

# Immigration

RESEARCH AND POLICY BRIEF

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## H-2A Visas for Agriculture

### The Complex Process for Farmers to Hire Agricultural Guest Workers

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Congress created the H-2A program in 1986 to allow legal foreign workers to temporarily work for U.S. farmers who were unable to hire qualified Americans. However, illegal immigrant workers came to dominate the industry in the 1990s, and the H-2A program was rarely used. While it still supplies only about 10 percent of farm labor, H-2A employment has increased fivefold since 2005.

The H-2A program needs reforms, but productive reform is only possible if policymakers understand how the system currently operates. This brief explains how the H-2A visa program works. Its main findings include the following:

- The H-2A program has more than 200 rules and is bureaucratically complex.
- H-2A minimum wages are higher than every state's minimum wage by, on average, 57 percent.
- Americans accept only 1 in 20 H-2A job offers, and most later quit.
- H-2A expansion is likely responsible for much of the large decline in illegal immigration from Mexico.
- Violations of H-2A regulations are generally minor. An average of only 0.27 percent of farmers per year have been barred from the program because of serious H-2A violations.

## H-2A Program Rules

The H-2A program is an employer-sponsored temporary worker program, meaning that farmers initiate the process, not the workers. The H-2A visa program has no numerical cap but is restricted to temporary or seasonal jobs lasting less than a year.<sup>1</sup> This requirement significantly limits participation and effectively bars dairies and most animal farms that demand labor year-round.<sup>2</sup> H-2A's most widely used predecessor—colloquially known as the Mexican Bracero Program (canceled in 1964)—had no such limitation.<sup>3</sup> The H-2A program also narrowly defines “agriculture,” excluding most meat packers and processors.<sup>4</sup>

Figure 1 broadly outlines the H-2A process. The Government Accountability Office has found that the “complexity of the H-2A program poses a challenge for some employers” because it “involves multiple agencies and numerous detailed program rules that sometimes conflict with other laws.”<sup>5</sup> In 2014, the U.S. Citizenship and Immigration Services (USCIS) ombudsman characterized the H-2A program simply as “highly regulated.”<sup>6</sup> Appendix Table C details a noncomprehensive list of 209 H-2A rules that apply to workers and farmers, and Text Box 1 is a short summary of those rules.

To start, when farmers have jobs that they want to fill with H-2A workers, they must first receive a labor certification from the Department of Labor (DOL).<sup>7</sup> They must anticipate a worker shortfall and initiate the labor certification process 60 days before the job's start date by submitting job orders to State Workforce Agencies (SWAs), which are state-run entities that help unemployed U.S. workers.<sup>8</sup> The SWAs guarantee that job offers comply with H-2A regulations and

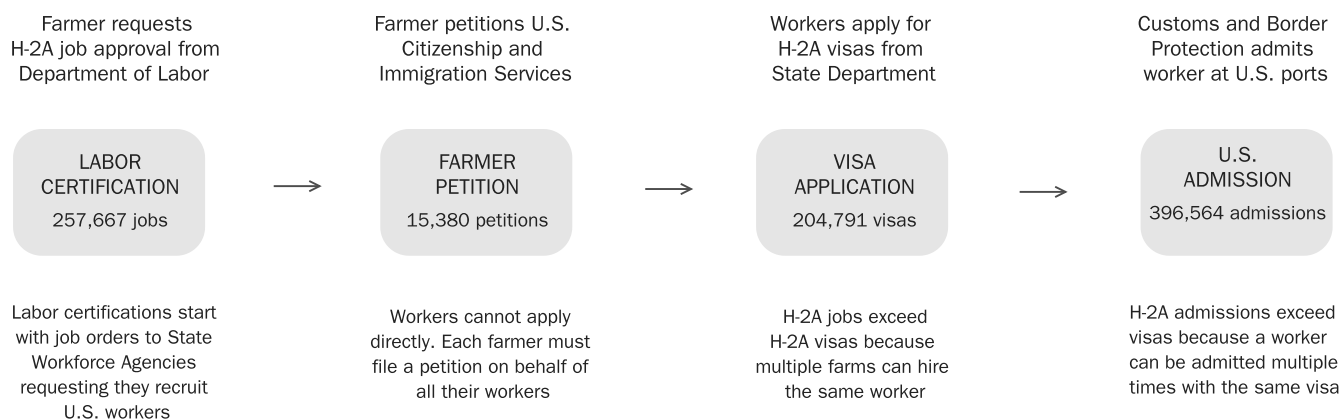
inform unemployed Americans about the job opportunities.<sup>9</sup> Farmers meanwhile must contact former U.S. employees and advertise the jobs.<sup>10</sup>

If too few U.S. workers apply, DOL will again review the jobs and certify the farmer to hire foreign workers for the remaining positions. The law requires DOL to make certifications at least 30 days before the job starts.<sup>11</sup> Delays have cost farmers millions of dollars in lost crops.<sup>12</sup> But the internet has improved DOL processing: it deployed online applications in 2012, and by 2019, about 94 percent of applicants used it.<sup>13</sup> As a result, the department moved from completing just 63 percent of labor certifications within 30 days in 2011 to completing 97 percent in 2015 (Figure 2).<sup>14</sup> In 2019, however, delays reemerged as DOL had the lowest rate of timely approvals (86 percent) of any year since 2013.<sup>15</sup>

If DOL grants the labor certification, the farmer pays fees of \$100 plus \$10 per worker, up to \$1,000 total.<sup>16</sup> Even after H-2A workers start, however, farms must continue to accept U.S. workers until half the job period has expired.<sup>17</sup> While farmers continue recruiting U.S. workers, they petition USCIS to admit foreign workers and pay a \$460 fee per petition.<sup>18</sup> USCIS will conduct yet a third duplicative review (after the State Workforce Agencies and DOL) of the jobs.<sup>19</sup> This can also delay workers' arrivals, and while USCIS has a 15-day deadline, it may surpass the deadline if it requests additional information from the farmer, which it did 11 percent of the time in 2019.<sup>20</sup> Farmers may generally request workers from only 84 eligible countries.<sup>21</sup> Since 2015, USCIS has removed four countries from the eligibility list: Belize, Ethiopia, Haiti, and the Philippines.<sup>22</sup>

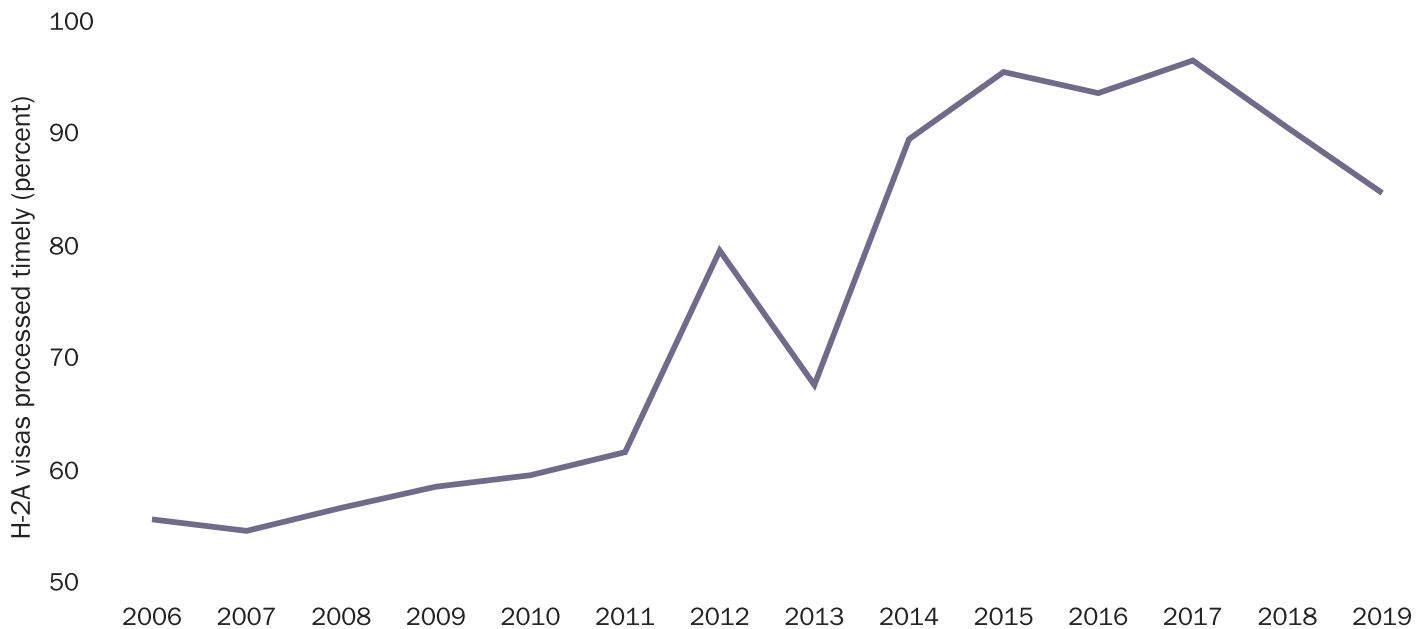
Figure 1

### Four federal agencies oversee the H-2A program, 2019



Sources: “Selected Statistics by Program,” OFLC Performance Data, Department of Labor, Employment and Training Administration; “Nonimmigrant Worker Petitions,” Citizenship and Immigration Services; “Nonimmigrant Visa Statistics,” Department of State; “Legal Immigration and Adjustment of Status Report Quarterly Data,” Department of Homeland Security (admissions based on 2018 data).

Figure 2

**Share of H-2A labor certifications processed timely, 2006–2019**

Sources: Sen. Mike Crapo, "Letter to Hilda Solis," March 14, 2012; Government Accountability Office, *H-2A Visa Program: Modernization and Improved Guidance Could Reduce Employer Application Burden*, GAO-12-706 (Washington: GAO, September 2012); "Selected Statistics by Program," OFLC Performance Data, Department of Labor, Employment and Training Administration.

If USCIS approves a petition, workers may apply for visas. They pay a \$190 visa fee, which employers later reimburse if the worker finishes at least half of the contract.<sup>23</sup> The Mexican Bracero Program streamlined entries by not requiring visas.<sup>24</sup> Until 2016, USCIS also permitted visa-less H-2A entries from several Caribbean countries.<sup>25</sup>

To receive visas, H-2A workers must demonstrate that they do not intend to live in the United States permanently, either illegally or legally.<sup>26</sup> Based on the available evidence, less than 1 percent of the illegal immigrants who overstayed visas were H-2A workers, indicating that they value their legal status.<sup>27</sup> Farmers petitioned for legal permanent residence on behalf of only 77 H-2A workers in 2018 because workers cannot receive H-2A status with a permanent residence petition pending; the process is too lengthy and expensive for farmers, and employers cannot request permanent residence for workers in temporary jobs.<sup>28</sup> Visas authorize travel to the U.S. border, where Customs and Border Protection (CBP) screens workers, grants them admission, and authorizes their H-2A status for the job's duration.<sup>29</sup> CBP charges an entry fee of \$6 per worker, and workers often wait in line several hours to enter the country.<sup>30</sup>

When workers arrive, farmers must pay wages and benefits at rates set by DOL to both H-2A and U.S. workers in "corresponding employment."<sup>31</sup> This parity requirement—which the Bracero Program lacked—applies even if U.S. workers are the vast majority of employees, which discourages new

farmers from joining.<sup>32</sup> Farmers must usually pay a minimum wage called the Adverse Effect Wage Rate (AEWR), which is the costliest and most contested rule.<sup>33</sup>

The AEWR is a regional average wage based on annual government surveys.<sup>34</sup> The AEWR ignores differences between localities, detailed job types, skills, and experience. Both the H-2B nonagricultural and H-1B skilled worker programs determine wages for local areas for specific occupations and permit some private surveys.<sup>35</sup> The H-1B program also provides four skill levels.<sup>36</sup> The 2020 hourly AEWR (Figure 3) was between \$11.71 (Alabama, Florida, Georgia, and South Carolina) and \$15.83 (Oregon and Washington).<sup>37</sup> The 2020 AEWR was higher than every state's minimum wage by an average of 57 percent.<sup>38</sup>

DOL adjusts the AEWR annually based on a survey and uniquely classifies overtime, hazard pay, bonuses, performance incentives, and all other payments as wages.<sup>39</sup> This inflates the base hourly rate before adding these types of extra compensation for the following year.<sup>40</sup> This inflated average rate then applies to all workers, pricing out H-2A and U.S. workers who had below-average wages. When these workers drop out, the surveyed wage is artificially inflated even further. Many farmers feel these procedures put the AEWR on an upward escalator that becomes more disconnected from reality each year. The average AEWR has grown about twice the rate of inflation since 2001.<sup>41</sup> In some states, the AEWR

**TEXT BOX 1**  
**MAJOR H-2A RULES**

**Eligibility:** Full-time farm jobs lasting less than one year.

**Labor certification:** Employers must show no “adverse effect” on U.S. workers.

**Positive recruitment:** Advertise job, contact past employees.

**50 percent rule:** Accept U.S. workers applying until half the contract has elapsed.

**Corresponding employment mandate:** U.S. workers get the same benefits as H-2As.

**Adverse Effect Wage Rate:** H-2A minimum wage based on regional averages that include overtime, bonuses, and incentives.

**Three-fourths guarantee:** Farmers must pay at least 75 percent of the contract period.

**Housing:** Farmers must provide no-cost housing to H-2A and out-of-state U.S. workers.

**Transportation:** Cover daily transit to jobsite and transit to and from home country or state.

**Meals:** Workers must have access to a kitchen or receive three meals per day.

**Petition:** Employers must petition to request workers’ admission to the United States.

**Visa:** Workers must receive a visa from a consulate to travel to a U.S. port of entry.

**Nonimmigrant intent:** Workers cannot intend to live in the U.S. permanently, either legally or illegally.

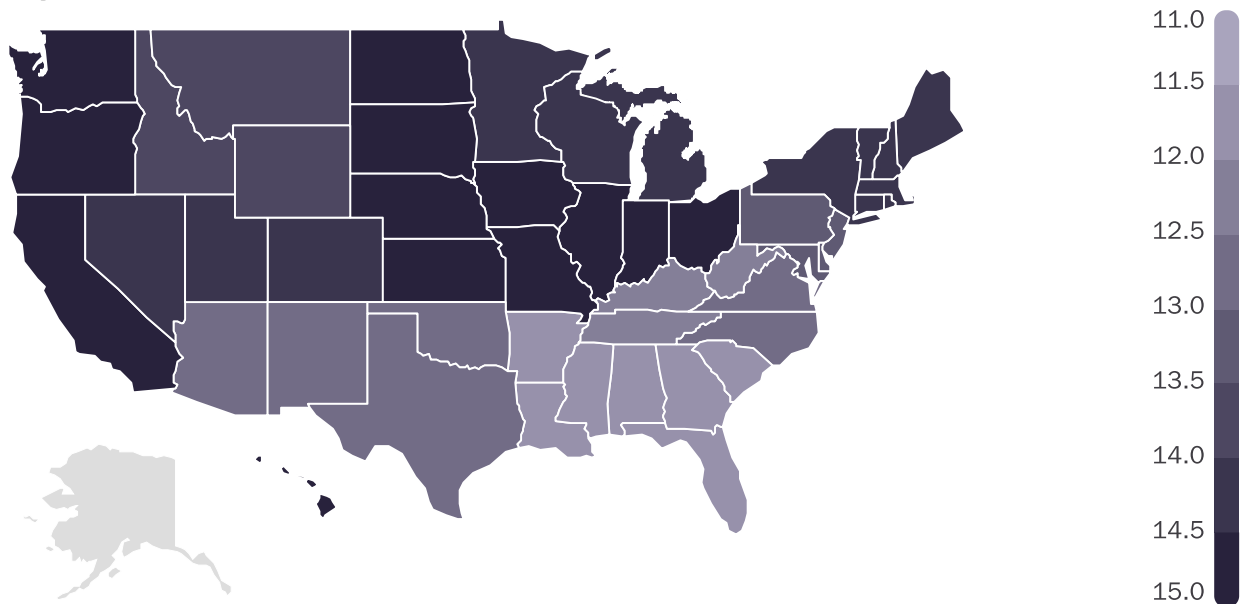
**Three-year limit:** H-2A workers transferring between U.S. farms must return to their home country for at least 90 days after three years.

**Fees:** \$100 per labor certification, plus \$10 per worker; \$460 per employer petition; \$190 per visa; \$6 per admission.

**Records:** Maintain detailed records for three years.

See Appendix Table C for a full list of 209 rules.

Figure 3  
**Adverse effect wage rates, 2020**



Source: “Adverse Effect Wage Rate Trends,” Office of Foreign Labor Certification.

increased 23 percent in 2019.<sup>42</sup>

Farmers must guarantee AEWR wages equal to at least 75 percent of the projected job period even if it finishes early.<sup>43</sup> H-2A farmers must also finance transit to and from jobsites and offer workers either kitchens or three daily meals.<sup>44</sup> H-2A workers and out-of-the-area U.S. workers must receive housing at no cost. Excluding the AEWR, housing is

the costliest rule for farmers: it accounts for nearly a quarter of H-2A requirements (see Appendix Table C) and inflates total compensation far above the non-H-2A rate.<sup>45</sup> In comparison, the H-2B program for nonagricultural jobs generally has no housing mandate.<sup>46</sup>

When H-2A workers complete 50 percent of the job, farmers must reimburse their expenses for travel to the United

States and, if workers complete the job, pay for the trip back to their home country, unless workers find other H-2A jobs.<sup>47</sup> Regulations require H-2A workers to find another employer within 30 days and mandate absences of at least three continuous months every three years.<sup>48</sup> DOL's Wage and Hour Division conducts audits of H-2A farmers and fines those who fail to comply with regulations.<sup>49</sup> Figure 4 illustrates a simplified version of H-2A filing procedures.

Given the high costs and regulatory complexities of the H-2A program, farmers use it as a last resort. For this reason, it served few farms until around 2005 but has grown rapidly since then (Figure 5). In 2019, DOL certified about five times as many jobs for H-2A employment as in 2005—an increase from 48,336 to 257,667.<sup>50</sup> These certified jobs led to 204,366 visas for new foreign workers to travel from abroad, and H-2A workers were admitted to the United States about 397,000 times.<sup>51</sup> Nonetheless, H-2A jobs were just 10 percent of the roughly 1.4 million full-time equivalent agricultural jobs in 2019.<sup>52</sup>

### U.S. Workers and the H-2A Program

The first sections of Figure 4 cover DOL's labor certification.<sup>53</sup> The Government Accountability Office has called this process a “time consuming, complex, and challenging” exercise that “imposes a burden on H-2A employers that is not borne by employers who break the law and hire undocumented workers.”<sup>54</sup> The labor certification is intended to demonstrate that H-2A workers will not “adversely affect” U.S. workers.<sup>55</sup> Numerous government and academic reports have found that this expensive effort is largely futile, producing few, if any, hires that would not otherwise occur.<sup>56</sup>

DOL has continuously raised H-2A minimum wages to induce U.S. workers to apply, but Department of Agriculture economists have concluded that “farm labor supply in the United States is not very responsive to wage changes.”<sup>57</sup> When Congress canceled the Bracero Program—which had admitted at its peak nearly a half a million Mexican workers—farmers in areas that lost braceros hired no more U.S. workers nor did they raise wages compared to other farms.<sup>58</sup> Instead, they mechanized, shifted to less labor-intensive crops, and downsized.

With more hospitable and consistent jobs available elsewhere, U.S. workers pass on seasonal farm jobs. For example, the North Carolina Growers Association sought to fill 7,008 jobs through the H-2A program in 2012 and just 143 U.S. workers—2 percent of those demanded—applied for and showed up for the jobs, and only 10 completed the growing season. From 2007 to 2010, only about 50 out of the 290,000 net increase in unemployed North Carolinians

chose agricultural jobs (Figure 6).<sup>59</sup>

DOL found that from 2014 to 2016, 87 percent of H-2A employers requesting U.S. workers received none.<sup>60</sup> Just 6 percent of H-2A jobs ultimately went to U.S. workers, and a majority of those showed up *after* the harvest began and H-2A workers had started.<sup>61</sup> This means that H-2A recruitment—including higher wages and state and federal oversight—provided farmers with U.S. workers in time for harvests just 2.9 percent of the time. Even then—as the North Carolina growers found—many U.S. workers “either did not report to work or voluntarily resigned.”<sup>62</sup>

Of course, even the few U.S. workers in H-2A jobs would likely have found jobs without the extensive regulatory structure. The H-2A employment surge has even coincided with a dramatic drop in unemployment for domestic farmworkers (Figure 7).<sup>63</sup> In other words, farms have hired domestic workers alongside H-2A workers.

### Farmers and the H-2A Program

American farms produced about \$133 billion—a bit below 1 percent—of the U.S. gross domestic product in 2017. Related downstream industries that depend on U.S. agricultural production contributed more than \$1 trillion to GDP.<sup>64</sup> This important industry spends about \$40 billion on hired help and depends on reliable sources of workers because harvests must occur during brief time windows.<sup>65</sup>

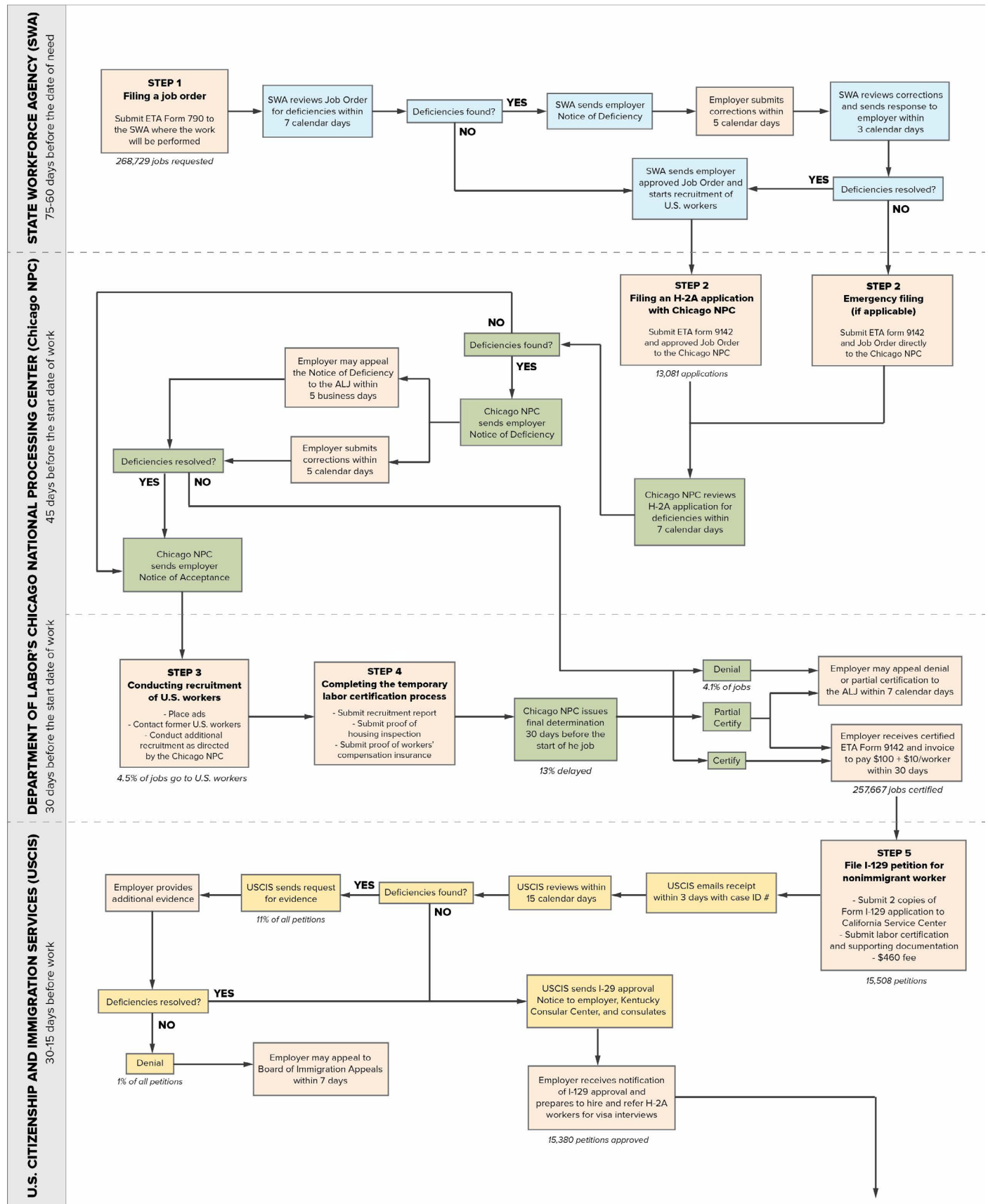
Farmers hire foreign workers because very few U.S. workers want farm jobs despite rising wages. The illegal immigrant share of domestic farmworkers grew from 7 percent to 56 percent from 1989 to 2000, but dropped to 48 percent by 2016 (Figure 8). Since 1989, the share of U.S.-born farmworkers fell from about 40 percent to roughly 25 percent (Figure 8).<sup>66</sup>

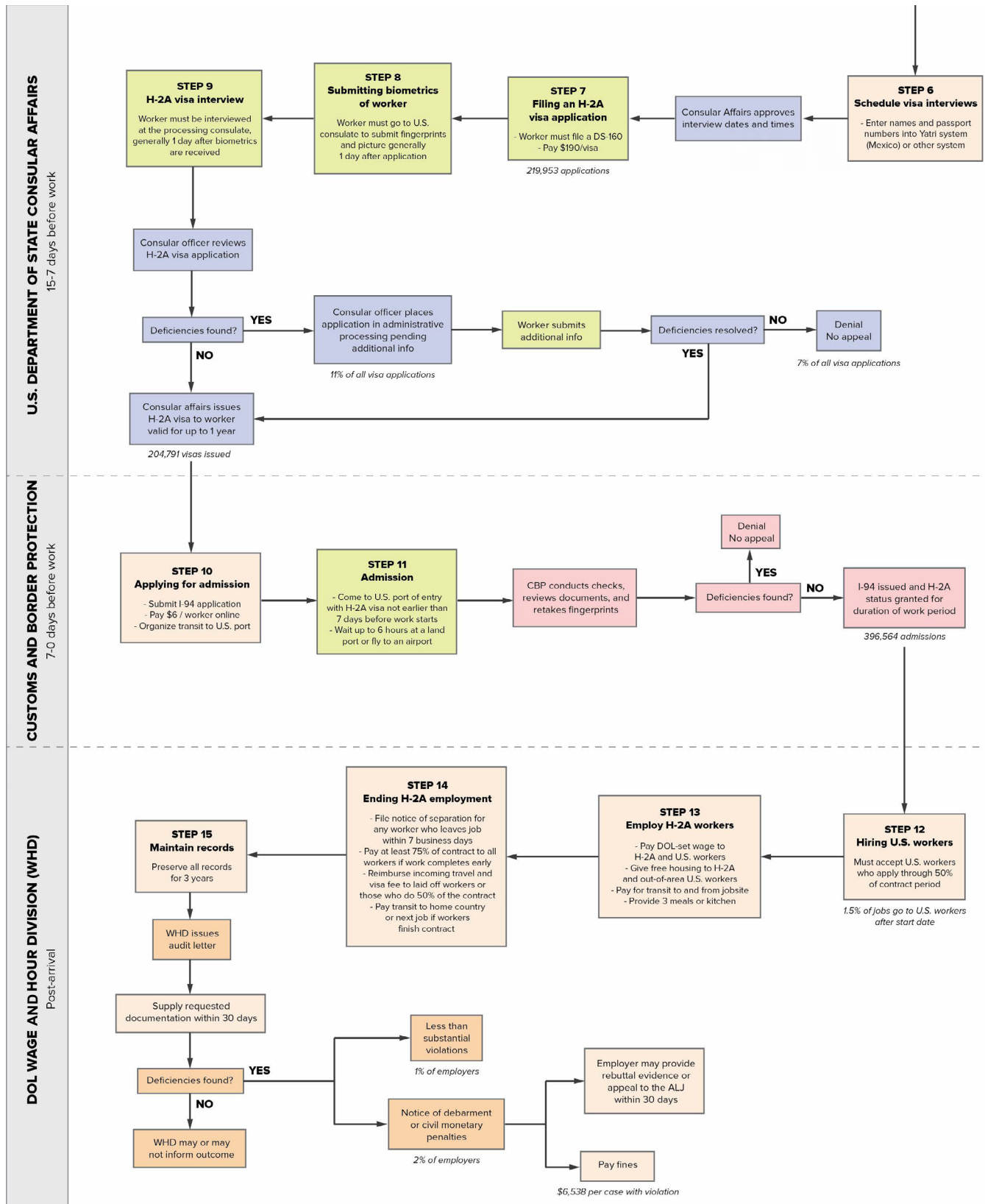
In addition to faster H-2A processing times (Figure 2), farm labor markets have changed since the late 1990s to encourage hiring more H-2A workers. Most important, the share of domestic farmworkers who are new (non-H-2A) entrants to U.S. farm work began cratering, falling from 27 to 4 percent from 1997 to 2016.<sup>67</sup> With fewer workers coming down the road, more farmers sought new workers through the H-2A program.

Fewer new entrants partly explains why labor demand has outstripped the supply of H-2A workers, causing farm wages to rise (Figure 9).<sup>68</sup> Farm laborers in crop production—the primary H-2A activity—saw especially outsized wage growth. In 2001, such laborers made 53 percent as much as all workers weekly, compared to 60 percent in 2019.<sup>69</sup>

Farms where labor expenses are the highest hire the most H-2A workers. Fruits, vegetables, horticulture, and tobacco

Figure 4  
H-2A program application process, 2019





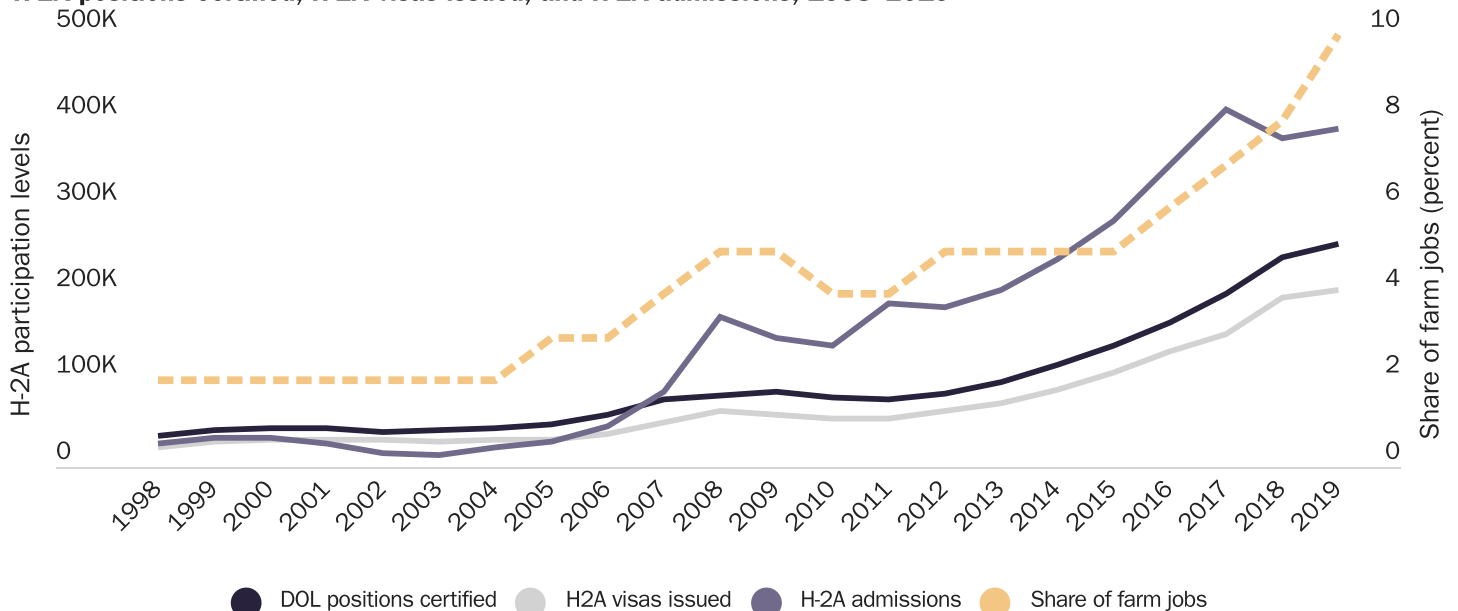
## Legend



Sources: Office of Foreign Labor Certification, *Employer Guide to Participation in the H-2A Temporary Agricultural Program* (Washington: DOL, January 2012); 20 C.F.R. Subpart B—“Labor Certification Process for Temporary Agricultural Employment in the United States (H-2A Workers),” April 1, 2018; and 8 C.F.R. § 214.2.



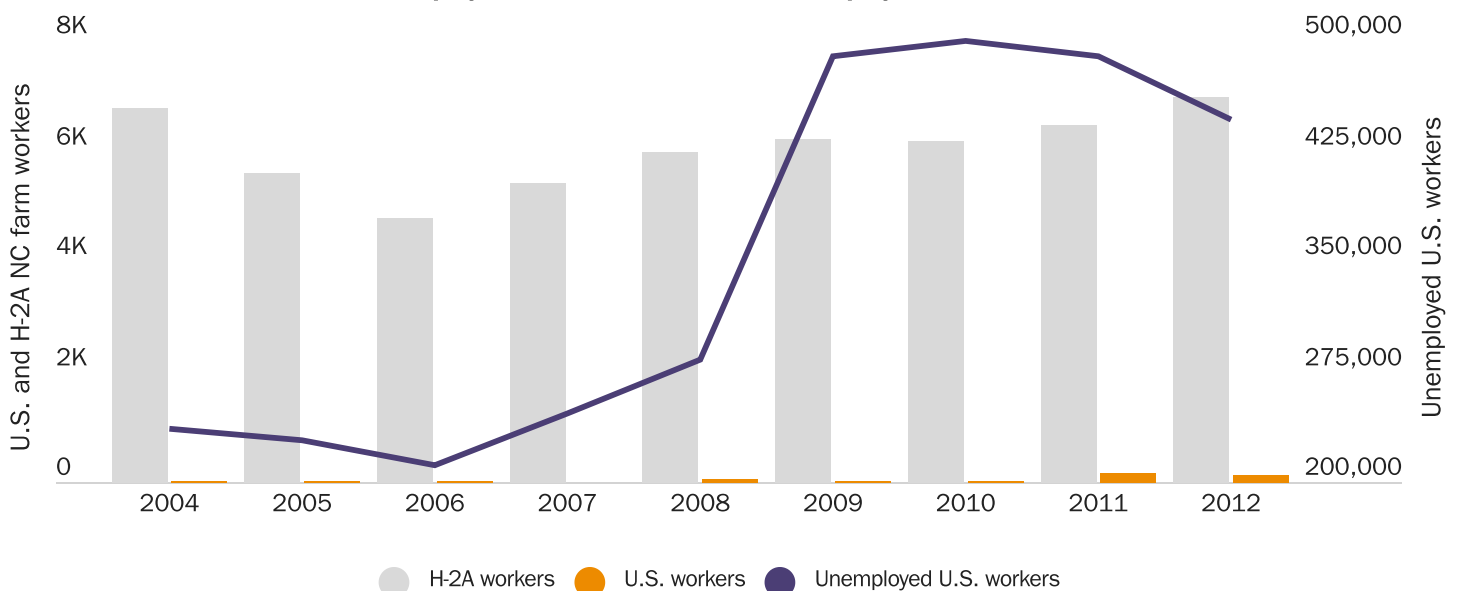
Figure 5

**H-2A positions certified, H-2A visas issued, and H-2A admissions, 1998–2019**

Sources: "Selected Statistics by Program," OFLC Performance Data, Department of Labor, Employment and Training Administration; Ruth Ellen Wasem and Geoffrey Colver, *Immigration of Agricultural Guest Workers: Policy, Trends, and Legislative Issues* (Washington: Congressional Research Service, January 24, 2003); Philip Martin, *Evaluation of the H-2A Alien Labor Certification Process and the U.S. Farm Labor Market* (Silver Spring, MD: KRA Corporation, September 18, 2008); Immigration and Naturalization Service, *Yearbook of Immigration Statistics* (Washington: DOJ, 1992); Department of Homeland Security, *Yearbook of Immigration Statistics* (Washington, DHS, 2019); "Legal Immigration and Status Report Quarterly Data," Department of Homeland Security; "Nonimmigrant Visa Statistics," Department of State; and "Regional Economic Accounts," Bureau of Economic Analysis.

Note: Farm jobs include direct agricultural employment and agricultural support activities (which includes some forestry and fishing). Data are interpolated for 2003; admissions are interpolated for 1997 and 2005 and estimated for 2019 based on the ratio of visas issued to admissions in 2018.

Figure 6

**H-2A workers and U.S. workers employed in North Carolina and unemployed U.S. workers in North Carolina**

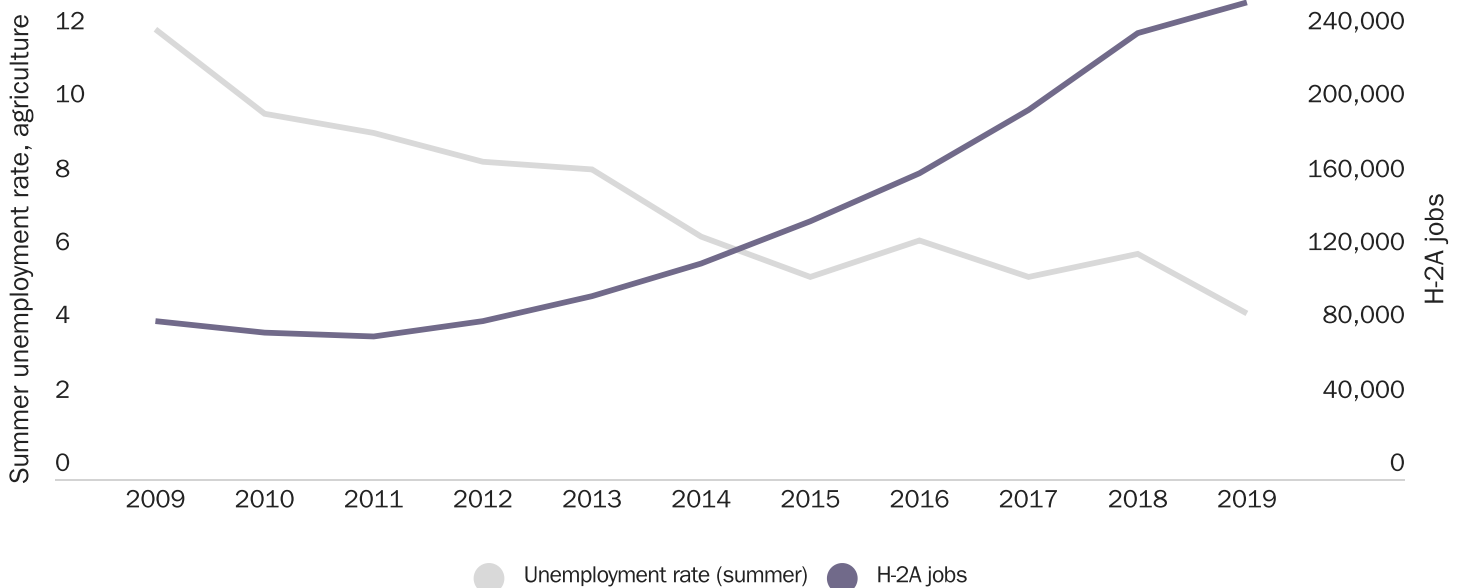
Source: Michael Clemens, "The Effect of Occupational Visas on Native Employment: Evidence from Labor Supply to Farm Jobs in the Great Recession," IZA DP no. 10492 (Bonn: IZA Institute of Labor Economics, January 2017), p. 19.

farming constituted nearly three-quarters of H-2A jobs in 2018, and these industries spend double or triple the share on labor as other agricultural industries (Table 1).<sup>70</sup> While

dairies and other animal farms use the H-2A program less, they also face a major legal obstacle to participating because most of their jobs are permanent rather than, as H-2A law

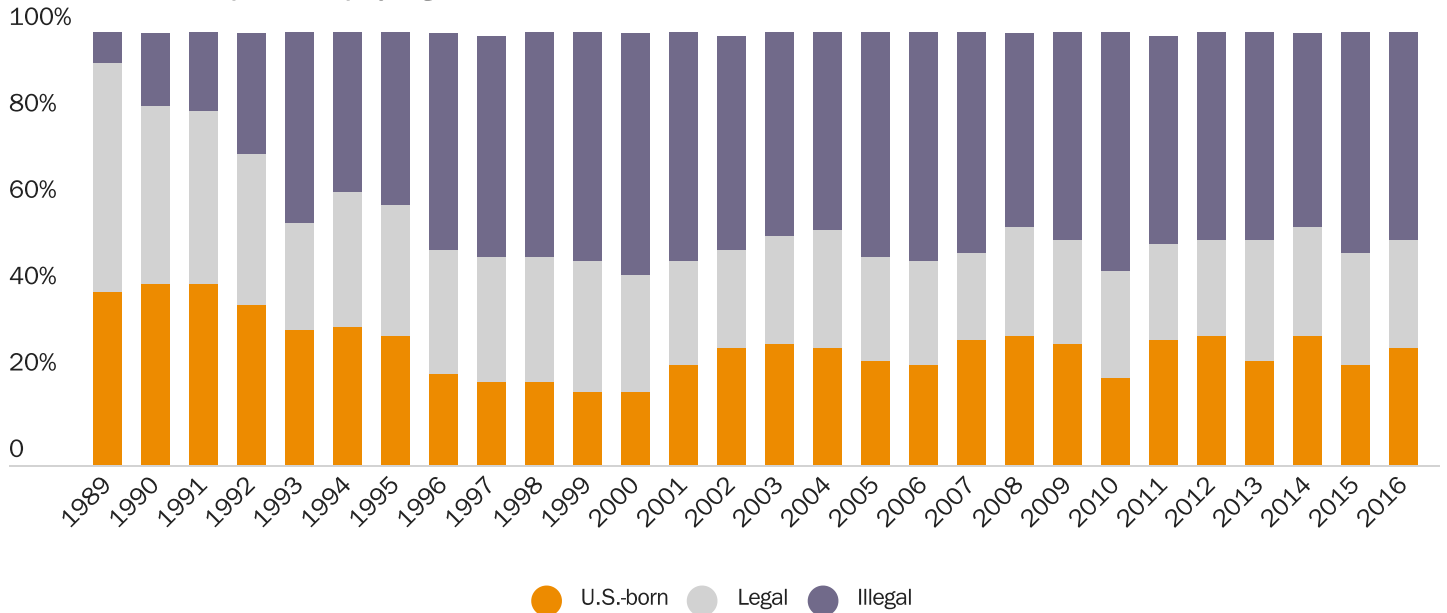


Figure 7

**Domestic agricultural summer unemployment rate and H-2A jobs**

Sources: "Annual Report Performance Data," OFLC Performance Data, Department of Labor, Employment and Training Administration; "Selected Statistics by Program," OFLC Performance Data, Department of Labor, Employment and Training Administration; and "Table A-14. Unemployed Persons by Industry and Class of Worker, Not Seasonally Adjusted," Bureau of Labor Statistics, 2019.

Figure 8

**U.S. farmworkers (non-H-2A) by legal status, 1989–2016**

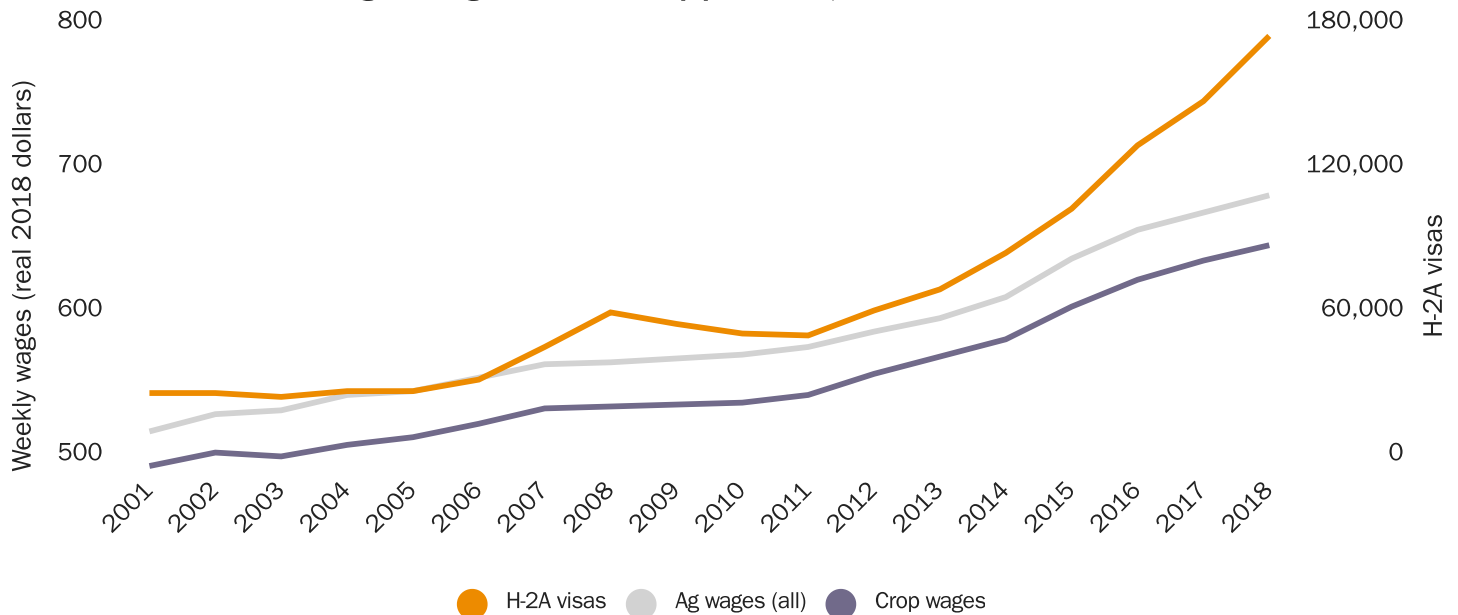
Source: "The National Agricultural Workers Survey," Department of Labor, Employment and Training Administration.

requires, temporary.<sup>71</sup>

The H-2A increase has likely lowered illegal border crossings, reducing the supply of illegal farmworkers and prompting still more farmers to hire H-2A workers. From 2000 to 2018, a 1 percent increase in H-2 visas for Mexicans—including some under the H-2B program for nonagricultural

jobs—was associated with a 1 percent decline in the absolute number of Mexicans apprehended for crossing illegally.<sup>72</sup> Figure 10 shows that when H-2A admissions are high, Border Patrol apprehensions (per agent) have remained low.<sup>73</sup> As one H-2A worker told the *Washington Post* in April 2019, "Most of my friends go with visas or they don't go at all."<sup>74</sup>

Figure 9

**H-2A visas and mean real wages for agriculture and crop production, 2001–2019**

Source: "Quarterly Census of Employment and Wages," Bureau of Labor Statistics (inflation-adjusted using the Personal Consumption Expenditures Index).

Note: Wages adjusted for inflation by "Personal Consumption Expenditures: Chain-type Price Index," Bureau of Economic Analysis, <https://fred.stlouisfed.org/series/PCEPI>.

Table 1

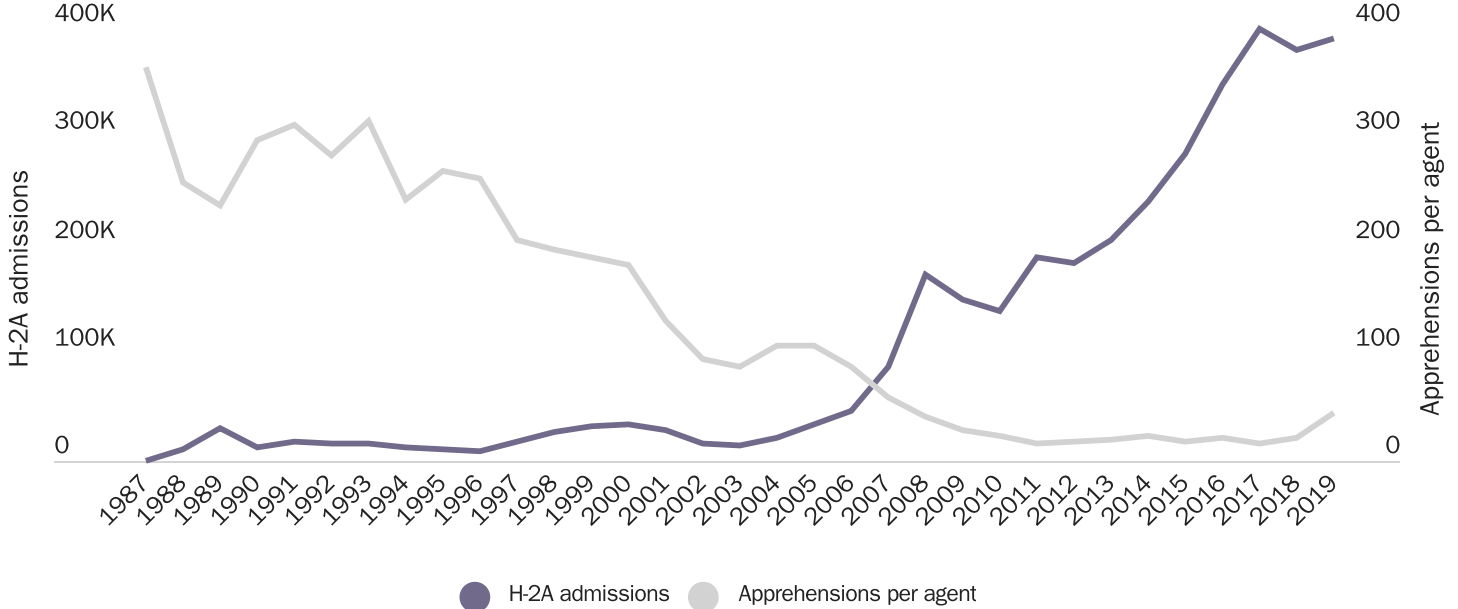
**Farm labor expenses, farm hired workers, and H-2A jobs**

	Labor expenses (thousands \$)	Labor share of all expense	Total hired workers	Share of hired workers	Share of H-2A jobs
All farming	\$ 39,230,796	12%	2,411,033	100%	100%
Oilseed and grain farming	\$ 4,577,825	5%	323,206	13%	6%
Vegetable and melon farming	\$ 4,684,356	29%	226,795	9%	36%
Fruit and tree nut farming	\$ 9,008,151	39%	567,607	24%	25%
Greenhouse, nursery, and floriculture	\$ 5,376,107	43%	267,399	11%	7%
Tobacco	\$ 273,910	25%	22,330	1%	11%
All other crops	\$ 2,529,750	13%	225,334	9%	8%
Dairy cattle and milk	\$ 4,120,273	12%	154,259	6%	0%
Beef cattle ranching and farming	\$ 3,236,319	5%	328,329	14%	1%
Hog and pig	\$ 1,313,568	6%	45,555	2%	0%
Poultry and egg	\$ 1,902,614	6%	71,948	3%	0%
Sheep and goat	\$ 126,657	8%	27,171	1%	1%
Animal aquaculture and other animals	\$ 1,807,355	20%	128,770	5%	2%

Sources: "Census of Agriculture," Department of Agriculture, National Agricultural Statistics Service; and "Selected Statistics by Program," OFLC Performance Data, Department of Labor, Employment and Training Administration, 2018.

Figure 10

**H-2A admissions and Border Patrol apprehensions per agent, 1987–2019**

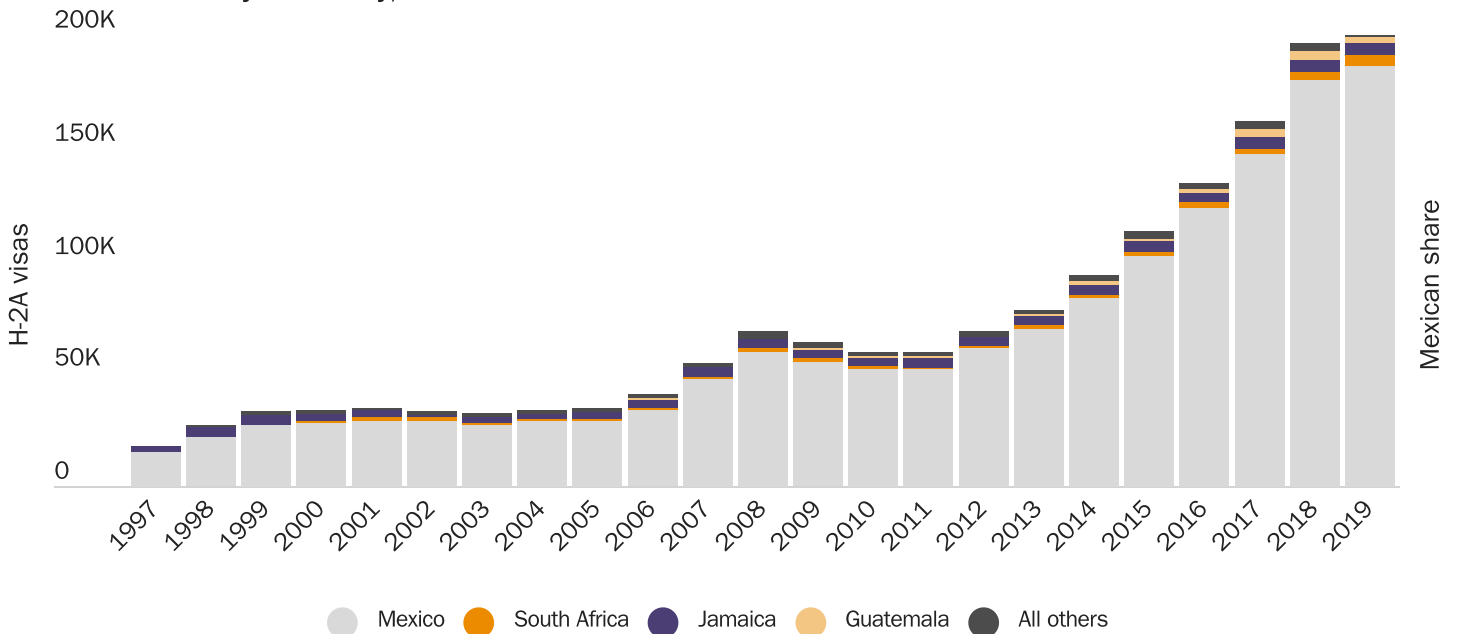


Sources: Immigration and Naturalization Service, *Yearbook of Immigration Statistics* (Washington: DOJ, 1992); Department of Homeland Security, *Yearbook of Immigration Statistics* (Washington: DHS, 2019); Department of Homeland Security, *Legal Immigration and Status Report Quarterly Data* (Washington: DHS, 2018); "Nonimmigrant Visa Statistics," Department of State; "Total CBP Enforcement Actions," Customs and Border Protection, 2019; Border Patrol, *Nationwide Illegal Alien Apprehensions Fiscal Years 1925–2018* (Washington: DHS, 2019); Border Patrol, *Border Patrol Agent Nationwide Staffing by Fiscal Year* (Washington: DHS, 2018); and "Border Patrol Agents: Southern Versus Northern Border," Transactional Records Access Clearinghouse, 2006.

Note: Admissions in 2019 were estimated using 2019 visa issuances based on the ratio of visas to admissions in 2018; admissions were interpolated in 1997 and 2005.

Figure 11

**H-2A visas issued by nationality, 1997–2019**



Sources: "Nonimmigrant Visa Statistics," Department of State; and Department of Homeland Security, *Yearbook of Immigration Statistics* (Washington: DHS, 2019).

Note: Jamaica reflects admissions from 1997–2015 because visas were not required until 2016.

## Foreign Workers and the H-2A Program

Almost all H-2A workers are Mexicans. Figure 11 shows the number of H-2A visas issued by nationality from 1997 to 2019.<sup>75</sup> Mexicans dominate the flow every year, and from 2005 to 2019, the Mexican share further increased from 82 to 91 percent. The next most common nationality is South African (2 percent), followed by Jamaican (2 percent), and Guatemalan (1 percent). All other nationalities amounted to just over 3 percent.

Farmers must petition the government to request foreign workers before workers can receive visas, meaning that farmers control which countries the workers come from. As H-2A employer requests grew, U.S. recruiters expanded their existing recruitment in Mexico.<sup>76</sup> For this reason among others, it is unlikely that farmers will hire many non-Mexican workers in the foreseeable future.<sup>77</sup> If Congress wants to encourage the hiring of other nationalities that are prone to making illegal border crossings, it needs to expand the program, such as allowing year-round industries to use H-2A visas but only to hire from those specific countries—thus forcing employers to recruit there.<sup>78</sup>

Higher U.S. wages motivate Mexicans to accept U.S. farm jobs (see Text box 2).<sup>79</sup> The annualized wage for H-2A workers was almost \$25,000 in 2019.<sup>80</sup> Mexico's minimum wage for farmworkers was just \$4.64 per day, less than \$1,200 per year.<sup>81</sup> Even the highest paid agricultural workers in Mexico only earn \$15 per day.<sup>82</sup> Even if H-2A minimum wages fell, Mexicans would still greatly benefit from H-2A jobs.<sup>83</sup> Indeed, a larger number would benefit because a lower wage would allow farmers to hire more workers.

Nearly all H-2A workers willingly attempt to return year after year. While the State Department fails to disclose the frequency at which H-2A workers return, one indication is that the similar H-2B program for nonagricultural workers—most of whom are also Mexicans—doubled in size when Congress allowed H-2B returning workers to be exempt from the cap in 2007.<sup>84</sup> The H-2A program is uncapped, so no similar experiment can occur, but H-2A workers also report repeatedly participating.<sup>85</sup>

The frequency of returning workers indicates that whatever the downsides, foreign workers prefer H-2A jobs to jobs in their home countries or illegal status. Unfortunately, abuses can happen. Polaris, a group dedicated to combating human trafficking, received 327 complaints to its human trafficking hotline from H-2A visa holders from 2015 to 2017—about 0.08 percent of visas issued.<sup>86</sup> These are tragic cases, but as David Medina of Polaris told the *Guardian*, most H-2A workers' "biggest fear is to lose that visa."<sup>87</sup>

### TEXT BOX 2 THE H-2A EXPERIENCE

"I miss my family, yes. But we come here to support our families and provide our kids with a better education. In Mexico, they pay very little. You work all day and you earn what you earn here in an hour. It's a big difference."

—Rodolfo Benito Coy Garcia, H-2A Tennessee tree harvester

"[Crossing illegally], one of the men in my group was bitten by a snake. There was nothing anyone could do but leave him there. . . . [Under H-2A], I don't have to risk my life anymore to support my family. And when I am here, I do not have to live in hiding."

—José Vásquez Cabrera, H-2A Florida fruit picker

"It means a lot for somebody like me to have people like American farmers open up their doors for us to come work for them so that we can provide for our families back home."

—Jacque Myburgh, H-2A North Dakota cattle rancher

"It's a better future than in Mexico."

—Joel, H-2A Minnesota vegetable picker

"I like it. I have good money. What [I] make in one day at home, [I] make in one hour here."

—Carlos Montano, H-2A cilantro harvester

"We earn a lot of money here. One American dollar is worth 18 pesos in Mexico. But the work here is much less laborious."

—Indiana fruit picker

The Wage and Hour Division of DOL investigates abuses and enforces H-2A rules. Figure 12 compares the number of H-2A wage and hour violators fined by the division to the number of unique H-2A employers each year since 2008.<sup>88</sup> Even with H-2A's immense regulatory complexity, DOL fined just 2 percent of H-2A employers, on average, annually from 2008 to 2018. Most fines were for minor infractions, worth on average just \$237.<sup>89</sup> The maximum available fine per violation in 2019 was \$115,624.<sup>90</sup> Fewer than 20 employers from 2008 to 2018 had serious enough violations to have been suspended or debarred from the program—an annual rate of 0.27 percent of the employers.

While farmers, unions, and migrant advocates disagree over the necessity of more intrusive auditing of all employers to deal with such limited abuses, they generally agree that H-2A workers should be better able to protect their own rights by leaving to find new jobs.<sup>91</sup> This would require lengthening the period that workers have to find another job and allowing existing H-2A workers to be recruited on the same terms as U.S. workers so that subsequent employers need not have already initiated the complex recruitment process before the

Figure 12

**H-2A employers and H-2A employer violators and debarments for serious violations**

Sources: "Selected Statistics by Program," OFLC Performance Data, Department of Labor, Employment and Training Administration, 2019; "Wage and Hour Division Compliance Action Data," Department of Labor, July 26, 2019; and "Program Debarments," Department of Labor.

Note: Data reference unique employers in each year, not cases or violations. Violators were assigned to the date that violations occurred; debarments to the year that they began.

worker applies. These changes would be a rare win-win reform for both farmers and foreign workers.

## CONCLUSION

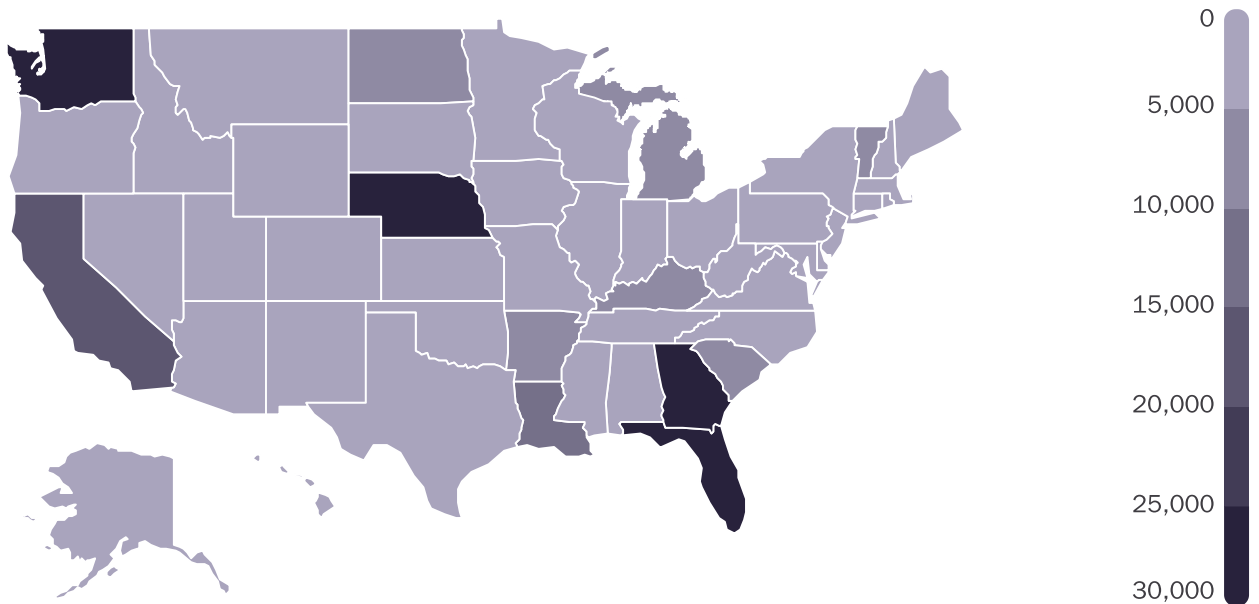
The H-2A program has more than 200 complex rules that reduce farmer participation. Farmworker wages have increased continuously since 2001, but H-2A recruitment of American workers still attracts less than 3 percent of the

needed workers by the job's start date. Higher wages, low unemployment rates, and fewer U.S. workers entering agriculture have encouraged more farmers to use the program, which has likely resulted in fewer illegal border crossings. H-2A abuses of foreign workers are rare, and H-2A workers choose to return year after year because program conditions improve their lives. Congress could expand on this successful program by making H-2A visas available to year-round industries and streamlining its rules and regulations.

## APPENDIX

Figure A

### H-2A labor certification jobs approved by state, 2018

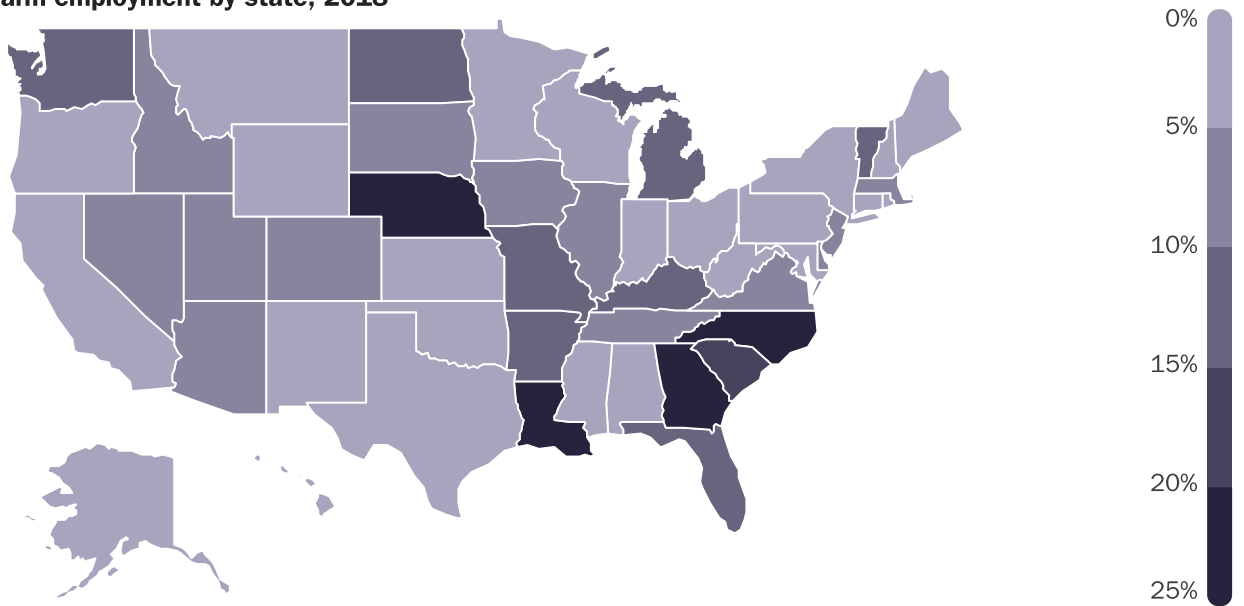


Source: "Selected Statistics by Program," OFLC Performance Data, Department of Labor, Employment and Training Administration, 2019.

Note: Unlike the Department of Labor's summary statistics, this figure includes "sub-employment" (secondary jobs for a joint employer).

Figure B

### H-2A share of farm employment by state, 2018



Sources: "Selected Statistics by Program," OFLC Performance Data, Department of Labor, Employment and Training Administration, 2019; and "Regional Economic Accounts," Bureau of Economic Analysis.

Note: Unlike the Department of Labor's summary statistics, this figure includes "sub-employment" (secondary jobs for a joint employer).

Table A

**H-2A program participation statistics**

	Department of Labor labor certifications					DHS	State Dept.		CBP
	Unique employers	Employer requests	Jobs requested	Jobs certified	Timely processed	Employer petitions	Visa approved	Visa denial rate	Admissions
1987	N/A	N/A	N/A	0	N/A	N/A	44	N/A	0
1988	N/A	N/A	N/A	N/A	N/A	N/A	2,612	N/A	10,851
1989	N/A	N/A	N/A	26,206	N/A	N/A	3,965	N/A	30,189
1990	N/A	N/A	N/A	25,086	N/A	N/A	5,318	N/A	13,219
1991	N/A	N/A	N/A	25,213	N/A	N/A	6,847	N/A	18,487
1992	N/A	N/A	N/A	18,710	N/A	N/A	6,445	N/A	16,385
1993	N/A	N/A	N/A	16,846	N/A	N/A	7,243	N/A	16,257
1994	N/A	N/A	N/A	16,514	N/A	N/A	7,721	N/A	13,185
1995	N/A	N/A	N/A	15,117	N/A	N/A	8,379	N/A	11,394
1996	N/A	N/A	N/A	17,537	N/A	N/A	11,004	N/A	9,635
1997	N/A	N/A	N/A	23,352	N/A	N/A	16,011	N/A	N/A
1998	N/A	N/A	39,810	34,783	N/A	N/A	22,676	N/A	27,308
1999	N/A	N/A	46,985	41,827	N/A	N/A	28,568	N/A	32,372
2000	N/A	N/A	47,845	43,670	N/A	N/A	30,201	N/A	33,292
2001	N/A	N/A	47,154	44,147	N/A	N/A	31,523	N/A	27,695
2002	N/A	N/A	47,435	41,027	N/A	N/A	31,538	7%	15,628
2003	N/A	N/A	N/A	N/A	N/A	N/A	29,882	7%	14,094
2004	N/A	N/A	44,801	43,637	N/A	N/A	31,774	8%	22,141
2005	N/A	N/A	50,721	48,336	N/A	N/A	31,892	8%	N/A
2006	N/A	6,551	64,146	59,110	57%	N/A	37,149	13%	46,432
2007	N/A	7,740	80,413	76,814	56%	N/A	50,791	15%	87,316
2008	6,564	8,096	86,134	82,099	N/A	N/A	64,404	11%	173,103
2009	6,519	7,857	91,739	86,014	N/A	N/A	60,112	12%	149,763
2010	6,000	7,378	89,177	79,011	N/A	N/A	55,921	9%	139,406
2011	5,585	7,361	83,844	77,246	63%	N/A	55,384	6%	188,411
2012	5,940	8,047	90,362	85,248	81%	7,723	65,345	8%	183,860
2013	6,030	8,388	105,735	98,821	69%	7,455	74,192	7%	204,577
2014	6,348	9,405	123,528	116,689	91%	12,577	89,274	8%	240,620
2015	6,995	10,339	145,874	139,832	97%	9,158	108,144	8%	283,580
2016	7,124	8,684	172,654	165,741	95%	10,151	134,368	6%	348,052
2017	7,612	10,115	206,156	200,049	98%	11,602	153,095	5%	412,820
2018	8,341	11,806	251,679	242,762	92%	13,444	196,408	7%	380,331
2019	11,472	15,337	269,141	259,254	84%	15,508	202,025	N/A	N/A

Sources: "Performance Reports, 2006–2017," "H-2A Selected Statistics," and "H-2A Disclosure Data," Office of Foreign Labor Certification; "Nonimmigrant Visa Statistics," Department of State; "Worldwide NIV Workload by Visa Category," (2002–2012), Department of State; Department of Homeland Security, *Yearbook of Immigration Statistics* (Washington, DHS, 2019); Immigration and Naturalization Service, *Yearbook of Immigration Statistics* (Washington: DOJ, 1992); "Quarterly Immigration and Status Report," Department of Homeland Security; "I-129, Petition for a Nonimmigrant Worker," Citizenship Immigration Services; and "H-2A Nonimmigrant Worker," Citizenship Immigration Services.



Table B

**H-2A program enforcement statistics**

	Debarments	Wage and hour division departments	Wage and hour division unique violators	Unique cases	Penalties
2000	N/A	N/A	N/A	68	\$136,620
2001	N/A	N/A	N/A	102	\$258,540
2002	N/A	N/A	N/A	121	\$173,385
2003	N/A	N/A	N/A	76	\$311,025
2004	N/A	N/A	N/A	79	\$178,350
2005	N/A	N/A	N/A	73	\$285,900
2006	N/A	N/A	N/A	86	\$57,900
2007	N/A	N/A	N/A	95	\$77,413
2008	2	N/A	63	114	\$440,508
2009	3	N/A	82	117	\$309,338
2010	0	N/A	104	100	\$357,080
2011	16	N/A	136	170	\$780,755
2012	16	N/A	157	216	\$3,267,239
2013	30	N/A	101	232	\$5,972,230
2014	25	N/A	103	173	\$1,768,000
2015	30	N/A	114	207	\$3,921,187
2016	28	12	113	235	\$2,223,114
2017	17	13	106	330	\$2,246,527
2018	31	29	73	318	\$3,064,224
2019	26	17	N/A	431	\$2,836,552

Sources: "H-2A Disclosure Data," Office of Foreign Labor Certification; "Wage and Hour Compliance Action Data," Department of Labor; "Program Debarments," Department of Labor; and "Fiscal Year Data for WHD," Department of Labor.

Note: Violators were assigned to the date that violations occurred; debarments were assigned to the year that they began.

Table C

**H-2A program requirements**

	Requirement	Regulation	Statutory Mandate
<i>Department of Labor Rules</i>			
1	Hire workers only for temporary or seasonal jobs	20 CFR § 655.103(d)	8 USC § 1101(a)(H)(ii)(A)
2	Hire only farm labor	20 CFR § 655.103(c)	8 USC § 1101(a)(H)(ii)(A)
3	Pay wages higher of Adverse Effect Wage Rate, prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or federal or state minimum wages	20 CFR § 655.120(a)	No statute
4	Implement increased minimum wage in the middle of a contract	20 CFR § 655.120(b)	No statute
5	Submit job order to State Workforce Agency	20 CFR § 655.121(a)(1)	8 USC § 1188(b)(4)
6	File job order between 60-75 days before date of need	20 CFR § 655.121(a)(1)	No statute
7	File job order with every State Workforce Agency, if multiple	20 CFR § 655.121(a)(1)	No statute
8	Notify SWA of changes in date of need or number of workers before 10 days prior to date of need	20 CFR § 653.501(c)(5)	No statute
9	Pay workers who show up before date of need if date of need changes before 10 days prior to need	20 CFR § 653.501(c)(5)	No statute
10	Respond to job order deficiencies within 5 calendar days	20 CFR § 655.121(e)(3)	No statute
11	Accept applicants who fail to meet new requirements if the job order is amended, if they applied before the amendment	20 CFR § 655.121(b)(1)	No statute
12	Provide all workers a copy of the job order on first day or sooner if practicable	20 CFR § 655.121(e)(3)	No statute
13	Offer U.S. workers no less than the wages, benefits, and working conditions of H-2As	20 CFR § 655.122(a)	8 USC § 1188(b)(3)(A)(ii)
14	Impose no more rules on U.S. workers than H-2As	20 CFR § 655.122(a)	8 USC § 1188(b)(3)(A)(ii)
15	Compensate and treat H-2As the same as U.S. workers	20 CFR § 655.122(a)	No statute

	Requirement	Regulation	Statutory Mandate
16	Job requirements must be normal and accepted by non-H-2A employers	20 CFR § 655.122(b)	8 USC § 1188(c)(3)(A)(ii)
17	Job order must include minimum benefit, wage, and working conditions	20 CFR § 655.122(c)	8 USC § 1188(b)(4)
18	Obtain housing for H-2As	20 CFR § 655.122(d)(1)	8 USC § 1188(c)(4)
19	Provide family housing if it is the prevailing practice (50%) of farmers in the area	20 CFR § 655.122(d)(4)	8 USC § 1188(c)(4)
20	Provide housing to the U.S. workers in corresponding employment who are not reasonably able to return to their residence within the same day	20 CFR § 655.122(d)(1)	8 USC § 1188(b)(3)(A)(ii)
21	Do not deduct the cost of housing from H-2A or U.S. workers' wages	20 CFR § 655.122(d)(1)	No statute
22	Pay for public housing directly, not through reimbursement	20 CFR § 655.122(d)(4)	No statute
23	Require no deposits from workers for incidentals/cleaning housing	20 CFR § 655.122(d)(3)	No statute
24	Do not charge for normal wear-and-tear damages to housing	20 CFR § 655.122(d)(3)	No statute
25	Rental or public accommodations must meet local, or if none, state, or if none, federal standards	20 CFR § 655.122(d)(1)(ii)	8 USC § 1188(c)(4)
26	Document that public housing meets the applicable standards	20 CFR § 655.122(d)(1)(ii)	No statute
27	Must obtain inspection of employer housing by SWA	20 CFR § 655.122(d)(1)	No statute
28	Must obtain inspection of employer housing by SWA before every labor certification	20 CFR § 655.122(d)(1)	No statute
29	"Promptly" notify SWA in writing of changes in accommodations	20 CFR § 655.122(d)(6)	No statute
30	Provide workers' compensation insurance at no cost to the worker	20 CFR § 655.122(e)(1)	8 USC § 1188(b)(3)

	Requirement	Regulation	Statutory Mandate
31	Workers' compensation must be equal to that provided under the state law for comparable jobs	20 CFR § 655.122(e)(1)	8 USC § 1188(b)(3)
32	Provide DOL with proof of workers' compensation	20 CFR § 655.122(e)(2)	8 USC § 1188(b)(3)
33	Provide the worker all work supplies at no cost	20 CFR § 655.122(f)	No statute
34	Provide either a kitchen or three daily meals	20 CFR § 655.122(g)	No statute
35	Kitchen must be provided at no cost	20 CFR § 655.122(g)	No statute
36	Petition to charge more than \$12.26 for meals	20 CFR § 655.173(a)	No statute
37	Pay housing and three meals for each day of the contract until the worker leaves, regardless what day the work ends	20 CFR § 655.122(i)(5)	No statute
38	Cannot charge for transporting food, overhead for kitchen or meals, or depreciation of kitchen property	20 CFR § 655.173(b)(1)	No statute
39	Pay transit from "the place from which the worker has come to work" after 50% of contract	20 CFR § 655.122(h)(1)	No statute
40	Pay "daily subsistence" (min. three meals) from "the place from which the worker has come to work" after 50% of contract	20 CFR § 655.122(h)(1)	No statute
41	Advance transit payment to worker if it is the area's prevailing practice (50% of farms)	20 CFR § 655.122(h)(1)	No statute
42	Pay transit to home country (or state) of workers who complete contract and have no immediate H-2A job or the subsequent employer won't pay for transit there	20 CFR § 655.122(h)(2)	No statute
43	Pay transit to home country (or state) of workers who are terminated without cause (or due to a contract termination) and have no immediate H-2A job or the subsequent employer won't pay for transit there	20 CFR § 655.122(h)(2)	No statute
44	Pay for "daily subsistence" (min. three meals) during trip back to home country (or state) of workers who complete contract and have no immediate H-2A job or the subsequent employer won't pay for transit there	20 CFR § 655.122(h)(2)	No statute
45	Pay for "daily subsistence" (min. three meals) during trip back to home country (or state) of workers who are terminated without cause (or due to a contract termination) and have no immediate H-2A job or the subsequent employer won't pay for transit there	20 CFR § 655.122(h)(2)	No statute

	Requirement	Regulation	Statutory Mandate
46	Pay for daily transit between housing and worksite	20 CFR § 655.122(h) (3)	No statute
47	Employer transportation must comply with federal, state, and local regulations	20 CFR § 655.122(h) (4)	No statute
48	Provide property damage insurance	20 CFR § 655.122(h) (4)	No statute
49	Provide vehicle insurance that covers whatever workers' compensation doesn't	20 CFR § 655.122(h) (4)	No statute
50	Pay 75% of contract hours, minus holidays and Sundays or refusals to work, even if work ends early unless terminated for cause after following notification requirements or displaced by U.S. worker	20 CFR § 655.122(i) (1)	No statute
51	Keep records for payroll, nature of work, earnings, times worked each day, times offered each day, workers' home addresses, amounts and reasons for deductions	20 CFR § 655.122(j) (1)	No statute
52	Keep records accessible at the place or places of employment or at one or more established central recordkeeping offices	20 CFR § 655.122(j) (2)	No statute
53	State the reasons why any worker failed to work all the hours offered in a day	20 CFR § 655.122(j) (3)	No statute
54	Retain records of job order, contact with U.S. workers, recruitment report, workers' compensation, earnings, hours, contract, for three years after certification date	20 CFR § 655.167(b)	No statute
55	Give a pay statement with total earnings, hourly rate, hours offered, hours actually worked, all itemized deductions, beginning and end dates	20 CFR § 655.122(k)	No statute
56	Pay the minimum hourly wage for each hour, regardless of the averages for the entire contract.	20 CFR § 655.122(l)	No statute
57	Wage cannot be based on incentives/piece rate unless the employer guarantees an average wage per pay period higher than the required wage	20 CFR § 655.122(l) (1)	No statute
58	Piece rates must be paid above the prevailing rate (50% of farms)	20 CFR § 655.122(l) (2)(ii)	No statute
59	Require no productivity standards above the norm for the area	20 CFR § 655.122(l) (2)(iii)	No statute
60	Pay workers at least twice monthly or more frequently if prevailing practice (50% of farms)	20 CFR § 655.122(m)	No statute

	Requirement	Regulation	Statutory Mandate
61	Notify DOL if a U.S. or H-2A worker abandons job for five consecutive days within two workdays	20 CFR § 655.122(n)	No statute
62	Notify DOL if a U.S. or H-2A worker is terminated for cause within two workdays	20 CFR § 655.122(n)	No statute
63	Terminate work contract only for fire, weather, or act of God	20 CFR § 655.122(o)	No statute
64	Try to transfer workers laid off due to a terminated contract to "comparable" jobs "acceptable to the worker"	20 CFR § 655.122(o)	No statute
65	Specify in job offer all deductions not required by law	20 CFR § 655.122(p)	No statute
66	Make no deductions for the benefit of the employer	20 CFR § 655.122(p)	No statute
67	Provide worker with work contract or job order	20 CFR § 655.122(q)	No statute
68	Provide worker with work contract or job order by the day work begins	20 CFR § 655.122(q)	No statute
69	Provide worker with work contract or job order in a language understood by worker	20 CFR § 655.122(q)	No statute
70	Work contracts must contain at least all H-2A requirements	20 CFR § 655.122(q)	No statute
71	File labor certification application	20 CFR § 655.130(a)	8 USC § 1188(a)
72	File labor certification application 45 days before date of need, except for new H-2A employers, or document "detailed information describing the good and substantial cause" for the delay	20 CFR § 655.130(b)	No statute
73	Include original (non-electronic) signature of employer or agent/attorney	20 CFR § 655.130(d)	No statute
74	Submit a statement of assurances to follow H-2A rules with labor certification	20 CFR § 655.135	8 USC § 1188(a)
75	Reject U.S. workers only for lawful, job-related reasons	20 CFR § 655.135(a)	8 USC § 1188(b)(3)(A)(ii)
76	Record the lawful, job-related reasons for any rejections of U.S. workers	20 CFR § 655.135(a)	8 USC § 1188(b)(3)(A)(ii)
77	Hire no H-2As during strike or lockout	20 CFR § 655.135(b)	8 USC § 1188(b)(1)
78	Hire all qualified U.S. workers who apply	20 CFR § 655.135(d)	8 USC § 1188(b)(3)(A)(ii)

	Requirement	Regulation	Statutory Mandate
79	Hold no passports or immigration documents for workers	20 CFR § 655.135(e)	18 USC 1592(a)
80	Provide at least 35 hours of work per week	20 CFR § 655.135(f)	No statute
81	Lay off no "similarly employed" U.S. workers in the same occupation within 60 days of the date of need	20 CFR § 655.135(g)	No statute
82	Impose no penalties on those who file complaints or testify against employer	20 CFR § 655.135(h)	No statute
83	Notify workers of the duty to leave the U.S. at job's end unless employed by another H-2A employer	20 CFR § 655.135(i) (1)	No statute
84	Charge nothing, in any form, to workers for hiring workers	20 CFR § 655.135(j)	No statute
85	Contractually prohibit any third party from charging anything for referring workers for jobs	20 CFR § 655.135(k)	No statute
86	Post in conspicuous location at jobsite a poster containing workers' rights	20 CFR § 655.135(l)	No statute
87	Post workers' rights poster in English and any other language of a "significant portion" of workers	20 CFR § 655.135(l)	No statute
88	File request to change number of workers, showing that any request above 20% couldn't be foreseen and crops will be in jeopardy	20 CFR § 655.145(a)	No statute
89	File a request for minor changes in job period, showing that they couldn't be foreseen and crops will be in jeopardy	20 CFR § 655.145(b)	No statute
90	Provide housing and meals to workers already in route at time delay in job start is requested	20 CFR § 655.145(b)	No statute
91	Advertise H-2A jobs online at DOL website	20 CFR § 655.151 (amended)	No statute
92	Advertisements must contain all offered benefits and wages	20 CFR § 655.152 (amended)	No statute
93	Contact and recruit all former U.S. employees from prior year	20 CFR § 655.153	No statute
94	Recruit all former U.S. employees during the time the SWA is circulating job order for interstate clearance	20 CFR § 655.153	No statute
95	Document all contacts with former U.S. employees to recruit them	20 CFR § 655.153	No statute



	Requirement	Regulation	Statutory Mandate
96	Make "positive recruitment" (active participation of employer) of U.S. workers	20 CFR § 655.154(a)	8 USC § 1188(b)(4)
97	"Positive recruitment" efforts of U.S. workers must be in a multistate area	20 CFR § 655.154(a)	8 USC § 1188(b)(4)
98	Recruit U.S. workers until the date that H-2A workers leave (presumptively three days before need)	20 CFR § 655.158	8 USC § 1188(b)(4)
99	Positive recruitment of U.S. workers must be at least what is normal in the area	20 CFR § 655.154(b)	No statute
100	Submit a recruitment report with the name of each recruitment "source," name and contact of every U.S. applicants, whether they were hired, show contact with former U.S. employees, explain any reasons for not hiring U.S. applicants	20 CFR § 655.156(a)	No statute
101	Update recruitment report until 50% of the contract period expires	20 CFR § 655.156(b)	No statute
102	Pay, house, and otherwise treat all U.S. workers recruited under H-2A program rules in accordance with those rules even if the employer withdraws H-2A application	20 CFR § 655.172(b)	No statute
103	Pay fees of \$100 per application and \$10 per worker up to \$1,000	20 CFR § 655.163(b)	8 USC § 1188(a)(2)
104	Pay fees owed not later than 30 days after the certification date	20 CFR § 655.163(c)	No statute
105	Respond to record audit request within 30 days and cooperate with any DOL investigation	20 CFR § 655.180(b)	No statute
106	Submit a request to replace U.S. workers who were available but who are no longer available with H-2As	20 CFR § 655.166(a)	No statute
107	Pay civil monetary penalties within 30 days	29 CFR § 501.22	8 USC § 1188(g)(2)

#### ***Housing Rules***

	Employer-provided housing must meet federal temporary labor camp standards, including:	20 CFR § 655.122(d)(1)(i)	8 USC § 1188(c)(4)
108	Sites must not be located within 200 feet of surface collection of water unless subjected to mosquito control	29 CFR § 1910.142(a)(1)	8 USC § 1188(c)(4)
109	Sites must not be subject to periodic flooding	29 CFR § 1910.142(a)(1)	8 USC § 1188(c)(4)
110	Sites must be rendered free from depressions in which water could gather	29 CFR § 1910.142(a)(1)	8 USC § 1188(c)(4)

	Requirement	Regulation	Statutory Mandate
111	Sleeping and eating areas must be at least 500 feet from livestock	29 CFR § 1910.142(a)(2)	8 USC § 1188(c)(4)
112	Area around housing must be free of debris or trash	29 CFR § 1910.142(a)(3)	8 USC § 1188(c)(4)
113	Rooms must have 50 square feet per occupant or 100 square feet if they also cook and live there	29 CFR § 1910.142(b)(2)	8 USC § 1188(c)(4)
114	Rooms must have seven-foot ceilings	29 CFR § 1910.142(b)(2)	8 USC § 1188(c)(4)
115	Storage facilities for belongings must be provided	29 CFR § 1910.142(b)(3)	8 USC § 1188(c)(4)
116	Separate beds must be provided to each occupant	29 CFR § 1910.142(b)(3)	8 USC § 1188(c)(4)
117	Beds must be separated by 36 inches or 48 inches if bunk beds	29 CFR § 1910.142(b)(3)	8 USC § 1188(c)(4)
118	Beds must be elevated at least 12 inches off the floor	29 CFR § 1910.142(b)(3)	8 USC § 1188(c)(4)
119	Beds cannot be triple-deck	29 CFR § 1910.142(b)(3)	8 USC § 1188(c)(4)
120	Bunk beds must have 27 inches between the bunks	29 CFR § 1910.142(b)(3)	8 USC § 1188(c)(4)
121	Floors must be wood, asphalt or concrete	29 CFR § 1910.142(b)(4)	8 USC § 1188(c)(4)
122	Wood floors must be elevated 12 inches	29 CFR § 1910.142(b)(5)	8 USC § 1188(c)(4)
123	Windows must be a tenth of the floor area	29 CFR § 1910.142(b)(7)	8 USC § 1188(c)(4)
124	Windows must be able to be opened	29 CFR § 1910.142(b)(7)	8 USC § 1188(c)(4)

	Requirement	Regulation	Statutory Mandate
125	Windows and doors must be screened	29 CFR § 1910.142(b)(8)	8 USC § 1188(c)(4)
126	Screens must be 16-mesh	29 CFR § 1910.142(b)(8)	8 USC § 1188(c)(4)
127	One stove per 10 occupants must be provided	29 CFR § 1910.142(b)(10)	8 USC § 1188(c)(4)
128	35 gallons of water per person must be provided	29 CFR § 1910.142(c)(2)	8 USC § 1188(c)(4)
129	No shelter should be more than 100 feet from a water source	29 CFR § 1910.142(c)(3)	8 USC § 1188(c)(4)
130	Water fountains must be available for each 100 occupants if pressurized water is available	29 CFR § 1910.142(c)(4)	8 USC § 1188(c)(4)
131	Toilets must be available without passing through a sleeping room	29 CFR § 1910.142(d)(2)	8 USC § 1188(c)(4)
132	Toilet rooms must have a window	29 CFR § 1910.142(d)(2)	8 USC § 1188(c)(4)
133	Toilet room windows must be six square feet	29 CFR § 1910.142(d)(2)	8 USC § 1188(c)(4)
134	Toilets must be in room separate from all other rooms	29 CFR § 1910.142(d)(2)	8 USC § 1188(c)(4)
135	Toilets must be within 200 feet of the door of each sleeping room	29 CFR § 1910.142(d)(3)	8 USC § 1188(c)(4)
136	An outhouse must not be within 100 feet of any sleeping or dining area	29 CFR § 1910.142(d)(3)	8 USC § 1188(c)(4)
137	Each sex must have their own toilet room	29 CFR § 1910.142(d)(4)	8 USC § 1188(c)(4)
138	There must be one toilet per 15 potential occupants	29 CFR § 1910.142(d)(5)	8 USC § 1188(c)(4)

	Requirement	Regulation	Statutory Mandate
139	One urinal must be provided for each 25 men (or two feet of urinal trough)	29 CFR § 1910.142(d)(7)	8 USC § 1188(c)(4)
140	Toilets must be lit 24/7	29 CFR § 1910.142(d)(8)	8 USC § 1188(c)(4)
141	Toilet rooms must be cleaned daily	29 CFR § 1910.142(d)(10)	8 USC § 1188(c)(4)
142	Sewer lines must be connected if available	29 CFR § 1910.142(e)	8 USC § 1188(c)(4)
143	A handwash basin must be available for every family or six occupants	29 CFR § 1910.142(f)(1)	8 USC § 1188(c)(4)
144	A shower must be available for every 10 occupants	29 CFR § 1910.142(f)(1)	8 USC § 1188(c)(4)
145	Laundry tubs must be available for every 30 occupants	29 CFR § 1910.142(f)(1)	8 USC § 1188(c)(4)
146	A slop sink should be in every building	29 CFR § 1910.142(f)(1)	8 USC § 1188(c)(4)
147	Floors in bathing areas should be smooth but not slippery	29 CFR § 1910.142(f)(2)	8 USC § 1188(c)(4)
148	Floor drains must be provided for bathing and laundry areas	29 CFR § 1910.142(f)(2)	8 USC § 1188(c)(4)
149	Curbing and floor junctions must be coved	29 CFR § 1910.142(f)(2)	8 USC § 1188(c)(4)
150	Walls in bathing and laundry areas must be impervious to moisture to the height of the splash	29 CFR § 1910.142(f)(2)	8 USC § 1188(c)(4)
151	Heated water must be provided on demand	29 CFR § 1910.142(f)(3)	8 USC § 1188(c)(4)
152	Buildings must be capable of being heated to 70 degrees	29 CFR § 1910.142(f)(4)	8 USC § 1188(c)(4)

	Requirement	Regulation	Statutory Mandate
153	Drying facilities must be provided	29 CFR § 1910.142(f)(5)	8 USC § 1188(c)(4)
154	Buildings must have one ceiling light if electricity is available	29 CFR § 1910.142(g)	8 USC § 1188(c)(4)
155	At least one garbage container must be provided within 100 feet	29 CFR § 1910.142(h)(1)	8 USC § 1188(c)(4)
156	Garbage containers must be fly-tight, rodent-tight, and impervious	29 CFR § 1910.142(h)(1)	8 USC § 1188(c)(4)
157	Garbage containers must be emptied when full or twice a week	29 CFR § 1910.142(h)(3)	8 USC § 1188(c)(4)
158	Kitchens must be not open directly into any living or sleeping area	29 CFR § 1910.142(i)(2)	8 USC § 1188(c)(4)
159	Kitchen operators must not have any communicable disease	29 CFR § 1910.142(i)(3)	8 USC § 1188(c)(4)
160	Insect and rodent control measures must be taken	29 CFR § 1910.142(j)	8 USC § 1188(c)(4)
161	First aid facilities must be provided	29 CFR § 1910.142(k)(1)	8 USC § 1188(c)(4)
162	First aid facilities must be run by a person trained to administer first aid	29 CFR § 1910.142(k)(2)	8 USC § 1188(c)(4)
163	First aid facilities must be open 24/7	29 CFR § 1910.142(k)(2)	8 USC § 1188(c)(4)
164	Report to local health care officer any person with a communicable disease or any unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is present	29 CFR § 1910.142(l)(1)	8 USC § 1188(c)(4)
<b>Department of Homeland Security Employer Rules</b>			
165	File an I-129 nonimmigrant worker petition with USCIS to request H-2As	8 CFR § 214.2(h)(5)(i)(A)	8 U.S.C. 1184(c)(1)
166	State nationality of workers in petition	8 CFR § 214.2(h)(2)(iii)	No statute
167	Name in petition all workers already in the U.S.	8 CFR § 214.2(h)(2)(iii)	No statute

	Requirement	Regulation	Statutory Mandate
168	Provide a copy of an I-94 entry record for workers extending or changing status in the United States	8 CFR § 214.2(h)(5)	No statute
169	Name in petition all workers from countries who are not designated as a participating country	8 CFR § 214.2(h)(2)(iii)	No statute
170	Prove in petition that the job qualifies as temporary or seasonal	8 CFR § 214.2(h)(5)(iv)(A)	No statute
171	Provide evidence in petition that a named worker has the qualifications for the job	8 CFR § 214.2(h)(5)(v)	No statute
172	Submit an approved labor certification with petition	8 CFR § 214.2(h)(5)(i)(D)	8 USC § 1188(a)
173	Submit evidence in petition that a worker from a non-participating country would be in the U.S. interest (e.g., the unavailability of workers from any other country)	8 CFR § 214.2(h)(5)(i)(F)(1)(ii)	No statute
174	Consent to DHS access to all property where the worker will be	8 CFR § 214.2(h)(5)(vi)(A)	No statute
175	Notify DHS within two workdays that an H-2A worker fails to work for five days	8 CFR § 214.2(h)(5)(vi)(1)(B)(i)	No statute
176	Notify DHS if the worker is terminated within two workdays	8 CFR § 214.2(h)(5)(vi)(B)(1)(ii)	No statute
177	Notify DHS if the job completes more than 30 days before the contract ends within two workdays	8 CFR § 214.2(h)(5)(vi)(B)(1)(ii)	No statute
178	Pay a fine of \$10 for each failure to notify DHS	8 CFR § 214.2(h)(5)(vi)(B)(3)	No statute
179	Retain evidence of the notification of DHS regarding the end of a worker's employment	8 CFR § 214.2(h)(5)(vi)(B)(2)	No statute
180	Retain evidence of the notification of DHS regarding the end of a worker's employment for one year	8 CFR § 214.2(h)(5)(vi)(B)(2)	No statute
181	Notify DHS of any fees that workers paid to a third party for being hired as H-2As within two days	8 CFR § 214.2(h)(5)(xi)(A)(4)	No statute
182	Accept nor allow be accepted by a third party a fee from the worker for hiring the worker	8 CFR § 214.2(h)(5)(xi)(A)	No statute
183	Do not attempt to simultaneously petition for workers for U.S. legal permanent residence	8 CFR § 214.2(h)(5)	8 USC § 1101(a)(H)(ii)(A)

	Requirement	Regulation	Statutory Mandate
184	Pay a fee to USCIS of \$460 for the I-129 petition	8 CFR § 214.2(h)(5)	8 USC § 1101(a)(H)(ii)(A)
<b>Department of Homeland Security Worker Rules</b>			
185	No violations of any condition of H-2A status in the last five years	8 CFR § 214.2(h)(5)(viii)(A)	8 USC § 1188(f)
186	Enter no earlier than one week prior to the date of need	8 CFR § 214.2(h)(5)(viii)(B)	No statute
187	Do not attempt to simultaneously receive U.S. legal permanent residence as receive H-2A status	8 CFR § 214.2(h)(5)	8 USC § 1101(a)(H)(ii)(A)
188	Leave country or find new job no later than 30 days after the end of initial job	8 CFR § 214.2(h)(5)(viii)(B)	No statute
189	Leave country after three continuous years in status (not including any departures of less than 45 days)	8 CFR § 214.2(h)(5)(viii)(C)	No statute
190	Remain outside the country for not less than three months after three continuous years in H-2A status	8 CFR § 214.2(h)(5)(viii)(C)	No statute
191	Leave country if employer petition is revoked within 30 days	8 CFR § 214.2(h)(5)(xii)	No statute
192	Work only for an employer with an approved H-2A petition	8 CFR § 214.2(h)(5)(viii)(A)	No statute
193	Do not abandon the H-2A job (unless there is illegal or inappropriate conduct)	No regulation	No statute
194	File an extension of stay request if a second H-2A employer is found	8 CFR § 214.2(h)(5)(viii)(C)	No statute
195	Report change of U.S. address within 10 days	8 CFR § 265.1	8 USC § 1305(a)
<b>Department of State Worker Rules</b>			
196	File a DS-160 nonimmigrant visa application at a U.S. embassy or consulate	9 FAM 403.2-5(A)a.	8 USC § 1202
197	Provide an approved employer I-129 petition	9 FAM 403.9-5(E)a.	8 USC 1184(a)(1)



	Requirement	Regulation	Statutory Mandate
198	Demonstrate a foreign residence	9 FAM 401.1-3(F)(1)	8 USC § 1101(a)(H)(ii)(A)
199	Demonstrate an intention to return home (through permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations)	9 FAM 401.1-3(F)(2)b	8 USC § 1101(a)(H)(ii)(A)
200	Do not plan to adjust to legal permanent residence or have an immigrant visa petition pending	9 FAM 402.10-10(A)b.	8 USC § 1101(a)(H)(ii)(A)
201	Be interviewed at a consulate or embassy abroad unless reapplying within 12 months	9 FAM 403.5-2 (U)b	8 USC § 1202(h)
202	Provide biometrics (10 fingerprints and digital photograph)	9 FAM 403.2-3a(3)	8 USC § 1732(b)(1)
203	Pay the machine-readable visa (MRV) processing fee of \$190	22 CFR 22.1.21(b)	8 USC § 1713(b)
204	Do not attempt to use earlier than one week before date of employer's need	9 FAM 402.10-11b.(2)	No statute
<b>Customs and Border Protection Rules</b>			
205	Enter at port of entry	8 CFR § 235.1(a)	8 USC § 1182(a)(6)(A)(i)
206	Present documents at port of entry (passport with H-2A visa)	8 CFR § 212.1	8 USC § 1732(b)(2)
207	Submit biometrics (10 fingerprints and photograph) at port of entry	8 CFR § 235.1(f)(1)(ii)	8 USC § 1732(b)(2)
208	Be inspected by a CBP officer	8 CFR § 235.1(a)	8 USC § 1225(a)(3)
209	Pay \$6 fee per worker for a form I-94 entry record (employer must pay or reimburse)	8 CFR § 103.7(b)(1)(ii)(D)	No statute

Sources: U.S. Code of Federal Regulations (2019); and United States Code (2018).

## NOTES

1. 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (2018); 20 C.F.R. § 655.103(d) (2019).
2. The program had a de facto practice of approving year-round sheep and goat herders. USCIS will terminate its practice in June 2020, and the Department of Labor will rescind its policy in 20 C.F.R. § 655.215(b)(2) (2019) by regulation. See Citizenship and Immigration Services, “Policy Memorandum—Subject: Temporary or Seasonal Need for H-2A Petitions Seeking Workers for Range Sheep and/or Goat Herding or Production,” PM-602-0176, November 14, 2019.
3. Glenn E. Garrett, *Mexican Farm Labor Program Consultants Report: October 1959* (Washington: DOL, 1959), p. 5.
4. 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (2018).
5. “For example, because of confusion regarding the H-2A regulations, one employer expressed uncertainty about the appropriate time to reimburse workers for their in-bound travel costs, payment of which must be included in the job offer. The H-2A regulations specify that workers must be reimbursed upon the completion of 50 percent of their work contract but also that H-2A employers may be subject to the Fair Labor Standards Act, under which employers are to make such reimbursements during the first week of employment.” Cited in: Government Accountability Office, *H-2A Visa Program: Modernization and Improved Guidance Could Reduce Employer Application Burden*, GAO-12-706 (Washington: GAO, September 2012), p. 25.
6. Office of the Citizenship and Immigration Services Ombudsman, *Annual Report 2014* (Washington: DHS, June 27, 2014).
7. 8 U.S.C. § 1188 (2018); 20 C.F.R. § 655.100. (2019).
8. “About NASWA,” National Association of State Workforce Agencies.
9. 20 C.F.R. § 655.121 (2019).
10. 20 C.F.R. Subpart B—“Labor Certification Process for Temporary Agricultural Employment in the United States (H-2A Workers),” April 1, 2018.
11. 8 U.S.C. 1188(c)(3)(A) (2018).
12. Government Accountability Office, *Improved Guidance Could Reduce Employer Application Burden*, p. 17.
13. Department of Labor, “Temporary Agricultural Employment of H-2A Nonimmigrants in the United States,” 84 Fed. Reg. 36,170 (July 26, 2019).
14. For 2006–2007, see Sen. Mike Crapo, “Letter to Hilda Solis,” March 14, 2012; for 2011 data, see Government Accountability Office, *Improved Guidance Could Reduce Employer Application Burden*, p. 12; for 2012–2019, see “Selected Statistics by Program,” OFLC Performance Data, Department of Labor, Employment and Training Administration.
15. No agency tracks whether workers show up on time. Government Accountability Office, *Improved Guidance Could Reduce Employer Application Burden*, p. 17.
16. 20 C.F.R. § 655.163 (2019).
17. 20 C.F.R. § 655.135(d) (2019).
18. 8 C.F.R. § 103.7(b)(1)(i)(A) (2019); “I-129, Petition for a Nonimmigrant Worker,” Citizenship and Immigration Services, updated October 18, 2019. USCIS is proposing to change the fee structure to \$425 per petition for unnamed beneficiaries and \$860 for named beneficiaries. Department of Homeland Security, “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 84 Fed. Reg. 62,308 (November 14, 2019).
19. “California Service Center Processing Time Report,” American Immigration Lawyers Association, March 19, 2018.
20. “I-129, Petition for a Nonimmigrant Worker,” Citizenship Immigration Services.
21. C.F.R. 214.2(h)(2)(iii) (2019); 8 C.F.R. 214.2(h)(5)(i)(F)(1)(ii) (2019). For the 2019 country list, see “H-2A Temporary Agricultural Workers: H-2A Eligible Countries List,” Citizenship and Immigration Services, updated January 24, 2019. The country list is based on four criteria: The country’s cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and such other

factors as may serve the U.S. interests.

22. Ineligible countries in the Americas include Antigua and Barbuda, the Bahamas, Belize, Bolivia, Cuba, Dominica, Guyana, Haiti, Saint Kitts and Nevis, Saint Lucia, Suriname, Trinidad and Tobago, and Venezuela. “H-2A Temporary Agricultural Workers,” Citizenship and Immigration Services, 2015, <https://web.archive.org/web/20160219155925/https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers>.

23. “H-2 Visas,” U.S. Embassy and Consulates in Mexico.

24. Barbara Driscoll, *The Tracks North: The Railroad Bracero Program of World War II* (Austin: University of Texas, 1999), p. 58.

25. “The visa exemption for agricultural workers from the specified Caribbean countries dates back more than 70 years and was created primarily to address U.S. labor shortages during World War II by expeditiously providing a source of agricultural workers from the British Caribbean to meet the needs of agricultural employers in the southeastern United States.” Department of Homeland Security, “Elimination of Nonimmigrant Visa Exemption for Certain Caribbean Residents Coming to the United States as H-2A Agricultural Workers,” 81 Fed. Reg. 6430 (February 8, 2016).

26. 8 U.S.C. § 1101(a)(15)(H) (2018).

27. Estimates are only recorded for air arrivals and departures, which comprise a small portion of the H-2A program. Government Accountability Office, *Overstay Enforcement: Additional Actions Needed to Assess DHS’s Data and Improve Planning for a Biometric Air Exit Program*, GAO-13-683 (Washington: GAO, July 2013), p. 17. More recent government reports only estimate the annual flow of people, ignore those who overstay, and don’t break these numbers down by detailed status. Department of Homeland Security, *Fiscal Year 2018 Entry/Exit Overstay Report* (Washington: DHS, April 2019). Outside analysis of the above report indicates that the estimates are too high and that the overstay population in the United States did not grow. Robert Warren, “DHS Overestimates Visa Overstays for 2016; Overstay Population Growth Near Zero during the Year,” *Journal on Migration and Human Security* 5, no. 4 (2017): 768–79.

28. “Disclosure Data, PERM Program,” OFLC Performance Data, Department of Labor, Employment and Training Administration.

29. 8 C.F.R. 214.2(h)(5)(vii) (2019).

30. Customs and Border Protection, “CBP Reminds Travelers to Obtain the I-94 Permit Early,” news release, March 11, 2013; and Peter Samore, “Arizona’s Immigration Crisis: How Border Towns Are Impacted,” KTAR News, April 16, 2019.

31. 20 C.F.R. § 655.122(i)(1) (2019).

32. United Fresh Produce Association, “In re: DOL Docket no. ETA-2019-0007, RIN 1205-AB89 Temporary Agricultural Employment of H-2A Nonimmigrants in the United States” 84 Fed. Reg. 36,168 (September 24, 2019).

33. “The higher of the AEWR, the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage” under 20 C.F.R. § 655.120(a) (2019).

34. “Surveys—Farm Labor,” National Agricultural Statistics Service, Department of Agriculture, November 9, 2018.

35. 20 C.F.R. § 655.10; 20 (2019); and C.F.R. § 655.731 (2019).

36. 20 C.F.R. § 655.731 (2019).

37. “Adverse Effect Wage Rate Trends,” Office of Foreign Labor Certification.

38. David Bier, “H-2A Guest Worker Minimum Wages Up in 2020, 57% above New State Minimums,” *Cato at Liberty* (blog), January 3, 2020.

39. Benjamin Reist, Tyler Wilson, and Heather Ridolfo, *Findings for the 2018 Agricultural Labor Base Wage Question Experiments* (Washington: USDA, March 2019).

40. United Fresh Produce Association, “In re: DOL Docket No. ETA-2019-0007, RIN 1205-AB89 Temporary Agricultural Employment of H-2A Nonimmigrants in the United States,” 84 Fed. Reg. 36,168 (September 24, 2019).

41. David Bier, “H-2A Farmers Will Benefit from House Reform Bill,” *Cato at Liberty* (blog), November 5, 2019.

42. Bier, “H-2A Farmers Will Benefit From House Reform Bill.” Data are from: William G. Whittaker, *Farm Labor: The Adverse Effect Wage Rate* (Washington: Congressional Research Service,

March 26, 2008), pp. 7–8; and “Adverse Effect Wage Rate Trends,” Office of Foreign Labor Certification, years 2009 through 2019.

43. 20 C.F.R. § 655.122(i) (2019).

44. 20 C.F.R. § 655.122(i) (2019); 20 C.F.R. § 655.122(d)(1) (2019); and C.F.R. § 655.122(g) (2019).

45. “I wish I could do [H-2A], but I need to build homes for them and that’s not cheap,” said Marquez. “It’s too expensive for us to get that kinda help because the building that we have to have before we can put H-2A workers, their requirement is too high,” said farmer Jose Rouna.” Quoted in Tristan Balagtas, “Local Farmers Struggling to Find Workers,” CBS News KIMA TV, August 1, 2019; “The hourly rate isn’t bad, but the housing and travel costs really increase the overall expense.” Quoted in Des Keller, “Seasonal Farm Workers Help,” *Progressive Farmer*, September 4, 2018; “The only ‘headache’ that comes with hiring H-2A workers, Davison said, is finding housing.” Quoted in Nicole Roy, “Temporary Workers Visa Program Grows in Western Idaho,” *Idaho Press-Tribune*, March 25, 2018.

46. Department of Labor, “Temporary Agricultural Employment of H-2A Nonimmigrants in the United States,” 84 Fed. Reg. 36,235 (July 26, 2019).

47. 20 CFR § 655.122(h)(1).

48. 8 CFR 214.2(h)(15)(ii)(C); (5)(viii)(B); (xii).

49. 20 C.F.R. § 655.180 (2019).

50. These numbers exclude “sub-employer” certified jobs (secondary jobs for joint employers). For labor certification statistics 1989–1997, see Joyce Vialet, *Immigration: The “H-2A” Temporary Agricultural Worker Program* (Washington: Congressional Research Service, April 9, 1998); for 1998–1999, see Ruth Ellen Wasem and Geoffrey Colver, *Immigration of Agricultural Guest Workers: Policy, Trends, and Legislative Issues* (Washington: Congressional Research Service, January 24, 2003); for 2000–2004, see Philip Martin, *Evaluation of the H-2A Alien Labor Certification Process and the U.S. Farm Labor Market* (Silver Spring, MD: KRA Corporation, September 18, 2008), p. 42; for 2005–2015, see “Annual Performance Reports,” OFLC Performance Data, Department of Labor, Employment and Training Administration; for 2007, see p.25; for 2008 through 2011, see p. 35; for 2012 through 2015, see p. 4; for 2016–2019, see “Selected Statistics by Program,” OFLC Performance Data, Department of Labor,

Employment and Training Administration.

51. For H-2A visa statistics for 1987–2018, see “Nonimmigrant Visa Statistics,” Department of State; for 2019 aggregated data, see “Monthly Nonimmigrant Visa Issuance Statistics,” Department of State, Bureau of Consular Affairs; for H-2A admissions from 1988 through 1992, see the links in the “General Collection” in Immigration and Naturalization Service, *Yearbook of Immigration Statistics* (Washington: DOJ, 1992); for years 1993 through 2017, see Department of Homeland Security, *Yearbook of Immigration Statistics* (Washington, DHS, 2019), Table 25; for 2018, see “Legal Immigration and Adjustment of Status Report Quarterly Data,” Department of Homeland Security.

52. Estimates are based on Bureau of Economic Analysis, *SA27N Full-Time and Part-Time Wage and Salary Employment by NAICS Industry* (Washington: BEA, 2018).

53. Office of Foreign Labor Certification, *Employer Guide to Participation in the H-2A Temporary Agricultural Program* (Washington: DOL, January 2012).

54. General Accounting Office, *Improved Guidance Could Reduce Employer Application Burden*, p. 33.

55. 8 U.S.C. § 1188 (2018); and 20 C.F.R. § 655.100 (2019).

56. “Few U.S. workers were referred. . .” quoted in General Accounting Office, *The H-2A Program: Protections for U.S. Farmworkers*, GAO/PEMD-89-3 (Washington: GAO, October 1988); “The positive recruitment requirement appears to result in few domestic workers being placed in these jobs.” Quoted in Government Accountability Office, *H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers*, GAO/HEHS-98-20 (Washington: GAO, December 1997), p. 58; “The H-2A certification process is ineffective,” quoted in Office of Inspector General, *Consolidation of Labor’s Enforcement Responsibilities for the H-2A Program Could Better Protect U.S. Agricultural Workers* (Washington: DOL, March 31, 1998); “Current recruitment procedures . . . produce few U.S. workers but lead to controversy and litigation,” quoted in Martin, *Evaluation of the H-2A Alien Labor Certification Process*, p. iv; Michael Clemens, “The Effect of Occupational Visas on Native Employment: Evidence from Labor Supply to Farm Jobs in the Great Recession,” IZA DP no. 10492 (Bonn: IZA Institute of Labor Economics, January 2017); Department of Labor, “Temporary Agricultural Employment of H-2A Nonimmigrants in the United States,” 84 Fed. Reg. 36,168 (July 26, 2019); “One agent for H-2A employers

reported that its employer-clients had spent about \$75,000 to advertise roughly 5,000 positions, and the employers did not receive a single applicant in response to the advertisements. An association representing agricultural employers similarly reported that its members spent millions of dollars on newspaper advertisements for H-2A positions each year and received no U.S. applicants in response.” Quoted in Department of Labor, “Modernizing Recruitment Requirements for the Temporary Employment of H-2A Foreign Workers in the United States,” 84 Fed. Reg. 49,441 (September 20, 2019).

57. Steven Zahniser, J. Edward Taylor, Thomas Hertz, and Diane Charlton, *Farm Labor Markets in the United States and Mexico Pose Challenges for U.S. Agriculture*, Economic Information Bulletin no. 201 (Washington: USDA, November 2018), p. 2.

58. Michael A. Clemens, Ethan G. Lewis, and Hannah M. Postel, “Immigration Restrictions as Active Labor Market Policy: Evidence from the Mexican Bracero Exclusion,” *American Economic Review* 108, no. 6 (2018): 1468–87.

59. Clemens, “The Effect of Occupational Visas on Native Employment.”

60. Department of Labor, “Temporary Agricultural Employment of H-2A Nonimmigrants in the United States,” 84 Fed. Reg. 36,168 (July 26, 2019).

61. Author’s analysis of data in Department of Labor, “Temporary Agricultural Employment of H-2A Nonimmigrants.”

62. Department of Labor, “Temporary Agricultural Employment of H-2A Nonimmigrants.”

63. “Table A-14. Unemployed Persons by Industry and Class of Worker, Not Seasonally Adjusted,” Bureau of Labor Statistics, 2019.

64. “What Is Agriculture’s Share of the Overall U.S. Economy?,” Department of Agriculture.

65. “Census of Agriculture,” Department of Agriculture, National Agricultural Statistics Service.

66. “The National Agricultural Workers Survey,” Department of Labor, Employment and Training Administration.

67. “The National Agricultural Workers Survey.”

68. “Nonimmigrant Visa Statistics,” Department of State; and “Quarterly Census of Employment and Wages,” Bureau of Labor Statistics. (Inflation-adjusted using the Personal Consumption Expenditures Index.)

69. “Quarterly Census of Employment and Wages.”

70. “Census of Agriculture”; and “Selected Statistics by Program,” OFLC Performance Data, Department of Labor, Employment and Training Administration.

71. 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (2018).

72. Alex Nowrasteh and Andrew C. Forrester, “H-2 Visas Reduced Mexican Illegal Immigration,” *Cato at Liberty* (blog), July 11, 2019.

73. It is important to control for the amount of enforcement because more agents can cause more apprehensions without more total border crossings. Comparing apprehensions to *admissions* is more methodologically sound than comparing apprehensions to H-2A visas or H-2A jobs because the same worker can be admitted multiple times or apprehended multiple times. Immigration and Naturalization Service, *Yearbook of Immigration Statistics* (Washington: DOJ, 1992); Department of Homeland Security, *Yearbook of Immigration Statistics* (Washington, DHS, 2019); “Total CBP Enforcement Actions,” Customs and Border Protection, 2019, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2019>; Border Patrol, *Nationwide Illegal Alien Apprehensions Fiscal Years 1925–2018* (Washington: DHS, 2019); Border Patrol, *Border Patrol Agent Nationwide Staffing by Fiscal Year* (Washington: DHS, 2018); and “Border Patrol Agents: Southern Versus Northern Border,” Transactional Records Access Clearinghouse, 2006.

74. Kevin Sieff, “Why Is Mexican Migration Slowing While Guatemalan and Honduran Migration Is Surging?,” *Washington Post*, April 29, 2019.

75. “Nonimmigrant Visa Statistics,” Department of State. The 2019 aggregated data are from “Monthly Nonimmigrant Visa Issuance Statistics,” Department of State, Bureau of Consular Affairs. For 1997–2017, see Department of Homeland Security, *Yearbook of Immigration Statistics* (Washington, DHS, 2019) (note that Jamaicans did not require visas until 2016 so the data on admissions were used for Jamaica only for 1997–2015).

76. Government Accountability Office, *H-2A and H-2B Visa*

*Programs: Increased Protections Needed for Foreign Workers*, GAO-15-154 (Washington: GAO, March 2015).

77. Other reasons include Mexico's relatively larger labor market, its more expedited consular visa processing, and its proximity to the United States, which can make it more affordable for employers to bus workers to the jobsites rather than fly them. Some border farms can also avoid paying for H-2A housing by allowing Mexicans to commute from their Mexican homes.

78. David Bier, "Trump Is Promising Visas for Guatemalans—Here's How He Can Deliver," *Cato at Liberty* (blog), August 2, 2019.

79. Rodolfo Benito Coy Garcia, quoted in Alana Semuels, "For U.S. Farmers and Mexican Workers, It's Tough Being Legal," *Los Angeles Times*, March 30, 2013; José Vásquez Cabrera, quoted in Ginger Thompson and Steven Greenhouse, "Mexican 'Guest Workers': A Project Worth a Try?" *New York Times*, April 3, 2001; Jacque Myburgh quoted in Jack Dura, "South African Workers Fill Mandan-area Farm, Ranch Labor Gap," Associated Press, June 29, 2019; Joel, quoted in Brian Todd, "Who Harvests Your Food? Immigrant Labor a Growing Piece of Ag Workforce," Forum News Service, August 8, 2019; Carlos Montano, quoted in Aaron Cerbone, "Migrant Labor in Gabriels," *Adirondack Daily Enterprise*, August 17, 2019; and Jessie Higgin, "Farmers' Struggle to Legally Import Workers Threatens U.S. Crops," UPI, September 19, 2018.

80. "Selected Statistics by Program," OFLC Performance Data, Department of Labor, Employment and Training Administration; and "Mexico Average Daily Wages," Trading Economics, 2019.

81. The equivalent U.S. dollar amount for 88.36 pesos was \$4.64 in 2019. See Secretaria de Gobernacion de Mexico, "Resolution," December 2018.

82. University of California, Davis, "Farmworkers in Mexico's Export Agriculture Conference Report," Migration Dialogue, October 15, 2018.

83. "Orlando . . . supported his entire family, he said, and even if the wages in the U.S. dropped, he would still re-apply for a job as an H-2A worker. The money was too good to pass up. His roommate, Cesar, who would only his first name for the same reason, agreed with Orlando. 'It's the reason why we come,' he added." Quoted in Kate Cimini, "Could a Federal H-2A Visa Proposal Mean Lower Wages for Farmworkers? Advocates Worry," *The*

*Californian*, October 15, 2019.

84. Department of State, *Nonimmigrant Visas Issued by Classification, Fiscal Years 2003–2007* (Washington: DOS, 2007).

85. Des Keller, "Seasonal Farm Workers Help," *Progressive Farmer*, September 4, 2018; and Thompson and Greenhouse, "Mexican 'Guest Workers.'"

86. "Human Trafficking on Temporary Work Visas: A Data Analysis 2015–2017," Polaris, June 2018. From 2015 to 2017, 395,607 H-2A visas were issued: see "Nonimmigrant Visa Statistics," Department of State. The Department of Homeland Security granted T status (for human trafficking victims) to 39 H-2A workers from 2009 to 2013, which represents 0.01 percent of H-2A visas issued. Government Accountability Office, *Increased Protections Needed for Foreign Workers*.

87. Milli Legrain, "'Be Very Careful': The Dangers for Mexicans Working Legally on US Farms," *The Guardian*, May 16, 2019.

88. Unique employers were identified by eliminating duplicates in each year. Duplicates were identified after cleaning the data of punctuation and corporate structure identifiers that are commonly inconsistent. "Selected Statistics by Program," OFLC Performance Data, Department of Labor, Employment and Training Administration; "Wage and Hour Division Compliance Action Data," Department of Labor, July 26, 2019; and "Program Debarments," Department of Labor, [https://www.foreignlaborcert.doleta.gov/pdf/Debarment\\_List\\_Revisions.pdf](https://www.foreignlaborcert.doleta.gov/pdf/Debarment_List_Revisions.pdf).

89. The \$2,836,551.51 in fines and 11,984 violations equals an average of \$237 per violation. See "Fiscal Year Data for WHD," Wage and Hour Division, Department of Labor, <https://www.dol.gov/agencies/whd/data/charts>.

90. "H-2A: Temporary Agricultural Employment of Foreign Workers," Wage and Hour Division, Department of Labor, <https://www.dol.gov/agencies/whd/agriculture/h2a>.

91. Current regulations permit just 30 days for workers to find a new job under the H-2A visa (8 C.F.R. § 214.2(h)(5)(viii)(B)) (2019). See the comments of Giev Kashkooli of the United Farmworkers: *Agricultural Labor: From H-2A to a Workable Agricultural Guestworker Program, Before the Subcommittee on Immigration and Border Security of the Committee on the Judiciary, House of Representatives*, 113th Cong., 1st Sess. (February 26, 2013) (statement of Giev Kashkooli).

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