherance of trafficking” a crime; 18 U.S.C. § 1597, which bans unlawful conduct with respect to immigrant documents; and 18 U.S.C. § 1594, which bans conspiracies to commit forced labor.\textsuperscript{45} Civil damages for forced labor are awarded under 18 U.S.C. § 1595, which provides a civil remedy for any violations of 18 U.S.C. §§ 1589-1591, 18 U.S.C. § 1592, and U.S.C. § 1597.\textsuperscript{46}

\textbf{D. Theoretical Analysis}

Most networking studies on criminal behavior use a social network analysis to determine the social organization of crime.\textsuperscript{47} These studies aim to uncover hidden relationships within criminal groups and their relation to criminal activities.\textsuperscript{48} Researchers often look at youth gangs, delinquent groups,
transnational gangs, and organized crime networks. The resulting criminal networks are typically analyzed to determine homophily or similarities between nodes in the network, the network structure, the amount of social capital certain actors have in the network, and how the network structure reacts to police and prosecutorial intervention. However, most of these studies are quantitative and are based on a large amount of data. With the small number of federal labor trafficking cases each year, it is not possible to generate enough data for a quantitative social network analysis.

While not suitable for a quantitative network exchange analysis, our smaller set of labor trafficking data extracted from the court documents was suitable for a qualitative exchange network analysis. This type of analysis allows researchers to construct larger social networks from an analysis of the micro-level labor trafficking exchanges found in the legal case data. An initial review of the labor trafficking cases in our sample shows that much of labor trafficking involves violations of work contracts, making the cases suitable for an analysis using social exchange theory. Our analysis focused on explaining the underlying causes for larger labor trafficking networks to determine why the H-2A visa system is ineffective in preventing labor trafficking violations.

II. DESCRIPTION OF LABOR TRAFFICKING BASED ON THE CASE ANALYSIS

A. Roles in the Labor Trafficking Process

We began our research by coding the cases to determine the structure of the agricultural labor trafficking process. Structurally, we found a distinct pattern of roles in both the criminal and civil cases. This pattern, however, was much less complex than the one presented in the OSCE’s Business Model of Trafficking in Human Beings, to which we coded the cases. With

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49 Peter J. Carrington, Crime and Social Network Analysis, in THE SAGE HANDBOOK OF SOCIAL NETWORK ANALYSIS 236, 244-46 (John Scott & Peter J. Carrington eds., 2011).
50 Id. at 245-47.
51 See Bright et al., supra note 47, at 69.
54 Our social exchange analysis is developed later in the paper.
55 ARONOWITZ ET AL., supra note 37. As described above, according to the Business Model of Trafficking in Human Beings, the following roles are involved in the labor trafficking process: (1) investors, (2) recruiters, (3) transporters, (4) corrupt public officials, (5) informers, (6) guides and crew members, (7) enforcers, (8) debt collectors, (9) money launderers, and (10) supporting personnel.
the exception of the United States v. Patricio case, which involved twenty-four defendants fulfilling at least one of the roles presented in the business model, our case analysis revealed a much simpler labor trafficking model for agriculture.\textsuperscript{56} All the other labor trafficking cases, criminal and civil, involved networks that were much smaller than in the Patricio case.\textsuperscript{57} Twenty-four of the twenty-eight labor trafficking cases in the sample involved networks of one or two people as defendants; two cases involved three defendants; one case involved four defendants; and one case involved five defendants.\textsuperscript{58} In each of the twenty-four cases with networks of one or two people as defendants, the labor trafficking process involved a simpler business model consisting of only: (1) the farmer or company doing the trafficking, (2) subcontractors, (3) recruiters, and/or (4) supporting personnel to file H-2A papers.\textsuperscript{59}

Excluding the Patricio case, all six of the criminal cases involving Mexican workers fit the simpler business model.\textsuperscript{60} In these cases, the labor trafficking was carried out by a small group of offenders, with one person taking on the role of subcontractor, another person serving as recruiter, and one or two individuals working as supporting personnel to help with the processing of H-2A documents.\textsuperscript{61} The labor trafficking was more organized in the Mexican criminal cases than in the civil cases, with only one civil case, Santiago v. Canela, following this “organized” pattern of labor trafficking.\textsuperscript{62} Even though the labor trafficking was less organized in the other civil cases, each still used a simple business model. Seven of these cases involved a subcontractor or U.S. farmer using a recruiting service, instead of a recruiter who

\textsuperscript{56} Indictment at 1-2, United States v. Patricio, No. 5:21-cr-00009 (S.D. Ga. 2021); Sanchez Ley, supra note 30 (our findings were consistent with the investigation by the Mexican news organization, Milenio, on labor trafficking between the U.S. and Mexico); see supra charts accompanying notes 34-35.

\textsuperscript{57} This is also consistent with the National Institute of Justice’s description of labor trafficking networks as usually involving one person or a small group, are decentralized, and have little ties to other criminal networks. See How Does Labor Trafficking Occur in U.S. Communities and What Becomes of the Victims?, NAT’L INST. OF JUST. (Aug. 31, 2016), https://nij.ojp.gov/topics/articles/how-does-labor-trafficking-occur-us-communities-and-what-becomes-victims; see supra charts accompanying notes 34-35.

\textsuperscript{58} Complaint at 1, Garcia v. Stemilt AG Services, LLC, No. 2:20-cv-00254 (E.D. Wash. 2020); Complaint at 1, Reyes-Trujillo v. Four Star Greenhouse, No. 5:20-cv-11692 (E.D. Mich. 2020); Complaint at 1, Lopez Alcaraz v. RC Orchards, No. 1:19-cv-03192 (E.D. Wash. 2019); Rosas v. Sarbanand Farms, LLC, 329 F.R.D. 671, 680 (2018) (each of the four cases that did not fit the “smaller” labor trafficking model involved “Big Agro” companies), see supra charts accompanying notes 34-35.

\textsuperscript{59} See supra charts accompanying notes 34-35; see infra charts accompanying note 67-69.

\textsuperscript{60} See supra charts accompanying notes 34-35.

\textsuperscript{61} Id.

was part of their business model, to recruit the workers they needed. In six cases, the farmer alone facilitated the recruitment of workers. Finally, in the five “Big Agro” cases—which involved large commercial farms—it was the companies themselves supervising the subcontracting and employment of workers that led to the labor trafficking charges. Three of the Big Agro cases were also different in that they were class action cases that involved hundreds and thousands of immigrant workers.

Table 3: Labor Trafficking Criminal Cases by Number of Defendants

<table>
<thead>
<tr>
<th>Case Name</th>
<th>State</th>
<th>Country</th>
<th>Subcontractor</th>
<th>Farmer</th>
<th>Year</th>
<th># of Victims</th>
<th># of Defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. v. Moreno</td>
<td>Indiana</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2021</td>
<td>17</td>
<td>5</td>
</tr>
<tr>
<td>U.S. v. Maria Leticia Patricio</td>
<td>Georgia</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2021</td>
<td>66</td>
<td>24</td>
</tr>
<tr>
<td>U.S. v. Yordon Velazquez Victoria</td>
<td>Georgia</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2021</td>
<td>23</td>
<td>1</td>
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<tr>
<td>U.S. v. Elizabeth Balcazar</td>
<td>South Carolina</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2021</td>
<td>55</td>
<td>2</td>
</tr>
<tr>
<td>U.S. v. Alejandro Hernandez Melchor</td>
<td>Wisconsin</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2021</td>
<td>23</td>
<td>1</td>
</tr>
<tr>
<td>U.S. v. Medina</td>
<td>Georgia</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2020</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>U.S. v. Camposeco-Montejo</td>
<td>Florida</td>
<td>Guatemala</td>
<td></td>
<td></td>
<td></td>
<td>2019</td>
<td>1</td>
</tr>
<tr>
<td>U.S. v. Garcia</td>
<td>Wisconsin</td>
<td>Mexico</td>
<td>X</td>
<td>X</td>
<td>2019</td>
<td>23</td>
<td>4</td>
</tr>
</tbody>
</table>


67 Table 3 is a cumulative reflection of the author’s research and findings, as discussed throughout this article. This information will be utilized for author observations and conclusions throughout the remainder of this article.
Table 4: Labor Trafficking Civil Cases by Number of Defendants

<table>
<thead>
<tr>
<th>Case Name</th>
<th>State</th>
<th>Country</th>
<th>Year</th>
<th>Victims</th>
<th># of Defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gonzalez-Rodriguez et al. v. Gracia et al.</td>
<td>North Carolina</td>
<td>Mexico</td>
<td>2021</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Marin-Santiago et al. v. Canela et al.</td>
<td>Georgia</td>
<td>Mexico</td>
<td>2021</td>
<td>9</td>
<td>4</td>
</tr>
<tr>
<td>Cortez-Romero et al. v. Marin J Corp et al.</td>
<td>Florida</td>
<td>Mexico</td>
<td>2020</td>
<td>19</td>
<td>2</td>
</tr>
<tr>
<td>Rodriguez v. City Pinestraw &amp; Harvesting</td>
<td>Georgia</td>
<td>Mexico</td>
<td>2020</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Moshan-Martinez v. Valadez</td>
<td>North Carolina</td>
<td>Mexico</td>
<td>2020</td>
<td>12</td>
<td>5</td>
</tr>
<tr>
<td>Garcia et al. v. Stemilt Ag Services LLC</td>
<td>Washington</td>
<td>Mexico</td>
<td>2020</td>
<td>1100</td>
<td>1</td>
</tr>
<tr>
<td>Reyes-Trujillo v. 4 Star Greenhouse</td>
<td>Michigan</td>
<td>Mexico</td>
<td>2020</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Janse van Rensburg et al. v. Hood et al.</td>
<td>Arkansas</td>
<td>South Africa</td>
<td>2019</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Ovando v. Barajas</td>
<td>Florida</td>
<td>Mexico</td>
<td>2019</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Gonzalez Leiva v. Clute</td>
<td>Indiana</td>
<td>Mexico</td>
<td>2019</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>West v. Butikofer</td>
<td>Iowa</td>
<td>South Africa</td>
<td>2019</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Alcaraz v. RC Orchards</td>
<td>Washington</td>
<td>Mexico</td>
<td>2019</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Arreguin et al. v. Sanchez</td>
<td>Georgia</td>
<td>Mexico</td>
<td>2018</td>
<td>13</td>
<td>1</td>
</tr>
<tr>
<td>Perez v. Huerta Farms et al.</td>
<td>New Jersey</td>
<td>Mexico</td>
<td>2018</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Arauco-Lapa v. Wentz et al.</td>
<td>Oregon</td>
<td>Peru</td>
<td>2018</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Rosas et al. v. Sarbanand Farms, LLC et al.</td>
<td>Washington</td>
<td>Mexico</td>
<td>2018</td>
<td>600</td>
<td>4</td>
</tr>
<tr>
<td>Bernal v. Coleman</td>
<td>Kentucky</td>
<td>Mexico</td>
<td>2018</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>


69 Table 4 is a cumulative reflection of the author’s research and findings, as discussed throughout this article. This information will be utilized for author observations and conclusions throughout the remainder of this article.
B. Indicators and Roles in the Labor Trafficking Process – Criminal Cases & Canela

We then coded the cases to determine which “indicators” of labor trafficking were present. The indicators we coded for were: (1) abuse of vulnerability, (2) deception, (3) restriction of movement, (4) isolation, (5) physical and sexual violence, (6) intimidation and threats, (7) retention of identity documents, (8) withholding of wages, (9) debt bondage, (10) abusive working and living conditions, and (11) excessive overtime. The seven criminal labor trafficking cases (including the Patricio case) and the one civil case that involved an organized group of traffickers (Santiago v. Canela) all involved the following six labor trafficking factors: (1) debt bondage, (2) the holding of visas, (3) withholding of wages, (4) verbal abuse, (5) threats, and (6) poor living conditions. Two cases also involved a lack of medical care.

Combining the labor trafficking “role” analysis with the “indicator” analysis showed that the labor trafficking process was the same for all eight of the “organized” labor trafficking cases discussed above. The process began with a recruiter/coyote, working in tandem with a subcontractor, going to Mexico to recruit immigrants to work in the U.S. on H-2A visas. After finding interested workers, the recruiter/coyote instructed the workers to travel from their hometowns in Mexico to the U.S. Consulate located in another Mexican city far enough away that the immigrants had to incur travel and hotel costs to get there. The recruiter/coyote then instructed the immigrants on how to obtain H-2A visas and charged them for his or her services. These fees, plus the travel costs, put the workers in debt before they began their work in the U.S. In addition, the recruiter/coyote often coached the immigrants to lie to obtain their H-2A visas, which began the process of putting

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70 ILO INDICATORS OF FORCED LABOUR, supra note 3.
72 See Patricio, No. 5:21-cr-9; Garcia, 2:19-cr-96.
73 See Complaint at 4-5, Patricio, No. 5:21-cr-9.
74 See Complaint at 13, Patricio, No. 5:21-cr-9.
75 See HERNANDEZ MELCHOR at 31-32.
them in fear of deportation. Once an H-2A job opened in the U.S., the recruiter/coyote informed them where to go in the U.S. for the work. The immigrants incurred further debt to pay for food and travel to the worksite in the U.S. By that point, the workers had taken out loans or mortgaged their farms to pay these costs.

Once at the work location in the U.S., the subcontractor then confiscated the visas from the workers, leaving the H-2A workers vulnerable to forced labor abuses for fear of leaving the worksite or being deported if the subcontractor fired them. The H-2A visa requires that the workers be reimbursed for travel and visa expenses only after completing fifty percent of their contract, thus putting them in debt bondage before starting work. Too often the workers were not reimbursed for these costs, and the subcontractor paid the workers a lower wage and made them work longer hours than they contracted to work for. The H-2A visa also requires that the employers provide meals and housing for the workers, but often they were fed poor quality food and forced to live in overcrowded, dilapidated housing. Verbal abuse and threats were common during the workday to coerce the workers into producing more. In each of the eight cases, the workers became reluctant to seek outside help because they feared not being able to pay off the debts they incurred, going further into debt by having to pay travel costs back to Mexico, being jailed by immigration authorities in the U.S., and being blacklisted by the subcontractors such that they would never be able to find work in the U.S. again. Blacklisting also would leave workers without any way to pay off their debts except to forfeit property they own in Mexico.

Table 5: Labor Trafficking Factors – Criminal Cases & Canela

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Debt Bondage</th>
<th>Low Pay</th>
<th>Hold Visas</th>
<th>Verbal Abuse</th>
<th>Threats</th>
<th>Poor Living Conditions</th>
<th>Medical Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. v. Moreno</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>U.S. v. Maria Leticia Patricio</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

Id. at 12, 32.

Id. at 12-13.

Id. at 29.

See id.

Complaint at 24, Patricia, No. 5:21-cr-9.

Id.

Id. at 27-29.

Id. at 30-31.

Table 5 is a cumulative reflection of the author’s research and findings, as discussed throughout this article. This information will be utilized for author observations and conclusions throughout the remainder of this article.
C. The Criminal Cases: Outcomes

Typically, the number of criminal labor trafficking cases filed each year in the U.S. is low. Prosecutors attribute the low number of convictions to the reluctance of victims to come forward out of fear of being blacklisted and not being able to pay off their debts, and the lack of resources to prosecute such cases. This held true for the agricultural labor trafficking cases in our sample, as there were only nine federal criminal cases involving agricultural labor trafficking that resulted in convictions for the years 2017 to 2021. All eight of the completed cases ended with a plea bargain. In addition, the United States. v. Patricio case is still being litigated, but some of defendants have already pleaded guilty in that case. Notably, while there were nine separate criminal cases, several of these cases stemmed from the same investigations. The United States v. Yordon Velazquez Victoria and United States v. Medina convictions came as a result of the investigation into the United States v. Patricio case, and the conviction in the United States v. Alejandro Hernandez Melchor case resulted from the investigation in the United States v. Garcia case.

In the criminal cases, the subcontractors received the harshest sentences,

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85 LANE ET AL., supra note 32.
87 See supra chart accompanying note 84.
88 The United States v. Patricio is the only federal criminal case whose outcome is still pending. Patricio, No. 5:21-cr-9.
89 Id.
followed by the recruiters/coyotes. The bookkeepers or supporting personnel received much lighter sentences. In *United States v. Medina*, the main subcontractor, Javier Sanchez Mendoza, was sentenced to 360 months, or thirty years, in prison. Medina, the recruiter/coyote, was sentenced to sixty-four months in prison. In a separate hearing, Victoria, who served as supporting personnel in the labor trafficking network, was given a prison sentence of a little over a year and ordered to pay the victims $17,000 in restitution. No prison time was given in the *United States v. Garcia* case, but Melchor, who served as a recruiter/coyote for subcontractors Saul Garcia and Saul Garcia Jr., was sentenced to time served and ordered to pay restitution. In that case, Saul Garcia and his sons, Saul Garcia Jr. and Daniel Garcia, escaped further prison time, but the court ordered restitution. Together, the three defendants are expected to pay close to $850,000 in restitution to the over twenty-three victims involved in their labor trafficking scheme. In *United States v. Moreno*, subcontractor Bladimir Moreno, owner of Los Vilatoros Harvesting, was sentenced to almost ten years (118 months) in prison, while his recruiter/coyote received a sentence of forty-one months in prison, and his bookkeeper received twenty-four months of supervised community release. In *United States v. Elizabeth Balcazar*, subcontractor Enrique Balcazar received a forty-month sentence while his daughter and bookkeeper Elizabeth Balcazar received a two-month sentence and one year of home detention.

The other two criminal cases involved Guatemalan families. In *United States v. Camposeco-Montejo*, Camposeco-Montejo pleaded guilty to child labor violations after he trafficked a relative’s child. He received an eight-
year (ninety-six-month) prison sentence.\textsuperscript{102} \textit{United States v. Antonio Francisco-Pablo} involved a Guatemalan brother-in-law and sister exploiting their younger sister. Antonio Francisco-Pablo received a thirty-six-month prison sentence while his wife was given a time-served sentence.\textsuperscript{103} Both were also ordered to pay $18,950 in restitution.\textsuperscript{104} The criminal case summaries are below:

<table>
<thead>
<tr>
<th>Case Name</th>
<th>State</th>
<th>Country</th>
<th>Subcontractor</th>
<th>Farmer</th>
<th>Year</th>
<th>Counts</th>
<th>Convictions</th>
<th># of Victims</th>
<th># of Defendants</th>
<th>Plea</th>
<th>Bargain</th>
<th>Prison Sentence</th>
<th>Restitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. v. Moreno</td>
<td>IN</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2021</td>
<td>6</td>
<td>3</td>
<td>17</td>
<td>5</td>
<td>3</td>
<td>118 mos; 41 mos; 37 mos; 24 mos home detention</td>
<td>$175,000</td>
<td></td>
</tr>
<tr>
<td>U.S. v. Maria Leticia Patricio</td>
<td>GA</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2021</td>
<td>54</td>
<td>0</td>
<td>66</td>
<td>24</td>
<td>0</td>
<td>Pending trial</td>
<td>Pending</td>
<td></td>
</tr>
<tr>
<td>U.S. v. Yordon Velazquez Victoria</td>
<td>GA</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2021</td>
<td>9</td>
<td>1</td>
<td>23</td>
<td>1</td>
<td>1</td>
<td>15 mos.</td>
<td>$17,000</td>
<td></td>
</tr>
<tr>
<td>U.S. v. Elizabeth Balcazar</td>
<td>SC</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2021</td>
<td>5</td>
<td>3</td>
<td>55</td>
<td>2</td>
<td>3</td>
<td>40 mos; 2 mos; 1 yr. home detention</td>
<td>$508,125.89</td>
<td></td>
</tr>
<tr>
<td>U.S. v. Alejandro Hernandez Melchor</td>
<td>WI</td>
<td>Mexico</td>
<td></td>
<td></td>
<td>2021</td>
<td>5</td>
<td>1</td>
<td>23</td>
<td>1</td>
<td>1</td>
<td>12 mos time served</td>
<td>Restitution amount pending</td>
<td></td>
</tr>
<tr>
<td>U.S. v. Medina</td>
<td>GA</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2020</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>64 mos; 360 mos</td>
<td>$15,000</td>
<td></td>
</tr>
<tr>
<td>U.S. v. Campo-secos-Montejo</td>
<td>FL</td>
<td>Guatemala</td>
<td></td>
<td></td>
<td>2019</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>96 mos</td>
<td>$34,000</td>
<td></td>
</tr>
<tr>
<td>U.S. v. Garcia</td>
<td>WI</td>
<td>Mexico</td>
<td>X</td>
<td></td>
<td>2019</td>
<td>10</td>
<td>4</td>
<td>23</td>
<td>4</td>
<td>4</td>
<td>Time served</td>
<td>$750,000 (pending)</td>
<td></td>
</tr>
<tr>
<td>U.S. v. Antonio Francisco-Pablo</td>
<td>WA</td>
<td>Guatemala</td>
<td></td>
<td></td>
<td>2017</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>36 mos; time served</td>
<td>$18,950</td>
<td></td>
</tr>
</tbody>
</table>

\textit{D. Indicators and Labor Trafficking Process - Civil Cases}

The main difference between the civil cases and the criminal cases regarding the labor trafficking process was that only one civil case, \textit{Santiago v.}
**Canela**, involved a recruiter/coyote organized in business with the subcontractor.\(^{105}\) Other than the amount of organization in the case, the same labor trafficking indicators were present in the civil cases. Debt bondage was present in thirteen of the cases that did not involve a large agricultural company, low pay occurred in all nineteen cases, verbal abuse occurred in sixteen of the nineteen cases, poor living conditions were present in fourteen cases, medical issues were present in eight cases, and the workers’ visas were withheld in six cases.

Combining the role and indicator analysis in the civil cases showed that in the eighteen civil cases that did not involve organized labor trafficking, the subcontractor or farmer contracted with an outside recruiter or agency to find workers.\(^{106}\) However, the result was the same because the recruiter/coyote or agency still charged the workers fees for help obtaining a visa and employment.\(^{107}\) Paying for their visas, travel costs to the U.S. Consulate in Mexico to obtain their visas, and travel costs to the work site in the U.S still placed the workers in a significant amount of debt before working their first day, leaving them vulnerable to verbal abuse, threats, low pay, poor living conditions, and fear of deportation and blacklisting by their employers.\(^{108}\) This was also how the labor trafficking was carried out in the five civil cases involving Mexican subcontractors using recruiting services in Mexico.\(^{109}\) Additionally, in the two sheep rancher cases involving Peruvians, the farmers used a non-profit recruiting agency called Mountain Plains Agricultural Service to recruit workers, but the workers still went into debt due to travel costs to the U.S. and were subsequently subject to abuse.\(^{110}\)

In the six cases involving subcontractors and farmers who did their own recruiting, the applicants followed their employer’s instructions on how to obtain their visas instead of paying a recruiter/coyote service preemployment costs.\(^{111}\) However, the applicants still incurred expenses traveling to the U.S. Consulate in their home country, acquiring a visa, and traveling to the job site in the U.S. Once in the U.S., the subcontractors and farmers then refused

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\(^{105}\) Complaint at 3-5, *Marin-Santiago et al.*, No. 5:21-cv-00061.

\(^{106}\) See supra chart accompanying note 104.

\(^{107}\) See id.


\(^{109}\) See supra chart accompanying note 104.


\(^{111}\) *Arreguin et al.*, 398 F. Supp. at 1320; Complaint at 1-2, *Janse van Rensburg et al.*, No. 3:19-CV-00008; see Gonzalez Leiva, LEXIS 249022 at *2, 14; see West, LEXIS 159866 at *2, 26; see Preliminary Statement at *8-9, 12, Perez v. Huerta Farms, No. 1:18-CV-16255-JBS-JS (D.N.J. Nov. 17, 2018); see *Bernal*, LEXIS 249440 at *1-2.
to reimburse the workers for these expenses, putting them in debt. The cases where farmers did the recruiting themselves differed from the cases involving subcontractors in that the farmers seized the visas of the workers upon arrival at the worksite in only two of the six cases. However, not seizing the workers documents did not have much of an effect on the overall labor trafficking process. The workers still feared losing their job, being sent to immigration jail, being sent back to Mexico and having to pay travel costs, and/or being blacklisted, leaving them vulnerable to the employer’s abuse. The employers still underpaid the workers to keep them in debt and forced them to work without adequate meals or housing.

The labor trafficking process differed in the five Big Agro cases. In each of these cases, the labor trafficking was driven by big companies trying to profit from migrant labor, rather than individual farmers or subcontractors trying to profit from the workers. To begin the labor trafficking process, the companies themselves took an active part in hiring subcontractors to recruit the workers legally. While these workers did not begin their employment in debt bondage, they still feared being fired and sent to jail, being sent back to Mexico and having to pay travel costs themselves, not being able to pay off other debts incurred by coming to the U.S. to work, and being blacklisted by the companies. Playing on these fears, the companies were still able to engage in labor trafficking by paying the workers low wages, making

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112 See e.g., cases accompanying note 111.
113 See supra chart accompanying note 104.
114 Farmers seized worker documents in Arreguin et al., 398 F. Supp. 3d at 1320; Preliminary Statement at 39, Perez, No. 1:18-CV-16255-JBS-JS; but not in Complaint at 7, Janse van Rensburg et al., No. 3:19-CV-00008-DPM; Gonzalez Levia, LEXIS 249022, at *14; West, LEXIS 159866, at *2-6; Bernal, LEXIS 249440, at *1–2.
115 West, LEXIS 159866, at *2, 4, 5-6 (Even without the confiscation of documents, the plaintiffs in Butikofer “regularly suffered verbal abuse and threats” including “threats of physical harm and deportation to pressure [them] into working.” Moreover, if the plaintiffs complained of the abuse or resisted the employer, Butikofer would reduce their hours, thus creating further financial strain on the workers).
116 See id. at 5-6 (For example, plaintiffs “did not have hot water” and their “house was located directly beside a ditch filled with dead cow carcasses.”).
117 See supra charts accompanying notes 34-35.
118 See e.g., Reyes-Trujillo, 513 F. Supp. 3d at 774-75; Stemlit AG Servs., LEXIS 212722, at *2, *6-7; Fifth Amended Complaint at 6, Stemlit AG Servs., No. 2:20-CV-0254; Complaint at 9-10, Lopez Alcaraz, No. 1:19-CV-03192; Complaint for Damages and Injunctive Relief at 7-8, Rosas, No. 2:18-CV-00112; See Second Amended Complaint at 10, Moshan-Martinez v. Valadez, No. 5:20-CV-00205-FL (W.D. N.C. Feb. 24, 2021).
119 Reyes-Trujillo, 513 F. Supp. 3d at 777 (For example, the plaintiff in the Reyes-Trujillo case “were not paid on time, not paid consistently, and were not paid at all for hundreds of hours of work at Four Star. They were repeatedly paid with checks that bounced and rarely received paystubs.” However, if it was ever discovered that the plaintiffs were complaining about the inadequate compensation, they “would be sent back to Mexico and blacklisted from the H-2A program.”).
them work long hours, and subjecting them to verbal abuse and threats when trying to motivate them to produce.\textsuperscript{120}

In \textit{Reyes-Trujillo v. Four Star Greenhouse et al.}, company officials at the Four Star Greenhouse hired a labor contractor, Vasquez Citrus and Hauling (VCH), to bring H-2A workers from Mexico.\textsuperscript{121} However, VCH has a questionable reputation, and despite being directed by Four Star to recruit legally, it proceeded to charge the workers pre-employment visa processing costs and failed to reimburse the workers for travel to the U.S. Consulate and to the Four Star Greenhouse in Michigan.\textsuperscript{122} While at the work site, the workers were supervised by Four Star officials in company facilities, along with the other Four Star employees. However, when they began to complain about the low pay and lack of reimbursement, VCH intervened and threatened to fire the complaining workers.\textsuperscript{123} VCH even had a couple of workers deported, which led to the lawsuit. Four Star, which generated over $18 million in annual sales, ended up having to pay eight workers $94,608.38 in damages for labor trafficking.\textsuperscript{124}

Labor trafficking by a company, where the workers end up being trafficked solely based on the way they are treated as employees of the hiring company, was present in each of the three Washington state cases: \textit{Garcia et al. v. Stemilt Ag Services LLC} (2020), \textit{Alcaraz v. RC Orchards} (2019), and \textit{Rosas et al. v. Sarbanand Farms, LLC et al.} (2018). In each case, the company attempted to recruit workers in Mexico legally. The only problem in recruitment occurred in the \textit{RC Orchards} case, where the workers complained that they were not fully reimbursed for travel expenses. In each case, after recruitment and travel to the work site, the workers were housed in labor camps owned by the companies and supervised by company officials. In \textit{RC Orchards}, the courts found evidence of labor trafficking where the workers were forced to work twelve hours a day, given inadequate breaks, paid poorly, made to live in housing without heat, and threatened with deportation if they did not produce enough and/or complained about the conditions. RC Orchards, a 500-acre fruit farm which grossed over $500,000 each year, was fined a hefty $240,000, which was distributed to the seven complaining

\begin{thebibliography}{99}
\bibitem{120} See id.
\bibitem{121} Plaintiff's Original Complaint at 1, \textit{Reyes-Trujillo, No. 2:20-CV-11692}.
\bibitem{122} Id. at 1-2, 12; Godoy, supra note 18 (“In 2016, the US Department of Transportation fined VCH, based in the state of Florida, for 22,000 dollars for a bus accident in which six H-2A workers were killed while returning from Monroe, Michigan to Mexico. Two years later, the DOL’s Wage and Hour Division banned VCH and its owner for three years due to program violations in the state of North Carolina, such as failure to reimburse travel expenses and payroll and workday records. However, both continued to operate in the sector.”).
\bibitem{123} Plaintiff's Original Complaint at 15-16, \textit{Reyes-Trujillo, No. 2:20-CV-11692}.
\bibitem{124} FLSA Settlement Agreement and Release at 2, \textit{Reyes-Trujillo, No. 2:20-CV-11692}.
\end{thebibliography}
workers in the form of restitution and damages. In a related case, immigrant workers won a settlement for over $500,000 from RC Orchards a year later.

In *Stemilt*, after doing everything legally, the company withheld work renewal permits from the workers, causing them to fear deportation. Exploiting this fear, Stemilt then underpaid the workers and subjected them to verbal abuse and threats. The court found this to be labor trafficking and ordered the company to pay out $3 million in damages, including a payment of $6,000 to each of the 1,100 migrant workers involved.

In *Sarbanand Farms*, the workers went on strike after being forced to work in the hot sun and an environment filled with smoke and debris from nearby forest fires. Verbal abuse and threats prompted the court to find Sarbanand, the largest producer of blueberries in the world, guilty of labor trafficking, and the court forced the company to pay $3.75 million in restitution and fines to over 600 victims.

In *Moshan-Martinez v. Valadez*, the Goldsboro Milling Company used a registered subcontractor, Francesco Valdez, to obtain H-2A workers to harvest its 2018 blueberry crop. Valdez also contracted with nearby Winzler Farms and Cottle Farms to provide them with migrant blueberry pickers for the 2018 season. Valdez had subcontracted since 2014 but never brought in more than 400 workers in any one year. However, in 2018, to avoid costs associated with bringing in H-2A workers, each of the three blueberry companies subcontracted with Valdez to employ immigrant workers. In all, Valdez brought in 1,442 H-2A workers—more than three times the size of workforce he had been bringing in previous years. To recruit the workers, the human resources director from Sleepy Creek Farms, owned by and presently known as Goldsboro Milling Company, even travelled to Mexico with

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126 Id.

127 Fourth Amended Complaint for Damages at 12, *Stemilt Ag. Servs.*, No. 2:20-CV-00254-SMJ.

128 See id.

129 See *Stemilt AG Servs.*, No. 2:20-CV-00254.


133 See id. at 12.

134 See id.

135 See id. at 1-2.

Valdez. However, Valdez did not have the $450,000 to reimburse the workers for pre-employment and travel costs once they arrived in North Carolina, as required by law, nor did he have enough room in his labor camps to house the workers. As a result, he required the workers to pay recruitment fees. Without enough money for overhead costs, the workers were underpaid, underfed, and forced to live in overcrowded labor camps without protection from rodents and insects. To complete the labor trafficking process, Valdez threatened the workers to get them to stay and work on the blueberry farms. With the companies so heavily involved in the process, an out-of-court settlement was reached with Cottle Farms for $15,000, with Valdez for $85,000, and with Goldsboro Milling Company, formerly known as Sleepy Creek Farms, for $85,000. Twelve of the labor trafficking victims received settlement money, and some of the money was set aside to pay any other victim who came forth with a complaint for the 2018 work year.

The table below summarizes the labor trafficking process in the civil cases:

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Labor Contractor</th>
<th>Farmer</th>
<th>Debt Bondage</th>
<th>Low Pay</th>
<th>Hold Visas</th>
<th>Verbal Abuse</th>
<th>Threats</th>
<th>Poor Living Conditions</th>
<th>Discrimination</th>
<th>Medical Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gonzalez-Rodriguez et al. v. Gracia et al.</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Marin-Santiago et al. v. Canela et al.</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Cortez-Romero et al. v. Marin J Corp et al.</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rodriguez v. City of Pinestraw and Harvesting</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Mosshan-Martinez v. Valdez</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Garcia et al. v. Stemilt Ag Services LLC</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reyes-Trujillo v. 4 Star Greenhouse</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Janse van Rensburg et al. v. Hood et al.</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ovando v. Barajas</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gonzalez Leiva v. Clute</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

137 See id. at 10.
138 See id. at 17, 22, 49.
139 See id. at 26.
140 See id. at 34-35, 37.
141 See id.
142 Judgment at 1, Mosshan-Martinez, No. 5:20-CV-205-FL; Waiver, Release and Settlement Agreement at 2, Mosshan-Martinez, No. 5:20-CV-00205-FL.
143 Waiver, Release and Settlement Agreement at 2-4, Mosshan-Martinez, No. 5:20-CV-00205-FL.
144 Table 7 is a cumulative reflection of the author’s research and findings, as discussed throughout this article. This information will be utilized for author observations and conclusions throughout the remainder of this article.
All nineteen civil cases were resolved by out-of-court settlement, with restitution ordered in eighteen of the nineteen civil cases. The only case without a monetary award was Perez v. Huerta Farms et al., in which the H-2A plaintiffs decided not to pursue their monetary claims after the defendant, Huerta Farms, declared bankruptcy.145 Huerta Farms involved a farmer acting alone to facilitate the labor trafficking process.146 Restitution was ordered in five of the other six cases involving a farmer or subcontractor acting alone to facilitate the labor trafficking.147 The restitution ranged from $75,000 given out to thirteen victims in Alvarado v. Flores, to $278,887 being awarded to thirteen victims in Arreguin et al. v. Sanchez.148 The other restitution awards in these cases were $102,500 to two victims in Gonzalez-Rodriguez et al. v. Gracia, $140,000 to nineteen victims in Cortez-Romero et al. v. Marin J. Corporation, and $126,918.33 to one victim in Rodriguez v. City Pinestraw & Harvesting. Punitive damages for forced labor violations were awarded in eight cases (see Table 8 below), including the Arreguin, Gracia, and Marin J. cases.149 In many cases, the specific amounts were not listed, and punitive damages were awarded in terms of a ratio to the wage damages, such as one-to-one or two-to-one.

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145 See Suggestion of Bankruptcy at 3-4 Perez, No. 1:18-CV-16255-JBS-JS.
146 See Amended Complaint at 4, Perez, No. 1:18-CV-16255.
147 See supra charts accompanying notes 34-35.
148 Order at 26, Sanchez, No. 2:18-cv-133; Settlement Agreement and Release at 1, Alvarado-Flores, No. 5:17-CV-369.
Eleven of the civil cases involved farmers taking part in the labor trafficking process. The farmers themselves were ordered to pay restitution in ten of the eleven cases, with Perez v. Huerta Farms et al. being the only case where a farmer escaped without paying restitution.\textsuperscript{150} The two farmer cases involving sheep herders from Peru did not pay well. In Zevallos et al. v. Stamatakis, only $20,000 was awarded to three victims, and no dollar amount was provided in the Arauco-Lapa v. Wentz settlement involving one victim.\textsuperscript{151} One of the two farmer cases involving South African victims paid very well, and the other case paid poorly. In West v. Butikofer, three South African victims were paid $247,050 in restitution, while the court in Jans van Rensburg et al. v. Hood awarded only $30,000 to five victims.\textsuperscript{152} Only one of the three farmer cases involving Mexican workers paid well, with $460,972 being awarded to nine victims in Gonzalez Leiva v. Clute, while only $30,000 was paid out to four victims in Ovando v. Barajas, and the settlement amount was not disclosed in Bernal v. Coleman.\textsuperscript{153}

The Big Agro cases involved the largest payments. In Reyes-Trijullo v. Four Star Greenhouse, $94,608.38 was paid to eight victims, and in Moshan-Martinez v. Valadez, $170,000 was paid to twelve victims.\textsuperscript{154} The biggest awards came in the three Washington state class action lawsuits with $3 million dollars being awarded to 1,100 victims in Garcia, et al. v. Stemilt Ag Services, L.L.C. and $375 million dollars awarded to 600 victims in Rosas et al. v. Sarbanand Farms, L.L.C. In Alcaraz v. RC Orchards LLC, $240,000 was awarded to seven victims in 2020, but then earlier this year, the court increased the damage award by $500,000 for 400 victims who worked for RC Orchards during the years 2018-2021.\textsuperscript{155} A summary of the civil case settlements is below:

\textbf{Table 8: Summary of Civil Case Settlements}\textsuperscript{156}

\begin{tabular}{|l|l|l|l|l|l|l|}
\hline
Case Name & State & Country & Victims & Amount of Restitution & Attorney Fees Award & Punitive Damages & Farmer Paid Damages \\
\hline
Perez v. Huerta Farms & & & & & & & \\
\hline
Zevallos et al. v. Stamatakis & & & & & & & \\
\hline
Jans van Rensburg et al. v. Hood & & & & & & & \\
\hline
Reyes-Trijullo v. Four Star Greenhouse & & & & & & & \\
\hline
Moshan-Martinez v. Valadez & & & & & & & \\
\hline
\hline
\hline
Alcaraz v. RC Orchards LLC & & & & & & & \\
\hline
Bernal v. Coleman & & & & & & & \\
\hline
\end{tabular}

\textsuperscript{150} See Docket Summary at 5, Perez, No. 1:18-CV-16255.
\textsuperscript{151} FLSA Settlement and Release Agreement at 1, Zevallos et al., No. 2:17-CV-253; see also Stipulation to Entry to Judgment of Dismissal, Arauco-Lapa, No. 2:18-cv-95.
\textsuperscript{152} Judgment at 1, West, No. 19-CV-1039; Settlement Agreement and Release at 1, Janse van Rensburg et al., No. 3:19-cv-8.
\textsuperscript{153} Order at 1, Gonzalez Leiva, No. 4:19-CV-87; Settlement Agreement at 2, Ovando, No. 5:19-cv-00464; Order at 1, Bernal, No. 1:18-CV-88.
\textsuperscript{154} Settlement Agreement at 2, Reyes-Trijillo, No. 5:20-cv-11692; see Moshan-Martinez, No. 5:20-cv-205.
\textsuperscript{155} Stemilt AG Serv., 2:20-cv-392; Order at 2, Rosas, No. 2:18-cv-112; Hoang, supra note 125.
\textsuperscript{156} Table 8 is a cumulative reflection of the author’s research and findings, as discussed throughout this article. This information will be utilized for author observations and conclusions throughout the remainder of this article.
Eight of the nine criminal cases involved violations of 18 U.S.C. § 1989, which bans forced labor itself. The criminal case that did not was a child labor case with one child victim. A summary of the laws and charges in the nine criminal cases is below:

<table>
<thead>
<tr>
<th>Case Description</th>
<th>State</th>
<th>Country</th>
<th>No. of Cases</th>
<th>Laws Charged</th>
<th>Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gonzalez-Rodriguez et al v. Gracia et al</td>
<td>North Carolina</td>
<td>Mexico</td>
<td>2</td>
<td>$102,500</td>
<td>$17,500</td>
</tr>
<tr>
<td>Marin-Santiago et al v. Canela et al</td>
<td>Georgia</td>
<td>Mexico</td>
<td>9</td>
<td>Pending</td>
<td>Pending</td>
</tr>
<tr>
<td>Cortez-Romero et. al v. Marin J Corp, et al.</td>
<td>Florida</td>
<td>Mexico</td>
<td>19</td>
<td>$140,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>Rodriguez v. City Pinestraw &amp; Harvesting</td>
<td>Georgia</td>
<td>Mexico</td>
<td>1</td>
<td>$126,918.33</td>
<td>$27,184.18</td>
</tr>
<tr>
<td>Moshan-Martinez v. Valadez</td>
<td>North Carolina</td>
<td>Mexico</td>
<td>12</td>
<td>$170,000</td>
<td>$50,000</td>
</tr>
<tr>
<td>Garcia, et al v. Stemilt Ag Services LLC</td>
<td>Washington</td>
<td>Mexico</td>
<td>1100</td>
<td>$3 million</td>
<td>$750,000</td>
</tr>
<tr>
<td>Reyes-Trujillo vs. 4 Star Greenhouse</td>
<td>Michigan</td>
<td>Mexico</td>
<td>8</td>
<td>$94,608.38</td>
<td>$30,000</td>
</tr>
<tr>
<td>Ovando v. Barajas</td>
<td>Florida</td>
<td>Mexico</td>
<td>4</td>
<td>$30,000</td>
<td>$932.00</td>
</tr>
<tr>
<td>Gonzalez Leiva v. Clute</td>
<td>Indiana</td>
<td>Mexico</td>
<td>9</td>
<td>$460,972</td>
<td>$22,553</td>
</tr>
<tr>
<td>West v. Butikofer</td>
<td>Iowa</td>
<td>South Africa</td>
<td>3</td>
<td>$247,050</td>
<td>$10,518</td>
</tr>
<tr>
<td>Alcaraz v. RC Orchards</td>
<td>Washington</td>
<td>Mexico</td>
<td>7</td>
<td>$240,000</td>
<td>Not determined (pending)</td>
</tr>
<tr>
<td>Arreguin et al. v. Sanchez</td>
<td>Georgia</td>
<td>Mexico</td>
<td>13</td>
<td>$278,887</td>
<td>$19,168</td>
</tr>
<tr>
<td>Perez v. Huerta Farms et al.</td>
<td>New Jersey</td>
<td>Mexico</td>
<td>2</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Arauco-Lapa v. Wentz, et al</td>
<td>Oregon</td>
<td>Peru</td>
<td>1</td>
<td>Not determined (settled)</td>
<td>Not determined (pending)</td>
</tr>
<tr>
<td>Rosas et al. v. Sarbanand Farms, LLC et al.</td>
<td>Washington</td>
<td>Mexico</td>
<td>600</td>
<td>$3,750,000</td>
<td>$787,500</td>
</tr>
<tr>
<td>Bernal v. Coleman</td>
<td>Kentucky</td>
<td>Mexico</td>
<td>2</td>
<td>Not determined (settled)</td>
<td>Not determined (pending)</td>
</tr>
<tr>
<td>Zevallos et al. v. Stamatakis et al.</td>
<td>Utah</td>
<td>Peru</td>
<td>3</td>
<td>$20,000</td>
<td>$6,476</td>
</tr>
<tr>
<td>Alvarado-Flores et al. vs. Garcia</td>
<td>North Carolina</td>
<td>Mexico</td>
<td>13</td>
<td>$75,000</td>
<td>$1,104</td>
</tr>
</tbody>
</table>

F. Labor Trafficking Law

Eight of the nine criminal cases involved violations of 18 U.S.C. § 1989, which bans forced labor itself. The criminal case that did not was a child labor case with one child victim. A summary of the laws and charges in the nine criminal cases is below:

Table 9: Summary of Laws and Charges in Criminal Cases

<table>
<thead>
<tr>
<th>Labor Trafficking Offenses Charged as Criminal Cases from 2017-2021</th>
<th># of Cases</th>
<th>Laws Charged</th>
<th>Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 U.S.C. § 1589 – Forced Labor</td>
<td>8</td>
<td>27</td>
<td>4</td>
</tr>
</tbody>
</table>

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158 Table 9 is a cumulative reflection of the author’s research and findings, as discussed throughout this article. This information will be utilized for author observations and conclusions throughout the remainder of this article.
While the H-2A visa system guarantees workers a minimum rate of pay, travel costs, food and living conditions, the workers must sue for damages related to H-2A violations under other laws.\textsuperscript{159} Civil damages for forced labor, or Trafficking Victims Protection Reauthorization Act ("TVPRA") claims as the courts call them, are awarded under 18 U.S.C. § 1595, which provides a civil remedy for any violations of 18 U.S.C. §§ 1589–1597.\textsuperscript{160} Forced labor claims were brought in all nineteen of the civil cases, with damages being sought under 18 U.S.C. § 1595 in eighteen of those cases.\textsuperscript{161} Additionally, punitive damages were awarded under § 1595 in eight of the cases for infliction of emotional and physical pain and suffering caused by the labor trafficking.\textsuperscript{162}

<table>
<thead>
<tr>
<th>Code</th>
<th>Chapter</th>
<th>Title</th>
<th>Cited Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 U.S.C. § 1590</td>
<td>Trafficking for Peonage, Slavery, Involuntary Servitude, or Forced Labor</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>18 U.S.C. § 1962</td>
<td>RICO</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>18 U.S.C. § 1324</td>
<td>Alien Harboring</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Other Crimes including Money Laundering, Mail Fraud, Conspiracy to Commit Mail Fraud, Aiding and Abetting and Assault, Witness Tampering</td>
<td>6</td>
<td>60</td>
<td>1</td>
</tr>
<tr>
<td>Totals</td>
<td>9 possible</td>
<td>168</td>
<td>21</td>
</tr>
</tbody>
</table>

Monetary damages in the civil cases, however, were more likely to be

\textsuperscript{159} Bier, supra note 6.
\textsuperscript{160} See 18 U.S.C. § 1595; see Bright et al., supra note 47.
\textsuperscript{161} See Complaint at 45, Gonzalez-Rodriguez, No. 5:21-cv-406; Complaint at 1, Marin-Santiago et al., No. 5:21-cv-61; Complaint at, Rodriguez, No. 2:20-cv-93; Complaint at 2, 3, Moshan-Martinez, No. 5:20-cv-205; Complaint at 1, 2, Stemilt AG Servs., No. 2:20-CV-0254; Complaint at 1-2, 3, Reyes-Trujillo, No. 2:20-CV-11692; Complaint at 1, 2, 3, Janse van Rensburg et al., No. 5:19-cv-87; Complaint at 2, 3, Ovando, No. 5:19-cv-464; Complaint at 1, 6, Gonzalez Leiva, No. 4:19-cv-87; Complaint at 1-2, West, No. 2:19-cv-1039; Complaint at 2, 3, Lopez Alcaraz, No. 1:19-cv-3192; Complaint at 1, 2, Arreguin et al., 398 F. Supp.; Complaint at 2, Perez, No. 1:18-cv-16255; Complaint at 10, 11, Arauco-Lapa, No. 2:18-cv-95; Complaint at 1, 2, Rosas, No. 2:18-cv-112; Complaint at 1, 2, Bernal, No. 1:18-cv-88; Complaint at 1, 2, Zevallos et al., No. 2:17-cv-253; Complaint at 3, Alonso-Miranda v. Garcia-Pineda, No. 5:17-cv-369 (E.D.N.C. July 22, 2017); see also Complaint at 27, Cortez-Romero et al., No. 2:20-cv-14058 (failing to include a 1595 claim).

awarded under the Federal Labor Standards Act (FLSA). The FLSA reinforces the H-2A requirements that employers pay workers at least the minimum wage, for overtime, and for hours spent on the employer’s worksite. Monetary damages under the FLSA were awarded in thirteen of the seventeen cases that considered such claims. While the defendants sued employers under numerous laws, most claims were for a “breach of contract.” Although this type of claim occurred in all nineteen civil cases, only two cases actually claimed damages related to the breach of contract. Other laws that were sued under included state wage laws, state human trafficking laws, and various civil laws related to forced labor. A summary of the laws and charges used in the civil cases is below:

Table 10: Summary of Laws and Charges in Civil Cases

<table>
<thead>
<tr>
<th>Civil Law</th>
<th>Claims</th>
<th>Monetary Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 U.S.C. § 1595 – Civil Remedy in Trafficking Offense</td>
<td>18</td>
<td>8 – damages awarded under § 1595</td>
</tr>
<tr>
<td>(charged in addition to a trafficking offense in a civil case)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 U.S.C. § 1589 – Forced Labor</td>
<td>19</td>
<td>0</td>
</tr>
<tr>
<td>18 U.S.C. § 1590 Trafficking for Peonage, Slavery, Involuntary Servitude, or Forced Labor</td>
<td>12</td>
<td>0</td>
</tr>
<tr>
<td>18 U.S.C. § 1592; or 18 U.S.C. § 1597 – Unlawful Handling of Documents</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>18 U.S.C. § 1593 – Mandatory Restitution</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>18 U.S.C. § 1594 – Forced Labor Conspiracy</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>18 U.S.C. § 1962 – RICO</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>FLSA – Fair Labor Standards Act – establishes minimum wage, overtime and record keeping standards.</td>
<td>17</td>
<td>13</td>
</tr>
<tr>
<td>Breach of Contract</td>
<td>19</td>
<td>2</td>
</tr>
</tbody>
</table>


165 See supra chart accompanying notes 34-35; see, e.g. Waiver, Release & Settlement Agreement at 2, Gonzalez-Rodriguez, No. 5:21-cv-406; FLSA Settlement Agreement & Release at 1, Reyes-Trajillo, No. 2:20-CV-11692; Release, & Settlement Agreement at 2, Moshan-Martinez, No. 5:20-cv-205.

166 See Complaint at 44, Gonzalez-Rodriguez, No. 5:21-cv-406; Complaint at 2, Rodriguez, No. 2:20-cv-93.

167 Table 10 is a cumulative reflection of the author’s research and findings, as discussed throughout this article. This information will be utilized for author observations and conclusions throughout the remainder of this article.
Labor trafficking also varied by country. Twenty-two out of the twenty-eight total cases that we studied involved American subcontractors and farmers trafficking Mexican immigrant workers to harvest fruit and vegetables. This included all five of the Big Agro cases. The two South African cases involved small farmers doing the recruiting themselves. The two cases that involved Peruvians were sheep rancher cases, and two Guatemalan cases involved family members trafficking other family members for unjust enrichment.

Geographically, Florida typically has the highest number of H-2A workers, having more than 39,000 in 2020. Other top states in 2020 included Georgia (27,600), Washington (26,800), California (25,400), and North Carolina (22,000). This is consistent with the number of criminal cases in our sample. The U.S. district court for the Southern District of Georgia had the most trafficking cases, with three criminal cases and three civil cases. In addition, the two Wisconsin cases were both criminal and involved labor subcontractors from southern Georgia. Washington state was next with four cases: one criminal and three civil. There were three Florida cases—one criminal and two civil—and three North Carolina civil cases. Other states with cases from our sample included Indiana with two cases (one criminal and one civil), and one criminal case from South Carolina. Arkansas, Iowa, Kentucky, Michigan, New Jersey, Oregon, and Utah each had one civil case. Of these states, Indiana, South Carolina, Michigan, Iowa, and Kentucky were in the top twenty states that gave out the most H-2A visas in 2020.

In all, the main difference in the actual labor trafficking process between

<table>
<thead>
<tr>
<th></th>
<th>Total Cases</th>
<th>Civil Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>AWPA – Migrant and Seasonal Agricultural Protection Act</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>State Wage Laws</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>Civil Rights/Discrimination Laws</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Other Laws including State Human Trafficking Laws (3), Fraud (3), Family Medical Leave Act (1), Negligence (4), Various State Law regarding payment to workers (10), Assault (3).</td>
<td>29</td>
<td>1 (For FMLA)</td>
</tr>
<tr>
<td>Totals</td>
<td>141</td>
<td>32</td>
</tr>
</tbody>
</table>

G. Case Analysis- Other Factors

Labor trafficking also varied by country. Twenty-two out of the twenty-eight total cases that we studied involved American subcontractors and farmers trafficking Mexican immigrant workers to harvest fruit and vegetables. This included all five of the Big Agro cases. The two South African cases involved small farmers doing the recruiting themselves. The two cases that involved Peruvians were sheep rancher cases, and two Guatemalan cases involved family members trafficking other family members for unjust enrichment.

Geographically, Florida typically has the highest number of H-2A workers, having more than 39,000 in 2020. Other top states in 2020 included Georgia (27,600), Washington (26,800), California (25,400), and North Carolina (22,000). This is consistent with the number of criminal cases in our sample. The U.S. district court for the Southern District of Georgia had the most trafficking cases, with three criminal cases and three civil cases. In addition, the two Wisconsin cases were both criminal and involved labor subcontractors from southern Georgia. Washington state was next with four cases: one criminal and three civil. There were three Florida cases—one criminal and two civil—and three North Carolina civil cases. Other states with cases from our sample included Indiana with two cases (one criminal and one civil), and one criminal case from South Carolina. Arkansas, Iowa, Kentucky, Michigan, New Jersey, Oregon, and Utah each had one civil case. Of these states, Indiana, South Carolina, Michigan, Iowa, and Kentucky were in the top twenty states that gave out the most H-2A visas in 2020.

In all, the main difference in the actual labor trafficking process between

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168 Id.
169 Id.
170 Id.
172 Id.
173 Id.
the criminal and civil cases was in the amount of organization in the labor trafficking process. Seven of the nine criminal cases involved subcontractors and recruiters working for the same organization to form a Transnational Criminal Organization (TCO), while only one of the civil cases involved a TCO.\footnote{174} Although our case sample is small, it appears that criminal charges were more likely to be filed in cases where prosecutors suspected that the labor trafficking was organized and involved a TCO. In addition, evidence of other crimes was present in all the criminal cases, which suggests that this factored into the decision of whether to proceed criminally or civilly. Sex crimes were charged in the \textit{Moreno, Patricio, Camposeco-Montejo}, and \textit{Antonio-Francisco-Pablo} cases.\footnote{175} A wrongful death occurred in the \textit{Patricio, Melchor, and Garcia} cases, and in \textit{Balcazar}, the subcontractor used guns to assault the labor trafficking victims.\footnote{176}

Court policies also seemed to determine whether the case was handled criminally or civilly, with two different approaches emerging from the data. Taking the criminal approach, the District Court for the Southern District of Georgia led the way. Of the nine criminal cases in the sample, that District Court had three criminal cases.\footnote{177} Moreover, the two criminal cases in Wisconsin originated in Southern District of Georgia. David Estes, lead prosecutor on the \textit{Patricio} case and other Georgia law enforcement officials have expressed a commitment to prosecuting labor trafficking cases criminally as the best strategy to prevent the crime.\footnote{178} On the other hand, Washington state officials have taken a class action civil law approach, combatting labor trafficking by heavily fining the companies involved in the cases they handled.\footnote{179}

### III. UNDOCUMENTED WORKERS

Because undocumented workers do not have access to federal courts, our analysis of labor trafficking in the criminal and civil cases was limited to

\footnote{174} Factual Proffer at 1-2, \textit{Camposeco-Montejo}, No. 9:19-cr-80147; Complaint at 4, \textit{Francisco-Pablo}, No. 3:17-cr-5128 (the two criminal cases that did not involve a TCO were the Guatemalan cases involving family members trafficking other family member).

\footnote{175} See Indictment at 3, \textit{Francisco-Pablo}, No. 3:17 CR 5128; \textit{Moreno et al.}, No. 8:21-cr-313; \textit{Patricio}, No. 5:21-cr-9; \textit{Camposeco-Montejo}, No. 9:19-cr-80147.

\footnote{176} See \textit{Patricio}, No. 5:21-cr-9; \textit{Hernandez Melchor}, No. 2:21-cr-200; \textit{Garcia}, No. 2:19 CR 96; see also, Indictment at 1, \textit{Balcazar}, No. 3:21-cr-834.

\footnote{177} \textit{Medina}, No. 2:20-cr-00050; \textit{Patricio}, No. 5:21-cr-9; \textit{Victoria}, No. 2:21-cr-13; see supra charts accompanying notes 34-35.


\footnote{179} See Mai Hoang, supra note 125.
documented workers with H-2A visas.\textsuperscript{180} However, a large number of agricultural workers that come to the U.S. each year are undocumented. While the Department of Labor issued 317,619 H-2A visas in 2021,\textsuperscript{181} this number only accounted for about one-half of the agricultural workers who worked in the U.S. that year.\textsuperscript{182} The other half were undocumented workers.\textsuperscript{183} Labor trafficking problems develop as undocumented workers are subject to financial exploitation by farmers, often being told that their undocumented status does not give them a right to a minimum wage.\textsuperscript{184} Workers often live in dirty, cramped housing, are undernourished, and fear speaking out against their employers because they might be blacklisted from employment.\textsuperscript{185} Surveys of undocumented workers in San Diego, showed that thirty percent of the undocumented workers were subject to labor trafficking abuses.\textsuperscript{186}

The immigrant workers are not solely the blame for their illegal status.\textsuperscript{187} For the most part, the problem of undocumented agricultural workers is driven by the farmers themselves.\textsuperscript{188} American agricultural employers do not like the H2-A program because it is bureaucratically complicated, lengthy,

\begin{footnotesize}
\begin{enumerate}
\item[183] See id.
\item[184] Id. \textit{See How does Labor Trafficking Occur in U.S. Communities and what Becomes of the Victims?}, supra note 57.
\item[185] Hernandez & Gabbard, supra note 182; see Recognizing Labor Trafficking, POLARIS, https://polarisproject.org/labor-trafficking/?gad_source=1&gclid=Cj0KCQjwiYOx8BtfC5ARIisAldvH52-4eQAOVf60urnZfnm6EE7eeW2nAAyiBbyHVkJ4iLd186Y2QzKqz-wUaAljJEALw_weB (last visited Apr. 18, 2024).
\item[187] See Roos & Rouhandeh, supra note 26.
\item[188] Id. (highlighting that many employers in the agriculture and food related industries avoid the complex legal process associated with the H-2A visa system).
\end{enumerate}
\end{footnotesize}
and expensive.\textsuperscript{189} Under the H2-A “three-fourths” requirement, farmers must guarantee to pay workers for at least seventy-five percent of the contract period.\textsuperscript{190} If weather conditions reduce the expected yield from their crop, such as a sudden frost, the farmer must pay the H-2A workers even if they have not done any work for them.\textsuperscript{191} Fines for using undocumented workers range from $1,700 to $6,000, but experts claim these fines are “a slap on the wrist” for the farmers.\textsuperscript{192} Many farmers opt not to use the H-2A Visa system in favor of hiring undocumented workers for a number of reasons: paying fines are often cheaper than H-2A labor costs, labor trafficking cases are rarely prosecuted, and a need to keep up with competitors, many of whom are using undocumented workers.\textsuperscript{193} Companies are rarely prosecuted for using undocumented workers because of the language in the 1986 Immigration and Control Act (IRCA), which requires employers to “knowingly” hire the undocumented migrant workers in order to be prosecuted.\textsuperscript{194} Until recently, the courts would not give standing to the undocumented workers due to their illegal status, leaving them with almost no protections against their employers.\textsuperscript{195} However, this is changing.

In January of 2023, the Department of Homeland Security announced a path for undocumented workers to access the courts if they have been victims of labor trafficking.\textsuperscript{196} The new policy, called “deferred action,” allows the undocumented workers to access the courts despite their illegal status.\textsuperscript{197} The new policy is part of a strategy to prosecute the employer instead of the undocumented immigrant.\textsuperscript{198} “Deferred Action” is the second major change to

\textsuperscript{189} See id. (the U.S. government requires agricultural and farm employers to bring immigrant workers into the U.S. through the H-2A system. To bring in workers under the H-2A program, first, the employer must show the job is temporary or seasonal, that domestic workers cannot be found to perform it, and that hiring the migrant worker will not adversely affect the working conditions of U.S. workers. The employer must then go through a four-part application process that takes between sixty and seventy-five days just to obtain authorization to use H-2A workers. This process includes filing forms with the State Force Agency (SWA), the National Processing Center (NPC), and United States Citizenship and Immigration Services (USCIS). The program provides the migrant workers with the security that U.S. Immigration and Customs (ICE) agents will not detain or deport them, separate them from their family, requires H-2A employers to pay workers minimum wages, provide free transportation to the work site from their home country, and to provide them with free accommodations); Bier, supra note 6.

\textsuperscript{190} Bier, supra note 6.

\textsuperscript{191} Roos & Rouhandeh, supra note 26.

\textsuperscript{192} Id.

\textsuperscript{193} See Rayes, supra note 86; Roos & Rouhandeh, supra note 26.


\textsuperscript{196} Id.

\textsuperscript{197} Id.

\textsuperscript{198} Id.
immigration policies affecting agricultural workers. In October of 2021, the Secretary of Homeland Security, Alejandro Mayorkas, issued a memo directing immigration authorities to cease their massive worksite raids to catch undocumented workers, which were used as an enforcement tactic under former President Donald Trump. Mayorkas said the “Trump” approach, which led to the arrests of sometimes hundreds of unauthorized immigrants, was not focused on “exploitative employers.” Typically, the Trump-supported raids on companies were conducted by hundreds of ICE Agents who would swarm in on a company and arrest hundreds of undocumented workers at a time. To avoid losing production time, the companies often replaced the undocumented workers they lost with new undocumented workers, claiming the new workers were documented. The towns near these companies would often lose consumer business when large number of workers were deported; and, the arrested undocumented workers—who most likely were recruited by the company—become further victimized by deportation.

In summation, the high percentage of undocumented workers who fall victim to labor trafficking abuses indicates that prevention strategies are needed to protect both documented and undocumented workers. Over 90% of the immigrant workers are from Mexico. Because U.S. companies dictate which opportunities are available, Mexican workers have to proceed accordingly, either by the H-2A visa process or by remaining undocumented. H-2A visa reforms therefore need to be examined in light of the social, political and economic relations between the Mexican workers and the American agricultural companies.

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200 Id.


202 See id.

203 See Asbury, supra note 8, at 477.

204 Bier, supra note 6.

205 See Roos & Rouhandeh, supra note 26.
IV. EXPLAINING LABOR TRAFFICKING USING EXCHANGE NETWORK THEORY

Our case analysis showed that the labor trafficking process involves a series of exchanges of work contracts between the various actors involved. Damage claims for a breach of contract were sought in all nineteen of the civil cases. We observed that the labor trafficking process often begins with a social exchange or contract between the farmer and the U.S. government.206 During this first set of exchanges, the farmer decides whether to contract with the government and use the H-2A visa system to hire documented workers or to forgo the H2-A system and illegally bring in undocumented workers.207 A second set of exchanges occurs during the recruitment of immigrant workers. In this stage, labor contracts create social exchanges between the farmer and/or the subcontractors and the immigrant workers they recruit.208 The third set of exchanges occurs when the recruited worker begins working. These exchanges are between the worker and his or her employer.209 To learn more about these three types of exchanges, we applied social exchange theory to the case law data we collected. We then used exchange network theory to explain the relationship between these three types of micro-level social exchanges within the larger social, political, and economic structures that shape them.210

In developing exchange network theory in 1976, researcher Richard Emerson observed that large numbers of actors in a network will engage in the same types of social exchanges across society.211 With over a half million similarly situated immigrants seeking the same type of agricultural work on thousands of U.S. farms each year through similar social exchanges, Emerson’s observation holds true for labor trafficking.212 The large number of similar exchanges allows for an analysis of micro-level social exchanges to determine their relation to the macro-level forces that shape them. For Emerson,
social exchange was a frame of reference which could be used to link micro- and macro- theory with one another.\textsuperscript{213}

Researcher Peter Blau defined social exchange as an exchange of activity between at least two people that is more or less rewarding or costly.\textsuperscript{214} Like Emerson, Blau also used social exchange theory to analyze how simple social exchanges at the micro-level between at least two people can be used to gain insight into the macro-level structures that shape the micro-level processes.\textsuperscript{215} For Blau, people become attracted to one another in ways that motivate them to engage in social exchanges.\textsuperscript{216} However, not all relationships are social exchanges; a social exchange occurs when a person voluntarily obligates another person by supplying him with rewarding services.\textsuperscript{217} To discharge the obligation, the second person must then compensate the first person for the services received.\textsuperscript{218} Social exchanges can involve intrinsic exchanges such as affection, approval, and respect in love or friendship relations, or extrinsic exchanges that are purely economic.\textsuperscript{219} For Blau, however, even extrinsic exchanges contained intrinsic significance for the people involved in the exchange, making all exchanges “social.”\textsuperscript{220}

Karen Cook then furthered research on social exchange networks by analyzing how trust, power and dependence can facilitate or close social exchanges in the context of collective economic and political organizations.\textsuperscript{221} Observing that trust is an essential element of the social exchange process,

\textsuperscript{213} Emerson, \textit{supra} note 211 at 336 (Social exchange micro theory refers to the study of relationships or individual social exchanges while macro theory refers to the study of larger social and economic structures that shape the micro level exchanges).

\textsuperscript{214} BLAU, \textit{supra} note 210, at 89-92. For Blau (1964) not all relationships are social exchanges, A social exchange occurs when a person voluntarily obligates another person by supplying him with rewarding services. To discharge the obligation, the second person must then compensate the first person for the services received (Blau, 1964). Social exchanges can involve intrinsic exchanges such as affection, approval, and respect in love or friendship relations or extrinsic exchanges that are purely economic, but for Blau, even extrinsic exchanges contained intrinsic significance for the people involved in the exchange, making all exchanges “social.”

\textsuperscript{215} See id. at 23-25 (Blau maintained that micro level social exchanges contained elements that led to the discovery of the social structures that governed them. For Blau, the structural norms arose to prevent individuals from gaining undo advantages over others in social exchange relationships. These structured societal norms replace subjective individual norms to structure the exchange relationships to guard against improprieties in the exchanges. For example, businessmen, doctors, and government officials all engage in social exchanges almost totally influenced by organizational and professional norms to protect themselves).

\textsuperscript{216} Id. at 20.

\textsuperscript{217} Id. at 89.

\textsuperscript{218} Id.

\textsuperscript{219} See id.

\textsuperscript{220} See BLAU, \textit{supra} note 210, at 112.

Cook defines trust as the “willingness to become vulnerable to another.” Put a different way, the trustor “risks” the trustee will act in a way consistent with their interests but outside of their control.\(^{222}\) Trusting the other in an exchange relationship will always involve risks; it also opens the door to social power, which is the ability to influence another person.\(^{223}\) Blau postulated that in social exchange theory, one person has more power over the other when he is the only person who can supply rewards to the other person.\(^{224}\) This type of social exchange allows the person in power to dictate terms to the person in the subordinate position on what they must do to obtain the resources they desire. If the subordinate person does not submit to the demands of the person in power, they do not receive the needed benefits.\(^{225}\)

Power is also related to dependence in the social exchange relationship. Emerson is best known for his work on power and dependence in social exchanges, theorizing that the more dependent one actor is on the other to obtain the needed resources they are bargaining for, the more power the other actor has over him.\(^{226}\) Cook and Latusek (2012) furthered research on social exchange networks by analyzing how trust and distrust could facilitate or close social exchanges that take place in the context of collective economic and political organizations.\(^{227}\)

In our research on the labor trafficking process, we examined how the variables of trust, power, and dependence impact three types of social exchanges that take place during the labor trafficking process: (1) the contract between the farmer and the U.S. government to hire documented workers or use undocumented workers; (2) the social exchange between the recruiter/coyote and the worker; and (3) the social exchange between the employer and the worker. We then linked this analysis to the larger social, economic, and political forces that helped shape them.

\textit{A. Applying Social Exchange Theory to Labor Trafficking}

\textit{i. Exchange Between Farmers and U.S. Government}

To determine the role of the undocumented worker in the labor trafficking process, we began our exchange network analysis by examining the initial decision by farmers on whether to “trust” the H-2A visa system and hire documented workers, or forgo the H-2A visa system and use undocumented


\(^{223}\) See id. at 11-12.

\(^{224}\) Blau, \textit{supra} note 210, at 21.

\(^{225}\) Id. at 21-22.

\(^{226}\) Id. at 22.


https://scholarship.richmond.edu/pilr/vol27/iss3/4
workers. Social exchange theorists define “trust” in terms of “risk,” and in the farmers case, the decision becomes whether or not the farmer wants to “risk” being vulnerable to the requirements of the H-2A visa system and admit workers legally.\textsuperscript{228} For the farmer, the reward for using the H-2A visa system is that it allows him to legally recruit and hire immigrant workers to help him harvest crops. As a U.S. citizen, the farmer is dependent on the government, which has the power to require him to use the H-2A visa system.\textsuperscript{229} The government exercises its power over the farmer by subjecting him or her to fines if he or she forgoes using the H-2A visa system and employs undocumented workers to fulfill their labor needs.\textsuperscript{230}

Research and our case analysis indicate that farmers and agricultural companies treat undocumented and documented workers in a similar manner. This rules out the idea that farmers are forgoing the H-2A visa system to evade responsibility for mistreating the workers they hire. Rather, the decision on whether to use the H-2A visa system is financial. The H-2A visa system’s “three-fourths” rule requires farmers to pay workers for seventy-five percent of their contract, regardless of whether they have work for them.\textsuperscript{231} In addition, the H2-A system requires farmers to pay transportation costs to and from the immigrant’s home country and the worksite in the U.S.\textsuperscript{232} However, due to volatile weather conditions inherent to agriculture, the farmers may not be able to provide workers enough work to fulfill seventy-five percent of their contracts.\textsuperscript{233} Additionally, farmers may not want to pay travel costs if they only intend to use workers for a short period of time. In sum, a social exchange analysis frames the farmers’ decision on whether or not to use the H2-A system. The decision is based on whether they would rather risk the financial obligations that come with using the system, or whether they would rather risk not using the system and making themselves vulnerable to government fines. This suggests that the H2-A requirements need to be more responsive to the economic needs of the farmers in order to gain better compliance with the system.

The workers’ dependence on the farmers for jobs also factors into the farmer’s decision to use documented or undocumented workers. According to social exchange theory, one person becomes more dependent on another when that person is the only means to obtain their reward.\textsuperscript{234} Dependency is

\textsuperscript{228} See Cook, supra note 222 at 9; Roos & Rouhandeh, supra note 26.
\textsuperscript{229} See Roos & Rouhandeh, supra note 26; see Cook, et al., supra note 222, at 287.
\textsuperscript{230} See Roos & Rouhandeh, supra note 26.
\textsuperscript{231} Bier, supra note 6.
\textsuperscript{232} Id.
\textsuperscript{233} Roos & Rouhandeh, supra note 26.
\textsuperscript{234} BLAU, supra note 210, at 111-112.
related to power in that the more dependent one person is on another, the more power the other person has over them. While the immigrant workers would rather work in documented H2-A jobs, the only way out of poverty for most Mexican workers is to work in U.S. agriculture. Most are willing to risk “trusting” U.S. employers in undocumented jobs to obtain the money needed to get out of poverty and to provide those employers with a large pool of available workers. This gives farmers control over the decision on whether to offer the immigrant workers undocumented or documented work.

ii. Exchanges Between Recruiter/Coyotes and Immigrant Workers

The second set of network exchanges in the labor trafficking process are those between the recruiter/coyotes and the immigrant worker in the worker’s home country. After receiving authorization to hire H2-A workers, farmers must then recruit the foreign workers to come to the U.S. H2-A visa rules also require foreign workers to obtain H-2A visas for authorization to travel to the U.S. However, the majority of the Mexican workers have less than six years of schooling. To Mexicans, the visa systems of both Mexico and the United States are generally seen as impossible to navigate and a waste of time. In addition, the majority of Mexicans who want to work in the U.S. are unfamiliar with it. Without knowing how to find work in the U.S. or how to obtain a visa, it becomes convenient for these Mexican workers to use a recruiter/coyote to guide them through the process of finding a job. In social exchange terms, for the Mexican worker to obtain an H-2A visa, it means taking a risk and placing their trust in the recruiter/coyote. This also makes them vulnerable to the prospect that the recruiter/coyote will take advantage of them. In addition, Mexican workers’ lack of education and knowledge limits their ability to seek help with the visa process, which further enhances the power the recruiter/coyotes have over them.

The recruiters often abuse their power over the immigrants by coaching...
them to lie to the American Consulate to obtain their H2-A visa. This occurred in the nineteen cases we examined involving recruiter/coyotes. Once this occurs, the farmer/subcontractor in the U.S. can leverage this fraud to scare the workers and begin the forced labor process. When the workers arrive at the worksite in the U.S., the farmer/subcontractor establishes power by threatening to turn the workers over to U.S. immigration authorities and deport them if they protest pay and work conditions. In addition, recruiter/coyotes usually illegally charge the Mexican workers fees for their services. In total, before starting work in the U.S., workers must pay the recruiter fees plus the $190.00 visa fee, travel costs to and from the American Consulate in Mexico, and travel costs to the job site in the U.S. For Mexican workers, Travel and visa costs usually run over $5,000.00. With the minimum wage for agricultural workers being $4.64 per day in Mexico, most Mexican immigrants do not earn more than $1,200.00 a year, leaving them with no other way to pay off their debt but to work the job offered to them by the farmer/subcontractor. Under H-2A rules, employers are supposed to reimburse the worker for all these costs after they complete fifty percent of their work contract. However, this requirement makes the workers vulnerable to the farmers/subcontractors putting them in debt bondage by not reimbursing them for the visa and travel costs once on the job.

iii. Exchanges Between Farmers and Immigrant Workers

The third set of exchanges we analyzed took place between the farmer/subcontractor employers and the immigrant workers during the course of their employment. Too often the farmers exploit the workers’ fears in order to commit forced labor crimes. As discussed above, by the time the worker arrives at the worksite, he or she is already financially vulnerable to the farmer/subcontractor. Dependent on the farmer/subcontractor for work to pay off the debt, all too often farmers create a debt bondage situation for their workers by not paying their travel costs. Farmers or subcontractors did not pay the workers for visa and travel costs in twenty-two of the twenty-eight cases we studied.

Because jobs in the U.S. pay so much more than the worker can make in

244 See CLOSE TO SLAVERY: GUESTWORKER PROGRAMS IN THE UNITED STATES, supra note 2, at 14-15; see ILO INDICATORS OF FORCED LABOUR, supra note 3.
245 Bier, supra note 6; COHEN, supra note 242, at 76.
246 COHEN, supra note 242 at 151.
247 Bier, supra note 6.
248 Id.
249 CLOSE TO SLAVERY: GUESTWORKER PROGRAMS IN THE UNITED STATES, supra note 2, at 9; ILO INDICATORS OF FORCED LABOUR, supra note 3.
Mexico, the monetary risk of placing their trust in the farmers and subcontractors is understandable. In making themselves vulnerable to farmers and subcontractors, the Mexican workers reason they can withstand anything their U.S. employers ask of them. Moreover, they often live on poor farms in Mexico. The prospect of having to risk hard work, low pay and poor living conditions is therefore not going to deter them from seeking better-paying work in the U.S. However, despite the workers’ toughness, the farmers and subcontractors are still able to instill the fear of being deported and the fear of not being able to pay off the debts they incurred. Employers will then exploit these fears and continue the labor trafficking process by using verbal abuse and threats to force the workers to work long hours while living in deprived housing situations.

The H-2A visa system does little to remedy the situation. It only allows visa holders to work jobs for which farmers have been authorized to use H-2A workers. If the worker does leave their designated job, the H-2A visa system only gives them thirty days to find another one. However, without being familiar with the U.S. and its labor market, it is almost impossible for an H-2A worker to leave one H-2A job for another. This leaves the H-2A workers dependent on their employers.

It is interesting to note that labor trafficking resulted in four of the five Big Agro cases even when the company did not put the workers into debt bondage before starting their employment. In each of these cases, the companies attempted to pay the worker travel costs. Still, in each case the worker feared that if fired they would not be reimbursed for travel costs back to Mexico. This fear, plus their fear of deportation, made them vulnerable to labor trafficking. The H-2A visa system is again part of the problem. It does not require the employer to reimburse the worker for their trip home if they are

250 Gomber-Muñoz, supra note 15; COHEN, supra note 242.
252 Id. at 113.
254 Bier, supra note 6.
255 Chen, supra note 11, at 35; see id.
256 The five “Big Agro” cases were Moshan-Martinez v. Valadez; Garcia v. Stemilt Ag Services, LLC; Reyes-Trujillo v. Four Star Greenhouse, Inc.; Lopez Alcaraz v. RC Orchards, LLC; and Rosas v. Sarbanand Farms, LLC; Moshan-Martinez v. Valadez was the only one of these cases that involved debt bondage. See supra charts accompanying notes 34-35.
257 See supra cases referenced in note 256.
258 See NO WAY TO TREAT A GUEST, FARMWORK JUST. 17 (last visited Apr. 24, 2024).
“fired” from the job.259

iv. Macro-Level Factors

To complete our exchange network analysis, we identified how the three types of social exchanges were shaped by larger macro-level forces. Since only documented H-2A workers were able to access the courts for the cases in our sample, our data only allowed us to analyze how labor trafficking affected documented workers.260 With over fifty percent of the agricultural work by immigrants in the U.S. being done by undocumented workers, understanding how undocumented workers factor into labor trafficking is essential to understanding the overall labor trafficking problem.261 To better understand the role of undocumented workers in the labor trafficking process, we began our exchange network analysis by examining the micro-level, farmer-government social exchanges involving the farmers’ initial decision on whether to use documented H-2A workers or undocumented workers.

Research on the farmer-government exchanges shows that U.S. farmers are empowered by U.S. agricultural economic and political policies. These policies have allowed farmers to take over Mexican agriculture markets, leaving Mexican workers with fewer jobs and lesser pay for agricultural work in Mexico.262 This makes the already impoverished Mexican workers dependent on U.S. farmers for jobs to get out of poverty. In addition, Mexican workers generally do not care whether the jobs offered to them by U.S. employers are documented and legal or undocumented and illegal.263 The result is large pools of Mexican workers are willing to work in the U.S. with or without documentation. Having the ability to recruit both documented and undocumented workers to fulfill their labor needs gives U.S. agricultural companies control over the decision to use documented or undocumented workers.

Our research showed that the agriculture company’s decision on whether


260 Kreighbaum et al., infra note 180 (highlighting the recency of court access to undocumented agricultural workers).

261 Hernandez & Gabbard, supra note 182.


to use documented or undocumented workers is financial. The H-2A’s “three
fourths” rule requires the farmers to pay workers for seventy-five percent of
the work they contract for, regardless of whether they have the need for work-
ers or not.\footnote{Bier, supra note 6.} Since agriculture work is susceptible to volatile weather condi-
tions, often farmers would rather risk using undocumented workers and gov-
ernment fines than to pay workers for work they do not complete under the
H-2A regulations.\footnote{See Roos & Rouhandeh, supra note 26.} Fines for using undocumented workers are light. In add-
ition, farmers often can avoid criminal penalties because the 1986 Immigra-
tion and Control Act (IRCA) requires employers to “knowingly” hire the un-
documented migrant workers before they be prosecuted.\footnote{Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324(a) (2005).} Finally, courts are reluct-
ant to give standing to the undocumented workers due to their illegal status,
leaving them with almost no protections against their employers.\footnote{Kreighbaum et. al, supra note 180 (highlighting the recency of court access to undocumented agricultural workers).}

Given the farmers’ power to control the hiring process, reforming the H2-
A visa requirements to be more responsive to the farmers’ economic needs
would reduce the number of undocumented workers. Eliminating the “three
fourths” rule and increasing fines for using undocumented workers should
induce more farmers to use the H-2A visa system. A higher percentage of
documented H-2A workers under a reformed visa system should reduce labor
trafficking. Our analysis also indicates that, given the workers’ dependence
on U.S. agriculture for farm work, policies that punish immigrant workers
for coming to the U.S. to work illegally will do little to reduce the number of
undocumented workers.\footnote{Gomber-Muñoz supra note 15, at 51-52.}

We then examined how macro-level forces affected the recruiter/coyote-
imigrant worker social exchange relationships. These relationships were
shaped by current economic and political policies that make the immigrant
worker dependent on recruiters/coyotes to obtain visas and jobs. In particular,
the Mexican government does little to help the migrant farmworkers because
it does not regulate the recruiters who begin the labor trafficking process in
Mexico.\footnote{See Godoy, supra note 18.} Most of the Mexican workers have less than a sixth-grade educa-
tion.\footnote{NCS Import, A Diploma At Any Age: Adult High School Founded by Cesar Chavez Targets Rural
any-age-adult-high-school-founded-by-cesar-chavez-targets-rural-immigrant/article_05512d25-6a75-
5f50-8e74-e4098fab1799.html; Meyer, supra note 241 (which indicates eighth grade being the average
level of education for migrant workers).} This, coupled with the fact that they are not familiar with the U.S.,
leaves them dependent on the recruiter/coyotes to obtain work. Without regulations in Mexico, these recruiter/coyotes often exploit workers and start the labor trafficking process by charging them fees and travel costs.

While more regulation of recruiters by the Mexican government would help the workers, our data analysis still shows that U.S. companies ultimately control the recruiting process by hiring the recruiters. The immigrants’ lack of education and unfamiliarity with the U.S. makes it almost impossible for them to find U.S. jobs on their own, and companies need recruiters to help workers with the hiring process. However, the companies—not the immigrant workers—need to pay the recruiter fees. Increasing the percentage of documented workers would make more companies liable to the H-2A requirements, which mandate paying workers for all travel costs and forbid the recruiters/coyotes from charging them fees. While this would help reduce labor trafficking, the H-2A system as a whole needs reform. Even if recruiters do not charge personal fees, the H-2A system requirement that employers reimburse workers for travel after the worker completes fifty percent of their work contract makes the worker vulnerable to debt bondage for the first half of their work contract. Too often the employers do not fully reimburse the immigrant workers.

We completed our social network exchange analyses by examining the social exchanges between agricultural employers and workers. Our analysis of the four Big Agro cases showed that labor trafficking occurs even if the workers were recruited legally and not put in debt bondage before starting their jobs. In each case, the workers still feared deportation and going into debt by not being able to pay travel costs back to their country of origin in the event they were fired. In each case, the companies were able to exploit these fears and commit forced labor crimes. Overall, employer-worker social exchanges are structured by historical economic, political, and social forces. Agricultural labor trafficking between the U.S. and Mexico dates back to the end of the nineteenth century. Over the centuries, little progress has been made in the U.S. to dispel negative stereotypes that depict Mexican workers as docile, simple-minded, and having poor hygiene, making them “ideal” for arduous and low-paying farm work. With nobody to advocate on behalf of the immigrant workers politically, these myths continue to shape employer-employee social exchanges on the work site and lay the foundation for forced

271 Bier, supra note 6.
273 See Peter Benson, Faciality and Structural Violence in Farm Labor Camps, 23 CULTURAL ANTHROPOLOGY 589, 601–2 (2008) (discussing the stereotypes around Mexicans that makes people believe they are good labor workers).
CONCLUSION

Descriptive research on the twenty-eight cases in our sample showed that labor trafficking organized around Mexican subcontractors forming transnational criminal organizations (TCOs) was not as prevalent as reported. Organized labor trafficking in the form of Mexican-led TCOs only occurred in eight of the twenty-eight cases we studied. Other forms of labor trafficking reported in the other twenty cases involved individual farmers and subcontractors acting alone as facilitators of the labor trafficking, or Big Agro companies incorporating the labor trafficking into their business model. The eight cases involving organized TCOs in our sample all involved individuals with Mexican surnames. Their labor trafficking networks were much simpler than the business model we used in coding. Seven of the cases involved a small labor trafficking network consisting of a subcontractor, a recruiter/coyote, and supporting personnel to assist with the paperwork. Often the recruiter/coyotes and/or supporting personnel were family members. In only one case, Patricio, did the TCO consist of a large criminal organization with roles resembling the business model. In addition, seven of the eight cases involving an organized TCO were handled criminally, suggesting that prosecutors were much more likely to bring criminal charges in cases involving Mexican-led organized labor trafficking operations.

All eight of the completed criminal cases ended with a plea bargain. The U.S. vs. Patricio case is still being litigated, but some of defendants have already pleaded guilty. In the criminal cases, the subcontractors received the harshest sentences, followed by the recruiter/coyotes. The bookkeepers or supporting personnel were given much lesser sentences.

Cases involving farmers or agricultural companies were less organized
and more likely to be handled civilly. Although no U.S. farmer pleaded guilty to a criminal charge, our overall case analysis shows the courts did hold them financially or civilly accountable. Other than the amount of organization in the case, and the court system’s different approaches labor trafficking cases, there were no major differences between the criminal and civil cases involving subcontractors or farmers who acted alone in furthering the labor trafficking process. However, the labor trafficking process differed in the five Big Agro cases. In each of these cases, the labor trafficking process was driven by big company’s desire to profit from migrant labor rather than individual farmers or subcontractors trying to profit from the workers. Finally, each civil case in the sample was settled out of court.

To explain the labor trafficking process, we then examined how the farmer-government, recruiter/coyote-worker, and employer-worker social exchanges are structured by larger economic, political, and social forces. Economically, the farmer-government exchanges have been shaped by trade agreements between the U.S. and Mexico, which have allowed the U.S. to dominate Mexican agriculture markets, resulting in less agricultural work in Mexico and lower wages for the agriculture work in Mexico. Since Mexicans are willing to work both documented and undocumented jobs in the U.S., these policies allow U.S. employers to choose between documented or undocumented workers to meet their labor needs. Fines for companies using undocumented workers are light. Politically-speaking, U.S. farmers and agricultural companies also encourage the use of undocumented workers by lobbying legislators not to enforce sanctions for using undocumented workers. This leads to lax enforcement, which allows companies to avoid the fines associated with using undocumented workers. Clearly, American farmers control the decision on whether to use documented or undocumented workers.

The effect of U.S. trade agreements with Mexico has left immigrant workers more dependent on the U.S. companies for work, thus giving the companies more power to control them. To make matters worse, an analysis of the recruiter/coyote-worker relationship revealed that Mexico does little to regulate the recruiting process in Mexico, which leaves the immigrant workers

280 See supra charts accompanying note 104 (twelve of the nineteen cases involving farmers ended up in civil court).

281 INSTITUTE FOR AGRICULTURE AND TRADE POLICY, supra note 262; Hoyos-Robles et al., supra note 262.


283 See Godoy, supra note 18.
dependent on unregulated recruiters to obtain employment. Too often the recruiters take advantage of the situation by instructing workers to lie on their H-2A visa application and by charging workers for their services. This makes the workers even more vulnerable to their employers forced labor tactics.

Socially, relations between Mexican workers and U.S. farmers date back to the end of the nineteenth century, and continue to affect the employer-worker relations once the immigrant is on the job. Over the centuries, little progress has been made in the U.S. to dispel negative stereotypes about Mexicans, which set the stage for employers to abuse their immigrant workers. Mexican workers are lured into micro-level labor trafficking exchanges by the push of U.S. economic policies that reduce jobs in Mexican agriculture and drive down wages, and the pull of jobs in the U.S. that offer increased wages. With little political oversight, and ineffective H-2A policies, the mistreatment of Mexican workers by U.S. employers will continue into the 21st century.

In sum, effective reform of the H-2A visa system, be it legal, economic, or political, needs to take into account the dependency of the immigrant worker on the U.S. agricultural companies. The labor trafficking process begins out of this dependency, because immigrant workers take risks and make themselves economically and legally vulnerable to the companies by signing labor contracts. Policies that reduce this dependency and empower the workers to fight back against abusive and exploitative employers should be devised. Although the U.S. policy toward agricultural labor trafficking is fragmented, optimistically, the U.S. is on the right path with policies that: (1) shift the blame for agricultural labor trafficking away from the immigrants and onto the farmers; and (2) allow undocumented workers access to the courts to redress their labor trafficking grievances. The federal courts can make it easier to bring lawsuits for both documented and undocumented workers by continuing to award attorney fees in labor trafficking civil cases. Finally, while the trend among agricultural employers is to use the H-2A visa system and hire documented workers, the U.S. government needs to do more to encourage companies to use the H-2A visa system.

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284 See Godoy, supra note 18.
ernment is also on the right path by barring imports on goods that are produced by companies who use forced labor.\footnote{Hoyos-Robles et al., supra note 262.} However, much still needs to be done to reduce agricultural labor trafficking.
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