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### **Migrant Labor Rights**

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## Executive Summary

The United States is the largest migrant receiving nation in the world, and the majority of those migrants are in the United States for purposes of work. An examination of the treatment of migrant laborers reveals, however, that despite the promise of great opportunity, the migrant worker experience is marred by systemic failures by the United States to protect their human rights. This report highlights the violations of the human rights of migrant labor in the United States from the moment of recruitment through the conclusion of their employment relationship and attempts to seek redress for workplace violations.

1. From the point of recruitment and entry into the United States, rising border deaths signal an escalating humanitarian crisis and require more effective governmental responses in line with the obligation to prioritize life over death.
2. Throughout the duration of their time as workers in the United States, workers may experience unredressed exploitation such as untreated work place injuries, underpayment of minimum and overtime wages, and sexual harassment are commonplace for migrant workers in the United States.
  - Exploitation in the workplace is exacerbated by statutory exclusions that would otherwise protect them, such as the exclusion of agricultural workers and domestic workers from protections under the National Labor Relations Act and certain provisions of the federal Fair Labor Standards Act, that work to deny large numbers of migrant workers the right to freedom of association, to join and participate in union activity, and the right to certain minimum wage and overtime protections.
  - Judicial decisions further restrict a migrant worker's access to remedies when their rights have been violated: in recent decisions, the United States' highest court and various state courts have excluded undocumented workers from employment rights and remedies available to their documented counterparts.
3. After separation from the exploitative working situation, migrant workers further face substantial legal and practical barriers that prevent them from accessing justice in the United States.

The lack of full protections and robust enforcement mechanisms aimed at protecting all labor and employment rights of all migrant workers regardless of migration status, often gives rise to conditions of forced labor.

This report calls on the government to take specific steps to eliminate the conditions that contribute to the exploitation and abuse of migrant laborers, and recognizes the need to enhance migrant worker protections across the board to guard against situations ripe for forced labor and human trafficking.

In this report, the above-listed U.S.-based civil society organizations and individuals who provide direct services to, advocate on behalf of, and are committed to the just and equal treatment of migrant workers, submit information under Sections B, C and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review.<sup>1</sup>

## INTRODUCTION

1. Immigrants comprise 15.5 percent of the U.S. labor force. There were 23.9 million foreign-born workers in the United States in 2009 and the median weekly earnings of foreign-born full-time wage and salary workers were less than 80 percent of those of their native-born counterparts.<sup>2</sup> Migrant laborers make up a large share of all workers in many low-wage industries, including farming occupations, cleaning, construction, and food preparation.

2. Despite guarantees under international law, migrant laborers in the United States endure the denial of rights and full remedies from the inception of their journey as a migrant worker and extending beyond their separation from employment and return to their country of origin. Insufficient mechanisms exist to prevent border deaths, human trafficking and forced labor, and in some instances, child labor. Once engaged in employment, migrant laborers face *de jure* and *de facto* discrimination. Immigration enforcement raids at places of employment and homes have a chilling effect on the ability and willingness of individuals to seek protection from abuse and exploitation when their rights are being violated, further contributing to rights violations. Compounding the discrimination and exploitation often experienced by migrant workers, recent decisions of the United States Supreme Court and various state courts have specifically excluded the undocumented subgroup of migrant laborers from full employment rights and remedies available to their citizen counterparts. Although international law recognizes the right of States to control their borders, international law prohibits many forms of discrimination against non-nationals, whether or not the individuals are legally authorized to work.

### I. BACKGROUND & FRAMEWORK

3. International law clearly establishes the affirmative obligations of States to guard against discrimination on the basis of migration status. These obligations include the Universal Declaration of Human Rights (Art. 2, UDHR), the International Covenant on Civil and Political Rights (Art. 2, ICCPR) and the American Declaration of the Rights and Duties of Man (Art. 2, AmDecl.).<sup>3</sup> The Inter-American Court on Human Rights held in an Advisory Opinion on the Juridical Rights of Undocumented Migrants that discrimination against persons on the basis of migration status violates customary international law.<sup>4</sup> Specifically, the Court stated that irregular migrants “possess the same labor rights as those that correspond to other workers . . . and [the State] must take all necessary measures to ensure that such rights are recognized and guaranteed in practice.”<sup>5</sup>

### II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

#### A. From Recruitment to Site of Employment

##### Border Deaths

4. Migrant workers come to the United States having been recruited either directly or indirectly for employment. Yet an alarming number of them die en route, never making it to their destination in violation of The Universal Declaration of Human Rights guarantee that “no one shall be subject to cruel, inhumane or degrading treatment . . . [that] everyone is entitled to the

rights and freedoms set forth in this declaration, without distinction of any kind, such as race . . . or other status.<sup>6</sup>

5. Border deaths have become a major concern of human rights advocates since the U.S. government implemented a border enforcement policy named “prevention through deterrence” in 1994.<sup>7</sup> The strategy assumed that as the urban areas were controlled, the undocumented migrants would “funnel” to more remote regions where natural barriers and extreme environment would deter the illegal entry. Nevertheless, the strategy has not worked. In the 15 years since the United States began to patrol along the 2,000-mile border, estimates of the death toll range from 3,861 to 5,607<sup>8</sup> Border deaths continue despite economic downturn, fewer migrant crossers, and a steady drop in apprehensions. By August 31, 2009, U.S. Border Patrol (USBP) has reported a historical low of 519,394 apprehensions. We have witnessed a slight decline in deaths with 416 deaths during the same period, compared with 492 in 2005, the decade’s peak.<sup>9</sup>

## **B. During Employment**

### **Statutory Exclusions from Labor & Employment Law Protections**

6. The rights of domestic workers and agricultural workers are violated by statutory exclusions from protections under major national statutes aimed at protecting and promoting worker rights. The National Labor Relations Act (NLRA) guarantees workers the right to organize and join labor unions and the Fair Labor Standards Act (FLSA) sets minimum standards for wages, overtime provisions and child labor laws. However, while these federal laws impose limits on the exploitation of labor, both acts contain exclusions for domestic workers and agricultural workers. This has particularly deleterious effects on women and girl migrant laborers, who are often effectively invisible workers in private homes as caretakers, or in fields removed from public eye as agricultural workers, making them more vulnerable to exploitation and abuse. These group rights are further violated by the domestic workers exclusion from protections under the Occupational Safety and Health Act (OSHA), depriving them of the right to a safe and healthy work environment.<sup>10</sup> Furthermore, agricultural workers brought in under the H-2A guestworker visa are excluded from the main federal protective statute for farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act. 29 U.S.C. Section 1802(8)(B)(2). As a result, most H-2A workers have only administrative remedies (i.e. a DOL complaint) for any violations of their contracts and their rights as H-2A workers are quite attenuated. Workers classified as independent contractors are similarly excluded from the full protection of labor laws creating uneven standards across different labor sectors.<sup>11</sup> Because labor and employment laws assign rights to “employees”—a status that is very narrowly defined—employers often misclassify their employees as independent contractors or subcontractors denying them workplace protections.<sup>12</sup>

### **Judicial Exclusions from Labor and Employment Law Protections**

7. In recent decisions, the United States Supreme Court and various state courts have excluded undocumented workers from employment rights and remedies available to their documented counterparts. Discrimination against undocumented workers is rooted in a decision by the United States Supreme Court, *Hoffman Plastic Compounds, Inc. v. National Labor Relations*

*Bd.*,<sup>13</sup> in which the country’s highest court limited undocumented workers’ right to an effective remedy for violation of their freedom of association.

8. The *Hoffman* case involved a worker named Jose Castro. Mr. Castro was working in a factory in California and was fired, along with other co-workers, for his organizing activities. The National Labor Relations Board (NLRB), the agency that administers the National Labor Relations Act (NLRA)—the primary law under which workers are guaranteed the right to organize trade unions and bargain collectively in the United States—ordered the employer to cease and desist, to post a notice that it had violated the law and to reinstate Mr. Castro, and to provide him with back pay for the time he was not working because he had been illegally fired. During a hearing on his case, Mr. Castro admitted he was not legally authorized to work. The U.S. Supreme Court ultimately held that undocumented workers cannot receive back pay under the NLRA. Under the Act, back pay is the only remedy awarded to a victim of an illegal anti-union firing in order to compensate him for wages he would have earned had he not been wrongfully fired. The Court also reinforced that undocumented workers are not entitled to reinstatement, the only other remedy to the individual for violations of the Act.

9. In *Hoffman*, there was no question that the employer had violated the NLRA: in fact, one justice referred to the employer’s violation of the law as “crude and obvious.”<sup>14</sup> However, a majority of the justices nevertheless held that the immigration policy underlying the Immigration Reform and Control Act of 1986—which prohibits the employment of unauthorized aliens in the United States—required the Court to deny the remedy of back pay to undocumented workers. The elimination of the only meaningful remedy to such wrongfully discharged workers has had the practical effect of limiting undocumented workers’ right to freedom of association and eliminating the enforceability of this right. This has left workers more vulnerable to exploitative working conditions because, without an effective remedy available, undocumented workers are less likely to risk job loss by attempting to form or join a union, or speak out about poor working conditions.

10. Despite contentions that undocumented workers receive the same protections as citizen workers in their rights under the NLRA, the reality is very different. Employers have used the *Hoffman* decision to deter employees from pursuing their employment rights and from voting in union elections, and unauthorized workers and others working with them are now more vulnerable to intimidation from their employers. Because *Hoffman* arguably made immigration status relevant to many workplace rights, employer-defendants often seek discovery of the immigrant-plaintiffs’ immigration status, an action that serves to chill immigrants’ willingness to pursue their workplace rights. States have further limited the rights and remedies available to undocumented workers under state law, extending far beyond the denial of the right to freedom of association, by, for example, limiting or eliminating basic workplace protections such as access to compensation for workplace injuries, freedom from workplace discrimination, and entitlement to hold an employer responsible for a workplace injury.<sup>15</sup>

11. Although international law recognizes the right of States to control their borders, international law prohibits many forms of discrimination against non-nationals, whether or not the individuals are legally present in the state. Non-nationals are protected by fundamental human rights in the workplace such as the prohibition against discrimination and the protection

of freedom of association. Article 23.4 of the UDHR states that, “Everyone has the right to form and to join trade unions for the protection of his interests.” Similarly, the ICERD provides under Article 5 of the Convention that countries must guarantee the “right to freedom of peaceful assembly and association” and “the right to form and join trade unions.” Read under Article 2 of the Convention, such guarantees must be provided without discrimination. Further, the ICCPR protects freedom of association and trade union rights in Article 22.

12. However, as a result of the *Hoffman* decision, millions of immigrants who have left their home countries in search of work are subject to government-imposed discrimination and severely undermined labor protections. As the CERD observed during its recent periodic compliance review, cases such as *Hoffman* “have further eroded the ability of workers belonging to racial, ethnic and national minorities to obtain legal protection and redress in cases of discriminatory treatment at the workplace, unpaid or withheld wages, or work-related injury or illnesses,” calling into question the United States’ compliance with Articles 5(e)(i) and 6 of the ICERD.<sup>16</sup> Further, the International Labour Organization, in examining whether the outcome of *Hoffman* denies workers’ fundamental right to freedom of association, concluded that “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.”<sup>17</sup> As we recommend below, the CERD encouraged the government to “explore all possible solutions, including amending . . . legislation to bring it into conformity with freedom of association principles . . . with the aim of ensuring effective protection for all workers against acts of anti-union discrimination.”<sup>18</sup>

### **ICE Raids**

13. The U.S. government’s heavy reliance on workplace raids and the involvement of state and local police in immigration enforcement has severely denied migrant workers their labor and employment rights. Between 2005 and 2008, ICE conducted raids at workplace and home and even arrested workers on the courthouse steps while they were standing up for their rights. ICE’s aggressive and hostile wholesale sweeps of workplaces violates fundamental rights to life, liberty and security. Article 23.4 of the UDHR states that, “Everyone has the right to form and to join trade unions for the protection of his interests.” Similarly, the ICERD provides under Article 5 of the Convention that countries must guarantee the “right to freedom of peaceful assembly and association” and “the right to form and join trade unions.” The ICCPR protects freedom of association and trade union rights in Article 22.

14. ICE’s aggressive and hostile wholesale sweeps of workplaces violate fundamental rights to life, liberty and security. Josue Diaz, an immigrant worker who was recruited from a day laborer corner in New Orleans to work on reconstruction efforts in Texas after Hurricanes Ike describes his experience: “We were forced to live in tents in an isolated labor camp at an abandoned oil refinery, we were made to work in toxic conditions without safety equipment, we were subjected to racist and dehumanizing treatment, and when we protested the discrimination and illegal treatment, our employer . . . called local police and ICE. We were arrested immediately. Instead of enforcing our labor rights against the company, the police and ICE tried to turn us into criminals.”<sup>19</sup>

15. The cooperation between the Department of Homeland Security and the Department of Justice in the famous Postville<sup>20</sup> raid caused further due process violations with life-long implications. The individual victims of the Postville raid and the subsequent prosecutions did not understand what was transpiring against them, nor were they provided with proper counseling on the consequences of the pleas. These actions resulted in violations of the right to a fair trial and judicial protection. The United States' failure to ensure that all noncitizens have access to representation subsequent to the raids violates ICCPR Article 13. Most significantly, similar ICE raids have had a dramatic chilling effect on workers seeking to pursue any of their basic human rights to decent working conditions and in some situations, even any compensation for their labor.

## **Vulnerable Populations**

### Guest Workers

16. Both H-2A and H-2B programs impose on foreign workers a temporary, non-immigrant status that ties workers to particular employers and makes their ability to obtain and retain a visa dependent on remaining in the good graces of their employer. In extreme cases, workers find themselves in situations of indentured servitude or forced labor because they signed over deeds to property in their home countries and have to pay back the huge sums to get to the U.S. with interest.<sup>21</sup> The lack of visa portability, tying workers' status in the U.S. directly to the employer, combined with exploitation in recruitment and subcontracting, leave workers in extremely vulnerable situations. The employer's designation of an exclusive recruiter initiates the climate of coercion and vulnerability. Transportation, visa, and recruiter costs are often incurred as a heavy burden by the laborer and often primarily to benefit the employer.<sup>22</sup> The incurred costs are conveyed as an owed debt<sup>23</sup>. The language, social and physical barriers further hinder workers from obtaining assistance.<sup>24</sup>

17. Furthermore, congressional regulations prohibit federally funded legal service programs from assisting migrant workers who labor with an H2B visa, the temporary guest worker program for non-agricultural work. This regulation prevents approximately 100,000 workers from accessing the most widely available legal services.<sup>25</sup> The services that are available to low-wage workers are not nearly sufficient to meet the demands of H2 work visa holders or the six million undocumented laborers, also denied access to legal services provided by federally-funded programs.

### Victims of Human Trafficking and Forced Labor/Slavery

18. Through the Trafficking Victims Protection Act of 2000 (TVPA), the United States sought to combat human trafficking, specifically recognizing as victims of human trafficking individuals who are recruited through force, fraud or coercion for the purpose of sexual exploitation or forced labor are then subjected to forced labor or sexual exploitation.<sup>26</sup> The TVPA also created the T visa, providing legal status survivors of trafficking who meet certain qualifications.<sup>27</sup> The TVPA and the protections afforded, however, have been criticized for requiring survivors of trafficking to agree to and to demonstrate cooperation with federal law enforcement officials. If they are unable to obtain law enforcement endorsement, they may face deportation regardless of



the exploitation they suffered while being forced to work in the United States. The system for identifying and providing protection to survivors of trafficking and their family members needs to better reflect the realities and the fears of the trafficking survivors. Almost all victims of trafficking are subject to some form of debt-bondage, including debts incurred in paying for transportation fees and living expenses in the United States. Traffickers often threaten victims with injury or death and take away the victims' travel documents. Many victims trafficked into the U.S. do not speak English and are unable to escape or obtain outside help.

19. In order to effectively combat human trafficking, the United States needs to recognize how strict immigration laws and lack of labor and employment law enforcement in all low-wage industries contribute to the continuing existence of human trafficking in the United States. The demand for cheap, unskilled labor continues to beckon immigrants while the number of available visas and routes for legal migration are far from enough to meeting this demand. At the same time, the United States needs to similarly recognize that by focusing its anti-trafficking enforcement efforts on sex trafficking and on the most extreme cases of forced labor, it allows other employers who exploit and abuse migrants working the shadows to operate with impunity.

20. To ensure that trafficking victims and all exploited workers enjoy protections without discrimination is part of the U.S.'s obligations under Art. 5 of the ICERD, further elaborated upon in General Recommendation 30.<sup>28</sup>

### Child Labor

21. Child labor remains a problem in the United States, particularly in the agriculture industry. The U.S. child labor law allows a 12-year-old to perform back-breaking harvest work for 8-12 hours a day in 95-degree heat when that same child would not be allowed to work in an air-conditioned office.<sup>29</sup> The exact number of children laboring in the agriculture industry is not known, and the estimates range from 300,000 to 800,000.<sup>30</sup> Many farm worker children earn less than \$2 an hour. Child farm workers risk pesticide poisoning, heat illness, injuries from scissors, knives and heavy equipment, and life-long disabilities. They suffer fatalities at four times the rate of children working in other jobs.<sup>31</sup> Overwhelmed by constant migration and exhaustion from arduous work, many of these children drop out of school; half never graduate.

22. The dangerous working conditions and severe health impact agricultural work has on children violate Section 213(c)(2) of Fair Labor Standards Act (FLSA) as well as ICERD Article 5(e)(i) and (iv). Furthermore, child laborers' right to education as articulated in FLSA Section 214(d) and ICERD Article 5(e)(v) is frequently violated. Unequal protection and ineffective enforcement available to child farm workers violate Article 6 of the ICERD.

## **C. Post-Employment**

### **Access to judicial and administrative remedies post-separation from employment**

23. Migrant workers who leave the United States either voluntarily or otherwise after their separation from employment face many barriers in their pursuit of judicial and administrative remedies for workplace rights violations.

24. During the course of litigation—whether it is to recover stolen wages or to secure medical treatment for a workplace injury—workers must often appear in-person in U.S. courts to pursue their claims. Workers compensation claimants often have to testify or attend a medical examination with a state-specific approved insurance doctor. But legal barriers and resource constraints make it very difficult, and at times impossible, for workers to return to the United States to attend medical examinations or administrative or judicial hearings. Without a right, or at least a presumptive right to return, migrant workers – particularly those who came as guestworkers or who are without legal status in the United States – have few options for returning to ensure justice. Workers may try to obtain a tourist visa which U.S. consular officials issue on a highly discretionary basis, and others may seek entry through a mechanism called humanitarian parole. But even with direct intervention from worker advocates, migrant workers are routinely denied these visas because it is presumed they will use the visa to remain unlawfully in the U.S. Denial of the visa often results in a total denial of justice and workers are forced to abandon their claims.

25. This situation is a particularly problematic aspect of the U.S. guest worker program through which employers bring persons to the United States through U.S. government-sponsored mechanisms to work temporarily in low-wage manual labor jobs, and when the visa expires or the employee is terminated from employment (whether lawfully or not), the workers must return home. The guest worker system, however, does not provide a right for those workers to return, or mechanisms for them to seek redress for the violations they may have suffered in the U.S. after they return home. In fact, the system makes it so difficult for workers to find legal redress once they leave that the result is a guest worker system that supplies the United States with a steady stream of highly marginalized and precarious workers.

26. To comply with U.S. commitments under international treaties, the United States must provide guest workers with access to justice and equal opportunity before the law and ensure the portability of justice. Portable justice is the right and ability of transnational migrant workers to access justice in the countries of employment even after they have departed for their home countries.

### **III. RECOMMENDATIONS**

27. As described, some violations result from the federal laws affecting migrant laborers, while others are a matter of administrative policy or agency practice. We welcome the efforts of the United States to begin to correct some of the most egregious human rights violations against migrant laborers. In 2000, Congress passed the Trafficking Victims Protection Act (TVPA) to address various aspects of trafficking in person both in the U.S. and abroad. While certainly a first step, there are a number of gaps that TVPA leave for victims of trafficking. We further commend the recent initiatives of the U.S. Department of Labor to stop the practice of wage-theft in the United States, and the launching of increased enforcement efforts to ensure that workers who are denied minimum wage and overtime as required under the law are able to recover those wages without discrimination. Despite those efforts, however, laws and practices continue to leave large numbers of workers unprotected and without access to remedies when their workplace rights are violated.

28. In order to fix these systemic violations and uphold its international legal obligations toward migrant laborers, the United States Government should:

**i. Ensure compliance with the requirement under int'l law of equality and non-discrimination in the rights and remedies afforded to workers, regardless of migration status.**

- a. Expand the legal and legislative framework to ensure that labor protections and post-separation remedies are available to migrant workers regardless of immigration status.
- b. Amend laws, policies and jurisprudence to comport with international obligations to apply workplace protections in a nondiscriminatory manner and protect the freedom of association of all workers.
- c. Enact comprehensive legislation that would prohibit a distinction in federal or state law between employment and labor rights based on immigration status.
- d. Instruct state and federal courts to prohibit employer inquiries into the immigration status of a worker asserting his or her employment and labor rights to avoid chilling and discouraging attempts by undocumented workers to enforce their rights through litigation and complaints to administrative bodies.
- e. Make available temporary work visas so that migrant workers may return to the United States to pursue non-frivolous legal cases combating exploitation and abuse.
- f. Extend statutes of limitations for issues involving migrant workers.

**ii. Ensure adequate protections and enforce fair regulations for all workers from the point and place of recruitment onward to prevent border deaths, exploitation of guest workers, and recruitment of child laborers and victims of trafficking.**

- a. Examine the continued presence and completion of the administrative process that provide endorsement of the victim for the purpose of a T-visa.
- b. Continue to promote state anti-trafficking legislation in a victim-centered approach and training for state and local law enforcement on human trafficking.
- c. Enhance recognition, and ability to meet the needs, of all trafficking victims, regardless of national origin, including exploration of intensive case management practices for both foreign citizens and U.S. citizens.
- d. Take actions to combat the use of child labor through support for legislation such as Pass the Children's Act for Responsible Employment (CARE), which would prohibit large numbers of 12- and 13-year-olds from working for wages in the agriculture industry under trying and dangerous conditions, while preserving the family farm exemption to permit farmers to pass on work skills to their own children.

**iii. Take further steps to enforce internal firewalls between immigration enforcement and labor and employment law protections.**

- a. Encourage and gather complaints from migrant workers who have suffered discrimination in the workplace and make the information public for private actions against scofflaw employers.
- b. Provide multi-lingual education at the time visas are issued and at the worksite to assist with information collection.
- c. Provide migrant workers who have faced discrimination an opportunity to seek other employment and be given extended legal status in the U.S. to pursue claims.
- d. Investigate and prosecute aggressively employers who are discriminating in the workplace.
- e. Modify the current H-2a and H-2b guestworker program to allow for visa portability. The current system only allows guest workers to work for the employers whose names appear in the immigration document, which makes it very risky if not impossible for guest workers to leave their original employers.
- f. Expand the criminal liability from those individuals who actually assisted in recruiting guestworkers into situations of forced labor, indentured servitude or slavery to all who profit from their labor.

**iv. The US should take a leadership role before the international community in signing and seeking from Congress ratification of the U.N. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

## Appendix – Reports Addressing Human Rights of Migrant Workers in the United States

Cathleen Caron, *Portable Justice, Global Workers, and the United States*, 40 CLEARINGHOUSE REV. 549 (Jan.–Feb. 2007), available at <http://globalworkers.org/PDF/clearinghouse.pdf>.

Nat'l Employment Law Project, *Report on Excluded Workers* (forthcoming 2010) (on file with author).

The Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States*, Mar. 2007, available at <http://www.splcenter.org/get-informed/publications/close-to-slavery-guestworker-programs-in-the-united-states>.

U.S. Human Rights Network, *ICERD Shadow Report 2008: Rights of Immigrants and Migrants to the United States*, Jan. 15, 2008, available at [http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/2\\_Immigrant%20Rights.pdf](http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/2_Immigrant%20Rights.pdf).

U.S. Human Rights Network Labor Caucus, *ICERD Shadow Report 2008: Labor and Employment Rights*, Feb. 2008, available at [http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/23\\_Labor%20and%20Employment.pdf](http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/23_Labor%20and%20Employment.pdf).

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<sup>1</sup> U.N. Human Rights Council [UNHRC] Dec. 6/102, Follow-up to Human Rights Council Res. 5/1 (Sept. 27, 2007).

<sup>2</sup> Bureau of Labor Statistics, U.S. Dept. of Labor, Foreign-born Workers: Labor Force Characteristics, available at <http://www.bls.gov/news.release/pdf/forbrn.pdf>.

<sup>3</sup> U.S. is bound by the American Declaration of the Rights and Duties of Man (AmDecl.) by virtue of its membership in the Organization of American States.

<sup>4</sup> Advisory Opinion on the Juridical Condition and Rights of the Undocumented Migrants, OC-18, ¶60.

<sup>5</sup> *Id.* at ¶160.

<sup>6</sup> The Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d sess., 1st plen. Mtg., U.N. Doc A/810 (December 12, 1948), Arts. 2 & 5.

<sup>7</sup> U.S. Cong. Senate 106th Second Sess. Subcommittee on Immigration of the Committee of the Judiciary, *Enhancing Border Security*. Feb., 2000, U.S. Gov. Printing Office, Washington 4.

<sup>8</sup> Maria Jimenez, *Humanitarian Crisis: Migrant Deaths at the U.S.- Mexico Border*, October 1, 2009 17.

<sup>9</sup> Spencer S. Hsu, *Border Deaths are Increasing*, The Wash. Post, September 30, 2009.

<sup>10</sup> *Id.*

<sup>11</sup> Economic Research Service, U. S. Dept. of Agric., Rural Labor and Education: Farm Labor, available at <http://www.ers.usda.gov/Briefing/LaborAndEducation/FarmLabor.htm#demographic>.

<sup>12</sup> National Employment Law Project, Independent Contractor Misclassification and Subcontracting, available at [http://www.nelp.org/site/issues/category/independent\\_contractor\\_misclassification\\_and\\_subcontracting](http://www.nelp.org/site/issues/category/independent_contractor_misclassification_and_subcontracting).

<sup>13</sup> *Hoffman Plastic Compounds Inc. v. Nat'l Labor Relations Bd.*, 535 U.S. 137, 122 S.Ct. 1275, 152 L.2d 271 (2002).

<sup>14</sup> *Id.* at 153.

<sup>15</sup> *Crespo v. Evergo Corp.*, 366 N.J. Super. 391 (App. Div. 2004), cert. denied, *Crespo v. Evergo Corp.*, 180 N.J. 151 (2004) (holding that an undocumented worker suing for discriminatory termination could not recover either economic or non-economic damages absent egregious circumstances during the period of employment such as extreme sexual harassment); *Sanchez v. Eagle Alloy Inc.*, 254 Mich. App. 651 (Mich. Ct. App. 2003), cert. denied, *Sanchez v. Eagle Alloy Inc.*, 471 Mich. 851 (Mich. 2004) (finding that undocumented workers are covered by Michigan workers' compensation law and are entitled to full medical benefits if injured on the job but that their right to wage-loss benefits ends at the time that the employer "discovers" they are unauthorized to work); *Reinforced*

*Earth Co. v. Workers' Compensation Appeal Board (Astudillo)*, 570 Pa. 464 (2002) (holding that although undocumented worker is entitled to medical benefits after experiencing a workplace injury, illegal immigration status might justify terminating workers' compensation benefits for temporary total disability).

<sup>16</sup> U.N. Committee on the Elimination of Racial Discrimination [CERD], Concluding Observations of the CERD, ¶ 28, U.N. Doc. CERD/C/USA/CO/6 (Feb. 2008).

<sup>17</sup> *Case No. 2227 (United States)*, ILO Committee on Freedom of Association, 332nd Report of the Committee on Freedom of Association, GB.288/7 (Part II) (November 2003) 142, ¶ 610, available at <http://www.ilo.org/public/english/standards/reim/gb/docs/gb288/pdf/gb-7.pdf>.

<sup>18</sup> *See Id.* ¶ 612.

<sup>19</sup> American Rights at Work, Immigration Study Finds Enforcement Has Undermined Workers' Rights (Oct 27, 2009), available at <http://www.americanrightsatwork.org/press-center/2009-press-releases/immigration-study-finds-enforcement-has-undermined-workers-rights-20091027-842-374-374.html>.

<sup>20</sup> One of the largest immigration raids in United States history. This occurred in May 2008.

<sup>21</sup> The Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States*, Mar. 2007, available at <http://www.splcenter.org/get-informed/publications/close-to-slavery-guestworker-programs-in-the-united-states>.

<sup>22</sup> David Twomey, LABOR AND EMPLOYMENT LAW: TEXTS AND CASES 669 (14th ed. 2010).

<sup>23</sup> Lucas Benitez, Congressional Testimony. *Coalition of Immokalee Workers, Government Reform Committee*, available at <http://www.rfkcenter.org/node/244>.

<sup>24</sup> *Id.* at 37.

<sup>25</sup> Sarah Paoletti, *Submission to the UN Special Rapporteur on the Rights of All Migrant Workers and Members of their Families* (2006).

<sup>26</sup> Trafficking Victims Protection Act of 2000 [TVPA], Pub. L. No. 106-386, 22 U.S.C. 7102(8). TVPA defines “Severe Forms of Trafficking in Persons” as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age” or “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

<sup>27</sup> *See Id.* § 107(n)(4).

<sup>28</sup> The Committee urges States Parties “take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particularly by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault. General Recommendation No. 30: Discrimination against Non-Citizens, Committee on the Elimination of Racial Discrimination, Jan. 10, 2004 ¶34.

<sup>29</sup> Fair Labor Standard Act, Pub. L. No. 75- 718 § 213(c)(1)(B), 29 U.S.C. 201.

<sup>30</sup> U.S. General Accounting Office's estimate in 1998 was 300,000. The Association of Farmworker Opportunity Programs estimated in its 2007 report that there are between 400,000 to 500,000 child farmworkers in the U.S., while the United Farm Workers' estimate in May 2007 that as many as 800,000 children worked on U.S. farms.

<sup>31</sup> Mining is considered to be the most dangerous industry and agriculture ranks second. However, children younger than 18 are not allowed to work in mining. *See* Child Labor Coalition, *Children in the Fields Campaign Fact Sheet*, available at <http://www.stopchildlabor.org>.