

**2014 Shadow Report to the  
U.N. Committee on the Elimination of Racial Discrimination**

**ILLEGALLY DENIED: MIGRANT FARMWORKERS FIGHT FOR ACCESS TO JUSTICE  
AND HEALTH CARE IN THE UNITED STATES**

This report is submitted on behalf of a coalition of human rights and legal aid organizations working with migrant farmworkers in the United States.<sup>1</sup>

**I. Introduction and Issue Summary**

This shadow report is respectfully submitted to the U.N. Committee on the Elimination of Racial Discrimination regarding the failure of the U.S. government to protect the human rights of migrant farmworkers and their families. Equal treatment is illusory for the poorest of the poor, but especially for migrant farmworkers and their families, who are particularly vulnerable to racism. By continuing to allow employers to deny outreach workers access to the farms and ranches where migrant farmworkers live and work, the U.S. is complicit in violating the human rights of this vulnerable population and violates its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), especially articles 5 and 6, protecting the right to seek protection from and effective remedies against racism.

Between 1 and 3 million year-round and seasonal migrant farmworkers, including at least 100,000 children, are estimated to labor every year in U.S. fields.<sup>2</sup> Most are poor and many live and work in dangerous and dehumanizing circumstances.<sup>3</sup> About 89% of farmworkers are racial minorities (Hispanic and African American), while 72% of migrant farmworkers are foreign-born and only 30% speak English well.<sup>4</sup> Approximately 21% of farmworkers live in employer-owned and -provided housing.<sup>5</sup>

Routinely, outreach workers who attempt to provide migrant farmworkers living on labor camps or ranches in the U.S. with legal assistance, health care, 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, accuse outreach workers of trespassing on their property, demand prior notice before visiting the property, or pressure the outreach workers to break confidentiality and infringe on the privacy of farmworkers by naming prospective clients who are seeking assistance. Outreach workers, moreover, regularly experience harassment and are threatened with arrest and even violence<sup>6</sup> by owners and operators of migrant labor camps. Farmworkers also face threats of deportation,

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<sup>1</sup> Submitted on behalf of: Texas RioGrande Legal Aid; Center for Human Rights & Humanitarian Law Local Human Rights Lawyering Project; Worker Justice Center of New York; Hispanic Affairs Project (HAP); Public Justice Center; National Law Center on Homelessness & Poverty; Global Workers Justice Alliance; California Rural Legal Assistance Foundation; Farmworker Justice; Colorado Legal Services; Northwest Workers' Justice Project; El Comité de Apoyo a los Trabajadores Agrícolas (CATA); Centro de los Derechos del Migrante, Inc. (CDM); Sarah Paoletti, Esq. A coalition of civil society organizations submitted a [shadow report](#) to the U.N. Human Rights Committee in 2013, as well as joint [complaint](#) to the U.N. Special Rapporteur on extreme poverty and human rights in 2012 on this same issue of migrant camp access.

<sup>2</sup> See, e.g., National Center for Farmworker Health, *Farmworker Health Factsheet: Demographics 1* (Sept. 2012), <http://www.ncfh.org/docs/fs-Migrant%20Demographics.pdf>; Christine Ahn, Melissa Moore & Nick Parker, *Migrant Farmworkers: America's New Plantation Workers*, 10(2) BACKGROUNDER (Spring 2004), <http://www.acequiainstitute.org/researchreports.html>.

<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> Findings from the National Agricultural Workers Survey (NAWS) 2007 -2009, <http://www.doleta.gov/agworker/naws.cfm>; National Center for Farmworker Health, *supra* note 2.

<sup>5</sup> Southern Poverty Law Center, *Who Are Farmworkers?* (2010), <http://www.splcenter.org/sexual-violence-against-farmworkers-a-guidebook-for-criminal-justice-professionals/who-are-farmworker>.

<sup>6</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>.

sexual violence<sup>7</sup> and violence against security of the person, and inhumane treatment and abuse at the hands of their employers. The near-total control that some agricultural employers exert over farmworkers who live in their labor camps has been likened to an “almost slave-master relationship.”<sup>8</sup>

The effects of these abuses are manifold: service providers are discouraged from providing services; farmworkers’ vital privacy interests and the confidential relationship between service providers and workers are undermined; and advocates are limited in their ability to identify and serve victims of labor abuses, sexual violence, child labor, and human trafficking.<sup>9</sup> The totality of these factors gives employers a free pass to engage in a “race to the bottom” in exploiting and discriminating against this extremely vulnerable population.

The U.S. does not have a comprehensive or uniform federal and state legal framework concerning the right of migrant farmworkers to receive visits and information from outreach workers on agricultural labor camps. Moreover, farmworkers have historically been discriminated against under U.S. law for racist reasons, and that racism, with regard to many U.S. labor and employment laws, endures today and continues to have racist impact.<sup>10</sup> The relevant laws that do exist consist of various federal<sup>11</sup> and state court<sup>12</sup> decisions, state statutes,<sup>13</sup> state attorney general opinions,<sup>14</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. The U.S. Congress has recognized the special barriers agricultural workers face in accessing legal assistance and the legal system<sup>15</sup> and has recommended “outreach” as the “principal activity” through which to break down these barriers,<sup>16</sup> yet no action has been taken to actualize that recommendation. These failures, coupled with federal and state labor laws that exacerbate the socio-economic deprivation of migrant farmworkers and discriminate against them because of their migrant status or poverty, violate migrant farmworkers’ human rights.

## II. Legal Framework: Migrant Labor Camp Access and the Convention on the Elimination of All Forms of Racial Discrimination

The failure of the U.S. government to adequately promote, protect, and enforce the rights of migrant farmworkers to access to legal advocates on labor camps where migrant workers work, and also live,

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<sup>7</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>8</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/Jun. 2009), [http://www.migrantclinician.org/files/MCN%20MayJun09\\_fLR.pdf](http://www.migrantclinician.org/files/MCN%20MayJun09_fLR.pdf) (internal quotation marks omitted).

<sup>9</sup> See, e.g., *Lainez v. Baltazar*, 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 by threatening violence against anyone who tried to help workers leave the camp; the case settled out of court); *Camayo v. John Peroulis & Sons Sheep, Inc.*, No. 10-cv-00772 (D. Colo. filed Apr. 6, 2010); *Asanok v. Million Express Manpower, Inc.*, 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 v. Vermillion Ranch Ltd. Partnership*, No. 06-cv-01043 (D. Colo. filed June 1, 2006).

<sup>10</sup> See e.g., Juan E. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 Ohio St. L.J. 95 (2011); *Race & Immigration Symposium: Mexicans, Immigrants, Cultural Narratives, and National Origin*, 44 Ariz. St. L.J. 305, 328 (2012).

<sup>11</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>12</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>13</sup> See, e.g., *Sam Andrews’ Sons v. Agric. Labor Relations Bd.*, 47 Cal.3d 157 (Cal. 1988) (interpreting Cal. Labor Code § 1152).

<sup>14</sup> See, e.g., 67 Op. Atty. Gen. Md. 64 (Jul. 19, 1982).

<sup>15</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>16</sup> *Id.* at 35.

permits the continued exploitation of and discrimination against of migrant farmworkers, and directly violates the Convention on the Elimination of All Forms of Racial Discrimination articles 5 and 6, which protect the right to seek protection and effective remedies against racism.<sup>17</sup> Migrant farmworkers are particularly vulnerable to racism.<sup>18</sup> This is particularly true for migrant workers who live and work on labor camps. They face a number of barriers to accessing the justice system to vindicate their rights: isolation in remote locations, short length of time in a specific area discouraging knowledge of available services in the community, economic dependence upon employers, language barriers, 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. Without effective legal representation by farmworker legal advocates, the door to the justice system has almost completely closed for migrant farmworkers. Yet, as described 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 regularly subjected to discrimination and exploitation.

The following four sections provide specific descriptive context for U.S. obligations regarding access to migrant labor camps under international human rights instruments and U.S. law.

### **III. CERD General Recommendations on Access to Justice**

This Committee's General Recommendation 31 highlights the importance free legal advice and counsel for victims of racism.<sup>19</sup> In addition, General Recommendation 29 recommends that State Parties "take the necessary steps to secure equal access to the justice system for all members of descent-based communities, including providing legal aid."<sup>20</sup>

### **IV. CERD Concluding Observations from the 2008 Periodic Review of the U.S. on Access to Justice and Migrant Workers**

During its 2008 review of the U.S., this committee expressed concern that the lack of civil counsel for persons living in poverty disproportionately and negatively affects racial minorities in the U.S. and recommended that the U.S.

allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings, with particular regard to those proceedings where basic human needs, such as housing, health care, or child custody, are at stake.<sup>21</sup>

This Committee also recommended that the U.S.

take effective measures [...] to ensure the right of workers belonging to racial, ethnic and national minorities, including undocumented migrant workers, to obtain effective protection and remedies in case of violation of their human rights by their employer.<sup>22</sup>

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<sup>17</sup> The Convention on the Elimination of All Forms of Racial Discrimination art. 6, 21 Dec. 1965, 660 U.N.T.S. 195.

<sup>18</sup> See Comm. on the Elimination of Racial Discrimination, *General Recommendation XXX on Non-Citizens*, ¶ 21, U.N. Doc. A/59/18(SUPP) (2004).

<sup>19</sup> Comm. on the Elimination of Racial Discrimination, *General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, Rep. on its 66th and 67th Sess., Feb. 21–March 11, Aug. 2–19, 2005, ¶ 8, 17, U.N. Doc. A/60/18(SUPP) (2005).

<sup>20</sup> Comm. on the Elimination of Racial Discrimination, *General Recommendation XXIX on Article I, Paragraph 1, of the Convention (Descent)*, ¶ 21, U.N. Doc. A/57/18 (Nov. 1, 2002).

<sup>21</sup> Comm. on the Elimination of Racial Discrimination, *Concluding Observations--United States of America*, ¶ 22, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008).

<sup>22</sup> *Id.* at ¶ 28.

## V. Relevant Sections of the U.S. Government's 2013 CERD Periodic Report

In its 2013 CERD report, the U.S. government addressed the CERD Committee's concerns regarding counsel in civil matters by recognizing that the U.S. "faces challenges in both its provision of legal representation to indigent criminal defendants and its provision of free and affordable civil legal services to the poor and middle class."<sup>23</sup> Specifically, the U.S. government stated that it "recognize[s] that these challenges are felt acutely by members of racial and ethnic minorities."

The U.S. government also described the establishment of the U.S. Department of Justice (DOJ)'s Access to Justice Initiative in 2010 and its ongoing work to strengthen civil legal services. The work of the new Access to Justice Initiative at the DOJ has been extraordinary, especially given that it is a very small office with limited funding. With additional funding and staff, the Access to Justice Initiative would likely be able to work with other agencies and make great progress on these access to justice issues, as well as others. However, the establishment of the Access to Justice Initiative is not enough to address the issue of migrant labor camp access for outreach workers. The recommendations below provide a starting point for a conversation with the U.S. government moving forward.

## VI. Other UN Recommendations on Access to Justice

Last month the U.N. Human Rights Committee recommended that the U.S. take measures to ensure that immigrants facing deportation have access legal representation<sup>24</sup> and improve provision of legal representation to women victims of domestic violence.<sup>25</sup> The U.N. Human Rights Committee has also interpreted Article 14 of the International Covenant on Civil and Political Rights to require access to the legal system and access to counsel in civil cases.<sup>26</sup>

Several U.N. Special Rapporteurs have also stressed the importance of access to counsel in civil cases: the U.N. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance has specifically welcomed legal aid for victims of hate crimes;<sup>27</sup> the U.N. Special Rapporteur on Violence Against Women, Its Causes & Consequences has specifically recommended legal aid for victims of violence;<sup>28</sup> the U.N. Special Rapporteur on the Human Rights of Migrants has noted the importance of legal aid to migrants;<sup>29</sup> the U.N. Special Rapporteur on Adequate Housing recently commented that

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<sup>23</sup> Periodic Report of the United States to the Committee on Elimination of Racial Discrimination, ¶ 62-64, U.N. Doc. CERD/C/USA/CO/6 (2013), [http://www.state.gov/j/drl/rls/cerd\\_report/210605.htm](http://www.state.gov/j/drl/rls/cerd_report/210605.htm).

<sup>24</sup> U.N. Human Rights Comm., *Concluding Observations on the Fourth Report of the United States of America*, ¶ 15 U.N. Doc. CCPR/C/USA/CO/4 (April 22, 2014).

<sup>25</sup> *Id.* at ¶ 16.

<sup>26</sup> U.N. Human Rights Comm., *General Comment 32: Article 14, Right to Equality before Courts and Tribunals and To a Fair Trial*, ¶ 10, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007).

<sup>27</sup> U.N. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance on the Implementation of General Assembly Resolution 65/199*, Annual Report to the Human Rights Council, ¶¶ 16 U.N. Doc. A/HRC/18/44 (July 21, 2011) (by Githu Muigai).

<sup>28</sup> U.N. Special Rapporteur on Violence Against Women, Its Causes & Consequences, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, Annual Report to Comm. on Human Rights: International, Regional and National Developments in the Area of Violence against Women (1994–2003), ¶ 90, U.N. Doc. E/CN.4/2003/75 (Jan. 6, 2003) (by Radhika Coomaraswamy) ("States should establish, strengthen or facilitate support services to respond to the needs of actual and potential victims, including . . . legal aid . . ."); U.N. Special Rapporteur on Violence Against Women, Its Causes & Consequences, *Annual Report to Comm. on Human Rights: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶ 83, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (by Yakin Ertürk) ("States must ensure that quality physical and psychological health services and legal assistance are provided to victims of violence.").

<sup>29</sup> Special Rapporteur on the Human Rights of Migrants, *Promotion and Protection of All Human Rights, Civil Political, Economic, Social and Cultural Rights, Including the Right to Development*, Human Rights Council, ¶ 46, U.N. Doc. A/HRC/7/12 (Feb. 25, 2008) (by Jorge Bustamante); see also Special Rapporteur on the Human Rights of Migrants, *Specific Groups and Individuals: Migrant Workers*, Comm. on Human Rights, ¶ 24, U.N. Doc. E/CN.4/2003/85 (Dec. 30, 2002) (by Gabriela Rodríguez Pizarro).

[I]ack of legal aid for civil matters can seriously prejudice the rights and interests of persons . . . when they are unable to contest tenancy disputes, eviction decisions, immigration or asylum proceedings, eligibility for social security benefits, abusive working conditions, discrimination in the workplace or child custody decisions;<sup>30</sup> and

the U.N. Special Rapporteur on the Independence of Judges and Lawyers noted that

legal aid is an essential component of a fair and efficient justice system founded on the rule of law . . . it is also a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights.<sup>31</sup>

## **VII. Recommended Questions**

Please request clarification as to what specific steps the United States has taken regarding migrant farmworkers and their families that live and work in labor camps to ensure their rights to obtain effective protection and remedies in case of violation of their human rights by their employer.

## **VIII. Suggested Recommendations**

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

1. Please urge the United States to take all reasonable measures under applicable international human rights instruments and domestic law 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.
2. Please recommend strengthened enforcement of the rights of migrant farmworkers by all appropriate federal, state, and local agencies in the United States.
3. 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.

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<sup>30</sup> Special Rapporteur on Adequate Housing, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, Human Rights Council, ¶ 69, U.N. Doc. A/HRC/22/46 (Dec. 24, 2012) (by Raquel Rolnik).

<sup>31</sup> U.N. Special Rapporteur on the Independence of Judges and Lawyers, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, ¶ 20, U.N. Doc. A/HRC/23/43 (Mar. 15, 2013) (by Gabriela Knaul).