

United States' Compliance with the International Covenant on Civil and Political Rights Freedom of Association and Right to Equality and Non-Discrimination in Work

Submitted by

United Workers Congress
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I. Relevant question in list of issues:

Question 23 in the list of issues asked of the United States:

Freedom of assembly and association (arts. 21 and 22)

Please clarify why agricultural and domestic workers and independent contractors are excluded from the right to organize themselves in trade unions by the National Labor Relations Act and provide information on steps taken to ensure that the right to freedom of association is available to these categories of workers.

II. Introduction and Background

This shadow report is submitted to inform the review of the United States (U.S.) before the Human Right Committee (HRC), in particular pertaining to Question 23 on the list of issues. The contents of this report are organized in light of the state's response to Question 23, and the U.S.'s obligations under Article 22 of the ICCPR and related issues.

In their response to Question 23, the U.S. fails to answer the two most pertinent inquiries of the HRC: namely *why* are certain classes of workers excluded from the core legal framework in place protecting the right to form and join a trade union in the U.S., and *what steps* are being taken to ensure the right to freedom of association is available to excluded workers.

The U.S. response fails to take into account the fullness of its obligation to respect, protect and fulfill the right to freedom of association. This means, that while the U.S. must refrain state actors from violating the right, it must also prevent third parties from violating the right and take measures to ensure that the right is enjoyed by all those within its jurisdiction.

Despite efforts to answer the HRC to the contrary, the U.S. continues to fail to guarantee full labor rights and remedies, including the right to freedom of association and collective bargaining, to entire categories of workers, in violation of Article 22, and Articles 2 and 26 and Article 14 of the ICCPR.

III. Summary of Issues

U.S. Compliance with Article 22: Right to Freedom of Association, Right to Form and Join Trade Unions

According to Article 22 of the ICCPR, “*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.”ⁱⁱ The only restrictions permitted on the absolute right to organize are situational to protect, “national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”ⁱⁱⁱ There is no exemption permitted for categories of workers or exclusions for any person based on the type of job they perform.

The HRC has repeatedly found that impeding the right to form associations and to bargain collectively is in violation of Article 22 of the ICCPR.ⁱⁱⁱ The HRC has declared freedom of association, including the right to collective bargaining, should be guaranteed to *all* individuals^{iv} and has specifically found that the right to collectively bargain covers public sector workers,^v farm workers,^{vi} and “workfare” participants.^{vii}

Article 22.3 of the ICCPR integrates the ILO’s Freedom of Association Convention (87) into the ICCPR with the admonition that State Parties to the ILO and Convention 87 are not permitted to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention. While the United States has not ratified this Convention, it is required by virtue of membership in the ILO and the Declaration on Fundamental Principles and Rights at Work to respect, to promote and to realize, in good faith, the fundamental rights subject to the Convention, namely freedom of association and the effective recognition of the right to collective bargaining. The many exclusions and restrictions referred to above violate this section of the ICCPR as legislative measures and application of the law is contrary to Convention 87, which allows workers without distinction the right to form and join unions to protect their interests.

In the United States, the primary law under which workers are guaranteed the right to organize trade unions and to bargain collectively in the United States is the National Labor Relations Act (NLRA),^{viii} which protects an employee’s right to “self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection ...”^{ix} However, the NLRA explicitly excludes public-sector workers, agricultural and domestic workers^x, as well as workers categorized as independent contractors,^{xi} such as most taxi drivers, and non-employees such as “workfare” participants, unemployed people who are compelled to work in order to receive government benefits such as food assistance, social services and welfare grants. The denial of workers’ full rights to freedom of association and collective bargaining has a direct negative impact on the overall working conditions for low-wage workers, and workers’ rights to health, safety and dignity.

The right to organize is designed to put existing labor rights within reach of ordinary workers. The U.S. has consistently undermined that goal by excluding millions of workers from protection. For many others, the right to organize and collective bargaining is unavailable as a practical matter due to intensive employer interference with organizing campaigns, particularly in the 24 states that have “right-to-work” laws. These laws force unions to represent non-member employees and deprive unions of the infrastructure needed for effective organizing and bargaining. Employers threaten to close the plant in 57% of union election campaigns.^{xii} They discharge workers in 34 percent of elections and threaten to cut wages and benefits in 47% of elections.^{xiii} Workers are forced to attend anti-union, one-on-one sessions with a supervisor at least weekly in two-thirds of elections.^{xiv} The

intensification of employer anti-union campaigns and the proliferation of right-to-work laws have had a clear impact on union participation rates. In 1983, there were 17.7 million union members in the United States, 20.1%^{xv} of the workforce. In 2009, that proportion was 12.3%. In the right-to-work states, union density—the percentage of workers who belong to a union—now averages 6%.^{xvi}

Agricultural Workers

In the NLRA, the term “employee” for purposes of labor rights and protections specifically does not include any individual employed as an agricultural laborer.^{xvii} Agricultural laborers, or farmworkers, are thus excluded from the right nearly all other American workers have to collectively bargain.^{xviii} Agricultural workers are denied the ability to organize and bargain collectively for the purposes of representing and protecting their interests wholesale as an entire category of laborers. The federal employment law that covers agricultural workers, the Migrant and Seasonal Agricultural Worker Protection Act of 1983 (AWPA),^{xix} requires employers to disclose and comply with the terms of the employment they offer, and upholds some safety standards. However, the AWPA does not protect agricultural workers’ ability to bargain collectively.^{xx}

There are only ten states in the U.S. where the international human right to collectively bargain is protected for agricultural workers under state law: Arizona,^{xxi} California,^{xxii} Hawaii,^{xxiii} Kansas,^{xxiv} Louisiana,^{xxv} Massachusetts,^{xxvi} Nebraska,^{xxvii} New Jersey,^{xxviii} Oregon^{xxix} and Wisconsin.^{xxx} This means, even though the piecemeal state-by-state approach, that this important right is unavailable to agricultural workers in 80% of U.S. states.

The oftentimes seasonal nature of their work, the instability of working conditions and the dangerous labor they perform makes agricultural workers particularly vulnerable to exploitation by their employers. The right to organize as employees and bargain with employers is an absolute necessity to ensure basic safety standards and standards for well-being of agricultural workers are effectively implemented and monitored.

Domestic Workers

Domestic workers are similarly excluded from the definition of “employee” under the NLRA, in violation of Article 22, as well as Articles 2 and 26, of the ICCPR. As was reported to this Committee during the prior review of the United States:

Exclusion from the NLRA leaves domestic workers unprotected against private employers who deny them their right to associate and assemble peacefully. An employer, when violating those rights under the ICCPR, does not violate any U.S. law, nor is there any U.S. law under which the worker may bring suit. Even if a domestic worker has a contract assuring the right to associate and assemble, the Committee has stated that “a formal right to sue for breach of contract may well be insufficient” and has recommended that states extend coverage of labor laws to domestic workers.^{xxxii}

While domestic workers and homecare workers have won important victories in some states via executive order or state legislation, gaining the right to join a union and engage in collective bargaining, domestic workers in the overwhelming majority of states remain excluded from protections at both the state and federal level.^{xxxiii} Because of the limited legal protections afforded domestic workers, they confront a range of violations under the ICCPR that extend beyond the denial

of the right to associate and bargain collectively, from substandard working conditions to forced servitude.

Independent Contractors

Workers – particularly those in the janitorial, home care, constructing, taxi and trucking industries – are frequently misclassified as “independent contractors” by employers seeking to avoid regulation and liability through the misclassification of workers as independent contractors. According to a review of state audits, as many as 10-30% of workers are misclassified as “independent contractors,” resulting millions of workers being denied the right to freedom of association, collective bargaining, and other fundamental workplace rights.^{xxxiii}

Employers’ efforts to avoid liability through misclassification have been sanctioned by courts. In April 2009, for example, the D.C. Circuit of the U.S. Court of Appeals overturned the NLRB-sponsored election in which truck drivers in a Massachusetts facility who worked for FedEx Home Delivery – one of the nation’s largest parcel delivery services – voted overwhelming to join the Teamsters Union.^{xxxiv} The appeals court held the truck drivers were independent contractors, reasoning that they own their own trucks and, therefore, have the potential to use them for other entrepreneurial ‘business opportunities,’ without making any factual finding as to whether the workers who unionized actually did use their trucks for other purposes. In reaching its decision, the court rejected the NLRB regional director’s ruling that these workers are employees because they perform a regular and essential part of FedEx’s normal operation, are required to follow routes set by the company, are trained by the company, must plaster the name of FedEx on their trucks doing business in the company’s name, under significant guidance from the FedEx management, participate in the company vacation plan, group insurance and pensions and have a permanent working arrangement with FedEx.^{xxxv}

Public-Sector Workers

The right of public-sector workers to collectively bargain is specifically protected under the ICCPR.^{xxxvi} In 1999 the HRC ordered the government of Chile to “review the relevant provisions of laws and decrees in order to guarantee to civil servants the rights to join a trade union and to bargain collectively, guaranteed under article 22 of the Covenant.”^{xxxvii}

In the U.S., public-sector workers are excluded from the NLRA and have experienced increasing encroachments on their fundamental associational rights in recent years. The rights of public-sector workers vary from state to state, with some outright prohibitions on bargaining. State level legislative changes that have withdrawn bargaining rights from public-sector workers are particularly disturbing. In the state of Wisconsin, a law enacted in 2011 stripped the long-established bargaining rights of teachers, clerks, nurses, laborers and dozens of other categories state and local government employees. The matter is currently pending before the state’s high court. Legislation in other states has diminished bargaining rights.

North Carolina’s internationally condemned ban on public-sector collective bargaining may become even more entrenched because of a proposed amendment to the North Carolina State Constitution, which would prohibit public-sector bargaining. Voters in North Carolina will decide this issue in

October 2013. The International Labor Organization has condemned the ban on public-sector bargaining as violating workers fundamental rights to Freedom of Association and specifically breaching ILO Conventions 87, 98 and 151.^{xxxviii} Further anti-union legislation has been submitted to the governor that would constrain agricultural worker organizing by prohibiting agreements that place conditions related to the agricultural producers status as a union or non- union employer or entry or refusal to enter an agreement with labor union as unenforceable as against public policy in restraint of trade or commerce in the State of North Carolina. South Carolina and Virginia also prohibit public-sector bargaining. Texas prohibits collective bargaining of public employees, except for firefighters and police officers. Alabama requires express statutory authority and none exists. Other states, including West Virginia and Mississippi, have no regulatory mechanism for public-sector bargaining thereby making it virtually impossible to advance the collective interests of public-sector workers. Several states have very limited public-sector bargaining, omitting vast categories of workers, including Georgia, Idaho, Kentucky, Louisiana, Oklahoma, Tennessee and Utah.

Immigrant Workers

While undocumented workers are considered “employees” under the NLRA, the US Supreme Court’s decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), held that an undocumented worker illegally terminated for exercising freedom of association rights guaranteed under Art. 22 is not entitled to any individualized remedy at law. The decision found undocumented workers are not entitled to compensation for wages they would have earned had they not been terminated. In response to a complaint filed by the AFL-CIO and the Confederation of Mexican Workers, the International Labor Organization concluded that the *Hoffman* decision violated international law since “the remedial measures left to the NLRB in cases of illegal dismissals of undocumented workers are inadequate to ensure effective protection against acts of anti-union discrimination.”^{xxxix} The Inter-American Court of Human Rights likewise found the *Hoffman* decision inconsistent with international human rights law in an Advisory Opinion from 2003, concluding that immigrant workers, regardless of status, were entitled to the same basic labor protections as citizens—including back pay.^{xl}

Articles 2 and 26: Right to Equality and Non-Discrimination

Article 2 of the ICCPR dictates that all people within the territory of the United States have equal right to benefit from protection of the 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.”^{xli} Similarly, Article 26 provides for equal protection of the law and does not permit discrimination on any of the same grounds.^{xlii} In addition to the U.S.’s failure to protect and ensure the right to freedom of association for many classes of workers, the exclusion of individuals from federal labor protection because of their race, national origin, migrant status, also violates the U.S.’s obligations under Article 2 and 26.

The FLSA, which mandates minimum wages and overtime pay, and the National Labor Relations Act, which provides for the right to associate and collective bargaining, excludes from fundamental protections from overtime protection agricultural workers and live-in domestic workers, the majority of whom are people of color and recent immigrants. As many as 2.5 million homecare workers, for example, are entirely excluded from the protection of minimum wage and overtime laws.^{xliii} Tipped-workers are provided a different minimum wage scheme under FLSA, with a special minimum wage which remains at \$2.13 per hour, while the current federal minimum wage is \$7.25 per hour (14 states have state minimum wages that are even higher).^{xliv}

Excluding agricultural workers and domestic workers from labor protection legislation has a disproportionate and discriminatory impact on persons of color. The Committee on the Elimination of Racial Discrimination has determined that laws and policies that have “an unjustifiable disparate impact” on racial and ethnic minorities are prohibited.^{xlv} However, the disparate impact on these vulnerable groups is not incidental. These exclusions were initially written in to the law explicitly due to racial bias and for the purpose of excluding African Americans from labor protections. In 1937, Southern lawmakers threatened to block the President’s Federal Labor Standards Act (FLSA) and the accompanying NLRA unless they exempted agricultural workers and domestic workers, effectively excluding most African Americans. On the floor of the House of Representatives, Rep. J. Mark Wilcox of Florida summed up the racist sentiment behind these exemptions with alarming candor:

Then there is another matter of great importance in the South, and that is the problem of our Negro labor. There has always been a difference in the wage scale of white and colored labor. So long as Florida people are permitted to handle the matter, this delicate and perplexing problem can be adjusted; But the Federal Government knows no color line and of necessity it cannot make any distinction between the races. We may rest assured, therefore, that ... it will prescribe the same wage for the Negro that it prescribes for the white man. ... [T]hose of us who know the true situation know that it just will not work in the South. You cannot put the Negro and the white man on the same basis and get away with it.^{xlvi}

Today there are an estimated 2 million workers in the fields and farms of the United States.^{xlvii} Approximately three-fourths are Mexican-born, two-thirds are migrants, and one-half are undocumented.^{xlviii} As predominantly African American sharecroppers have been replaced, the burden of these historical lax protections in U.S. labor law for agricultural workers and domestic workers continues to fall disproportionately on Latino and migrant workers.

While Title VII of the federal Civil Rights Act protects workers’ rights to be free from discrimination based on several factors: sex, color, race, religion and national origin, statutory and judicially-imposed restrictions exclude large numbers of workers from protection. Small employers, for example, are excluded under the national law,^{xlix} as well as under several state anti-discrimination laws (which also may exclude specific categories of workers). Moreover, immigrants without work authorization are excluded from the protection of the Unfair Immigration-Related Employment Practices Act, which protects against discrimination based on citizenship and national origin in employment.¹

In addition, workers have experienced an abuse of criminal-background checks. Nearly one in three U.S. adults has a criminal record that shows up on a routine background check. Increasing use of background checks in all sectors of the economy, means qualified workers are unjustly excluded from employment based on arrest (not conviction) records, old and non-serious convictions, and offenses that are not job-related.^{li}

The *Hoffman* decision has had a negative impact on the labor and employment law protections available to migrant workers in an irregular status. Specifically, some state courts following Hoffman’s precedent have refused to accord undocumented workers compensation for wages lost due to work-related injuries and on-the-job discrimination. In the workers compensation arena, courts in least two states, Michigan and Pennsylvania, have held undocumented workers are not entitled to compensation for lost wages because of injuries, following the reasoning employed in the *Hoffman*

decision. In other states, workers fear retaliation – such as prosecution for document fraud and ultimately deportation– if they pursue their full rights under the law.^{lii} In the context of employment discrimination, some state courts have concluded that undocumented workers have no rights to certain forms of compensation for certain type of discrimination.^{liii} At the federal level, U.S. law against citizenship discrimination does not protect these workers.^{liv}

These exemptions violate the U.S.’s international obligations under the ICCPR, perpetuating the discrimination in which they are rooted and compounding the U.S.’s failure to protect and ensure the right to freedom of association.

Article 14: Right to Equality Before Courts and Tribunals

While the U.S.’s failure to provide a remedy to whole classes of workers for the violation of their rights to freedom of association violates Article 22, a lack of equality before the courts for workers seeking remedies also violates of Article 14 of the ICCPR. CCPR General Comment No. 13 recognizes that “article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law.”^{lv} The Committee encourages State parties to report on many things including, “equal access to courts.”^{lvi} Vulnerable groups of workers, such as agricultural workers, domestic workers, and migrant workers are often without recourse in the judicial system for violations of their labor rights.

Compounding the *de jure* and *de facto* discrimination experienced by agricultural and domestic workers, as well as independent contractors and other categories of excluded workers, is denial of equal access to justice. Specifically, migrant workers in irregular status and certain guestworkers are denied access to attorneys under various state and federally funded legal services programs, in violation of Art. 14.^{lvii} No nationwide policy protects these migrants in irregular status who are victims of labor law violations from disclosure of their status and deportation as a consequence of their involvement in judicial proceedings.

IV. U.S. Government Response

In June 2013, the U.S responded to issue 23 in paragraphs 121-124, but their response mischaracterizes the nature of the law and denies the reality of the experiences of thousands – if not millions of workers in the United States. Furthermore, it fails to acknowledge the Government’s affirmative responsibility to protect and ensure the right to freedom of association.

1. Response by U.S.: U.S. law and practice impose no restrictions on the right of individuals to form and join trade unions, including immigrant and undocumented workers, individuals employed as agricultural workers, domestic workers, and federal, state, and local government workers

Coalition response: The inquiry into legal restrictions does not reflect the entirety of the state’s obligation to protect and ensure the freedom of association. While there is no explicit legal restriction, there are explicit exclusions as to entire categories of workers entitled to legal protection, and small employers are not covered by the statute. The cumulative effect of these exclusions, right-to-work laws, and the judiciary’s removal of any remedy for migrant workers is an effective restriction on millions of individuals’ rights to form and join trade unions. Lack of affirmative legislation or legal precedent is, in effect, a restriction in and of itself.

2. Response by U.S.: Freedom of association is principally protected by the First Amendment of the U.S. Constitution, which has been interpreted by the Supreme Court to include an employee’s right to

form and join a union without interference from state actors. See Thomas v. Collins, 323 U.S. 516 (1945).

Coalition response: It is clear from the examples given above that the First Amendment does not offer sufficient protection for many categories of workers. Right-to-work legislation passed in many states, and the judiciary's decision in *Hoffman* should make this clear. State laws that negatively impact union membership directly infringe upon the right of workers to unionize, and judicial precedent removing any possible remedy for the violations of migrant's rights to organize effectively nullifies the rights of these workers. Furthermore, protections afforded under the First Amendment are distinct in nature from the rights afforded under the ICCPR. To fulfill its obligation under Article 22 the U.S. must also protect and ensure an individual's right to form and join a union without interference from *private* actors, such as retaliation by employers.

3. Response by U.S.: The 1935 National Labor Relations Act (NLRA) protects the rights of certain employees, acting concertedly, to self-organize; form, join, or assist labor organizations; bargain collectively through representatives of their own choosing; and engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. It does not in any way restrict the rights of workers not covered.

Coalition response: Although the NLRA does not restrict the rights of the employees in question, it fails to support those rights or provide any mechanism for their enforcement. As the ILO has noted, the failure of the United States to provide adequate remedies to individual employees is tantamount to the denial of a right. Exclusions of agricultural and domestic workers originally motivated in part by racial animus also violate the U.S.'s obligations under Article 2 and 26.

4. Response by U.S.: With regard to employment contractors, the nature of an employer's relationship with an independent contractor has been found not to fall within NLRA protection over collective bargaining regarding an employee's terms and conditions of employment. An employer generally regulates only the result to be accomplished by an independent contractor, rather than the method and manner of services, which an employer controls for its employees. See, Steinberg & Co., 78 NLRB 211, 220-21 (1948).

Coalition response: This statement exemplifies the United States' failure to live up to its obligations under the ICCPR, and failure to recognize the way in which the NLRA and the courts deny millions of workers the right to freedom of association and collective bargaining, as outlined above.

5. Response by U.S.: Further, approximately eight U.S. states, including California and Arizona, have enacted agricultural labor relations laws or include agricultural laborers within their general labor provisions.

Coalition response: There are a small minority of U.S. states where agricultural workers are protected in general statutes regarding worker protection, or have separate statutes covering them. However, this piecemeal solution still leaves agricultural workers in over 80% of U.S. states with no protection. The ICCPR obligates the U.S. as a whole and its provisions "shall extend to all parts of federal states without any limitations or exceptions."

V. Recommended Questions:

1. While the NRLA may not expressly *restrict* the right to freedom of association for workers excluded from its protection, what is the United States doing to fulfill its obligation under Article 22 to protect and ensure that all workers, without discrimination on the basis of immigration status, gender or race – including domestic workers, agricultural workers, public sector workers, independent contractors, and others – are guaranteed the rights to freedom of association accorded under the ICCPR?
2. What steps is the United States taking to ensure that it is not violating Articles 2 and 26 by excluding certain classes of workers – namely agricultural workers and domestic workers – from the NRLA, when such exclusions are rooted at least in part in racial animus, and today still carry a disparate impact against racial and ethnic minorities?
3. What steps is the United States taking to adopt the ILO Convention on Domestic Work, and to ensure the rights contained therein, rights consistent with its obligations under the ICCPR are guaranteed without discrimination to all persons engaged in domestic work?
4. What is the U.S. doing to address the human rights guaranteed under Articles 2, 14, and 24 of the ICCPR for growing numbers of temporary, part-time, subcontracted and contingent workers across the country?
5. What remedy do workers excluded from the protection of the NRLA have if retaliated against by their employer for attempting to exercise their rights to form and join a trade union? What steps is the United States taking to ensure all workers, regardless of migration or other status, have full and equal access to courts and administrative bodies charged with adjudicating complaints and providing redress when workers' rights are violated? What steps is the United States taking to ensure legal aid is available to all workers, regardless of migration status, in guaranteeing access to justice?
6. What steps is the United States taking to ensure prosecutorial discretion is employed in deportation proceedings where undocumented workers have suffered retaliation for engaging in the right to freedom of association in the workplace, in violation of their rights accorded under Article 22 of the ICCPR?

VI. Recommendations

In order to comply with its international obligations under the ICCPR, the United States should observe the following recommendations:

- Initiate a process of harmonizing national legislation and domestic laws with Article 22 by guaranteeing protection and full remedies in their labor laws to all workers, regardless of employment category or immigration status, to:
 - (i) comply with the decisions of intergovernmental organizations and regional bodies regarding migrant workers;
 - (ii) consistently prosecute violations of labor law with regard to migrant workers' conditions of work; and
 - (iii) prosecute *inter alia* those issues related to workers' remuneration and conditions of health, safety at work and the right to freedom of association, including the right to form and join trade unions.
 - (iv) ensure all rights and remedies are available on an equal basis to all workers regardless of migration status.
- Carry out impartial investigations into reports of human rights violations made by migrant workers and all low-wage workers, including guestworkers, and to ensure workers who claim to have been abused or exploited have full access to all the rights and remedies available under domestic and international law, without discrimination.

- Sign and ratify the International Labor Organization’s Convention concerning Decent Work for Domestic Workers.^{lviii}
- Pass legislation with strong worker protections– including comprehensive immigration reform and the inclusion of the POWER Act – that will provide a legalization process for undocumented workers and will serve to guard against the ongoing discrimination workers in an irregular status face when seeking to exercise their rights to freedom of association and collective bargaining.
- Create a federal “independent contractor board” that would provide oversight and coordinate efforts against misclassification, and guard against workers being wrongly identified as independent contractors as a way to avoid regulation and liability, and to permit for the ongoing violation of large numbers of workers’ fundamental human rights.
- Abolish programs that force people to work for food assistance, social services and welfare grants commonly called “workfare.” Furthermore, take necessary steps to ensure government agencies do not use the unemployed to displace public sector employees or subsidize for-profit corporations, rather than taking affirmative measures to provide meaningful work on public works projects or public services at the prevailing wage and benefits, with union representation.
- Eliminate irrelevant questions about past arrests and/or convictions from applications for jobs or subsidized housing that have a discriminatory impact on persons of color and women, and enforce Title VII of the Civil Rights Act to decrease restrictions on employment opportunities for formerly incarcerated people.

Appendix

The mission of the **United Workers Congress (UWC)** is to expand the right to organize for all workers. The building of power among low-wage workers is based on our capacity to organize and collectively bargain. While the nine sectors of workers represented in the UWC have a long history of organizing, each of our sectors is excluded – either by default or design – from labor laws and regulations in the United States, thus compromising our capacity to achieve not just economic justice but economic security as well. The UWC represents millions of workers throughout the country. The UWC is comprised of national alliances or organizations that represent nine (9) sectors, with members across the United States, including: Restaurant Workers –Restaurant Opportunities Center United (ROC United); Day Laborers –National Day Laborer Organizing Network; Guest Workers – National Guestworkers Alliance; Domestic Workers –National Domestic Workers Alliance and Direct Care Alliance; Formerly Incarcerated Workers –All of Us or None; Workfare Workers– Community Voices Heard, SF Living Wage Coalition; Farmworkers –Coalition of Immokalee Workers, CATA; Southern Right-to-work states - National Jobs with Justice, Mississippi Workers Center for Human Rights, and Black Workers for Justice; and Taxi drivers –New York Taxi Workers Alliance, Taxi Workers Alliance of PA and LA Taxi Workers Alliance.

Robert F. Kennedy Center for Justice & Human Rights was founded as a living memorial to Robert F. Kennedy in 1968, honoring journalists, authors, and human rights activists who, often at great personal risk and sacrifice, are on the frontlines of the international movement for human rights and social justice. Partnering with these courageous and innovative human rights defenders, RFK Partners for Human Rights is the litigation, advocacy, and capacity-building arm of the Robert F. Kennedy Center for Justice & Human Rights. Combining a rights-based approach and extended multi-year partnerships with the RFK Award Laureates and other human rights activists, RFK Partners for Human Rights leverages its legal expertise, resources, and prestige to advance social justice goals around the world.

The International Commission for Labor Rights, ICLR, is a 501(c)(3) non-profit that is based in New York, and coordinates the pro bono work of a global network of lawyers and labor experts committed to advancing workers' rights through legal research, advocacy, cross-border collaboration, and the cutting-edge use of international and domestic legal mechanisms. ICLR's legal network also responds to urgent appeals for independent reporting on gross labor rights violations. The network was founded in 2001 at the request of more than 50 national trade unions and global federations, and the coordinating secretariat in New York was set up in 2005. The network aspires to be a resource for trade unions and workers around the world.

National Lawyers Guild: Labor and Employment Committee & International Committee
The National Lawyers Guild (NLG) was founded in 1937 as an association of progressive lawyers and jurists who believed that they had a major role to play in the reconstruction of legal values to emphasize human rights over property rights. The Guild is the oldest and most extensive network of public interest and human rights activists working within the legal system. **The Labor and Employment Committee** of the NLG is a non-profit unincorporated legal association engaged in legal education and advocacy. It serves as a liaison between the Guild and legal organizations that represent organized labor and workers. **The NLG International Committee (IC)** supports legal work around the world "to the end that human rights shall be regarded as more sacred than property interests." The NLG IC plays an active role in international conferences, delegations and on-going projects that examine and seek to remedy conditions caused by illegal U.S. or corporate practices. By bringing an alternative perspective to multinational institutions, schools, community centers and congressional hearings, the IC and its members actively educate, litigate, and truth-seek toward the end of social justice.

The Transnational Legal Clinic (TLC) – Penn Law’s international human rights and immigration clinic – provides direct representation to individuals seeking immigration relief in the form of asylum, T or U visas, cancellation of removal, and under VAWA. In addition, the Transnational Legal Clinic has a history of engaging in advocacy on behalf of and in partnership with grassroots and national immigrant rights organizations before the Inter-American Commission on Human Rights and the United States, including issues pertaining to the right to equality and non-discrimination for migrant workers. <https://www.law.upenn.edu/clinic/transnational/>.

Cornell Law School Labor Law Clinic represents the interests of workers and unions. Most of the legal work done in the clinic advances workers’ collective interests and freedom of association in the United States and abroad.

New Orleans Worker Center for Racial Justice, an organization dedicated to organizing workers across race and industry to build the power and participation of workers and communities, that is based in New Orleans but reaches across the South, in organizing day laborers, guestworkers, and homeless residents to build movement for dignity and rights in the post-Katrina landscape;

Vermont Workers Center seeks an economically just and democratic Vermont in which all residents have living wages, decent health care, childcare, housing and transportation. Our goal is to build a human rights oriented, democratic and diverse movement of working and low-income people that is locally focused and coordinated on a statewide basis. Working with organized labor toward economic justice we empower people to exercise their right to organize. The Vermont Workers Center takes action on a full range of human rights issues and builds alliances nationally and internationally.

The **Border Network for Human Rights (BNHR)** is one of the leading immigration reform and human rights advocacy organizations in the United States. Based in El Paso, Texas, the BNHR has a membership of more than 700 families, or close to 4,000 individuals, in West Texas and Southern New Mexico. It also helps organize other civic-minded groups along the border and is the force behind the Texas-wide Reform Immigration for Texas Alliance.

Migrant Justice builds the voice, capacity and power of the migrant farmworker community and engages community partners to organize for social and economic justice and human rights. We believe lasting systemic change requires changing not just how our food and economic systems work, but also changing who is at the table leading. Through Migrant Justice, migrant farmworkers, with ally support, are building community and organizing capacity to achieve concrete victories such as creating one of the best Bias-Free Policing Policies in the country, ensuring undocumented workers access Vermont’s universal health care, and passing a law that opens the door for access to driver’s licenses regardless of immigration status.

ⁱ International Covenant on Civil and Political Rights, Article 22(1), opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976) (emphasis added), *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

ⁱⁱ International Covenant on Civil and Political Rights, Article 22(2), opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976), *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

ⁱⁱⁱ Report of the Human Rights Committee, A/52/40 vol.1 (1997) at para. 357 *available at* [http://www.unhcr.ch/tbs/doc.nsf/0/34ba08bed16ca623802565670054033d/\\$FILE/N9724764.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/34ba08bed16ca623802565670054033d/$FILE/N9724764.pdf); *see also* Report of the Human

Rights Committee, A/54/40 vol. I (1999) at para. 286 *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/282/30/PDF/N9928230.pdf?OpenElement>.

^{iv} Report of the Human Rights Committee, A/54/40 vol. I (1999) at para. 286 *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/282/30/PDF/N9928230.pdf?OpenElement>.

^v Report of the Human Rights Committee, A/54/40 vol. I (1999) at para. 221 *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/282/30/PDF/N9928230.pdf?OpenElement>; *see also* Report of the Human Rights Committee, A/52/40 vol. I (1997) at para. 188 *available at* [http://www.unhchr.ch/tbs/doc.nsf/0/34ba08bed16ca623802565670054033d/\\$FILE/N9724764.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/34ba08bed16ca623802565670054033d/$FILE/N9724764.pdf).

^{vi} Report of the Human Rights Committee, A/49/40 vol. I (1994) at para. 157 *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/377/62/PDF/N9437762.pdf?OpenElement>.

^{vii} Report of the Human Rights Committee, A/54/40 vol. I (1999) at para. 239 *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/282/30/PDF/N9928230.pdf?OpenElement>.

^{viii} 29 U.S.C. § 151-169

^{ix} National Labor Relations Act, 29 U.S.C § 157 (2006).

^x 29 U.S.C. § 152(3)

^{xi} 29 U.S.C. § 152(3).

^{xii} Kate Bronfenbrenner, No Holds Barred: The Intensification of Employer Opposition to Organizing (Economic Policy Institute and American Rights at Work Education Fund, May 2009), <http://www.epi.org/publications/entry/bp235/>.

^{xiii} Kate Bronfenbrenner, No Holds Barred: The Intensification of Employer Opposition to Organizing (Economic Policy Institute and American Rights at Work Education Fund, May 2009), <http://www.epi.org/publications/entry/bp235/>.

^{xiv} Kate Bronfenbrenner, No Holds Barred: The Intensification of Employer Opposition to Organizing (Economic Policy Institute and American Rights at Work Education Fund, May 2009), <http://www.epi.org/publications/entry/bp235/>.

^{xv} Barry T. Hirsch and David A. Macpherson, "Union Membership and Coverage Database from the Current Population Survey: Note," *Industrial and Labor Relations Review*, Vol. 56, No. 2, January 2003, pp. 349-54

^{xvi} Averages calculated from comparison of right-to-work laws compiled in U.S. Dept. of Labor, Office of Performance, Budget and Departmental Liaison, Wage and Hour Division, USU.S. Department of Labor, State Right-to-work Laws and Constitutional Amendments in Effect as of January 1, 2009 with Year of Passage, Jan 2009, <http://www.dol.gov/whd/state/righttowork.htm>; and U.S. Dept. of Labor, USU.S. Bureau of Labor Statistics, Economic News Release, Union affiliation of employed wage and salary workers by state Jan 2010, Table 5, <http://www.bls.gov/news.release/union2.t05.htm>.

^{xvii} 29 U.S.C. § 152(3).

^{xviii} 29 U.S.C. § 152(3).

^{xix} 29 U.S.C. §1801.

^{xx} 29 U.S.C. §1801

^{xxi} 8 ARIZ. REV. STAT. ANN. §§ 23(1321)-(29), *available at* <http://www.azleg.gov/arizonarevisedstatutes.asp?title=23>. A court may grant an employer a ten-day restraining order enjoining an injunction if the strike is likely to cause a significant reduction in the quality of the product. However, when this occurs, the employers must agree to arbitration of the dispute.

^{xxii} CAL. STAT. §§1140-1166.3 *available at* http://www.alrb.ca.gov/content/pdfs/statutesregulations/statutes/ALRA_010112.pdf.

^{xxiii} HAW. REV. STAT. § 377-4 (2011), *available at* <http://law.justia.com/codes/hawaii/2011/division1/title21/chapter377/>. Farm workers, including dairy farmers, must give at least ten days notice to the Labor Relations Board of their intention to strike if doing so “would tend to cause the destruction or serious deterioration of the product” and the Board will inform their employers.

^{xxiv} KAN. STAT. ANN. § 44-828 *available at* http://kansasstatutes.lesterama.org/Chapter_44/Article_8/.

^{xxv} LA. REV. STAT. ANN. § 23:883 *available at* http://www.lawserver.com/law/state/louisiana/laws/louisiana_revised_statutes_title_23_chapter_8_part_iv.

^{xxvi} MASS. GEN. LAWS ch. 150A §5A *available at* <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter150A/Section5A>.

^{xxvii} NEB. REV. STAT. §§ 48(901)-(911) *available at* <http://nebraskalegislature.gov/laws/browse-chapters.php?chapter=48>.

^{xxviii} NJ CONST. art. I, para. 19 guarantees all private employees the right to collectively bargain, *available at* <http://www.njleg.state.nj.us/lawsconstitution/constitution.asp>. In 1989, the New Jersey Supreme Court held that this right applied to farm workers in *Comite Organizador de Trabajadores Agricolas v. Molinelli*, 552 A.2d 1003.

http://www.leagle.com/xmlResult.aspx?xmlDoc=1989201114NJ87_1195.xml&docbase=CSLWAR2-1986-2006

^{xxix} OR. REV. STAT. §§ 662.805-25 *available at* <http://www.oregonlaws.org/ors/chapter/662>

^{xxx} WIS. STAT. §§ 111.01-15. Farm workers must give at least ten days’ notice to the Labor Relations Board of their intention to strike if doing so “would tend to cause the destruction or serious deterioration of such product.” *available at* <http://docs.legis.wisconsin.gov/statutes/statutes/111.pdf>

^{xxxi} Domestic Workers’ Rights in the United States, Report prepared by Andolan organizing south Asian workers, CASA of Maryland, Domestic Workers United, Global Rights, University of North Carolina School of Law Human Rights Policy Clinic, Stefani Bonato, McKenna Coll, and Eric Tars, for the U.N. Human Rights Committee in response to the Second and Third Periodic Report of the United States, <http://www.law.unc.edu/documents/clinicalprograms/domesticworkersreport.pdf>.

^{xxxii} For example, domestic workers in California are included in that state’s labor relations act, and domestic workers who work more than 16 hours per week in Massachusetts are included under that state’s labor relations act.

- ^{xxxiii} Sarah Lieberstein, Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries (Nat'l Employment Law Project, August 2012), http://nelp.3cdn.net/0693974b8e20a9213e_g8m6bhyfx.pdf.
- ^{xxxiv} *FedEx Home Delivery v. NLRB*, 563 F.3d 492 (D.C. Cir. 2009).
- ^{xxxv} See Joint Submission on Labor Rights to the United Nations Universal Periodic Review, Ninth Session of the UPR Working Group of the Human Rights Council (22 November--3 December 2010) (April 2010), <http://www.ushrnetwork.org/resources-media/labor-rights-upr-joint-report-2010>.
- ^{xxxvi} Report of the Human Rights Committee, A/54/40 vol. I (1999) at para. 221 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/282/30/PDF/N9928230.pdf?OpenElement>.
- ^{xxxvii} Report of the Human Rights Committee, A/54/40 vol. I (1999) at para. 221 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/282/30/PDF/N9928230.pdf?OpenElement>.
- ^{xxxviii} International Labour Organization, Case no. 2460 (United States), The United Electrical, Radio and Machine Workers of America supported by Public Services International available at http://www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO::P50001_COMPLAINT_FILE_ID:2897486
- ^{xxxix} Complaints Against the United States by AFL-CIO and Confederation of Mexican Workers, Case No. 2227, ¶ 610 (2003).
- ^{xl} Advisory Opinion No. 18, Inter-American Court of Human Rights (Sept. 2003).
- ^{xli} International Covenant on Civil and Political Rights, Article 2, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.
- ^{xlii} International Covenant on Civil and Political Rights, Article 26, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.
- ^{xliiii} Paul K. Sonn, Catherine K. Ruckelshaus and Sarah Leberstein, Fair Pay for Home Care Workers: Reforming the U.S. Department of Labor's Companionship Regulations Under the Fair Labor Standards Act (Nat'l Employment Law Project, August 2011), http://nelp.3cdn.net/ba11b257b1bb32f70e_4rm62gqkj.pdf.
- ^{xliv} Rajesh Nayak & Paul K. Sonn, Restoring the Minimum Wage for America's Tipped Workers (Nat'l Employment Law Project, Aug 2009), http://nelp.3cdn.net/bff44d5fafbd9d2175_vem6ivjib.pdf.
- ^{xlv} UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 14, "Definition of discrimination" (Forty-second session, 1993), UN Doc. HRI\GEN\1\Rev.1 (1994), p. 277.
- ^{xlvi} 82 Cong. Rec. 1404 (1937).
- ^{xlvii} *The Human Cost of Food: Farmworkers' Lives, Labor, and Advocacy* (Charles D. Thompson, Jr. & Melinda F. Wiggins eds., 2002).
- ^{xlviii} *The Human Cost of Food: Farmworkers' Lives, Labor, and Advocacy* (Charles D. Thompson, Jr. & Melinda F. Wiggins eds., 2002).
- ^{xlix} 42 U.S.C. §2000e(b).
- ^l 8 U.S.C. §1324b(a)(3).
- ^{li} Michelle Natividad Rodriguez & Maurice Emsellem, 65 Million need Not Apply (Nat'l Employment Law Project, March 2011), http://nelp.3cdn.net/c1696a4161be2c85dd_t0m62vj76.pdf
- ^{lii} *Sanchez v. Eagle Alloy*, 658 N.W. 2d 510 (Ct. Apps. Mich 2003); *The Reinforced Earth Company v. Workers' Compensation Appeal Board*, 810 A.2d 99 (Pa, 2002); *Doe v. Kansas Dep't of Human Resources*, 90 P.3d 940 (Sup. Ct. Kansas 2004).
- ^{liii} See, *Morejon v. Terry Hinge and Hardware*, 2003 WL 22482036 (Cal.App, 2 Dist. 2003) A New Jersey court held that a worker claiming discriminatory termination under New Jersey's Law Against Discrimination (LAD) was not entitled to claim economic or non-economic damages because she could not be lawfully employed. In that case, the plaintiff had left work on maternity leave and her employer refused to reinstate her after the leave. In reaching its conclusion, the New Jersey Superior court recognized that there might be cases where "the need to vindicate the policies of the LAD ... and to compensate an aggrieved party for tangible physical or emotional harm" might lead to concluding that an individual should be able to seek compensation for that harm. *Crespo v. Evergo Corp.*, 841 A.2d 471 (N.J. Super. A.D. 2004), cert. denied 849 A.2d 184 (2004).
- ^{liv} 8 USC § 1324b
- ^{lv} General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14) : 04/13/1984 para. 2 available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument)
- ^{lvi} General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14) : 04/13/1984 para. 3 available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument)
- ^{lvii} Inter-American Court of Human Rights also addressed this right in its Advisory Opinion on the Juridical Condition and Rights of the Undocumented Migrants, OC-18, ¶¶ 121, 160
- ^{lviii} International Labor Organization, Convention concerning decent work for domestic workers (Entry into force: 05 Sep 2013) available at http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C189