

2012

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Recommended Citation

Shah, Reena K., and Lauren E. Bartlett. "Human Rights in the United States: Legal Aid Alleges that Denying Access to Migrant Labor Camps is a Violation of the Human Right to Access Justice." *Human Rights Brief* 20, no. 1 (2012): 15-21.

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Human Rights in the United States: Legal Aid Alleges that Denying Access to Migrant Labor Camps is a Violation of the Human Right to Access Justice

by Reena K. Shah* and Lauren E. Bartlett**

As of the year 2000, it is estimated that there are more than 86 million migrant workers worldwide, the vast majority of whom suffer poor living and working conditions.¹ In the United States (U.S.), more than 3 million migrant farmworkers,² including at least 100,000 children,³ are estimated to labor in fields every year, many of whom lack access to justice, earn sub-living wages, and exist in dehumanizing circumstances.⁴ Farmworkers are among the most exploited and vulnerable populations in the United States; yet, distressingly, they are also the least protected by U.S. law and law enforcement.

Legal aid⁵ advocates in the United States attempt to raise awareness and educate this starkly poor, mobile, and isolated population about the legal protections and remedies available to them, only to have employers either outright deny access or prevent meaningful communication with farmworkers in the migrant labor camps where migrants and their families often reside during the course of their employment. One nonprofit law firm that provides such services, Maryland Legal Aid Bureau,⁶ spearheaded the submission of a joint legal aid complaint on the issue to the United Nations (UN) Special Rapporteur on Extreme Poverty and Human Rights. Advocates who reach out to, and represent, migrant farmworkers argue that the lack of federal law mandating access to migrant labor camps, combined with discriminatory treatment of migrant farmworkers under U.S. labor laws and lackluster enforcement of those laws that would apply, violates a panoply of farmworkers' human rights, including their right to access justice.



Courtesy U.S. National Archives

The complaint, which is the basis for this article, is notable because it is the first-ever joint effort among U.S. legal aid organizations to utilize the Special Procedures created through the Office of the UN High Commissioner for Human Rights to shine an international spotlight on an entrenched local issue. It comes on the heels of a new partnership between Maryland Legal Aid, Texas RioGrande Legal Aid, and the Center for Human Rights and Humanitarian Law (the Center) at the American University Washington College of Law. One of the Center's programs, the Local Human Rights Lawyering Project, aims to normalize human rights at the state and local levels and help legal aid lawyers integrate human rights into their daily work.⁷ Such partnerships are part of a larger push among social justice advocates in the United States to galvanize a domestic human rights movement so as to bring human rights home, rather than only applying them overseas, as has thus far been more common.

As described more fully below, the joint legal aid complaint submitted to the UN Special Rapporteur on Extreme Poverty and Human Rights argues that the denial of access to migrant labor camps ostensibly equals an inability for the farmworkers to access justice, as well as other human rights, especially the right to health and the right to family and community. The complaint argues that the United States, as a State Party to various

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human rights treaties, is required to protect, respect, and fulfill the human rights of all people, including migrants. By refusing to uphold the right to access to justice for farmworkers in the United States, the U.S. government, as well as state and local governments, violates human rights law, thereby allowing millions of farmworkers to continuously suffer inhumane conditions and assaults on human dignity.

MIGRANT FARMWORKERS ARE ONE OF THE MOST VULNERABLE POPULATIONS IN THE UNITED STATES

In the United States, migrant farmworkers are among the most vulnerable because they are among the poorest—if not *the* poorest—laborers.⁸ Twenty-four percent of migrant farmworkers earn less than \$7,500 per year and only three percent of migrant farmworkers earn more than \$30,000 per year.⁹ Adding salt to the wound, most do not receive any employment-related benefits, such as health care, disability insurance, vacation, or pension.

Farm labor is also one of the most dangerous occupations in the United States, with injuries and illness disabling farmworkers at a rate *three* times that of the general population¹⁰ and work-related injuries causing death at a rate more than *seven* times¹¹ that of workers generally.¹² Farmworkers also suffer higher incidences of HIV infection,¹³ infant mortality,¹⁴ pesticide poisoning,¹⁵ dehydration,¹⁶ heat stress,¹⁷ and tuberculosis, the last of which is contracted at a rate six times that of the general population.¹⁸ They are also subjected to deplorable living conditions, including overcrowding, poor ventilation and light, a lack of indoor plumbing, and poor field sanitation and work hygiene.¹⁹

A language barrier compounds the population's vulnerability, as many are not fluent in English. Almost eighty percent of migrant workers are foreign born and of those seventy-five percent are of Mexican origin.²⁰ For most, basic communication in English, let alone navigation of the U.S. legal system, is a challenge. Compounding the language barrier are low levels of education among migrant workers, whose average education level is sixth grade.²¹

ADVOCATES ACROSS THE UNITED STATES ARE ARBITRARILY DENIED MEANINGFUL ACCESS TO MIGRANT CAMPS

The routine denial or lack of meaningful access to legal advocates, health care providers, and other farmworker service providers to the migrant labor camps, where migrant farmworkers and their families often live during the course of their employment, make the population even more vulnerable.²² The camps are almost always located in rural areas that are close to the fields, far from towns and service providers. Because farmworkers who live at these camps are often at the mercy of employers for transportation, their ability to access community resources, including neighborhood businesses, medical services, and legal services, is extremely limited.²³

Farmworkers' access to outreach workers able to come to the labor camps and farms on which the migrants and their families live during the course of their employment has been deemed to be a prerequisite to the success of any program designed to

ameliorate the migrant farmworkers' plight.²⁴ When outreach workers attempt to bridge the gap and reach farmworkers at the labor camps, however, employers commonly tell outreach workers to leave the property, accuse them of trespassing, demand prior notice before visiting, or pressure the advocates to break confidentiality and infringe on the privacy of farmworkers by naming prospective clients who are seeking assistance. Outreach workers also regularly experience harassment, and are threatened with arrest or even violence by employers at the migrant labor camps.

The effects of this employer aggression are manifold. For example, employers' intimidation of community service providers discourages them from providing services, and the limited resources of legal aid organizations may be drained litigating the camp-access issues rather than addressing the farmworkers' underlying legal needs. If outreach workers do accommodate employers' demands of prior notification in the name of maintaining good relationships and avoiding conflict, the approach effectively undermines the farmworkers' vital privacy interest and the confidential relationship between the service providers and workers. Employers' ability to limit access in this way also precludes advocates' ability to identify and serve victims of domestic violence, child labor, and human trafficking.

Denying access to migrant labor camps is neither an occasional nor an accidental occurrence. Employers are well aware of the impact that outreach might have on the farmworkers and make it a point to let farmworkers know of the consequences of

Denying access to migrant labor camps is neither an occasional nor an accidental occurrence.

seeking assistance. A stark example, as reported in the *Charlotte Observer*, is the message that the North Carolina Growers Association hammered home when workers arrived for orientation: "[...] don't complain, don't seek legal help."²⁵ The *Charlotte Observer* reported that an employee of the Association "forbids" farmworkers

from associating with Legal Services of North Carolina, whose farmworker unit provides legal advice, and the Association clearly warns that the price of disobedience is being "sent back to Mexico."²⁶

Maryland Legal Aid, the organization that spearheaded the complaint with the UN, represents and advocates on behalf of agricultural workers who live or work in Maryland or Delaware. As part of its Farmworker Program (the Program), attorneys litigate employment cases related to agriculture and non-employment matters that impact the migrant and seasonal agricultural worker community.

The experiences of attorneys at Maryland Legal Aid exemplify how a lack of access to migrant camps forestalls access to justice for farmworkers. On April 11, 2011,²⁷ the Program's supervising attorney, Nathaniel Norton, and his paralegal went to Albright Farms to reach out to farmworkers, give them information about their rights, answer questions, and make them aware of the availability of assistance. As Mr. Norton and his paralegal sat in their car at the end of the farm's driveway, Mr. Albright, the owner of the farm, and another man drove their trucks right up next to the car at high speed and parked at the side and directly behind Mr. Norton's car. Mr. Albright then began screaming at the advocates, stating that they were trespassing on the property

and that they had no right to be there without permission. The owner stated he could, “shoot people” who were on his property without permission, and that the advocates were a, “bunch of bleeding heart liberals who were poking their noses where they did not belong.”²⁸ Mr. Norton explained that the Maryland Attorney General Opinion Letter²⁹ allowed him and other similar advocates to come on the property to do outreach. He further explained the reason for not giving advance notice was that he did not want to have his efforts frustrated if farmworkers were told not to speak to outreach workers, or if their conversations were monitored. Mr. Norton eventually left the property without being able to complete his work.³⁰

Such blatant threats underscore why it is critical to provide access to migrant labor camps and protect farmworker privacy. Without these protections, farmworkers are dissuaded from seeking help because of a real threat of retaliation³¹ and are for all intents and purposes shut out of the legal system. This results in wage theft; lack of drinking water, hand-washing or toilet facilities in the field; lack of redress for employer abuse; pesticide exposure; unreported domestic violence and rape; and even illegal child labor, to name a few. The lack of oversight gives employers a free pass to engage in a “race to the bottom,” and to exploit to an unconscionable degree the human rights of this extremely vulnerable population.³²

Shamefully, the power differential between the isolated and unprotected farmworker and the all-controlling employer creates an “almost slave-master” relationship.³³ The control that employers exert over farmworkers’ ability to connect with services designed for the farmworkers’ benefit makes farmworkers an easy target for inhuman treatment and abuse at the hands of their employers. The farmworkers constantly face threats of violence against security of their person. The consequences of not providing access to justice are thus grave for a population that is deeply

vulnerable, marginally protected under the law, and ripe for exploitation.

LAW ON MIGRANT LABOR CAMP ACCESS IN THE UNITED STATES IS INCONSISTENT AND DISCRIMINATORY

Furthermore, the principal federal employment law for farmworkers in the United States, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA),³⁴ fails to mandate access to labor camps that house migrant farmworkers, despite the fact that U.S. federal courts have consistently held that, (i) workers who live in employer-provided housing have constitutionally protected interests in receiving information and visitors, and (ii) staff of migrant services organizations have constitutionally protected interests in accessing workers and communicating with them regarding their rights.³⁵

Because of the lack of federal protections, the status of the right to access migrant camps varies by state. Unfortunately, very few states have a statute that mandates right of

access to migrant labor camps. Only a handful have an Attorney General’s Opinion, which is an exposition on the status of the state’s law according to the Attorney General and something law enforcement should in theory be bound by as much as any legislative act. However, regardless of the status of the law in each state, the tendency of law enforcement to bow to the demands of the employers, instead of upholding farmworkers’ rights, further makes the U.S. government complicit in human rights violations committed against farmworkers.

The U.S. government’s silence with respect to camp access is part of its history of systematic discrimination and exclusion of the farmworker population from legal protections.³⁶ For example, farmworkers are denied the federal rights and protections necessary to organize and join unions under the National Labor Relations Act (NLRA),³⁷ the right to overtime pay, protections for child labor, and in the case of farmworkers employed on small farms, even the right to minimum wage under the Fair Labor Standards Act (FLSA).³⁸ Further, farmworkers are excluded from many workers’ compensation laws, which are under the purview of the states, not the federal government.

While the passage of AWPA was a step in the right direction, the law still does not allow collective bargaining and does not apply to smaller employers. It does, however, provide some important protections. Most significantly, it requires that agricultural employers disclose terms of employment at the time of recruitment and comply with those terms, that employers who use farm labor contractors confirm that the contractors are registered with and licensed by the Department of Labor, that providers of housing meet local and federal housing standards, and that transporters of farmworkers use vehicles that

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Courtesy U.S. National Archives

are insured and meet basic federal safety standards.³⁹

The U.S. Department of Labor's (DOL) Wage and Hour Division administers and enforces labor laws, which farmworkers can also directly challenge through lawsuits in federal district courts. However, the U.S. government does not adequately enforce laws pertaining to farmworkers. In fact, the U.S. Department of Labor actions devoted to AWPA and FLSA violations have declined drastically over the years. In the case of FLSA violations, between 1938 and 1990, fifty to eighty percent of all court cases each year were brought by the DOL (rather than through a worker's private right of action in court). Since 1990, however, that percentage has dwindled markedly to about ten to twenty percent of all cases.⁴⁰

Further, the Occupational Safety and Health Act, originally enacted in 1970 and administered and enforced by the DOL's Occupational Safety and Health Administration (OSHA), is the principal federal law designed to protect employees from hazards at the workplace. But for many years, OSHA did not use its regulatory authority to protect farmworkers. For example, OSHA set a field sanitation standard only after receiving a thirty-day deadline to do so by a federal judge, who castigated OSHA's fourteen years of "resistance" as "intractable" and a "disgraceful chapter of legal neglect."⁴¹ Similarly, the Environmental Protection Agency, which has the principal responsibility for approving, restricting, and banning the use of agricultural pesticides, has been more responsive to the demands of pesticide manufacturers and growers than the safety and health concerns of the farmworkers and their families.⁴²

Given that the U.S. government inadequately enforces laws designed to protect farmworkers and that the farmworkers lack the information, knowledge, tools, and foremost the freedom needed to enforce the laws themselves, the role of policing and vindicating farmworkers' rights falls on non-government lawyers bringing claims on behalf of individual clients. While it is beneficial that the AWPA offers a private right of action so farmworkers have an ability to bring individual cases, the law fails to provide for an award of attorney's fees that would create a strong disincentive for private attorneys to accept farmworker cases.⁴³

Under these conditions, the only legitimate recourse for farmworkers in obtaining access to justice and enforcement of their rights is through legal aid offices, whose charge is to provide free legal aid to the poorest and most vulnerable. However, the U.S. Congress limited farmworkers' ability to attain true justice through this route because it hamstrung publicly funded legal aid offices both from representing undocumented workers⁴⁴ and from bringing class action lawsuits.⁴⁵ These restrictions, in turn, have shut the door to any legal relief, and certainly to any access to justice, for a significant segment of the U.S. farmworker population.



Courtesy U.S. National Archives

The farmworkers face tremendous hurdles in even taking the first step toward enforcement of their rights. The threats of retaliation, criminal arrests, deportation, and other related sanctions for meeting with lawyers loom large for farmworkers; the purpose of the threats is to control communication, force a breach of confidentiality, and silence workers from seeking legal or other assistance.

LACK OF ACCESS TO MIGRANT LABOR CAMPS MEANS LACK OF ACCESS TO JUSTICE AND AN INABILITY TO FULFILL OTHER HUMAN RIGHTS

In 1974, the U.S. Congress directed the new Legal Services Corporation (LSC)⁴⁶ to study whether certain client groups faced special barriers to accessing the justice system and had special unmet legal needs. One of the groups studied was migrant and seasonal farmworkers. LSC completed the study in 1977, concluding that, (i) migrant farmworkers do face special barriers that limit their access to the legal assistance delivered by legal aid programs, and (ii) migrant farmworkers have specialized legal needs that cannot be adequately met through the regular legal services-delivery system.⁴⁷

This decades-old LSC study remains the most comprehensive inquiry into the special barriers to access to justice faced by migrant farmworkers, but its findings and recommendations are just as relevant today. The study identified the following factors as barriers to access to justice: (1) isolation in remote locations, (2) short length of time in an area, (3) language, (4) economic dependence upon employers, and (5) cultural isolation. The study advised that, "[. . .] outreach is the principal activity that legal services can undertake to break down barriers which prevent access [of workers to legal services]."⁴⁸

Further, the study noted that many migrant farmworkers do not view the legal system as a way of favorably resolving disputes, and are hesitant to use the legal system in part because farmworkers' experiences with the legal system in their country of origin also color their perspective on the U.S. legal system. The study noted that farmworkers tend to have little knowledge of the legal protections, that cover them in the U.S. workplace. Farmworkers often do not know how or where to seek help with problems, assume that the legal system is so biased against them that a just remedy is impossible, assume that their participation in the legal system may result in problems with the criminal justice system, and fear that legal entanglements may jeopardize their immigration status, even where their presence in the country is perfectly lawful.⁴⁹

Given that the U.S. government has recognized that agricultural workers face special barriers to accessing legal assistance, the legal system in general, and the enforcement of their rights, it is incumbent on the U.S. government to ensure access for outside legal advocates and other service providers as a means of ensuring access to justice and other services essential to

farmworkers' health, welfare, and dignity. Without the ability to bring those perpetrating harm to justice, farmworkers are not only denied access to justice and an effective remedy, but they are also unable to fulfill other fundamental human rights. The denial of meaningful access for service providers to migrant labor camps leaves farmworkers extremely isolated, and without the information that they could use to seek help to file wage claims, report domestic violence, seek health care, and demand a safer work environment. The judicial system is often the only method of securing the right to an adequate standard of living, the right to health, and freedom from discrimination.

Accessing justice allows for the vindication of all human rights. Without access to justice, all too often there is no effective remedy for real and severe harms done. What is more, as Reginald Heber Smith, considered the father of the legal aid system, wrote, "Without equal access to the law, the system not only robs the poor of their only protection, but it places it in the hands of their oppressors, the most powerful and ruthless weapon ever created."⁵⁰

DENIAL OF ACCESS TO MIGRANT LABOR CAMPS IN THE UNITED STATES VIOLATES HUMAN RIGHTS LAW

Human rights law obligates States to protect, respect, and fulfill the human rights of all persons, including the right to access justice.⁵¹ In the United States, ratified treaties are binding on the federal, state, and local governments through the Supremacy Clause of the U.S. Constitution.⁵² The United States has ratified the International Covenant on Civil and Political Rights (ICCPR)⁵³ and the International Convention on the Elimination of Racial Discrimination (ICERD),⁵⁴ both of which obligate the United States to ensure access to justice at every level of government for all people present in the country. This obligation holds regardless of the United States' *modus operandi* of exceptionalism and self-purported role as a model for other nations in terms of human rights standards and achievements.⁵⁵

Under the ICCPR, States Parties undertake to, "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."⁵⁶ Further, the States have agreed that, "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law."⁵⁷ In this respect, "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, . . . national or social origin, . . . birth or other status."⁵⁸ Moreover, the Human Rights Committee, the treaty body that oversees the ICCPR, has made it clear that human rights law extends to all people present in the United States, regardless of their migration status.⁵⁹

The ICERD also provides that "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law[.]"⁶⁰ The ICERD further requires through Article 2(1)(c)

that "[e]ach State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists[.]"⁶¹ While the ICERD in Article 1(2) does state that the ICERD "shall not apply to distinctions, exclusions, restrictions or preferences made by the State Party... between citizens and non-citizens,"⁶²

General Recommendation 30 of the Committee on the Elimination of Racial Discrimination, which oversees the ICERD, clearly states that Article 1(2) "must be construed so as to avoid undermining the basic prohibition of discrimination"⁶³ and that State Parties "ensure that non-citizens enjoy

equal protection and recognition before the law" in the administration of justice and "combat ill-treatment of and discrimination against non-citizens by police and other law enforcement agencies."⁶⁴

Both the ICCPR and the ICERD provide for life, liberty, and security of the person; freedom of assembly and association; non-discrimination; and freedom of movement. The ICCPR requires that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence" and that in the case of such interference, "[e]veryone has a right to protection of the law against such interference or attacks."⁶⁵ In terms of international comparative law, the Supreme Court of Canada has also held similarly that the State has positive obligations to protect vulnerable workers from actions by private employers.⁶⁶ Moreover, the Inter-American Court of Human Rights has held that states must respect the labor and employment rights of unauthorized workers on parity with their authorized counterparts.⁶⁷

CONCLUSION

Unfortunately, the United States is failing to meet its obligations to migrant farmworkers under human rights law. The United States structures its systems to compound human rights violations against migrant farmworkers, rather than uphold those rights. As a result, migrant farmworkers are poor, exploited, vulnerable, and unequal under the law. Furthermore, they have limited opportunities in which to enforce their rights and challenge these conditions. Outreach to this isolated population is the gateway for changing this situation and ensuring access to the legal system and other services. However, the United States fails to have a federal mandate requiring access and affirming the human rights of farmworkers to privacy in their labor camp homes and has a patchwork of state laws that, for the most part, do not mandate access and lack the will to enforce migrant farmworkers' rights.

The joint legal aid complaint submitted by Maryland Legal Aid argues that the U.S. government should be held accountable for the human rights violations against migrant farmworkers and the UN Special Rapporteur on Extreme Poverty and Human Rights should urge the government to take federal action to correct these wrongs. Violations of human rights of farmworkers are not just a local problem in Maryland and across the United

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States, but also a global problem for which the United States fails to be the exception that upholds and vindicates farmworkers' rights. Instead of being a model and a leader of freedom, justice,

and liberty for the rest of the world, the United States is complicit in compounding human rights violations against one of its most vulnerable populations.

Endnotes

¹ Towards a Fair Deal for Migrant Workers in the Global Economy, Rep. IV of the Int'l Labor Office on its 92d Sess. (2004), 3, 7, available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>.

² NAT'L CTR. FOR FARMWORKER HEALTH, INC., FARMWORKER HEALTH FACTSHEET, 1 (2012), available at <http://www.ncfh.org/docs/fs-Migrant%20Demographics.pdf>.

³ Christine Ahn et al., *Migrant Farmworkers: American's New Plantation Workers*, FOOD FIRST (Mar. 31, 2004), <http://www.foodfirst.org/node/45>.

⁴ OXFAM AMERICA, LIKE MACHINES IN THE FIELDS 1 (2004), available at <http://www.spnyc.org/fairfoodnyc/pdf/oxfam2006report.pdf>. See generally HUMAN RIGHTS WATCH, CULTIVATING FEAR (2012), available at http://www.hrw.org/sites/default/files/reports/us0512ForUpload_1.pdf (describing the particularly dehumanizing effect of sexual violence or sexual harassment on farm workers than can be particularly powerless).

⁵ For the purposes of this article, the terms "legal aid advocates" or "legal aid attorneys" both refers to lawyers who work for non-profit organizations that provide free advice and legal representation to low-income people in the United States. The term "legal aid" also includes organizations that are funded by the Legal Services Corporation (LSC) and those that receive no funding from the LSC.

⁶ The communication was also joined by Legal Aid of North Carolina, Texas RioGrande Legal Aid, Colorado Legal Services, and Illinois Migrant Legal Assistance Project of LAF, representing the experiences of fourteen states. The Legal Aid Bureau, Inc., or Maryland Legal Aid, is a statewide nonprofit law firm that has provided quality legal services to low-income individuals for the past 100 years. For more information on Maryland Legal Aid, please visit <http://www.mdlab.org>.

⁷ For more information on the Local Human Rights Lawyering Project, please visit www.WCLCenterforHR.org.

⁸ See OXFAM AMERICA, *supra* note 4, at 11–15 (detailing the conditions leading to poverty among farm workers).

⁹ U.S. DEP'T OF LABOR, FINDINGS OF THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 2001–2002 47–48 (2005), available at http://www.doleta.gov/agworker/report9/naws_rpt9.pdf.

¹⁰ Oxfam, *supra* note 4, at 16 (internal citations omitted).

¹¹ BUREAU OF LABOR & STATISTICS, CENSUS OF FATAL OCCUPATIONAL INJURIES CHART, (1992–2011) 2 (2011), available at <http://www.bls.gov/iif/oshwc/cfoi/cfch0010.pdf> (reporting the fatality rate for all workers at 3.5 deaths per 100,000 workers); Centers for Disease Control and Prevention, *Agricultural Safety* (July 13, 2012), <http://www.bls.gov/iif/oshwc/cfoi/cfch0010.pdf> (finding the fatality rate for agricultural workers to be 26.1 deaths per 100,000 workers, which is approximately 7.45 times the rate for all workers).

¹² NAT'L CTR. FOR FARMWORKER HEALTH, INC., OCCUPATIONAL HEALTH AND SAFETY, 1 (2012), available at <http://www.ncfh.org/docs/fs-Occ%20Health.pdf>. See generally MARGARET REEVES ET AL., FIELDS OF POISON 2002: CALIFORNIA FARMWORKERS AND PESTICIDES (1997), available at http://www.ufw.org/white_papers/report.pdf (explaining the detrimental effect that pesticides have on the health of farmworkers); Joe Surkiewicz, *Helping migrant farmworkers, decades after "Harvest,"* DAILY REC., Jul. 8, 2012, <http://thedailyrecord.com/2012/07/08/joe-surkiewicz-helping-migrant-farmworkers-decades-after-harvest/> (relating an advocate's

perspective that farmworkers often put up with dangerous conditions because they feel they have no other option).

¹³ Cynthia R. Albarrn & Adeline Nyamathi., *HIV and Mexican Migrant Workers in the United States: A Review Applying the Vulnerable Populations Conceptual Model*, 26 J. ASS'N NURSES AIDS CARE 173, 173 (2011).

¹⁴ GINA SOLOMON, PESTICIDES AND HUMAN HEALTH 39 (2000).

¹⁵ *Id.* at 13–17.

¹⁶ See OXFAM AMERICA, *supra* note 4, at 17.

¹⁷ *Id.*

¹⁸ CDC, *Prevention and Control of Tuberculosis in Migrant Farmworkers: Recommendations of the Advisory Council for the Elimination of Tuberculosis*, 44 CDC MMWR RR-10 (1992), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/00032773.htm>.

¹⁹ *Fields of Tears*, ECONOMIST (Dec. 16, 2010), <http://www.economist.com/node/17722932>.

²⁰ U.S. DEP'T OF LABOR, FINDINGS OF THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 2001–2002 3 (2005), available at http://www.doleta.gov/agworker/report9/naws_rpt9.pdf.

²¹ *Id.* at 18.

²² See generally LEGAL SERVICES CORPORATION, SPECIAL LEGAL PROBLEMS AND PROBLEMS OF ACCESS TO LEGAL SERVICES (1977).

²³ Eduardo Gonzalez, Jr., *Migrant Farm Workers: Our Nation's Invisible Population*, EXTENSION: U. DISTRICT COLUMBIA (Mar. 6, 2012), <http://www.extension.org/pages/9960/migrant-farm-workers:-our-nations-invisible-population>.

²⁴ See Elizabeth J. duFresne & John J. McDonnell, *The Migrant Labor Camps: Enclaves of Isolation in our Midst*, 40 FORDHAM L. REV. 279, 282 (1971).

²⁵ OXFAM AMERICA, *supra* note 4, at 50.

²⁶ *Id.*

²⁷ Interview with Nathaniel Norton, Supervising Attorney, Maryland Legal Aid Bureau Farmworker Program, in Baltimore, Md. (Oct. 2012). All facts related to the events this date were related to the authors by Mr. Norton.

²⁸ See generally Surkiewicz, *supra* note 12 (describing Mr. Norton's difficulties with denial of access by employers).

²⁹ In a 1982 opinion, Maryland Attorney General Stephen H. Sachs concluded that the employer-owner of a migrant labor camp cannot deny a resident farm worker the right to receive guests and to be visited by clergy, medical, or other service personnel, lawyers, and the press. 67 Md. Op. Att'y Gen. 4 (1982).

³⁰ Mr. Norton later sent a letter to Mr. Albright notifying him of the facts of the interaction and the relevant legal issues raised.

³¹ See Mark Heffington, *The Case for Putting an End to "Building Good Grower Relationships": Why it is Time to Stop Discriminating against Our Farmworker Patients*, MCN STREAMLINE, May–June 2009, at 4, available at http://www.migrantclinician.org/files/MCN%20MayJun09_fLR.pdf (arguing from the perspective of a medical doctor that this practice needs to stop in order to protect workers).

³² See Surkiewicz, *supra* note 12.

³³ Heffington, *supra* note 31, at 4.

³⁴ 29 U.S.C. §§ 1801–72 (2006).

³⁵ See, e.g., *Francheschina v. Morgan*, 346 F. Supp. 833, 837–39 (S.D. Ind. 1972) (holding that, consistent with all previous jurisprudence, the First and Fourteenth Amendments protect migrants'

access to information and bar trespassing charges against individuals who speak to or distribute literature to migrant workers); *Folgueras v. Hassle*, 331 F. Supp. 615, 623 (W.D. Mich. 1971) (ruling that the “owner of these migrant labor camps . . . may not constitutionally deprive the migrant laborers living in his camps, or members of assistance organizations, or mere visitors of reasonable access to his camps”).

³⁶ See generally MARC LINDER, *MIGRANT WORKERS AND MINIMUM WAGES: REGULATING THE EXPLOITATION OF AGRICULTURAL LABOR IN THE UNITED STATES* (1992) (explaining the exclusion of migrant farmworkers from labor protection and exploring the effect this has on individuals).

³⁷ 29 U.S.C. § 152(3) (excluding agricultural laborers from the definition of employee as it pertains to the NLRA).

³⁸ 29 U.S.C. § 213 (detailing exceptions to the FLSA); see also OXFAM AMERICA, *supra* note 4 at 39 (explaining the effect of labor law exceptions on agricultural workers).

³⁹ 29 U.S.C. §§ 1801–72.

⁴⁰ OFFICE OF PUB. AFFAIRS, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *JUDICIAL BUSINESS OF THE UNITED STATES COURTS* Table C-2 (1941-1998).

⁴¹ *Farmworker Justice Fund v. Brock*, 811 F.2d 613, 614 (D.C. Cir. 1987), *vacated as moot* 817 F.2d 890 (1987).

⁴² See EMILY HEADON, ENVIRONMENTAL WORKING GROUP, *FROM BUREAUCRATS TO FAT CATS* (1999); TODD HETTENBACH, ENVIRONMENTAL WORKING GROUP, *ATTACK OF THE KILLER WEEDS* (1999); Shelley Davis, *Advocates Criticize EPA’s Method of Evaluating Farmworkers’ Pesticide Risks*, FARMWORKER JUSTICE NEWS, Spring 2003, at 1, 1, 5–7.

⁴³ 29 U.S.C. § 1854 (2006).

⁴⁴ 45 C.F.R. § 1626.3 (2011).

⁴⁵ 42 U.S.C. § 2996e.

⁴⁶ The Legal Services Corporation (LSC) is a nonprofit corporation established by the U.S. Government to provide free legal assistance to those who would otherwise be unable to afford it. For more information on LSC, please visit <http://www.lsc.gov>.

⁴⁷ LEGAL SERVICES CORPORATION, *supra* note 22.

⁴⁸ *Id.* at 35 (emphasis added).

⁴⁹ *Id.*

⁵⁰ REGINALD HEBER SMITH, *JUSTICE AND THE POOR*, 134–35 (1919).

⁵¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 83(a), *entered into force* July 1, 2003, 220 U.N.T.S. 3 [hereinafter ICRMW];

Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), at art. 2, 6. The United States has not signed the ICRMW.

⁵² U.S. CONST. art. VI, cl. 2.

⁵³ International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 1916 U.S.T. 521, 999 U.N.T.S. 171 [hereinafter ICCPR]. The United States issued a Declaration upon ratification that “the provisions of articles 1 through 27 of the Covenant are not self-executing,” meaning unenforceable under U.S. law without separate enacting legislation.

⁵⁴ International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD]. The United States Senate issued a Declaration that the provisions of ICERD are not self-executing, meaning unenforceable under U.S. law without separate enacting legislation.

⁵⁵ See, e.g., Judith Resnick, *Law’s Migration: American Exceptionalism, Silent Dialogues, and Federalism’s Multiple Ports of Entry*, 115 YALE L.J. 1564, 1582–84 (2006) (explaining U.S. exceptionalism).

⁵⁶ ICCPR, *supra* note 53, at art. 2(3).

⁵⁷ *Id.* at art. 26.

⁵⁸ *Id.*

⁵⁹ UN Human Rights Committee, General Comment 23, *The Rights of Minorities* (Art. 27), ¶ 5.2, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Aug. 4, 1994); ICRMW, *supra* note 51, at art. 1(1).

⁶⁰ ICERD, *supra* note 54, at art. 5.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Committee on the Elimination of Racial Discrimination, General Recommendation 30, *Discrimination Against Non Citizens*, ¶ 2, U.N. Doc. CERD/C/64/Misc.11/rev.3 (Jan. 10, 2004).

⁶⁴ *Id.* at ¶¶ 18, 21.

⁶⁵ ICCPR, *supra* note 53, at art. 17.

⁶⁶ *Dunmore v. Ontario* (Attorney General), [2001] 3 S.C.R. 1016 (Can.); see Steven M. Barrett, *Dunmore v. Ontario* (Attorney General): *Freedom of Association at the Crossroads*, 10 CANADIAN LAB. & EMP. L.J. 83, 83–84 (2003).

⁶⁷ *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 110 (Sept. 17, 2003).