LABOR TRAFFICKING IN CALIFORNIA'S CENTRAL VALLEY AGRICULTURAL INDUSTRY

Summary of research conducted by Siddharth Kara as reported in "Modern Slavery: A Global Perspective," Chapter 3 (Columbia University Press 2017)

"No matter the circumstances through which an individual enters this country, he or she never deserves to be a slave. That is, however, exactly what many migrants find, whether they enter through irregular channels or with pristine paperwork."[1]

I.   California is not only the largest agricultural state in the US, but one of most productive agricultural zones in the world.

- Central Valley area covers 22,500 square miles
    - 76,400 farms covering 25.5 million acres
- Home to more than 99% of the US' stock of 14 crops
    - Produced agricultural products worth $54 billion in 2015

II.   California's agricultural industry is heavily reliant on low wage migrant labor workers many of whom are victims of labor trafficking.

- Trafficking is almost equally prevalent in both the H-2A documented group and the undocumented labor pool

Interviewed over 1000 workers and uncovered 303 human trafficking victims using highly conservative criteria – **128 held H-2A visas**

- Hard to know how many H-2A workers in the US in any given year as not all who obtain visas actually travel, but the number has been increasing every year for the past decade
- Estimates for 2016- 100,000-130,000[2] for the entire US. Workers primarily from south of the US-Mexico border.

Paradoxically, the H-2A program offers further avenues for servitude than for undocumented workers

- Time/expense of employers filing annual paperwork results in workers being induced to overstay visa
- 73 of the 128 interviewed had stayed past visa terms and were in multiyear forced labor situations
- **Recruiting fees ranged from $2000 to $5000**

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[1] Id. at 86.
[2] Id. at n.3.

III. Farm Labor Contractors (FLCs) are part of foreign recruiting networks and often abuse workers

- Cases show identification documents confiscated on arrival, freedom of movement and employment restricted; paid about $1.50/hour through system of unfair and excessive wage deductions and under threat of deportation

Case Example: Felipe
- Felipe working on a farm near Bakersfield.
- He was promised $10,000 for the season by his Mexican recruiter
- Felipe paid:
  - $2000 to the recruiter for his H-2A visa
  - $667 for transportation to CA (that was to be reimbursed at the end of the season)
- His visa was confiscated by FLC when he arrived in CA
- He was not paid for three months: expenses for transport to the US, food, rent, transport to the farm where he worked, attorney fees to process the visa, and even expenses to fix the truck that took him to the worksite, were deducted from his paycheck
- Asked for an accounting, only given on a slip of paper in English that he did not understand
- Beaten by his crew leader
- Not allowed to leave the farm during the day nor his apartment at night
  - Asked for fans because the apartment was oppressively hot, and charged for them
- Finally paid $200 in the fourth month of work
- He overstayed his visa at the FLCs request to earn additional funds, even though promised lower wages (only $400-500 per month)
- Charged $40 every time taken to the money transfer office to wire money home
- He had been in the US for 4 years at the time of the interview
  - Would like to leave for other work that pays more, but will be deported because of overstaying his visa
- Ability to send money home is the only thing that keeps him going
  - Worries that he will never be able to leave and will die there

- In every case of trafficking, whether the worker was documented or not, the FLC or other labor recruiter was directly involved in the exploitation
- Coercive labor practices of the FLCs are exacerbated by the use of *enganchadores* (recruiters outside the US) because of the incurred debt for their services

Uncovered 253 cases of debt bondage

- Farm owners sever legal responsibility for working conditions by outsourcing recruitment, treatment and management of labor to FLCs and other labor subcontractors

IV.   Exploitation by unscrupulous Farm Labor Contractors is pervasive.

- In 2016, there were 810 FLCs registered in US, with 350 or roughly 43% operating in California

- Average wage of a CA FLC is $60,040, about **three times** that of a properly paid farm worker and more than 11 times that of the victims interviewed

- Found that most of the abuses stem from conduct of unlicensed FLCs
  - No impetus to become licensed as the maximum fine is $10,000 and the FLC can earn 10-20 times that amount from the exploited workers

- Despite law requiring migrants to be paid the same as US workers, there is no enforcement, no audits, resulting in ever lowering of wages, fewer US citizens taking the jobs, more migrants being recruited, with wages continuing to spiral down.
  - Estimating 20 workers managed by one FLC, author concludes that an FLC can amass a pre-tax profit of 47.3% from labor exploitation.[3]

- Lack of accountability for compliance with existing laws is partially a function of insufficient enforcement, but even more a function of the absence of farm owner liability.

"If farm owners faced serious and tangible liability for worker exploitation, the system would surely have fewer abuses."[4]

V.   Conclusions and Recommendations

FLCs serve as intermediaries providing farm owners with the cheap labor pool that they want, while simultaneously severing the farm owner's legal liabilities associated with treatment of the workers.

Need a direct legal relationship between the primary employer and the laborer or vicarious liability of employers for subcontractors' behavior:

"Doing so would lead to a considerable decrease in abuses because farm owners would have a vested interest in maintaining compliance with labor laws and ensuring that they work with fully licensed FLCs, if in fact most abuses are committed by the unlicensed ones."[5]

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[3] Id. at Table B.7.
[4] Id. at 97.
[5] Id. at 99.