

Testimony of Tyrone C. Pinkins
Before the United States House of Representatives
Committee on Education and Labor
Subcommittee on Workforce Protections

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Chairwoman Adams, Ranking Member Keller, and members of the Subcommittee: I am pleased to appear before this Committee. Thank you for the opportunity to speak with you today about the guest worker program and its impact on local workers.

Let me begin with a brief overview of my background of and commitment to serving in low income communities in the Mississippi Delta. My name is Ty Pinkins, I am a Veteran—served twenty-one years in the Army. I am a lawyer, and Equal Justice Works Fellow at the Mississippi Center for Justice. But, more important than all that, I am a son of the Mississippi Delta.

I was born and raised in Rolling Fork—a small, rural town deep in the Delta, where I started chopping cotton at thirteen years old to help my parents make ends meet.

I cherish my unconventional upbringing. It prepared me for challenges like multiple deployments to war zones, finishing college while serving in the Army, attending law school, and thereafter, returning home to the Mississippi Delta to provide legal services in low-income communities like the one in which I was raised.

My work as a lawyer in the Delta focuses on ensuring low-income community members have access to legal representation, which they could not afford if it were not for the services offered by the Mississippi Center for Justice. And that is certainly the case with regard to local farmworkers. I am here today because across the Mississippi Delta, farm owners participating in the H-2A program are in blatant violation of the promises they made to the federal government.

The H-2A program has grown exponentially across the nation in recent years. There has been relatively little public discussion of what impact this growth has had on farming communities. Many have simply accepted the assurances of agribusinesses that the H-2A program needs to be expanded and “streamlined,” because, according to H-2A proponents, there simply aren’t any Americans left willing and able to perform the demanding physical labor required of most farm jobs. I’m here to tell you that this is a myth. While the number of Americans working in agriculture has declined, there are still many areas across the country where U.S. citizens depend on farm work for their livelihoods. And the Mississippi Delta is one of them.

Agriculture remains the dominant industry in the Delta, as well as the major source of jobs for local community members, the majority of whom are Black. Each morning, thousands of Delta residents, almost all of them U.S. citizens, go to work at those demanding farm labor jobs. As in generations past, their efforts are essential to keeping the Delta the productive agricultural area that it has been for centuries. In many cases, these local farmworkers are carrying forward a family legacy, because their parents and grandparents worked these same fields for generations.

A May 28th article in the *New York Times*, as well as a lengthy article recently published in the *Mississippi Today*, described how the rapid expansion of the H-2A program is transforming the farm labor market in Mississippi in much the same fashion as it is across the country. These changes have been extremely detrimental to local farmworkers. Despite all the laws and regulations designed to protect American workers against unfair competition from H-2A workers, the local farmworkers in the Delta have been displaced as area farmers each year import more and more foreign workers. Absent major changes in the way the H-2A program is administered and its rules enforced, there won’t be another generation of local Black farmworkers in the Delta. Instead, their jobs will all have gone to H-2A workers who are far more susceptible to employer abuse.

In accordance with Department of Labor regulations, farm owners make three specific promises to the federal government when applying to participate in the H-2A program. First, no H-2A should be admitted to the U.S. to fill a job unless no qualified U.S. worker is available. In order to further this policy, when requesting to participate in the H-2A program, farm owners must

promise the federal government that they will contact former U.S. workers they employed during the previous farming season and invite them to return to the job before those farm owners reach out to foreign H-2A workers. Furthermore, farm owners must put forth at least the same kind and degree of effort to recruit U.S. workers to fill those positions as they do to hire foreign H-2A workers.

Second, farm owners who do in fact bring in H-2A workers must pay them what's called the Adverse Effect Wage Rate, which differs by state and is subject to change each year. Mississippi's Adverse Effect Wage Rate this year for H-2A farms is \$12.45/hr.

And, third, to the extent H-2A workers are employed, their wages and working conditions cannot undermine those of local American farmworkers. Meaning, business owners participating in the H-2A program promise the federal government that if they employ an H-2A worker and a local U.S. worker is performing the same job function, the employer must provide to the U.S. worker at least the same benefits, wages, and working conditions that are being provided to the H-2A worker.

Many of the dozens of farms throughout the Delta participating in the H-2A program employ a range of discriminatory practices against local Black farmworkers. On behalf of several Delta farmworkers, the Mississippi Center for Justice and Southern Migrant Legal Services have filed suits against several Delta farms for, among other things, discriminatory wage practices.

The farming season in Mississippi begins in February and runs through November. H-2A workers are generally brought in for that time period. The entire season involves planting and harvesting crops like cotton, corn, soybeans, rice, etc. Mississippi Farmers have for years, season after season, brought in white South Africans as H-2A workers without affirmatively reaching out to the local Black American workers from the previous season, as mandated by federal regulations.

Hard-working Americans in the Mississippi Delta, have been doing farm work for decades—driving tractors, combines, and cotton pickers. Planting crops in the Spring, harvesting those

crops in the Fall. For generations, their families worked on those farms, passing down essential skills, and traditions of hard work. They know the seasons, they know the geography, they know the equipment, and they know the crops. Local community members literally know the soil in the Delta.

However, that's not the case with the workers who are brought in under the H-2A program. They arrive without an adequate understanding of the different seasons, equipment, and crops. So, how do farm owners overcome this employee training hurdle? Many farm owners begin by forcing local Black workers to train and mentor foreign H-2A workers on how to operate the equipment, understand the seasons, and plant and harvest crops. All this while the local workers (who are doing the teaching) are being paid as low as \$7.25/hr. (the federal minimum wage) while the farms pay the H-2A workers at least the Adverse Effect Wage Rate of \$12.45/hr., or in many cases, an even higher rate of up to \$16/hr.

Next, after they have been adequately trained, the farm owners put H-2A workers on the same type of equipment: tractors, cotton pickers, and combines, that their local Black workers are operating . . . in the same fields . . . at the same time. The only difference is that the H-2A workers are still being paid up to \$16/hr., while the local Black workers who trained them, and are now working alongside them, are paid at \$7.25 or \$8.00/hr.

What happens when local workers ask for a raise? Everyone wants to be paid fairly for an honest day's work. Well, when local workers ask for a raise, ask to be paid equal to their South African counterparts, one of three things happen: they are either ignored, flat out told "no", or threatened with being fired.

Farm owners in the Delta are blatantly ignoring the H-2A regulations that they promised to abide by when they applied to hire foreign workers. Some farmers seek to justify this situation by claiming that they can't find any local Black people to work on their farms because Black people in the Delta are lazy and don't want to work. This is patently untrue.

Local Black workers have been the backbone of the Delta farm economy for generations. And they would like to continue in these jobs. But these loyal, hard-working local Black workers are increasingly discovering that the farmers for whom they have worked for decades no longer want their services. They see their jobs being outsourced to the same H-2A workers who they trained.

Those local Black workers who are still able to find jobs with H-2A farms are forced to accept wages far below those paid to the foreign workers. Local farmworkers, paid at or near the federal minimum wage, sometimes put in over 100 hours of work in a week, only to bring home less than \$400 in pay, while their H-2A counterparts earn \$1500 or more. This is the sort of discrimination that is supposed to be illegal under the H-2A program. But in the Mississippi Delta, it is the norm at H-2A farms.

Contrary to what some farm owners believe, Black people in the Delta are not lazy. What they want is to be paid fairly for the work they do, and to be treated with dignity and respect. What they want is a federal government and federal agencies that are going to enforce regulations designed to protect their rights. What they don't want is to be treated like second class citizens—forced to train their replacements—while simultaneously being cheated out of the wages the law mandates that they be paid.

Unfortunately, in the administration of the H-2A program, the federal and state governments have largely failed U.S. farmworkers—especially in the Mississippi Delta. Enforcement of the regulations designed to protect U.S. workers occurs only occasionally, if at all. The required recruitment of U.S. farmworkers has proven to be a largely meaningless exercise, typically brushed aside by farm owners. And the state and federal governments have acquiesced in employers' imposition of hiring requirements that exclude many qualified American workers. In the Mississippi Delta, the end result, all too often, has been the displacement of long-time Black U.S. farmworkers by white South African H-2A workers. Those local Black workers, able to still find work at H-2A farms, are almost always paid less than the H-2A's—even though all of the workers perform the same jobs.

There is no indication that these trends are abating. The Department of Labor certified 193,200 jobs to be filled with H-2A workers in the first two quarters of Fiscal Year 2022, up 16 percent from the 166,000 jobs certified during the first two quarters of Fiscal Year 2021. This puts DOL on pace to certify considerably more H-2A positions this year than the 317,600 certified in all of Fiscal Year 2021.

Lawlessness abounds within the H-2A program. DOL's Wage and Hour Division, in May 2022, reported that 735 investigations found farms with H-2A violations in Fiscal Year 2020 and Fiscal Year 2021. At these H-2A farms, the Wage and Hour Division assessed \$9 million in back wages for 13,408 workers, and assessed an additional \$9.5 million in civil money penalties.

Thank you for the opportunity to speak with you today about the guest worker program and its impact on local workers. I am happy to answer any questions you may have.