

**Barbara McDowell and Gerald S. Harman Foundation
Six Month Grant Report
North Carolina Justice Center**

We filed a class action on behalf of a group of H-2A worker who were not paid correctly by the H-2A Labor Contractor they worked for on December 11, 2015. The case, Jose Carmen Gallegos Gallegos, et al. v. Becerra Enterprises, Inc., and Luis Alfonso Becerra, was filed in the U.S. District Court for the Eastern District of North Carolina, Case No. 4:15-cv-00196.

Mr. Gallegos brought claims on behalf of himself and all others similarly situated under the Fair Labor Standards Act ("FLSA"), North Carolina Wage and Hour Act, North Carolina common-law of contract, Florida Constitution's Minimum Wage Provisions, and the Florida common-law of contract. Mr. Gallegos alleges that the defendants did not pay him or his H-2A coworkers the Adverse Effect Wage Rate (AEWR) required by participation in the H-2A program for all hours worked during some workweeks while they worked in Florida from December 2013 through May 2014 or while they worked in North Carolina from June 2014 through November 2014. Although the pay stubs provided to Mr. Gallegos and his colleagues reported that they were being paid at least the AEWR for all hours worked, Mr. Gallegos alleged that the hours he and his colleagues worked each week were often underreported on their check stubs, sometimes by more than 20 hours. This resulted in violations of the wage payment provisions under the North Carolina and Florida statutes, breached the contract between Becerra and the H-2A workers, and sometimes resulted in violations of the Fair Labor Standards Act's minimum wage provisions. He also alleges that defendants did not fully reimburse Mr. Gallegos and the other H-2A workers for visa and inbound transportation costs- expenses which are for the benefit of the employer – resulting in minimum wage damages. Seven of Mr. Gallegos former H-2A colleagues have filed consent to sue forms in order to participate in the FLSA claims.

Soon after the case was filed, counsel for defendant contacted us to discuss settlement. We have reviewed some of defendant's pay and time records for the period that Mr. Gallegos was employed by him, as well as documents about his company's and his own personal finances. At this stage, we think it is likely that over the next six months we will resolve this case through a settlement agreement.

There are many other H-2A Labor Contractors operating in North Carolina, however, and over the next six months we also intend to continue looking for other clients and opportunities to curtail the expansion of H-2A Labor Contractor abuse through litigation. We are actively investigating one case involving an H-2A Labor Contractor and fixed site employer. Our goal remains to hold these "deep pockets" liable for the labor contractor's wage and hour violations.

The attorneys working on this case and other H-2 Labor Contractor issues are:

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