**Migrant Farmworkers Denied Access to Legal Services, Healthcare and Other Outreach Workers in Employer-Run Housing**

Reporting Organizations:

This issue is submitted by a six legal aid organizations[[1]](#footnote-1) operating in eleven states across the country that provide free civil legal services to poor people, including migrant agricultural workers, and perform outreach to workers and their families in migrant labor camps.

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Issue Summary:

**The ability of legal services personnel, healthcare professionals, and other service providers to meet with migrant farmworkers living and working on U.S. farms has been systematically impeded by growers, often with the assistance of law enforcement. Workers and their family members living on farms where they work, in so-called “labor camps,” often do not have the means to leave. As a result, camp access denied to service providers effectively denies all access to healthcare, legal, and other services.**

There are over 2.7 million farmworkers in the United States[[2]](#footnote-2), including 100,000 or more children.[[3]](#footnote-3) They are overwhelmingly members of minority groups and foreign born. Farm work is one of the most dangerous and deadly jobs[[4]](#footnote-4) in the United States, yet it is also one of the lowest paid. Farmworkers are frequently discriminatorily exempted from protections of state and federal laws designed to protect workers under exemptions that have their roots in Jim Crow-era white supremacy. For example, farmworkers generally do not have to be paid overtime[[5]](#footnote-5), sometimes they are not even guaranteed the minimum wage[[6]](#footnote-6), and they may be lawfully retaliated against for trying to join or organize a union, or for taking any concerted action to improve their wages or work conditions.[[7]](#footnote-7)

Many farmworkers migrate within the U.S. for work and live in employer-controlled housing (“labor camps”) while they are away from their homes.[[8]](#footnote-8) H-2A guestworkers, who are farmworkers who travel from foreign countries on temporary work visas that tie them to a single employer, also typically live in employer-controlled housing. Workers in labor camps often are dependent on their employer not only for their income, but also for their shelter, transportation, mail service, and access to the outside world. The near-total control that some agricultural employers exert over farmworkers that live in labor camps has been likened to an “almost slave-master relationship.”[[9]](#footnote-9)

Therefore, legal services, health services, and other service providers perform outreach visits to workers and their families in labor camps in the evenings after the work day is done to offer services that attempt ameliorate these conditions. However, outreach provider access to workers in camps is routinely frustrated by the farmworkers’ employers, often with the acquiescence or assistance of law enforcement officers. Growers lock gates, post “No Visitor” signs, demand prior notice to the employer before visits, tell outreach workers to leave the property, threaten them with criminal trespass charges, call the police, and threaten physical violence. Farmworkers living in camps face threats of being fired, of deportation, of blacklisting, and of physical violence if they speak to outreach workers. Some workers have suffered actual violence at the hands of their employers for having spoken to outreach workers. When growers call the police on outreach workers, the police often just do the growers’ bidding--requiring outreach workers to leave the property, threatening them with trespass charges, or arresting them for trespass.[[10]](#footnote-10)

The effects of these practices are manifold: Service providers are deterred from identifying and providing services to those who are the most in need and most at risk of labor abuses, sexual violence, child labor, and human trafficking; the farmworkers’ privacy interests and the confidential relationship between service providers and workers is undermined; and the perception that agricultural employers are a law unto themselves is strengthened.

Concluding Observations and ICCPR Legal Framework:

In 2014, the U.N. Human Rights Committee wrote:

The Committee remains concerned about cases of trafficking of persons, including children, for purposes of labour . . . [i]t is concerned about the insufficient identification and investigation of cases of trafficking for labour purposes and notes with concern that certain categories of workers, such as farm workers and domestic workers, are explicitly excluded from protection under labour laws, thus rendering those categories of workers more vulnerable to trafficking.[[11]](#footnote-11)

The failure of the United States to adequately promote, protect, and enforce the rights of migrant farmworkers to access to legal advocates and other service providers at the labor camps where migrant workers live, permits the continued exploitation of migrant farmworkers by their employers and directly violates ICCPR **Article 19**, which protects the right to seek and receive information, ensuring “easy, prompt, effective and practical access” to “[g]overnment information of public interest.” Allowing employers and law enforcement officers to interfere with access also violates **Article 17**, which states: “No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence. . . . Everyone has the right to the protection of the law against such interference or attacks.”

In addition, the failure of the United States to provide an effective remedy to migrant farmworkers for violations of their human rights violates **Article 2(3)**, which requires that each State party to the Covenant ensure that any person whose human rights under the ICCPR are violated shall have an effective remedy.

The failure of the United States to protect access to migrant labor camps by legal service providers also violates migrant farmworkers’ right to access to legal counsel and information in violation of **Article 14** and **Article 26**, which provide that “all persons shall be equal before the law.” It additionally violates **Article 22**, which states: “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.”

The failure of the United States to take steps to prevent outreach workers from being threatened with and charged and arrested for trespass violates **Article 9**, which states: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.”

Current U.S. Government Policy and Practice:

The U.S. does not have a comprehensive or uniform federal and state legal framework concerning the right of migrant farmworkers to receive visits and information from outreach workers in labor camps. The relevant laws that do exist consist of various federal and state court decisions, state statutes, state attorney general opinions, and master-servant common law principles. In most states, however, there are no statutes, state attorney general opinions, state court decisions, or applicable federal court decisions on the right to access migrant labor camps. Even in states where the law ostensibly protects the rights of farmworkers and outreach workers to visit with each other, the law is often ignored by employers and law enforcement officers.

The Congressionally created Legal Services Corporation has recognized the special barriers agricultural workers face in accessing legal assistance and the legal system and has recommended “outreach” as the “principal activity” to break down these barriers, yet no action has been taken by the U.S. to actualize that recommendation. The U.S. generally cites federalism as a reason why it cannot take steps to ensure access.[[12]](#footnote-12)

Other U.N. Body Recommendations:

In December 27, 2012, in response to a complaint on this issue[[13]](#footnote-13), the Special Rapporteurs on Extreme Poverty and Human Rights, on the Situation of Human Rights Defenders, and on the Human Rights of Migrants sent a letter to the U.S. requesting its response to the allegations outlined here.[[14]](#footnote-14) The U.S. responded on May 2, 2014.[[15]](#footnote-15) The response generally used federalism as an excuse for its failure to ensure access and highlighted the federal laws that do afford unrelated protection to farmworkers and anecdotal enforcement actions taken by the federal government with regard to instances where, for example, farmworkers were not paid the minimum wage.

Recommended Questions:

1. In each of the last four years, how many unannounced visits has the U.S. made to labor camps when workers are present, and how many workers have U.S. government employees spoken to outside of the presence of employers or their agents?
2. How many times has the U.S. acted on complaints or conducted an investigation related to the denial of access? How many times has the U.S. imposed fines or other penalties for interference with the right to access? How many prosecutions has the U.S. undertaken relating the denial of access?

Suggested Recommendations:

1. The U.S. Department of Labor, and corresponding state labor agencies, should use and enforce existing regulations and policies that support the right of access for outreach workers. This would include:
	* Increasing the agency's role in investigation and enforcement of access rights violations;
	* Collaborating with state and local mechanisms to ensure effective protection of human rights defenders and migrants;
	* Conditioning farm labor contractors' registration certificates, and authorizations to house farmworkers, on adherence with the right of access for outreach workers; and
	* Training federal, state and local officials related to the right of access by outreach workers and mandating that state monitors report observed interference with outreach workers’ right of access.
2. The U.S. Department of Justice should utilize its statutory authority found at 42 U.S.C. § 14141 to investigate and monitor local law enforcement agencies and should specifically monitor police actions that interfere with the right to migrant labor camp access through intimidation or threats of arrest.
3. For employers utilizing the H-2A federal guestworker program, the U.S. Department of Labor should enforce existing regulations prohibiting unfair treatment on right of access to non-governmental outreach, deem denial of access rights to outreach workers a substantial violation of a material term or condition of the job, and require access rights be included in working conditions investigated during field checks.
4. Develop a complaint mechanism for outreach workers at the U.S. Department of Labor or the U.S. Department of Justice to track violations by employers and local law enforcement agencies and mechanisms to monitor and investigate recurring problems.
1. The submitting organizations are Texas RioGrande Legal Aid, Inc. (TRLA) and Southern Migrant Legal Services (SMLS), on behalf of La Union del Pueblo Entero (LUPE); Legal Aid of North Carolina; Legal Aid Society of Metropolitan Family Services; Colorado Legal Services; and South Carolina Legal Services. [↑](#footnote-ref-1)
2. Legal Services Corporation, *August 2016 – Final Estimates Adopted by LSC for 2017-2018 Implementation, Final Estimates—Tables I—VI (Excel), Table I*; available at <https://lsc-live.app.box.com/s/dfsy78qhagsk12oxi6fr79pd5eq0geqp> (last visited January 14, 2019). [↑](#footnote-ref-2)
3. *See,* Reena K. Shah, et al., Legal Aid Bureau, Inc., Migrant Farmworker Human Rights Complaint to the United Nations Special Rapporteur on Extreme Poverty and Human Rights, December 13, 2012 [hereafter Special Rapporteur Submission]; available at <https://www.dropbox.com/s/c88tktnfr9cvf0n/Migrant%20Farmworker%20Camp%20Access%20Human%20Rights%20Complaint%20%28Dec%2013%202012%29.pdf?dl=0> (last visited January 14, 2019). [↑](#footnote-ref-3)
4. *Id.* [↑](#footnote-ref-4)
5. *See*, federal Fair Labor Standards Act, 29 U.S.C. § 213(b)(12). [↑](#footnote-ref-5)
6. *See*, federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(6) (exempting farmworkers who work for smaller employers). [↑](#footnote-ref-6)
7. *See*, federal National Labor Relations Act, 29 U.S.C. § 152(3) (excluding agricultural workers from the definition of “employee” and thus exempting them from protections of the Act). [↑](#footnote-ref-7)
8. U.S. Dep’t of Labor, *Findings of the National Agricultural Workers Survey (NAWS) 2001–2002: A Demographic and Employment Profile of United States Farmworkers*, at 43 (Mar. 2005), *available at*

http://www.doleta.gov/agworker/report9/naws\_rpt9.pdf (last visited January 14, 2019). This survey found that 21% of “crop workers” lived in housing supplied by the employer; 33% of migrant crop workers

lived in employer-provided housing; and two-thirds of this housing was located on the employer’s farm. However, given that there is little recent comprehensive data on farmworkers, these numbers may be underestimates of the current situation. [↑](#footnote-ref-8)
9. Mark Heffington, *The Case for Putting an End to “Building Good Grower Relationships”: Why it is Time to Stop Discriminating Against Our Farmworker Patients*, 15(3) MCN STREAMLINE 4 (May/Jun. 2009), available at

<https://www.migrantclinician.org/blog/2009/may/case-putting-end-%E2%80%9Cbuilding-good-grower-relationships%E2%80%9D-why-it-time-stop-discriminating-> (last visited January 14, 2019) (internal quotation marks omitted). [↑](#footnote-ref-9)
10. *See generally*, Special Rapporteur Submission, *supra* note 3. The examples highlighted in the 2012 Submission are illustrative of what persists today. The submitting organizations have documented many additional similar examples from around the country from 2013 to the present and can provide them upon request. [↑](#footnote-ref-10)
11. U.N. Human Rights Comm., *Concluding Observations on the Fourth Report of the United States of America*, ¶ 15 U.N. Doc CCPR/C/USA/CO/4 (April 22, 2014). [↑](#footnote-ref-11)
12. *See e.g. infra* note 14. [↑](#footnote-ref-12)
13. *See* *supra* note 3. [↑](#footnote-ref-13)
14. Available at <https://www.dropbox.com/s/oy1sirfqnt51jao/Special%20Rapporteur%20Letter%20to%20USG.pdf?dl=0> (last visited January 14, 2019). [↑](#footnote-ref-14)
15. Response available at <https://www.dropbox.com/s/skfjqaumssh0i4d/US%20Mission%20Response%20May%202%202014.pdf?dl=0> (last visited January 14, 2019). [↑](#footnote-ref-15)