

Maltreatment & Injustice: An Overview of the Plight of Latino Forest Workers in the Southeast

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Key to abbreviations used in this report

DOL	U.S. Department of Labor
FLSA	Fair Labor Standards Act
H-2A	Federal labor classification for temporary or seasonal farm work
H-2B	Federal labor classification for temporary non-agricultural work
IRS	U.S. Internal Revenue Service
MSWPA	Migrant and Seasonal Worker Protection Act
OSHA	U.S. Occupational Safety and Health Administration
SPLC	Southern Poverty Law Center
USCIS	U.S. Citizen and Immigration Services
USDA	U.S. Department of Agriculture

Note: For the purposes of this report, the Southeast region of the U.S. (also referred to as the South) includes Georgia, North and South Carolina, Florida, and Alabama.

Executive Summary

Over a period of 15 years from 1990 through 2004, the total number of Latinos moving to the Southeast to fill low wage agricultural, manufacturing and forest jobs surpassed 2.4 million. During the same time frame, forestry has experienced substantial growth in the region due to a major industry shift from the Northwest to the Southeast. Forestry requires a large labor force which it draws from the growing Latino labor pool. It utilizes both legal and undocumented workers to perform a wide variety of labor intensive, low wage jobs including planting seedlings, applying herbicide, cutting trees and collecting non-timber forest products.

Most large scale forest operations are comprised of mainly foreign guest workers (H-2B visa holders) while smaller operations more often rely on undocumented workers. Although forestry working conditions and wages vary widely, it is clear that the lack of regulation and oversight leaves many Latino workers, both undocumented and H-2B guest workers, vulnerable to exploitation and maltreatment. The large supply of Latino workers willing to do low paying forestry work, their nonexistent or limited English language skills, the lack of government oversight and regulations, and the disparate and invisible nature of the industry all contribute to an environment in which worker exploitation, maltreatment and injustice continue unabated.

Both top-down and bottom-up reform is necessary to address the systematic worker rights violations that these workers face, though both may be difficult to achieve. Strategic partnerships with institutions pursuing similar interests and a multi-faceted approach in addressing the problems at both the local and national level would be the most effective way to combat the injustices that confront Latino forestry workers in the Southeast. Specific recommendations for change include:

- Pine straw should become a registered product.
- H-2B visa holders should be under the same regulations as H-2A visa holders.
- A separate guest worker H-2 labor classification for forest workers should be considered.
- The large companies that contract out for their labor force should be subject to greater regulatory pressure to insure that all laws and protections applicable to workers rights are adhered to.
- The plight of undocumented workers is in dire need of intervention and advocacy.

Introduction

Largely unregulated and with very low visibility, the forestry industry over the past two decades has absorbed large numbers of Latino forest workers. Both legal and undocumented Latino workers have been subjected to exploitation and maltreatment.

Immigration has recently catapulted to the forefront of the political arena, becoming an issue of considerable public concern. Documentation of the conditions of immigrant workers in forestry is a subject that has garnered public attention beginning with the reporting of Sacramento Bee staff writer Tom Knudson (2005) and more recently with the biting indictment of the H-2 guest worker program by the Southern Poverty Law Center's (SPLC) report (2007). As the debate over both legal and illegal immigration continues to capture national media attention, it is clear that immigrants are increasingly employed in a wide variety

of sectors, including the forestry industry. What is less well known is that forestry, an industry in the Southeast in which working conditions are often similar to those of migrant farm laborers, has until recently avoided national media attention.

The Southeast region of the U.S. is an area where historically little of the immigration debate has been focused and where little is known of the condition of immigrant Latino forestry workers specifically. Insufficient attention has been paid to the immigrant population in the Southeast in general, and this is especially true for those working in forestry. The issue of immigrant Latino forestry workers in the Southeast merits consideration given demographic, political, and economic concerns.

The Southeast is not traditionally thought of as a destination for immigrants since immigration research tends to focus on "gateway cities" rather than rural areas and since immigration to the region from South and Central America has only recently increased. The South boasts the fastest-growing Hispanic population in the country (Pew Hispanic Center 2005). This immigration trend has often been into metropolitan areas but over the past two decades immigration to the rural Southeast has exponentially increased. While Latino immigration into rural areas is not a new phenomenon e.g., the bracero program of the 1940s and 1950s (SPLC 2007), what is new is the scope and scale in which Latinos are moving into the rural Southeast. It is a trend that one researcher compares to immigration to the Southwest in the beginning of the twentieth century and earlier (Furuseth 2006).

The use of Latino immigrants in the forestry industry is not specific to the Southeast. Researchers in the Northwest noticed that Latino workers there comprise the majority of workers in the low skill, low income jobs in the forest. This trend is also true of the Southeast which has come to dominate forest production nationally, overtaking the Northwest as the principal region in the U.S. for the industry. Unlike the Northwest, which is dominated by federally managed land, about 90 percent of forests in the Southeast are privately owned.

The Southeast is significantly forested and boasts a well-developed forestry industry. Despite its relatively recent arrival to the region, forestry has quickly become crucial to the South's economy; in Alabama, which is seventy-one percent forested, forestry is the dominant industry (Casanova 2006). The Southeast is also the largest paper-producing region in the world and home to the first and second largest paper producing companies in the world, International Paper and Georgia Pacific. In 1998, Southern forests accounted for 62 percent of all timber production in the United States and 79 percent of all

planted trees (SPLC 2007). Moreover, it is important to note that while the South recently became “the most important timber producing region in the country” that structural shift from agriculture to forestry-dominated industries was facilitated by Latino workers (McDaniel and Casanova 2005).

Latinos have come to occupy most niches of the forestry industry with the exception of paper and pulp, and make up the vast majority of workers in tree planting, herbicide application, Christmas tree harvesting, Galax harvesting (a leaf used in floral arrangements), and pine straw gathering. Latino immigrant workers are most likely the predominant workforce in other fields as well. These workers are in some cases replacing a previously Anglo workforce (such as in Galax harvesting), but are more frequently meeting a relatively new demand (such as pine straw gathering). Forestry and the forestry industry represent a relatively new niche for migrant and immigrant workers in the South (Casanova 2006). Largely unregulated and with very low visibility, the forestry industry is thought to have absorbed large numbers of workers. Very little is known in general about non-timber forest production in the Southeast, and specifically about the conditions of workers who are mostly Latino. This report is a compilation of information with regards to the extent and condition of Latino forestry workers in the American Southeast.

Despite the growing relevance of both forestry and Latino immigration to the Southeast, there is a significant dearth of research on the subject. There are at least four academic researchers who focus on Latinos involved in the Southeastern forestry industry, three of whom were interviewed for this report. Two additional people were interviewed, one a community organizer who works with pine straw workers, and the other an academic who is the editor of a forthcoming book on Latinos in the South. Information from the Southern Poverty Law Center was obtained through direct correspondence and via its website. This report is intended to provide a general overview and suggest areas for further study and reform.

Demographic Change in the Southeast Since 1990

The Southeast boasts the fastest growing Latino population in the U.S. In less than 20 years the number of Latino forest workers has dramatically increased. They now dominate almost every niche in the forestry industry in the region.

The years between 1990 and 2004 represented a period of enormous growth for immigration on a national level. Latinos accounted for 25 percent of non-metropolitan population growth in the 1990s (Kandel and Cromartie 2004). Of the 36.7 million foreign-born immigrants in the U.S. in 2004, 10.7 million were undocumented. Thirty-five percent of those undocumented immigrants arrived in the U.S. between 1995 and 1999, and 30 percent arrived after 2000. These immigrants are overwhelmingly from Latin America, and almost 60 percent of them are Mexican. According to the Pew Hispanic Center, “Since the mid-1990s, the most rapid growth in the immigrant population in general and the unauthorized population in particular has taken place in new settlement areas where the foreign-born had previously been a relatively small presence.” (Passel 2005).

The Latino population in non-metropolitan areas has doubled since 1980. “By 2000 half of all non-metropolitan Hispanics lived outside traditional settlement areas of the southwest” (Kandel and Cromartie 2004). This is considered to be the most rapidly growing demographic group in rural and non-metropolitan America. Nationally, official estimates for 2000 counted over a million Latinos in rural

areas alone and when urban areas are included, this number jumps to 11 million (Census 2001). This trend has been echoed in the Southeast as well. Prior to 1990, there was little recorded Latino migration to the Southeast, but in the South as a whole, Census 2000 (2001) estimates (which are considered to be very low) placed Latino figures at 11.6 percent of the region's population.

Between 1990 and 2000, the states other than Nevada with the highest rate of Hispanic population increase were: North Carolina (394 percent increase), Arkansas (337 percent increase), Georgia (300 percent increase), Tennessee (278 percent increase), South Carolina (211 percent increase), and Alabama (208 percent increase). Georgia is considered a "new large state" for undocumented immigrants with 200,000 - 250,000 undocumented immigrants; while North Carolina and Florida are considered "major destinations" with 300,000 - 2.3 million undocumented immigrants; and Alabama, Mississippi, and South Carolina are considered smaller states with between 20,000 and 35,000 undocumented immigrants (Passel 2005).

Trends in North Carolina exemplify the region's Latino demographic changes. Researchers affiliated with the University of North Carolina found that the Hispanic population of which 45 percent were undocumented, grew from 1.1 percent of North Carolina's population in 1990 to 7 percent of the state's population in 2005. This survey indicated that approximately 30 percent of North Carolina's Latino population resides in non-metropolitan or rural counties (Kasarda and Johnson 2006). Hamilton (2004) also supports the finding that the Hispanic population in North Carolina has grown dramatically in recent years.

Latinos moving into the Southeast region (not counting guest workers) have been almost 60 percent foreign born and overwhelmingly young males with very limited English skills. Mostly an undocumented labor pool, the majority of them moved to the region after 1995 (Pew 2005). Latinos in the Southeast have filled jobs that the native population would not fill under favorable economic conditions, working in the hog and chicken plants, manufacturing jobs, and forestry (Census 2001). The South was a very welcoming environment to these workers, until roughly 2005 when national attention focused on immigration (Furuseth 2006).

Forestry is a relatively new industry to the Southeast which has rapidly expanded over the past decade and a half, with agricultural fields giving way to planted forests (much of which have been planted by Latino workers). The presence of the growing immigrant population reflects the need to manage and harvest these newly planted forests. The enormous increase of Latino immigrants to the Southeast has most likely occurred due to the confluence of several factors, notably over-saturation in urban centers; increased demand for forestry labor in an area once dominated by agriculture; an "unusually robust economy" in the Southeast in the 1990s (Pew 2005); emigration of the native population and a labor shortage in low-wage industries; and lack of economic opportunity in source countries. In the forestry industry, immigrants to the United States from Central America have come mostly from Mexico, Honduras, and Guatemala (Furuseth 2006). Additionally, Latinos began to penetrate the region at the same time that African-Americans were increasingly moving out, leaving open a wide range of unskilled, low-wage opportunities (McDaniel and Casanova 2005).

H-2B Visa Holders

The H-2B program is seriously flawed. Latino H-2B forest workers are bound to a single employer, have no access to legal assistance, are denied medical benefits for work-related injuries, and are often forced to live in substandard conditions and underpaid for their work.

Created under the 1986 Immigration Reform and Control Act (McDaniel and Casanova, 2005), H2-B visas are issued to employers for non-agricultural, unskilled seasonal labor. The use of these visas in the forestry industry is a “relatively recent phenomenon” (Casanova 2006). These visas are used by forest management workers, a sector of the forestry industry that has largely shifted to rely on Latino migrant workers instead of the native population (Casanova and McDaniel 2005). The qualitative research that has been done suggests that large-scale tree planting in the Southeast and the shift in timber production from the Northwest to the Southeast were coeval, occurring in the early to mid

1980s, although H-2B visas did not become popular with employers until the early 1990s. Employers in the Southeast and forestry employers dominated requests for H-2B visas from the years 1996 to 2001. In 2004, 168,471 H-2B workers were granted visas, 22,083, or approximately 13 percent, of which were for forestry workers (SPLC 2007).

Large contractors prefer to use H-2B visas to hire undocumented workers as this allows them the freedom to bid on larger contracts as well as government contracts (McDaniel and Casanova 2005). These visas are currently capped at a limit of 66,000 per fiscal year by United States Citizen and Immigration Services (USCIS). There is often more than one worker per visa, since visas are issued to employers and an employer may petition for a blanket visa. In order to obtain a visa, an employer must prove that there are no United States citizens willing to do the work (Casanova 2006). H-2B visas encompass a wide variety of jobs, covering people from make-up artists and gem-cutters to snow-shovelers, housekeeping staff, and forestry workers (Casanova and McDaniel 2005). Since it is the employer who holds the visa, the worker is allowed to work only for that employer.

In 2005 the Southern Poverty Law Center (SPLC), a non-profit located in Montgomery, Alabama that is renowned and respected for its initiation of important civil rights litigation, filed four class-action lawsuits under its Immigrant Justice Project on behalf of H-2B forestry workers in the Southeast. The lawsuits claimed that forestry employers violated the minimum wage and overtime laws mandated under the Fair Labor Standards Act (FLSA) (DOL 2004a) as well as other provisions of the Migrant and Seasonal Worker Protection Act (MSWPA) (DOL 2005).

The lawsuits include: Federico Salinas-Rodriguez v. Alpha Services, Inc. (filed in April 2005), Hugo Martin Recinos-Recinos, et al. v. Express Forestry Inc., et al. (filed in April 2005), Escolastico De Leon-Granados v. Eller and Sons, Inc. (filed in June 2005), and Rosiles-Perez, et al. v. Superior Forestry Service Inc., et al. (filed in January 2006) (SPLC 2007a). To date, two of those lawsuits have been settled, resulting in contractors agreeing to pay back wages to class members and change the way they do business. The two other cases are pending. Substantially similar allegations have been made in lawsuits filed by other advocates, several of which were settled with payment or entry of judgment. In addition, on the basis of more than 1,000 inter-views with pine workers where their pay stubs indicated that they worked substantially fewer hours than they actually did, SPLC has concluded that this industry systematically underpays its workers (SPLC 2007).

SPLC’s work is extremely important and laudable. The goal of their litigation is to evoke systematic change in company practices, to highlight the problems with the H-2B program, and to recover the worker’s due wages. It aims to force the industry into compliance with FLSA and MSWPA, both of which entitle H-2B workers to the prevailing wage and overtime.

Undocumented Workers

Undocumented Latino forest workers are disenfranchised. Overwhelmingly young, single men with limited or no English language skills, they are forced to live and work “under the radar” in constant fear of immediate deportation.

Although records are available about H-2B visa holders, knowledge is scant regarding the working conditions and issues facing undocumented non-timber forest workers in the Southeast. There are thought to be tens of thousands of undocumented forest workers in the region who comprise a significant portion of the total Latino forestry worker population, although it is unclear whether they represent the majority (Passel et al. 2004, Passel 2005). Present throughout the entire forestry industry, they are concentrated in specific areas and tend to be found on small crews gathering non-timber forest products.

Undocumented workers confront an array of problems not faced as directly by their H-2B counterparts including the ever present risk of immediate deportation (Hamilton 2004, 2006). Deportation is a high risk facing the workers not because it would be difficult to return, but more likely because of the loss of several weeks’ pay. Exploitation of undocumented workers is a major problem and many are unaware of the rights and protections potentially available to them under both FLSA and the Occupational Safety and Health Administration (OSHA) which apply regardless of legal status (DOL 2004a, 2004b). Nevertheless, application of FLSA to ensure proper wages and working conditions to undocumented forestry workers in the Southeast is problematic since DOL enforces FLSA on a case by case basis and only when a federal entity is involved. It is not applied to private-to-private entity contracts. Furthermore, DOL engages in enforcement of FLSA for businesses with annual operations in excess of \$500,000 or for individuals who are considered to engage in interstate commerce (DOL 2004a). This policy effectively excludes many undocumented workers from the benefits and rights they may be due. Language barriers further complicate the matter. The problems of this disenfranchised group in the Southeast need to be systematically and realistically addressed by DOL.

Analysis

The recurrent theme with respect to the forestry industry in the Southeast is the lack of regulation and oversight that has resulted in widespread exploitation and maltreatment of H-2B and undocumented Latino forest workers.

According to one paper, employers prefer H-2B guest workers for peripheral, secondary jobs and local workers for ‘core’ jobs that offer benefits and better pay (Casanova and McDaniel 2005). Latinos are clustered in H-2B low-paying forestry jobs, but as they gain experience, many are gradually branching out to perform jobs at all levels in the industry. Unfortunately, this does not always translate into better working conditions and wages for the workers. A number of Latino workers who move up in the industry and “learn the ropes” of the system then go on to recruit and exploit other

undocumented workers the same way they had been exploited. Co-ethnic exploitation is all too common in the industry. Crew bosses act as gatekeepers to the workers, keeping them uninformed and pocketing a large profit, often not paying taxes for their workers. With little oversight, the murky legal area of who (the firm, landowner, or contractor) is responsible for the worker, paired with the exploitative practices being learned and passed on, make it appear unlikely that the situation will change without intervention.

The H-2B program itself is highly flawed in several respects. Unlike their H-2A counterparts, H-2B visa holders must pay for their own housing and transportation; moreover, work is not guaranteed. Further, while H-2A visa holders are entitled to a federal labor lawyer, H-2B visa holders are not. In general, H-2B visa holders, especially those who work on private forest lands, are less regulated and less visible than their H-2A counterparts. What truly opens up H-2B visa holders to exploitation, though, is the inability of workers to switch employers. They are, in the words of two researchers who studied H-2B forestry workers in the Southeast, “at the mercy of contractors for wages and working conditions” (Casanova and McDaniel 2005). As further stated by the SPLC report, they are “bound to a single employer and without access to legal resources; routinely cheated out of wages; forced to mortgage their futures to obtain low-wage, temporary jobs; held virtually captive by employers or labor brokers who seize their documents; forced to live in squalid conditions; and denied medical benefits for on-the-job injuries.” (SPLC 2007).

The recurrent theme with respect to the forestry industry in the Southeast is the lack of regulation and oversight, exacerbated by the fact that the majority of forest operations in this region occur on private lands. With the exception of construction workers (Library of Congress 2006), the McNamara-O’Hara Service Contract Act (DOL 2007b) and the Davis-Bacon Act (DOL 2007a) are intended to protect contracted and sub-contracted workers and guarantee them the prevailing wage and compensation for lack of benefits, but these apply only to contracts with the federal government or on federal land. Private land operations lack the extent of the regulation of both legal and illegal workers compared to those on public lands.

Another way of avoiding FLSA oversight in the forest products industry is labor sub-contracting. Private contractors acting as middlemen hire small crews that often avoid oversight by the Hour and Wage Division of DOL, the enforcement branch of FLSA. While FLSA regulations apply regardless of worker immigration status, the Hour and Wage Division does not apply to private-to-private contract arrangements, businesses operating under the \$500,000 annual threshold, or individuals who are not considered to engage in interstate commerce (DOL 2004a). Thus the employers of these small crews have enormous control over their employees’ wages and working conditions.

Given this scenario, workers are highly susceptible to exploitation; indeed, oftentimes crew bosses will not issue wages due or not file taxes for their workers when they have told them that they have. The large companies that hire these contractors turn a blind eye, abdicating responsibility for the workers and avoiding labor issues. Such contractors therefore have a free hand in dealing with their crews, while not being held accountable by the larger companies or the government.

Most federal government agencies provide very little oversight of the forestry industry in the Southeast, due in part to the fact that most work is done on private land. The federal agencies that have an interest in these issues are DOL, the Internal Revenue Service (IRS), USCIS, and the Occupational Safety and Health Administration (OSHA). Each of these four agencies is minimally involved on the ground, if at all.

FLSA enforces minimum wage and overtime, among other things, but its oversight does not apply to small forestry companies with less than nine employees. The Hour and Wage Division of DOL, which is responsible for enforcing FLSA regardless of the immigration status of the worker, does not therefore have jurisdiction over small forestry crews, many of whom are undocumented workers.

Although USCIS issues H-2B visas, they are approved by DOL. Accordingly, USCIS has very little oversight of the H-2B program, especially compared to their H-2A visa counterparts. USCIS' only active involvement in the region has involved immigration raids, which have little if any real impact on either the workers or the contractors (Hamilton 2006).

OSHA has not been mentioned by any of the interviewees and is assumed to be only minimally involved, if at all. There are some health concerns and safety concerns in the forest, notably in the application of pesticides, the thinning of forests, and respiratory concerns with pine straw workers packing straw in closed trailers. However, it does not appear that OSHA has paid significant attention to these issues.

Many problems associated with Latino forest workers revolve around the absence of rules governing the hiring of H2-B guest workers. Previous abuses affecting agricultural guest workers resulted in corrective rules to protect H2-A farm workers, including the right to a federal legal aid attorney. Similar rules for H2-B and undocumented workers have yet to be adopted.

Conclusions and Recommendations

The current pattern of maltreatment and injustice toward undocumented and guest workers in the forestry industry in the Southeast must be halted and overhauled. Latino forest workers have the right to be informed of their rights and to be treated justly and with dignity.

James Hamilton's (2004) assessment states, "The introduction of new actors with a broader range of cultural identities poses new challenges that policy makers must address to meet the needs of industries and their workers." The forestry industry in the Southeast relies almost entirely on a Latino worker population that has recently begun to settle there in large numbers in the rural areas. Yet the condition of these workers varies depending on the particular work they do. Forestry in the Southeast is diverse and includes many enclaves and niches which make it very difficult to generalize across the industry. However, it is clear

that both H-2B and undocumented workers are being exploited. The invisibility of the industry, the large supply of workers with limited English skills who are willing to do forestry work, and the disparate nature of the industry all contribute to an environment which easily exploits workers. Again, although there isn't uniformity across the industry, what appears consistent is the potential abuse of federally defined worker's rights (DOL 2007a, 2007b, 2004a, 2004b).

A heavy burden lies with the contractors themselves to reform, which they are unlikely to do. Yet without a political will to change the system, little will be accomplished from the top-down. In this respect, there are several tangible changes that can be made, given government resolve to do so. For example, pine straw, currently not a registered product with the U.S. Department of Agriculture (USDA), should become a registered forest product so that the process of collecting pine straw and the working conditions therein would be regulated.

Additionally, subjecting H-2B visa holders to the same regulation as the H-2A visa holders would be one approach to improving H-2B forest worker conditions on the Southeast. Most importantly, it is imperative that employers wield less control over their H-2B workers. In the short term this can be achieved if the H-2B program allows current H-2B workers to switch employers without losing their visas. Other flaws in the H-2B program must be corrected to permit DOL enforcement of the H-2B prevailing wage, payment or reimbursement of the workers' transportation costs to the U.S., free housing, access to legal services, and a "three-quarters" wage guarantee.

A longer term approach could remove forestry work from the H-2B program entirely, as some have proposed, and give forestry work its own guest worker designated program to address the varied and diverse forest work across the country, and take into consideration the unique regional issues that drive the need for foreign undocumented and guest workers.

Pressure needs to be applied to the large companies that contract out their work. Most forestry work is done through contractors with little oversight. More oversight is necessary. This should be done collaboratively with employers if possible to increase the likelihood of compliance. Employers must be willing to take a minimal amount of responsibility for their workers. Contractors and large firms should be engaged in a productive dialogue along with interested parties and government agencies to find common ground and begin discussing industry labor and safety issues. Such a working group could prove both informative and useful to all participants.

Preventing the exploitation of undocumented Latino forest workers remains the most illusive and challenging issue to be faced. Undocumented workers, while afforded protection under FLSA, are likely to be employed on smaller crews, exempting them from some provisions of FLSA. Even taking the first step of canvassing undocumented forest workers is daunting.

As one researcher warned, there is a thin line between calling positive attention to the issue and calling attention to the issue that might cause backlash and ultimately jeopardize the workers. Nevertheless, all of these Latino forestry workers have the right to be informed of their rights and to be treated justly. There is no organization that works specifically with forestry laborers in the Southeast, and the need for such an organization is great.

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