

Colorado Legal Services

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Farm Workers and Trafficking in Colorado



COLORADO LEGAL SERVICES MIGRANT FARM WORKER DIVISION 800.864.4300

PBS FRONTLINE Rape In The Fields

<http://www.pbs.org/wgbh/pages/frontline/rape-in-the-fields/>

“ We were surrounded by big, mean-looking security guards, who did not allow us to leave the premises, even to buy food. I was treated like a prisoner, and I felt that my dignity was violated.”



- Victim of labor trafficking in Global Horizons case

What does trafficking of farm workers look like?

- Confiscation of immigration **documents**
- Recruitment **debts**
- Wages so low that they will never be able to pay back the debts associated with coming to the US
- Being **cut off** from support networks, families and social and legal services
- **Fear of retaliation** to themselves through **violence** or **deportation** and to their families back home
- Sometimes depending entirely on the employer for all contact with the outside world

Farm Work is Always Tough, So When Does it Become Trafficking?

- Exploitation in agriculture becomes trafficking when the employer uses **force, fraud or coercion to control workers and make them believe that they have no option but to continue working for that employer.**
- As in other forms of trafficking, it may involve:
 - Enticing a worker to migrate and leave the safety of home with **false promises** about living or working conditions;
 - **Isolating** workers from their peers, family members, or service providers;
 - **Controlling** a worker's movement inside and outside of their home and their **communications** with individuals in the community; and verbal, psychological, physical or sexual abuse.
 - **Confiscation** of documents

Historically our agricultural system has relied on the labor of poor people, many of whom have lacked full legal protections, including indentured and bonded laborers, slaves from Africa, share-croppers, and undocumented migrants.



What is the connection between farming and exploitation?

WHY ARE FARM WORKERS PARTICULARLY VULNERABLE?

- 72 % of all farm workers in the US are foreign born
- They are often undocumented
- Often live in employer provided HOUSING
- They live in rural areas often very far from the center of town
- Many do not speak English
- The H2A – agriculture work visa program

What is the **H2A** visa program?

- H2A is the current agriculture guest worker program
- Workers can only come to do specific agricultural work that has been determined not to have a negative effect on US workers
- The employer/grower is obligated to provide **HOUSING**, transportation costs, and visa costs



Problems with H2A

- The worker and the visa are solicited by the employer/grower
 - That means the worker is here at the behest of the grower.
 - It also means that the worker can't transfer to a different farm/ranch if he/she is being mistreated
 - Which creates a huge disincentive to report any problems for fear of losing the visa and having to return to home country.

More problems with H2A

- The Department of Labor has **exempted** herders from the standards that exist under H2A
- Plus, H2A workers are **exempted** from the Migrant and Seasonal Agricultural Worker Protection Act (AWPPA), which would otherwise allow for enforcement of contract terms and agreements in federal court.

What are some of the Remedies?

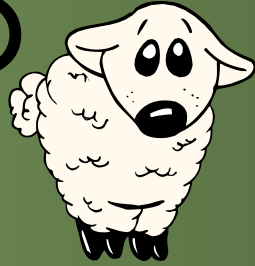
U Visa Crimes include:

- One or more of the following or any similar activity in violation of Federal or State, or local criminal law: rape; torture; [human] trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt conspiracy, or solicitation to commit any of the above mentioned crimes.

Remedies continued...

- T visa
 - The survivor must be a victim of a severe form of trafficking in persons;
 - Be physically present in the US on account of such trafficking
 - Has cooperated with law enforcement (this is nuanced and there are some exceptions)
 - Would suffer extreme hardship involving severe harm in the event of removal.

Case Studies: Shepherders in CO



- Recruited from home country and made to pay recruitment fees
 - Workers forced to work from moment of arrival
 - 24/7 with no breaks or days off and without sufficient food
 - The housing/fuel supply was insufficient to keep them warm in the winter
 - Employer confiscated immigration documents
 - The workers were not allowed to leave the ranch or talk with any passerby
 - They were physically attacked and verbally abused
 - They did not understand, read or speak English

The Final Straw

“ Finally there came a point when I couldn't continue to put up with the terrible working conditions and mistreatment. So I decided to leave.

I took care of all the animals, and I walked toward the highway. It took several hours to reach the highway but once I got there, I got a ride from a passing car. The driver took me to Denver.”

Case Study: Grant Family Farms

- Was one of the largest CSAs in the country
- Hudson, Weld County (northeast of Denver)
- Agriculture contractor
 - A person who supplies a crew to a farm/farmer when agricultural work needs to get done
 - Licensed by Department of Labor
 - They are paid a lump sum that is meant to cover wages, insurance, and taxes for the workers
 - In this case, the contractor provided false documents to the farmer that purported to show all the employees were legal workers

Case Study: Grant Family Farms

- What happened?
 - The contractors lost their license
 - The couple was indicted on charges of harboring and transporting illegal immigrants
 - The property was seized along with \$128k
 - The couple both served nearly 1 year in jail and were then deported
 - The victims were granted temporary visas for their cooperation
 - There were no charges of involuntary servitude
 - Standard is BARD in criminal case

Case Study: Grant Family Farms

- CLS helped the victims bring a civil case against the farmer under a theory of joint employment because as a joint employer he was ultimately responsible for many of the working conditions of the workers.
- Eventually the victims were awarded monetary judgments

How can I identify a farm worker that has been a victim of trafficking?

- **LOOK BENEATH THE SURFACE**
 - We often do not see the things that are hidden in plain sight
- **LISTEN**
 - Pay attention to details that raise red flags
 - Working to pay off a debt that without defined terms or conditions
 - Their documents have been taken
 - They are being threatened or family is being threatened
 - The employer controlled their food/water/housing/use of restroom
 - Employer cut off or controlled contact with the outside world