

**GAO**

Report to the Chairman, Committee on  
Education and Labor, House of  
Representatives

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September 2010

# H-2B VISA PROGRAM

## Closed Civil and Criminal Cases Illustrate Instances of H-2B Workers Being Targets of Fraud and Abuse



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Highlights of [GAO-10-1053](#), a report to the Chairman, Committee on Education and Labor, House of Representatives

## Why GAO Did This Study

The H-2B visa program assists U.S. employers anticipating a shortage of domestic nonagricultural workers by permitting them to hire nonimmigrant foreign workers temporarily. The program is overseen by several agencies, including the Department of Labor (Labor), the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS), and the Department of State. Employers often hire labor recruiters or other intermediaries to assist with the process of obtaining labor certifications and finding foreign workers. GAO was asked to determine if there were examples of recruiters and employers engaging in illegal or fraudulent activity within the H-2B visa program.

GAO reviewed recent closed civil and criminal court cases involving H-2B workers, obtained data from Labor and USCIS on H-2B visas issued in fiscal years 2008 and 2009 and in first 6 months of fiscal year 2010, and interviewed advocacy groups that represent H-2B workers in litigation. In addition, GAO made undercover calls and site visits to recruiters, posing as H-2B employers and foreign H-2B workers and asked a series of questions related to legal requirements of the program. GAO also visited several H-2B housing and work site locations. Case studies and results of tests and site visits cannot be projected to the entire population of H-2B employers and recruiters.

View [GAO-10-1053](#) or [key components](#).  
For more information, contact Gregory Kutz at (202) 512-6722 or [kutzg@gao.gov](mailto:kutzg@gao.gov).

## H-2B VISA PROGRAM

### Closed Civil and Criminal Cases Illustrate Instances of H-2B Workers Being Targets of Fraud and Abuse

## What GAO Found

GAO reviewed 10 closed cases over the last 5 years that involved H-2B employers and recruiters that violated various labor laws or settled allegations of violations outside of court. These 10 cases involved diverse employers in different industries with employees in 29 states with violations in areas such as employers failing to pay promised wages, overtime, or both; employers charging H-2B workers exorbitant fees; and employers and recruiters submitting fraudulent documentation to government officials. For example, in one case H-2B workers became indebted to their employer through a series of arbitrary charges. The employer then forced workers to take second jobs at local fast food restaurants to pay these debts. The table below provides a summary of cases where H-2B workers rights were violated.

**Cases of Fraud and Abuse within the H-2B Program**

Industry, location	Details
Hotel - South Dakota	<ul style="list-style-type: none"> <li>Hotel owners forced H-2B workers to work in substandard conditions, confiscated workers' passports, and threatened workers that they would be sent home in a "box" if they disobeyed orders.</li> <li>In 2008, the couple was found guilty on nine counts, including conspiracy, holding people in peonage, making false statements, and visa fraud.</li> </ul>
Construction and foreign contract labor firm - Louisiana	<ul style="list-style-type: none"> <li>Workers from India paid at least \$20,000 for H-2B visas to enter the United States but were never employed by the construction company.</li> <li>The construction company owner pled guilty to conspiracy, and the other conspirators were found guilty of 1 count of conspiracy, 14 counts of encouraging and inducing illegal immigration, and 1 count of money laundering.</li> </ul>
Labor broker, hospitality employers, and immigration attorney - Virginia	<ul style="list-style-type: none"> <li>Conspirators fraudulently obtained H-2B certification from Labor for over 3,800 individuals, leased workers to undisclosed businesses not listed on the visa petitions, defrauded the government of \$7.4 million in payroll taxes never remitted to the Internal Revenue Service.</li> <li>The conspirators pled guilty to charges including conspiracy, visa fraud, and tax evasion charges that were linked to an international organized crime ring.</li> </ul>

Source: GAO analysis of court files.

GAO personnel found that most recruiters they called or visited posing as prospective H-2B employers and workers did not encourage our undercover agents to violate program rules. Of the 18 recruiters in multiple states we contacted, 15 appropriately did not offer any advice on violating H-2B program rules. However, during three calls, H-2B recruiters did provide suggestions on how to circumvent program rules, such as providing "good excuses" to help "weed out" prospective U.S. workers or recouping costs through "off-the-book" transactions to avoid restrictions on pay deductions. Additionally, GAO found that H-2B workers contacted during the site visits to their housing locations were generally pleased with their living and working conditions. However, at one location the H-2B workers were afraid to speak with outside individuals for fear of retaliation from their employer.

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United States Government Accountability Office  
Washington, DC 20548

September 30, 2010

The Honorable George Miller  
Chairman  
Committee on Education and Labor  
House of Representatives

Dear Mr. Chairman:

With the United States continuing to attract tens of thousands of foreign nationals each year who seek legal employment, the H-2B visa program is intended to benefit both American employers and foreign workers. Employers anticipating a shortage of American nonagricultural workers may hire nonimmigrant foreign workers<sup>1</sup> to fill temporary labor needs through the H-2B visa program. Employers often hire labor recruiters<sup>2</sup> or other intermediaries to help find foreign workers and obtain the required labor certifications. The workers come from a diverse set of countries and work in a range of industries, most often construction, landscaping, manufacturing, hospitality service, and food processing. Several federal agencies oversee the program, including the Department of Labor (Labor), the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS), and the Department of State (State).

Several recent convictions have shown that some employers and recruiters may be abusing the foreign workers in the program. In addition, some employers may violate program rules by subverting program regulations requiring that employers first attempt to hire U.S. workers. You asked us to determine if there were examples of recruiters and employers that were engaging in illegal or fraudulent activity within the H-2B visa program. Specifically, we (1) reviewed recent closed civil and criminal court cases of fraudulent, illegal, and abusive activity by recruiters and employers participating in the H-2B program and (2) conducted undercover tests of employer and recruiter practices.

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<sup>1</sup>An H-2B worker is defined as a foreign nonimmigrant worker employed by a U.S. employer to perform temporary nonagricultural labor or services. 8 U.S.C § 1101(a)(15)(H)(ii)(b).

<sup>2</sup>A recruiter is an individual or company hired by U.S. businesses to identify and hire foreign workers for employment under the H-2B visa program.

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To identify court cases of recent fraud and abuse within the H-2B program, we researched court documentation involving violations of the H-2B program in the last 5 years that resulted in a criminal conviction, civil or administrative liability, or significant financial settlement. We reviewed a nonrepresentative selection of 10 closed cases, from leads provided by advocacy groups and our own research, associated with workers employed in 29 states and various industries to illustrate the types of abuse and fraud that occurred in the H-2B program, but we cannot generalize these findings to the program.

To examine methods used by H-2B employers and recruiters, we reviewed recent civil and criminal cases involving H-2B workers; obtained data from Labor and USCIS on H-2B visas issued in fiscal years 2008 and 2009 and in the first 6 months of fiscal year 2010; and interviewed advocacy groups that represent H-2B workers in litigation. We conducted undercover calls to 18 U.S.-based H-2B recruiters and staffing agencies. These recruiters were selected from leads provided by advocacy groups and our own research. Using scenarios based on recent court cases and program requirements, we posed as potential employers and foreign workers to assess whether selected recruiters would advocate violating program laws and regulations. We also made undercover site visits to two selected recruiters that we had previously contacted by phone. Finally, we conducted site visits of H-2B worker housing locations to identify instances of substandard housing accommodations or other forms of abuse and the mistreatment of H-2B workers. These sites were selected from leads provided by advocacy groups and our own research. Case studies, site visits, and results of proactive testing cannot be projected to the entire population of H-2B employers and recruiters.

We conducted the work for this investigation from April 2010 through September 2010 in accordance with the standards prescribed by the Council of Inspectors General for Integrity and Efficiency. Additional details on our scope and methodology are included in appendix I.

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## Background

The Immigration and Nationality Act allows foreign nationals to enter the United States to perform temporary labor if unemployed individuals capable of performing the work cannot be found in the United States. Labor and USCIS are responsible for reviewing employers' applications for H-2B workers, and State is responsible for issuing visas to workers. Under the program, employers in industries with a onetime occurrence, peak load, seasonal, or intermittent needs can supplement their domestic workforces with H-2B workers. The temporary work must be for full-time

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employment and the employer's need for the workers must generally be less than a year. The H-2B classification may be extended for qualifying employment in 1-year increments up to a total of 3 years. Up to 66,000 H-2B visas can be issued each fiscal year.

Prospective H-2B employers must apply to Labor for a temporary labor certification attesting that American workers capable of performing the work are not available and that the employment of foreign workers will not adversely affect the wages and working conditions of similarly employed American workers. The H-2B program requires the employer to attest to Labor that it will offer a wage that equals or exceeds the highest of the prevailing wage, the applicable federal minimum wage, the state minimum wage, or the local minimum wage to the H-2B worker. The employer also must agree to offer terms and working conditions typical to U.S. workers in the same geographical area;<sup>3</sup> not use H-2B workers to replace striking workers; comply with all federal, state, and local labor, health, and safety laws; and detail and clarify all paycheck deductions in the job offer and ensure that all deductions are reasonable. The employer must also not place any workers outside the area listed on the Labor application without first obtaining a new certification and must notify Labor and USCIS if an H-2B worker quits before the end of the term of employment. In addition, the employer agrees to forbid any recruiter from seeking or receiving payment from H-2B workers, except for costs that are the responsibility of the worker.<sup>4</sup> Moreover, the employer agrees not to seek or receive payment of any kind from the H-2B workers related to labor certification.

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<sup>3</sup>H-2B workers are covered by the Fair Labor Standards Act (FLSA). FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments.

<sup>4</sup>According to Labor regulations, acceptable fees that are the responsibility of H-2B workers include passport or visa fees or reimbursement for the lesser of the actual cost or fair market value of transportation abroad.

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## Court Cases Reveal Unfair Wages, Excessive Fees, and Fraudulent Documentation in the H-2B Program

The 10 cases that we reviewed demonstrate fraud and abuse committed by recruiters and employers participating in the H-2B visa program and operating in 29 states. Though the cases include a diverse group of employers in different industries, our review of these 10 cases showed violations in areas such as unfair wages for employees, excessive fees charged to employees, and fraudulent documentation submitted to federal agencies to circumvent program rules.

**Employers failed to pay the prevailing hourly wage or overtime.** In 6 of the 10 cases we reviewed, there were allegations that employers did not pay their H-2B employees the established hourly wage, overtime, or both. For example, a carnival operator in New York paid employees by the week regardless of the number of hours worked. Working up to 80 hours a week, the employees averaged less than \$5.00 an hour—far less than the \$8.00 to \$12.20 promised. In another case, H-2B employees alleged that an Arkansas-based forestry corporation did not pay overtime wages despite work weeks regularly exceeding 40 hours.

**Employers charged H-2B workers excessive fees.** In 6 of the 10 cases we reviewed, employers charged their H-2B workers fees that were for the benefit of the employer or charged excessive fees that brought employees' wages below the hourly federal minimum wage. These charges included visa processing fees far above actual costs, rent in overcrowded apartments that drastically exceeded market value, and transportation charges subject to arbitrary "late fees." Workers left the United States in greater debt than when they arrived. In one case, these fees reduced employees' paychecks to as little as \$48 for a 2-week period. A total of 4 of these cases resulted in a criminal conviction, including civil or administrative liability, and the remaining 2 cases resulted in a significant financial settlement.

**Employers and recruiters submitted fraudulent documentation.** In 8 of the 10 cases we reviewed, employers were alleged to have submitted fraudulent documentation to Labor, USCIS, and State to either exploit their H-2B employees or hire more employees than needed. Employers and recruiters misclassified employee duties on Labor certification applications to pay lower prevailing wages; used shell companies to file fraudulent labor certification applications for unneeded employees, then leased the additional employees to businesses not on the visa petitions; and preferentially hired H-2B employees over American workers in violation of federal law. A total of 5 of these cases resulted in a criminal conviction, including civil or administrative liability, and the remaining 3 cases resulted in a significant financial settlement.

There is no law or program requirement that prohibits companies from being awarded federal contracts even if they have been found to have violated H-2B immigration laws. Several of these employers continued to receive H-2B certifications and money from federal contracts while in litigation, after reaching a settlement as a result of litigation, or after being found guilty of various charges.

Table 1 summarizes the 10 cases in which H-2B employers and recruiters committed visa fraud or exploited their H-2B workers.

**Table 1: Summary of Court Cases**

Case	Location	Defendants	Case details	Outcome
1	Arizona, Delaware, Maryland, New Jersey, New York, Pennsylvania, and Virginia	Temporary employment recruiting agency	<ul style="list-style-type: none"> <li>The agency conspired with client businesses to return employed illegal aliens to native countries, and then fraudulently obtain H-2B visas to bring the employees back.</li> <li>The agency submitted falsified documents to Labor, State, and USCIS using names from a Mexico phone book and fictitious biographical information to serve as placeholders, so that additional H-2B visas were on hand in case client businesses needed to hire additional alien workers.</li> <li>The agency coached the employees to lie to U.S. immigration officials during visa application interviews and about their previous presence in the United States.</li> <li>Federal criminal suit was filed in 2009.</li> </ul>	<ul style="list-style-type: none"> <li>In 2009, all parties involved (the owner, his wife, his sister, and an unrelated office manager) pled guilty. The owner's sister was sentenced to 3 years of probation, 200 hours of community service a year for 3 years, and a \$50,000 fine. The office manager and the owner's wife received 5 years of probation. Additionally, his wife received 200 hours of community service a year for 5 years and a \$2,000 fine, while the office manager received 250 hours of community service a year for 5 years and a \$20,000 fine. The owner passed away while awaiting sentencing.</li> </ul>

Case	Location	Defendants	Case details	Outcome
2	New York	Carnival operator	<ul style="list-style-type: none"> <li>In 2008, New York's Office of Attorney General (OAG) began to investigate this company after receiving complaints from H-2B workers about wages and substandard housing. The OAG alleged that the company:</li> <li>discriminated against 54 Mexican H-2B employees by not paying the salary promised;</li> <li>housed employees in overcrowded, cockroach- and bedbug-infested trailers with unsanitary restrooms;</li> <li>did not provide safety equipment or proper attire;</li> <li>verbally harassed employees; and</li> <li>paid \$275 to \$350 a week regardless of hours (employees earned an average of \$5.00 an hour but were promised \$8.00 an hour and \$12.20 an hour for overtime).</li> </ul>	<ul style="list-style-type: none"> <li>In 2009, the carnival operator settled with the OAG and did not admit liability, but agreed to pay \$325,000 in restitution and damages to the employees.</li> <li>The employer agreed to submit to an independent monitor to ensure, among other things, compliance with minimum wage and overtime law and provide equal treatment and sanitary housing to employees.</li> </ul>
3	South Dakota	Hotel	<ul style="list-style-type: none"> <li>The employer forced nine employees to work in substandard conditions and placed them in servitude<sup>a</sup> at their hotel.</li> <li>The employer offered employees \$6.05 an hour but actually paid \$3.00 per room and required that each room be cleaned for an hour.</li> <li>The employer did not pay overtime.</li> <li>The employer charged nine employees \$1,200 each in visa processing fees, despite actual fees totaling \$1,200 for all nine workers.</li> <li>The employer charged seven employees \$1,050 a month for an apartment they shared, though it normally rented for \$375.</li> <li>The employer forced employees to pay arbitrary charges, leading them to take second jobs at local fast food restaurants to pay these debts.</li> <li>The employer isolated the workers from the community and threatened physical abuse.</li> <li>The employer confiscated the employees' passports and threatened deportation in a "box" if they disobeyed orders.</li> <li>Federal criminal suit was filed in 2007.</li> </ul>	<ul style="list-style-type: none"> <li>In 2008, the couple who owned the hotel was found guilty on nine counts, including conspiracy, holding people in peonage,<sup>b</sup> making false statements, and visa fraud.</li> <li>The husband was sentenced to 50 months in jail, while his wife received 36 months in jail. Each received a \$15,000 fine.</li> </ul>

Case	Location	Defendants	Case details	Outcome
4	Virginia	Landscaping company	<ul style="list-style-type: none"> <li>A labor union filed a complaint with the Department of Justice alleging that the employer discriminated against U.S. workers by preferentially hiring H-2B employees in violation of federal law.</li> <li>The company obtained certifications for over 2,500 H-2B workers from Labor since 2007.</li> </ul>	<ul style="list-style-type: none"> <li>A settlement agreement was reached on May 11, 2010, in which the employer did not admit liability but agreed to modify its hiring policy and personnel practices and provide full back pay of \$11,173 to a U.S. citizen who was denied a job.</li> </ul>
5	Arkansas	Forestry company	<ul style="list-style-type: none"> <li>A class action was filed against the company alleging violations of the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act. The plaintiffs alleged that the company: <ul style="list-style-type: none"> <li>failed to pay over 2,200 workers the prevailing wage or overtime for 6 years by exploiting their inability to speak English and their lack of understanding U.S. laws;</li> <li>forced 7-day work weeks and frequent overtime without breaks;</li> <li>violated the Migrant and Seasonal Agricultural Worker Protection Act by failing to reimburse the workers for expenses they incurred and making unlawful withholdings and deductions from wages; and</li> <li>forced workers to move to another work site but deducted living expenses from their paychecks for both locations.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>During litigation, the company was held in contempt of court three times for intimidating workers who expressed interest in joining the lawsuit.</li> <li>The company entered into a settlement agreement in which it did not admit liability but agreed to pay \$2.75 million in February 2010 after workers sued to recover unreimbursed expenses for obtaining H-2B visas.</li> <li>The company continues to receive active labor certifications from Labor to recruit H-2B workers since the settlement.</li> <li>The company obtained certifications for over 1,900 H-2B workers from Labor since 2007.</li> <li>The company received over \$200,000 from federal contracts during litigation.</li> </ul>

Case	Location	Defendants	Case details	Outcome
6	Louisiana	Construction company and foreign contract labor firm	<ul style="list-style-type: none"> <li>The company obtained \$1.8 million from a fraudulent H-2B visa conspiracy to bring 87 Indian nationals into the United States illegally.</li> <li>The company submitted fraudulent H-2B documentation to federal agencies allegedly seeking workers from India.</li> <li>The company charged at least \$20,000 for H-2B visas but never employed the Indian nationals.</li> <li>Representatives of the firm traveled to India to assist the Indian nationals with the application process and corresponded with the U.S. Consulate on behalf of the workers.</li> <li>These conspirators were indicted on federal criminal charges in 2008.</li> </ul>	<ul style="list-style-type: none"> <li>In 2009, the construction company owner pled guilty to conspiracy and was sentenced 3 years probation and 6 months home confinement.</li> <li>In 2009, the other conspirators were found guilty of 1 count of conspiracy, 14 counts of encouraging and inducing illegal immigration, and 1 count of money laundering and sentenced to 41 months imprisonment.</li> </ul>
7	Virginia	Labor broker, hospitality employers, and immigration attorney	<ul style="list-style-type: none"> <li>The conspiracy fraudulently obtained H-2B certification from Labor for over 3,800 individuals.</li> <li>The conspirators obtained certifications for more workers than needed, leasing the additional workers to undisclosed hotels or businesses not listed on the visa petitions.</li> <li>The conspirators generated over \$35 million in gross income by establishing a permanent foreign labor pool for jobs normally filled by Americans.</li> <li>The conspirators defrauded the government of \$7.4 million in payroll taxes never remitted to the Internal Revenue Service.</li> <li>The businesses charged H-2B workers exorbitant fees for visa-related services and excessive rent for unsanitary, overcrowded houses.</li> <li>The conspiracy started in 2003 and was terminated in 2009 when federal criminal charges were filed.</li> </ul>	<ul style="list-style-type: none"> <li>Nineteen suspects pled guilty to several charges including conspiracy, visa fraud, and tax evasion charges that were linked to an international organized crime ring.</li> <li>Some individuals convicted in the conspiracy received probation, home confinement with electronic monitoring, or federal prison sentences.</li> <li>Suspects were sentenced from October 2009 through February 2010.</li> </ul>

Case	Location	Defendants	Case details	Outcome
8	Florida	Hospitality labor broker	<ul style="list-style-type: none"> <li>Company representatives posed as executives from other legitimate businesses to fraudulently obtain H-2B certifications from Labor.</li> <li>The company coerced workers to sign contracts agreeing to lower pay than originally promised.</li> <li>The company charged up to 16 workers rent to live together in a two-bedroom house.</li> <li>The company paid as little as \$48 for 2 weeks of work because of excessive paycheck deductions, including fees for not cleaning housing accommodations and arriving late for transportation to work sites.</li> <li>Investigative documents indicate that the conspiracy started in 1999 and continued until 2007, when federal criminal charges were filed.</li> </ul>	<ul style="list-style-type: none"> <li>The court referred to the treatment of these workers as "legal slavery."</li> <li>All four executive officers received federal prison sentences and joint \$1 million dollar asset forfeiture.</li> <li>Final sentencing for defendants occurred in 2008.</li> </ul>
9	Pennsylvania	Landscaping company and labor broker	<ul style="list-style-type: none"> <li>A federal civil suit was filed in 2007 alleging that the company did the following: <ul style="list-style-type: none"> <li>Requested more H-2B workers than needed to lease them to other businesses via a recruitment firm at a premium rate;</li> <li>Misclassified employee duties on Labor certification applications to pay lower wages to H-2B workers;</li> <li>Required foreign workers to pay preemployment bonds guaranteeing that they would work for the entire season or forfeit the bond to company, in order to secure H-2B positions. Workers stated that the bonds were not refunded after terms of employment ended;</li> <li>Forced workers to pay excessive rent to live in employer-owned, substandard housing; and</li> <li>Fired workers who complained or threatened the company with breach of contract.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>In 2009, the court approved a settlement that required the employer to pay H-2B workers over \$20,000 and submit documentation verifying adherence to Fair Labor Standards Act and H-2B regulations in future employment practices.</li> </ul>

Case	Location	Defendants	Case details	Outcome
10	Colorado, Connecticut, Delaware, Indiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas, Virginia, and Wisconsin	Landscaping company	<ul style="list-style-type: none"> <li>A federal class action civil suit was filed in 2005, representing H-2B workers employed by the company from 2002 to 2005.</li> <li>The plaintiffs alleged that the employer made excessive deductions from paychecks, often resulting in workers receiving less than minimum wage.</li> <li>H-2B workers sought relief under the Fair Labor Standards Act for minimum wage and overtime violations, breach of contract, and wrongful termination.</li> </ul>	<ul style="list-style-type: none"> <li>The company paid a \$600,000 settlement to workers in 2008, the largest amount at that time.</li> <li>In 2008, the court ruled that H-2B travel costs, visa expenses, and employee fees primarily benefited the employer and could not be deducted from paychecks.</li> <li>Since 2008, the firm has been awarded over \$35,000 in federal contracts, and has applied for certifications for over 8,000 employees.</li> </ul>

Source: GAO analysis of court records, federal contract data, and Labor data.

<sup>a</sup>A condition of compulsory service in which the victim is compelled to perform labor or services against the victim's will for the benefit of another person through, among other things, the use of force, threats of force, restraint, or use or threat of coercion through law or the legal process.

<sup>b</sup>A condition in which the victim is forced to perform labor against the victim's will to pay off a debt.

## In Undercover Tests, Most Recruiters Did Not Encourage H-2B Visa Fraud but Some Offered to Help Violate Laws and Regulations

Of the 18 recruiters in multiple states we contacted, 15 H-2B recruiters did not encourage our undercover agents posing as prospective H-2B employers and employees to violate H-2B program rules. Most recruiters told our fictitious employers that they would have to pay H-2B employees the appropriate prevailing wage, as well as advertise job openings in local markets before seeking H-2B certifications. Most recruiters also informed our fictitious employers that they would not be able to profit from fees charged to H-2B employees for expenses such as rent or travel. In addition, one recruiter correctly told our fictitious prospective H-2B employee that she would have to return to her home country before applying for H-2B worker status.

However, in three cases recruiters offered advice on violating or evading program rules. A Texas recruiter suggested that we discourage American workers from accepting our landscaping job openings by having applicants run around the shop carrying a 50-pound bag to determine they were fit for the work. The recruiter also suggested conducting interviews before 7 a.m. and requiring drug testing prior to the interview as means to “weed out” qualified American applicants. In addition, the recruiter suggested that our current American landscape workers be fired “for cause” or induced to quit months before filing a petition for H-2B workers to avoid arousing suspicion by Labor. Furthermore, the recruiter made comments about recouping employer costs through “off-the-book” transactions for rent to

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avoid caps on payroll deductions. A recruiter in New York offered to provide “good excuses” to help “weed out” prospective U.S. workers who applied for our housekeeping jobs.

We also found that recruiters we visited did not offer our undercover agents assistance in violating the rules of the H-2B program. A recruiter in Kentucky told us that it usually petitions Labor for more workers than needed in case the employer has to hire one or two U.S. workers. This allows the employer to still be able to obtain the amount of H-2B workers it was seeking. However, the recruiter suggested that interest in these positions is usually limited because of low wages. Additionally, the recruiter suggested that U.S. workers would only apply for our jobs so that they could continue to receive unemployment benefits. We selected two recruiters located in Texas and New York that we had contacted during our undercover phone calls, posed as prospective H-2B employers willing to pay a retainer fee, and sought their assistance to help us obtain H-2B workers and violate the rules of the program. These recruiters refused to offer assistance in violating the program rules or to accept our retainer fee.

Our site visits to H-2B employee housing revealed that most of the workers we spoke with felt they had adequate housing, pay, and working conditions, though we did find some occurrences that were suspicious. H-2B employees at a circus in West Virginia with prior allegations of wage abuse and exorbitant recruitment fees stated that their employer provided adequate meals, transportation, and living accommodations that were not deducted from their salaries. The accommodations consisted of 6 to 7 employees living in one travel trailer. When our undercover agents asked to enter the trailer, the workers were adamant that no one was allowed inside without their employer’s consent. We also visited known housing locations for H-2B seafood processing employees in North Carolina. The employees told our investigators that they were afraid to speak with outside individuals for fear of retaliation from the employer. One employee said that another employee had recently been fired and sent back to their home country for reporting a burglary at their housing location to the police. Again, we were not allowed inside the employees’ housing.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to interested congressional committees, the Secretary of Labor, the Secretary of Homeland Security, and other interested parties. The report also will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-6722 or [kutzg@gao.gov](mailto:kutzg@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

Sincerely yours,

A handwritten signature in black ink that reads "Gregory D. Kutz". The signature is written in a cursive style with a large, stylized initial "G".

Gregory D. Kutz  
Managing Director  
Forensic Audits and Special Investigations

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# Appendix I: Scope and Methodology

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To identify court cases of illegal or fraudulent activity within the H-2B visa program, we researched court documentation involving violations of the H-2B program in the last 5 years that resulted in a criminal conviction, civil or administrative liability, or significant financial settlement. To illustrate cases of fraudulent, illegal, and abusive activity in the H-2B program, we identified 10 closed cases for detailed audit and investigation. The 10 cases were selected from leads provided by advocacy groups and our own research based on criteria that provided indications of fraud and abuse. For example, to investigate methods used by H-2B employers and recruiters, we reviewed recent civil and criminal cases involving H-2B workers; obtained data from the Department of Labor (Labor)<sup>1</sup> and the Department of Homeland Security's United States Citizenship and Immigration Services<sup>2</sup> on H-2B visas issued; and interviewed representatives of advocacy groups that represent H-2B workers in litigation. The cases were associated with workers employed in 29 states and various industries to illustrate a broad range of abuse or fraud occurring in the H-2B program.

To illustrate potential fraudulent recruiting methods utilized by H-2B recruiters, we conducted undercover calls to 18 U.S.-based H-2B recruiters and staffing agencies. These recruiters were selected from leads provided by advocacy groups and our own research. Using scenarios based on recent court cases and program requirements, we posed as potential employers and foreign workers to assess whether selected recruiters would advocate violating program laws and regulations. We also made undercover site visits to two selected recruiters that we had previously contacted by phone call.

To identify potential instances of abuse, we conducted site visits of H-2B worker housing locations to identify instances of substandard housing accommodations or other forms of exploitation and the mistreatment of H-2B workers. These locations were selected from leads provided by advocacy groups and our own research. Case studies, site visits, and results of proactive testing cannot be projected to the entire population of H-2B employers and recruiters.

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<sup>1</sup>Total number of records extracted may be understated because of the variation of each employer or representative name entered into the Labor database.

<sup>2</sup>The data cover fiscal years 2008 and 2009 and the first 6 months of fiscal year 2010.

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We conducted the work for this investigation from April 2010 through September 2010 in accordance with the standards prescribed by the Council of Inspectors General for Integrity and Efficiency.

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