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**Access to Justice and Healthcare for Migrant Farmworkers in the United States:  
A Shadow Report**

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This report is submitted to the U.N. Human Rights Committee on behalf of a coalition of human rights, legal aid and healthcare organizations working with migrant farmworkers in the United States.<sup>1</sup>

**I. Summary of Human Rights Violation at Issue: United States' Failure to Protect the Human Rights of Migrant Farmworkers to Access Justice, Healthcare and Other Services**

This shadow report is respectfully submitted to the U.N. Human Rights Committee regarding the United States' failure to protect the human rights of migrant farmworkers. By failing to protect the rights of migrant farmworkers and their families who live and work on migrant labor camps to access outreach workers and the rights of legal services, health, educational, religious, and other outreach providers' to have unfettered access to migrant farmworkers and their families, the United States is complicit in violating the human rights of this vulnerable population and violates its obligations under the International Covenant on Civil and Political Rights (ICCPR).

Between 1 and 3 million year-round and seasonal migrant farmworkers, including at least 100,000 children, are estimated to labor every year in American fields.<sup>2</sup> Migrant farmworkers are one of the most vulnerable populations in the United States. Yet, distressingly, they are also the least protected. Most are poor and many live and work in dangerous and dehumanizing circumstances.<sup>3</sup>

Lack of access for legal services, health services and other outreach providers to migrant labor camps amounts to lack of access to justice and information for those migrant workers and families that live at the labor camps. It also decreases these workers' and their families' access to other services that are essential to their health, welfare and dignity. Reasonable access to labor camps and farms on which migrants and their families live during the course of their employment is a prerequisite to the success of any program designed to ameliorate the migrant farmworkers' plight.<sup>4</sup> Moreover, in the case of access to justice, the United States Congress has recognized the special barriers

<sup>1</sup> Submitted on behalf of: Maryland Legal Aid (The Legal Aid Bureau, Inc.); Texas RioGrande Legal Aid (TRLA); Southern Migrant Legal

<sup>2</sup> See, e.g., National Center for Farmworker Health, Inc., *Farmworker Health Factsheet: Demographics 1* (Sept. 2012), <http://www.ncfh.org/docs/fs-MigrantDemographics.pdf>; Christine Ahn, Melissa Moore & Nick Parker, *Migrant Farmworkers: America's New Plantation Workers*, 10(2) BACKGROUND (Spring 2004), <http://www.foodfirst.org/node/45>.

<sup>3</sup> See generally Oxfam America, *Like Machines in the Fields: Workers without Rights in American Agriculture* (March 2004), <http://www.oxfamamerica.org/files/like-machines-in-the-fields.pdf>.

<sup>4</sup> See Elizabeth J. DuFresne & John J. McDonnell, *The Migrant Labor Camps: Enclaves of Isolation in our Midst*, 40 FORDHAM L. REV. 279, 282 (1971).

agricultural workers face in accessing legal assistance and the legal system<sup>5</sup> and has recommended “outreach” as the “principal activity” through which to break down these barriers.<sup>6</sup>

Routinely, however, outreach workers who attempt to provide farmworkers living at labor camps with legal assistance, healthcare, education, and social and other basic services are denied access altogether or not provided meaningful access. Farmworkers’ employers commonly tell outreach workers to leave the property;<sup>7</sup> accuse outreach workers of trespassing on their property;<sup>8</sup> demand prior notice before visiting the property;<sup>9</sup> or pressure the outreach workers to break confidentiality and infringe on the privacy of farmworkers by naming prospective clients who are seeking assistance.<sup>10</sup> Outreach workers, moreover, regularly experience harassment,<sup>11</sup> are threatened with arrest<sup>12</sup> and even threatened with violence<sup>13</sup> by owners and operators of migrant labor camps. Farmworkers also face threats of deportation; sexual violence<sup>14</sup> and violence against security of person; and inhumane treatment and abuse at the hands of their employers. The almost total control that some agricultural employers exert over farmworkers that live in their labor camps has been likened to an “almost slave-master relationship.”<sup>15</sup>

The effects of these abuses are manifold: service providers are discouraged from providing services; farmworkers’ vital privacy interest and the confidential relationship between service providers and workers is undermined; and advocates are limited in their ability to identify and serve victims of labor abuses, sexual violence, child labor and human trafficking.<sup>16</sup> The totality of these factors gives employers a free pass to engage in a “race to the bottom” and to exploit to an unconscionable degree the human rights of this extremely vulnerable population.

The United States does not have a comprehensive or uniform federal and state legal framework concerning the right of legal and other outreach workers to access migrant farmworkers who live and/or work on agricultural labor camps. Rather, the relevant laws that do exist consist of various federal<sup>17</sup> and state court<sup>18</sup> decisions, state statutes,<sup>19</sup> state attorney general opinions,<sup>20</sup> and master-servant common law principles. In addition, in some states there are no statutes, state attorney general opinions, state court decisions, or applicable federal court decisions on the right to access migrant labor camps. This failure, coupled with federal and state labor laws that exacerbate the socio-

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<sup>5</sup> Legal Servs. Corp., *Special Legal Problems and Problems of Access to Legal Services of Veterans, Native Americans, People with Limited English-Speaking Abilities, Migrant and Seasonal Farmworkers, Individuals in Sparsely Populated Areas: A Report to Congress As Required by Section 1007(h) of the Legal Services Corporation Act of 1974, As Amended 34-36* (1978) (on file ).

<sup>6</sup> *Id.* at 35.

<sup>7</sup> Letter from Advocates for Basic Legal Equality (ABLE) to Svetlana Schreiber, Jun. 29, 2012, Attachment 1.

<sup>8</sup> Letter from Young, Moore and Henderson, P.A. to Lori Elmer, Esq. at Legal Aid of North Carolina (LANC), Oct. 27, 2003, Attachment 2; Letter from The Kohn Partnership, L.L.P. to Caroline Smiley, Esq. of LANC, Oct. 6, 2011, Attachment 3.

<sup>9</sup> Email exchange between Donna Levesque, doctoral student at Walden University, and Stan Eury, Executive Director, North Carolina Growers’ Association, Aug. 9 - 18, 2010, Attachment 4.

<sup>10</sup> Letter from Constangy, Brooks & Smith, LLC to Lori Elmer, Esq. of LANC, Jun. 12, 2003, Attachment 5.

<sup>11</sup> Declaration of Elizabeth Studstill, intern at the North Carolina Farmworker Health Program, Sep. 16, 2010, Attachment 6.

<sup>12</sup> Declaration of Therese Swope Castillo, Harm Reduction Coordinator with the North Carolina Harm Reduction Coalition, Oct. 28, 2011, Attachment 7.

<sup>13</sup> See Colorado Legal Services, Migrant Farm Worker Division, *Overworked and Underpaid: H-2A Herders in Colorado* (2010), <http://users.frii.com/cls/Overworked%20and%20Underpaid.pdf>.

<sup>14</sup> See generally Human Rights Watch, *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the U.S. to Sexual Violence and Sexual Harassment* (2012), <http://www.hrw.org/news/2012/05/15/us-sexual-violence-harassment-immigrant-farmworkers> (describing the particularly dehumanizing effect of sexual violence and sexual harassment on farmworkers).

<sup>15</sup> Mark Heffington, *The Case for Putting an End to “Building Good Grower Relationships”*: *Why it is Time to Stop Discriminating Against Our Farmworker Patients*, 15(3) MCN STREAMLINE 4 (May/June. 2009), [http://www.migrantclinician.org/files/MCN%20MayJun09\\_fLR.pdf](http://www.migrantclinician.org/files/MCN%20MayJun09_fLR.pdf) (internal quotation marks omitted).

<sup>16</sup> See, e.g., *Lainez et al v. Baltazar, Sr. et al.*, 5:2011-cv-00167 (E.D.N.C. filed Apr. 8, 2011) (in which workers alleged a brutal system of debt bondage: workers who tried to escape were shot at by crew leaders, and defendants responded to the escape by informing the remaining workers that they were not allowed visitors to the labor camp and threatening violence against anyone who tried to help workers leave the camp; the case settled out of court); *Camayo et al. v. John Peroulis & Sons Sheep, Inc. et al.*, No. 10-cv-00772 (D. Colo. filed Apr. 6, 2010); *Asanok et al. v. Million Express Manpower, Inc. et al.*, 5:07-cv-00048-BO (E.D.N.C. filed Feb. 12, 2007) (where defendants restricted plaintiffs’ movement and their opportunity to visit with other people who spoke their language, and told the workers that they were not allowed to speak to outsiders); *Catalan et al. v. Vermillion Ranch Ltd. Partnership et al.*, No. 06-cv-01043 (D. Colo. filed Jun. 1, 2006).

<sup>17</sup> See, e.g., *Petersen v. Talisman Sugar Corp.*, 478 F.2d 73 (5th Cir. 1973); *Mid-Hudson Legal Servs., Inc. v. G & U, Inc.*, 437 F. Supp. 60 (S.D.N.Y. 1977), *rev’d on other grounds*, 578 F.2d 34 (2d Cir. 1978); *Velez v. Amenta*, 370 F. Supp. 1250 (D. Conn. 1974); *Franceschina v. Morgan*, 346 F. Supp. 833 (S.D. Ind. 1972); *Folgueras v. Hassle*, 331 F. Supp. 615 (W.D. Mich. 1971).

<sup>18</sup> See, e.g., *State v. DeCoster*, 653 A.2d 891 (Me. 1995); *State v. Fox*, 510 P.2d 230 (Wash. 1973); *State v. Shack*, 277 A.2d 369 (N.J. 1971).

<sup>19</sup> See, e.g., *Sam Andrews’ Sons v. Agric. Labor Relations Bd.*, 47 Cal.3d 157 (Cal. 1988) (interpreting Cal. Labor Code § 1152).

<sup>20</sup> See, e.g., 67 Op. Atty. Gen. Md. 64 (Jul. 19, 1982).

economic deprivation of migrant farmworkers and discriminate against them because of their migrant status or poverty violates migrant farmworkers' human rights.

In terms of violations under the ICCPR, specifically, the United States' failure to adequately promote, protect and enforce the rights of migrant farmworkers to access to legal advocates and other community service providers to labor camps where migrant workers work, and also live, permits the continued exploitation of migrant farmworkers by their employers, and directly violates the ICCPR Article 19, which protects the right to seek and receive information, ensuring "easy, prompt, effective and practical access" to "[g]overnment information of public interest."<sup>21</sup> In addition, the United States' failure to provide an effective remedy to migrant farmworkers for violations of their human rights violates ICCPR Article 2(3), which requires that each State party to the Covenant ensure that any person whose human rights under the ICCPR are violated shall have an effective remedy. Migrant farmworkers face a number of barriers to accessing the justice system to vindicate their rights: isolation in remote locations; short length of time in specific area; economic dependence upon employers; and cultural isolation. Furthermore, migrant farmworkers may fear seeking legal assistance due to perceived repercussions, including arrest and deportation, relating to their or their family members' sometimes irregular immigration status. The United States' failure to protect access to migrant labor camps by legal service providers also violates migrant farmworkers' right to access to legal counsel and information in violation of Article 14, as well as Article 26, of the ICCPR, which provides that "all persons shall be equal before the law." Lack of access to counsel has been recognized as one of the most acute problems facing migrant workers. Without effective legal representation by farmworker legal advocates, the door to the justice system has almost completely closed for migrant farmworkers. Yet, as mentioned above, attorneys and their staff have been targeted by employers seeking to control farmworker communications. The consequences of not providing access to justice are grave for a population that is deeply vulnerable, marginally protected under the law and ripe for exploitation.

## **II. Relevant Question in List of Issues: Issue 7 Non-Discrimination**

The U.N. Human Rights Committee in its List of Issues in relation to the fourth periodic report of the United States of America (CCPR/C/USA/4 and Corr. 1) adopted by the Committee at its 107th session (11–28 March 2013), asked the United States specifically about the issue of access of undocumented migrants to services and programmes in Issue 7:

Non-discrimination and equal rights of men and women (arts. 2, para.1; 3; and 26)

7. Please provide information on obstacles to the access of undocumented migrants to health services and higher education institutions, and to federal and state programmes addressing such obstacles.

## **III. The Response by the United States to Issue 7 Does Not Address Access to Migrant Farmworker Labor Camps**

While the United States insists in its response to the U.N. Human Rights Committee's List of Issues for the October 2013 periodic review that it has taken steps to ensure that undocumented migrants receive access to healthcare services and higher education, it did not address migrant farmworker labor camps and did not specifically provide any information about legal services, health, educational, religious, and other outreach providers' access to migrant farmworker labor camps. As mentioned above, barring outreach workers' access to labor camps where migrant workers is a major barrier to the achievement of access to justice, healthcare and information for migrant workers. The United States has also failed to respond to the U.N. Special Rapporteurs joint letter sent in December 2012 regarding this same issue.<sup>22</sup>

## **IV. Recommended Questions for the United States on Migrant Farmworker Camp Access**

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<sup>21</sup> U.N. Human Rights Committee, General Comment No. 10 U.N. Doc. CCPR/C/GC/10 (1983); U.N. Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34 (2011), <http://www2.ohchr.org/english/bodies/hrc/comments.htm>. See also, Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda, Access to justice by people living in poverty, U.N. Doc. A/67/278 (2012), <http://www.ohchr.org/EN/Issues/Poverty/Pages/Accessjustice.aspx>.

<sup>22</sup> See *supra*, note 1.

The organizations that respectfully submit this shadow report recommend that the following questions during the upcoming periodic review of the United States:

Please request clarification regarding what legal and other measures have been taken to ensure that legal and other advocates and outreach personnel can visit migrant farmworkers in the camps and farms in which they reside without being harassed and/or threatened.

Please request information on how these measures are enforced and what legal and institutional measures have been taken to ensure that farmworkers have access to information regarding their rights and healthcare.

Please request clarification as to whether the United States has considered extending federal rights and protections for migrant farmworkers with regard to their access to legal and other assistance and information.

#### **V. Suggested Recommendations for the United States on Migrant Farmworker Camp Access**

The organizations that respectfully submit this shadow report support the following recommendations for the United States on behalf of migrant farmworkers:

Please urge the United States to take all reasonable measures to protect, respect and fulfill the rights of migrant workers, and specifically to ensure access to migrant labor camps by community service providers – including legal services, health, educational and religious providers.

Please recommend strengthened enforcement of the rights of migrant farmworkers by all appropriate federal, state and local agencies in the United States.

Please recommend that the United States ensure education and training of the public, as well as and especially local law enforcement, about the rights of migrant farmworkers who live and work at the migrant labor camps to receive outreach services from community providers on employer property.