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## United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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May 15, 2023

### VIA ELECTRONIC TRANSMISSION

The Honorable Julie A. Su  
Acting Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20001

Acting Secretary Su:

It has come to our attention that a senior official at the Department of Labor (DOL) has made a series of troubling public statements regarding the H-2A visa program. As you know, Congress created the H-2A program in 1986 in order to allow farmers to hire non-immigrant temporary or seasonal agricultural workers when American labor is unavailable.<sup>1</sup> The goal of the program is to ensure an adequate labor supply in the agricultural sector.<sup>2</sup>

On April 14, 2023, a group of nonprofit organizations published a report following an investigation into purported “systemic issues” concerning the H-2A program.<sup>3</sup> The report included multiple quotes from Mike Rios, who currently serves as Regional Enforcement Coordinator at the Wage and Hour Division of DOL.<sup>4</sup> Among other troubling statements, Mr. Rios expressed his view that “wage theft is literally ‘baked into’ how [the H-2A] program operates.”<sup>5</sup> He further described the H-2A program as “the purchase of humans to perform difficult work under terrible conditions, sometimes including subhuman living conditions.”<sup>6</sup> Mr. Rios also has publicly stated that “[y]ou can throw a rock and hit a violation in the agricultural industry” and that the H-2A program involves employers “literally buying people to come do terrible work.”<sup>7</sup>

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<sup>1</sup> See 8 U.S.C. § 1101(a)(15)(H)(ii)(a).

<sup>2</sup> See 20 C.F.R. § 655.0(a)(3).

<sup>3</sup> Tina Vásquez, *Human Trafficking or a Guest Worker Program? H-2A’s Systemic Issues Result in Catastrophic Violations*, PRISM (Apr. 14, 2023), <https://prismreports.org/2023/04/14/h2a-visa-wage-theft-exploitation/>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Patricia Sulbaran et al., *Head Down, Episode 2*, LATINO USA (Apr. 21, 2023), <https://futuroinvestigates.org/investigative-stories/head-down/podcast-head-down-episode-2/>.

Mr. Rios's statements are inconsistent with the H-2A program's requirements. The governing regulations set forth specific rules regarding the wage farmers must pay workers employed under the program, none of which involve "wage theft."<sup>8</sup> Contrary to Mr. Rios's assertions, farmers must pay H-2A workers "a wage that is at least the highest of" the Adverse Effect Wage Rate (AEWR), an approved prevailing wage rate, a collective bargaining wage, or the federal or state minimum wage.<sup>9</sup> The AEWR does not allow for H-2A labor to earn less than domestic farm workers.<sup>10</sup> Regulations also require farmers to provide housing and cover transportation to and from the worker's home country.<sup>11</sup> Mr. Rios's claim that the H-2A program is equivalent to human slavery therefore finds no support in law or fact. It is also inflammatory and unbecoming of a senior federal official. If the officials tasked with enforcing the H-2A program believe the system amounts to "wage theft" and "the purchase of humans to perform difficult work under terrible conditions," then either DOL is currently unable to competently enforce the law or these statements reflect a startling bias against American farmers who use the program.

The senior DOL official makes these statements as American employers face a persistently tight labor market, with the number of job openings in recent months higher than before the onset of the COVID-19 pandemic.<sup>12</sup> Labor shortages are particularly acute in the agricultural sector, which have led to decreased production and higher food costs for American families.<sup>13</sup> The program "provides a guaranteed, stable workforce to growers who in the past may have struggled with recruiting or retaining local immigrant workers hired on a seasonal basis."<sup>14</sup>

This bias against the H-2A program appears to be part of a disturbing pattern during and before your tenure at DOL that demonstrates a disregard for the evenhanded enforcement of our nation's laws.<sup>15</sup> As Acting Secretary, it is your responsibility to ensure that federal law is enforced fairly

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<sup>8</sup> See 20 C.F.R. § 655.120.

<sup>9</sup> *Id.* § 655.120(a).

<sup>10</sup> See *id.*

<sup>11</sup> 20 C.F.R. § 655.122.

<sup>12</sup> Abha Bhattarai & Lauren Kaori Gurley, *Labor Market Adds 263,000 Jobs in March, Powering Economy on*, WASH. POST (Apr. 7, 2023), <https://www.washingtonpost.com/business/2023/04/07/march-jobs-labor-market-sliding/>.

<sup>13</sup> Isabel Hicks, *Montana Farmers Saw Rise in Labor Costs in 2022*, BOZEMAN DAILY CHRON. (Dec. 31, 2022), [https://www.bozemandailychronicle.com/news/agriculture/montana-farmers-saw-rise-in-labor-costs-in-2022/article\\_ccf38602-8871-11ed-a1af-13d131a07526.html](https://www.bozemandailychronicle.com/news/agriculture/montana-farmers-saw-rise-in-labor-costs-in-2022/article_ccf38602-8871-11ed-a1af-13d131a07526.html) (noting the "chronic shortage of agricultural labor" in the United States). See also Skyler Simnitt & Philip Martin, *U.S. Fruit and Vegetable Industries Try to Cope with Rising Labor Costs*, U.S. DEP'T OF AGRIC. (Dec. 28, 2022), <https://www.ers.usda.gov/amber-waves/2022/december/u-s-fruit-and-vegetable-industries-try-to-cope-with-rising-labor-costs/>; Justin Ferguson, *Labor Shortages Continue to Impact Farmers*, AM. FARM BUREAU FED'N (Nov. 1, 2022), <https://www.fb.org/focus-on-agriculture/labor-shortages-continue-to-impact-farmers>.

<sup>14</sup> Marcelo Castillo et al., *Examining the Growth in Seasonal Agricultural H-2A Labor*, U.S. DEP'T OF AGRIC. (Aug. 2021), <https://www.ers.usda.gov/publications/pub-details/?pubid=102014>.

<sup>15</sup> See Letter from Sen. Bill Cassidy and Sen. Tommy Tuberville to Stewart Knox, Sec'y, Cal. Lab. & Workforce Dev. Agency (May 1, 2023), <https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-tuberville-request-memo-from-julie-su-directing-staff-to-obstruct-federal-immigration-officials> (describing a memorandum issued in July 2017 by then-Commissioner Su instructing staff to refuse entry to U.S. Immigration Customs and Enforcement agents who visited state labor offices); Letter from Sen. Bill Cassidy to Julie A. Su, Acting Sec'y, U.S. Dep't of Lab. (Apr. 24, 2023), <https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-demands-answers-on-dols-failure-to-prevent-exploitation-of-migrant-children> (describing DOL's failure to enforce federal child labor laws).

and without bias or prejudice. Accordingly, we request you answer the following questions, on a question-by-question basis, by **close of business on May 19, 2023**.

1. In your view, what is DOL's role in enforcing the H-2A program?
2. Do you agree with Mr. Rios that the H-2A program "literally is the purchase of humans to perform difficult work under terrible conditions, sometimes including subhuman living conditions" and that "wage theft is literally 'baked into' how [the H-2A] program operates?"
3. Were you aware of Mr. Rios's statements regarding the H-2A program prior to the publication of the report cited above? If so, what steps, if any, have you taken to address those statements with Mr. Rios?
4. If confirmed as Secretary of Labor, what steps will you take to ensure that DOL officials tasked with enforcing the H-2A program will do so in a neutral and unbiased manner? Please explain in detail.

Thank you for your attention to this matter, and we look forward to your prompt response.

Sincerely,



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Bill Cassidy, M.D.  
Ranking Member  
U.S. Senate Committee on Health,  
Education, Labor and Pensions



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U.S. Senator