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Distinguished Special Rapporteur:

This human rights complaint is respectfully submitted to the United Nations Special Rapporteur regarding the United States’ failure to protect the human rights of migrant farmworkers. By failing to protect outreach providers’ unfettered access to migrant farmworkers and their family-members who live in agricultural labor camps supplied by their employers, the United States is complicit in violating the human rights of this vulnerable population.

The signatories to this complaint are legal services, healthcare, and community service organizations that specialize in providing services to migrant and seasonal agricultural workers and agricultural worker unions and associations, from states throughout the United States. Appendix A contains a complete list of submitting and supporting organizations.

EXECUTIVE SUMMARY

Between 1 and 3 million year-round and seasonal migrant farmworkers, including at least 100,000 children, are estimated to labor every year in American fields. Migrant farmworkers are one of the most vulnerable populations in American society. Yet, distressingly, they are also the least...
protected. Most are poor and many live and work in dangerous and dehumanizing circumstances. Frequent migration and social, linguistic and physical isolation exacerbate this vulnerability. Appendix B, which contains the most up-to-date information on the situation of migrant farmworkers in the United States, illustrates farmworkers’ deep vulnerability.

Lack of access to migrant labor camps amounts to lack of access to justice for those migrant workers and families that live at the labor camps. It also decreases these workers’ and their families’ access to other services that are essential to their health, welfare and dignity. Reasonable access to labor camps and farms on which 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. Moreover, in the case of access to justice, the United States Congress has recognized the special barriers agricultural workers face in accessing legal assistance and the legal system and has recommended “outreach” as the “principal activity” through which to break down these barriers.

Routinely, however, outreach workers who attempt to provide farmworkers living at labor camps with legal assistance, healthcare, education, and social and other basic services are denied access altogether or not provided meaningful access. Appendix C contains several examples illustrative of this nation-wide practice. These examples are representative of the problems faced by all social service providers who attempt outreach to migrant farmworkers.

Farmworkers’ employers commonly tell outreach workers to leave the property; accuse outreach workers of trespassing on their property; demand prior notice before visiting the property; pressure the outreach workers to break confidentiality and infringe on the privacy of farmworkers; or demand prior notice before visiting the property; pressure the outreach workers to break confidentiality and infringe on the privacy of farmworkers by naming prospective clients who are seeking assistance. Outreach workers, moreover, regularly experience harassment, are threatened with arrest and even threatened with violence by owners and operators of migrant labor camps.

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5 Legal Servs. Corp., Special Legal Problems and Problems of Access to Legal Services of Veterans, Native Americans, People with Limited English-Speaking Abilities, Migrant and Seasonal Farmworkers, Individuals in Sparsely Populated Areas: A Report to Congress As Required by Section 1007(h) of the Legal Services Corporation Act of 1974, As Amended, at 34-36 (1978) (on file with authors) (hereinafter, “LSC Study”). When the Legal Services Corporation Act was passed in 1974, Congress directed the new Legal Services Corporation (LSC) to study special barriers to access to justice for migrant and seasonal farmworkers, among other groups. This decades-old study remains the most comprehensive inquiry into this topic and its findings are just as relevant today. The study identified that isolation in remote locations; short length of time in the area; language; economic dependence upon employers; and cultural isolation are the primary barriers restricting access to justice.
6 Id., at 35.
8 Letter from Young, Moore and Henderson, P.A. to Lori Elmer, Esq. at Legal Aid of North Carolina (LANC), Oct. 27, 2003, Attachment 2; Letter from The Kohn Partnership, L.L.P. to Caroline Smiley, Esq. of LANC, Oct. 6, 2011, Attachment 3.
9 Email exchange between Donna Levesque, doctoral student at Walden University, and Stan Eury, Executive Director, North Carolina Growers’ Association, Aug. 9 - 18, 2010, Attachment 4.
Farmworkers also face threats of deportation; sexual violence and violence against security of person; and inhumane treatment and abuse at the hands of their employers. Further, employers may use the enforcement power of local law enforcement officials to control the access that the migrant farmworkers living on their property have to other people and services. The almost total control that some agricultural employers exert over farmworkers that live in their labor camps has been likened to an “almost slave-master relationship.”

The effects of these abuses are manifold: service providers are discouraged from providing services; farmworkers’ vital privacy interest and the confidential relationship between service providers and workers is undermined; and advocates are limited in their ability to identify and serve victims of labor abuses, sexual violence, child labor and human trafficking. The totality of these factors 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.

The United States does not have a consistent legal framework that mandates camp access; instead, laws and law enforcement relating to camp access is generally left up to individual states. This failure, coupled with federal and state labor laws that exacerbate the socio-economic deprivation of migrant farmworkers and discriminate against them because of their migrant status or poverty violates migrant farmworkers’ human rights and the United States’ obligations under the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) – both treaties that the United States has signed and ratified.

As such, the signatories to this complaint recommend that the Special Rapporteur request the United States to do the following: permit a country visit by the Special Rapporteur to conduct an in-depth investigation into migrant camp-access issues; take all reasonable measures to bring United States law and regulations in compliance with treaty obligations under the ICCPR and CERD.

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16 See, e.g., Lainez et al v. Baltazar, Sr., et al., 5:2011-cv-00167 (E.D.N.C. filed Apr. 8, 2011) (in which workers alleged a brutal system of debt bondage: workers who tried to escape were shot at by crew leaders, and defendants responded to the escape by informing the remaining workers that they were not allowed visitors to the labor camp and threatening violence against anyone who tried to help workers leave the camp; the case settled out of court); Camayo et al. v. John Peroulis & Sons Sheep, Inc. et al., No. 10-cv-00772 (D. Colo. filed Apr. 6, 2010); Asanok et al. v. Million Express Manpower, Inc. et al., 5:07-cv-00048-BO (E.D.N.C. filed Feb. 12, 2007) (where defendants restricted plaintiffs’ movement and their opportunity to visit with other people who spoke their language, and told the workers that they were not allowed to speak to outsiders); Catalan et al. v. Vermillion Ranch Ltd. Partnership et al., No. 06-cv-01043 (D. Colo. filed Jun. 1, 2006).


CERD; urge strengthened enforcement of rights of migrant farmworkers by all appropriate federal and state agencies; educate and train local law enforcement about rights of migrant farmworkers to receive outreach worker visitors in their migrant camp homes.

I. Lack of a Uniform Legal Framework in the United States Concerning the Right of Legal and Other Workers to Access Migrant Farmworker Camps

In the United States, there is no comprehensive or uniform federal and state legal framework concerning the right of legal and other outreach workers to access migrant farmworkers, who may live, in addition to work on agricultural labor camps. Rather, the law consists of federal\(^{19}\) and state court\(^{20}\) decisions, state statutes,\(^{21}\) state attorney general opinions,\(^{22}\) and master-servant common law principles. Court decisions arise from affirmative litigation on the right to access and from defending criminal allegations of trespass. In some 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.

II. Causal Relationship Between the Practices of Public Officials and the Violation of Human Rights of Migrant Farmworkers

Citing criminal trespass statutes, employers use the enforcement power of local law enforcement officials to control the access that the migrant farmworkers living on their property have to other people and services. Appendix D includes examples of this practice. Whether it is due to a lack of clarity in the laws that apply to the rights of migrant farmworkers living on the employer’s property or the lack of training on this issue and how to deal with the nuances of these laws, local law enforcement officials tend to support the employers’ use of the criminal trespass statutes in this manner. Even in cases where case law or an attorney general opinion supports unfettered access by outreach workers, police often step in to support employer’s efforts to limit access in contravention of the law or attorney general opinion.

Employers usually have longstanding ties to the surrounding rural community, speak English fluently, and solicit the assistance of local law enforcement with frequency and ease. In contrast, most migrant farmworkers have a short length of time in the area with little or no ties to the community, often do not speak English, and tend to distrust or fear law enforcement either because of immigration status or based on assumptions of bias within the legal system.

The act of law enforcement officials coming to the scene and arresting or directing legal advocates or other service providers off the employer’s property does more than prevent that particular service from reaching the workers. Migrant farmworkers receive a clear message that there are limits to their freedoms and that their protection under the law is less than that of their employer. Because the local law enforcement officials carry out the threats of the employers, the perceived power of the employer reinforces the idea that access to the legal system is simply not a viable option for migrant farmworkers. Migrant farmworkers fear that by simply receiving information


about legal rights or information about programs and services that provide assistance, they may have problems with their employer, the criminal justice system and/or jeopardize their immigration status.23

As it is, migrant farmworkers, like many other immigrants living and working in the United States, do not often exercise their fundamental right to seek police protection when they are victimized or in fear of their personal safety.24  This is likely due to a number of factors such as linguistic barriers, distrust of the legal system,25 or fear of jeopardizing immigration status.26  The fact that local law enforcement officials are perceived to defend the rights of employers over those of migrant farmworkers makes it even less likely that the farmworkers will seek police protection in situations of workplace violence or otherwise.27  The practice of local law enforcement officials giving deferential treatment to employers in the application of trespass laws not only contributes to this imbalance of power and impedes access to justice, it has broad repercussions on other fundamental freedoms of migrant farmworkers.  The results are problematic in that they further hinder the already marginalized farmworker population from accessing justice as well as other services that are essential to their right to health, welfare and dignity.

III. Federal and State Law in the United States Exacerbates the Poverty of and Discriminates Against Migrant Farmworkers

Farmworkers’ poverty and vulnerability are at best unsurprising results and at worst intentional results of federal and state laws governing agriculture and farm labor.28  These laws routinely exempt farmworkers from some of the most basic labor and safety protections—protections that other American workers take for granted.  These laws both create and sustain the poverty and deprivation suffered by migrant and seasonal farmworkers in the United States.

The federal Fair Labor Standards Act (FLSA),29 which sets the federal minimum wage and generally provides an overtime premium for hours worked over 40 in a week, exempts farmworkers in important ways.  Farmworkers are completely exempt from overtime coverage; 30

23 See Oxfam America, supra note 3; see also LSC Study, supra note 5, at 36.
24 See generally, LSC Study, supra note 5.
25 Id., at 36. The LSC Study noted that many migrant farmworkers do not view the legal system as a means of favorably resolving disputes and are hesitant to use it. It further observed that farmworkers’ experiences with the legal system in their country of origin also color their perspective on the U.S. legal system. Additionally, the study noted that farmworkers tend to have little knowledge of the legal protections which cover them in the U.S. workplace and do not know how or where to seek help with problems.
26 Id.
27 See E-mail exchange between Sue E. Hagie, Nurse Practitioner with Community Health Services and Nathaniel Norton, Esq. of Maryland Legal Aid, Jul. 29, 2012, Attachment 8; E-mail exchange between Sue E. Hagie, Nurse Practitioner with Community Health Services and Nathaniel Norton, Esq. of Maryland Legal Aid, May 16, 2012, Attachment 9.
29 29 U.S.C. §§ 201-219. The FLSA also fails to guarantee farmworkers periods for rest and meals during the workday—a seemingly basic protection for people performing tiring physical labor.
30 29 U.S.C. § 213(b)(12). This exemption has been included in the FLSA from the beginning: when the original bill was introduced in Congress in 1937, this exception served as a concession to Southern states whose economies
further, the FLSA does not apply to “small” farms that employ a handful of workers and thus, many farmworkers are denied even the basic guarantee of the federal minimum wage of $7.25 per hour. These exemptions are a direct result of a racially discriminatory intent, as evidenced by the law’s legislative history. Even today, the FLSA’s discriminatory effect remains as the exemptions under the law now have a disparate impact on the United States’ Hispanic population.

Farmworkers also face a uniquely steep uphill battle if they try to improve their wages or working conditions through collective action. The federal National Labor Relations Act (NLRA), which putatively protects workers’ rights to organize into unions and take other collective action, exempts all agricultural employees from its protections. This exemption also has its roots in intentional race discrimination. Without the NLRA, organizing a farmworkers’ labor union is nearly impossible: farmworkers can be fired for engaging in organizing activities or for joining a union, and farm labor unions have no power to compel a company to bargain with them. Without the power to bargain collectively, each farmworker is on her own against a significantly more powerful employer.

Individual farmworkers are putatively protected against retaliation from their employers by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), but that minimal protection is insufficient to bring about company-wide or industry-wide change. The AWPA, like the FLSA, does not apply to “small” agricultural employers. Thus many farmworkers are denied the AWPA’s minimal housing, transportation and disclosure protections. A single worker’s lawsuit against an exploitative employer is far less effective than a collective work stoppage.

The United States also discriminates against farmworkers by providing weaker workplace health and safety protections compared to those available in other industries. The Occupational Safety


32 Representative J. Mark Wilcox of Florida spoke against the FLSA bill, stating, “Then there is another problem of great importance in the South, and that is the problem of our Negro labor. There has always been a difference in the wage scale of white and colored labor. . . . You cannot put the Negro and the white man on the same basis and get away with it.” 82 Cong. Rec. 1404 (1937). Representative Edward E. Cox of Georgia agreed: “The organized Negroes of the country are supporting [the FLSA] because it will, in destroying state sovereignty and local self-determination, render easier the elimination of racial and social distinctions.” 82 Cong. Rec. App. 442 (1937).
33 Approximately, 83% of crop workers identify as Hispanic and approximately 4% identify as Black. See NAWS, supra note 1.
34 See 29 U.S.C. § 152(3).
36 See Southern Poverty Law Center, supra note 27, at 10; see also Bon Appétit Mgmt. Co. Foundation & United Farm Workers, Inventory of Farmworker Issues and Protections in the United States, at 27 (Mar. 2011), available at http://www.ufw.org/pdf/farmworkerinventory_0401_2011.pdf (last visited Dec. 12, 2012). There are two exceptions to this: the states of California and Oregon have state laws allowing agricultural workers to organize. However, many U.S. states are right to work states where it is prohibited to require all workers in a closed shop workplace to join a union. This anti-union legal framework makes it harder for workers to unionize and collectively improve wages and working conditions.
and Health Act, administered and enforced by the 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 has not used its regulatory authority to protect farmworkers. For example, OSHA set a field sanitation standard only after a legal battle and an opinion by a federal appeals court castigating OSHA’s 14 years of “intractable” “resistance” as a “disgraceful chapter of legal neglect.”

Similarly, the Environmental Protection Agency (EPA), 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 employers than the safety and health concerns of the farmworkers and their families. The protections that do exist, including those relating to pesticides and field sanitation (access to drinking water, toilets, hand-washing facilities), cannot be enforced through individual lawsuits by farmworkers. Without a private right of action to enforce these protections, farmworkers are dependent on infrequent inspections and weak enforcement action by federal agencies.

Many states do not require agricultural employers to provide workers’ compensation coverage to injured farmworkers. Agriculture is one of the most dangerous industries in the United States, and this lack of protection for on-the-job injuries leaves farmworkers extremely vulnerable when accidents occur.

These serious gaps in United States law are just some of the major exclusions from coverage which impact farmworkers, ensuring that they remain among the poorest and most vulnerable workers in the American economy. While two federal laws, AWPA and the FLSA, do provide important protections to migrant and seasonal farmworkers, the farmworkers themselves are not often in a position to enforce their rights. They are generally physically, linguistically, and socially isolated from mainstream American society, and often distrust the legal system.

39 The most serious safety and health hazards farmworkers face are: (1) lack of adequate drinking water and toilet facilities; (2) musculo-skeletal injuries caused by lengthy stooping, lifting and cutting in harvesting crops; (3) farm machinery and equipment; and (4) exposure to pesticides. See Oxfam America, supra note 3.
42 Instead, federal agencies’ enforcement is presumed to serve as an adequate means of ensuring compliance. The Environmental Protection Agency (EPA) inspects agricultural employers and enforces the Worker Protection Standard (WPS) Rule, 40 C.F.R. § 170, from the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 et seq. (1996). OSHA enforces field sanitation standards, 29 C.F.R. § 1928.110, although those standards do not apply to farms with fewer than 11 employees—leaving one third of all farm employees in the United States without even this minimal level of protection. See Bon Appétit, supra note 35, at 36.
44 See Bon Appétit, supra note 35, at 34 (noting that only 13 states, in addition to the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, require employers to cover seasonal and migrant farmworkers to the same extent as all other workers).
Moreover, they are crushingly dependent upon their employers and the tight-knit employment networks that extend across borders and control their access to future work.\textsuperscript{46} Unfortunately, the federal government fails to allocate sufficient resources to the enforcement of these laws on the farmworkers’ behalf, thus further guaranteeing that the existing system of exploitation will persist.\textsuperscript{47} The only legitimate recourse then for farmworkers to have access to justice and an ability to have their rights enforced is through legal aid offices, whose charge is to provide free legal services to the poorest and most vulnerable. Even here, the United States Congress has limited farmworkers’ ability to attain true justice because it has hamstrung publicly funded legal aid offices both from representing undocumented workers and from bringing class action lawsuits – shutting the door to any legal relief and certainly to access to justice to a significant segment of the farmworker population in the United States.

This consistent discrimination against farmworkers under the law lowers their wages and decreases the protections and services afforded to them. This poverty and discrimination is exacerbated when farmworkers are allowed to be kept unaware of the limited rights and services that they do have under state and federal law and are kept from enforcing those legal rights and accessing available services. For migrant farmworkers, the United States’ failure to protect outreach workers’ access to labor camps compounds the effects of the discrimination and works to increase their poverty.

\section*{IV. Causal Relationship Between the Violations of Human Rights of Migrant Farmworkers and the Failure of the United States Government to Provide Access to Labor Camps}

By signing and ratifying both the ICCPR and the CERD, the United States has obligated to respect, protect and ensure the fulfillment of human rights of all people in the United States at every level of government.

\textit{Access to legal and other advocates}

The United States’ exclusion of migrant farmworkers from critical legal protections, and its failure to ensure meaningful access by and to legal advocates and other community service providers, violate the rights of migrant farmworkers and United States’ human rights commitments under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on the Elimination of all forms of Racial Discrimination (CERD).

The United States’ failure to adequately promote, protect and enforce the rights of migrant farmworkers to access to legal advocates and other community service providers to labor camps where migrant workers work, and also live, permits the continued exploitation of migrant farmworkers by their employers, and directly violates the ICCPR Article 19, which protects the right to seek and receive information, ensuring “easy, prompt, effective and practical access” to


“Government information of public interest”. In addition, it violates CERD’s mandate against racial discrimination in the enjoyment of the right to housing and the right to public health, medical care, social security and social services. As noted, almost 80% of farmworkers in the United States are foreign born. The United States’ failure to protect migrant farmworkers’ access to legal advocates and community workers has a disparate impact on their ability to enjoy the rights to equal housing, health and medical care and other services.

The United States’ failure to provide an effective remedy to migrant farmworkers for violations of their human rights violates ICCPR 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. Migrant farmworkers face a number of barriers to accessing the justice system to vindicate their rights: isolation in remote locations; short length of time in specific area; economic dependence upon employers; and cultural isolation. Furthermore, migrant farmworkers may fear seeking legal assistance due to perceived repercussions, including arrest and deportation, relating to their or their family members’ sometimes irregular immigration status.

Legal outreach and legal aid services are often the only recourse migrant farmworkers have to accessing the justice system and seeking remedies for rights violations. However, the AWPA, the principal federal employment law for migrant farmworkers, does not mandate that farm owners grant legal workers’ access to labor camps housing migrant farmworkers. Some states’ Attorneys General have issued official Opinions that declare that the workers in the camp have a right to receive visitors and that outreach workers have a right to access workers. In theory these opinions should bind law enforcement acting under state authority. However, this does not bear out in practice. The failure of the United States government to mandate and ensure access by legal aid workers to migrant farm workers thus violates the farmworkers’ right to effective remedy.

The United States’ failure to protect access to migrant labor camps by legal service providers violates migrant farmworkers’ right to access to legal counsel and information in violation of Article 14 of the ICCPR, which provides that “all persons shall be equal before the courts and tribunals” in criminal and civil cases and creates an obligation upon States to ensure that everyone has access to “a fair and public hearing by a competent, independent and impartial tribunal established by law.” Lack of access to counsel “has long been recognized as one of the most acute problems facing both [migrant] workers and the legal system.” Without effective legal representation by farmworker legal advocates, the door to the justice system has almost completely closed for migrant farmworkers. Yet, attorneys and their staff have been targeted by employers seeking to control farmworker communications. Indeed, employers have been candid that their opposition to allowing migrant farmworkers access to lawyers is to prevent farmworkers from knowing and enforcing their legal rights.

49 CERD, supra note 17, art. 5.
50 See Appendix D.
52 Id., at 546 (discussing the plight of undocumented immigrant farmworkers in states lacking independently-funded (i.e., non-LSC-funded) legal aid organizations).
53 Letter from Constangy, Brooks & Smith, LLC, supra note 10.
54 One grower lobby, the Farm Bureau, fought against funding for farmworker legal aid lawyers by complaining that “legal aid lawyers educate farm employees about their rights and help them take group action to enforce those rights.” Smerbeck, supra note 50 at 528. Cf. Howard Gault Co. v. Texas Rural Legal Aid, Inc., 615 F. Supp. 916, 925 (N.D. Texas 1985) (quoting Deaf Smith County Sheriff Travis McPherson as telling growers, “I think that [TRLA] is the
are grave for a population that is deeply vulnerable, marginally protected under the law and ripe for exploitation. The results can be wage theft, unaddressed AWPA violations, dangerous field sanitation conditions, redress from employer abuse, pesticide exposure, and even human trafficking,\textsuperscript{55} to name a few.

The United States’ failure to protect service providers’ access to farmworkers allows employers to exploit the state of the camp access law to deny migrant farmworkers' access to healthcare in violation of its obligations under CERD, Article 5 (c) (iv), which requires states 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, notably in the enjoyment of . . . [t]he right to public health, medical care, social security and social services.”

Employers use threatened or actual police force to prevent or limit workers’ access to healthcare providers. Given the uncertainty of the law, health care providers are faced with the following choices: (1) cease visiting particular labor camps where health care providers fear harassment and arrest; (2) continue to operate at labor camps and face criminal charges if necessary; or (3) agree to employer demands that they unreasonably (and often discriminatorily) limit their access and services to this type of patient, or provide unreasonable notification to the employer in advance of visits and/or ask the employer's permission to visit with migrant farmworkers.

Some farmworkers are denied healthcare because providers have decided to cease providing services to workers at camps where providers have been physically intimidated and threatened with arrest.\textsuperscript{56} Some farmworkers are denied healthcare even when the provider continues to serve a camp where a employer threatens the provider with arrest, because police officers have forced healthcare providers to stop seeing patients and to leave camps even after the police have been shown legal authority allowing for the provider’s presence.\textsuperscript{57} And, unfortunately, some migrant healthcare providers allow employers to control when and which workers obtain medical care and the extent of care that workers receive.\textsuperscript{58} These policies all result in healthcare providers being unable to treat their “farmworker patients with the same respect for their autonomy and dignity” as their non-farmworker patients.\textsuperscript{59}

In the place of comprehensive federal protections, the United States has allowed for a patchwork of state laws that for the most part do not mandate access to and by legal workers and other community service providers and do not affirm the right of migrant farmworkers to privacy in their homes, which is often the same as their place of work. Both federal and state governments are obligated to comply with the standards set forth in the treaties ratified by the United States, with the federal government retaining ultimate responsibility for compliance.\textsuperscript{60} Indeed, in ratifying both the ICCPR and CERD, the United States pledged to take the necessary steps to ensure that the rights recognized in the treaty are given effect through state action.\textsuperscript{61}

\textsuperscript{55} See, e.g., John Does I-V v. Rodriguez et al., 06-cv-00805 (D. Colo. filed Apr. 26, 2006).

\textsuperscript{56} See, e.g., Declaration of Elizabeth Studsill, supra note 11.


\textsuperscript{58} See, e.g., E-mail Exchanges with Sue E. Hagie, supra note 26.

\textsuperscript{59} Heffington, supra note 14, at 4 (likening some growers’ desire to control all aspects of their workers’ lives on and off the job to 19th-century slavery).

\textsuperscript{60} ICCPR, supra note 16, art. 50; U.S. Const. art. 6, §2.

\textsuperscript{61} In ratifying both the ICCPR and CERD, the U.S. attached an understanding that “to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate
Lack of protections for farmworkers under the law

Migrant farmworkers in the United States live in poverty, are at risk of exploitation and discrimination, and are unequal under the law. They have very few mechanisms and opportunities to enforce their rights. Federal labor protections would help prevent their exploitation in the workplace. Federal protection of outreach by legal advocates, healthcare providers, and other community service providers would provide migrant farmworkers with access to the legal system and other services to protect their rights.

The United States’ exclusion of migrant farmworkers from federal laws protecting the rights to organize and join unions, the rights to overtime pay and a minimum wage (specifically on small farms), and the protections against child labor, violates migrant farmworkers’ right to equal protection of the law without discrimination. Specifically, the United States exempts migrant farmworkers from the protections contained in the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA), the two primary pieces of federal legislation protecting workers in virtually all other industries.

The subnational states’ exclusion of migrant farmworkers from many state workers’ compensation laws likewise violates migrant farmworkers’ right to equal protection under the law. ICCPR Article 26 guarantees that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” Discrimination is prohibited on any ground “such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Indeed, the rights contained in the ICCPR are enjoyed by all persons who find themselves subject to the jurisdiction of the State party to the treaty, including migrant workers.62

The obligation to prohibit and eliminate racial discrimination and to guarantee equal protection of the law, including in the enjoyment of the rights to work, to free choice of employment, to just and favorable conditions of work and renumeration, and to form and join trade unions, is reiterated in CERD Article 5. As detailed previously, the exclusion of migrant farmworkers from federal statutory protections is in large part the result of discriminatory intent evident in the legislative history underlying the statutes. Moreover, given that a high percentage of all farmworkers working and living in the United States are foreign born (80%),63 the exclusion of migrant farmworkers from federal and state labor law protections has a clearly discriminatory impact. Such a discriminatory effect violates the non-discrimination mandates of both ICCPR and CERD.64
The United States’ failure to reform federal laws to include migrant farmworkers violates its obligation to dismantle discriminatory impacts of legislation. CERD Article 2(1)(c) mandates 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.” As stated above, the United States’ failure to protect migrant farmworkers by excluding them from the purview of the NLRA and FLSA has discriminatory effect on the bases of race and national origin. Under its international agreements, the government has an obligation to amend the offending legislative frameworks.

V. Recommendations

The signatories to this complaint respectfully urge the Special Rapporteur to accept the statements and the attachments herein as evidence of the grave problems with migrant camp access in the United States as a violation of farmworkers’ human right to access justice as well as other rights to health, welfare and dignity.

We urge you to request permission to conduct a country site visit to the United States to assess the migrant camp access issue and the plight of migrant farmworkers first-hand.

We further recommend that you urge the United States to take all reasonable measures to protect, respect and fulfill the rights of migrant workers, as outlined in the aforementioned treaty obligations, and specifically to ensure access to migrant labor camps by community service providers – including legal services, health, educational and religious providers.

We urge you to recommend strengthened enforcement of the rights of migrant farmworkers by all appropriate federal, state and local agencies.

We also urge you to recommend that the United States ensure education and training of the public, as well as and especially local law enforcement, about the rights of migrant farmworkers who live and work at the migrant labor camps to receive outreach services from community providers on employer property.
Appendix A
Submitting and Contributing Organizations

Submitting Organizations

These organizations are signatories to the complaint.

The Legal Aid Bureau, Inc., or Maryland Legal Aid, is a state-wide non-profit law firm that has provided free legal services to low-income people and communities for over 100 years. It is the first legal services organization in the country to adopt a human rights framework and attempts to use international human rights norms in advocating for real and sustainable change in the lives of the poor and disenfranchised. Maryland Legal Aid’s Farmworker Program serves agricultural workers in Maryland and Delaware. [www.mdlab.org](http://www.mdlab.org)

Texas RioGrande Legal Aid (TRLA) is a non-profit legal services organization that provides free legal services to low-income residents in 68 counties of Southwest Texas. It is the third largest legal services provider in the country. TRLA serves agricultural workers throughout the State of Texas and in six southeastern states through its project, Southern Migrant Legal Services (SMLS). SMLS serves agricultural workers in the states of Kentucky, Tennessee, Alabama, Mississippi, Louisiana and Arkansas. [www.trla.org](http://www.trla.org)

The Farmworker Unit of Legal Aid of North Carolina is a non-profit legal services organization that provides free legal services to agricultural workers throughout North Carolina [www.farmworkerlanc.org](http://www.farmworkerlanc.org)

The Migrant Farm Worker Division of Colorado Legal Services is a non-profit legal services organization that provides free legal services to agricultural workers throughout Colorado [www.coloradofarmworkers.com](http://www.coloradofarmworkers.com)

Illinois Migrant Legal Assistance Project, a project of the Legal Assistance Foundation of Metropolitan Chicago, provides free legal services to agricultural workers throughout Illinois [www.lafchicago.org](http://www.lafchicago.org)

Advocates for Basic Legal Equality is an unrestricted legal services program that represents low-income persons and groups in civil matters. The Migrant Farmworker and Immigration Program of Advocates for Basic Legal Equality, Inc. (ABLE) provides free legal services to agricultural workers throughout Ohio. [www.ablelaw.org](http://www.ablelaw.org)

Farmworker Legal Services of Michigan, a division of Legal Services of South Central Michigan, is a legal aid office with attorneys and other legal staff who provide free legal assistance and referrals to migrant and seasonal farmworkers throughout the state of Michigan. [www.farmworkerlaw.org](http://www.farmworkerlaw.org)

California Rural Legal Assistance (CRLA) serves low-income individuals residing in over 22 California counties. As rural areas and small cities of California continue to change, so does our outreach and service to diverse communities. Today, CRLA serves a wide array of clients, while maintaining specialized programs that focus on services for farmworker populations. [www.crla.org](http://www.crla.org)

California Rural Legal Assistance Foundation (CRLAF) is a statewide non-profit organization that provides community outreach and education, public policy advocacy, litigation support, and technical and legal assistance for California’s rural poor. We target our work in the areas of agricultural workers’ health, civil rights, education, labor & employment, immigration & citizenship, pesticides & worker safety, rural housing and sustainable communities. [www.crlaf.org](http://www.crlaf.org)

Farmworker Justice is a nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice. We work with farmworkers and their organizations throughout the nation. [www.fwjustice.org](http://www.fwjustice.org)

The Southern Poverty Law Center is dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of our society. Using litigation, education and other forms of advocacy, we work toward the day when the ideals of equal justice and equal opportunity will be a reality. SPLC employs a three-pronged strategy to battle racial and social injustice: They track the activities of hate groups and domestic terrorists across America, and launch innovative lawsuits that seek to destroy networks of radical extremists; they use the courts and other forms of
advocacy to win systemic reforms on behalf of victims of bigotry and discrimination; and they provide educators with free resources that teach school children to reject hate, embrace diversity and respect differences. [www.splcenter.org](http://www.splcenter.org)

**Centro de los Derechos del Migrante, Inc. (CDM)** empowers Mexico-based migrant workers to defend and protect their rights as they move between their home communities in Mexico and their workplaces in the United States through education, training and outreach, referral services and direct representation, and policy advocacy. [www.cdmigrante.org](http://www.cdmigrante.org)

**North Carolina Justice Center**’s mission is to eliminate poverty in North Carolina by ensuring that every household in the state has access to the resources, services and fair treatment it needs to achieve economic security. The North Carolina Justice Center is a leading progressive research and advocacy organization and the state’s preeminent voice for economic, social and political justice. [www.ncjustice.org](http://www.ncjustice.org)

**Global Workers Justice Alliance**’s mission is to combat worker exploitation by promoting portable justice for transnational migrants through a cross-border network of worker advocates and resources. Global Workers coined the term portable justice to describe 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. [www.globalworkers.org](http://www.globalworkers.org)

The **South Texas Civil Rights Project (STRCP)** provides free civil legal services to the migrant farm worker community and other indigent persons in South Texas. STRCP is committed to the eradication of social, legal, and political barriers which deny active and equal participation in the benefits of society to low-income, disenfranchised community members. To this end, our work takes us to the fields, colonias, and courts to solidify positive change so that marginalized and disenfranchised people can live with dignity, opportunity, and equality. [http://www.texascivilrightsproject.org/?page_id=478](http://www.texascivilrightsproject.org/?page_id=478)

**El Comité de Apoyo de las Trabajadores Agrícolas (CATA)** was founded by migrant farmworkers in southern New Jersey in 1979. Today, CATA works and has members in New Jersey, Pennsylvania, Maryland and Delaware. CATA is governed by and comprised of farmworkers who are actively engaged in the struggle for better working and living conditions. CATA’s mission is to empower and educate farmworkers through leadership development and capacity building so that they are able to make informed decisions regarding the best course of action for their interests. [www.cata-farmworkers.org](http://www.cata-farmworkers.org)

**The Farm Labor Organizing Committee, AFL-CIO (FLOC)**, is both a social movement and a labor union. Our immediate constituency is migrant workers in the agricultural industry, but we are also involved with immigrant workers, Latinos, our local communities, and national and international coalitions concerned with justice. The FLOC vision emphasizes human rights as the standard and self-determination as the process for achieving these rights. We struggle for justice for those who have been marginalized and exploited for the benefit of others and we work to change the structures of society to enable workers to have a direct voice in their own conditions. [www.floc.com](http://www.floc.com)

**North Carolina Farmworkers Project**’s mission is to promote the organization of farm workers so they can find solutions to their problems collectively, to promote the political participation of workers and strive to improve their living conditions. The Project focuses on farmworker health. [www.ncproyecto.org](http://www.ncproyecto.org)

**Student Action with Farmworkers (SAF)** works with farmworkers, students, and advocates in the Southeast and nationwide to create a more just agricultural system. Since 1992, SAF have engaged thousands of students, farmworker youth, and community members in the farmworker movement. SAF uses actions, presentations, publications and email alerts, to inform and mobilize students and community members around current legislation, consumer boycotts, and other justice efforts initiated by farmworkers. [www.saf-unite.org](http://www.saf-unite.org)

**Fuerza del Valle Workers’ Center** fights wage theft and other labor abuses of workers in and from the Rio Grande Valley of South Texas through advocacy, organizing, and education. Among the workers organized by Fuerza are one of the nation’s largest pools of agricultural workers whose homes are in the Valley, but who migrate all over the U.S. each year and who often live in migrant labor camps and other employer-provided housing.

**Vecinos, Inc.,** located in Sylva, NC, provides health care to farmworkers in Jackson, Swain, Macon and Transylvania counties through mobile medical outreach, case management, and health education.

**Brownsville Community Health Center** (BCHC) is a non-profit provides comprehensive primary health care services with excellence and dignity to its community at its main clinic and 4 satellite clinics in the Rio Grande Valley
of Texas. BCHC also serves as a migrant health center, serving many of the migrant and seasonal farmworker families who travel north during harvesting season. mybche.org

Polaris Project is one of the leading organizations in the global fight against human trafficking and modern-day slavery. Named after the North Star “Polaris” that guided slaves to freedom along the Underground Railroad, Polaris Project is transforming the way that individuals and communities respond to human trafficking, in the U.S. and globally. www.polarisproject.org

The Freedom Network (USA), which was established in 2001, is a coalition of more than 30 non-governmental organizations and individual experts that provide services to, and advocate for the rights of, human trafficking survivors in the United States. www.freedomnetworkusa.org

Hispanic Affairs Project (HAP) is a non-profit organization serving the Hispanic immigrant population in six communities in Western Colorado. HAP envisions Western Colorado communities where cultural diversity is recognized and Hispanic immigrants have opportunities to contribute as integral members through active civic participation. A key component of HAP’s work is outreach to migrant agricultural workers who reside in employer provided housing. www.hapgj.org

United With Migrants is a multi-community, nonprofit organization supporting the work of Sister Molly Muñoz, CHM, in her daily service to Colorado's migrant community. Its mission is to support and empower farm workers by building community and providing basic human services. Part of United With Migrants' work involves visiting migrant labor camps to provide workers with food, clothing and information about social services.

Sarah Paoletti directs the Transnational Legal Clinic, the University of Pennsylvania Law School’s international human rights and immigration clinic. Students enrolled in the clinic represent individual and organizational clients in a myriad of cases and projects that require them to grapple with international and comparative legal norms in settings that cut across borders, legal systems, cultures, and languages. Paoletti’s research focuses on the intersection of human rights, migration, and labor law, and she has presented on this theme before the United Nations and the Organization of American States. She also works closely with advocates seeking application of international human rights norms in the United States. www.law.upenn.edu/cf/faculty/paoletti

Megan Beaman is a private attorney whose law practice is rooted in the notion that all people deserve access to justice and enforcement of basic rights. Ms. Beaman’s practice is founded on years of advocacy and activism in working class and immigrant communities, including the recent many years of successful representation of and outreach to farmworker communities in Coachella Valley, Imperial Valley, and other parts of California.

Contributing organizations:
These organizations provided information and/or technical assistance for drafting this complaint but are not complainants.

For over 20 years, the Center for Human Rights and Humanitarian Law at the American University College of Law has worked with students, faculty and the international legal community to provide scholarship and support for human rights initiatives around the world. The Center is dedicated to creating opportunities for students, practitioners and activists through training, complementary education, outreach, workshops and conferences, and research and publications. http://www.wcl.american.edu/humright/center/

The Columbia Law School Human Rights Institute draws on Columbia Law School’s deep human rights tradition to support and influence human rights practice in the United States and throughout the world. The Institute focuses on three different axes of human rights (Human Rights in the United States, Counterterrorism and Human Rights, and Human Rights and the Global Economy) and works to build bridges between scholarship and activism, develop capacity within the legal community, engage governments, and model new strategies for progress. The Columbia Law School Human Rights Clinic works in partnership with the Human Rights Institute to provide students with hands-on experience working on active human rights cases and projects. http://web.law.columbia.edu/human-rights-institute

The Farmworker Project of Legal Services of New Jersey provides free civil legal assistance to migrant and seasonal agricultural workers throughout New Jersey. www.lsnjlaw.org
Appendix B

The Situation of Migrant Farmworkers in the United States

Farmworkers are among the most vulnerable laborers in American society. Farms in all fifty states use migrant workers, but they are an invisible population to most Americans. Many are wholly isolated from society because they live in employer owned or operated migrant labor camps. This housing is usually located in rural areas, close to fields and other agricultural operations and is therefore often distant from towns and community resources. Farmworkers are frequently at the mercy of their employer for transportation from labor camp homes to stores, medical facilities, and the like, which reduces their ability to access food, healthcare, legal services and community resources on their own accord.

Migrant farmworkers are also among the poorest laborers in America. A 2005 government report stated that the average annual income for crop workers was between $10,000 and $12,499 and the average annual income for workers’ families was between $15,000 and $17,499. Compare this to the poverty threshold for the relevant period for a family of four, including two children, which was $18,244. Furthermore, most are also not provided any employment related benefits such as health insurance, disability insurance, paid or unpaid vacation and sick leave or retirement benefits such as pensions.

Additionally, farm work is one of the most dangerous jobs in the country. Fatality rates in agriculture are seven times the national average. An estimated 10,000 to 20,000 farmworkers experience an occupational exposure to pesticides each year. The dangers of pesticide exposure are multiplied by deplorable working conditions, problems with inadequate or non-existent access

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67 There is little recent, comprehensive data on farmworkers. The decennial U.S. Census does not capture data specific to farmworkers and no government agency is responsible for surveying farmworkers throughout the U.S. on their working and living conditions. Therefore, consistent and reliable data is difficult to report. However, in terms of the data that do exist, the most reliable and comprehensive seem to be in the NAWS Report, supra note 1. The population sampled by the NAWS is labeled “crop workers” and consists of most farmworkers in crop agriculture. It reports that 42% of crop workers are migrant crop workers, defining “migrant” as someone who travels at least 75 miles to obtain a crop job. It does not include migrant or seasonal agricultural workers who work in the poultry, livestock or seafood industries, and does not include H-2A guest workers who may be working in crop agriculture.
69 Sara Rosenbaum & Peter Shin, Migrant and Seasonal Farmworkers: Health Insurance Coverage and Access to Care 1-2 (Apr. 2005) (finding that in 2000, 10% of farmworkers had private insurance, and 85% of farmworkers and 90% of farmworkers’ children were uninsured), available at http://sphhs.gwu.edu/departments/healthpolicy/CHPR/downloads/migrant.pdf (last visited Dec. 12, 2012).
72 Jerome M. Blondell, U.S. Environmental Protection Agency, Health Effects Division, Epidemiology of Pesticide Poisonings in the United States, with Special Reference to Occupational Cases, 12 OCCUPATIONAL MEDICINE 209 (Apr.-Jun. 1997). However, this estimate was based simply on an extrapolation of the numbers of pesticide poisonings in California. Other estimates of the number of poisonings have been as high as 300,000 annually. See Ahn, Moore & Parker, supra note 2.
to drinking water, drinking water hand-washing, and toilet facilities. Farmworkers also suffer higher incidences of HIV, infant mortality, heat stress and have six times the risk of contracting tuberculosis than the general population. These health concerns make it particularly important for them to have access to healthcare, social services, and information about their legal rights while they are working.

A language barrier, cultural isolation and low education levels exacerbate the farmworkers’ vulnerability. Many farmworkers are not fluent in English. While 81% speak Spanish, 44% report not being able to speak English “at all,” 53% reported not being able to read English “at all” and even more salient, 95% of Latin American-born crop workers report they cannot read or speak English well.

In addition to the language barrier, migrant farmworkers are often unfamiliar with American culture and specifically the communities in which they momentarily reside. Almost 80% of farmworkers are foreign-born and of those, 75% are of Mexican origin. Many farmworkers are also undocumented immigrants, which makes them more vulnerable to retaliation from employers who threaten arrest or deportation. Retaliatory threats from employers who are not only, social service programs, but also fear arrest and deportation and are therefore vulnerable to retaliatory threats from employers.

Compounding their vulnerability is the fact that farmworkers in general and immigrant farmworkers in particular, have low levels of education, with the median level of completed education being sixth grade. For most, therefore, basic communication in English, let alone navigating legal or other systems, becomes almost an insurmountable feat.

Given that the farmworker population is highly mobile, workers are often unfamiliar with the area to where they migrate and the social services that are available. Those that are undocumented are ineligible for the government safety net programs entirely. Despite their high rate of poverty, even documented farmworkers rarely access needs-based government programs. Only 22% of farmworkers report that they, or someone in their household, had used needs-based services, with only 15% using Medicaid; 11% using Women, Infants and Children Program (WIC); 8% using Food Stamps; and a mere 1% using general assistance or Temporary Assistance for Needy

73 Maureen Sweeney & Stephen Ciesieski, Farmworker Legal Services of North Carolina, Where Work is Hazardous to Your Health: A Survey of Occupational Injuries and Field Sanitation Among North Carolina Farmworkers (Apr. 1990), available at http://www.ncfh.org/pdfs/2k12/1317.pdf (last visited Dec. 12, 2012). This shocking 1990 independent survey conducted in North Carolina found that only 4% of farmworkers had access to drinking water, despite being required to work in extremely hot weather for long stretches of time.
79 NAWS, supra note 1.
80 Id.
Families (TANF). This is arresting given the poverty level of farmworkers and the fact that underemployment is also widespread within the farm workforce. Farmworkers spend, on average, only about 66% of the year performing farm work in the United States; however, over 62% report that they are not or do not know if they are covered by unemployment insurance.

81 Id.
82 Id.
Appendix C
Examples of ways in which farmworkers are deprived of access to outreach workers and their information and services. [For additional examples, also see Appendix D.]

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Maryland

Sue Hagie is a nurse practitioner employed by a federally funded migrant health clinic which serves migrant workers on Maryland’s Eastern Shore. She reports that she has been having increasing difficulty in accessing workers. She has had particular problems with two employers and their camps in Preston, MD.83

The Worm Brothers farm owns and operates the Yello Hill camp. Approximately two years ago, Worm Brothers told Ms. Hagie that she was no longer allowed to visit the camp to provide medical treatment and to deliver medications, for conditions such as diabetes and high blood pressure, to the workers at the camp. Workers told her that if they sought medical or dental care, even off the camp, that they would be fired and sent back to Florida. Ms. Hagie reports that several workers who sought care from her were fired and returned to Florida for seeking treatment.

Perhaps not coincidentally, at this same camp in the summer of 2011, a migrant worker was shot in the camp by the crew leader employed by Worm Brothers to oversee the camp and to supervise the workers in the field. One bullet grazed the worker’s leg. The crew leader denies shooting the worker, but admits to keeping the unlicensed handgun with him in the camp, to firing the gun several times into the air after drinking alcohol in order to intimidate the worker, and to lying to the police and preventing their access to the camp, along with a principal of Worm Brothers, on the night of the shooting.

Wings Landing is another farm in Preston that has prevented Ms. Hagie from visiting its camps. It has thereby kept her from having any meaningful access to workers and has prevented workers from receiving medical care. Ms Hagie reports that the owner of the farm and camps, Wayne Quidas, has told her that she is required to telephone him every time that a worker needs medical care or she needs to deliver medications to workers. Beyond the fact that he is improperly interfering with patient confidentiality, he has increasingly taken days and up to a week and a half to respond to her calls and to allow a worker to receive treatment or medication. As he knows, workers at the camp suffer from uncontrolled diabetes cardiac problems. This problem is particularly acute at the start of the season when these workers arrive without medication.

Ms. Hagie reports that recently Mr. Quidas told her that if he sees her at the camp, he will call the sheriff or he will come to the camp with his shotgun.

Unfortunately, in response to this behavior, the clinic that Ms. Hagie works for has directed her to not visit these camps and in effect to stop providing medical care to these workers who are the most vulnerable among already vulnerable migrant workers.

In Baltimore County in the Spring of 2011, Maryland Legal Aid’s Farmworker Program supervising attorney, Nathaniel Norton84 and his paralegal went to Albright Farms to do outreach and give workers information about their rights, answer questions and make them aware of the

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83 Sue E. Hagie e-mail exchanges, supra note 26.
availability of assistance. As they were sitting 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 to the car at high speed and parked at the side and right behind their 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 their property without permission and that the advocates were a “bunch of bleeding heart liberals who were poking their noses where they did not belong.”

Mr. Norton explained that the Maryland Attorney General Opinion Letter 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. Despite this explanation, Mr. Albright’s continued threatening behavior forced Mr. Norton off the farm.

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North Carolina

In response to an invitation by a farmworker, Kathryn Cox, who works for the Wake County Farmworker Health Program in Raleigh, North Carolina – a state that is among the top six its use of migrant farmworkers – set up an HIV testing station at a farm in Wake County on April 16, 2012 at 7:00 p.m. after all work at the farm had been completed.

The owner of the farm and employer of the farmworkers, approached the HIV testing station in a hostile manner with a large dog. In a raised voice that Ms. Cox perceived as threatening, he yelled that the health workers were there without permission; accused them of trespassing; ordered them to leave the premises; and demanded that the outreach workers make an appointment before coming on his property. Ms. Cox explained that they were there within their rights and did not need to make appointments to see the farmworkers who reside on the farm according to the North Carolina Attorney General’s Opinion.

The farm owner then got less than two feet away from Ms. Cox’s face to continue screaming at her, making Ms. Cox feel intimidated and uncomfortable. Intimating that it was inappropriate for the outreach workers to be there because they were female, the farm owner then told Ms. Cox that

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85 Letter to Albright Farms from Nathan Norton Esq. of Maryland Legal Aid, Apr. 20, 2011, Attachment 11.
86 Maryland AG Letter, supra note 21.
87 Letter to Albright Farms, supra note 84.
88 North Carolina’s Attorney General’s opinion was sought in 1998 after staff of Farmworker Legal Services of North Carolina, Inc. (FLSNC) visited a labor camp owned by grower Cecil Williams of Rainbow Farms – a farm on which, in 1981, an employee, Mr. Robert Anderson, died as a result of inhumane conditions and degrading treatment at the farm. Mr. Anderson was sick and asked to be excused from work. He was forced to go and although he continued to complain and even began to vomit blood in the fields, the Rainbow Farms crew leaders refused to provide him medical attention. He was beaten with a stick and forced to pick sweet potatoes and finally collapsed in the field. He was then left in a closed hot bus for four hours before medical help was summoned. By then, he was dead. In 1998, FLSNC was approached by a worker who walked several miles from Rainbow Farms to a public phone to call FLSNC. He told them that there were many health and safety problems at the camp that that he was sick and needed medical attention. FLSNC visited the camp and was retained by three workers at the camp who had suffered work-related injuries. During one return trip, grower Cecil Williams accosted the attorneys and demanded that they leave. He requested that the Nash County Sheriff arrest them for trespass. The attorneys explained to the deputies that the farmworkers, as tenants, had a right to have visitors of their choice. Later that year, the North Carolina Attorney General issued an Opinion concluding that it was “seriously doubtful” that the State could successfully prosecute a criminal trespass statute against an attorney on the landowner’s property at the invitation of a migrant worker living thereon. 1998 North Carolina Attorney General Opinion, Attachment 12 at 3.
if she knew what was good for her, then she would leave. After threatening to call the sheriff, the farm owner left.

Although Ms. Cox then stayed at the request of the farmworkers and conducted the health education session on HIV/AIDS and continued with HIV testing, the damage nonetheless, had been done. In her own words: “This incident has made me anxious to return to [that] labor camp. I am concerned about jeopardizing our clients’ trust in our program should another confrontation take place, further compromising their already limited access to health services. I am also concerned about the repercussions for myself and our program staff should [the owner] contact the police.”

Another example of this is from Yadkin County, North Carolina. A medical school student interning with the North Carolina Farmworker Health Program visited a migrant labor camp where she and a fellow outreach worker planned to provide health assessments for migrant farmworkers. As they attempted to enter the camp, the grower confronted them and insisted that they had to pre-schedule with him their visits to farmworkers. He then slammed his fist on student’s vehicle as they attempted to leave the labor camp. When the student returned on a later date, her attempt to perform a health assessment on a farmworker was physically disrupted by the grower. The grower had entered the living quarters of the farmworkers, yelling loudly and being physically aggressive to the two female outreach workers. The student tried to explain that farmworkers had the right to have visitors under the common law, but the grower continued to threaten to have the medical student arrested for criminal trespass. The student and her colleague have not returned to that labor camp out of fear for their safety. Farmworkers living at the labor camp are thus denied access to medical care as a direct result of the inadequate access laws and through threats of arrest.

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**Kentucky**

On October 18, 2007, legal advocates from Southern Migrant Legal Services (SMLS), visited a farm in Kentucky. A number of H-2A guest workers lived on the property and were employed at the farm. The farmworkers wished to talk to the SMLS attorney and paralegal about problems they were having with their employment, but were nervous about the grower’s reaction to their meeting with the legal advocates.

Shortly after the SMLS representatives arrived, the grower and his wife approached, and demanded to know who the SMLS representatives were and the reason of the visit. The SMLS representatives identified themselves and explained that the workers had invited them to the property. They helped translate for the workers, who then told their employer they had contacted SMLS to talk about problems they had at work. At this point, the grower and his wife grew very angry, started screaming and demanded that SMLS get off of the property, despite the fact that the farmworkers insisted that they had invited them there and wanted them to stay.

The grower subsequently called 911 and reported that the SMLS representatives were trespassing on his property. Local law enforcement arrived on the scene. The grower continued screaming angrily about the fact that no one had the respect to ask him if they could come onto his property.

90 Declaration of Elizabeth Studsill, *supra* note 11.
The deputies said that they understood the workers wanted to talk to SMLS, but that it could not be done on the grower’s property. Law enforcement told the advocates that they had to leave the property and that if they were to re-enter, they would be arrested for criminal trespassing.
Appendix D
Examples of employers’ use of local law enforcement officials’ enforcement powers to control the access that the migrant farmworkers living on their property have to other people and services

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Maryland

In 2008, Maryland Legal Aid outreach worker, Nohora Rivero, visited a labor camp on the farm of a Carroll County grower. The grower told Ms. Rivero that their migrant workers did not need her visit. The grower said Ms. Rivero had no right to be at the camp, she was trespassing, and that he would call the police. Ms. Rivero showed the grower the Maryland Attorney General Opinion and explained its contents to him. Nevertheless, the grower called the police and reported that Ms. Rivero was trespassing. When the police arrived, Ms. Rivero explained to the officer that she was visiting workers who lived on the property in order to conduct federally funded and federally mandated outreach and showed the officer a copy of the Attorney General’s Opinion. The officer told Ms. Rivera that she had to leave or be arrested for trespass and that he did not need to follow the Opinion because it was not the original letter signed by the Attorney General and because it was too old.

In e-mail correspondence with Nathaniel Norton of Maryland Legal Aid, Nurse Practitioner Sue E. Hagie spoke of her concerns about whether the local law enforcement in Caroline County could be trusted after an officer who was recently transferred to the area told her that he was told to “stay away from labor camps” and that the “farms did their own thing” and “not to get involved.”

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Colorado

In Colorado, police cited Sister Maria Muñoz for criminal trespass after she visited a farm worker to deliver him food, water, and medicine. The City Attorney found support to prosecute Sister Muñoz for criminal trespass because the farm worker’s employer/property owner had previously prohibited her from going on to his property because she contacted the Colorado Department of Agriculture (CDA) after witnessing pesticides being sprayed in close proximity to the workers. Because the grower claimed that what she had reported to the CDA was untrue, he characterized it as the type of “illegal conduct” that gave him the necessary grounds to bar her from his property, regardless of the rights of his workers to have invited guests on the premises.

Outreach workers providing legal information to sheepherders in Northwestern Colorado, along with clothing and food donated by a local church, sought clarification on this issue from a local county sheriff’s office. The outreach workers were told that ranchers had the authority to prohibit their access to the sheepherders that the ranchers employed even on public land because the rancher owned the mobile housing unit utilized by the sheepherder and held the leases of the public lands.

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91 E-mail Exchanges with Sue E. Hagie, supra note 26.
93 The case was later dismissed on the technicality that Sister Muñoz had not received prior notice of the employer’s intent to bar her. City of Ft. Lupton, supra note 91.
94 See Catalan, Camayo, supra note 15.
**Kentucky**

In Kentucky, after a grower called 911 because legal advocates were visiting with a migrant farmworker in his residence on the grower’s property, deputy sheriffs arrived and directed the legal advocates to leave the premises and warned them that they would be arrested for trespassing if they were to re-enter.\(^{95}\) Although the deputies appeared to understand that the workers had invited the advocates, they nevertheless claimed that the meeting could not take place on the employer’s property.\(^{96}\)

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**North Carolina**

In Macon County, North Carolina, Nathan Dollar and his staff at a farmworker health program have had repeated encounters with law enforcement while attempting to provide medical care to migrant workers. In September 2011, Mr. Dollar and his mobile medical unit visited a camp where the workers “expressed that they wanted [his] services.” The grower called the police and when the police arrived, Mr. Dollar showed them a copy of North Carolina’s Attorney General Opinion. The Opinion supports Mr. Dollar’s and the workers’ rights to access. Nevertheless, the officers ordered Mr. Dollar and the mobile medical unit to leave the premises. Farmworkers at the camp told Mr. Dollar that the scene had frightened them and that “they could not understand why the police had been called.” Mr. Dollar notes, “Because we were forced to leave early, we had to turn several patients away that night.” Much of this scene repeated itself in October 2012 when Mr. Dollar and his staff revisited the camp. An agent of the grower came to the camp and claimed that he “made the decision” about who could visit the workers. Mr. Dollar went so far as to repeatedly make sure that he had unanimous support among the camp residents for his presence. Nevertheless, the agent called the police. Fortunately, on this occasion, when police officers came to the camp and Mr. Dollar explained his and the workers’ legal rights to the officers, he was not forced to leave.\(^{97}\)

\(^{95}\) Declaration of Nathan Dollar, *infra* note 56.

\(^{96}\) *Id.*

\(^{97}\) *Id.*
List of Attachments

Attachment 1 - Letter from Advocates for Basic Legal Equality (ABLE) to Svetlana Schreiber, Jun. 29, 2012

Attachment 2 - Letter from Young, Moore and Henderson, P.A. to Lori Elmer, Esq. at Legal Aid of North Carolina (LANC), Oct. 27, 2003

Attachment 3 - Letter from The Kohn Partnership, L.L.P. to Caroline Smiley, Esq. of LANC, Oct. 6, 2011

Attachment 4 - Email exchange between Donna Levesque, doctoral student at Walden University, and Stan Eury, Executive Director, North Carolina Growers’ Association, Aug. 9 - 18, 2010

Attachment 5 - Letter from Constangy, Brooks & Smith, LLC to Lori Elmer, Esq. of LANC, Jun. 12, 2003

Attachment 6 - Declaration of Elizabeth Studstill, intern at the North Carolina Farmworker Health Program, Sep. 16, 2010

Attachment 7 - Declaration of Therese Swope Castillo, Harm Reduction Coordinator with the North Carolina Harm Reduction Coalition, Oct. 28, 2011

Attachment 8 - E-mail exchange between Sue E. Hagie, Nurse Practitioner with Community Health Services and Nathaniel Norton, Esq. of Maryland Legal Aid, Jul. 29, 2012

Attachment 9 - E-mail exchange between Sue E. Hagie, Nurse Practitioner with Community Health Services and Nathaniel Norton, Esq. of Maryland Legal Aid, May 16, 2012


Attachment 11 - Letter to Albright Farms from Nathan Norton Esq. of Maryland Legal Aid, Apr. 20, 2011

Attachment 12 - 1998 North Carolina Attorney General Opinion

Attachment 13 – Declaration of Kathryn Cox of the North Carolina Farmworker Health Program, Jun. 12, 2012

Attachment 14 - Letter from Arthur P. Mizzi, Ph.D. to Jennifer J. Lee, Esq. of Colorado Legal Services, Aug. 24, 2006
June 29, 2012

Svetlana Schreiber  
Svetlana Schreiber & Associates  
1370 Ontario St., Suite 1620  
Cleveland, Ohio  44113-1701

Re: Outreach visit by staff on Tuesday, June 12, 2012, to Chef’s Garden agricultural labor camp

Dear Ms. Schreiber:

On Tuesday, June 12, 2012, legal services outreach staff were visiting XXX agricultural labor camps to give workers information about their rights and LAWO and ABLE services. The owner, xxx, came to the camp and ordered the outreach staff to leave and they promptly left.

First, we believe outreach staff and other persons have the right to go onto the agricultural labor camp and talk to workers there and that the workers at the camp have rights in receiving visitors. Further, we believe Mr. X’s actions caused an atmosphere of fear and intimidation and that his actions led to workers not being informed of new federal tax policies governing H-2A workers.

We are writing you in an attempt to amicably resolve this matter without litigation. LAWO and ABLE believe that they have the legal right to visit agricultural labor camps and other places migrant farmworkers and immigrants reside.

The case law, by both federal courts and state supreme courts, is clear regarding visits to agricultural labor camps by migrant farmworker advocacy groups, including legal services organizations. See, e.g., Mid-Hudson Legal
Services, Inc. v. G & U, Inc., 437 F.Supp. 60 (S.D.N.Y. 1977); Franceschina v. Morgan, 346 F.Supp. 833 (S.D. Ind. 1972); Folgueras v. Hassle, 331 F.Supp. 615 (W.D. Mich. 1971); State v. DeCoster Egg Farms, Decision No. 7119 (Maine 1995); State v. Fox, 510 P.2d 230 (Wash. 1973); State v. Shack, 277 A.2d 369 (N.J. 1971); Petersen v. Talisman Sugar Corp., 478 F.2d 73 (5th Cir. 1973) (holding that "by using its property as a round-the-clock habitat for its employees, [the employer] has forfeited the broad right...to enforce strictly a "No Trespassers" policy...the company must accommodate its property rights to the extent necessary to allow the free flow of ideas and information between the plaintiffs and the migrants"); Velez v. Amenta, 370 F. Supp. 1250 (D. Conn. 1974) (holding that the ownership rights of the employer "are not plenary" and "do not include the right to suspend workers’ constitutional guarantees of freedom of speech, assembly and religion"); and, Marsh v. State of Ala., 326 U.S. 501 (1946) (holding that company towns and other circumstances where employees live and create a community, are examples of an owner opening his property up for public use, and in such circumstances, First Amendment rights "occupy a preferred position" to property rights).

Migrant advocacy organizations, along with other groups and individuals, have the right to visit agricultural labor camps without notice or approval so long as the visits are done in a reasonable time, place and manner (e.g., no loudspeakers in the middle of the night).

The case law regarding access to migrant farmworker groups supports our claim to unencumbered outreach. Our position finds its support in several basic principles of law, and it is articulated by one of the Opinions of the Attorney General of Michigan, #4727, April 13, 1972:

The freedoms of religion, speech, press and assembly guaranteed by the First and Fourteenth Amendments to the United States Constitution are operative throughout the length and breadth of the land. They do not become suspended on the threshold of an agricultural labor camp. The camp is not a private island or an enclave existing without the full breadth and vitality of federal constitutional and statutory protection.
We do not challenge X’s right to be left undisturbed in carrying out its business and instruct our outreach staff that they are not to approach workers in the field or other employment locations, e.g., packing sheds. Indeed, *State v. Shack*, 277 A.2d at 374, addresses this concern:

The farmer, of course, is entitled to pursue his farming activities without interference . . . [b]ut we see no legitimate need for a right in the farmer to deny a worker the opportunity for aid available from federal, state, or local services, or from recognized charitable groups seeking to assist him. Hence representatives of these agencies and organizations may enter upon the premises to seek out the worker at his living quarters. Furthermore, the migrant families’ right to consult with an ABLE staff member cannot be blocked simply because the labor camp is located on private property. *Folgueras v. Hassle*, 331 F.Supp. at 625, states emphatically:

Whether the court regards the question of access to migrant labor camps as one of constitutional law, the rights surrounding the ownership of real property or the rights of tenants in relations to their landlord, the law compels a single conclusion. The fundamental underlying principle is simply that real property ownership does not vest the owner with dominion over the lives of those people living on his property. The migrants who travel across the country to work in the grower’s fields and live on the grower’s property are clothed with their full bundle or rights as citizens and human beings. They may not be held in servitude or peonage, and they are not serfs. They are, however, citizens of the United States and tenants. As such they are entitled to the kinds of communications, associations and friendships guaranteed to all citizens, and secured by the Constitution. The owner’s property rights do not divest the migrants of these rights.

The confidentiality of client identity is also important to us. As the Fifth Circuit noted in *Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317 (5th Cir. 1985), at 1332, “. . . that farm workers who attempt to assert their rights must overcome a general background of fear and intimidation caused by the widespread practice of retaliation against those who complain about violations.”

Ohio courts have noted that the confidential revelation of a client’s identity to their attorney is a privileged communication and therefore the attorney cannot be compelled to disclose the identity of their client. *Miller v.

I am writing to inform you of our position on this issue and to request that you afford LAWO and ABLE representatives an unencumbered right to visit the camps so long as visits are done in a reasonable time, place, and manner. This right derives from living in a free society. After you review the case law I am sure that you will agree with us.

Consequently, we intend to continue visiting agricultural labor camps, including X camps, without seeking permission or advance notification. Please let us know if you have any questions or disagree with us by July, 9, 2012. Otherwise we will assume that you will not interfere in the future with our outreach efforts. If we experience further interference with our outreach efforts we will take further necessary legal action to vindicate both the workers’ and our rights in this matter.

Respectfully yours,
October 27, 2003

Ms. Lori J. Elmer
Legal Aid of North Carolina
Post Office Box 26626
Raleigh, NC 27611

Re: IC No. 236833
Juan Villarreal v. Chester Pilson

Dear Ms. Elmer:

It has come to our attention that you were recently at Mr. Pilson's farm and "interviewing" field workers. Mr. Pilson has asked me to advise you that he does not consent to you trespassing on his land. It is also our understanding that the gentleman you spoke with was a supervisor, and such communications are prohibited inasmuch as Mr. Pilson is a represented party. We assume that you will have no further contact with Mr. Pilson or any of the supervisors on his farm.

With kind regards.

Sincerely yours,

YOUNG MOORE AND HENDERSON, P. A.

By: [Signature]

Zachary C. Bolen

cc: Mr. Chester Pilson
ZCB/ml
517904/283-040
October 6, 2011

Caroline Smiley, Esq.
Individually and as a member of the
Immigrants Legal Assistance Project
224 S. Dawson Street
Raleigh, North Carolina 27611-8068

Re: Trespassing on Private Property

Dear Ms. Smiley:

Please be advised that this firm represents the following individuals and companies (collectively the “Client”) the properties of which you committed the offense of trespass last night:

Bottomley Evergreens and Farms, Inc.;
Bottomley Enterprises, Inc.;
William B Bottomley;
Martha Bottomley;
Mitchell B. Bottomley
Martha and William Bottomley, Tenants by the Entireties; and
Mitchell and Deanna Bottomley, Tenants by the Entireties.

You are hereby advised that you are not to enter upon the properties of our Client at any time and for any purpose whatsoever.

Should you enter upon or remain on any property owned by our Client we will immediately notify the authorities that you have committed the criminal act of Second Degree Trespass.
October 6, 2011
Page 2

North Carolina Revised Statute Section 14-159.13 states in its entirety:

Second degree trespass.

(a) Offense. – A person commits the offense of second degree trespass if, without authorization, he enters or remains on premises of another:

(1) After he has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person; or

(2) That are posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises. [Emphasis Supplied].

Our Clients, as owner of these properties have asked us to serve this Notice on you and the other members of your organization that you and the other members of our organization are not to enter upon or remain on any of our Client’s properties.

In addition to committing the act of trespass as defined under North Carolina law, I am sure you are aware that trespass is also a civil Tort for which damages – including punitive or exemplary damages- are available as a remedy in addition to such equitable injunctive relief.

You should also be aware that from this date forward, should you enter or remain upon any property of our Client we will immediately notify the Office of the Disciplinary Committee for the North Carolina Bar Association that in our opinion a member of the Bar has committed a misdemeanor, that your actions were designed to use your license to practice law to intimidate our Client and that you engaged in conversation regarding the legal actions of a non-lawyer knowing that he or she was represented by counsel.

I was shocked to learn of your actions. Surely you are aware of the law in your state.

I trust this office will not have to take any additional steps to protect our Client’s rights. Rest assured, however, that should you fail to comply with this notice, we will vigorously defend the rights of our Client zealously within the bounds of the law.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK
October 6, 2011
Page 3

Should you or any member of your organization wish to discuss this matter further please do not hesitate to contact the undersigned.

Very truly yours,
The Kohn Partnership, LLP

By: Michael E. Kohn

MEK/mek
CC: Martha and Blan Bottomley
Mitchell B Bottomley
Deanna Bottomley
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“Farmworkers that invite me” is the operational key phrase at issue here. We have checked with the Attorney General of North Carolina concerning the rights of migrant housing operators and the rights of farmworker occupants of our housing. Our housing is shared by numerous unrelated individual workers who each have the “right to quiet enjoyment” (as the AG puts it). Our migrant housing facilities are on private property.

NCGA has no problem with you visiting any worker who invites you. Key word “invites you.” Before you enter any of our employers members property you should clearly state who has invited you – at that point you will be allowed to enter and visit any worker that we have verified has actually invited you. Your presence at our facility will then be conditional on the rights of the other workers (who did not invite you) their right to “quiet enjoyment” of their domicile. Furthermore since the housing facility is a shared facility, NCGA and its employer members have housing rules. Rule #10 “Workers living in employers housing may not entertain guests in or on housing premises after 10:00 p.m. Sunday through Friday, nor after 12 midnight on Saturday.” (the rules are posted at the housing facility in English and Spanish) Any worker who violates this provision may be terminated. You and any worker who personally invites you to visit must adhere to this rule or you will be charged with trespassing and the worker may be terminated.

If you enter any of our farmer members property without proper authorization you will be charged with trespassing.

Furthermore it is our belief that your survey is inaccurate. In North Carolina there are approximately 250,000 migrant and seasonal farmworkers (according to the Institute of Southern Studies). Approximately 90% of those are illegal aliens. You are concentrating your survey based on a list of approved housing facilities. There are approximately 14,000 beds approved by NC OSHA of those approximately 11,000 are owned by NCGA members and house legally admitted H2A workers. Your survey is therefore an inaccurate cross section of migrant farmworkers (legally admitted H2A workers represent less than 2% of farmworkers in the state). H2A workers training, wage and benefit package, housing and over all experience is far better than the other 98% of farmworkers. All of our workers are recent arrivals from Mexico. Many work in agriculture in Mexico. As you know exposure to chemicals is not well controlled in Mexico. H2A workers receive better pesticide training than regular farmworkers. If you want to find the most accurate data available you should be surveying the other 98% of the farmworker population. You have chosen the
Attachment 4 - Email Exchange between Donna Levesque and Stan Eury - NC easy way rather than the most accurate way to survey.

Finally we have received complaints from our workers and our farmer members concerning your attitude and conduct while present on our farms. It is obvious that you have an agenda other than simply surveying the health of our workers.

I will follow through with legal action if you do not comply with the rules as stated above.

Sincerely,

Stan Eury
Executive Director NCGA

Cc: NCGA membership

From: Donna Levesque [mailto:donnalevesque@bellsouth.net]
Sent: Tuesday, August 17, 2010 1:56 PM
To: Stan Eury
Subject: Re: Donna Levesque

Dear Mr. Eury,

I will be visiting migrant labor camps and administering my survey to any and all migrant and seasonal farmworkers that invite me or my research staff in and agree to participate in my study.

Sincerely,

Donna Levesque

From: Stan Eury <mailto:seury@ncgrowers.org>
Sent: Monday, August 09, 2010 2:56 PM
Attachment 4 - Email Exchange between Donna Levesque and Stan Eury - NC

To: donnalevesque@bellsouth.net
Cc: Lee Wicker <mailto:lwicker@ncgrowers.org> ; Ken White <mailto:kwhite@ncgrowers.org> ; Paul Saffle <mailto:psaffle@ncgrowers.org> ; jhill110@suddenlink.net
Subject: RE: Donna Levesque

Donna,

I have reviewed the materials that you provided. Neither NCGA nor its members wish to participate in this survey. For clarification NCGA jointly employs all of its workers with all of our members, as such, this is your official notification not to enter our farm premises.

Thank You for your Cooperation,

Stan Eury
Executive Director NCGA

From: Donna Levesque [mailto:donnalevesque@bellsouth.net]
Sent: Monday, August 09, 2010 1:18 PM
To: Paul Saffle
Subject: Re: Donna Levesque

Dear Paul,

I am following up on our conversation from earlier today. Again, I am conducting research study on pesticide exposure among migrant and seasonal farmworkers this summer in Surry, Stokes, Yadkin, and Rowan counties. I am a doctoral student at Walden University in the Public Health Epidemiology specialization. I understand that some farmers in Stokes county have contacted your agency for information about my study, therefore I have included an attachment of my pilot survey and a copy of informed consent which will be required by farmworkers for participation in the study. I have recruited five bilingual interviewers to conduct the interviews and I will be fully supervising the operation. The study is not publicly funded and and is being conducted under the guidelines of Walden University.

If you have any questions or would like to discuss this project, please contact me. All stakeholders will receive a copy of the study results when the study is completed.

Regards,

Donna Levesque, MHA, BSCLS

home (910) 458-6112 cell (336)648-0300

Page 3
June 12, 2003

Lori J. Elmer, Esq.
Legal Aid of North Carolina, Inc.
Farmworker Unit
224 South Dawson Street
P.O. Box 26626
Raleigh, NC 27611

Via Facsimile and U.S. Mail
(919)856-2187

RE: Barnes Farming Corporation

Dear Lori:

I understand that you were present at Barnes Farming Corporation (Barnes) on Tuesday night without permission from Barnes. We view this as a trespass and we do not expect this conduct to occur in the future. If you have a need to meet with a specific worker who is a client or prospective client, arrangements can be made for that meeting to occur off site.

If you have any questions or would like to discuss this matter, please call.

Very truly yours,

[Signature]

W. K. Loftis, Jr.

WRL,Jr./te
DECLARATION FROM ELIZABETH STUDESTILL

I am a medical student. I am currently in my second year of medical school at the University of North Carolina School of Medicine. This past summer, I interned with the North Carolina Farmworker Health Program and was placed with the Surry County Health and Nutrition Center. Throughout my internship, I performed outreach to farmworkers at over 30 farm labor camps in Surry, Stokes, and Yadkin Counties. I conducted health assessments at these camps and connected workers with definitive health care when appropriate. I also organized a Sunday medical and dental clinic in an effort to improve access to health care for migrant and seasonal farmworkers during the agricultural season.

In July, I was performing outreach to camps near Yadkinville, North Carolina. I was traveling with Wanda Norman, an outreach worker with the Surry County Health and Nutrition Center. Together, Ms. Norman and I visited a camp during the early afternoon because the work day was shorter than usual and the workers had returned from the tobacco field to the camp earlier than usual. We conducted health assessments for the workers at that camp. We suspected that the workday was also shortened at a nearby camp operated by Alex Shugart, so Ms. Norman and I decided to drive by the camp in an effort to provide health screening services to the workers living there.

As we drove up the road to the camp, we saw the farmer but not the farmworkers. Ms. Norman and I introduced ourselves to Mr. Shugart. We also explained that we work with the Farmworker Health Program and that we were there to see the workers at the camp. Mr. Shugart was initially polite, but upon learning that we were with the Farmworker Health Program, he yelled "There are children starving and you want to weigh and measure a bunch of Mexicans!" He yelled that at us for wasting his tax dollars and threatened told us that we were trespassing on his property. He leaned towards the car and pointed his finger in our faces. We explained that we try to visit workers at the camp after work and that we would like to see the workers to conduct health assessments one weekday evening. We also explained that our program serves migrant and seasonal farmworkers, regardless of ethnicity. Mr. Shugart explained that the only time that the workers would be available for us to visit them is after 9:30PM on a weekend or on Sunday during the day. We agreed with Mr. Shugart that we would visit the camp again at 9:30PM that following Thursday night. As we attempted to depart from the camp, Mr. Shugart pounded his fist on the trunk of our car in an effort to prevent us from driving away. We stopped our car and he continued to yell at us for visiting his camp. Ms. Norman was visibly shaken, and I was shaken as well.

That following Thursday night, Ms. Norman and I were not able to visit the workers at Mr. Shugart's camp because we had to transport a farmworker from another camp to the local emergency room. On Sunday afternoon, we found ourselves near the Shugart farm and decided to visit. Ms. Norman and I arrived at the camp on that Sunday afternoon. We introduced ourselves to a group of five workers and they invited us into their living quarters. I began to perform a health assessment on a worker. I was a few minutes into the assessment performing a blood pressure check with my stethoscope in my ears when I heard a man yelling loudly. I turned around to see that Mr. Shugart had entered the workers' living quarters.
and was waving his arms with his fingers pointed in Ms. Norman's face while leaning over her. In front of myself and all of the workers that we were treating, he yelled at her, "I am going to teach you some respect." Not wanting the workers to have to experience Mr. Shugart's tirade, Ms. Norman motioned to me and we asked Mr. Shugart to address us outside.

Outside, Mr. Shugart continued to yell and exhibit aggressive body language towards Ms. Norman and myself with his finger pointed in our faces. He told us that he has "all kinds" that visit the camp that he is trying to control. He said that people come to the camp to rob his toolshed. He yelled at me, "I have whores coming out here. I can't have you coming to the camp." I assured him that I was not there to steal from his toolshed nor to prostitute myself. I explained once again that I was there to provide health care to the workers. I explained that migrant farmworkers are tenants and have a legal right to receive visitors. Mr. Shugart threatened Ms. Norman and I once again with criminal trespass. I asked Mr. Shugart if he would just allow us to complete our health assessment. He told us no and repeated his desire to teach us some respect. As he did this, he continued to lean over Ms. Norman and myself and shake his finger in our faces. He asked to see our identification cards, and wrote down our names.

To date, we have not returned to Mr. Shugart's camp to provide health care to the workers living there. My internship with the North Carolina Farmworker Health Program has ended and Ms. Norman has communicated to me that she fears for her safety should she return to the camp to provide health care to the workers. We both have a concern that to challenge Mr. Shugart and visit the camp against his desire could damage the long-established good rapport that our program has with other farmers in the tri-county area, and could potentially impair our efforts to improve access to healthcare for the farmworkers we serve.

I affirm, under penalty of perjury, on this 16th day of September, 2010, that all of the foregoing statements are true to the best of my knowledge.

Elizabeth Studstill

Date 9/16/2010
DECLARATION OF THERESE SWOPE CASTILLO

My name is Therese "Tessie" Swope Castillo. I work as a Harm Reduction Coordinator with the NC Harm Reduction Coalition ("NCHRC"), a non-profit organization based in Durham, North Carolina. The NCHRC's mission is to encourage and motivate the acceptance of harm reduction strategies in North Carolina through education, interventions, advocacy, and resource development. NCHRC promotes harm reduction activities throughout the state to prevent human trafficking as well as activities to prevent the spread of communicable diseases.

As a Harm Reduction Coordinator, my duties include conducting outreach to high-risk populations, conducting educational presentations regarding human trafficking and the prevention of communicable disease, testing for disease, and fundraising to support NCHRC's work. Part of this work includes conducting evening outreach visits to migrant farm labor camps throughout the state. I often make multiple return visits to camps to establish rapport with the workers which helps when talking about sensitive health topics.

On July 12, 2011, I returned to Roger Dupree's migrant farm labor camp in Angier, North Carolina for the third time this season. Earlier that season, I had visited the camp to dispense first aid supplies such as bandages, hydrogen peroxide, and anti-biotic ointment to the workers.

I travelled to the camp with a volunteer with our organization to conduct testing and educate workers about communicable disease prevention. At around 7:30 in the evening, I drove up the camp driveway to the worker barracks at the Dupree camp. I spoke to a worker in the doorway of the camp kitchen. I introduced myself and the worker indicated that he recognized me from my earlier visits this season. He explained to me that the other workers in the camp had not yet returned from work, and that I should return later when the other workers were to arrive home. About a minute after my arrival at the camp, a large, red truck pulled up to the front of the worker barracks. The driver of the car drove aggressively. I noticed that he was driving very fast. As soon as the truck pulled up, I noticed that the worker with whom I had been chatting immediately disengaged from our conversation went inside the kitchen and closed the kitchen door.

A man, who later identified himself as Roger Dupree's son said, "It's me you need to see!" He motioned to me with his arm to immediately move away from the worker barracks and come over to his truck. I introduced myself and the volunteer and described the work of our organization. The man said, "I have had people like you arrested three or four times here before. You are not supposed to be here." I repeated the health and prevention-related goals of our organization and described the education and testing that we provide. He said, "If you want to come here, you have to run it by us first." He wanted the volunteer and I to accompany him to his office. I told him that I did not wish to do that. I asked him for contact information. He wrote down his contact information and said his father is Roger Dupree. He told me that if I wished to return to the camp, I was to call him for his permission first.
Because I did not want to put the volunteer in harm's way, I decided to leave the camp. Mr. Dupree closely followed our car in his truck for the entire length of the driveway of the camp. He remained at the end of the driveway and observed us travel down the public road far from the entrance to the camp until we were out of sight.

I have not returned to the camp yet this season and nor has anyone else from my organization. I fear for my safety should I return to the camp this season or in future seasons. I am also concerned about the chilling effect of Mr. Dupree's actions on my future interactions with farmworkers about health-related topics at that camp.

I affirm, under penalty of perjury, on this 28th day of October, 2011, that all of the foregoing statements are true to the best of my knowledge.

Therese Swope Castillo

Date
Norton, Nathaniel

From: shagie7@comcast.net
Sent: Friday, July 29, 2011 11:55 PM
To: Norton, Nathaniel; Felix, Veronique
Cc: Sue Ellen Hagie
Subject: Yello Hill Camp Human Rights violations
Follow Up Flag: Follow up
Flag Status: Completed

To: Nate Norton, Esquire
Legal Aid, Salisbury, MD

Dear Mr. Norton,

My name is Sue E. Hagie and I am a Family Nurse Practitioner working for Community Health Services, a federally funded health care facility. During the summer, my work involves providing health care in various migrant farm camps & seafood houses which hire migrants on the Eastern Shore of Maryland. It is in the capacity of a nurse practitioner that I have had involvement with the camp known as Yello Hill located in Preston, Maryland. I have provided health care services in that camp for the last 4 years. I have provided health care services in approximately 30 migrant camps in Virginia and Maryland over the last 8 years. Although the conditions have often not been good, I have not witnessed the human rights violations and abuses that I have seen at the Yello Hill Camp in Preston, Maryland.

I have been in contact with Victoria Felix and she has given me your email address so that any email that I send can go to both of you while she is away from the office. I am hoping to keep the issues that I will discuss in the forefront of everyone's mind as the migrant workers and Stan, the camp manager, will leave in 4 weeks so the problems must be addressed as soon as possible. When problems such as this are not readily addressed those causing the problems will continue to abuse & violate the workers rights next season. At the end of the crop season, Stan will return to the Immokalee, Florida area, located not far from Fort Myers.

As the following attached emails will explain some of what is happening, I will try to be brief in this note. My contact with Ms Felix has been in regard to two men one of whom is J who was wounded after being shot by the camp manager, by the name of Stan (I do not have his last name at this time) at the Yello Hill Camp owned by Billy Worm. Apparently, J received a minor wound to his leg but did not seek medical attention nor did he file a police report. He has probably just tried to "move on". Like others who are in the camp, he likely is fearful of retaliation from Stan, those in the camps who are involved in drugs or possibly others involved. Because so many in the camp have been involved in drugs or have a police record, many feel like they cannot say anything without incriminating themselves. I feel certain that this has been drilled into them that if they tell of the abuses, that they will be just as guilty. Many of the folks have had some jail time & others just want to "fly below the radar" and not be noticed. They are used to abusive behavior and feel that they can deal with what is happening at the camp. It is a pain to which they are accustomed. They exhibit a false bravado about how the they knew that Stan's bullets wouldn't hit them as he wasn't that good a shot. They have told me many things that are going on but end the conversation with the comment that they will deny what they have told me if they are asked. My hope is that some of them will tell the truth so that change can happen.

The other man who I have mentioned to Ms Felix is who was fired after receiving medical care from me. He had waited 10 days in pain to be seen while I was out-of-state. Even though he told the camp manager,

8/17/2012
Stan, that he needed medical care and he missed the bus that went to the fields because of this, he was fired. Stan brought 2 workers who were sick back to the camp an hour later when I was still there. His payment from one worker for bringing him back was a 6 pack of beer. (Stan was driving the bus at the time he took the beer). I saw this myself. According to the workers, Stan has been demanding the stash of beer from those who have bought up beer & soda which the intent to sell them for a profit. Even though Stan was returning to the field, he did not offer to take back but fired him instead.

Choptank Community Health Services has advised us that we are not to go to the Yello Hill Camp. I no longer feel safe in that setting when a see an abusive, violent, unstable person get away with open firing in a crowded camp of people. This was no "misunderstanding" it is just another exhibition of abusive, out of control behavior on the part of an angry, cruel, controlling man. Billy Worm who is as much to blame as Stan, needs to know that Stan is a liability who has to go. So at this time, this medically needy camp is not receiving medical services. The last time that I was at the camp was a week ago. I have not told them that we are not coming back as I do not want to alert Billy Worm or Stan that we are attempting to have some of the problem issues at the camp investigated. I feel that if these problems are not addressed now, they will continue on year after year. Please let me know how I can help.

I have not gone to the Preston sheriff as I am not sure that they can be trusted. One of the people from the police or sheriff's office told me a couple of years ago after one of the migrants was murdered, that when he was transferred to the Preston area, he was told to stay away from the "labor camps" that the farm owners "did their own thing" & not to get involved. Billy Worm has lived all of his life in this area & is well known. Therefore, I don't know who to trust here.

Please feel free to contact me. My work cell phone number is: or my home phone where I can only be reached on weekends & after 9 PM in the evening is

Sue E. Hagie, CRNP
Family Nurse Practitioner
Choptank Community Health Services

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From: Hagie, Sue
Sent: Tuesday, July 26, 2011 11:12 PM
To: 
Cc: 
Subject: RE: Yello Hill MSFW Camp

Thanks for talking with the health dept. In regard to the physical condition of the camp, it is about the best that it has ever been in the last 4 yrs. However, the cruel, abusive behavior on the part of the camp manager known as Stan, has escalated with each passing year. This has now included an incident where the Stan, the camp manager open fired on Joe Matthews, a migrant worker. Ms. Felix has told me that Mr. Matthews received a minor gunshot wound to his leg. There are so many abuse issues in this camp that I can't start to describe them but will mention as few.

Under threat of losing their jobs, the workers are denied medical care. who had been in pain

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and had waited for over 10 days to be seen, was fired on July 21st for waiting to see us for an acute sick visit as we had been unable to fit him in during the lunch hr. (There were about 15 people to be seen & we had a maximum of 40 minutes making it impossible for us to see them all). Mr. Parra explained to the camp mgr that he needed to be seen. Afterwards, he was fired for that & was put on the bus Friday to return to Florida. The Stan, the camp manager & Billy Worm, the camp owner, have a way of “quickly” making the “problem” go away before Legal Aid can be contacted. There is a 68 yr old diabetic man in the camp who has had a dental abscess since he arrived 6 weeks ago and is in constant pain. Stan has told him that if he goes to the dentist, he’ll be fired. This man, (who I have know for 4 yrs.), has told me this several times. He is practically in tears when he tells me about his pain & he’ll be fired but all that I can do is give him antibiotics to subdue the abscess, the phone number for the dental clinic & the number where he can set up transportation. The problem is, he’ll lose his job if he goes. The workers are verbally abused with incredibly profane language when they need water in the fields (when they have been working in temperatures greater than 100 degrees); The very abusive language which I will spare you of at this time, is not illegal. It just shows a poor choice of a manager, who is emotionally abusive & dangerous if the worker refrains from drinking water on incredibly hot days. Cases of beer are carried to the camp by Stan the camp mgr & sold. Drinking beer is the fastest way for the workers to dehydrate & die. Research confirms that dehydration is the number one killer of migrant workers.

Stan is involved with drug dealers who I am told he invites to the camp each Friday night (payday). Supplies & sells marijuana (at least) on the bus in the mornings on the way to the fields. I have been told by several of the workers that he drives to the fields “under the influence” when he drives them to work in the morning. Often he is so intoxicated, he falls down in the fields & lies there & the people just work around him. The list goes on. I am told that there are 2 people at the camp who are selling crack cocaine, marijuana & other drugs. The drugs are being brought to the camp by the nephew of one of the 2 individuals who reside in the camp & who are selling the drugs. I have been given the names of those who sell but am uncertain as to the veracity of this information.

I spoke with a man who I consider a reliable source who worked at the camp last year. He reports that he spoke to Billy Worm (camp owner) & complained that the smoking of marijuana on the bus was making the several asthmatic workers so sick that they could hardly work. He emphasized that it had to stop. Nothing was done. Continued to supply/ sell marijuana to the workers.

In regard to the shooting which happened on or about the 8th or 9th of July, the local sheriff or police were called & they came to the camp. Billy Worm was present when they arrived & told them that it was a “misunderstanding”. I am told by the workers that Stan had started shooting at Mr. Matthews feet & legs. (I'm told that Stan’s gun is a 9 shot, 22 caliber pistol that does not eject the shell casings). When he ran out of bullets, he yelled at his wife (Martha Keene) to get his other gun. She brought it out & Stan started shooting at Mr. Matthews in a crowded camp as he dodged & ran through the camp trying to get away. I was told that people were running in all directions trying to find a place to hide. The police / sheriff asked several people in front of Billy & Stan, where the gun was. They were all fearful of answering & said that they didn’t know & that they hadn’t seen a gun although they had actually seen Stan hide the gun in a barrel. No evidence, No crime. Stan was not taken into custody. The workers are all painfully aware of what will happen to them if they talk. I am told that the authorities did not look for shell casings or check Stan’s hands & clothing for gunfire residue. Nothing was done to actually confirm what happened. I don’t know if Mr. Matthews was still in the camp by the time that the police arrived.

I'm told that last yr., Stan got his gun out while driving the bus & shot out through the window while driving down the road just to let the workers know that he had a gun. He showed them that he had a gun and told them "he would use it if he needed". A couple of yrs ago, they watched Stan beat a man in the face with the butt of a gun until the man's face was bloody. The man disappeared & no one seems to know where he went. No one remembers the man's name. The people are terrified of this duo & know that they will not only be fired but that
their personal safety is at risk.

Previous patterns at this camp have been that they have their pay check withheld, they often have not gotten to take their belongings with them & the next day they are on the bus to return to Florida, before they can talk to Legal Aid etc. In addition, they are concerned for their personal safety. Sometimes, the bus ticket has not taken them all the way to Florida but dropped them off half way in places like N. Carolina, with no money, no clothing & no belongings. There are many other similar stories but you can get the picture.

I have one contact at the camp who is willing to talk to Legal Aid. Some who have described the incidents have told me that if they are asked, they will deny that they said anything. I have given the Salisbury Legal Aid Mr. phone number. I have no contact # number for the man who was fired from his job but have given his name & the circumstance of the firing to Legal Aid for the unjust firing from employment. I have known for 3 yrs. He was a hard worker, a quiet, peaceful man & a one who rarely sought medical care. My name has been given to the Dept of Labor at the federal level as the Salisbury Legal Aid is very concerned about the Human Rights violations.

Today, I received calls about workers in this camp who need acute care or specialty appointments for which they have no money. We are working on it from a distance as I cannot return to the camp. The workers know that I will not be there this week but they do not know that we are not returning to the camp. I have received phone calls from people who are from various churches who want to let me know that there are several people who they have visited in the Yello Hill Camp who are in pain & have not had their dental abscesses taken care resolved. I have suggested that they contact the State Dept. of Health. That’s where we are at present.

There is more but this is more than enough for now. At least this much is in print.
Sue E. Hagie, CRNP
Norton, Nathaniel

From: Hagie, Sue [SHagie@choptankhealth.org]
Sent: Wednesday, May 16, 2012 11:19 PM
To: Norton, Nathaniel
Subject: Yello Hill issues

Hi,

Thanks for calling this afternoon. I am glad that we got a chance to talk. Attached is the note from the assistant manager who is primarily running our migrant program. [Redacted] makes reference to the Weds evening plan which was an evening clinic that we had hoped to hold this wk. but needed to cancel. We will be paying for the workers transportation. We had to pay about $100.00 for the transportation last time. (That $100.00 would have paid for a lot of medications from our limited funding). For 6 weeks prior to the evening clinic that we held, the workers had gotten no more than 4 - 6 hrs. of work a day. Our transportation arrived at the camp at 5:30 PM to pick up any workers who needed to be seen. One of the men told Billy Worm about us holding the clinic. That was the only night before or since that they have had to work more than 6 hrs. That day they worked 12 hrs. They arrived at the clinic at about 7:45 PM. That resulted in me having a 15 hour workday; a couple of the men were too hungry to come as they hadn’t eaten since before 7:00 AM; and I had to hurry and see the men as quickly as possible as the driver needed to get them back to the camp by 9:00 PM. I work as the sole provider: I do the interview, check the medications, do the exam & any needed tests, take the vital signs draw the blood, and write the orders etc It takes a bit of time to do this. It is not like I have a nursing support team. I have an interpreter.

In regard to the medication “drop off” that Billy suggests: there are several workers who are illiterate. We always try to review the directions with the workers who need that kind of assistance. Also, we usually have several Haitian workers with whom we have to use the language line for interpretation. Often I have to have the patient set out all of their pill bottles on a table and go over the medications with them. Even then mistakes get made. The pharmacy does not write the instructions in Creole or French. Often the “Spanish” instructions are half in English and half in Spanish. With the “drop off” routine, none of this review is possible. My name is on those prescriptions and this routine makes me very anxious for the patient’s safety and my liability. I have always been able to monitor them and now that is not possible.

In regard to the transportation offered by Billy Worm: until now, meaning when I saw this email, the camp van (which holds about 10-14 people) is only allowed to be used only for going to the grocery, laundermat and beer runs. Friday afternoon is when they make the grocery trips so I question whether or not 2 workers would be dropped off at the clinic or picked up afterwards. There is a charge for every trip so I am certain that there will be a cost for this trip. I am just unable to trust that he will allow them to go to the clinic. Today I struggled to get 2 men clinic appts during a 45 minute block of time on Friday afternoon but because they do not know when or if they can get off of work, they don’t know if they can get to the appt. (I had to fight the clinic personnel for those appts & am now in problems with the clinic mgr. She wrote my mgr about me getting the 2 appts for the migrant workers as she wanted them for someone else) If the workers have a clinic appt and are a “no show” for the appt because they are 5 minutes late or not able to leave work, they will not be given an appt the remainder of the time that they are working here this summer. When we were allowed to go to the camp, I saw them during their lunch hour & after work if it was not dark out when they returned. Year before last, in 9 weeks, I had 387 patient visits at the Yello Hill Camp. Last yr, because we had to stop going out to the camp in July secondary to it no longer being safe, I saw about 190 visits. That camp has always been the highest need camp. It has older workers, many of whom are homeless or live in the homeless shelter when they return to Florida. They have a lot of chronic and acute care issues. The best and most consistent medical care is the care that they receive while they are here.

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In regard to the comment that Billy Worm “is still angry with us”, he apparently made some kind of comment to Shelley that we were responsible for him having to pay in fines. I don’t know any details about that.

I was unable to speak with my manager, about you coming and talking with us as she had left for home because her child was sick. I will bring the subject up as soon as I can discuss it with her privately. Stay in touch. I appreciate that you are willing to support us.

Sue
I, Nathan Dollar, declare as follows:

1. I am the executive director of Vecinos, Inc. Farmworker Health Program. I have worked at Vecinos, Inc. since 2010 coordinating medical outreach to farmworkers and their families. The majority of my time at work is spent visiting migrant labor camps in our mobile medical unit, interpreting for my medical staff and doing health education with farmworkers and their families.

2. Every October our outreach team travels to Franklin, North Carolina to hold clinics to provide medical services to H2A workers who work for Norton Creek Farms.

3. On the evening of September 29, 2011, we were holding a clinic for a group H2A workers living in an old motel located on Moss Lane in Franklin, NC. There were approximately 60 workers residing at this location and they did not return home until after 9pm. The workers had given us their consent to be on the premises and expressed that they wanted our services. This evening our medical provider and I were working in our mobile unit and our nurse, "RN" was collecting lab work and providing flu vaccinations directly outside the mobile unit.

4. At approximately 9:30pm there was a knock on our mobile unit door. A man who identified himself as the son-in-law of the workers' employer, Wayne Moss, said he wanted to talk with me. I stepped out of the mobile unit to speak with the man. He told me that we had to leave by 10pm. I replied that we would make all efforts to leave at a reasonable hour, but that we had several people waiting to see our medical provider and would not be able to leave by 10pm. At this point the man became hostile and told me that the workers had complained about our presence and an alleged “handbook” stated that the workers could not have visitors past 10pm and he would “call the law” if we were not out at that time. At this point the man walked back to his apartment which was adjacent to the farmworker housing.

5. At approximately 10:15pm a patrol car from the Macon County Sheriff’s Department arrived. There were two deputies. One of the deputies spoke with the man and the other spoke with me. I informed the deputy that despite living in grower provided housing; the workers had tenants’ rights under North Carolina law. As a result, we had the right to be there because we had permission from the workers. I showed the deputy a copy of the 1998 letter from the NC State Attorney General’s office specifically addressing the tenant’s rights of farmworkers and the tenant’s rights brief prepared by NC Legal Aid’s Farmworker Division.
6. Both deputies reviewed the information I had, but determined that we had to leave. The other deputy told me that he wasn’t sure about the law, but the owner was telling us to leave so he was obligated to make us leave. We then left.

7. The workers expressed to us that they were frightened by the police presence and did not understand why the police had been called if we were only trying to provide a service to them.

8. Because we were forced to leave early, we had to turn several patients away that night.

9. In the following weeks we visited other H2A housing owned by Norton Creek Farms, and did not have any problems, despite staying well past 10pm.

10. On October 2, 2012 we were back holding a clinic at the same location on Moss Lane in Franklin, NC. This time our nurse was taking blood pressures and collecting labs in our mobile unit and I was working with two nursing students from Western Carolina University at a table outside the mobile unit. At approximately 7:30pm, another man approached the table and addressed me. He did not reside at the motel. Instead, he appeared to be staying at an apartment building adjacent to the property. He told me that we had to be out by 10pm. Again, I informed him that we would be out as early as possible, but that I could not guarantee we would leave by 10pm. At this point the man became very hostile and began yelling in my face.

11. I told him that the workers had given us their permission to be there and we would stay as long as they wanted us to. To this he replied that the workers did not have right to give us permission to be there and that he made the decision. He also stated that “workers don’t have tenants’ rights.” He went on to tell me about what he claimed was an employee handbook that contained a specific rule limiting visitors to 10pm. To this, I calmly informed him that he was mistaken and that the state of North Carolina says that the farmworkers have tenants' rights and they had a right to have visitors and to receive health care. I calmly told him that we would not comply with this rule. He told me that I was to be gone by 10pm and walked away.

12. At this point the two nursing students were visibly frightened by the confrontation, but we continued working. I spoke with the workers again who had gathered to see what was going on. I told them that it was our objective to offer everyone services that wanted them and we would stay as long as we had
their permission. I asked them again if it was okay if we stayed past 10pm. They unanimously replied that it was.

13. At approximately 8:30pm the man returned with a copy of the handbook. This time he became increasingly more hostile and continued to yell and blow smoke in my face. He continued to say that the workers "have no right" to tell us we can be there. He also said, threateningly, that if the farmworkers did tell us that we could be there past 10pm then they would fire all of them and send them home. He told me again that he would “call the law” if I did not start packing up by 9:45pm. He then went back to his apartment.

14. At approximately 9:40pm the man came out of his apartment, sat in a chair and glared at us. This made my staff and the nursing students uncomfortable, but we continued to work.

15. At 10:10pm a patrol car from the Macon County Sheriff’s Department pulled into the parking lot. The deputy spoke with the man for a while then came over to speak with me.

16. Again, I informed the officer that the workers had tenants’ rights and that they had given us their consent to be there. I also showed the officer the same literature detailing the workers’ rights to have visitors.

17. After reviewing the literature the officer said, “It appears you have the right to be here.” He told the man that the owner could contact us and we could dispute this in court, but that he could not make us leave.

18. We continued working and packed up and left around 10:30pm.

I declare under the penalties of perjury that the foregoing declaration is true and accurate to the best of my knowledge and belief.

This is the 15th day of October, 2012

[Signature]

Nathan Dollar
April 20, 2011

Tom Albright
Albright Farms
15630 Old York Road
 Monkton, MD 21111-2204

Dear Mr. Albright:

I am writing to you as the supervising attorney for the Legal Aid Bureau’s Farmworker Program. We met on April 11th when my female colleague and I stopped by your property while doing outreach to migrant farm workers.

As we were sitting in our car at the end of your driveway at the intersection of Old York Road, you and another man drove your trucks up to us at high speed and parked at our side and behind us. You jumped out of your vehicle, ran to my driver’s side window, and began screaming at us in an angry tone of voice. You maintained the same tone and volume throughout our interaction. You stated that we were trespassing on your property and that we had no right to be there without your permission. You claimed that we owed you money to replace your truck cap that had fallen off your vehicle when you drove after us. You stated that you could shoot people who were on your property without your permission, because they might be stealing. You said we were a bunch of bleeding heart liberals who were poking our noses where they did not belong.

I attempted to explain why we were there and the legal basis we had for being on your property. It was difficult for me to do that, however, because you were extremely agitated and repeatedly interrupted me. As I began to explain at that time, Maryland law allows lawyers, clergy, the press, etc. to visit migrant labor camps without the permission of the owner of the camps. Please see the enclosed Maryland Attorney General Opinion Letter No. 82-024 for a thorough discussion of this topic.

We work for a publicly-funded legal aid organization that receives funds dedicated to providing legal advice and representation to migrant farm workers. This work necessitates our doing outreach to these workers, including outreach to the farm labor camps where they live on a seasonal basis. We attempt to visit every migrant labor camp in the state at least twice per year. We visit workers to assure that they are aware of their rights, to provide them outreach materials.
explaining these rights, and to offer our legal services for a variety of problems they may have. For example, many workers seek assistance in preparing tax returns or have problems relating to identity theft. The fact that we visit your migrant labor camp does not mean that we are targeting you or workers who work for you or that we believe you are not treating workers well.

We recognize, however, that there are some employers and some farm labor contractors in the state who do exploit their workers and who interfere, through intimidation and other means, with workers’ rights to access the information and services we provide. Typically, workers living in migrant camps are dependent on the grower for the roofs over their heads as well as their continued employment. They are usually reluctant even to be seen by the employer or farm labor contractor speaking with legal outreach workers. This is especially true if they are having problems with the contractor or employer. The principal reason we do not give advance notice of our visits to camps is our concern that our efforts will be frustrated if the workers are told not to speak with us or our conversations or contacts are monitored.

The threatening manner in which you confronted us on the 11th interferes with our ability to do our jobs. As perhaps you can understand, when we encounter the reaction we did from you and your associate, our concern for the welfare of the workers in your labor camp is increased, because it appears that you are trying to keep them from hearing about their rights and speaking with us about any problems they may have.

I propose that a reasonable accommodation of your desire to maintain the security of your property would be for representatives of the Legal Aid Bureau to tie a white handkerchief to our vehicle’s antenna, when we drive onto your property. That way you will know who we are and you will hopefully understand that we are not stealing anything from you. We cannot accept, however, any arrangement that would allow you or anyone else to intentionally or effectively monitor with whom we are talking or the substance of communications. Again, the Attorney General Opinion letter goes into some detail about the reasons for this.

Based on your threatening manner and behavior and what we interpreted as an indirect threat of violence, we ask that you respond to this letter in writing so we can be assured that you will not use threats of violence or violence the next time we come onto your property to talk with workers. If you do not respond in a manner that allows us to perform our jobs as we have a right to do in Maryland without the danger of violence from you, we will ask the court to resolve this matter.

If you have any questions or concerns, or if you wish to discuss this more fully, you may write me at the address above or at nnorton@mdlab.org.

Sincerely,

Nathaniel Norton
August 21, 1998

Mr. Keith Werner
Assistant District Attorney
Nash County Courthouse
P. O. Box 750
Nashville, NC 27856

Dear Mr. Werner:

I reply to your letter requesting advice concerning a situation which has arisen in your prosecutorial district between a local farmer and attorneys with Farmworkers Legal Services of North Carolina.

The question you ask is: "Whether migrant farm workers, under H2-A status, are afforded the protection of the landlord-tenant relationship which is contrary to the contract that is provided by the federal government." Put another way, you ask whether and to what extent a landowner may enforce a criminal trespass statute against a Farmlawers Legal Services attorney who, upon the invitation of a migrant worker, seeks access to the landowners property to communicate with the migrant worker living thereon.

For reason which follow, if the attorney accesses the landowners property at the invitation of a migrant worker, I most seriously doubt that you could successfully prosecute the attorney for criminal trespass.

Before proceeding, I note a couple of things. First, the H2-A status of the migrant worker makes no legal difference. All importers who desire to import non-immigrant farm workers (H2-A workers) must first obtain proper approval from the U. S. Department of Labor. For your information, the federal statute dealing with this type migrant worker is 8 U.S.C. 1188 (1997). Regulations have been adopted by the U.S. Department of Labor with respect to H2-A workers. Those regulations are set out in Subpart B of 20 CFR Chapter V, Section 655.90, etc.

Finally, as we discussed in our telephone conversations, you are not certain as to the facts giving rise to your question. However, I may assume for this discussion that a migrant worker requested the attorney to visit at the worker's housing facility provided by the landowner.
The Work Agreement (hereinafter "Agreement") is a 12-page, single spaced printed document. Paragraph 6 of the Agreement, titled "Housing and Meals" provides in pertinent part the following:

Housing is provided at no cost to workers who are not reasonably able to return to their place of residence the same day .... No tenancy in such housing is created: employer retains possession and control of the housing premises at all times and worker, if provided housing under the terms of w of employment with the assigned employer who provides such housing. Workers who reside in such housing agree to be responsible for maintaining the housing in a neat and clean manner. Reasonable repair costs of damage or loss of property, other than that caused by normal wear and tear, will be deducted from the earnings of the worker if he is found to be responsible for damage or loss to housing or furnishings. (Emphasis added).

My review of the pertinent language in Paragraph 6 suggests that the intent was to protect the landowner from having to give notice to the migrant-employee to end his right to remain on the landowner's property after the employment period ended, rather than to remove all tenancy rights from the worker. Absent other evidence, I seriously doubt any court would conclude that the language of Paragraph 6 denies the worker the right to invite an attorney to visit.

State and federal courts are in general agreement that the question of access to migrant labor camps involves an analysis of at least two major legal issues: (1) the rights of migrants as tenants; and (2) the First Amendment rights of both migrants and third parties.

RIGHTS OF MIGRANTS AS TENANTS

Whether or not the landlord-tenant relationship can be established in this case is questionable, and depends on the facts which are brought out if there is a trial. Arguably, the landowner could assert that the migrants were licensees because the housing was given free of charge and not in return for compensation for labor; and, the migrant signed a contract which provided that "no tenancy in such housing is created; employer retains possession and control of the housing premises at all times . . ." If a court concludes that the worker has tenancy rights, there is clear law in North Carolina that a migrant worker may invite a third party on the landowner's property if a landlord-tenant relationship is established. See, State v. Smith, 100 N.C. 466 (1888), and Tucker v. Yarn Mill Company, 194 N.C. 756 (1927).

I should point out that if the contract were interpreted to exclude all rights of tenancy, arguably the contract may be unenforceable if it can be shown that the contract was unconscionable because of a lack of bargaining power of the migrants with the landowners. See, Brenner v. SchoolHouse, Ltd... 302 N.C. 207, 213 (1981).
Other state jurisdictions have also concluded that a landlord-tenant relationship exists between an agricultural employer and a migrant farm worker. In State v. Fox, 82 Wash.2d 288, 510 P.2d 230 (1973), the Washington Supreme Court overruled a criminal trespass charge against an employee of Legal Services. The court held that the employer did not have a right to bring a trespass charge against the employee of Legal Services since the migrant farm workers were tenants of the labor camp and they had possession of the premises. The California Supreme Court reversed a similar trespass conviction in People v. Medrano, 78 Cal. App.3rd 198 (1978), on the grounds that the migrant farm workers were tenants and had possession of the premises.

As you know, the First Amendment to the U.S. Constitution protects, among others, the freedom of speech and association. The question here is whether the enforcement of a criminal trespass statute against an invited visitor to a migrant labor camp constitutes unconstitutional state action. As we discussed in one of our telephone conversations, assuming there is clear evidence that one of the migrant workers invited the attorney to visit, I do not see how the State could successfully maintain a criminal trespass action. The controlling case in this area is Marsh v. Alabama, 326 U.S. 501 (1946), where the Supreme Court found the constitutional guarantees of freedom of speech and religion precluded enforcement of a state trespass statute against persons who distributed religious literature on the street of a company-owned town. Because the company had "open[ed] up its property for use by the public in general," the company's right as a landowner to forbid trespassing was "circumscribed" by the First Amendment rights of free speech and association. Id., at 506. Federal courts have particularly applied the "company town rationale" in permitting migrants to invite third parties onto the landowners property. See, Folqueras v. Hassle, 331 F.Supp. 615, 625 (W.D. Mich. 1971) and Mid-Hudson Legal Services, Inc. v. GNU, Inc., 437 F.Supp. 60, 62 (S.D.N.Y. 1977). See also, New Jersey v. Shack, 58 N.J. 297, 277A.2d 369 (1971).

Based on the facts as I understand them, and assuming that the Farmworkers Legal Services attorney is on the landowner's property at the invitation of a migrant worker living thereon, I seriously doubt that the State may successfully prosecute a criminal trespass statute against the invited attorney.

Very truly yours,

Andrew A. Vanore, Jr.
General Counsel

AAV jr/jt
Declaration of Kathryn Cox

1. My name is Kathryn Cox, and I am a Program Assistant for the Wake County Farmworker Health Program.
2. My duties include visiting migrant farmworker camps to conduct health assessments, provide health education and over-the-counter medications, and refer farmworkers to low-cost health services when needed.
3. We receive funding from the North Carolina Farmworker Health Program to focus on HIV prevention for the farmworker population in our area, most of whom are Mexican migrants. A number of recent studies, summarized in part in a 2011 critical review, have shown high rates of HIV infection among Mexican migrant workers living in the U.S. This vulnerability has been linked both to behavioral risks and to lack of access to health resources, which our program mitigates through free testing, education, and health care referrals.
4. On April 16, 2012, a colleague of mine at the Wake County Farmworker Health Program, Ana Beltran, had a telephone conversation with a resident of the labor camp owned by [REDACTED] Farms.
5. This camp is located on [REDACTED] in Angier, North Carolina.
6. The farmworker invited us to come visit him at the camp. He told Ms. Beltran they had finished work for the day and extended an open invitation to come to the camp that evening.
7. On a previous visit to the camp, several workers had expressed interest in the HIV testing that we could offer. We had arranged to visit them the week of April 16 to offer free on-site testing.
8. Ms. Beltran and I then drove with two members of the Wake County HIV team to the camp in a Wake County vehicle. We arrived a few minutes before 7:00 p.m.
9. We were greeted by some of the workers, who volunteered to help us set up the testing materials. They invited us to set up the materials on a picnic table outside the barracks. We began setting up the HIV testing station.
10. [REDACTED], the owner of [REDACTED] Farms and employer of the farmworkers who we were visiting, drove up in a red pick up truck, parked directly behind our car, then got out of his vehicle along with a large dog.
11. I introduced myself to him as an employee of the Wake County Farmworker Health Program.
12. He then accused us of trespassing and ordered us to leave his property.
13. He spoke in a raised voice that I perceived as threatening. I also knew at the time that several other outreach workers from other farmworker health programs had experienced unpleasant and hostile confrontations by Mr. [REDACTED]
14. He pointed to the testing station and asked what is was for, and I told him that we were offering free HIV tests as a service to his employees.
15. He yelled at some of the workers to go into the house and take a shower.
16. He said we were on his property without permission. I explained that I believed we were within our rights and that the NC Attorney General had issued a statement supporting that right.

17. I introduced him to the other members of our team. All four of us were wearing badges identifying ourselves as Wake County employees.

18. He demanded that we make an appointment with him before visiting his workers. I noted that telling him in advance interfered with the employee’s access to health services and could be considered a breach of confidentiality. I would make appointments only with our clients, and he did not have the right to dictate when or who received health care.

19. At one point in the conversation, he was less than two feet away from my face and raised his voice even higher. I asked him several times not to yell at me. I felt intimidated and uncomfortable.

20. He then claimed it was inappropriate for us to be there because we were female.

21. He then said that if I “[knew] what was good for me,” then I would leave.

22. He was very upset and threatened to call the sheriff, adding "Who all in there's got HIV?"

23. I was very upset at this point and told him he had no right to ask about his employee's health or HIV status.

24. He said again that he had “had enough” and would “remember everything” that I had said, and he left.

25. I asked the workers if they still wanted us to stay and they said that they did. We then provided a health education session on HIV/AIDS and continued with HIV testing.

26. This incident has made me anxious to return to the labor camp. I am concerned about jeopardizing our clients' trust in our program should another confrontation take place, further compromising their already limited access to health services. I am also concerned about the repercussions for myself and our program staff should Mr. contact the police.

I affirm, under penalty of perjury, on this 21st day of June, 2012, that all of the foregoing statements are true to the best of my knowledge.

Kathryn Cox

Signature

6/21/12
Date
Arthur P. Mizzi, Ph.D.
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August 24, 2006

Jennifer J. Lee, Esq.
Colorado Legal Services
1906 Sherman Street, Suite 400
Denver, Colorado 80203-1811

Re: Sister Maria L. Munoz and Ms. Mona Penaflor

I represent Villano Brothers Farms, Inc., the Villano family, and their various other business entities (Villanos). I am in receipt of your letter to the Villanos dated August 21, 2006 (August 21 Letter). The Villanos asked me to review and respond to that letter on their behalf.

As I understand the facts of this matter, on August 13, 2006 Sister Munoz and Ms. Penaflor were in the Villanos' Davis Farm Field (Davis Field) when a crop dusting plane flew over the Villanos' Brown House Farm and Asparagus Fields (Sprayed Fields). Although Ms. Penaflor thought that the plane was too close to the Davis Field, flight records show it was at least a quarter mile away. The Sprayed Fields are also located at least a quarter of a mile from the Davis Field. Neither Sister Munoz, Ms. Penaflor, or any of the Villanos' workers have reported any direct or indirect pesticide exposure, nor have they reported any related symptoms or illness to the Villanos or the mobile medical clinic that made one of its routine visits to the Davis Field on the afternoon of August 13, 2006. Nevertheless, it appears that Sister Munoz conspired with Ms. Penaflor to falsely report to Colorado Legal Services (CLS) and/or the Colorado Department of Agriculture (CDA) that the Villanos' workers had been sprayed.

I have reviewed the case law cited in your August 21 Letter and agree that the Villanos, as landlord, cannot deny reasonable access to the workers' residences by the invited guests of those tenants, the Villanos' workers. However, that case law also holds that those invited guests may not engage in any conduct that violates the law of the State or Federal governments. When Sister Munoz and Ms. Penaflor provided CLS and/or CDA with false information, their access became unreasonable and their conduct became illegal. As such, the Villanos have the right to preclude, and have precluded, access to any of their properties by Sister Munoz and Ms. Penaflor.
This letter serves as formal notice to Sister Munoz and Ms. Penafior that due to their illegal conduct the Villanos are forbidding them access to any of the Villanos' properties. The Villanos have instructed their tenants accordingly. However, the Villanos recognize the benefit of providing social services and spiritual counseling to their workers and have encouraged them to invite alternative guests to the residences. Such guests are not allowed in any of the Villanos' work areas or in any other parts of the Villanos' properties without explicit permission from the Villanos.

In closing, Sister Munoz and Ms. Penafior's actions have damaged the Villanos by forcing them to expend time and money addressing fraudulent claims. Therefore, if Sister Munoz, Ms. Penafior, or their associates choose to ignore this notice, the Villanos will pursue all appropriate remedies.

If you have any questions, please do hesitate to contact me.

Sincerely,

Arthur P. Mizzi, Ph.D.
Attorney at Law