



SHORTCHANGED

The Big Business Behind the Low Wage
J-1 Au Pair Program

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ABOUT THE AUTHORS

The **INTERNATIONAL HUMAN RIGHTS LAW CLINIC (IHRLC)** is one of ten law clinics within the Clinical Program at American University Washington College of Law (WCL). The Clinical Program is designed to give students the opportunity to represent real clients with real legal problems, to handle litigation from beginning to end, to explore and address pressing legal and policy issues with institutional clients, and to learn lawyering skills at both a practical and theoretical level. Both the collaboration with the co-authors in producing the report as well as the topic exemplify the IHRLC's commitment to giving students the opportunity to represent non-U.S. citizens and non-profit organizations working to defend the human rights of foreign nationals in the U.S. and abroad.

CENTRO DE LOS DERECHOS DEL MIGRANTE, INC. (CDM) envisions a world where migrant worker voices are respected and policies reflect their voices and experiences. CDM's innovative approach to legal advocacy and organizing accompanies workers in their hometowns, at the site of recruitment, and in their U.S. worksites through legal services, community education and leadership development, and policy advocacy. CDM's Migrant Women's Project (Proyecto de Mujeres Migrantes, or "ProMuMi") promotes migrant women's leadership in advocating for just labor and immigration policies that respond to the particular challenges that women face when migrating to the U.S. for work.

The **INTERNATIONAL LABOR RECRUITMENT WORKING GROUP (ILRWG)** is a coalition of nearly 30 organizations and academics that works alongside internationally recruited workers, analyzes labor markets and economic conditions, and advocates for all working people. The ILRWG's transformative analysis across labor sectors makes clear that recruitment abuses are systemic, rather than visa specific, and that our current patchwork of disparate rules and lax enforcement allows and even incentivizes recruiters and employers to abuse workers. In February 2016, the ILRWG formalized a committee dedicated to strengthening protections for workers on J-1 visas. For more information about the ILRWG, visit www.fairlaborrecruitment.wordpress.com.

The **NATIONAL DOMESTIC WORKERS ALLIANCE (NDWA)** is the nation's leading voice for dignity and fairness for the millions of domestic workers in the United States. Founded in 2007, NDWA works for the respect, recognition, and inclusion in labor protections for domestic workers, most of whom are women. The alliance is powered by 60 affiliate organizations, plus local chapters in Atlanta, Durham, Seattle, and New York City, of over 20,000 nannies, housekeepers, and direct care workers in 36 cities and 17 states.

EXECUTIVE SUMMARY

Informed by au pairs' firsthand accounts, this report explores structural deficiencies in the J-1 au pair program that contribute to labor rights abuses. Au pairs report wage theft, coercion, sexual harassment, retaliation, and misrepresentation, among other abuses. Among the range of temporary work visas available to domestic workers, the J-1 au pair program is the only program masquerading as a cultural exchange. Indeed, au pairs report that work, rather than cultural exchange, is the central component of their experience. Au pairs report that their sponsor agencies communicate competing narratives about the program to them and to their host family employers: while sponsor agencies and their foreign affiliates promise au pairs a cultural exchange program at the time of recruitment, sponsor agencies advertise the program to host families as an affordable and flexible childcare program, electing not to emphasize the educational and cultural exchange components. Sponsor agencies' profit motives prevent au pairs from accessing support when they face abuses. When au pair and host family interests come into conflict, au pairs report that sponsor agencies side with families, putting au pairs at risk of coercion, labor exploitation, and human trafficking.

This report also highlights the U.S. State Department's failure to exercise meaningful oversight over sponsor agencies and over the

business relationships between host family employers and sponsor agencies, which in turn conceals labor rights violations. The State Department's continued mischaracterization of the program as a cultural exchange rather than a work program enables sponsors and host families to abuse au pairs, while lack of enforcement by the State Department allows these abuses to persist.

We recommend transferring oversight of the au pair program to the Department of Labor to strengthen protections of au pairs' rights. Until the transfer occurs, we recommend that the State Department bolster oversight, accountability, transparency, and enforcement. To counter the economic coercion that au pairs report, we recommend that the State Department ban sponsor agencies from charging au pairs recruitment fees and that au pairs be paid a fair hourly wage without deductions for room and board. We recommend that the State Department consult with the Departments of Labor and Homeland Security to ensure au pairs do not face barriers to justice while in the United States or after returning to their countries of origin. We recommend that the State Department facilitate au pairs' ability to change employers. Finally, we recommend that au pairs receive a contract at the time of recruitment and know-your-rights training upon arrival in the United States.

J-1 AU PAIR PROGRAM

A WORK PROGRAM THAT LACKS WORKER PROTECTIONS

BACKGROUND

The au pair program is one of fourteen temporary migration programs administered by the U.S. State Department under the J-1 Exchange Visitor Visa Program. In 2017, 20,353 “exchange visitors” came to the United States to work as au pairs.¹ According to the statute, the J-1 program is intended as an educational and cultural exchange program.² Indeed, the State Department bills the program as a cultural exchange in which foreign nationals live and participate in the home life of a host family, providing childcare for the family while attending a post-secondary educational institution. According to program guidelines, au pairs are not meant to serve as general housekeepers or to assume the role of household management.³

The J-1 au pair program requires that participants be between the ages of 18 and 26, proficient in spoken English, and high school graduates or the equivalent.⁴ Furthermore, au pairs must be personally interviewed in English and pass both a physical exam and a background check.⁵ Program regulations also establish the host families’ and sponsor agencies’ roles and responsibilities. The regulations require that an au pair provide no more than 10 hours a day or 45 hours a

week of childcare for the host family and take a minimum of 6 educational credits at a post-secondary institution during the au pair year.⁶ It is the host family’s responsibility to facilitate the enrollment and attendance of the au pair in the post-secondary educational institution by ensuring that the au pair has adequate transportation to attend classes and by paying up to \$500 (\$1,000 for EduCare participants) towards the cost of enrollment. EduCare is a subcategory of the J-1 au pair program in which au pairs work up to 30 hours per week and attain at least 12 rather than 6 academic credits.⁷ Au pairs are legally entitled to a private bedroom, meals, one-and-a-half days off each week, a full weekend off each month, and two weeks of paid vacation.⁸ Au pairs are legally entitled to wages that comply with federal standards. However, sponsor agencies limit au pair wages to \$4.35 per hour; their legal justifications for doing so are currently the subject of litigation.⁹

WORK, RATHER THAN CULTURAL EXCHANGE, DEFINES THE AU PAIR PROGRAM.

Au pairs interviewed for this report describe their initial attraction to the au pair program’s three advertised components: to enjoy an immersive experience in American culture, to strengthen their English or other skills through academic coursework, and to provide childcare services as a part of their host families. In practice, however, all interviewees found work to be the central focus of the program: in many cases, J-1 au pairs described performing childcare activities to such an extent and at such a low cost that it compromised their ability to participate in



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Au pairs are treated as underpaid domestic workers.

	J-1 AU PAIR PROGRAM PARTICIPANTS	EDUCARE PARTICIPANTS
MAXIMUM WORK HOURS	No more than 10 hours a day or 45 hours a week of childcare for the host family.	No more than 10 hours a day or 30 hours a week of childcare for the host family.
MINIMUM EDUCATIONAL CREDIT	Six educational credits.	Twelve educational credits.
MAXIMUM EDUCATION STIPEND	Host families must provide a maximum of \$500 towards the required coursework.	Host families must provide a maximum of \$1,000 towards the required coursework.
WEEKLY WAGE	Paid weekly based on a 45-hour work week. ¹⁰	EduCare participants receive 75 percent of the predetermined weekly wage that is required for non-EduCare participants.
TIME OFF	One weekend off per month and one-and-a-half days off per week.	One weekend off per month and one-and-a-half days off per week.
VACATION	Two weeks.	Two weeks.

meaningful cultural activities or meet their academic requirement.

Rather than being treated with dignity and respect as valuable participants in a “mutually rewarding”¹¹ cultural exchange program, many au pairs are treated as underpaid domestic workers, or worse.¹² Interviewed au pairs report cleaning and cooking for the entire family, while not being allowed to eat with them. Others report sexual harassment or racist comments from host families and working such long hours that they are unable to pursue the academic portion of the program to their satisfaction. Au pairs also report host families intentionally deterring them from the academic portion of the program. For instance, one au pair interviewed for this report stated:

“I wanted [to] take my 6 credits of classes but I didn’t get the full \$500 dollars for classes because my host family said that the class I wanted was too expensive. They played a psychological game with me so that I could feel guilty for asking for something expensive. They took advantage of the fact that I couldn’t communicate well.”¹³

Although au pairs can be required under the program to work up to 45 hours per week as caregivers, the State Department and the designated sponsor agencies that implement the program emphasize the cultural exchange and education aspects of the program. The mischaracterization of au pairs as cultural exchange visitors rather than workers results in a vacuum of oversight that allows employers to overwork au pairs, underpay them on a regular basis, and deprive them of the benefits of the program and of their basic human rights.

THE AU PAIR PROGRAM LACKS MEANINGFUL GOVERNMENT OVERSIGHT.

The State Department administers the J-1 au pair program but has proven itself both ill-equipped to oversee a work program and inadequate at protecting against the abuses that au pairs commonly report. Characterizing the J-1 au pair program as a work program, advocates, scholars, and even the State Department’s Office of Inspector

General have questioned the appropriateness of using J-1 visas for the au pair program and have suggested shifting oversight to the Department of Labor.¹⁴ Although au pairs can complain to the Department of Labor¹⁵ with respect to some minimum wage violations, the State Department’s administration of the program as a whole is a barrier to workplace

justice, quality employment, and other existing labor protections.¹⁶

State Department-designated sponsor agencies¹⁷ are responsible for implementing and regulating the J-1 au pair program.¹⁸ Although the program also establishes regulations for sponsor agencies, ultimately, sponsor agencies that fail to comply face few

WHEN "FRANCISCA" LEARNED about the J-1 au pair program, it seemed like a perfect fit. She thought that the program, branded as a cultural exchange, was an ideal opportunity to have an adventure while improving her English. When she arrived in the United States, however, "Francisca" felt she had been misled by duplicitous advertising that had simultaneously billed the exchange to her host family as a means to employ cheap labor. Although the sponsor agency told her she would only be responsible for childcare, "Francisca" soon discovered that her host family expected her to run errands, clean the house, do the laundry, and garden. Her host family went so far as to cancel their house-keeping service after "Francisca" arrived. On top of this, the host family required

"Francisca" to perform uncompensated, overtime work while they berated her for studying English, a fundamental element of the J-1 au pair program’s cultural exchange offering. When "Francisca" complained to her local counselor, she found her to be unsupportive. Although the program was "advertised as an amazing experience" for au pairs, "Francisca" felt this was a misrepresentation because "[y]ou’re not actually a part of the family." She noted that the incompatible "expectations towards the au pair, and au pair towards the cultural exchange" ultimately "becomes a problem." Disillusioned with the program, "Francisca" now understands that it’s "not easy to get the experience you actually want" because au pairs "are too vulnerable."¹⁹

Structure of Au Pair Program

U.S. GOVERNMENT AGENCIES
Participants pay State Department visa application fees.
Sponsors pay State Department designation and predesignation fees.
EMPLOYERS, PARTICIPANTS, SPONSORS, AND DOMESTIC AGENTS
Employers pay participants for work performed.
Participants may pay program fees to sponsors.
Sponsors may pay domestic agents for assistance.
OVERSEAS AGENTS
Participants may pay program fees to overseas agents.
Overseas agents may pay sponsors a portion of program fees.

consequences.²⁰ While in theory, sponsor agencies that do not comply with federal regulations may be expelled from the J-1 au pair program, in practice, the State Department exercises limited oversight over the sponsor agencies: As of 2014, the State Department had not expelled or even sanctioned an agency in 8 years,²¹ despite receiving numerous complaints. Even when the State Department sanctions sponsors, the sanctions rarely result in “meaningful consequences.”²² The failed oversight is largely due to the State Department’s reliance on sponsor agencies’ self-reporting.²³ According to the State Department’s website, the responsibility of reporting serious problems lies with the sponsor agencies.²⁴ Even when sponsor agencies report complaints to the State Department, the State Department does not have the capacity to follow up on them, with fewer than forty total employees overseeing the entire J-1 program, which issued nearly 340,000 visas in 2016.²⁵

The J-1 au pair program regulations require that sponsor agencies employ local

counselors – often called LCC’s – for monthly and quarterly check-ins with au pairs.²⁶ In theory, local counselors could provide an effective monitoring mechanism, were they to operate as independent, third-party evaluators. Instead, au pairs report that their complaints largely fail to result in material improvements because local counselors all too often are unsupportive or side with the host family.²⁷ Indeed, sponsor agencies support local counselors through commissions for recruiting and retaining host families.²⁸ Even if a host family has violated the regulations, the regulations do not impose consequences for the family or indicate that the family will be prevented from participating in the program in the future.²⁹ One au pair expressed her frustration with sponsor agencies’ bias towards families, saying:

“This agency only recruits girls to use and exploit. If the family treats you badly, they don’t care. They don’t support you. The local coordinators support the family at all times. The au pair is alone. She doesn’t have anyone’s support. It’s a scam.”³⁰

EXPLOITATION AND ABUSES OF AU PAIRS

ABUSES BEGIN AT THE TIME OF RECRUITMENT.

In administering the J-1 program, the State Department outsources the selection of au pairs to designated sponsor agencies that often recruit workers through foreign affiliates.³¹ Sponsors and their foreign affiliates are responsible for conducting background checks and ensuring that au pairs meet the J-1 program’s conditions and qualifications.³²

The State Department does not require au pair sponsor agencies to disclose their relationships with foreign affiliates and recruiters, thereby obscuring responsibility

for recruitment abuses. Form DS-3036, the application to be a sponsor agency, requires that prospective sponsor agencies disclose to the State Department the “Role of Other Organizations Associated with Programs (if any)” with whom they will work for recruitment or any other purpose.³³ While this field is mandatory, applicants can also fill the field with “N/A.”³⁴ Regardless, the State Department does not make this information publicly available, nor does it request or publish the full set of fees and costs that sponsor agencies and their affiliates charge au pairs. This lack of transparency conceals the relationships between sponsors and their affiliates

"ANTONIA'S" FIRST HOST FAMILY placement as a J-1 au pair quickly went from bad to worse. Initially, her host family expected her to work overtime and refused to give her breaks or days off. Not only did her host family fail to pay her for the extra hours she worked, but after a few weeks, they stopped paying her altogether. When "Antonia" asked about her salary, her host mother yelled at her, threatened her, and told her that the "five au pairs before [her] did more than [she] did and did not complain." After "Antonia" asked her local counselor to intervene, her host family took away her access to the internet, leaving "Antonia" feeling "isolated and scared." Finally, one night, her host family entered her private room, packed

all her clothes into a trash bag, and kicked her out of the house. Instead of supporting "Antonia" or connecting her with legal or social services, her sponsor agency threatened to kick her out of the program and send her home if she didn't find another host family within two weeks. Although "Antonia" was ultimately able to find another host family and remain in the United States, she was traumatized by this experience. "It is unfair that all of the au pairs in the U.S. feel scared to talk and feel unprotected from the government and anyone else," she said. "There is no one supervising how the au pairs are doing and how they are treated. It's something the government should be doing."³⁵

and insulates sponsors from responsibility for abuses that local recruiters commit.

The State Department does not oversee the activities of these foreign recruiters. Instead, it relies on the designated sponsor agencies to monitor the activities of their foreign affiliates and staff.³⁶ The lack of direct oversight by the State Department enables recruiters to disregard the requirements set out by the regulations. As one au pair explained:

"[The recruiters] have a business mindset. For example, they are supposed to ... interview [you] in English to test your ... language skills. I did my interview in my native language and they just translated the interview."³⁷

Recruiters commonly charge prospective au pairs recruitment fees in addition to the sponsor's fees (interview fees, visa application fees, airfare, etc.), which can amount to several thousands of dollars.³⁸ Nearly half of interviewed au pairs reported paying between \$1,500 and \$2,500 in recruitment and sponsor fees.³⁹ Websites hosted by sponsor agencies like Cultural Care Au Pair advertise

similar figures. While prospective applicants may pay as much as \$3,000 in countries like China,⁴⁰ an analysis of Cultural Care Au Pair's foreign affiliates shows that au pairs are charged \$1,750, on average, to participate in the au pair program.⁴¹ Of this amount, applicants pay roughly \$1,500 directly to Cultural Care Au Pair, while the remainder goes to pay for visa application fees, background checks, international drivers licenses, and the like.⁴² Such a high entry cost can place a very large financial drain on participants.⁴³ Au pairs who incur these expenses often are faced with the pressure of paying off the loans they borrowed to cover recruitment agencies' unregulated fees.⁴⁴ This burden can push au pairs "to remain in exploitative or abusive placements" until they are able to recover their losses.⁴⁵

As gatekeepers to J-1 opportunities, recruiters often wield significant power over the au pairs they hire and the au pairs' employment relationships in the United States. For au pairs who suffer workplace violations, retaliation is a real concern: one au pair, whose recruiter had close ties to her univer-

sity, was concerned that the recruiter would prevent her from completing her degree if she filed a complaint with the State Department.⁴⁶ Another au pair described how her sponsor agency disqualified her from future J-1 au pair opportunities in an act of retaliation.⁴⁷

AU PAIRS SUFFER WORKPLACE ABUSES, PROGRAM VIOLATIONS, AND HUMAN TRAFFICKING.

Au pairs endure the gamut of workplace abuses that low-wage and low-income workers in the U.S. experience, including wage theft, sexual harassment and other forms of discrimination, contract misrepresentation, and in the worst cases, forced labor.⁴⁸ By and large, au pairs' experience is much like that of other domestic workers in the United States. Both are overwhelmingly female.⁴⁹ Both are also "essentially on-call" in circumstances where "the limits to work that would normally apply in a job simply do not exist."⁵⁰ Au pairs interviewed for this report experienced a range of recurring workplace abuses, including discrimination, emotional abuse, and verbal abuse. Interviewees most commonly reported facing coercion to work at unfair pay rates and violations of program regulations established to fulfill au pairs' basic needs.

COERCED TO WORK: AU PAIRS ARE OVERWORKED AND UNPAID.

Although au pairs are entitled to basic labor protections under the Fair Labor Standards Act (FLSA) as well as state and local wage



TOWARDS JUSTICE

Joanna Paola Beltran, named plaintiff in the class action suit of 91,000 au pairs against their sponsor agencies for a range of abuses.

protections, those protections are not enforced. As a result, au pairs are paid a standard, weekly rate that amounts to approximately \$4.35 per hour.⁵¹ Meanwhile, although the regulations purport to limit au pairs to 45-hour workweeks and restrict their duties to the childcare-specific work, au pairs routinely report working longer hours and doing housework and other duties beyond the scope of their legally defined employment.⁵² Au pairs interviewed for this report consistently stated that their hours far exceeded the program's mandates. One au pair explained,

"They were expecting me to work as a maid. I worked with them more than fifty hours. Even when they were home I was still working. They wanted me to do a lot of home services; I ended up cleaning the house alone. [The family imposed] car rules and curfew rules."⁵³

When host families force their au pairs to work overtime and fail to provide au pairs with fair and consistent schedules, the J-1 au pair program resembles an exploitative labor program more than a cultural exchange program. One au pair in Boston explained:

COST OF J-1 AU PAIR PROGRAM PARTICIPATION	
PERCENTAGE	COST
15%	\$2,001 - \$2,500
31%	\$1,501 - \$2,000
39%	\$1,001 - \$1,500
15%	\$500 - \$1,000

Based on responses of J-1 au pairs interviewed

“It’s not a cultural exchange program, it’s a labor program...[For one] of the families, I worked more than 45 hours per week, and [the host mother] didn’t pay me after a few weeks. I asked her for the money, and she got very upset, was mean and threatening. She took away my access to the Internet. I felt isolated and scared. I only stayed with [the host family] for 3-4 months. I asked them for my money, and the family refused. The LCC reminded the family once more that they needed to pay me. [Instead] the family decided to kick me out of the house. They took all of my clothes, put them in a trash bag and kicked me out that night. I had to stay with the LCC, and only had two weeks to find another family – if not, I’d be sent home.”⁵⁴

Sometimes, a host family offers to compensate the au pair additional wages for working more than 45 hours per week.⁵⁵ These additional wages, however, generally do not

meet federal, state, or local overtime requirements. Some au pairs report that their host families do not pay them for overtime and instead expect them to take on extra responsibility as “being part of the family.”⁵⁶

Sponsor organizations tell families that in exchange for the labor performed by au pairs, host families are responsible for paying au pairs a weekly stipend of \$195.75, claiming that this stipend is the equivalent of paying an au pair the federal minimum wage of \$7.25 for 45 hours per week, less 40% to account for the cost of room and board.⁵⁷

Au pairs are currently challenging this calculation in an ongoing class action lawsuit in Colorado, *Beltran v. InterExchange, Inc.*, which alleges that the sponsor organizations are violating not only minimum wage and overtime laws, but also federal antitrust law and state-law fraud protections.⁵⁸ The plain-

BARBARA HAD HIGH HOPES to travel to the U.S. through the J-1 au pair program to learn English and gain professional experience. After paying nearly \$1,500 in fees to a sponsor agency, Barbara was accepted into the program and granted a visa, was matched with a host family, and traveled to the U.S. for preliminary training. Before ever meeting her host family in person, however, Barbara’s sponsor agency suddenly accused her of being unfit for work, citing a section of her application that had previously been approved. When restricted phone

access made it impossible for her to contact either her host family or her own family back in Mexico, Barbara had nowhere to turn. Unwilling to hear her case, Barbara’s sponsor agency forced her to return home and forfeit her recruitment fee only days after arriving. When Barbara attempted to re-apply to the J-1 au pair program again through a different sponsor agency, she was horrified to discover that her first sponsor agency had filed a report accusing her of misusing her visa. As a result, Barbara was marked ineligible, and her application was denied.⁵⁹

Case Study: Cultural Care Au Pair Fees by Region

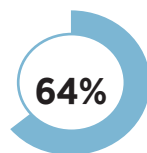
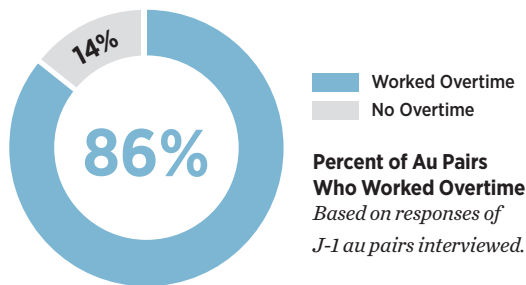
Based on survey of Cultural Care Au Pair Foreign Affiliates’ Listed Fees⁶⁰



tiffs allege that the sponsors' stipend amount violates federal, state, and local minimum wage rules and deprives them of earned overtime premiums. They also assert that the sponsors colluded to set that wage, which accounts for neither the number of children an au pair cares for nor her geographic location, in violation of the antitrust laws. Finally, the plaintiffs allege that the sponsors fraudulently misrepresented the au pair program, au pairs' ability to negotiate their wages, and the wages the au pairs were entitled to receive.

The Federal District Court of Colorado has determined that the au pairs in *Beltran* have viable claims in each of these areas. In particular, the au pairs are proceeding with minimum wage claims under federal, state, and various local laws, and the Court has explained that FLSA bars the practice of deducting room and board from wages where, as in the case of au pairs, live-in employment is a program requirement for the benefit of the employer.⁶¹ The Court further concluded that the au pairs have a viable claim for overtime, since au pair sponsor agencies are employers who "may not avail themselves of the [domestic worker] overtime exemption, even if the employee is jointly employed by the individual or member of the family or household using the services."⁶²

The Court additionally found that the au pairs have a viable claim against the sponsor agencies for wage fixing and recently certified a class of over 91,000 current and former au pairs to proceed with that claim.⁶³ The court also certified classes under the Racketeer Influenced and Corrupt Organizations Act (RICO), state minimum wage laws and state fraud rules.⁶⁴ The au pairs are also proceeding collectively with federal wage and hour claims under the FLSA's collective action mechanism.



Never Paid for Overtime Work



Occasionally Paid an Overtime "Bonus"



Paid an Overtime "Bonus"

"Bonuses" included extra food, gift cards, and sub-minimum wage payments.

NEEDS DENIED: PROGRAM REQUIREMENTS ARE NOT MET.

As a general matter, au pairs report that the program fails to guarantee access to the basic material needs and services promised under the J-1 au pair program. Despite program requirements that host families guarantee transportation to classes,⁶⁵ some au pairs interviewed for this report stated that they did not have access to transportation to attend their required classes or to leave the house on their days off.⁶⁶ Although host families are also required to provide au pairs with a private bedroom and meals,⁶⁷ some au pairs reported that their host families offered them shared or inadequate living quarters,



CENTRO DE LOS DERECHOS DEL MIGRANTE, INC.

Some au pairs are not allowed basic fresh food and are only allowed to eat leftovers.

ALTHOUGH BEATRIZ WAS TOLD she would earn a flat-rate salary of \$195.75 per week as a J-1 au pair, she never expected to be literally worked sick. After putting in excessive, unpaid overtime hours to keep up with one family's demands, Beatriz fell ill. Unable to take breaks to even visit the restroom, Beatriz eventually had to seek treatment for a bladder infection. At the doctor's office, however, she was also diagnosed with chronic stress headaches as a result of being overworked. After Beatriz fainted during another visit to the doctor's office, her host family called her at the hospital to reprimand her for being late to pick up the children. Another host family would constantly

monitor her whereabouts outside of work, going so far as to surveil her internet use and to plant a GPS on the car she used. She began to question why her host families would treat au pairs in such a degrading manner, observing that "[t]hey take more care of their pets than us. The pets are part of the families but we are humans. Why do they treat us like that?" Reflecting further, Beatriz continued: "In Mexico when I was doing my degree, I was writing a thesis. I was writing a theory about violence but not experiencing it. . . I realized that the things I was studying in Mexico about violence and discrimination I was experiencing [in the U.S.] in first person."⁶⁸

refused to buy basic fresh food, and only allowed the au pair to eat leftovers from family meals.⁶⁹ One au pair reported that her host family forced her to eat food to which she was allergic.⁷⁰ In another placement, her host family made her sleep in a cold basement, which was also their children's and dog's play area.⁷¹ Abusive circumstances like these caused several of the au pairs to suffer short- and long-term emotional and psychological harm.⁷²

REPORTS OF TRAFFICKING: THE AU PAIR PROGRAM ABANDONS WORKERS.

In addition to abuses reported by au pairs in the interviews conducted for this report, recent exposés and litigation reveal that the exploitative nature of the au pair program can render participants vulnerable to trafficking.⁷³ A 2012 State Department Trafficking in Persons (TIP) Report states that au pairs and others on short-term visas are particularly vulnerable to human trafficking.⁷⁴ In Chicago, for example, after jobs four au pairs secured through a sponsor agency, Au Pair in

America, fell through, a convicted pimp beat, raped, and terrorized the women into forced prostitution and into working in his massage parlors. District Judge Robert Gettleman, who presided over the criminal trial, later remarked that the workers' sponsor agency, Au Pair in America, "basically cut them loose."⁷⁵

This egregious case is not isolated. From January 1, 2014 through December 31, 2017, the National Human Trafficking Hotline, operated by Polaris, received reports of 25 potential victims of trafficking who were on J-1 au pair visas. The majority of these potential victims were trafficked for the domestic work they were providing in the home, though some were forced into commercial sex or other forms of labor. Almost all of the potential victims were forced to work by their employers, though for 28% of the potential victims, the sponsor or recruiter was also involved in the potential trafficking. The most frequently reported forms of force, fraud, and coercion included: fraud or misrepresentation related to job duties; verbal abuse; economic abuse including withholding pay or creating debts or quotas; excessive work-

ing hours; withholding needs or wants; and withholding important documents including identification or immigration paperwork.

Twenty percent of the au pairs reported experiencing physical abuse.⁷⁶

PROFIT-DRIVEN MONITORING AND LOBBYING

STATE DEPARTMENT DELEGATES AUTHORITY TO SPONSOR AGENCIES.

The State Department is responsible for overseeing the sponsor agencies and ensuring that these agencies comply with the regulations governing the au pair program.⁷⁷ The State Department relies almost exclusively on sponsor agencies' self-reports for compliance determinations, resulting in scant monitoring and enforcement. The State Department is required to review a sponsor agency's "summary of the annual survey of host families and au pairs, all complaints received and their resolutions, and all situations that result in the placement of an au pair with more than one host family."⁷⁸ Despite these responsibilities, the State Department fails to respond to au pair exploitation, while both au pairs and sponsor agencies face strong incentives to underreport labor rights violations.⁷⁹

The Office of Private Sector Exchange, the State Department division responsible for overseeing the au pair program, has only about forty employees charged with this monitoring work. This small group of employees is responsible for overseeing not just the au pair program, but all fourteen J-1 Visa Exchange Visitor Programs, which issued nearly 340,000 visas to participants coming to work in the United States in 2016.⁸⁰ As such, the State Department's reliance on self-reporting effectively outsources what minimal oversight exists in the program to the sponsor agencies. This practice affords sponsor agencies a large amount of discretion over the implementation of program regulations.⁸¹ The resulting breakdown in

the chain of meaningful oversight serves as a barrier to justice for au pairs.

Under J-1 program regulations, au pair sponsor agencies have the responsibility to fully monitor each au pair placement and are required to have a local counselor contact the au pair and the host family on a monthly basis.⁸² The local counselor is then required to maintain a record of the monthly contact and has the "obligation to report unusual or serious situations or incidents involving either the au pair or host family."⁸³ When there is an incident "involving or alleging a crime of moral turpitude or violence," the local counselor must promptly notify the State Department.⁸⁴ However, the sponsor agency can exercise discretion in determining whether a violation is serious enough to report.⁸⁵ As a result, sponsor agencies often do not report, much less address, rampant violations of the au pair exchange program, such as a host family's mistreatment of au pairs.⁸⁶

Interviews with au pairs suggest that local counselors' roles vary widely. An au pair interviewed for this report stated that:

"I think the role of the [Local Counselor (LCC)] was never complete. [The LCC] was playing a role, like she took care of us, but she didn't care about us. I felt like my agency just put [LCCs] in control of the situation. I felt that the program was more about money, like selling girls. It was unfair because they were treating us like we were a new dog that they adopted."⁸⁷

Au pairs report that sponsor agencies frequently make local counselors responsible for receiving au pair complaints, and that these counselors often fail to take reports of

RAQUEL STAYED WITH HER HOST family for four months before they abruptly kicked her out of the house. During those four months, Raquel had struggled to meet her basic needs. Although the J-1 au pair program requires host families to provide au pairs with food, a private room, time off, and transportation to their English classes, Raquel's experience fell far short of meeting those expectations. Upon her arrival, Raquel discovered that her family was vegetarian, so she often had to save her own money to buy the food she needed to stay healthy. However, even when she wanted to eat vegetarian food, she had to wait until her host family was finished eating to serve herself,

and even then, Raquel faced harassment from family members during meals. Further exacerbating the food insecurity, her host family would sometimes pay her four or five days late to punish her for not doing extra work like housekeeping and dishwashing that was outside the scope of her responsibilities as an au pair. Likewise, they would punish her by denying her access to their car or refusing to let her leave the house altogether in the evening. With no access to public transportation, Raquel was entirely reliant on the host family's car. As a result of the restrictions on both her time and her transportation, Raquel was never able to enroll in English classes.⁸⁸

noncompliance seriously. Whether a non-compliant host family is held accountable for misconduct is at the discretion of the sponsor agencies.⁸⁹

As mentioned earlier, sponsor agencies and their recruiters wield significant control over the visa that allows an au pair to remain in the U.S.⁹⁰ Many au pairs report being afraid to voice complaints about their workplace condition for fear of retaliation, against which the J-1 program offers little protection.⁹¹ One au pair interviewed for this report shared that the fear of being sent home deterred her from lodging a complaint about wage theft and safety. In her words:

"It was creepy. I avoided any contact with the father. I lived in the house but I tried to just do my work. I had a plan to stay in the U.S. so I tried to suck it up and keep going... If the situation were different I would have said something... There were always periods where [I] didn't get paid for a few weeks. It was really hard to budget. I didn't want to tell my supervisor because I was scared that I would not find a new family in two weeks as required to re-match, and would have to go back to [my country]."⁹²

Retaliation concerns, compounded by the pressures of recruitment debt and low wages, limit au pairs' willingness to report workplace abuses.

SPONSOR AGENCIES' INTERESTS UNDERMINE WORKER PROTECTIONS.

Sponsoring au pairs is big business for the sixteen State Department-designated sponsor au pair agencies. Because host families are their main source of revenue, as a matter of economics, the agencies are allied to the families over the au pairs themselves. The State Department requires that an entity seeking designation—whether domestic or international—merely “[d]emonstrate that the organization or its proposed Responsible Officer has no fewer than three years’ experience in international exchange” and “meet at all times its financial obligations.”⁹³ A governmental, non-profit, or for-profit entity can become a designated sponsor so long as it pays a non-refundable application fee of \$3,982 and the State Department approves its application.⁹⁴

Although the vast majority of au pair sponsor agencies, including the largest ones, are for-profit, three are non-profits whose IRS filings provide a glimpse of the money they make through this program. Cultural Homestay International reported net earnings of \$1,592,045, and assets of \$9,316,720 in 2016.⁹⁵ InterExchange showed assets of \$25,833,778 in 2015, and most of its funding comes from program services revenue, primarily from host family fees.⁹⁶ EurAupair International showed \$99,090 in net profits and \$4,548,440 assets in 2016.⁹⁷

While au pair sponsor agencies present themselves to au pairs and the general public as benevolent organizations promoting cultural exchange, they advertise the program to families as affordable and flexible childcare. That is, au pairs are sold an experience, and families are sold cheap labor. This sales model enables sponsor agencies to benefit financially from au pairs' low wages and financial investment in the program.

Families, unlike au pairs, are repeat customers of sponsor agencies.⁹⁸ Au pairs' time in the program is limited, due to both the age restriction and that they must reside outside the United States for at least two years following the completion of an initial au pair program.⁹⁹ In addition, host families pay sponsor agencies much more in program participation fees than the fees the au pairs pay. For example, Cultural Care Au Pair charges families \$9,070 in fees, while it charges au pairs around \$1,500 in fees, on average, to participate in the J-1 au pair program.¹⁰⁰ Despite their official role as a mediator between families and au pairs, sponsor agencies derive more profit from families, resulting in a bias towards families when conflict arises.¹⁰¹ As one au pair explained:

“You have to keep in mind that even though you're paying the agency, the host families are also paying. And in a larger quantity, they are the principal client of the agencies. The families need au pairs every year but an au pair can only stay for a determined time. Because of this, even when they should defend the rights of au pairs, they give you advice so as not to harm the families.”¹⁰²

SPONSOR AGENCIES LOBBY FOR THEIR BOTTOM LINE, NOT FOR AU PAIRS.

Sponsor agencies have strong incentives to lobby against wage increases and labor protections and to silence reports of abuse.¹⁰³ While information on for-profit sponsor agencies' net profits is not publicly available, Guidestar reports that nonprofit sponsor agencies have profits and assets worth millions of dollars, almost all of which are derived from program fees.¹⁰⁴ Still, the sponsor agencies have mobilized host families to lobby against higher wages for au pairs, arguing that such wage increases would necessarily be passed on to the families and destroy their access to the affordable childcare program.¹⁰⁵ Legislative aides describe the au pair lobby as incredibly powerful in its ability to leverage host families to create the appearance of a grassroots organizing effort when in reality they are lobbying on their own behalf.¹⁰⁶ Au pair sponsor agencies spend tens of thousands of dollars on lobbying efforts every year, directly and through a lobbying organization known as the Alliance for International Exchange.¹⁰⁷

In 2013, the au pair lobby successfully mobilized other J-1 sponsor agencies to achieve a carve-out for all J-1 visa holders from a federal legislative effort to protect internationally recruited workers from labor exploitation and human trafficking.¹⁰⁸ The proposed anti-trafficking legislation would have banned the exorbitant recruitment fees that recruiters charge to J-1 au pairs and other workers, leaving them vulnerable to trafficking and abuses. The sponsor agency lobby opposed the legislation and rallied host families against it. Au Pair Mom Blog, a popular source of information and discussion for host families, reprinted a letter from the au pair industry lobbying group Alliance for International Exchange arguing that the legislation would “[m]ake the program more expensive for American host families by creating new programmatic fees; [c]reate more regulatory complexity for American host families... and [e]ndanger the future of this important cultural exchange program.”¹⁰⁹ The result was an

“**MY BIG ISSUE** is how the program is sold... I feel like both sides are being sold something unrealistic. The families think they are getting cheaper nannies... It was sold as a cultural exchange [to me]... The company says you’ll be extra hands, but not that you’ll be an employee... When you come to the U.S. you think you’ll meet people, make money, learn English, but you cannot do any of that...They make forty-five hours seem flexible, but it’s not... I complained to the

[local counselor (LCC)] about the [lack of] food and feeling left out of the family, but the LCC did not care... LCCs were an intermediary between the au pair and the family, but as an au pair there was no use complaining to the LCC. She only cared about the client, [which is] the family. She did not care about the au pairs. She would only encourage us to do better. She only wanted the family to be happy and to have more families.”¹¹⁰

outry from host families and a carve-out for all J-1 visa holders from this critically needed worker protection.

Sponsor agencies also lobbied against the Domestic Worker Bill of Rights passed in Massachusetts, encouraging host families to contact the state legislature. In another letter reposted on the Au Pair Mom Blog, sponsor agency Cultural Care Au Pair reached out to parents arguing that the bill’s labor protections, if applied to au pairs, would “fundamentally change [the au pair program] for the worse.”¹¹¹ When the legislature deemed that the labor protections of the Domestic Workers Bill of Rights, including the higher Massachusetts minimum wage, did apply to au pairs, Cultural Care Au Pair sued the state of Massachusetts in an attempt to block those protections. Cultural Care Au Pair lost the case.¹¹² In response, Cultural Care Au

Au Pair Sponsor Agencies are Multi-Million Dollar Companies

Cultural Homestay International

\$9,316,720 in assets **\$1,592,045** in net profits

InterExchange

\$25,833,778 in assets

EurAupair International

\$4,548,440 in assets **\$99,090** in net profits

Pair stated that, “[w]e are disappointed in the ruling and will be taking immediate steps to exercise any and all legal remedies available to correct this ruling and, if necessary, appeal the decision.”¹¹³ An appeal was filed on November 1, 2017.¹¹⁴

When advocates proposed a bill to protect internationally recruited workers from recruitment fees and other recruitment-related abuses in Maryland, sponsor agencies also fought back, mobilizing host families and local coordinating counselors to testify in opposition to the bill. One host parent writing to oppose the bill expressed his view that, due to existing State Department oversight and monthly sponsor agency check-ins, the proposed bill would be “duplicious and a burden,” also stating that the proposed bill “would make it impossible for our family to utilize the au pair exchange program to meet

\$19,053.23

Cultural Care’s advertised annual cost of employing an au pair, only half of which is paid directly to the au pair.

our childcare needs.”¹¹⁵ Another host family went so far as to claim that, because they were providing food, lodging, and the use of their car, that their “au pair makes \$42,583 a year.”¹¹⁶ However, materials published by sponsor agency Cultural Care refute this claim. On its website, Cultural Care advertises that the annual cost to employ an au pair runs \$19,053.25, with only half of this amount paid directly to the au pair.¹¹⁷ More importantly, not only can worker protections coexist with a robust J-1 au pair program, but they are also critically necessary for ensuring that the program is not marred by further abuse. Nevertheless, sponsor agencies’ response to these proposals reveals how far they will go to oppose worker protections when they threaten the agencies’ ability to collect fees.

At the heart of the sponsor agencies’ lobbying efforts is the argument that the J-1 au pair program is not a work program, but rather a cultural exchange program. This argument conveniently enables sponsor agencies to obstruct meaningful labor protections for vulnerable au pairs and preserve their profits.

EXCLUDING AU PAIRS FROM LABOR PROTECTIONS PERPETUATES ABUSES AND GENDER INEQUALITY.

Sponsor agencies’ efforts to carve au pairs out of worker-protective legislation are damaging not only to au pairs but also to all domestic workers. Devaluing au pair work reinforces the gendered and harmful stereotype that domestic and caregiving work is not real work deserving of equal labor protections. Rather than seeing domestic work as skilled labor, the rhetoric of “false kinship”—e.g., “the au pair is part of the family”—and “cultural exchange” blurs the definition of work and enables host families to demand work far outside au pairs’ proscribed childcare duties.¹¹⁸

Generally, domestic workers enjoy far fewer labor rights than other workers. The lack of labor protections for domestic workers is rooted in the history of the Fair Labor Standards Act (FLSA), the landmark 1938



Domestic workers from Matahari Women Workers’ Center, a member of the National Domestic Workers’ Alliance, spearheaded advocacy efforts to pass the Domestic Workers Bill of Rights in Massachusetts. Governor Deval Patrick signed the bill into law in July of 2014.

legislation that established basic labor rights such as a minimum wage. However, Congress codified legacies of racism and sexism by excluding from FLSA protections for domestic and agricultural work, occupations historically held by slaves, African Americans, and immigrants.¹¹⁹ In 1974, Congress amended FLSA to include some domestic workers, but it still excluded live-in domestic workers from overtime pay and excluded providers of “companionship” services from both overtime pay and minimum wage requirements.¹²⁰ Unfortunately, in implementing the amendment, the “companionship” exception was defined broadly to include many home health aids.¹²¹ In 2015, the Department of Labor narrowed the FLSA exemptions to more closely define “companionship” services and to prohibit third-party employers from invoking the minimum wage and overtime exemptions for live-in domestic workers.¹²² Still, FLSA contains many carve outs for domestic workers.

Over the past several years, eight states have adopted a Domestic Workers’ Bills of Rights in an effort to correct some of these inequalities in the law.¹²³ Protections in each of these Domestic Workers’ Bill of Rights vary. Generally, these bills extend workplace protections to live-in domestic workers and eliminate labor law exclusions by, for example, including domestic workers under minimum wage and overtime protections, prohibiting harassment and discrimination, and

Nov 17, 2017



"Wolves in Sheep's Clothing"

Former Contractor - Local Childcare Coordinator - LCC in Baltimore, MD

Doesn't Recommend Negative Outlook

I worked at Cultural Care Au Pair as a contractor (More than a year)

Pros

Work from home, creative freedom in event planning

Cons

Extremely low pay, \$25/month per family and on call 24/7/365 - Duties include hosting a monthly meeting and three continuing education courses for the year, none of which carry any additional compensation. The only additional compensation is in the form of sales bonuses for new and repeat families.

No mileage reimbursement until over 60 miles from your home location - which is the radius of your territory.

\$100 flat rate for completing training, which is lengthy and involved

1099 employee - no benefits

Nice to your face, cutthroat behind your back

'Paid' travel for seminars and conferences is limited to \$250 round trip - good luck finding that. You'll also need to pay for your own hotel room if you don't want a roomie, whom you have no choice in the selection of.

Management will flat out lie to you, at both the regional and national levels.

A critical review of Cultural Care Au Pair written by a former employee on Glassdoor.com

GLASSDOOR.COM

Local counselors' compensation structure creates bias even at the lowest level of the sponsor agency. They earn as little as \$25 per host family per month for their work, which includes regular check-ins with au pairs, hosting events, and being on call 24/7.¹²⁸ However, local counselors can increase their salaries through commissions earned by recruiting new host families in their area and by retaining existing host families.¹²⁹ This commission for retaining host families creates an inherent bias towards host families when disputes arise. Au pairs regularly report both that local counselors ignore their valid complaints and that sponsor agencies support the claims

creating entitlement to meal and rest breaks as well as sick leave.¹²⁴ Through their lobby, au pair sponsor agencies have attempted to carve au pairs out of state-law protections under the Domestic Workers' Bills of Rights.¹²⁵ Even when state law protections exist, they are very rarely enforced, and au pair sponsor agencies do not respect local and state minimum wage laws, instead preferring to set a standard wage for all au pairs that is lower than federal, state, and local minimums.¹²⁶

In short, the au pair industry's objections to labor protections are thinly veiled efforts to maintain their business and to promote the J-1 au pair program to host families as inexpensive child care.

THE AU PAIR PROGRAM FAVORS FAMILIES OVER AU PAIRS.

In addition to a profit motive to lobby against labor protections, sponsor agencies also have a motive to side with host families over au pairs in disputes. This bias towards families is in direct conflict with sponsor agencies' State Department-assigned role as a dispute arbiter.¹²⁷ Au pairs who reach out to their local counselors often see their complaints go unaddressed. This conflict of interest impedes au pairs' access to justice.

of families who dismiss au pairs for invalid reasons.¹³⁰ In multiple cases, host families who made false accusations of child abuse against their au pairs faced no consequences, while the au pair was forced to leave the J-1 au pair program without a chance to defend herself.¹³¹ Meanwhile, the regulations contain no provision against retaliatory dismissal of au pairs.¹³² Instead, "[e]ven sometimes when the au pair is in the right, [sponsor agencies] support the family, offering them another au pair and pushing the previous au pair aside and on occasion, sending them back to their home country."¹³³ Even former local counselors report that the program favors families over au pairs.¹³⁴ The bias towards families and resulting power imbalance is not lost on au pairs.¹³⁵

This bias towards host families is not only unfair, but also dangerous for au pairs. While J-1 au pairs must pass a stringent criminal background check, host families are subject to a less thorough background check.¹³⁶ Most troublingly, sponsor agencies have continued to place au pairs with host families facing multiple allegations of abuse, while at the same time repatriating the au pairs who have complained of abuse.¹³⁷ In an interview, one au pair reported being told by her host family

“ERIKA” FOUND that the local coordinating counselor (LCC) working for her sponsor agency, Cultural Care Au Pair, consistently undermined her rights while protecting the interests of her host family. First, she found that her LCC’s guidance was confusing and misleading about the nature of her work. For example, the LCC both insisted that an au pair’s job was strictly childcare while also encouraging her to “take out the trash and help” and perform duties as a member the household. “Erika” found that it became difficult to set boundaries with her host family, especially when the LCC told her employers that au pairs “aren’t supposed to work more than 10 hours per day but... that if they need au pairs to work more hours, they can make arrangements with the au pairs.”

Over time, “Erika’s” host family became increasingly abusive, threatening to make her pay for things the children had broken and berating her for the smallest mistake. Only as conditions deteriorated did she discover that a previous au pair had run away, unable to bear the mistreatment. When “Erika” ultimately hit her breaking point and escaped from the ongoing abuse, her LCC threatened to kick her out of the program. When she shared emails and screenshots of the way the family was treating her, the LCC simply “didn’t know what to do.” In the end, while “Erika” ended up leaving the J-1 au pair program altogether, Cultural Care Au Pair took no steps to sanction the family, which continues to participate in the program.¹³⁸

that the previous au pair “had run away because she was crazy,” only to find out later that the family’s father had verbally abused that au pair and regularly threatened not to pay her.¹³⁹ When this au pair reported that she suffered similar abuse, neither her local counselor nor a manager from the sponsor agency took any action, even when presented with proof.¹⁴⁰ This au pair criticized the program’s biased structure, saying:

“The agency is more on the host family’s side. They never told me that my second family’s au pair had run away. The LCC [local coordinating counselor] gives more priority to the family because the family is paying Cultural Care more than what we pay. What we pay to enter the program is nothing compared to what the families pay. I think that’s why they don’t want to lose families even when the families cause issues. It’s unfair that the agency gives them that privilege. We should have equal privilege.”¹⁴¹

Any au pair who leaves her host family is allowed only two weeks to arrange a “re-match” with a new host family, and some sponsor agencies arbitrarily give au pairs

even less time.¹⁴² When an au pair fails to rematch, she must return to the home country, which means forfeiting international transportation expenses, program costs, and fees paid to foreign recruiters. Even worse, au pairs face the threat of “termination” from the program, a status that affects au pairs’ eligibility for future U.S. visas.¹⁴³ In 2016, sponsor agencies terminated 109 au pairs.¹⁴⁴ Au pairs report that, as a result of the potential consequences and the bias towards host families, they are often careful not to rock the boat by contesting any unfair treatment, even when it patently violates State Department regulations.¹⁴⁵

LIMITED STATE DEPARTMENT MONITORING AND ENFORCEMENT LACKS TRANSPARENCY.

The unequal power relationships between au pairs on the one hand and host families and sponsor agencies on the other is reflected in the number of complaints registered with the State Department. In response to a request for public records under the Freedom of Information Act by Centro de los Derechos

del Migrante, Inc. (CDM), the State Department was able to provide evidence of only two complaints for misconduct filed against either designated sponsor agencies or their Mexican affiliates between 2012 and March 2016.¹⁴⁶ Meanwhile, in January 2017 alone, 96 au pairs signed an online petition calling for better treatment of au pairs and complaining of their own poor treatment.¹⁴⁷

The low number of formal complaints may reflect that au pairs face barriers to filing

complaints or that sponsor agencies and their local counselors deter them from speaking out. Sponsor agencies may also fail to report complaints to the State Department, as required. The State Department could also be mishandling the complaints it receives. In any event, the evidence points to a clear breakdown in the J-1 au pair program's monitoring and enforcement mechanism.

CONCLUSION AND KEY RECOMMENDATIONS FOR PROTECTION OF AU PAIRS IN THE WORKPLACE

The State Department must exercise greater oversight over the J-1 au pair program to guarantee human rights protections for au pairs and access to justice for all domestic workers. Since the program's inception, sponsor agencies have sold it to host families as an affordable and flexible childcare program and to au pairs as an unparalleled cultural experience. As a result, au pairs participating in the program routinely experience a disparity between expectation and reality. Furthermore, the profit motives driving the J-1 au pair program prevent au pairs from accessing support when confronted with abuses. The combination of these financial incentives and the mischaracterization of the program allows host families to overwork au pairs, underpay them, and ultimately deprive them of their basic human rights.

Congress should overhaul the J-1 au pair program, transferring oversight from the State Department to the Department of Labor, which would rigorously vet and certify host families, monitor compliance with labor laws, eliminate eligibility for noncompliant host families, and hold them liable for abuses at all stages of the labor migration process. The Department of Labor would certify sponsors and regularly evaluate their compliance with program requirements. This overhaul should be designed and implemented with input from current and former au pairs.

Until the overhaul occurs, the State Department should consult and coordinate with the Departments of Labor and Homeland Security to ensure that the labor rights of

au pairs are strengthened and enforced, and that access to justice is ensured. The State Department should take the following steps:

OVERSIGHT AND ACCOUNTABILITY

- Utilize the sanctions at its disposal, revoking the designation of offending sponsor agencies that commit egregious offenses or repeat offenses.
- Hold sponsor agencies accountable for the actions of their recruiters.
- Detach local counselor salaries from incentives to recruit host families.
- Prohibit offending host families from hiring au pairs.
- Monitor and investigate sponsor agencies rather than relying on sponsor agency self-reporting as a mechanism for oversight.
- Perform exit interviews with au pairs upon departure in order to determine whether program goals have been met and regulations have been complied with.

TRANSPARENCY

- Create transparency in recruitment by requiring sponsor agencies and their foreign affiliates to publish all recruitment and employment-related information, including wages and host family information, so that prospective au pairs can evaluate sponsor agencies and host families, verify the terms of their employment, and make informed decisions about potential employment.
- Maintain a transparent, public database of complaints and sanctions.

FREEDOM FROM ECONOMIC COERCION

- In consultation and coordination with the Department of Labor, require that host families pay au pairs at least the prevailing wage for childcare workers in their area, and ban deductions for room and board.
- Require host families to cover all recruitment and transportation costs and fees. Until fees are eliminated, require sponsors and their foreign affiliates to publish all fees and costs so that prospective au pairs can make informed decisions about the economic burden they will bear.
- Increase the education stipend to cover the actual cost of the required credit hours at a local higher education institution.

ACCESS TO JUSTICE

- Guarantee a private right of action in federal court that will allow au pairs to hold sponsors and host families liable when they benefit from abusive recruitment practices, including deceptive promises during recruitment.
- Support efforts to ensure J-1 eligibility for federally funded legal services so that au pairs have meaningful access to justice in the United States.

FREEDOM OF MOVEMENT

- Facilitate au pairs' ability to change host families by creating a job-matching database of host families.

FREEDOM FROM RETALIATION

- In consultation and coordination with the Department of Labor, ensure au pairs are protected from retaliation by sponsor agencies or host families when they complain about working and/or housing conditions.
- In consultation and coordination with the Department of Homeland Security, ensure access to temporary visa status or deferred action and work authorization during the pendency of any proceedings in which au pairs assert labor or civil rights claims.

RIGHT TO A CONTRACT

- Require host families to provide au pairs with contracts that include the nature of the work to be performed and respect the au pair's free time and autonomy.

RIGHT TO KNOW

- In consultation and coordination with the Department of Labor, perform know-your-rights orientations for au pairs upon their arrival.

METHODOLOGY

This report is based on research conducted between 2016 and 2018 by students of the American University Washington College of Law's International Human Rights Law Clinic (IHRLC) and Civil Advocacy Clinic (CAC) and staff and volunteers from Centro de los Derechos del Migrante, Inc. (CDM). Researchers analyzed news articles, academic journals, and government websites, including federal regulations governing the program. Additionally, the report derives data from formal, in-depth interviews conducted with sixteen current and former au pairs in Washington, D.C., Maryland,

Boston, and New York, many of whom belong to the National Domestic Worker Alliance (NDWA) and local affiliate organizations, such as Matahari Women Workers' Center. Interviewees also include members of CDM's Migrant Defense Committee. The report cites anonymous au pair reviews posted on [Contratados.org](#), CDM's Yelp-like platform for migrant workers. The report's analysis draws on the authors' collective experience speaking with hundreds of au pairs. The voices of au pairs are central to this report, which is guided by au pair experiences and recommendations.

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- 6 22 C.F.R. §§ 62.31(a), (j)(2) (2018).
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- 25 OIG Inspection, *supra* note 14, at 22 (stating that the office tasked with monitoring the J-1 program employed thirty-three full time employees); Exchange Visitor Program—Fees and Charges, 78 Fed. Reg. 6263 (proposed Jan. 30, 2013) (promulgated with no changes and codified at 22 C.F.R. 62.17 (2018)) (requesting an increase in J-1 program fees in order to hire four new employees to monitor the program); Kopplin, *supra* note 22; U.S. State Department, Worldwide Nonimmigrant Visa Workload by Visa Category FY 2016, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVWorkload/FY2016NIVWorkloadbyVisaCategory.pdf> (last accessed March 26, 2018).
- 26 22 C.F.R. §§ 62.31(l)(1–3) (2018); *see also* Chuang, *supra* note 14, at 302.
- 27 *See, e.g.*, Interview by Au Pair WCL Clinical Student Attorney Group with Au Pairs (Interview #2562) in Boston, Mass. (March 24, 2017).
- 28 For a deeper discussion of financial incentives for counselors and favoritism to host families, *see infra*.
- 29 *See* Chuang, *supra* note 14, at 304.
- 30 Anonymous, Cultural Care Au Pair Review, *Contratados.org* (July 29, 2015) <http://contratados.org/es/content/cultural-care-au-pair> (translated from Spanish)
- 31 *See* 22 C.F.R. § 62.1(b) (2018). Many foreign affiliates fail to disclose their ties to a specific designated sponsor agency, creating a lack of transparency that leaves au pairs vulnerable to recruitment abuses. *See, e.g.*, Au Pair Mexico, <https://aupairmexico.com/> (last visited Mar. 26, 2018) (making no reference to its status as a foreign affiliate and failing to identify its affiliation with any designated sponsor agency).
- 32 *See* 22 C.F.R. § 62.10(a) (2018).
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- 35 Interview by Au Pair WCL Clinical Student Attorney Group with Au Pair (Interview #2557), Boston, Mass. (April 27, 2017).
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- 37 Interview by Au Pair WCL Clinical Student Attorney Group with Au Pair (Interview #2779), Washington, D.C. (December 12, 2017).
- 38 Chuang, *supra* note 14, at 301; *see also* Thrupkaew, *supra* note 12.
- 39 Interviews by Au Pair WCL Clinical Student Attorney Group, Centro de los Derechos del Migrante, Inc. with Au Pairs, Washington, D.C., New York, N.Y., Boston, Mass., Mexico City, Mexico (March 24, 2017–January 23, 2018).
- 40 *Project Cost*, CulturalCare.cn, <https://www.culturalcare.cn/why-cultural-care-au-pair/program-fee-other-costs> (last visited Mar. 26, 2018). Currency conversions made Mar. 27, 2018.
- 41 *See All Countries*, CulturalCare.com, <https://www.culturalcare.co.uk/countries> (last visited Mar. 26, 2018) (with links to fees charged by country). Currency conversions made Mar. 27, 2018.
- 42 *Id.*
- 43 *See* Thrupkaew, *supra* note 12.
- 44 *Id.*
- 45 *See* Chuang, *supra* note 14, at 335.
- 46 Chuang, *supra* note 14, at 305.
- 47 Interview by Centro de los Derechos del Migrante, Inc. with Au Pair (Interview #2406), Mexico City, Mexico (November 26, 2016).
- 48 *See* Thrupkaew, *supra* note 12; *see, e.g.*, Interview by Au Pair WCL Clinical Student Attorney Group with Au Pair (Interview #2553), New York City, N.Y. (April 8, 2017).
- 49 National Domestic Workers Alliance, Home Economics: The Invisible and Unregulated World of Domestic Work (2017), http://www.idwfd.org/en/resources/home-economics-the-invisible-and-unregulated-world-of-domestic-work/@@display-file/attachment_1 (last visited Mar. 26, 2018).
- 50 *Id.*

- 51 Kopplin, *supra* note 22.
- 52 Chuang, *supra* note 14, at 284; see Thrupkaew, *supra* note 12.
- 53 Interview by Au Pair WCL Clinical Student Attorney Group with Au Pair (Interview #2556), New York City, N.Y. (April 8, 2017).
- 54 Interview by Au Pair WCL Clinical Student Attorney Group with Au Pair (Interview #2557), Boston, Mass. (April 27, 2017).
- 55 Interviews by Au Pair WCL Clinical Student Attorney Group with Au Pairs (Interview #2562, #2558, #2563), Boston, Mass., New York City, N.Y. (March 24-25, 2017 & April 7-8, 2017, respectively).
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- 60 *All Countries*, CulturalCare.com, <https://www.culturalcare.co.uk/countries> (last visited March 26, 2018) (with links to fees charged by country). Currency conversions made Mar. 27, 2018.
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- 62 *Id.* at *41.
- 63 *Beltran v. InterExchange, Inc.*, No. 14-cv-03074-CMA-CBS, 2018 U.S. Dist. LEXIS 23940, at *26-*29 (D. Colo. Feb. 2, 2018)
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- 65 See 22 C.F.R. § 62, Appendix F (2018); see also *The Au Pair Exchange Program Brochure*, *supra* note 3.
- 66 Interview by Au Pair WCL Clinical Student Attorney Group with Au Pair (Interview #2558), New York City, N.Y. (April 7, 2017).
- 67 See 22 C.F.R. §§ 62.31(e)(6), 62, Appendix F (2018); see also *The Au Pair Exchange Program Brochure*, *supra* note 3.
- 68 Interview by Au Pair WCL Clinical Student Attorney Group with Au Pair (Interview #2780), Washington, D.C. (November 11, 2017).
- 69 Interviews by Au Pair WCL Clinical Student Attorney Group with Au Pairs (Interview #2558, #2566, #2553), New York City, N.Y. (March 24-25, 2017, April 7-8, 2017, respectively).
- 70 Interview by Au Pair WCL Clinical Student Attorney Group with Au Pair (Interview #2566), Boston, Mass. (March 24, 2017).
- 71 *Id.*
- 72 *Id.*
- 73 See Kopplin, *supra* note 22, exposing the lived realities of many au pairs who traveled to the United States under what they believed to be the protection of the U.S. State Department. One au pair, who was forced to work long hours illegally and provide her own food on her meager salary, reported that “[the families] think we are slaves.” This au pair, who was unable to reveal her true identity due to fear of retaliation, returned to Brazil. This exposé revealed that many au pairs in the United States are “overworked, humiliated, refused meals, threatened with arrest and deportation....” Kopplin’s reporting reveals not isolated incidents, as the U.S. State Department would have one believe, but systemic problems with the au pair program, which has gone virtually unchanged since its inception in 1986.
- 74 U.S. Dep’t of State, Trafficking in Persons Report 2017 (2017), <https://www.state.gov/documents/organization/271339.pdf> (last visited Mar. 26, 2018); see also Meghan Hampsey, *Myth: Human Trafficking Only Happens Abroad*, Human Rights First (Mar. 23, 2016), <https://www.humanrightsfirst.org/blog/myth-human-trafficking-only-happens-abroad>.
- 75 Annie Sweeney, *Convicted Pimp Sentenced to Life in Prison*, Chicago Tribune (Nov. 26, 2012), http://articles.chicagotribune.com/2012-11-26/news/ct-met-human-trafficking-sentence-20121127_1_message-parlors-life-sentence-illegal-immigrants.

- 76 Data from the National Human Trafficking Hotline, operated by Polaris, provided on May 9, 2018. Polaris data in general should not be taken as a comprehensive report on the scope of trafficking among au pairs as the data represents only cases reported to Polaris-operated hotlines. Note that Polaris did not systematically collect information on original visas types per victim of trafficking until January 2015, and, consequently, data from 2014 may only be partially representative of the information reported to Polaris during that time. Callers who did not specify they were au pairs may not have been recorded as such, and situations of ongoing trafficking may not have been revealed to Polaris at the time this data was provided.
- 77 See 22 C.F.R. § 62.31(m) (2018); *The Au Pair Exchange Program Brochure*, *supra* note 3.
- 78 See *id.*
- 79 Chuang, *supra* note 14, at 287; see also Kopplin, *supra* note 22.
- 80 See Worldwide NIV Workload by Visa Category, *supra* note 25; Thrupkaew, *supra* note 12.
- 81 See Worldwide NIV Workload by Visa Category, *supra* note 25.
- 82 22 C.F.R. § 62.31(l) (2018).
- 83 *Id.* at (l)(2–3).
- 84 *Id.* at (l)(4) (2008).
- 85 Chuang, *supra* note 14, at 301.
- 86 Chuang, *supra* note 14, at 287; see also Kopplin, *supra* note 22.
- 87 Interview by Au Pair WCL Clinical Student Attorney Group with Au Pair (Interview #2780), Washington, D.C. (November 11, 2017).
- 88 Interview by Centro de los Derechos del Migrante, Inc. with Au Pair (Interview #2758), Mexico City, Mexico (January 23, 2018).
- 89 Chuang, *supra* note 14, at 332.
- 90 Chuang, *supra* note 14, at 308; see Interview by Au Pair WCL Clinical Student Attorney Group with Au Pair (Interview #2563), Boston, Mass. (March 25, 2017).
- 91 Chuang, *supra* note 14, at 295, 300.
- 92 Interview by Au Pair WCL Clinical Student Attorney Group with Au Pair (Interview #2779), Washington, D.C. (December 12, 2017).
- 93 22 C.F.R. §§ 62.17, 62.2, 62.3 (2018).
- 94 See *id.*; DANIEL COSTA, GUESTWORKER DIPLOMACY 7 (2011) (CITING FORM DS-3036, EXCHANGE VISITOR PROGRAM APPLICATION).
- 95 *Cultural Homestay International*, GUIDESTAR.ORG, HTTP://WWW.GUIDESTAR.ORG/REPORTORGANIZATION.ASPX?EIN=94-2404633 (LAST VISITED MAR. 7, 2018).
- 96 *InterExchange*, GUIDESTAR.ORG, <https://www.guidestar.org/profile/13-3449415> (last visited Jan. 25, 2018).
- 97 *Euraupair International*, Guidestar.org, <https://www.guidestar.org/profile/33-0316910>, (last visited Jan. 25, 2018).
- 98 22 C.F.R. §§ 62.31(d), (p) (2018).
- 99 *Id.*
- 100 See *Our Pricing*, CulturalCare.com, <https://culturalcare.com/pricing> (last visited Mar. 26, 2018); *All Countries*, CulturalCare.com, <https://www.culturalcare.co.uk/countries> (last visited Mar. 26, 2018) (with links to fees charged by country). Currency conversions made Mar. 27, 2018.
- 101 See *id.*
- 102 Anonymous, Au Pair in America Review, Contratados.org (Nov. 10, 2014) <http://contratados.org/es/content/au-pair-america> (translated from Spanish).
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- 104 See *Cultural Homestay International*, Guidestar.org, <https://www.guidestar.org/profile/94-2404633> (last visited Mar. 26, 2018); *InterExchange*, Guidestar.org, <https://www.guidestar.org/profile/13-3449415> (last visited Mar. 26, 2018); *Euraupair International*, Guidestar.org, <https://www.guidestar.org/profile/33-0316910> (last visited Mar. 26, 2018).
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- 111 *Massachusetts' Domestic Workers Rights Bill: Time to Write Letters?*, *supra* note 105.
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- 143 *Id.* at 302.
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