

# **Deporting the Evidence: Migrant Workers in the South Expose How U.S. Immigration Enforcement against Human Rights Defenders Violates the International Covenant on Civil and Political Rights**

A Report to the United Nations Human Rights Committee on the  
Fourth Periodic Report of the United States of America

Submitted on behalf of the *New Orleans Workers' Center for Racial Justice* and  
*the Congress of Day Laborers, New Orleans*

Prepared by

New Orleans Workers' Center for Racial Justice  
Jacinta Gonzalez, Lead Organizer  
Jennifer J. Rosenbaum, Legal Director

Loyola University New Orleans College of Law  
Stuart H. Smith Law Clinic and Center for Social Justice Human Rights Project  
Johanna Kalb, Associate Professor of Law  
Samantha Hechtman ('13)  
Shannon Jung ('13)  
Emily Posner ('13)  
Emily Trostle ('14)

### About the New Orleans Workers' Center for Racial Justice

**The New Orleans Workers' Center for Racial Justice** is dedicated to expanding democracy through the power and participation of low-income communities and communities of color across the Southern United States. The Center was founded after Hurricane Katrina and since then has protected the bedrock civil, labor, and human rights of African American and immigrant communities. The Center represents workers on the frontlines of today's changing South in policy change efforts, in the media, and in strategic litigation and legal advocacy. For more information see [www.nowcrj.org](http://www.nowcrj.org).

**The Congress of Day Laborers** is a grassroots membership organization of immigrant workers and their families, many of whom helped rebuild New Orleans and the Gulf Coast of the United States after Hurricane Katrina. Members of the Congress are human rights defenders who promote human rights including freedom of association, equal protection, freedom of movement, political participation, self-determination, access to justice, and an end to discrimination, racial profiling, and forced labor. For more information on the Congress see [www.makejusticereal.org](http://www.makejusticereal.org).

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## Executive Summary

This report exposes the ways in which the United States is “deporting the evidence,” by arresting, detaining, and removing individuals engaged in defending themselves and their communities against serious violations of the International Covenant on Civil and Political Rights (ICCPR). In some cases, the state uses immigration enforcement to retaliate against persons who expose governmental abuses of civil and political rights. In other cases, the state cooperates with private actors who use immigration enforcement to hide their own unlawful behavior. Not only do these actions by the United States directly violate the ICCPR, they also prevent human rights abuses from being exposed or verified because victims and witnesses are intimidated, locked away, or removed from the country.

This report documents the stories of “the Southern 32,” a campaign of migrant workers in the southern region of the United States who are fighting government efforts to deport them in retaliation for the work they are doing to defend human rights. The southern region offers a microcosm of the broader challenges the United States faces in fully realizing its obligations to vulnerable immigrant communities under the International Covenant on Civil and Political Rights. In the last seven years, five major hurricanes have caused tens of billions of dollars of damage to the region. Immigrants, primarily Latino and Hispanic, have played a crucial role in the rebuilding effort, often performing the most essential and dangerous jobs. Today in New Orleans, many of the migrant workers who originally arrived to help with the post-Katrina recovery effort now live with their families in the city, intimately joined in the fabric of the community. Because they live and work either without formal governmental permission or with limited status as temporary contract workers, they are uniquely vulnerable to exploitation. Despite their essential contribution to the revitalization of the city and the region, these workers continue to face widespread human rights violations.

As the stories of the Southern 32 demonstrate, these workers are not quiescent victims. Rather, they are actively engaged in exposing violations of both domestic and international law. Unfortunately, instead of protecting migrant workers who speak out against unlawful arrests, racial profiling, forced labor, and other human rights abuses, the federal government’s response has often been to use the immigration system for retaliation -- or to look the other way when state and local actors engage in this activity. By “deporting the evidence,” which is itself a violation of the ICCPR, the United States also minimizes its exposure to responsibility for the underlying human rights violations against migrant communities, including:

- (a) the use of the threats of arrest, detention, and deportation by the Department of Homeland Security (“DHS”) to limit the right to freedom of association, including the right to form and join trade unions;<sup>1</sup>
- (b) the retaliatory arrest, detention, and deportation of migrants who exercise their civil and political rights;<sup>2</sup>

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<sup>1</sup> See International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR], art. 22(1) (“Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”).

- (c) the continued criminalization of immigrant communities;<sup>3</sup>
- (d) the use of unlawful racial profiling by state and local law enforcement and by federal immigration enforcement officers;<sup>4</sup>
- (e) the unlawful “over-detention” of immigrants, particularly as a result of state and local law enforcement collaboration with federal immigration enforcement;<sup>5</sup>
- (f) the lack of due process, racial profiling, unlawful detention, and other civil rights violations arising from reliance on immigration detainers;<sup>6</sup>
- (g) the unlawful conditions in prisons and jails where immigrants are detained;<sup>7</sup> and
- (h) the contribution of U.S. immigration policy to conditions of forced labor and involuntary servitude for migrant workers,<sup>8</sup> and to violations of their right to life.<sup>9</sup>

This report concludes with legislative and administrative recommendations that would help bring the United States immigration enforcement into compliance with its ICCPR obligations. The report also includes questions for the United States which would assist in clarifying critical areas for reform. We urge the Human Rights Committee to question the United States on its efforts to protect the civil and political rights of migrant workers and to issue strong recommendations to ensure immigration enforcement practices do not continue to undermine compliance with the ICCPR.

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<sup>2</sup> See ICCPR Human Rights Committee General Comment No. 15, The Position of Aliens Under the Covenant (27<sup>th</sup> Sess. 1986) [hereinafter Gen. Comment 15], at para. 7 (reiterating that “aliens” are entitled to equality before courts and tribunals and before the law, and they are guaranteed the right to hold and express opinions and to associate.”).

<sup>3</sup> See *id.* at para. 7 (“Aliens have the full right to liberty and security of the person. . . . They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence.”).

<sup>4</sup> See ICCPR, art. 2, 26.

<sup>5</sup> See *id.* at art. 9(1) (“No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”).

<sup>6</sup> See *id.*

<sup>7</sup> See *id.* at art. 10(1) (“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”).

<sup>8</sup> See *id.* at art. 8(3).

<sup>9</sup> See *id.* at art. 6(1).

## Substantive Violations of the ICCPR

### **Art. 19, 21, 22 (Organizing for Justice: The Right to Free Speech, Association, and Assembly)**

1. The ICCPR requires State parties to protect the expressive and associative rights of the persons within their jurisdiction without regard to immigration status.<sup>10</sup> Together, Articles 19, 21, and 22 protect the rights to free expression, assembly, and association.<sup>11</sup> In a 2011 General Comment to Article 19, the Human Rights Committee (hereinafter “Committee”) explained that this article is particularly significant because “[f]reedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.”<sup>12</sup> The Committee further emphasized the importance of the article in terms of an anchor of other rights guaranteed by the Covenant, stating that the “freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. For instance, freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote.”<sup>13</sup> As such, the “obligation to respect freedoms of opinion and expression is binding on every State party as a whole.”<sup>14</sup> States must take an affirmative role to protection against retaliation and silencing of speech, particularly in defense of human rights:

States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. . . .<sup>15</sup>

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<sup>10</sup> See Gen. Comment 15, *supra* note 2 at para. 7.

<sup>11</sup> See ICCPR, art. 19 (“Everyone shall have the right to hold opinions without interference” and “everyone shall have the right to freedom of expression . . . [which] shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”); art. 21 (“The right of peaceful assembly shall be recognized.”); art. 22 (“Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”).

<sup>12</sup> See ICCPR Human Rights Committee General Comment No. 34, Article 19: Freedoms of opinion and expression (102d Sess. 2011) [hereinafter General Comment 34] at para. 3.

<sup>13</sup> *Id.* at para. 4. General Comment 34 also highlights the broad reach of the article, which encompasses “the right to seek, receive and impart information and ideas of all kinds regardless of frontiers” and which includes “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.” *See id.* at para. 11.

<sup>14</sup> *See id.*, at para. 7.

<sup>15</sup> *Id.* at para. 23.

2. Although the United States ratified these provisions of the ICCPR without reservation as to citizenship status,<sup>16</sup> it has failed to enforce these protections with respect to non-citizens. While the rights to freedom of opinion, expression, and association, are protected by the federal Constitution,<sup>17</sup> the United States Supreme Court indicated in *United States v. Verdugo-Urquidez* that these constitutional protections may not extend to undocumented persons.<sup>18</sup> Since that case, federal and state courts have indicated that the question of whether the First and Fourth Amendments apply to non-citizens is unsettled.<sup>19</sup> The Congress has responded to these signals from the Court, enacting “sweeping antiterrorism legislation in 1996 and 2001 targeting immigrants for deportation based on speech or political affiliation and even familial associations.”<sup>20</sup>
  
3. As a result of the United States’ failure to provide protection for the expressive and associative rights of non-citizens, the immigration system is regularly used as a mechanism of retaliation against workers who organize against private and government abuses. In Shelbyville, Tennessee, federal Immigration and Customs Enforcement (ICE) agents conducted home invasions only one day after a public hearing against racial profiling.<sup>21</sup> Similarly, in Montgomery, Alabama, ICE agents covertly surveilled immigrant workers as they visited a civil rights museum in Montgomery.<sup>22</sup> In Beaumont, Texas, local law enforcement and ICE officials colluded in the detention and attempted deportation of workers who organized a strike to challenge discrimination and wage theft by their employer.<sup>23</sup> Some workers were deported and others challenged their arrests for almost four years. Eventually some of the cases were administratively closed, but the immigration charges were never formally withdrawn and the previously deported workers received no relief.<sup>24</sup>

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<sup>16</sup> For the text of the United States’ reservations, understanding, and declarations, see SENATE COMM. ON FOREIGN RELATIONS, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, S. EXEC. REP. NO. 23, 102d Cong. 2d Sess. 6-10 (1992).

<sup>17</sup> “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” See U.S. Const. Amend. I.

<sup>18</sup> See *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990). Writing for the majority, Chief Justice Rehnquist explained that “the people’ protected by the Fourth Amendment, and by the First and Second Amendments . . . refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” *Id.* at 265 (Rehnquist, C.J.).

<sup>19</sup> See Michael J. Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. REV. 667, 681 (2003).

<sup>20</sup> *Id.* at 683.

<sup>21</sup> Chris Strunk and Helga Leitner, Redefining Secure Communities, *THE NATION*, Dec. 21, 2011, available at <http://www.thenation.com/article/165295/redefining-secure-communities> (last visited Aug. 23, 2013).

<sup>22</sup> See Statement of Saket Soni, Director, New Orleans Workers’ Center for Racial Justice, Mar. 5, 2008, available at <http://nolaworkerscenter.wordpress.com/2008/03/> (last visited Aug. 23, 2013).

<sup>23</sup> See Harold Myerson, Protecting undocumented Workers: Legislation would expand the protection of U visas to those who come forward to report workplace violations, *L.A. Times*, June 24, 2011, available at <http://articles.latimes.com/2011/jun/24/opinion/la-oe-meyerson-undocumented-abuses-20110624> (last visited Aug. 23, 2013); Janelle Ross, Whistleblower workers face deportation despite Obama Administration Policy, *Huffington Post* (May 7, 2012, 6:24 PM), [http://www.huffingtonpost.com/2012/05/07/obama-deportation-whistleblower-workers\\_n\\_1497888.html](http://www.huffingtonpost.com/2012/05/07/obama-deportation-whistleblower-workers_n_1497888.html) (last visited Aug. 23, 2013); Janelle Ross, Josue Dias: Workplace Whistleblower gets Temporary Deportation Reprieve, *Huffington Post* (May 10, 2012, 4:43 PM) [http://www.huffingtonpost.com/2012/05/10/josue-diaz-workplace-whistleblower\\_n\\_1507078.html](http://www.huffingtonpost.com/2012/05/10/josue-diaz-workplace-whistleblower_n_1507078.html) (last visited Aug. 23, 2013).

<sup>24</sup> *Id.*

4. Delmy Palencia's experience epitomizes the challenges that immigrants face when they try to exercise their civil and political rights.<sup>25</sup> Palencia was arrested by the New Orleans Police Department on May 21, 2011 for locking her husband out of the house following a domestic dispute. She spent 45 days in jail, separated from her infant son, before the district attorney reviewed the arrest and dropped all charges against her. After the charges were dropped, the New Orleans Parish Sheriff continued to incarcerate Palencia in Orleans Parish Prison based only on an investigatory immigration hold. From inside the jail, she filed a petition for a writ of habeas corpus through which she won release from her unlawful detention. Palencia then became a key witness into the ongoing investigation of the Sheriff's treatment of immigrant detainees and the problematic relationship between the Sheriff and ICE. Because of her activism, she was promptly re-arrested in a warrantless night raid by ICE. She was then transferred to a rural detention center over four hours away from her child. After community pressure and advocacy by several members of the United States Congress, she received a temporary delay in her deportation.
5. Saúl Merlos also experienced retaliation for speaking publicly about his experience in ICE detention. In late 2012, Saul was arrested in Kenner, Louisiana and relocated to the immigrant detention facility in Basile, Louisiana. Upon release, Saúl was granted a 60-day stay of removal in order to address his immigration status. Shortly after his release, Saúl was invited to speak at a symposium titled *Dialogues on Detention: Applying Lessons from Criminal Justice Reform to the Immigration Detention System*. The symposium was organized by Loyola University New Orleans College of Law and a national non-governmental organization, Human Rights First. Days after he spoke at the symposium, Saúl was ordered to report to the New Orleans ICE office for an unscheduled check-in. He went and was immediately re-arrested and placed in detention, despite the previously granted stay of removal. He spent several weeks in a rural immigration detention center. After community pressure and advocacy by several members of the United States Congress, he received a temporary delay in his deportation.
6. The United States' failure to promulgate and enforce immigration policy that protects the expressive and associational rights of non-citizens violates the ICCPR. This failure is particularly egregious and damaging when it leads to the detention, arrest, and deportation of persons engaged in reporting and investigating human rights abuses. As these examples demonstrate, the United States' current approach to immigration law enforcement undermines federal efforts to understand, expose, and remedy violations of the ICCPR against immigrant communities and others who experience similar violations of their civil, labor, and constitutional rights.

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<sup>25</sup> Maria Clark, Lives on hold: immigration policy comes under fire locally, NEW ORLEANS CITY BUSINESS (March 22, 2013, 7:26 AM) <http://neworleanscitybusiness.com/blog/2012/03/22/immigration-policy-comes-under-fire-for-detaining-innocent/> (last visited Aug. 23, 2013); see also Pramila Nadasen, Anything but "Secure": Federal Program Designed to Nap criminals is devastating immigrant families, MS. MAGAZINE, Winter 2012, available at [http://www.ms magazine.com/winter2012/anything\\_but\\_secure.asp](http://www.ms magazine.com/winter2012/anything_but_secure.asp) (last visited Aug. 23, 2013); Katy Reckdahl, Immigrant laborers in New Orleans testing Obama administration's new policy, TIMES PICAYUNE, June 25, 2012, available at [http://www.nola.com/politics/index.ssf/2012/06/immigrant\\_laborers\\_in\\_new\\_orle.html](http://www.nola.com/politics/index.ssf/2012/06/immigrant_laborers_in_new_orle.html) (last visited Aug. 23, 2013).

**Art. (2); (14)(1) (Access to Justice: Right to an effective remedy and equality through the courts)**

7. Article 2 provides that all persons whose rights under the Covenant are violated “shall have an effective remedy . . . .”<sup>26</sup> The Committee has clarified that in addition to “effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights.”<sup>27</sup> These remedies “should be appropriately adapted so as to take account of the special vulnerability of certain categories of person . . . .”<sup>28</sup> Moreover, the Committee has explained that Article 2 also obligates the State to take measures to prevent recurring violations of the same rights.<sup>29</sup>
8. Separately, Article 14(1) provides that “[a]ll persons shall be equal before the courts and tribunals” of each State party. The Committee has interpreted article 14.1 as a guarantee of equal access to the courts, regardless of a party's citizenship or immigration standing, in both criminal and civil proceedings.<sup>30</sup>
9. The right of undocumented immigrants to access the courts is also protected by the U.S. Constitution. The United States Supreme Court has held that the due process protections of the Fifth and Fourteenth Amendments apply to all persons within the borders of the United States, regardless of immigration status.<sup>31</sup> The Court has reasoned, consistent with the Covenant, that these constitutional protections apply to everyone within the United States territorial jurisdiction.<sup>32</sup>

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<sup>26</sup> See ICCPR, art. 2(3) (“Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. . .”).

<sup>27</sup> See ICCPR Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (80th Sess. 2004) [hereinafter General Comment 31] at para. 15.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at para.17.

<sup>30</sup> See ICCPR Human Rights Committee General Comment No. 13, Equality before the courts and the right to a fair and public hearing by an independent court established by law (21st Sess. 1984) [hereinafter General Comment 13] (guaranteeing equal access to courts and tribunals). This interpretation has also been adopted by a least one federal court. See *Dubai Petroleum Co. v. Kazi*, 12 S.W. 3D 71, 82 (Tex. 2000) (holding that the ICCPR not only guarantees foreign citizens equal treatment in the signatories' courts, but also guarantees them equal access to these courts).

<sup>31</sup> In *Yick Wo v. Hopkins*, the Supreme Court held that all aliens are “persons” within the meaning of the fourteenth amendment and are protected by that amendment's due process clause. See *Yick Wo v. Hopkins* 118 U.S. 356, 369 (1886) (holding that the Fourteenth Amendment “provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws”). See also *Plyer v. Doe*, 457 U.S. 202, 202 (1982) (stating that “[w]hatever his status under the immigration laws, an alien is a “person” in any ordinary sense of that term. This Court's prior cases [have recognized] that illegal aliens are ‘persons’ protected by the Due Process Clauses of the Fifth and Fourteenth Amendments.”).

<sup>32</sup> Additionally, the right to court access is protected under federal statutory law. For example, the civil rights statute 42 U.S.C. § 1981 provides that “all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens.” 42 U.S.C. § 1981. Undocumented immigrants are considered “persons” within the meaning of the statute. See also *Martinez v. Fox Valley Bus Lines*, 17 F.Supp. 576, 577 (N.D. Ill. 1936)(holding that the §1981 and the Fourteenth Amendment protects undocumented immigrants).

10. Despite these formal protections, however, immigrants face significant challenges in reporting remedies for violations of their ICCPR and national constitutional and statutory rights. The bureaucratic infrastructure that the United States has implemented in order to ensure that violations can be reported and corrected regularly fails to provide any meaningful remedy, and may itself be the source of retaliation.

**A. U.S. Department of Homeland Security's Office of Civil Rights and Civil Liberties**

11. The United States represents that it corrects ICCPR violations through the Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL).<sup>33</sup> CRCL "leads DHS efforts to develop relationships with communities whose civil rights may be affected by DHS activities" through "regular roundtable meetings that bring together DHS officials with diverse communities in cities across the country."<sup>34</sup>
12. In some instances, however, DHS policies render these meetings inaccessible. For example, in May 2012, members of the New Orleans Workers' Center for Racial Justice were invited to participate in a community meeting with the ICE Public Advocate and regional ICE leadership. The ICE Southern Field Region leadership required law enforcement background checks to participate in the meeting. Community members were informed that they would have to provide their date of birth if they did not have alien registration numbers. These types of policies have a chilling effect on the ability of the immigrant community to communicate their concerns to DHS.
13. Even when violations are reported, CRCL maintains that it lacks the authority to grant relief. Moreover, CRCL often does not respond to complaints and sometimes may even be the source of retaliation through the immigration system. The New Orleans Workers' Center has filed 13 complaints with CRCL over the last 4 years, including several on behalf of groups of affected individuals. CRCL has not found any rights violations or made any policy recommendations in any of those cases, even in those found meritorious by other state and federal agencies and courts.
14. For example, Joaquin Navarro Hernandez filed a complaint with CRCL in April 2012 following a botched raid of a day labor corner by U.S. Customs and Border Patrol (CBP). He also, while fighting his deportation proceedings, filed a Freedom of Information Act request seeking publicly available information related to his arrest. He ultimately prevailed in his FOIA claim in federal court.<sup>35</sup> Based on the evidence that was revealed of the CBP's cover-up and perjured testimony, a federal immigration judge closed his deportation case. Nonetheless, a year later, CRCL has not made any findings relating to his complaint, nor communicated with him in any way aside from sending a case receipt acknowledgment.

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<sup>33</sup> See Fourth Periodic Report of the United States of America, CCPR/C/USA/4 (Dec. 30, 2011) [hereinafter Fourth Periodic Report], at para. 105.

<sup>34</sup> *Id.*

<sup>35</sup> See *Navarro Hernandez v. U.S. Customs and Border Patrol*, 2012 U.S. Dist. LEXIS 14290 (Feb. 6, 2012).

15. Additionally, in some cases, filing a complaint with CRCL can itself lead to retaliation through the immigration system. Mario Cacho is a Honduran national who was a reconstruction worker in New Orleans. On August 21, 2009 he completed a criminal sentence for disturbing the peace. Before finishing his criminal sentence, on August 3, 2009, ICE placed an immigration detainer on him. ICE's detainer expired in August, but ICE never took custody of Mr. Cacho and he remained in custody. Mr. Cacho filed a written grievance to the Orleans Parish Prison officials asking for his release, but the prison never responded. On February 5, 2010, Mr. Cacho's counsel filed a complaint with CRCL. At this point, he had been unlawfully over-detained for more than 160 days. After the complaint was filed, ICE sought custody of Mr. Cacho and deported him. In this rare instance the deportation did not block Mr. Cacho from continuing to expose violations of his civil and political rights. Mr. Cacho worked with advocates from the New Orleans Workers' Center for Racial Justice to pursue a civil rights lawsuit from his home in Honduras which resulted in a landmark civil rights settlement.<sup>36</sup> In recognition of the pattern and practice of civil rights violations, the settlement also resulted in a new policy limiting cooperation between local law enforcement and federal immigration agents.<sup>37</sup> U.S. immigration enforcement fought Mr. Cacho throughout the process even denying his application for temporary humanitarian status to testify at his federal civil rights trial.
16. Thus, while the United States presents the CRCL as providing a mechanism for identifying and remedying ICCPR violations, in practice this office offers neither a meaningful investigation into reports of abuse, nor an effective remedy for violations. As currently constituted, access to the CRCL is insufficient to meet the United States' obligations under Article 2.

## **B. Reporting Detention Conditions**

17. Another area where substantive violations of the ICCPR are widespread is in the treatment of immigrants in detention.<sup>38</sup> The number of persons held in immigration detention has grown exponentially over the last decade.<sup>39</sup> The large increase of detainees has overwhelmed the available government facilities. An increasingly large number of people are now detained

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<sup>36</sup> *Cacho et al. v. Gusman*, No. 11-225 (E.D. La. filed Feb. 2, 2011) (42 U.S.C. § 1983 action for unlawful over-detention). See also Update to the Letter of Findings, United States Civil Rights Investigation of the Orleans Parish Prison System, United States Department of Justice, Civil Rights Division (Apr. 23, 2012) (finding that the conduct of officials at OPP evinces deliberate indifference to basic needs with particular risk to immigrants detained there) available at [www.justice.gov/crt/about/spl/documents/parish\\_update\\_4-23-12.pdf](http://www.justice.gov/crt/about/spl/documents/parish_update_4-23-12.pdf) (last visited Aug. 23, 2013).

<sup>37</sup> Campbell Roberson, New Orleans and U.S. in Standoff on Detentions, N.Y. TIMES, August 12, 2013, available at <http://www.nytimes.com/2013/08/13/us/new-orleans-and-us-in-standoff-on-detentions.html> (last visited Aug. 23, 2013); A Brighter Line on Immigration Policing, N.Y. TIMES, August 17, 2013, available at [www.nytimes.com/2013/08/18/opinion/sunday/a-brighter-line-on-immigration-policing.html](http://www.nytimes.com/2013/08/18/opinion/sunday/a-brighter-line-on-immigration-policing.html) (last visited Aug. 23, 2013).

<sup>38</sup> See, e.g., Detention Watch Network, Conditions in Detention, <http://www.detentionwatchnetwork.org/node/2383> (last visited Aug. 23, 2013); Amnesty International USA, *Immigration Detention*, <http://www.amnestyusa.org/our-work/issues/refugee-and-migrant-rights/immigration-detention> (last visited Aug. 23, 2013).

<sup>39</sup> An estimated 3 million people have been in immigration detention in the last decade. An average of 30,000 people are held in immigration detention facilities on any given day. See FRONTLINE, THE U.S. IMMIGRATION DETENTION BOOM, <http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/map-the-u-s-immigration-detention-boom/> (last visited Aug. 23, 2013).

in facilities run by private contractors.<sup>40</sup> Persons in immigration detention report lack of access to urgent medical care, shortages of basic necessities like soap, toothpaste, and toilet paper, a vacuum of information about their deportation cases, and minimal or no access to their families and lawyers.<sup>41</sup> These conditions constitute violations of the ICCPR, as well as of ICE detention standards.<sup>42</sup>

18. As the United States explained in its Fourth Periodic Report, “[t]he current ICE detention system consists of approximately 240 local and state facilities acquired through intergovernmental service agreements (IGSA), seven contract detention facilities, and seven ICE-owned facilities.”<sup>43</sup> The largest majority (approximately 70% of detainees) are placed in IGSA facilities.<sup>44</sup> All detention facilities are required to meet the ICE National Detention Standards<sup>45</sup> or the Performance Based National Detention Standards. The United States represents that it monitors compliance with these standards through the Office of Detention Oversight (ODO), which is in the ICE Office of Professional Responsibility (OPR).<sup>46</sup> ODO was created in 2009 “to ensure independent internal management controls over ICE, the Detention Management Compliance Program, the safe and secure operation of detention facilities, and the humane treatment of ICE detainees.”<sup>47</sup> OPR/ODO both conducts its own inspections of detention facilities and investigates incidents of non-compliance and mistreatment, and collaborates with other federal government offices, including CRCL in their oversight efforts.<sup>48</sup>
19. The United States recognizes the important role that the detainees themselves can play in reporting violations of detention standards in its facilities. The Fourth Periodic Report represents that all ICE detainees are provided with handbooks that explain ICE detention standards and policies and explain the grievance process.<sup>49</sup> Nonetheless, detainees who report poor conditions are regularly ignored or subjected to retaliation.
20. Gerson Diaz was detained at the South Louisiana Correctional Center in Basile, Louisiana.

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<sup>40</sup> See Fourth Periodic Report *supra* note 33 at para. 236.

<sup>41</sup> See generally DETENTION WATCH NETWORK, EXPOSE AND CLOSE, *available at* <http://detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/ExposeClose/Expose-Executive11-15.pdf> (last visited Aug. 23, 2013) (highlighting detainee reports of inadequate medical care and food, as well as lack of access to legal counsel and family); System of Neglect, WASH. POST., May 11, 2008, *available at* [http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc\\_d1p1.html](http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html) (last visited Aug. 23, 2013) (documenting poor medical care and rising mortality rates of detainees).

<sup>42</sup> Article 10.1 of the ICCPR specifically provides for the preservation of human dignity for those who are held in detention. See ICCPR art. 10(1). The isolation of detainees from their counsel and their family, as well as the lack of adequate medical care, food, and other necessities, are an affront to the dignity of those held in immigration detention facilities.

<sup>43</sup> See Fourth Periodic Report, *supra* note 33 at para. 236.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at para. 237-38.

<sup>46</sup> *Id.* at para. 241-242.

<sup>47</sup> *Id.*, at para. 243. See also Susan Carrol, ICE paints bleak picture of detention system, HOUSTON CHRON., Oct. 20, 2011, *available at* <http://www.chron.com/news/houston-texas/article/ICE-paints-bleak-picture-of-its-detention-system-2209428.php> (last visited Aug. 23, 2013) (reporting that ODO inspection reports obtained through a FOIA request documented abusive practices, lack of medical care, and lack of clean underwear).

<sup>48</sup> Fourth Periodic Report, *supra* note 33 at para. 242.

<sup>49</sup> *Id.*, at para. 239.

He and other detainees filed grievances to challenge the poor conditions in the facility, but were ignored. He and sixty other detainees then began documenting the violations against them and conducting hunger strikes to expose the seriousness of ICE's failures.<sup>50</sup> In retaliation, several of the detainees were placed in solitary confinement.<sup>51</sup> Ultimately, the impasse was only resolved through the intervention of the DHS Secretary Janet Napolitano. When ICE finally conducted its own review of Basile, most of the violations reported by the detainees were validated<sup>52</sup> and conditions at Basile have begun to improve. Diaz continues to advocate for humane detention conditions and for the rights of detainees. Nonetheless, despite his courageous and meritorious advocacy efforts, ICE continues to pursue his deportation. Recently, his deportation defense based on civil rights violations occurring during his arrest was denied and he must now file an appeal or leave the country. ICE has continued to refuse to exercise discretion to close his case.

21. Mr. Diaz's experience at Basile demonstrates that without the participation of the detainees themselves, the United States cannot effectively protect the Covenant rights of persons held in immigration detention. The current structure of detention oversight only involves review and recommendations made by other offices within ICE. To be truly comprehensive and critical in the review of its facilities ICE and ODO need to respect the voices of those within the detention system. Without protection from retaliation, however, immigrant detainees face extremely high costs for reporting ICE violations.

### **C. Prosecutorial Discretion in Immigration Charges**

22. Recognizing the important role that immigrant workers play in exposing civil, labor, and human rights violations, ICE formally adopted a policy of providing relief for defenders engaged in human rights actions. On June 17, 2011, ICE Director John Morton issued a memorandum entitled "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs" ("Morton Memo").<sup>53</sup> The Morton Memo directs ICE officials to exercise "all appropriate discretion" for individuals "pursuing legitimate civil rights complaints" including "individuals engaging in a protected activity related to civil or other rights."<sup>54</sup> It states that such discretion is necessary "to avoid deterring individuals from...pursuing actions to protect

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<sup>50</sup> John Moreno Gonzales, 60 Immigrant Detainees Hunger Strike in Louisiana: Authorities Deny Poor Conditions, Associated Press, July 30, 2009, *available at* [http://www.startribune.com/templates/Print\\_This\\_Story?sid=52115137](http://www.startribune.com/templates/Print_This_Story?sid=52115137) (last visited Aug. 23, 2013). *See also* Detention Reform, N.Y. TIMES, Aug. 7, 2009, at A18, *available at* <http://www.nytimes.com/2009/08/07/opinion/07fri2.html?scp=2&sq=basile%20> (last visited Aug. 23, 2013) (arguing that ICE should ensure that national policies on detention impact "continuing outrages, like those documented by immigrant advocates at a center in Basile, LA, where detainees have wages hunger strikes to get their grievances heard.").

<sup>51</sup> *See* Monitoring Reports on Retaliation Against Detainee Human Rights Monitors at the South Louisiana Correctional Center, Basile, Louisiana, New Orleans Workers' Center for Racial Justice, *available at* <http://www.nowcrj.org/wp-content/uploads/2009/08/retaliation-report.pdf> (last visited Aug. 23, 2013).

<sup>52</sup> *See* ICE FOIA Request Number 1010FOIA 7265 (on file with New Orleans Workers' Center for Racial Justice).

<sup>53</sup> *See* JOHN MORTON, PROSECUTORIAL DISCRETION: CERTAIN VICTIMS, WITNESSES, AND PLAINTIFFS (Jun. 17, 2011) [hereinafter MORTON MEMO I], *available at* <http://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf> (last checked Aug. 23, 2013).

<sup>54</sup> *Id.* at 1. *See also* JOHN MORTON, EXERCISING PROSECUTORIAL DISCRETION CONSISTENT WITH THE CIVIL IMMIGRATION ENFORCEMENT PRIORITIES OF THE AGENCY FOR APPREHENSION, DETENTION, AND REMOVAL OF ALIENS 4 (Jun. 17, 2011) [hereinafter MORTON MEMO II], *available at* <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf> (last visited Aug. 23, 2013)(listing cooperation with federal, state, or local law enforcement as a positive factor warranting prosecutorial discretion).

their civil rights.”<sup>55</sup> While still discretionary, if broadly enforced, this memorandum would aid the U.S. in its obligations under the ICCPR.

23. In addition to the constraints that it is at best discretionary and subject to implementation by regional offices, the memorandum offers only limited protection for immigrant human rights defenders. It directs ICE officials to use their discretion not to pursue the deportation of any qualifying person. It does not, however, affirmatively direct immigration officials to grant immigrant human rights defenders any kind of authorization to stay or work in the United States and it does not prevent ICE from resuming a case for removal at another time.
24. Moreover, in practice, the Southern Regional Office of ICE has not exercised its prosecutorial discretion in accordance with the directives in the memorandum. The New Orleans Workers’ Center for Racial Justice has requested prosecutorial discretion to protect human rights defenders who participate in national and local investigations into unlawful policing and detention practices. By and large, except for one group of four workers who ran a national advocacy campaign for four years, ICE has ignored or denied these requests for prosecutorial discretion and has continued to pursue deportation for these individuals. As a result, these human rights defenders are denied equal access to courts to seek redress for their civil rights claims.
25. In sum, the remedies that the United States has created to ensure that the ICCPR rights of immigrant workers are protected are presently ineffective. Moreover, the systematic use of the immigration system to punish those who report violations separately contravenes the independent right to equal court access.

#### **Article (2)(1); (26) (Non-Discrimination)**

26. Articles 2(1)<sup>56</sup> and 26<sup>57</sup> of the ICCPR form the non-discrimination standard that binds all state parties. According to the Committee, “the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.”<sup>58</sup> Specifically, the Committee has recognized that non-citizens “have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them”<sup>59</sup> as well as “the right to freedom of assembly and association.”<sup>60</sup> Non-citizens also have the right to equal treatment in the courts.<sup>61</sup> As the Committee has

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<sup>55</sup> MORTON MEMO I, *supra* note 55 at 1.

<sup>56</sup> See ICCPR art. 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>57</sup> See ICCPR, art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>58</sup> See Gen. Comment 15, *supra* note 2 at para. 1.

<sup>59</sup> *Id.* at para. 7

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

explained, “the general rule is that each one of the treaty rights of the Covenant must be guaranteed without discrimination between citizens and aliens.”<sup>62</sup>

27. As recognized by the United States in its Fourth Periodic Report, non-citizens are also protected under U.S. constitutional and federal statutory law.<sup>63</sup> The United States acknowledges, however, that immigrants continue to be subjected to unlawful discrimination in all aspects of life.<sup>64</sup> State and federal actors are often active participants in and enablers of this discriminatory behavior,<sup>65</sup> creating a relationship of distrust and fear between these communities and the government.<sup>66</sup>
28. Nonetheless, immigrant workers in the Gulf Coast have not been quiescent victims of discrimination, but rather have been actively engaged in reporting and challenging violations of their domestic and international legal rights by employers and by law enforcement. Members of the Southern 32 Campaign and the New Orleans Workers’ Center for Racial Justice have been essential participants in state, local, and national efforts by government and non-governmental organizations to document and remedy workplace labor violations, law enforcement racial profiling, and abusive detention conditions, all of which violate the ICCPR,<sup>67</sup> as well as domestic constitutional and statutory law.
29. Despite the important role that these community leaders play in defending civil, labor, and human rights, the federal government regularly uses the immigration system to retaliate against them for speaking out against unlawful discrimination. Thus, the violation of the ICCPR right against non-discrimination is compounded by subsequent violations of the separate and independent right to speak and organize against unlawful discrimination and to demand and receive a remedy for Covenant violations.

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<sup>62</sup> *Id.*, at para. 2.

<sup>63</sup> See Fourth Periodic Report *supra* note 33 at para. 101 (“As a matter of U.S. law, aliens within the territory of the United States, regardless of other immigration status, enjoy robust protections under the U.S. Constitution and other domestic laws. Many of these protections are shared on an equal basis with citizens, including a broad range of protections against racial and national origin discrimination.”). See also *id.*, at para. 102 (detailing federal statutory protections against discrimination).

<sup>64</sup> See *id.* at para. 105.

<sup>65</sup> In the Gulf Coast region, the Department of Homeland Security Bureau of Immigration and Customs Enforcement [“ICE”] have supported private employers in violating immigrant workers’ rights. For example, in Mississippi, ICE “worked closely with a marine oil rig company . . . to discourage protests by temporary guest workers from India over their job conditions, including advising managers to send some workers back to India...” Julia Preston, *Suit Points to Guest Worker Program Flaws*, N.Y. TIMES, Feb. 2, 2010 at A12.

<sup>66</sup> See also *State of Alabama v. Victor Marquez*, No. CV2008-900560 (28<sup>th</sup> Judicial Cir. Ala. 2008) (alleging that while traveling from the United States to Mexico, a migrant farmworker had his life savings seized by the police during a traffic stop); *Central Alabama Fair Housing Center, et al. v. Julie Magee, et al.*, 835 F.Supp.2d 1165 (M.D. Alabama 2011) (alleging that the Alabama Department of Revenue’s requirement that people who owned or maintained mobile homes in the state must prove their lawful immigration status is a violation of the Fair Housing Act).

<sup>67</sup> The ICCPR protects against forced or compulsory labor, requires all persons to receive the equal protection of the law and proscribes arbitrary arrest or detention, and protects the dignity of persons who are deprived of their liberty. See ICCPR, arts. 8, 9, 10, 26.

## Conclusions & Recommendations

Non-citizens are entitled to full recognition of the protections guaranteed by the International Covenant on Civil and Political Rights. Unfortunately, as the United States acknowledges, unlawful discrimination against immigrant communities remains a problem for the nation.

Immigrant human rights defenders play an essential and irreplaceable role in identifying and remedying these violations.

Continued immigration enforcement including arrest, detention, and deportation of individuals engaged in defending human rights enumerated in the ICCPR violates the United States' obligation to provide an effective remedy under Article 2 of the Covenant, and severely limits the nation's ability to comply with its other Covenant obligations.

The United States' failure to protect the expressive and associative rights of non-citizens violates its commitments under the ICCPR and undermines federal efforts to end unlawful discrimination by both state and federal actors.

To bring the nation into compliance with its ICCPR obligations to immigrant human rights defenders and its obligation to detect, investigate, and remedy violations of all rights protected under the ICCPR, the United States should:

- **Legislate Immigration Protections for Individuals Defending Human Rights Enumerated within the International Covenant on Civil and Political Rights.** The POWER Act is proposed legislation that would ensure that worker protection laws are equally enforced in all workplaces and create special visa eligibility for workers suffering serious civil rights or labor violations.
- **Create and Enforce Administrative Protections for Individuals Defending Human Rights Enumerated within the International Covenant on Civil and Political Rights.** The Department of Homeland Security, the U.S. Cabinet agency responsible for immigration enforcement, should issue public guidance directing enforcement and legal personnel to properly limit enforcement in cases involving protected civil, labor, and human rights actions and should ensure consistent and broad implementation. This could include non-discretionary implementation and enforcement of the principles included in existing discretionary administrative documents.<sup>68</sup> Administrative protections must include: an end to all DHS custody conditions (including but not limited to detention, ankle shackles, travel limitations, and check-in requirements), indefinite future status for human rights defenders and their families (including termination of

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<sup>68</sup> See March 31, 2011, Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites available at <http://www.dol.gov/asp/media/reports/DHS-DOL-MOU.pdf>. See also June 17, 2011, Memorandum from John Morton, Director of ICE, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs available at <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>.

immigration cases with prejudice or indefinite stays of removal), and employment authorization.

- **Adopt Proactive Policies to Limit Harm to Ongoing Human Rights Activities.** The U.S. Department of Homeland Security should adopt procedures that limit the destructive impact of worksite, day labor corner, and community raids. Prior to such raids, ICE should conduct a community justice assessment on the raid's harm to ongoing protected activity relating to civil, labor, or human rights that shall constrain enforcement activity.
- **Terminate Federal Agreements with Local Law Enforcement Officials Who Undermine Human Rights.** The Department of Homeland Security should monitor and terminate collaboration with local and state law enforcement that is found to be undermining human rights. Terminating collaboration should include terminating detention contracts and information-sharing programs in which local law enforcement are found to have committed human rights violations including racial profiling, excessive use of force, over-detention based on expired immigration detainers, and/or unlawful detention conditions.
- **Investigate and Sanction Misconduct by Immigration Enforcement Officials and Protect Witnesses to the Investigation.** The Department of Homeland Security Office for Civil Rights and Civil Liberties should investigate and sanction agents who fail to comply with human rights, while protecting the confidentiality and safety of victims and witnesses who come forward and report misconduct. CRCL should develop a streamlined process to ensure that immigration enforcement protects and does not harm persons who participate in civil rights investigations. CRCL should also limit the ways in which information gathered through these investigations is shared and used against cooperating individuals in the future.
- **Ensure Community Transparency and Accountability.** The Department of Homeland Security should publicly disclose information relating to protection of human rights defenders across its field offices and divisions. This includes providing data, by region, relating to the number of cases reviewed and actions taken, community justice assessments performed, and funding allocations made towards civil, labor, and human rights. The Department of Homeland Security should also prioritize Freedom of Information Act requests relating to civil, labor, and human rights.

## Proposed Questions to the United States

- (1) What provisions of U.S. immigration law and policy ensure protections for vulnerable migrant workers and other individuals acting to defend the rights enumerated in the ICCPR so that the U.S. does not deport the evidence of serious human rights violations?
- (2) In June 2011, director of Immigration and Custom Enforcement (ICE), John Morton issued two memoranda to ICE personnel on the use of discretion in immigration enforcement.<sup>69</sup> They direct ICE attorneys and employees to refrain from pursuing individuals with strong ties to the United States, and those “involved in non-frivolous efforts related to the protection of their civil rights and liberties.”<sup>70</sup> Instead ICE officials are to focus their efforts on persons who pose a serious threat to national security and public safety, and individuals with an “egregious record of immigration violations.”<sup>71</sup>
  - a. Please provide an update on the effect of these memoranda on U.S. immigration enforcement policy. How does the United States ensure uniform compliance with these directives by personnel in ICE’s regional and local offices?
  - b. What kinds of training and oversight mechanisms are in place to ensure that ICE personnel properly exercise discretion under the Morton memoranda? What channels of redress are available when they do not?
- (3) The United States has created an Office of Civil Rights and Civil Liberties in the Department of Homeland Security, which is tasked with addressing complaints involving abuses of civil rights, civil liberties, and discrimination on the basis of race, ethnicity, and national origin, by employees or officials of the Department of Homeland Security, which includes the Bureau of Immigration and Customs Enforcement.<sup>72</sup>
  - a. What role does the DHS Office for Civil Rights and Civil Liberties play in enforcement of the protections for victims of civil rights and labor violations?
  - b. Please update the Committee as to the kind of complaints most commonly received by the CRCL and their resolution. What enforcement mechanisms does the CRCL have to end ongoing violations?
  - c. How does the United States ensure that documented and undocumented immigrants can report civil, constitutional, and human rights violations, particularly against government officials, without experiencing retaliation? How does the United States ensure that immigrants receive due process of law on claims of civil, constitutional and human rights violations made to CRCL without fear of deportation? What redress is available for persons who experience retaliatory action by DHS or its sub-agencies as a result of reporting a rights violation? What steps does DHS take to ensure they are not detained and/or deported while their claims are being investigated?

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<sup>69</sup> See *supra* n. 53-54 and accompanying text.

<sup>70</sup> See MORTON MEMO I, *supra* note 53 at 1.

<sup>71</sup> See MORTON MEMO II, *supra* note 54, at 5.

<sup>72</sup> See Fourth Periodic ICCPR Report, *supra* note 33, at para. 105 (describing CRCL’s efforts to reach out to communities and other immigration enforcement agencies to discuss possible violations of civil rights and civil liberties and methods for improvement). See also *id.* at para. 106 (describing CRCL’s investigative authority).

- d. How is information gathered through investigations shared within DHS and its sub-agencies? What protections exist to ensure confidentiality for participants in the process?
- (4) The 287(g) Program authorizes local law enforcement to perform certain immigration functions traditionally done by the federal government. The Program also has been the source of numerous reported civil, constitutional, and human rights violations. The United States reports that it is engaged in a number of training efforts to ensure that this program operates in a way that is consistent with constitutional and human rights standards.<sup>73</sup>
    - a. Please update the Committee as to the impact of these training programs on the incidence of civil and human rights violations affecting immigrant communities.
  - (5) During the Universal Periodic Review of 2010, the United States addressed continuing concerns over its migrant detention practices. In its report for the Fourth Periodic Review, the United States reports the creation of the Office of Detention Oversight, which is charged with independently verifying the inspection of detention facilities, according to national detention standards.<sup>74</sup>
    - a. Please update the Committee as to the success of these oversight mechanisms in improving detention conditions, particularly in private facilities. Do these Offices also play a role in redressing individual reports of problematic detention conditions? How does the United States ensure that migrants in detention can receive individual redress for civil and human rights violations, beyond merely filing complaints with oversight entities? How does the United States ensure protections from retaliation for detainees who file complaints while in custody?
    - b. Civil society groups continue to report detention conditions that are dangerous to the health and safety of detainees; over-reliance on detention of individuals including women, children, and asylum seekers; and punitive actions against detainees including the use of solitary confinement. How is the United States responding to these continuing concerns from civil society?
  - (6) DHS and the Department of Labor have a Memorandum of Understanding designed to ensure that immigration and labor rights enforcement activities do not conflict.<sup>75</sup> Pursuant to this Memorandum, ICE agreed to refrain from engaging in civil worksite enforcement activities at a worksite that is under DOL investigation, and further committed to evaluating requests from employers to ensure that they are not “motivated by an improper desire to manipulate a pending labor dispute, retaliate against employees for exercising labor rights, or otherwise frustrate the enforcement of labor laws.”<sup>76</sup>

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<sup>73</sup> See Fourth Periodic Report, *supra* note 33, at para. 291 (describing the 287(g) program, codified at 8 U.S.C. 1357(g), which allows domestic and local law enforcement to carry out functions of immigration officers). The United States has outlined many aspects of the program that are supposed to prevent and prohibit violations of civil rights by both ICE and local law enforcement. See *id.*, at para. 292.

<sup>74</sup> See *id.*, at para. 238, 242-245 (describing the oversight role of the CRCL and the ODO, and the creation of national detention standards).

<sup>75</sup> See Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (Dec. 7, 2011), *available at* <http://www.dol.gov/asp/media/reports/DHS-DOL-MOU.pdf> (last visited Aug. 23, 2013).

<sup>76</sup> *Id.* § IV(A).

- a. Please update the Committee as to the progress in implementing the protections in this Memorandum. Specifically, please explain what training is in place at the national, regional, and local level to ensure that ICE employees and officials are aware of their obligations under the Memorandum and describe the standards by which DHS evaluates employer requests under the Memorandum. Please provide documentation as to the number of times DOL has asked for protections for workers and DHS's response.