Response to Opposition Against AB 1362

AB 1362 **corrects a drafting error** in SB 477, ensuring that H-2A workers receive the protections the legislature originally intended. **Opposition arguments misinterpret legislative history** and fail to recognize that SB 477 **was meant to cover all foreign labor contractors, not just H-2B workers**.

Why This Matters

SB 477 was designed to **prevent early-stage recruitment abuse**, but due to the drafting error, **H-2A and other temporary workers—except H-2B—were left out of its protections**. AB 1362 **fixes that mistake** to ensure recruitment transparency and accountability.

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1. Current Regulations Do Not Prevent Exploitation at the Point of Recruitment

- **The Opposition's Argument:** Federal H-2A regulations already protect workers through wage guarantees, work contracts, and licensing requirements.
- **Counterpoint:** Federal rules only mandate **work contract disclosure at the time of visa application**—but workers are often **misled, charged fraudulent fees, or coerced into exploitative contracts long before they even apply for their visa**. SB 477 **requires disclosure at the time of recruitment**, ensuring workers are protected **before they are trapped in harmful agreements**.

Regulatory Language Comparison

- **California SB 477 (CA Labor Code § 9998.2.5):**
    - *A foreign labor contractor shall ascertain and disclose in writing to each foreign worker who is recruited for employment in English and in the primary language of the foreign worker being recruited, **at the time of recruitment**, the following information.*
- **Federal H-2A Disclosure Requirement:**
    - *Written disclosure must be provided **no later than the time at which an H-2A worker applies for a visa** and no later than the first (1st) day of work.*

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2. Documented Testimony Confirms H-2A Recruitment Abuses

- **The Opposition's Argument:** No examples of H-2A worker exploitation were cited in legislative testimony.
- **Counterpoint:** Multiple sources—including **Senate Judiciary Committee analysis during SB 516 and SB 477 discussions**—explicitly documented **severe abuses within the H-2A recruitment system**, proving that additional protections are needed.

Key Testimony from CAST (Coalition to Abolish Slavery & Trafficking)

- **More than 250 Thai agricultural workers were fraudulently recruited**, misled about job conditions.
- **Workers were charged recruitment fees up to $25,000**, deceived into believing they were securing stable agricultural jobs.
- Upon arrival, **traffickers confiscated passports, imposed debt bondage, and subjected them to threats and physical violence to prevent escape**.
- **Testimony detailed how these workers were housed in rat-infested conditions and forbidden from leaving the farms**, demonstrating **the exact type of recruitment abuse SB 477 was designed to prevent**.

Legislative Sources

- Senate Judiciary Committee, Senator Noreen Evans, Chair (2013-2014 Regular Session, SB 516)
- Assembly Committee on Labor and Employment, Roger Hernández, Chair (SB 516 – As Amended: May 7, 2013, June 24, 2013)

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3. Senate Judiciary Committee Findings Reinforce the Need for Expanded Oversight

- **The Senate Judiciary Committee's report on foreign labor contracting abuses highlighted systemic patterns of fraud, coercion, blacklisting, and human trafficking—explicitly citing H-2A recruitment abuses as part of the problem.**
- **The committee emphasized the urgent need for a standardized, enforceable system to regulate all foreign labor contractors**—contradicting the opposition's claim that SB 477 was never meant to cover H-2A workers.

Legislative Sources

- SENATE JUDICIARY COMMITTEE, Senator Noreen Evans, Chair, 2013-2014 RegularSession (SB 516 Steinberg) at 2 (Apr.29, 2013). See
- ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, Roger Hernández, Chair SB 516 (Steinberg) – AsAmended: May 7, 2013 at 3, citing to *The American Dream Up For Sale: A Blueprint for Ending International Labor Recruitment Abuse*, The International Labor Recruitment Working Group (Feb. 5, 2013) <http://fairlaborrecruitment.wordpress.com/report/> [as of Apr. 20, 2013], at p. 5.
- See also SENATE THIRD READING SB 516 (Steinberg) As Amended September 4, 2013 (quoting Steinberg)

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4. Legislative History Confirms SB 477 Was Always Meant to Cover All Foreign Workers

- **SB 477 was designed to regulate a broad range of foreign labor contractors, with only two specific exemptions:**
    - **Talent agencies licensed under California law.**
    - **J-1 exchange visitor program sponsors under federal regulations.**

- If the legislature had intended to exclude H-2A workers, it would have explicitly listed them as exceptions—but it did not. Instead, the law defines foreign workers broadly, and only singles out H-2B workers as an example—not a limitation.
- **The drafting mistake unintentionally excluded nearly all of the 350,000 temporary workers in California—including 50,000 H-2A workers—despite the clear intent of SB 477 to apply uniform protections to all foreign labor recruitment.**
- **AB 1362 does not expand regulation—it restores the coverage that was always meant to exist under SB 477.**

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5. Governor Newsom's Veto of AB 364 Misrepresented Worker Protections and Labor Recruitment Practices

- **While Newsom has supported key worker protection laws, his veto of AB 364 left 300,000 temporary migrant workers without crucial protections.** His reasoning contained **factual errors** that mischaracterized the bill's intent and the role of foreign labor recruiters.
- **Farm labor contractors and foreign labor recruiters operate in different spheres:**
    - **Farm labor contractors (FLCs) are regulated as employers within the U.S.—they hire and manage workers once they arrive.**
    - **Foreign labor recruiters operate outside the U.S., recruiting workers before they ever reach their employers—this stage is largely unregulated**, leading to wage theft, debt bondage, and human trafficking.
- **Newsom incorrectly suggested regulation of foreign labor recruiters is redundant**, ignoring the **major gaps in oversight** that allow abuses at the recruitment stage.
- **Farm labor contractors are already among the worst wage-and-hour violators in California**, accounting for **half of all detected violations between 2005 and 2019**.

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6. AB 1362 Restores SB 477's Original Intent Without Creating Redundant Regulations

- **Opponents argue AB 1362 is unnecessary, but legislative history proves SB 477 was always meant to include H-2A workers—a drafting mistake prevented full implementation.**
- **The failure to explicitly include H-2A workers was a mistake, not a policy choice.**
- **AB 1362 does not create new foreign labor contracting regulations—it simply fixes an error that has allowed recruitment abuses to persist.**

Conclusion: AB 1362 Must Pass to Fulfill the Legislature's Original Intent

Existing regulations **fail to prevent recruitment fraud and exploitation**, which occur before workers even apply for a visa. AB 1362 **ensures transparency and accountability**, fulfilling SB 477's **intended protections** for all foreign workers.

For these reasons, we **urge passage of AB 1362** to **close regulatory loopholes and protect California's foreign workers from recruitment abuses**.

ABOUT THE SUNITA JAIN ANTI-TRAFFICKING INITIATIVE

Sunita Jain Anti-Trafficking Policy Initiative (SJI) is an evidence-based and survivor-informed think tank based out of Loyola Law School. SJI intentionally works towards systemic change by taking an intersectional approach to develop and advocate for policieswhich prevent human trafficking and support survivors of trafficking

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