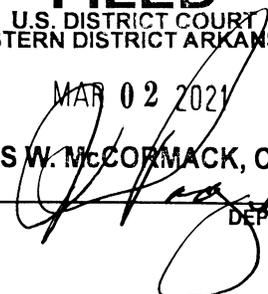


UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

MAR 02 2021

JAMES W. McCORMACK, CLERK  
By:  DEF. CLERK

JEANDRE FOUCHE, )

Plaintiff, )

v. )

Civil Action No. 3:21CV50-BSM

THE UNITED STATES OF AMERICA; )  
U.S. IMMIGRATION AND CUSTOMS )  
ENFORCEMENT; FITHEN, FIRST )  
NAME UNKNOWN; GAIRHAN )  
FARMS, INC.; WAYNE GAIRHAN; )  
DAVID GAIRHAN; and SCOTT )  
GAIRHAN, )

**JURY DEMANDED**

Defendants. )

This case assigned to District Judge Miller  
and to Magistrate Judge Kearney

**COMPLAINT**

**PRELIMINARY STATEMENT**

1. In 2018, Jeandre Fouche was working for Gairhan Farms on an H-2A temporary agricultural visa when he learned of another H-2A job opportunity. The Gairhans did not want Mr. Fouche to leave and threatened to have him arrested if he tried. After Mr. Fouche followed the process to seek a lawful transfer of his employment, the Gairhans made good on that threat, falsely reporting to the Department of Homeland Security that Mr. Fouche was an “absconder.” Defendant Fithen, an officer with Defendant U.S. Immigration and Customs Enforcement (“ICE”), arrived at Gairhan Farms within hours of the false report, found Mr. Fouche still there, and arrested him—even though the claim of “absconding” was visibly false and Mr. Fouche had not violated any law. For no other reason than seeking to lawfully transfer jobs, ICE detained Mr. Fouche in prison-like conditions for just over one month.

2. Because H-2A workers like Mr. Fouche are vulnerable to workplace abuse, the ability to lawfully transfer jobs without fear of employer threats or ICE imprisonment is a critical safety valve. Mr. Fouche brings this suit to seek redress for the financial and emotional damages he suffered as a result of Defendants' unlawful conduct and to ensure that his right to transfer H-2A jobs is not denied in the future.

### **JURISDICTION AND VENUE**

3. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question) and 28 U.S.C. § 1346 (Federal Defendant). The federal questions at issue arise under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 *et seq.*; *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971); the Administrative Procedure Act, 5 U.S.C. § 702; the Trafficking Victims Protection Reauthorization Act, 18 U.S.C. § 1595(a); and the Fourth Amendment to the U.S. Constitution.

4. This Court has supplemental jurisdiction over Mr. Fouche's state-law claims for malicious prosecution and breach of contract pursuant to 28 U.S.C. § 1367(a). The state-law claims are so related to the federal claims that they form part of the same case or controversy.

5. Venue is proper in the Eastern District of Arkansas under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Mr. Fouche's claims occurred here.

### **PARTIES**

6. Plaintiff Jeandre Fouche is a citizen and resident of South Africa. In 2018, he was lawfully admitted to the United States pursuant to 8 U.S.C. § 1101(a)(15)(H)(ii)(a)—colloquially called the "H-2A program"—to perform temporary agricultural labor for Defendant Gairhan Farms, Inc.

7. Defendant United States of America is a sovereign nation responsible for the enforcement of its immigration laws through officers, agents, and employees of the Department of Homeland Security. The United States is the appropriate defendant for tort claims against federal employees.

8. Defendant ICE is an agency of the Department of Homeland Security, organized and existing under the laws of the United States, and is responsible for enforcing federal immigration laws. Defendant ICE is an agency within the meaning of 5 U.S.C. § 706(b)(1).

9. Defendant First Name Unknown (“FNU”) Fithen is a natural person, employed at all relevant times as a Deportation Officer at the ICE Field Office in Little Rock, Arkansas. Defendant Fithen is an officer of Defendant United States of America and an agent of Defendant ICE charged with knowing and enforcing federal immigration law. 8 U.S.C. § 1357(a). Defendant Fithen is sued in his individual capacity.

10. Defendant Gairhan Farms, Inc., is a for-profit corporation organized under the laws of Arkansas and operating in Poinsett County, Arkansas.

11. Defendant Wayne Gairhan is a natural person residing in Poinsett County, Arkansas. He is registered through the Arkansas Secretary of State’s Office as the President of Gairhan Farms, Inc. Wayne Gairhan is the father of David and Scott Gairhan.

12. Defendant David Gairhan is a natural person residing in Poinsett County, Arkansas. He has represented on documents filed with the U.S. Department of Labor (“DOL”) that he is President of Gairhan Farms, Inc.

13. Defendant Scott Gairhan is a natural person residing in Craighead County, Arkansas. He is registered through the Arkansas Secretary of State’s Office as the Secretary and Treasurer of Gairhan Farms, Inc.

## EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Pursuant to 28 U.S.C. § 2675 of the FTCA, Mr. Fouche timely submitted an administrative claim to ICE requesting specific monetary sums as compensation for his damages. *See* Ex. 1 (SF95 with Attachments).

15. ICE received Mr. Fouche's claim at LaSalle Detention Facility on November 26, 2019, and at ICE's Office of the Principal Legal Advisor in New Orleans, Louisiana, on December 2, 2019.

16. ICE denied Mr. Fouche's claim via letter dated November 20, 2020. *See* Ex. 2 (Rejection Letter).

17. Mr. Fouche has exhausted all administrative remedies as required by 28 U.S.C. § 2401(b).

## LEGAL BACKGROUND

### H-2A Temporary Agricultural Worker Visas

18. Temporary agricultural workers are a large and growing segment of nonimmigrant visa holders in this country. Each year, hundreds of thousands of seasonal farmworkers are brought into the country on H-2A visas to fill the temporary labor needs of agricultural employers. Noncitizens admitted in this fashion, pursuant to 8 U.S.C. § 1101(a)(15)(H)(ii)(a), are commonly called "H-2A workers."

19. In 2018, the year in which the incidents giving rise to this complaint occurred, DOL certified over 2,000 H-2A jobs in Arkansas alone.

20. The H-2A program is initiated by U.S. employers seeking to hire foreign workers. H-2A visas are authorized only if the employer can demonstrate to state and federal officials that (1) there are not enough available workers within the United States to perform the jobs, and (2) the

H-2A workers' employment will not adversely affect U.S. workers' wages and working conditions. 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1188(a)(1).

21. The H-2A implementing regulations also include requirements designed to protect H-2A workers from abuse and mistreatment by their employers. *See, e.g.*, 20 C.F.R. § 655.122(d), (h), (l) (obliging employers to provide H-2A workers with free and safe housing and transportation, and certain wage rates); 20 C.F.R. § 655.135(e) (requiring employers to comply with all applicable laws, including the Trafficking Victims Protection Reauthorization Act). Compliance with these and other regulations must be documented in the portion of the employer's H-2A application called an Agricultural and Food Processing Clearance Order ("clearance order"), normally consisting of Forms ETA 790 and/or 790A.

22. In their clearance orders, employers must certify that they will not threaten, coerce, intimidate, or otherwise discriminate against H-2A workers who seek to exercise their rights under the H-2A program. 20 C.F.R. § 655.135(h); *see also* 29 C.F.R. § 501.4.

23. A clearance order must be reviewed by DOL and state workforce agencies. Once both bodies approve the clearance order, U.S. Citizenship and Immigration Services ("USCIS") makes H-2A visas available to foreign workers designated by the employer. The workers then obtain the visas in their home countries before entering the United States to perform the work described on the clearance order.

24. Once in the country, an H-2A visa holder "may be employed only by the petitioner through whom the status was obtained." 8 C.F.R. § 274a.12(b)(9).

25. However, an H-2A worker is not obligated by statute or regulation to complete a term of employment with the initial employer.

26. When workers voluntarily leave H-2A employment early, they may face certain regulatory penalties, such as bearing their own transportation costs. 20 C.F.R. § 655.122(h)(1)–(2).

27. Workers who leave their jobs early because their employers determine their services “are no longer required . . . due to fire, weather, or other Act[s] of God,” are not subject to those penalties, and their initial employers must “make efforts to transfer” them. 20 C.F.R. § 655.122(o).

28. Some H-2A workers who leave their employment early (whether by choice or at their employers’ behest) return to their home countries. Others transfer to different H-2A positions within the United States.

29. An H-2A worker who is already in the United States may seek a “change of employers” by finding a “prospective new employer” who, in turn, must file a Form I-129 Petition for a Nonimmigrant Worker (“I-129 Petition”) with USCIS on the H-2A worker’s behalf. 8 C.F.R. § 214.2(h)(2)(i)(D).

30. I-129 Petitions may be filed until up to 30 days after the expiration of the worker’s initial H-2A visa. 8 C.F.R. § 214.2 (h)(5)(viii)(B).

31. No federal law requires an H-2A worker to obtain a new H-2A visa prior to leaving an H-2A job. Nor does any law require H-2A workers to complete their first jobs before requesting transfers.

32. USCIS routinely approves applications for mid- and post-contract transfers of H-2A employment as long as the I-129 Petition is filed within 30 days of a worker’s departure from the first place of employment.

33. The ability to transfer H-2A positions is critical. For employers, transfers allow flexibility in an industry whose workforce needs may literally change with the weather. And for workers, transfers are a needed safety valve. Despite regulatory protections, H-2A workers face frequent workplace abuse. Much of that abuse flows from workers' fear that their employers can have them arrested and deported if they leave or even complain.<sup>1</sup> Workers who know they may seek out other employment opportunities in the United States without fear of detention and deportation are more willing to stand up against mistreatment and to raise the alarm about unlawful or dangerous workplace situations.

#### STATEMENT OF FACTS

34. In June 2018, Defendants Gairhan Farms, Inc., and David, Wayne, and Scott Gairhan (collectively, the "Gairhan Defendants") brought Mr. Fouche from South Africa to Trumann, Arkansas, on an H-2A visa to work as an agricultural equipment operator.

35. Mr. Fouche's H-2A visa for Gairhan Farms was valid until November 15, 2018.

36. Throughout Mr. Fouche's time at Gairhan Farms, Defendants David, Wayne, and Scott Gairhan all acted as his employers and supervisors. All three were at the farm on a daily basis, and all three regularly gave orders to the farm's H-2A workers, including Mr. Fouche.

37. David Gairhan paid Mr. Fouche's wages and tracked his hours.

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<sup>1</sup> See, e.g., U.S. Gov't Accountability Off., GAO-15-154, *H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers* at 38 (rev. May 30, 2017), <https://www.gao.gov/assets/690/684985.pdf> (explaining that workers "put up with abuses" in part because of "threats of deportation or physical violence"); Polaris, *Labor Trafficking in the U.S.: A Closer Look at Temporary Work Visas* at 4 (Oct. 1, 2015), [https://polarisproject.org/wp-content/uploads/2015/10/Labor-Trafficking-in-the-US\\_A-Closer-Look-at-Temporary-Work-Visas.pdf](https://polarisproject.org/wp-content/uploads/2015/10/Labor-Trafficking-in-the-US_A-Closer-Look-at-Temporary-Work-Visas.pdf) ("Aside from economic abuse, the next most frequent method[s] of coercive control were threats of deportation or reports to immigration officials."). For cases from the last several years alleging forced labor within the H-2A program premised on part on employer threats of arrest or deportation, see, for example, *Arreguin v. Sanchez*, 398 F. Supp. 3d 1314, 1320 (S.D. Ga. 2019); *Rosas v. Sarbanand Farms, LLC*, 329 F.R.D. 671, 684 (W.D. Wash. 2018); *Zevallos v. Stamatakis*, No. 2:17-CV-00253-DN, 2017 WL 6060623, at \*2, 7 (D. Utah Dec. 6, 2017); *Cruz-Cruz v. Conley-Morgan Law Grp., PLLC*, No. 5:15-CV-157-REW, 2017 WL 2112637, at \*1 (E.D. Ky. May 15, 2017).

38. The clearance order signed by David Gairhan on behalf of Gairhan Farms, Inc., listed the material terms of Mr. Fouche's employment. *See* Ex. 3 (Clearance Order).

39. The clearance order contained promises to "comply with" all "employment-related laws" and to "abide by the regulations at 20 CFR 655.135." *Id.* at 8, 10.

40. In late August 2018, Mr. Fouche learned of an H-2A job for a grain cart driver in North Dakota and applied for the position.

41. On or around September 5, 2018, the North Dakota employer submitted an I-129 Petition to USCIS on Mr. Fouche's behalf in accordance with the H-2A regulations.

42. On Thursday, September 6, 2018, Mr. Fouche informed the Gairhan Defendants about the new job and stated that he planned to leave that weekend.

43. All three Gairhans responded with anger and falsely represented to Mr. Fouche that he could not lawfully leave their employ.

44. David Gairhan falsely told Mr. Fouche that he could not leave his employment legally until three-fourths of his contract was complete, and that Mr. Fouche would be absconding if he left.

45. At the same meeting, Wayne Gairhan told Mr. Fouche that if he left, the Gairhans would send the Federal Bureau of Investigation ("FBI") and the U.S. Marshals after him, and that they already had the Marshals looking for another worker who had transferred to another farm earlier in the season.

46. Later that Thursday evening, Wayne Gairhan told another employee at the farm, Mr. Fouche's uncle Pieter, that he was going to go after Mr. Fouche and his visa. Wayne Gairhan warned Pieter that if Mr. Fouche left, the Gairhans would call the FBI and have Mr. Fouche arrested.

47. The Gairhan Defendants' threats were intended to compel Mr. Fouche to stay at Gairhan Farms and continue laboring on their behalf against his will.

48. The Gairhan Defendants' statements that Thursday were also false. The H-2A regulations do not require workers to remain until three-fourths of the contract is complete. The FBI and the U.S. Marshals Service are not involved in locating H-2A workers who leave their employment. And Mr. Fouche had not absconded. A worker "absconds" pursuant to the H-2A regulations if he "has not reported for work for a period of 5 consecutive workdays without the consent of the employer." 8 C.F.R. § 214.2(h)(5)(vi)(E).

49. More fundamentally, the Gairhan Defendants' threats notwithstanding, the H-2A regulations permitted Mr. Fouche to transfer H-2A employers, 8 C.F.R. § 214.2(h)(2)(i)(D), and afforded him a 30-day window following his departure from Gairhan Farms in which to do so, *id.* § 214.2(h)(5)(viii)(B).

50. The Gairhan Defendants knew or should have known that their statements were false. H-2A workers had previously left their employment early to transfer to other H-2A jobs. The Gairhans documented those transfers by informing DOL that those workers left for other employment, not that they absconded.

51. The next morning, Friday, September 7, 2018, Mr. Fouche began work as usual. After a few hours, Scott Gairhan approached him while he was working. He asked Mr. Fouche whether he still intended to leave, and Mr. Fouche responded yes. Scott Gairhan then took Mr. Fouche to the farm office, where David and Scott Gairhan again falsely stated that Mr. Fouche would be absconding if he left. After the impromptu meeting, Scott Gairhan drove Mr. Fouche back to his employer-provided housing.

52. That same day, while Mr. Fouche remained at Gairhan Farms, the Gairhan Defendants contacted the Department of Homeland Security and falsely reported that Mr. Fouche had absconded.

53. The Gairhan Defendants' false report reached the attention of Defendant Fithen, an ICE Officer posted in Little Rock.

54. Defendant Fithen, accompanied by local law enforcement, arrived at Mr. Fouche's housing at Gairhan Farms on the afternoon of September 7, 2018, just hours after Scott Gairhan had returned Mr. Fouche to his housing.

55. Mr. Fouche told Defendant Fithen that he had recently quit his employment with the Gairhan Defendants and that he was planning to leave for a new job in North Dakota.

56. Defendant Fithen informed Mr. Fouche that his employer had reported him as an absconder and falsely stated Mr. Fouche had violated his H-2A visa by terminating his employment contract.

57. Defendant Fithen did not have a warrant for Mr. Fouche's arrest.

58. As an ICE officer, Defendant Fithen had the legal authority to conduct a warrantless arrest only if he had "reason to believe that the alien so arrested [was] in the United States in violation of [U.S. immigration laws or regulations] and [was] likely to escape before a warrant [could] be obtained for his arrest." 8 U.S.C. § 1357(a)(2).

59. Defendant Fithen lacked probable cause to arrest Mr. Fouche without a warrant.

60. There was no reason to believe Mr. Fouche had violated immigration laws. From the readily apparent facts, including Mr. Fouche's continued presence at the Gairhan Farms and his clear intention to lawfully transfer to other H-2A employment, Defendant Fithen had no basis to conclude otherwise.

61. Likewise, there was no reason to believe that Mr. Fouche was likely to escape before Defendant Fithen could obtain a warrant. Mr. Fouche's new employer had already filed an I-129 Petition with USCIS informing ICE's sister agency of the exact address where Mr. Fouche would be found, and Mr. Fouche confirmed with Defendant Fithen that he would be staying with that North Dakota employer.

62. Nonetheless, Defendant Fithen handcuffed and arrested Mr. Fouche.

63. Defendant Fithen then drove Mr. Fouche to the jail in Lonoke, Arkansas, approximately two to three hours away from Gairhan Farms. Mr. Fouche was cuffed for the entire ride.

64. On or about September 10, 2018, three days after Mr. Fouche's initial arrest and while he was still being held in the Lonoke jail, ICE officials completed a Notice of Custody Determination and a Warrant for Arrest of Alien. ICE subsequently transferred Mr. Fouche to ICE's La Salle detention facility in Louisiana.

65. On or about October 16, 2018, after searching for and retaining counsel during more than a month in detention, Mr. Fouche was released from ICE custody on an \$8,000 bond.

66. On or about November 6, 2018, USCIS approved the I-129 Petition from Mr. Fouche's North Dakota employer that had been pending for approximately two months.

67. On information and belief, the substantial delay in approving the I-129 Petition was caused by Mr. Fouche's arrest and detention.

68. On December 3, 2018, an immigration judge terminated the immigration proceedings against Mr. Fouche after explicitly finding that Mr. Fouche was in lawful immigration status. Ex. 1 at 16.

69. Mr. Fouche's unlawful arrest and month-long detention caused him considerable emotional distress. He was held in prison-like conditions despite never having committed any crime. He did not know whether he would be released, or when, or whether he would ultimately be deported and barred from returning to the United States. Mr. Fouche's detention caused him to feel at turns despondent, angry, afraid, and panicked. He did not know if he could raise the money to cover bond and legal fees or how he would repay the loans he had taken out to cover his costs. He feared the loss of his new job, and he was cut off from friends and family in South Africa, including his fiancée, who had trouble reaching him in detention due to ICE's limitations on phone contact.

70. Mr. Fouche also incurred financial costs related to his detention, including lost wages and the lost value of his pre-booked flight to North Dakota. Mr. Fouche had to hire private counsel to prove his lawful immigration status. Mr. Fouche paid some of counsel's fee and, lacking the funds to pay the rest himself, was forced to raise and borrow money from friends and family to pay the remainder.

71. Since the termination of the removal proceedings, the record of Mr. Fouche's arrest and detention has caused him ongoing hardship. His arrest record has resulted in processing delays and uncertainties each time he has sought H-2A employment, leading to several weeks of post-release lost wages over the course of 2018 and 2019 while he awaited approval of H-2A transfers and extensions. For a low-wage worker like Mr. Fouche, each period of uncertainty and income loss represented a substantial hardship and a source of significant anxiety.

72. Mr. Fouche has also been advised by U.S. consular officials in South Africa that even if he obtains a visa to return to the United States in the future, he might be detained or deported

by customs officials upon arrival because he was previously arrested and placed in removal proceedings.

73. Mr. Fouche's wrongful arrest and detention haunt him. With this suit, he hopes to vindicate his belief that neither employers nor ICE may infringe on H-2A visa holders' basic right to lawfully pursue other H-2A employment opportunities. The fact that H-2A workers' employment authorization is tied to their employers does not mean that employers have unchecked power to wield the immigration system as a weapon of intimidation and control, lest a lawful government program be converted into a vehicle for forced labor.

### **FIRST CAUSE OF ACTION**

#### **Federal Tort Claims Act: False Imprisonment** **Against Defendant United States of America**

74. Mr. Fouche re-alleges and incorporates the allegations contained in the foregoing numerical paragraphs as if each such allegation was fully set forth herein.

75. Under Arkansas law, "[f]alse imprisonment is the unlawful violation of the personal liberty of another consisting of detention without sufficient legal authority." *Trammell v. Wright*, 489 S.W.3d 636, 638 (Ark. 2016).

76. As an ICE officer, Defendant Fithen has the legal authority to conduct a warrantless arrest only "if he has reason to believe that the alien so arrested is in the United States in violation of [U.S. immigration laws or regulations] and is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2).

77. Mr. Fouche did not violate the terms of his H-2A visa or the laws of the United States, and he was not a flight risk.

78. Nonetheless, on September 7, 2018, Defendant Fithen, while acting within the scope of his employment with Defendant United States, willfully arrested and detained Mr. Fouche without his consent, without a warrant, and without legal authority or justification.

79. As a proximate and foreseeable result of Defendant Fithen's actions, attributed under the FTCA to Defendant United States of America, Mr. Fouche suffered mental and emotional anguish, as well as lost wages and other financial harm, for which he seeks monetary relief pursuant to the FTCA, 28 U.S.C. § 2671 *et seq.*, and declaratory relief pursuant to 28 U.S.C. § 2201(a).

## SECOND CAUSE OF ACTION

### **Bivens: Unreasonable Detention in Violation of the Fourth Amendment Against Defendant FNU Fithen**

80. Mr. Fouche re-alleges and incorporates the allegations contained in the foregoing numerical paragraphs as if each such allegation was fully set forth herein.

81. The Fourth Amendment to the U.S. Constitution provides that each person has a right to be secure in their person against unreasonable searches and seizures.

82. Defendant Fithen arrested and detained Mr. Fouche without his consent, without a warrant, and without legal authority or justification. By conducting a warrantless arrest without probable cause, Defendant Fithen intentionally, maliciously, and recklessly violated Mr. Fouche's right to be free from unreasonable seizure as guaranteed by the Fourth Amendment.

83. As a proximate and foreseeable result of Defendant Fithen's violation of Mr. Fouche's Fourth Amendment rights, Mr. Fouche suffered mental and emotional anguish, as well as lost wages and other financial harm, for which he seeks monetary relief from Defendant Fithen in his individual capacity pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and declaratory relief pursuant to 28 U.S.C. § 2201(a).

### THIRD CAUSE OF ACTION

#### **Administrative Procedure Act: Unlawful Agency Action Against Defendant ICE**

84. Mr. Fouche re-alleges and incorporates the allegations contained in the foregoing numerical paragraphs as if each such allegation was fully set forth herein.

85. Defendant Fithen, acting as an agent of Defendant ICE, arrested and detained Mr. Fouche without his consent, without a warrant, and without legal authority or justification. These decisions and actions, individually and cumulatively, constitute agency action by Defendant ICE that is arbitrary, capricious, an abuse of discretion, not in accordance with law, and contrary to constitutional rights.

86. Defendant ICE maintains records in Mr. Fouche's immigration file incorrectly stating that he is subject to mandatory detention and that he violated the terms of his H-2A visa.

87. These violations of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)–(B), have aggrieved Mr. Fouche. The agency's actions and omissions resulted in his arrest, detention, and ongoing difficulty securing visas and H-2A employment in the United States, even though there was never probable cause to believe that he had violated the terms of his visa.

88. Mr. Fouche requests that, pursuant to 5 U.S.C. § 706(2), ICE's actions resulting in his arrest and detention be held unlawful and set aside.

89. Mr. Fouche additionally requests that, pursuant to 5 U.S.C. § 706(1), ICE be compelled to correct the inaccuracies in his immigration file.

### FOURTH CAUSE OF ACTION

#### **Malicious Prosecution Against Defendants Gairhan Farms, Inc., David Gairhan, Wayne Gairhan, and Scott Gairhan**

90. Mr. Fouche re-alleges and incorporates the allegations contained in the foregoing numerical paragraphs as if each such allegation was fully set forth herein.

91. Under Arkansas law, malicious prosecution consists of five elements: “(1) a proceeding instituted or continued by the defendant against the plaintiff; (2) termination of the proceeding in favor of the plaintiff; (3) absence of probable cause for the proceeding; (4) malice on the part of the defendant; and (5) damages.” *S. Ark. Petroleum Co. v. Schiesser*, 36 S.W.3d 317, 319 (Ark. 2001).

92. Defendants David, Wayne, and Scott Gairhan knowingly and falsely reported to immigration authorities that Mr. Fouche had absconded, despite being aware that Mr. Fouche had not violated the law and was still located on their premises. That false report set in motion Mr. Fouche’s removal proceedings.

93. In making that false report, Defendants David, Wayne, and Scott Gairhan were acting as officers and agents of and in the course and scope of their employment with Gairhan Farms, Inc.

94. The removal proceedings instigated by and on behalf of the Gairhan Defendants were terminated in Mr. Fouche’s favor when an immigration judge determined that he had lawful status in the United States.

95. There was no probable cause for the removal proceedings, as Mr. Fouche was seeking a lawful transfer of H-2A employment and had not absconded within the meaning of the H-2A regulations.

96. The Gairhan Defendants acted with malice in knowingly and falsely reporting that Mr. Fouche had absconded.

97. As a proximate and foreseeable result of the Gairhan Defendants' tortious actions, Mr. Fouche suffered mental and emotional anguish, as well as lost wages and other financial harm, for which he seeks compensatory and punitive damages.

#### FIFTH CAUSE OF ACTION

#### **Trafficking Victims Protection Reauthorization Act ("TVPRA"): Attempted Forced Labor Against Defendants Gairhan Farms, Inc., David Gairhan, Wayne Gairhan, and Scott Gairhan**

98. Mr. Fouche re-alleges and incorporates the allegations contained in the foregoing numerical paragraphs as if each such allegation was fully set forth herein.

99. The Gairhan Defendants attempted to subject Mr. Fouche to forced labor in violation of 18 U.S.C. § 1594(a) (providing that attempted violations of the TVPRA are punishable as completed violations).

100. Defendants David, Wayne, and Scott Gairhan used threats of legal, immigration, and financial harm to convince Mr. Fouche that he would suffer the serious harm of being apprehended by law enforcement and losing his opportunity to work in the United States if he were to leave their employ.

101. The threats of Defendants David, Wayne, and Scott Gairhan constituted a substantial step toward forced labor, and demonstrated intent to force Mr. Fouche to continue to work on their behalf.

102. The threats of Defendants David, Wayne, and Scott Gairhan were made both on their own behalf and as agents of Defendant Gairhan Farms, Inc.

103. The Gairhan Defendants threatened Mr. Fouche with serious harm in order to obtain his labor and services, in attempted violation of 18 U.S.C. § 1589(a)(2).

104. The Gairhan Defendants threatened to have Mr. Fouche arrested and deported, in attempted abuse of the legal process under 18 U.S.C. § 1589(a)(3).

105. The Gairhan Defendants attempted to obtain Mr. Fouche's labor and services using a scheme, plan, or pattern that, in the totality of the circumstances, was intended to coerce Mr. Fouche to believe that he would suffer serious harm if he was to leave their employ, in attempted violation of 18 U.S.C. § 1589(a)(4).

106. As a proximate and foreseeable result of these attempts to extract his labor via threats and abuse of the legal process, Mr. Fouche suffered emotional injuries and other damages, for which he seeks compensatory and punitive damages, including damages for emotional pain and suffering, attorney's fees, expert fees, and costs, under the civil remedies provision of the TVPRA, 18 U.S.C. § 1595.

#### **SIXTH CAUSE OF ACTION**

##### **Breach of Contract: H-2A Retaliation Against Defendant Gairhan Farms, Inc.**

107. Mr. Fouche re-alleges and incorporates the allegations contained in the foregoing numerical paragraphs as if each such allegation was fully set forth herein.

108. The clearance order, together with the minimum terms specified in 20 C.F.R. §§ 655.122 and 655.135, is a valid employment contract governing Mr. Fouche's employment. A copy is attached hereto as Ex. 3.

109. The clearance order was signed by Defendant David Gairhan on behalf of Defendant Gairhan Farms, Inc. Ex. 3 at 6.

110. Defendant David Gairhan acted within the scope of his authority on behalf of Gairhan Farms, Inc. in signing the clearance order contract, rendering Defendant Gairhan Farms,

Inc. a party to the clearance order contract and an employer within the meaning of the H-2A regulations, 20 C.F.R. § 655.103(b).

111. In Mr. Fouche's employment contract, Defendant Gairhan Farms, Inc. promised to "comply with" all "employment-related laws," Ex. 3 at 8, and specifically to "abide by the regulations at 20 CFR 655.135," *id.* at 10.

112. Among other things, 20 C.F.R. § 655.135 prohibits H-2A employers from "intimidat[ing], threaten[ing], restrain[ing], coerc[ing], blacklist[ing], discharge[ing] or in any manner discriminat[ing] against" a worker who exercises his legal rights. 20 C.F.R. § 655.135(h); *see also* 29 C.F.R. § 501.4(a). Subsection (e) of 20 C.F.R. § 655.135(e) requires H-2A employers to comply with all applicable laws, including the TVPRA.

113. Defendant Gairhan Farms, Inc., breached the employment contract when its officers and agents, Defendants David, Wayne, and Scott Gairhan, intimidated, threatened, coerced, and discriminated against Mr. Fouche because he exercised his right to transfer employment.

114. Defendant Gairhan Farms, Inc., breached the employment contract when its officers and agents, Defendants David, Wayne, and Scott Gairhan, attempted for force Mr. Fouche to labor for them in violation of the TVPRA because he exercised his right to transfer employment.

115. As a proximate and foreseeable result of the contractual breaches by and on behalf of Defendant Gairhan Farms, Inc., Mr. Fouche suffered mental and emotional anguish and suffering, as well as lost wages and other financial harm, for which he seeks damages.

**SEVENTH CAUSE OF ACTION**

**Fourth Amendment Claim for Injunctive Relief**  
**Against Defendant ICE**

116. Mr. Fouche re-alleges and incorporates the allegations contained in the foregoing numerical paragraphs as if each such allegation was fully set forth herein.

117. The Fourth Amendment to the U.S. Constitution provides that each person has a right to be secure in their person against unreasonable searches and seizures.

118. Defendant Fithen, acting on behalf of Defendant ICE, arrested and detained Mr. Fouche without probable cause, in violation of the Fourth Amendment.

119. This constitutional violation has caused and will continue to cause ongoing, irreparable harm to Mr. Fouche. Mr. Fouche's past record of wrongful arrest and detention shadows his attempts to obtain visas. Until he can clearly establish that he did not violate the H-2A regulations by his prior lawful transfer request, he will continue to face delays, rejections, and perhaps even summary deportation upon arrival in the United States. Meanwhile, he is concerned that if he should again attempt to transfer H-2A employment, he could again face arrest, detention, and perhaps a bar on future entry to the United States.

120. To remedy this ongoing harm, Mr. Fouche seeks injunctive and declaratory relief forbidding Defendant ICE from arresting or detaining himself or any other H-2A visa holder for undertaking a lawful transfer of H-2A employment, pursuant to a petition filed by a prospective employer on the worker's behalf within 30 days after the worker leaves his initial employment.

**JURY DEMAND**

121. Plaintiff asserts his right to trial by jury on all claims to which the right applies.

**PRAYER FOR RELIEF**

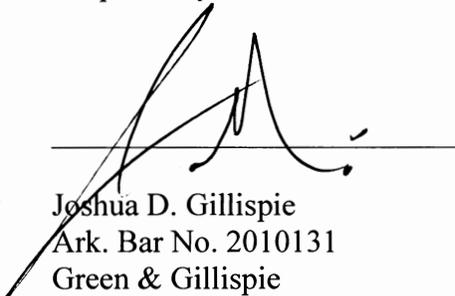
WHEREFORE, Plaintiff respectfully requests that, upon trial or other final disposition, this

Court:

- (a) Grant judgment in Mr. Fouche's favor on all claims;
- (b) Declare, pursuant to 28 U.S.C. § 2201(a), that (a) current regulations permit H-2A visa holders to lawfully transfer H-2A employers as long as the prospective employer files a petition on the worker's behalf within 30 days after the worker leaves his initial employment, and (b) any arrest or detention by Defendants ICE, the United States of America, or their employees or agents, of H-2A workers for undertaking such a lawful transfer is an unreasonable seizure that violates the Fourth Amendment of the U.S. Constitution;
- (c) Award Mr. Fouche compensatory damages, in an amount to be determined at trial, for violations of the Federal Tort Claims Act committed by Defendant United States;
- (d) Award Mr. Fouche compensatory and punitive damages, in an amount to be determined at trial, for violations of the Fourth Amendment of the U.S. Constitution committed by Defendant Fithen;
- (e) Hold unlawful and set aside Defendant ICE's arrest and detention of Mr. Fouche;
- (f) Compel ICE to remove the inaccurate information from Mr. Fouche's immigration file;
- (g) Award Mr. Fouche compensatory and punitive damages, in an amount to be determined at trial, for malicious prosecution committed by Defendants Gairhan Farms, Inc., David Gairhan, Wayne Gairhan, and Scott Gairhan;

- (h) Award Mr. Fouche compensatory and punitive damages, in an amount to be determined at trial, for attempted violations of the TVPRA committed by Defendants Gairhan Farms, Inc., David Gairhan, Wayne Gairhan, and Scott Gairhan;
- (i) Award Mr. Fouche damages, in an amount to be determined at trial, for the breach of contract by Defendant Gairhan Farms, Inc.;
- (j) Enjoin Defendant ICE from arresting or detaining Mr. Fouche or any other H-2A visa holder for undertaking a lawful transfer of H-2A employment pursuant to a petition filed by a prospective employer on the worker's behalf within 30 days after the worker leaves his initial employment;
- (k) Award Mr. Fouche pre- and post-judgment interest, as permitted by law;
- (l) Award Mr. Fouche reasonable and necessary attorney's fees and costs, as permitted by law; and
- (m) Grant any other such relief as the Court may deem just and proper.

Respectfully submitted,



A handwritten signature in black ink, appearing to read 'Joshua D. Gillispie', is written over a horizontal line. The signature is stylized and extends above and below the line.

Joshua D. Gillispie  
Ark. Bar No. 2010131  
Green & Gillispie  
1 Riverfront Pl., Ste. 605  
North Little Rock, AR 72114  
Tel: (501) 244-0700  
Fax: (501) 244-2020  
Email: [josh@greenandgillispie.com](mailto:josh@greenandgillispie.com)

Elizabeth Leiserson  
*Pro hac vice motion forthcoming*  
Tennessee State Bar No. 036095  
Melia Amal Bouhabib  
*Pro hac vice motion forthcoming*  
Tennessee State Bar No. 035588  
Southern Migrant Legal Services,  
A Project of Texas RioGrande Legal Aid  
311 Plus Park Blvd., Ste. 135  
Nashville, TN 37217  
Tel: (615) 538-0725  
Fax: (615) 366-3349  
Email: eleiserson@trla.org  
Email: abouhabib@trla.org

ATTORNEYS FOR PLAINTIFF

# **EXHIBIT 1**



**SOUTHERN MIGRANT LEGAL SERVICES**

A PROJECT OF TEXAS RIOGRANDE LEGAL AID, INC.  
311 PLUS PARK BLVD., STE. 135  
NASHVILLE, TN 37217  
TEL (615) 538-0725; FAX (615) 366-3349; TOLL-FREE (866) 721-7828

November 22, 2019

**VIA CERTIFIED MAIL AND E-MAIL**

Office of the General Counsel (ogc@hq.dhs.gov)  
U.S. Department of Homeland Security  
Mail Stop 3650  
Washington, DC 20528

U.S. Immigration & Customs Enforcement (original)  
Office of the Principal Legal Advisor  
1250 Poydras Street, Suite 2100  
New Orleans, LA 70113

U.S. Immigration & Customs Enforcement  
Office of the Principal Legal Advisor  
500 12th Street SW  
Washington, DC 20024

U.S. Immigration & Customs Enforcement  
La Salle Detention Facility  
830 Pinehill Rd.  
Jena, LA 71342

RE: Notice of Claim for Damages under the Federal Tort Claims Act – Jeandre Fouche

To whom it may concern:

Enclosed please find an administrative claim under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-80, against the United States government for the wrongful arrest and

imprisonment of Mr. Jeandre Fouche. Southern Migrant Legal Services, a Project of Texas RioGrande Legal Aid, represents Mr. Fouche in this claim for damage, injury, or death.

Please find enclosed:

- Mr. Fouche's completed SF-95 claim form
- Attachment A - Supplement to SF-95 Claim Form
- The I-213 documenting Mr. Fouche's arrest
- Mr. Fouche's NTA
- The immigration judge's order terminating proceedings
- A signed declaration authorizing release of information and documents to our office

We look forward to hearing from the responsible government attorneys about an early resolution of Mr. Fouche's claims. Absent a consensual resolution of Mr. Fouche's claims, we will pursue litigation against the United States government and any other parties liable in Mr. Fouche's wrongful arrest and imprisonment.

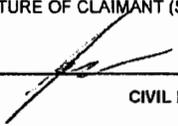
Sincerely,



Elizabeth Leiserson  
Amal Bouhabib  
*Counsel for Jeandre Fouche*

Southern Migrant Legal Services,  
A Project of Texas RioGrande Legal Aid  
311 Plus Park Blvd., Suite 135  
Nashville, TN 37217  
(615) 538-0725  
eleiserson@trla.org  
abouhabib@trla.org

Enclosures (6)

<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		<b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.			FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:  U.S. Immigration & Customs Enforcement La Salle Detention Facility 830 Pinehill Rd. Jena, LA 71342  <span style="float: right;">See Attachment A</span>				2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.  Jeandre Fouche 1354 Breyer Ave Pretoria 0186 South Africa  <span style="float: right;">See Attachment A</span>		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN		4. DATE OF BIRTH 07/04/1996	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 09/07/2018                      Friday		7. TIME (A.M. OR P.M.) 5:00 P.M.
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).  See Attachment A - Supplement to SF-95 Claim Form.						
<b>9. PROPERTY DAMAGE</b>						
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).						
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).						
<b>10. PERSONAL INJURY/WRONGFUL DEATH</b>						
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.  As a result of the unlawful treatment of Mr. Fouche by officers of U.S. Immigration and Customs Enforcement (ICE) as described in Attachment A - Supplement to SF-95 Claim Form, Mr. Fouche suffered financial harm, including lost income and fees for attorneys and bail fees, as well as severe, substantial, and continuing emotional and psychological distress.						
<b>11. WITNESSES</b>						
NAME			ADDRESS (Number, Street, City, State, and Zip Code)			
12. (See instructions on reverse). <span style="float: right;">AMOUNT OF CLAIM (in dollars)</span>						
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 1,000,000		12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.						
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).  				13b. PHONE NUMBER OF PERSON SIGNING FORM		14. DATE OF SIGNATURE 11-16-2018
<b>CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</b>				<b>CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</b>		
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).				Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

**INSURANCE COVERAGE**

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance?  Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number.  No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible?  Yes  No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance?  Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code).  No

**INSTRUCTIONS**

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows:

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

**PRIVACY ACT NOTICE**

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.  
 A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.  
 C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.  
 D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

**PAPERWORK REDUCTION ACT NOTICE**

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

**Attachment A - Supplement to SF-95 Claim Form**

**1. Submit to Appropriate Federal Agency:**

Office of the General Counsel  
U.S. Department of Homeland Security  
Mail Stop 3650  
Washington, DC 20528

U.S. Immigration & Customs Enforcement  
Office of the Principal Legal Advisor  
500 12th Street SW  
Washington, DC 20024

U.S. Immigration & Customs Enforcement  
Office of the Principal Legal Advisor  
1250 Poydras Street, Suite 2100  
New Orleans, LA 70113

U.S. Immigration & Customs Enforcement  
La Salle Detention Facility  
830 Pinehill Rd.  
Jena, LA 71342

**2. Claimant's Personal Representatives:**

Amal Bouhabib  
Southern Migrant Legal Services  
A Project of Texas RioGrande Legal Aid  
311 Plus Park Blvd., Suite 135  
Nashville, TN 37217  
(615) 538-0725 (phone)  
(615) 366-3349 (fax)  
[abouhabib@trla.org](mailto:abouhabib@trla.org)

Elizabeth Leiserson  
Southern Migrant Legal Services  
A Project of Texas RioGrande Legal Aid  
311 Plus Park Blvd., Suite 135  
Nashville, TN 37217  
(615) 538-0725 (phone)  
(615) 366-3349 (fax)  
[eleiserson@trla.org](mailto:eleiserson@trla.org)

**8. Basis of Claim:**

Claimant, Jeandre Fouche, is a 23-year-old South African citizen, currently employed in the United States as a temporary agricultural worker on an H-2A visa.

Mr. Fouche was brought to the United States on an H-2A visa by his employer, Gairhan Farms, in June 2018. The H-2A contract stated that his employment period would end on November 15, 2018. November 15, 2018 was stamped as the expiration date on his H-2A visa.

In late August 2018, Mr. Fouche heard of another H-2A job in North Dakota. With the assistance and advice of his H-2A agents, he requested to transfer there. The North Dakota

employer submitted an I-129 Petition to the U.S. Citizenship and Immigration Services requesting to hire Mr. Fouche as an H-2A worker.

On September 6, 2018, Mr. Fouche informed the Gairhans that he intended to transfer to the new employer. The Gairhans attempted to prevent Mr. Fouche from leaving by threatening to call the FBI and the U.S. Marshals on him. That night, USCIS's California Service Center sent an email notification to the North Dakota employer acknowledging receipt of the I-129 Petition for an H-2A worker filed on Mr. Fouche's behalf. The following day, September 7, 2018, Mr. Fouche went to work in the morning as usual. When he confirmed to the Gairhans that he still intended to leave for the new job, the Gairhans sent him home for the day.

At approximately 5 p.m. that afternoon, as he was packing to leave for his new job, an Immigration and Customs Enforcement (ICE) official, DO Fithen, accompanied by local law enforcement, came to Mr. Fouche's residence at Gairhan Farms, on Stacy Lane in Trumann, Arkansas. DO Fithen told Mr. Fouche that his visa was "terminated" because he had quit his job. Mr. Fouche told DO Fithen that he had a new H-2A job in North Dakota. At the time, Mr. Fouche had evidence of his H-2A application to USCIS on his phone, but DO Fithen did not ask to see any paperwork; instead, he persisted in claiming that Mr. Fouche's visa was "terminated." DO Fithen arrested Mr. Fouche and drove him to a jail approximately three hours away in Lonoke, Arkansas, outside Little Rock. On September 10, Mr. Fouche was issued a Notice to Appear, and DO Fithen completed an I-213 regarding the arrest. The next day, September 11, Mr. Fouche was transferred to ICE's La Salle detention facility.

On October 11, 2018, after spending more than one month in jail and ICE detention, Mr. Fouche was released from ICE custody on an \$8,000 bond. On December 3, 2018, immigration proceedings against Mr. Fouche were terminated on the basis that he had lawful H-2A status with his new employer.

Both the Notice to Appear and I-213 prepared by the arresting officer state that Mr. Fouche violated the terms of his visa because he attempted to change jobs "without first obtaining a new H2A visa." The H-2A laws and regulations do not impose that requirement. Under the H-2A regulations, Mr. Fouche had a right to transfer employers. Applications for H-2A visas on behalf of workers who wish to transfer employment may be filed up to 30 days after the worker leaves the original job. Because a new application had been submitted on Mr. Fouche's behalf well within that 30-day window (and, indeed, before he left his original

employment and before his arrest), Mr. Fouche was never out of status. ICE therefore had no legal basis to arrest, detain, or institute removal proceedings against him. DO Fithen and all ICE officials who ratified Mr. Fouche's continued detention violated Mr. Fouche's rights under U.S. immigration law.

Mr. Fouche's wrongful arrest and detention caused him substantial fear and emotional trauma, as well as financial harm. He incurred substantial legal fees and other costs, including bond-related costs. His emotional harm continues to this day. For example, he continues to work on an H-2A visa and worries that he could be arrested again if he attempts to transfer to another employer. He also worries that he might be denied visas in the future because of his wrongful arrest.

U.S. Department of Homeland Security Subject ID: 357408113 Record of Deportable/Inadmissible Alien

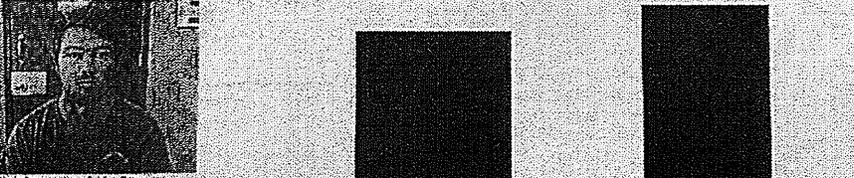
Family Name (I-AMS) <b>POUCIN, JEANDRE</b>		First Name		Middle Name		Sex	Race	Eyes	Hair
Country of (Former) Birth <b>SOUTH AFRICA</b>		Current Number and Class of Visa <b>See Narrative</b>		Last Known Address <b>17079 Stacy Lane Trumann, ARKANSAS, 72742</b>		Height <b>69</b>	Weight <b>181</b>	Complexion <b>Fair</b>	Complexion <b>Black</b>
Date of Birth <b>07/04/1994</b>		Age <b>22</b>		Date of Arrival <b>09/10/2018</b>		Remarks <b>SCAR BACK - Scar on Back</b>			
City, Province (State) and Country of Birth <b>Gealsville, SOUTH AFRICA</b>		Date of Expiration <b>See Narrative</b>		Remarks <b>See Narrative</b>		Remarks <b>See Narrative</b>			
Date of Issuance <b>09/10/2018</b>		Remarks <b>See Narrative</b>		Remarks <b>See Narrative</b>		Remarks <b>See Narrative</b>			

Immigration Record: **POUCIN, JEANDRE - See Narrative** / Criminal Record: **None Known**

Number of Previous and Manner of Entry: **POUCIN, JEANDRE - See Narrative** / Number of Previous and Manner of Entry: **POUCIN, JEANDRE - See Narrative**

Name and Address of (Last) Known U.S. Employer: **None Claimed** / Type of Employment: **See Narrative** / Date of Employment: **06/07/2018-09/07/2018**

Remarks (Outline particular under which alien was inspected/checked. Include details on status change regarding time, place and manner of entry, attempted entry, or any other entry, and other information which establish inadmissibility and/or deportability.)



Subject Health Status: **The subject claims good health.**

Current Criminal Charges: **09/10/2018 - 8 USC 1227 - DEPORTABLE ALIEN**

... (CONTINUED ON I-931)

Alien has been advised of sponsorship privileges: **9/10/18** (Date) / **D 4960 FITZGERALD** (Signature and Title of Immigration Officer)

Received (Subject and Representative) / Report of Interview: **September 10, 2018** / Office: **D 4960 FITZGERALD** / District: **Meridian of Aspent/Merica CO Aspent** / Remarks: **USER: 3 1028**

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name <b>FOUCHE, JEANDRE</b>	File Number 216 486 423 Event No: LRA1809000018	Date 09/10/2018
Current Administrative Charges 09/10/2018 - 237a1c1 - NONIMMIGRANT WITH UNAUTHORIZED EMPLOYMENT		
Previous Criminal History Subject has no criminal history		
Records Checked IAFIS Neg TECS Neg CIB Neg NCIC Neg EARM Neg		
NAME AND ADDRESS OF US EMPLOYER Gairhan Farms, INC. Gairhan Farms, INC, 17075 Stacy Lane Trumann, AR 72742 US		
TYPE OF EMPLOYMENT Farming, Forestry, and Fishing Occupations		
FUNDS IN POSSESSION United States Dollar 2.09 South African Rand 27.50		
At/Near Trumann, AR		
FATHER INFORMATION ADDRESS: 10 Deal St, Des Moines, OTHER - FOR COUNTRIES OTHER THAN US, MEXICO, AND CANADA, SOUTH AFRICA		
MOTHER INFORMATION NATIONALITY: SOUTH AFRICA ADDRESS: 10 Deal St, Des Moines, OTHER - FOR COUNTRIES OTHER THAN US, MEXICO, AND CANADA, SOUTH AFRICA		
Record of Deportable/Excludable Aliens		
Signature <i>[Signature]</i> D. SEAN O'NEILL	Title	DO

Department of Homeland Security

Continuation Page for Form I-213

Alien's Name <b>FOUCHE, JEANDRE</b>	File Number 215 485 423 Event No: LRA1809000018	Date 09/10/2018
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**ALIENAGE/REMOVABILITY**

Jeandre FOUCHE admits to being a citizen and national of South Africa and that is his country of birth. The subject admits having an employment contract to work as an H2A for Gaizhan Farms, INC located in Trumann, AR from June 7, 2018, to November 15, 2018. FOUCHE abandon his current employment with Gaizhan Farms LMC on September 05, 2018. FOUCHE failed to maintain his H2A Visa by attempting to abscond to another employer without first obtaining a new H2A Visa to remain in the United States.

FOUCHE entered the United States on a H2A work visa on June 07, 2018 at Atlanta, GA International Airport. On September 7, 2018, a Notice of Termination of Employment of H2A Worker was issued because you left your employer on September 6, 2018 to seek employment in another state (North Dakota) without first obtaining a new H2A visa. FOUCHE is amendable to removal from the United States pursuant to Section 237 (a) (1) (C) (i) of the Immigration and Nationality Act.

**METHOD/LOCATION OF APPREHENSION**

On September 07, 2018, Little Rock, AR ICE/Fugitive Operations DO was notified by the Memphis, TN United States Citizen and Immigration Service regarding a H2A Absconder located in Trumann, Arkansas. DO Fithen notified the Little Rock, AR SDO regarding this subject. On September 07, 2018, DO Fithen coordinated with local law enforcement to conduct a check of 19079 Stacy Lane in Trumann, AR. Upon arrival, DO Fithen knocked on the door to which FOUCHE answered. DO Fithen asked if FOUCHE lived there and if anyone else was present in the residence. FOUCHE stated that he and another individual lived there, but the other individual was not there. DO Fithen ask FOUCHE for consent to enter and FOUCHE granted entry. Upon entering, DO Fithen asked for FOUCHE'S identification to note who gave consent to enter. DO Fithen observed FOUCHE'S room and noticed the subject was packing his belongings to leave. DO Fithen asked FOUCHE if he was going on a trip. FOUCHE explained how he had just quit his job the day prior and was packing to leave for North Dakota to work for more money. DO Fithen then informed FOUCHE that he was reported as being an H2A Visa absconder by his employer and was in violation of his current H2A Visa due to terminating his employment contract. Subsequent checks in TRCS/ADIS confirmed that FOUCHE last entered the United States with a H2A Visa on June 07, 2018 at the Atlanta, GA International Airport. FOUCHE failed to maintain the conditions of his H2A Visa. FOUCHE currently has no legal immigration status to allow him, to work, remain in, or pass through the United States. FOUCHE was arrested by ICE, the residence was secured, and FOUCHE was transported to the Lonoke PD Jail. On September 10, 2018, FOUCHE was picked up and transported to the Little Rock, AR ICE/ENO office to be processed. FOUCHE was issued a NTA, I-200, and I-285 with No Bond and given a detainee in transit form. FOUCHE was informed he could speak to his consulate and given the opportunity to use the phone to call/ notify any friends or family about being in ICE custody. FOUCHE was transported to the Lonoke City, AR Police Department Jail pending removal proceedings in Jans, LA.

**CRIMINAL HISTORY**

None

**IMMIGRATION HISTORY**

FOUCHE entered the United States on a H2A work visa on June 07, 2018 at Atlanta, GA International Airport. On September 7, 2018, a Notice of Termination of Employment of H2A Worker was issued because FOUCHE left his employment on September 6, 2018 to seek employment in another state (North Dakota) without first obtaining a new H2A visa.

Other Information:  
FOUCHE is not eligible for DACA.

Title

DO

Department of Homeland Security

Continuation Page for Form I-213

Full Name  
FOUCHE, JEANDRE

File Number  
216 486 423  
Event No: LRA1809000018

Date  
09/10/2018

**MEDICAL PROBLEMS**  
FOUCHE claims he has no problems and is not currently taking any medications.

**PROPERTY ISSUES**  
FOUCHE had \$2.09 cash at time of arrest. All other property was booked at time of arrest.

**Other Identifying Numbers**

ALIEN-216486423  
Issuing Post/Location-M3698730  
COMMENT: H2A  
Driver's License (State and Country)-02/9607045189084 (SOUTH AFRICA)  
COMMENT: South Africa Driver License  
Arrival-Departure Record-29164527456  
COMMENT: H2A from 06/07/18 to 11/15/18  
USCIS Account Number-WAC1806251593  
COMMENT: H2A Visa

**PASSPORT NUMBER AND COUNTRY OF ISSUE**

A04504838 SOUTH AFRICA

Title

DO

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: 362408119

FINR: 1180861895

File No. 118-486-423

Event No: LRA1809000013

DOB: 07/04/1996

In the Matter of:

Respondent: OSARONS VOUCHE

currently residing at:

870 Pinehill Road Jena, LOUISIANA, 71348

(118) 722-7888

(Number, street, city and ZIP code)

(Area code and phone number)

- 1. You are an arriving alien.
- 2. You are an alien present in the United States who has not been admitted or paroled.
- 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:  
# See Continuation Page Made a Part Hereof.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 337 (a) (1) (C) (1) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a) (15) of the Act, you failed to maintain or comply with the conditions of the nonimmigrant status under which you were admitted.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to:  8CFR 208.30(f)(2)  8CFR 235.3(b)(5)(v)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:  
IMMIGRATION COURT 830 PINEHILL RD JENA LA 71348, LA SALLE IMMIGRATION COURT

(Complete address of Immigration Court, including Room Number, if any)

on to be sat. at To be sat. In show why you should not be removed from the United States based on the

(Date)

(Time)

clearly (if not clearly above).

9 1825 OBER SDDO

(Signature and Title of Issuing Officer)

Date: September 10, 2019

Little Rock, Arkansas

(City and State)

See reverse for important information

Form I-862 (Rev. 06/01/07)

**Warning:** Any statement you make may be used against you in removal proceedings. **Notice to Respondent**

**After Registration:** This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

**Representation:** If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 2.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

**Conduct of the hearing:** At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the Immigration Judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

**Failure to appear:** You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

**Mandatory Duty to Surrender for Removal:** If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses or locations for surrender can be obtained from your local DHS office or visit the internet at <https://www.ice.dhs.gov/about-us/contact-us>. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.11 require when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

**Request for Prompt Hearing**

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before:

Geordie Fourche  
(Signature of Respondent)

Date: 10 Sept 2018

[Signature]  
(Signature and Title of Immigration Officer)

**Certificate of Service**

This Notice to Appear was served on the respondent by me on September 18, 2018 in the following manner and in compliance with section 239(a)(1)(F) of the Act.

in person  by certified mail, return receipt requested  by regular mail

Attached is a credible fear worksheet.

Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the English language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

[Signature]  
(Signature of Respondent if Personally Served)

J. 6247 HULLERSON DO  
(Signature and Title of official)

Department of Homeland Security

Continuation Page for Form I-862

Alien's Name  
FOUCHER, JEANDRE

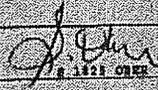
File Number  
216 486 423  
Event No: IAP1802000013

Date  
09/10/2018

THE SERVICE ALLEGES THAT YOU:

1. You are not a citizen or national of the United States;
2. You are a native of SOUTH AFRICA and a citizen of SOUTH AFRICA;
3. You were admitted to the United States at Atlanta, GA on or about June 7, 2018 as an H2A with authorization to remain in the United States until November 15, 2018;
4. You had an employment contract to work as an H2A for Gairhan Farms, LLC located in Trumann, AR from June 7, 2018 to November 15, 2018.
5. On September 7, 2018, a Notice of Termination of Employment of H2A Worker was issued because you left your employer on September 6, 2018 to seek employment in another state (North Dakota) without first obtaining a new H2A visa.

Signature



Title

SOBO

3 of 3 Pages

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
1717 AVENUE H, SUITE 100  
OMAHA, NE 68110

Immigration Attorneys, LLP  
Klosowski, Laura  
300 W. Adams Street  
Suite 500  
Chicago, IL 60606

In the matter of  
FOUCHE, JEANDRE

File A 216-486-423

DATE: Dec 4, 2018

Unable to forward - No address provided.

X Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to:

Board of Immigration Appeals  
Office of the Clerk  
5107 Leesburg Pike, Suite 2000  
Falls Church, VA 22041

Attached is a copy of the decision of the immigration judge as the result of your failure to appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:

IMMIGRATION COURT  
1717 AVENUE H, SUITE 100  
OMAHA, NE 68110

Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.

Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

Other: \_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
COURT CLERK  
IMMIGRATION COURT

FF

cc: ASST CHIEF COUNSEL, DHS

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
1717 AVENUE H, SUITE 100  
OMAHA, NE 68110

In the Matter of  
FOUCHE, JEANDRE

Case No: A216-486-423

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

After considering the facts and circumstances of this case and as there is no opposition from the parties, it is HEREBY ORDERED that these proceedings be terminated with / without prejudice.

NTA dated: Sep 10, 2018.

Reason for Termination:

*Resp. has H2A status. DHS cannot sustain the sole charge  
under 237a(1). NUMBER OF 51-6-1-115-27 ENTP 463, 468  
(10,308) - 8 CFR 12.40.12(a)*

*ABBY L. MEYER*  
Immigration Judge  
Date: 12/2/18

Appeal Waived/Reserved by A/I: NO APPEAL

Appeal Due Date:  
1/2/19

- CERTIFICATE OF SERVICE -

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)  
TO:  ALIEN  ALIEN c/o Custodial Officer  Alien's ATT/REP  DHS  
DATE: 12-4-18 BY: COURT STAFF  
Attachments:  EOIR-33  EOIR-28  Legal Services List  Other

LAW OFFICES OF  
**SOUTHERN MIGRANT LEGAL SERVICES**  
311 Plus Park, Blvd., Suite 135  
NASHVILLE, TENNESSEE 37217  
PHONE: (615) 638-0725  
FAX: (615) 366-3349

**AUTHORIZATION FOR RELEASE OF INFORMATION AND DOCUMENTS**

Please furnish to my legal representatives, Southern Migrant Legal Services, upon request by any of their attorneys or legal assistants, any and all records and documents in your possession pertaining to my case.

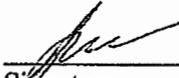
You are further hereby authorized to furnish my said attorneys or their representatives copies of any of the above and to permit them to inspect any of the same in your possession.

Please do not permit inspection of any of the above or furnish copies of the same to any other persons without my written consent or the consent of my attorneys.

It is also intended that a photostatic copy of this instrument be as effective and convey the same authority as the original hereof.

Pursuant to 28 U.S.C. § 1746, I, Jeandre Fouche, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

11-14-2019  
Date

  
Signature

# **EXHIBIT 2**

DELIVERED Dec 1 2020

Office of the Principal Legal Advisor

U.S. Department of Homeland Security  
Immigration and Customs Enforcement  
500 12<sup>th</sup> Street, SW, Mailstop 5900  
Washington, DC 20536



U.S. Immigration  
and Customs  
Enforcement

November 20, 2020

CERTIFIED MAIL. RETURN RECEIPT REQUESTED

Elizabeth Leiserson  
Southern Migrant Legal Services  
A Project of Texas RioGrande Legal Aid, Inc.  
311 Plus Park Blvd., Suite 135  
Nashville, TN 37217

Re: Federal Tort Claim against U.S. Immigration and Customs Enforcement

Dear Ms. Leiserson:

This correspondence is in reference to the receipt of the Standard Form 95 (SF 95), Claim for Damage, Injury or Death Claim Form, filed on behalf of Jeandre Fouche.

Any recovery under the Federal Tort Claims Act (FTCA) must be predicated upon a showing of a negligent or wrongful act or omission of a federal government employee acting within the scope of his/her employment. 28 U.S.C. § 1346(b).

After evaluating your claim our office has determined that your administrative claim is denied. If you are dissatisfied with this determination, you may file suit in an appropriate United States District Court not later than six months after the date of mailing of this notification of denial. 28 U.S.C. § 2401(b).

Sincerely,

*Annemarie Brennan-Linnan*

Deputy Chief  
District Court Litigation Division  
Office of the Principal Legal Advisor

# **EXHIBIT 3**



**Agricultural and Food Processing Clearance Order ETA Form 790**  
**Orden de Empleo para Obreros/Trabajadores Agrícolas y Procesamiento de Alimentos**

(Print or type in each field block – To include additional information, go to block # 28 – Please follow Step-By-Step Instructions)  
 (Favor de usar letra de molde en la solicitud – Para incluir información adicional vea el punto # 28 – Favor de seguir las instrucciones paso-a-paso)

<p>1. Employer's and/or Agent's Name and Address (Number, Street, City, State and Zip Code / Nombre y Dirección del Empleador/Patrón y/o Agente (Número, Calle, Ciudad, Estado y Código Postal):</p> <p>Gairhan Farms, Inc.        P.O. Box 254        17070 Stacy Lane        Trumann, AR 72472</p> <p>a) Federal Employer Identification Number (FEIN) / Número federal de Identificación del Empleador:</p> <p>██████████</p> <p>b) Telephone Number / Número de Teléfono:        870-483-5589</p> <p>c) Fax Number / Número de Fax:</p> <p>d) E-mail Address / Dirección de Correo Electrónico:</p>	<p>4. SOC (O*NET/OES) Occupational Code / Código Industrial:        45-2091</p> <p>a. SOC (ONET/OES) Occupational Title / Título Ocupacional        Ag. Equip. Operator</p> <p>5. Job Order No. / Num. de Orden de Empleo:        2085145</p>
<p>2. Address and Directions to Work Site / Domicilio y Direcciones al lugar de trabajo:</p> <p>17070 Stacy Lane        Trumann, AR 72472—From Truman, AR, go northwest on Hwy 463 N for 2.6 miles, then left onto CR 652 for 1.6 miles, then left onto Stacy Ln for 600 ft, worksite is on the left.</p> <p>Worksite is controlled/operated by the employer.</p>	<p>6. Address of Order Holding Office (include Telephone number) / Dirección de la Oficina donde se radica la oferta (incluya el número de teléfono):        P.O. Box 2991 501-693-2372        Little Rock, AR 72003</p> <p>a. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (Incluya el número de teléfono de su línea directa).        John Newkirk        501-693-2372</p>
<p>3. Address and Directions to Housing / Domicilio y Direcciones al lugar de vivienda:</p> <p>17070 Stacy Lane        Trumann, AR 72472—From Truman, AR, go northwest on Hwy 463 N for 2.6 miles, then left onto CR 652 for 1.6 miles, then left onto Stacy Ln for 600 ft.</p> <p>a) Description of Housing / Descripción de la vivienda:</p> <p>Trailer with 6 beds, 2 bathrooms, kitchen, living &amp; laundry facilities available. Total occupancy—6</p> <p>Housing is owned by the employer.</p>	<p>7. Clearance Order Issue Date / Fecha de Emisión de la Orden de Empleo:        12-4-17</p> <p>8. Job Order Expiration Date / Fecha de Vencimiento o Expiración de la Orden de Empleo:        7-1-18</p> <p>9. Anticipated Period of Employment / Período anticipado o previsto de Empleo:        From / Desde: 02/15/2018 To / Hasta: 11/15/2018</p> <p>10. Number of Workers Requested / Número de Trabajadores Solicitados:        6</p> <p>11. Anticipated Hours of Work per Week / Horas Anticipadas/Previstas de Trabajo por Semana. Total: 48</p> <p>Sunday / Domingo _____ Thursday / Jueves <u>9</u>        Monday / Lunes <u>9</u> Friday / Viernes <u>9</u>        Tuesday / Martes <u>9</u> Saturday / Sábado <u>3</u>        Wednesday / Miércoles <u>9</u></p> <p>12. Anticipated range of hours for different seasonal activities: / Rango previsto de horas par alas diferentes actividades de la temporada:        8:00 am to 6:00 pm</p> <p>13. Collect Calls Accepted from: / Aceptan Llamadas por Cobrar de:        Employer / Empleador: Yes / Si <input type="checkbox"/> No <input checked="" type="checkbox"/></p>

14. Describe how the employer intends to provide either 3 meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare meals / Describa cómo el empleador tiene la intención de ofrecer, ya sea 3 comidas al día a cada trabajador, o proporcionar gratuitamente instalaciones para cocinar.

Employer will furnish free and convenient cooking and kitchen facilities so that workers may prepare their own meals. Employer will provide transportation once a week to assure workers access to stores where they can purchase groceries, if the employer is providing cooking and kitchen facilities.

15. Referral Instructions and Hiring Information / Instrucciones sobre cómo Referir Candidatos/Solicitantes - (Explain how applicants are to be hired or referred, and the Employer's/Agent's available hour to interview workers / Explique cómo los candidatos serán contratados o referidos, y las horas disponibles del empleador/agente para entrevistar a los trabajadores). See instructions for more details / Ve a las instrucciones para más detalles.

Please contact David @ 870-930-5635 M-F 8:00 a.m. – 5:00 p.m.

Potential U.S. workers (referrals) will be accepted from the local Job Service Office, through word-of-mouth, gate hires (walk-up workers), and other sources. All applicants should be thoroughly familiarized with the job specifications and terms and conditions of employment on the job order.

16. Job description and requirements / Descripción y requisitos del trabajo:

Operating large farm equipment and machinery equipped with GPS, including a self-propelled sprayer, for cultivating, tilling, fertilizing, planting, and harvesting grain and oilseed crops such as rice, corn, soybeans; transporting crops from field to storage facilities; walking fields pulling off-type weeds; grain bin maintenance; drying rice; assisting with the operation and maintenance of irrigation systems, polypipe & flood; driving pickup to obtain parts and supplies; daily repairs and maintenance to equipment, machinery, buildings and fences. May have to work nights, possibly weekends. Employer may request but cannot require workers to work on their Sabbath; maintaining of worksite and equipment; also cleaning location and equipment; rate of pay may be more depending on experience.

Three (3) months experience required for the job duties listed. Must be able to obtain a drivers license within 30 days following hire and obtain clean driving record. Be able to lift up to 75 lbs. Once hired, worker may be required to take a random drug test at no cost to the worker. Testing positive or failure to comply may result in immediate termination from employment.

1. Is previous work experience preferred? / Se prefiere previa experiencia? Yes / Si  No  If yes, number of months preferred: / Si es así, numero de meses de experiencia: 3

2. Check all requirements that apply:

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> Certification/License Requirements / Certificación/Licencia Requisitos</li> <li><input checked="" type="checkbox"/> Driver Requirements / Requisitos del conductor</li> <li><input type="checkbox"/> Employer Will Train / Empleador entrenará o adiestrará</li> <li><input type="checkbox"/> Extensive Sitting / Estar sentado largos ratos</li> <li><input checked="" type="checkbox"/> Exposure to Extreme Temp. / Expuesto a Temperaturas Extremas</li> <li><input checked="" type="checkbox"/> Lifting requirement / Levantar o Cargar <u>75</u> lbs./libras</li> <li><input checked="" type="checkbox"/> Repetitive Movements / Movimientos repetitivos</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Criminal Background Check / Verificación de antecedentes penales</li> <li><input checked="" type="checkbox"/> Drug Screen / Detección de Drogas</li> <li><input type="checkbox"/> Extensive Pushing and Pulling / Empujar y Jalar Extensamente</li> <li><input checked="" type="checkbox"/> Extensive Walking / Caminar por largos ratos</li> <li><input checked="" type="checkbox"/> Frequent Stooping / Inclínándose o agachándose con frecuencia</li> <li><input type="checkbox"/> OT/Holiday is not mandatory / Horas Extras (sobre tiempo) / Días Feriados no obligatorio</li> </ul> |
|--|---|

17. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)							
Crop Activities	Hourly Wage	Piece Rate / Unit(s)	Special Pay (bonus, etc.)	Deductions*	Yes/Si	No	Pay Period / Período de Pago
Cultivos	Salario por Hora	Pago por Pieza / Unidad(es)	Pagos Especiales (Bono, etc.)	Deducciones			/ /
Grain, Oilseed Crops	\$10.38	\$		Social Security / Seguro Social	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Weekly / Semanal
	\$	\$		Federal Tax / Impuestos Federales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	\$	\$		State Tax / Impuestos Estatales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bi-weekly / Quincenal
	\$	\$		Meals / Comidas	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	\$	\$		Other (specify) / Otro (especifica)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Monthly/Mensual
							Other/Otro
							<input type="checkbox"/>

18. More Details About the Pay / Mas Detalles Sobre el Pago:

Reasonable repair cost of damage from deliberate destruction, other than that caused by normal wear and tear, will be deducted from the earnings of workers found to have been responsible for damage to housing or furnishings.  
 Employer guarantees 1st week wages of \$498.24

19. Transportation Arrangements / Arreglos de Transportación

The employer shall provide transportation between the place where the employer has provided housing to the actual work site and return at the end of the work day. Such transportation will be without cost to the worker, and the means of transportation shall meet all applicable safety standards. Refer to ETA 790 Attachments, page 3, Item 17 – Transportation – paragraph 2.

20. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, and/or pay workers for this (these) crop activity (ies)? / ¿Es la práctica habitual usar Contratistas de Trabajo Agrícola para reclutar, supervisar, transportar, dar vivienda, y/o pagarle a los trabajadores para este(os) tipo(s) de cosecha(s)? Yes / Si  No

If you have checked yes, what is the FLC wage for each activity? / Si contesto "Si," cuál es el salario que le paga al Contratista de Trabajo Agrícola por cada actividad?

21. Are workers covered for Unemployment Insurance? / ¿Se le proporcionan Seguro de Desempleo a los trabajadores? Yes/Si  No

22. Are workers covered by workers' compensation? / ¿Se le provee seguro de compensación/indemnización al trabajador: Yes/Si  No

23. Are tools, supplies, and equipment provided at no charge to the workers? / ¿Se les proveen herramientas y equipos sin costo alguno a los trabajadores? Yes/Si  No

24. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None".) / Enumere todos los acuerdos o convenios hechos con los propietarios del establecimiento o sus agentes para el pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique "Ninguno".)

None

25. List any strike, work stoppage, slowdown, or interruption of operation by the employees at the place where the workers will be employed. (If there are no such incidents, enter "None".) / Enumere toda huelga, paro o interrupción de operaciones de trabajo por parte de los empleados en el lugar de empleo. (Si no hay incidentes de este tipo, indique "Ninguno".)

None

26. Is this job order to be placed in connection with a future Application for Temporary Employment Certification for H-2A workers? / ¿Esta orden de empleo ha sido puesta en conexión con una futura solicitud de certificación de empleo temporal para trabajadores H-2A?

Yes/Si  No

27. Employer's Certification: This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. / Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones del empleo que se le ofrece, y contiene todos los términos y condiciones materiales ofrecidos.

David Gairhan President

Employer's Printed Name & Title / Nombre y Título en Letra de Molde/Imprenta del Empleador

SIGN  
HERE

*David Wayne Gairhan*

Employer's Signature / Firmé y Título del Empleador

10-27-17

Date / Fecha

**READ CAREFULLY**, In view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the Employment and Training Administration (ETA) nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the American Job Center constitute a contractual job offer to which the American Job Center, ETA or a State agency is in any way a party.

**LEA CON CUIDADO**, En vista de la función básica del Servicio de Empleo establecida por ley, como una entidad de intercambio laboral sin comisiones, es decir, como un foro para reunir a los empleadores y los solicitantes de empleo, ni ETA ni las agencias del estado pueden garantizar la exactitud o veracidad de la información contenida en las órdenes de trabajo sometidas por los empleadores. Ni ninguna orden de trabajo aceptado o contratado en el Centro de Carreras (American Job Center) constituyen una oferta de trabajo contractuales a las que el American Job Center, ETA o un organismo estatal es de ninguna manera una de las partes.

**PUBLIC BURDEN STATEMENT**

The public reporting burden for responding to ETA Form 790, which is required to obtain or retain benefits (44 USC 3501), is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. The public need not respond to this collection of information unless it displays a currently valid OMB Control Number. This is public information and there is no expectation of confidentiality. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

**DECLARACION DE CARGA PÚBLICA**

La carga de información pública para responder a la Forma ETA 790, que se requiere para obtener o retener beneficios (44 USC 3501), se estima en aproximadamente 60 minutos por respuesta, incluyendo el tiempo para revisar las instrucciones, buscar fuentes de datos existentes, recopilar y revisar la colección. El público no tiene por qué responder a esta recopilación de información a menos que muestre un número de control OMB válido. Esta información es pública y no hay ninguna expectativa de confidencialidad. Envíe sus comentarios acerca de esta carga o cualquier otro aspecto de esta colección, incluyendo sugerencias para reducir esta carga, al U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

28. Use this section to provide additional supporting information (including section Box number). Include attachments, if necessary. / Utilice esta sección para proporcionar información adicional de apoyo; incluya el número de la sección e incluya archivos adjuntos, si es necesario.

The employer must furnish to the worker on or before each payday in one or more written statements the following information:

- (1) The worker's total earnings for the pay period;
- (2) The worker's hourly rate and/or piece rate of pay;
- (3) The hours of employment offered to the worker (showing offers in accordance with the threefourths guarantee as determined in paragraph (i) of this section, separate from any hours offered over and above the guarantee);
- (4) The hours actually worked by the worker;
- (5) An itemization of all deductions made from the worker's wages;
- (6) If piece rates are used, the units produced daily;
- (7) Beginning and ending dates of the pay period; and
- (8) The employer's name, address and FEIN.

**20 CFR 653.501  
Assurances**

**INTRASTATE AND INTERSTATE CLEARANCE ORDER**

The employer agrees to provide to workers referred through the clearance system the number of hours of work per week cited in Item 11 of the clearance order for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 working days prior to the original date of need by so notifying the Order-Holding Office (OHO). If the employer fails to notify the OHO at least 10 working days prior to the original date of need, the employer shall pay eligible workers referred through the intrastate/interstate clearance system the specified hourly rate or pay, or in the absence of a specified hourly rate or pay, the higher of the Federal or State minimum wage rate for the first week starting with the original anticipated date of need. The employer may require workers to perform alternative work if the guarantee is invoked and if such alternative work is stated on the job order.

The employer agrees that no extension of employment beyond the period of employment shown on the job order will relieve the employer from paying the wages already earned, or specified in the job order as a term of employment, providing transportation or paying transportation expenses to the worker's home.

The employer assures that all working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws.

The employer agrees to expeditiously notify the OHO or State agency by telephone immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over recruitment, or other factors have changed the terms and conditions of employment.

The employer, if acting as a farm labor contractor, has a valid farm labor contractor registration certificate.

The employer assures the availability of no cost or public housing which meets applicable Federal and State standards and which is sufficient to house the specified number of workers requested through the clearance system.

The employer also assures that outreach workers shall have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107.

Employer's Name David Gairhan

Date: 10-27-17



Employer's Signature David Wayne David Purs

**Besides the material terms and conditions of the employment, the employer must agree to these assurances if the job order is to be placed as part of the Agricultural Recruitment System. This assurance statement must be signed by the employer, and it must accompany the ETA Form 790.**

**Item 9 - Wage Rates, Special Pay Information, and Deductions**

(A) The Adverse Effect Wage Rate (AEWR) of \$10.38 per hour. Pay the wage that is the highest of the AEWR, the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment. The employer assures that if a change in the AEWR requires an increase in the guaranteed minimum, such increase will be paid as of the effective date of the increase. Assurance provided that the highest wage will be paid at the time work is performed, for every hour or portion thereof worked, including any adjustments during a work contract period upon notification from the U.S. Department of Labor. All deductions not required by law are itemized and reasonable.

(B) Employer will not deduct for FICA and State Taxes for foreign workers, but will make the following deductions:      Advances      Meals   X   Other (explain) No deductions will be made which would bring the employee's hourly wage below the Federal Minimum Wage. (Reference; Internal Revenue Service Publication 51, Circular A, Agricultural Employer's Tax Guide) Reasonable repair cost of damage from deliberate destruction, other than that caused by normal wear and tear, will be deducted from the earnings of workers found to have been responsible for damage to housing or furnishings.

(C) Employer will      will not   X   pay the worker a bonus of \$      Per     , based on      Quality picking      end of season      Other       
Anticipated date by which payments will be made     .

(D) In accordance with Departmental regulations 20 CFR sec. 655.122(o)(1) "the employer must guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total period beginning with the first workday after the arrival of the worker at the work place of employment or the advertised contractual first date of need, whichever is later, and ending on the expiration date specified in the work contract or in its extensions, if any." "if, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes the fulfillment of the contract impossible, the employer may terminate the work contract. **Whether such an event constitutes a contract impossibility will be determined by the CO.** In the event of such termination of a contract, the employer must fulfill a three-fourths guarantee for the time that has elapsed from the start of the work contract to the time of its termination, as described in paragraph (i)(1) of this section. Employer guarantees to offer employment for a minimum of 3/4 of the workdays of the total specified period during which the work contracts and all extensions thereof. The employer must make efforts to transfer the worker to other comparable employment acceptable to the worker, consistent with existing immigration law, as applicable. If such transfer is not affected, the employer must: (1) Return the worker, at the employer's expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the worker's next certified H-2A employer, whichever the worker prefers; (2) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment; and (3) Pay the worker for any costs incurred by the worker for transportation and daily subsistence to that employer's place of employment. Daily subsistence must be computed as set forth in paragraph (h) of this section. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved."

(E) Payroll periods will be: Weekly   X   Twice Monthly     . Workers will be provided with an earnings statement on or before each payday, which contains at a minimum, the hours actually worked, total earnings, and all deductions. The statements will comply with 20 CFR 655.122(j)(m). Assurance all earnings records and statements will be available for inspection or transcription by the Secretary or a duly authorized and designated representative, and by the worker or representatives designated by the worker.

(F) Employer will provide worker referred through the interstate clearance system   48   hours of work for the week beginning with the anticipated date of need, *unless* employer has amended the date of need by notifying the local office no later than 10 days before the date of need. If employer fails to notify the order-holding office, then employer shall pay an eligible worker referred through the clearance system \$ 10.38 per hr. for the first week starting with the originally anticipated date of need. Employer will      will not   X   not require worker to perform alternative work if the guarantee cited in this section is invoked. Abandonment of employment or termination for cause. If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, and the employer notifies the NPC, and DHS in the case of an H2A worker, in writing or by any other method specified by the Department or DHS in a manner specified in a notice published in the Federal Register not later than 2 working days after such abandonment occurs, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of that worker under this section, and the worker is not entitled to the three-fourths guarantee described in paragraph (i) of this section. Abandonment will be deemed to begin after a worker fails to report for work at the regularly scheduled time for 5 consecutive working days without the consent of the employer.

**Item 10 - Anticipated Hours of Work:**

  9   hours per day is normal. The worker may be requested, but not required, to work   9   hours per day and/or the Sabbath depending upon the conditions of the crop.

**Item 11: Tools, Supplies and Equipment:** Employer will provide all required tools, equipment and supplies at no cost to the worker.

**Work Contract:** A copy of the work contract and the Job Clearance Order will be provided the worker by the employer no later than the day work commences.

**Number of Workers:** The employer expects the total number of workers to be used in this occupation to   6   of which   6   will be H2A workers. These numbers are estimates as total workforce needs are dependent upon weather, crop conditions and worker availability.

**Item 13 - Board Arrangements (Check applicable blanks):**

     Employer will provide 3 meals per day and will deduct \$      per day; or  
  X   Employer will furnish free and convenient cooking and kitchen facilities so that workers may prepare their own meals. Employer will provide transportation to assure workers access to stores where they can purchase groceries, if the employer is providing cooking and kitchen facilities.

**Item 14 - Description of Housing:** 17070 Stacy Lane Trumann, AR 72472 Trailer with 6 beds, 2 bathrooms, kitchen, living & laundry facilities available. Total occupancy—6 Housing is owned by the employer.

Available housing is for   X   Single worker(s)      Worker with family.

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Description: Housing will be clean and in compliance with OSHA Housing Standards at 29 CFR 1910.142 when occupied. Workers will be responsible for maintaining housing in a neat, clean manner.

Reasonable repair cost of damage, other than that caused by normal wear and tear, will be deducted from the earnings of workers found to have been responsible for damage to housing or furnishings.

Housing and utilities are provided at no cost to workers who are unable to return to their place of residence the same day.

**ITEM 17 – TRANSPORTATION:**

The employer shall provide transportation between the place where the employer has provided housing to the actual work site and return at the end of the work day. Such transportation will be without the cost to the worker, and the means of transportation shall meet all applicable safety standards. The employer assures that outbound and advance transportation and subsistence will be provided/paid by the employer, whether in the U.S. or abroad, where the worker completes the work contract period or is terminated without cause and no subsequent H-2A employer is available.

\*\*After the worker has completed 50% of work contract period, employer shall reimburse worker for cost of transportation and subsistence from the place from which the worker has come to work for the employer. If the worker completes the work contract period, or if the employee is terminated without cause, and the worker has no immediate subsequent H-2A employment, the employer will provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer. If the worker has contracted with a subsequent employer who has agreed in such work contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsistence employer's worksite the subsequent employer must provide or pay for such expenses. The employer is not relieved of its obligation to provide or pay for return transportation and subsistence if an H2A worker is displaced as a result of the employer's compliance with the 50 percent rule as described in sec.655.135(d) of this subpart with respect to the referrals made after the employer's date of need. The amount of transportation payment will be equal to the most economical and reasonable similar common carrier transportation charges for the distances involved. \*\* Up to \$51.00 day with receipts, up to \$38.25 per partial day with receipts - \$12.07 day without receipts.

**ASSURANCES:**

The employer agrees to abide by the regulations at 20 CFR 655.135 The employer must provide written assurance that from the time the foreign workers depart for the employer's place of employment, the employer must provide employment to any qualified, eligible U.S. workers who applies to the employer until 50 percent of the period of the work contract has elapsed. Start of the work contract timeline is calculated from the first date of need stated on the *Application for Temporary Employment Certification*, under which the foreign worker who is in the job was hired.

**Termination:** Employer may terminate worker with notification to the nearest Job Service if worker: (a) refuses without justified cause to perform work for which the worker was recruited and hired; or (b) commits a serious act of misconduct; or (c) fails, after completing any training or break-in period, to be able to perform all of the tasks described in the job order. In the event of termination occurring as a result of employment, or in the event of termination resulting from an Act of God, the employer will pay or provide reasonable costs of return transportation and subsistence to the place of recruitment. Additionally, the employer will reimburse worker for reasonable costs of transportation and subsistence incurred by the worker to get to the place of employment. If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, and the employer notifies the NPC, and DHS in the case of an H2A worker, in writing or by any other method specified by the department or DHS in a manner specified in a notice published in the Federal Register not later than 2 working days after such abandonment occurs, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of that worker under this section, and the worker is not entitled to the three-fourths guarantee described in paragraph (l) of this section. Abandonment will be deemed to begin after a worker fails to report for work at the regularly scheduled time for 5 consecutive working days without consent of the employer.

**CLEARANCE ORDER ASSURANCES  
(20 CFR 653.501)**

By filling an interstate clearance order, the employer agrees to abide by the interstate clearance order regulations and makes the following assurances:

1. The employer will provide workers referred through the employer's Clearance Order with a full week of employment for the week beginning with date of need stated in Item 5 of the Clearance Order, unless the employer amends such date of need at least 10 working days prior, by so notifying the appropriate ES office. The employer will pay workers recruited through this Clearance Order the rate specified in the Clearance Order for the first weeks starting with the original date of need. The employer retains the option, however, of requiring the worker to perform the alternative work specified in the Clearance Order, if the guarantee in this section is invoked.
2. In the event that the period of employment is extended beyond that specified in the Clearance Order, the employer will not be relieved from paying the wage already earned, and from providing transportation or paying transportation expenses as provided in the Clearance Order regulations.
3. The working conditions of this job offer comply with applicable Federal and State minimum wage, child labor, social security, health and safety, migrant and seasonal farm worker and other employment related laws.
4. The employer will expeditiously notify the appropriate ES office by telephone upon learning that his/her crop is maturing earlier or later, or that weather conditions, over recruitment, or other factors have changed the terms and conditions of employment being offered by the employer.
5. The employer, if acting as a Farm Labor Contractor (FLC) or Farm Labor Contractor Employer (FLCE) on the order, has a valid FLC certificate or FLCE identification card.
6. The employer will provide housing which meets Federal standards and is sufficient to house the number of workers requested through the Clearance System. The housing will be provided at no cost to the workers who are referred on this order, and when applicable, family members, as provided in Item 14 of the Clearance Order, who are unable to return to their residence on the same day.
7. Employment Service staff (including outreach workers) shall have reasonable access to workers in the conduct of outreach activities, pursuant to 20 CFR653.107 and 20 CFR 653.501
8. This job order describes the actual terms and conditions of the employment being offered by the employer and contains all the material terms and conditions of the job.

REFERRAL INSTRUCTIONS

Potential U.S. workers (referrals) will be acceptable from the local Job Service Office, through word-of-mouth, gate hires (walk-up workers), and other sources. All applicants should be thoroughly familiarized with the job specifications and terms and conditions of employment on the job order. Only workers meeting all qualifications on the job order should be referred by the Job Service Office. In the event the employer receives phone calls or walk-up workers interested in the job offer, the employer must inform the worker of the job requirements and duties, must consider the worker for the job based on the workers qualifications, and must report the results in the final recruitment report submitted to U.S. Department of Labor.

The best days and times of day for the local Job Service Office to contact the employer concerning referrals are as follows:

X  M  X  T  X  W  X  TH  X  F From  8 : 00 am to  :00 am and From  :00 pm to  5 :00 pm  
  M   T   W   TH   F From  : 00 am to  : 00 am and From  : 00 pm to  : 00 pm  
  M   T   W   TH   F From  : 00 am to  : 00 am and From  : 00 pm to  : 00 pm  
  M   T   W   TH   F From  : 00 am to  : 00 am and From  : 00 pm to  : 00 pm  
  M   T   W   TH   F From  : 00 am to  : 00 am and From  : 00 pm to  : 00 pm

The scheduling of the employer’s personal and telephone interviews of referrals will be coordinated by the employer with the local job service office. Personal interviews may be conducted at the local job service office.

ASSURANCE OF RENEWAL OF WORKER’S COMPENSATION COVERAGE DURING WORK CONTRACT PERIOD

This serves as an assurance that should I receive certification of my H-2A application, I will have a valid worker’s compensation insurance policy during the job contract period for any worker I employ under the H-2A program. Additionally, once I purchase my workers compensation insurance coverage, I will provide to your office the company’s name, policy number, and effective dates.

This also serves as an assurance that should my worker’s compensation insurance policy expire during the work contract period in which I employ workers under the H-2A program, I will renew my worker’s compensation insurance policy to cover the workers.

Additionally, once I do renew the worker’s compensation policy, I will provide the company’s name, policy number, and effective dates to the Certifying Officer, U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Chicago National Processing Center, 11 W. Quincy, Chicago, IL 60604

REQUEST FOR CONDITIONAL ACCESS INTO INTERSTATE CLEARANCE SYSTEM

I,  David Gairhan , hereby request permission for conditional entry into the interstate clearance system so that my job order can be transmitted to labor supply states in a timely manner and facilitate the recruitment of domestic workers.

As a condition for placing my order into interstate clearance, I assure that my housing will meet such standards as are agreed upon to fulfill the requirement of the U.S. Secretary of Labor for the use of the employment Service facilitate for interstate clearance orders.

I also authorize representatives of the State Employment Service, the State Health Department, and/or the U.S. Employment and Training Administration to inspect the housing that I am offering such workers at any reasonable time to verify its condition. I expect my housing to be occupied by  02/15/2018 . Based upon the above date, my housing will meet applicable standards by  01/15/2018  (30 days prior to anticipated occupancy date).

SIGN HERE   
 SIGNATURE OF EMPLOYER

02-27-17   
 DATE