

April 13, 2005

**MEMORANDUM IN SUPPORT OF PETITION**

on

LABOR LAW MATTERS ARISING IN THE UNITED STATES

submitted to the

NATIONAL ADMINISTRATIVE OFFICE OF MEXICO

under the

NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

REGARDING THE FAILURE OF THE UNITED STATES TO EFFECTIVELY ENFORCE  
LAWS PROTECTING THE RIGHTS OF IMMIGRANT WORKERS

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## Table of Contents

Introduction.....	1
Facts in Support of Petition.....	2
I. The individual petitioners .....	2
A. Petitioner Candelario Perez and other men with H-2B visas who worked together for Universal Forestry in Idaho.....	2
1. Labor violations .....	2
a. Wage Violations.....	2
b. Housing Violations .....	3
2. Inability of petitioners effectively to enforce their labor rights because they had extreme difficulty obtaining legal representation .....	4
a. Inability of the petitioners to obtain relief from the state and federal departments of labor, in the absence of legal representation .....	4
b. Inability of petitioners effectively to enforce their labor rights because they had extreme difficulty obtaining legal representation .....	5
B. Petitioners Camero Torres, Vargas Cisneros, Lira, and Borjas Gonzalez .....	7
1. Labor violations .....	7
2. Inability of petitioners effectively to enforce their labor rights because they had extreme difficulty obtaining legal representation .....	12
C. Petitioners Ceja Carballo, Escamilla Perez, Feria M., Guevara Hernandez, Lozano Guevara, Lopez Garcia, Morales Donis, Morales Gomez, Perez Ramirez, Salas Juarez and other workers from Veracruz, Mexico with H-2B visas employed by Universal Forestry in Idaho .....	14
1. Labor violations .....	14
2. Inability of petitioners to effectively enforce their labor rights because they had extreme difficulty obtaining legal representation .....	16
D. Petitioner Dan Morales .....	17
1. Labor violations .....	17
2. Inability of petitioner to effectively enforce his labor rights because he had extreme difficulty obtaining legal representation .....	18
a. The First Private Lawyer .....	18

b.	The Second Private Lawyer .....	19
c.	The Legal Services Lawyer .....	19
d.	Two Additional Private Lawyers .....	20
e.	Another Private Lawyer .....	20
f.	A Non-Lawyer .....	20
g.	The Department of Labor.....	20
h.	Morales Represents Himself Pro Se .....	20
h.	Another Private Lawyer .....	21
II.	The labor violations suffered by the petitioners are typical of those suffered by vulnerable immigrant workers in the United States.....	21
III.	The United States denies many immigrant workers appropriate access to a forum to enforce their labor-related rights.....	26
A.	The United States denies many immigrant workers access to lawyers receiving any LSC funding. ....	26
B.	Workers who obtain assistance from legal services lawyers are more likely to enforce their labor rights.....	28
C.	It is unlikely that immigrant workers can enforce their rights without access to lawyers receiving some LSC funding.....	29
Conclusion	.....	34

## **Introduction**

Alfredo Borjas Gonzalez, Manuel Camero Torres, Basilio Ceja Carballo, Moises Escamilla Perez, Bernabe Feria M., Praxedis Guevara Hernandez, Juan Carlos Lira, Salvador Lopez Garcia, Edgar Lozano Guevara, Dan Morales, Emilio Morales Donis, Domingo Morales Gomez, Alfredo Perez Ramirez, Candelario Perez, Jaime Salas Juarez, Jose Antonio Vargas Cisneros and the various named organizations in the United States and Mexico are filing the accompanying petition in order to bring to the attention of the National Administrative Office the fact that, in violation of the obligations of the United States under the North American Agreement on Labor Cooperation (“NAALC”), immigrant workers in the United States suffer serious and frequent violations of their labor rights and the United States fails to afford immigrant workers an appropriate ability to enforce their labor rights. The United States does not provide appropriate access to administrative or judicial bodies with power to enforce those rights, and available judicial proceedings are too complicated without the assistance of legal counsel and too expensive if the worker must secure a private attorney. In particular, the United States makes many immigrant workers – including all of the individual petitioners – ineligible for legal assistance from all legal services offices that receive any funding from the federal Legal Services Corporation (“LSC”),<sup>1</sup> thus denying those workers an opportunity effectively to enforce their labor law rights, in violation of Article 4; Article 5, Sections 1 and 5; and Labor Principles 6, 9, 10 and 11 of the NAALC.

This Supporting Memorandum sets forth facts in support of the accompanying Petition. Section I describes the specific complaints of the individual petitioners. Section II explains that the labor violations suffered by the individual petitioners are typical of those suffered by vulnerable immigrant workers in the United States. Section III describes how the United States prevents immigrant workers from securing legal representation to enforce their labor-related

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<sup>1</sup> See Consolidated Appropriations Act, 2005, Pub. L. 108-447 (2004) (“None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105-119 . . .”); 45 C.F.R. § 1626.

rights. Section IV explains why workers who obtain assistance from legal services lawyers are more likely to enforce their rights. Finally, Section V explains why it is difficult for immigrant workers to enforce their rights without access to legal services lawyers.

### **Facts in Support of Petition**

#### **I. The individual petitioners**

##### **A. Petitioner Candelario Perez and other men with H-2B visas who worked together for Universal Forestry in Idaho**

###### **1. Labor violations**

As described in this section, during the late summer of August 2000, Universal Forestry employed petitioner Candelario Perez (a Panamanian) and five other men, all of whom the company had brought into the United States as temporary non-agricultural workers on H-2B visas, to work in federal forests in the mountains outside McCall, Idaho, slashing and burning vegetation, clearing trails, and planting trees. In the course of that employment, the company violated the men's rights to be paid the wage they were promised, to pay the legally mandated minimum wage, and to be provided with decent housing.

###### **a. Wage Violations**

Universal Forestry had promised to pay the men \$10.50 per hour, the minimum wage required by federal law for work by H-2B workers in national forests in Idaho. However, petitioner Perez was paid approximately \$7.41 per hour for some of his employment and as little as \$1.00 an hour during other portions of his employment. The other men had likewise been paid less than they had been promised. The failure to pay the promised pay rate constituted a breach of their employment contract, in violation of both traditional contract law principles and the Migrant and Seasonal Agricultural Worker Protection Act (the "AWPA").<sup>2</sup> The failure to pay the promised rate also likely breached Universal Forestry's assurances to the U.S. Department of Labor ("U.S. DOL"), which had certified Universal Forestry to employ foreign

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<sup>2</sup> 29 U.S.C. § 1822(c) (prohibiting violation of a working arrangement).

temporary workers based upon those assurances.<sup>3</sup> Finally, the payment of wages below \$5.15 per hour violated the Fair Labor Standards Act (“FLSA”), which establishes the minimum wage that a covered employer can pay any worker.<sup>4</sup>

Universal Forestry deducted money from the men’s paychecks for gas, oil and a chainsaw that the men needed to work. For some of the men the deductions caused their pay to fall below \$5.15 per hour. This violated the FLSA, which prohibits deductions made for the primary benefit of the employer – such as deductions for equipment enabling a worker to do his or her job – whenever the deductions cause the worker’s pay to fall below \$5.15 per hour.<sup>5</sup> The deductions also violated Idaho law, which prohibits deductions from employee paychecks that are neither approved by federal or state law nor authorized in writing by the employee.<sup>6</sup> None of the men had provided such approval.

#### **b. Housing Violations**

In late August, 2000, Universal Forestry housed the six H-2B employees, including petitioner Perez, at a primitive campsite in the mountains outside of McCall. There were no restroom facilities or developed campground facilities nearby. The men slept in a lightweight four-person tent, in a makeshift shelter made out of a lightweight plastic, and in another shelter made out of a tarp. There were no sleeping pads, mattresses or sleeping bags. The only drinking water was untreated and came from a creek, even though local residents understand that any untreated water from creeks or streams can expose them to giardia and e-coli bacteria. In early September, as night time temperatures approached freezing, the crew leader slept in a pickup truck; two men slept in an equipment trailer lacking vents, windows, or an emergency escape; and three men slept in a tent.

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<sup>3</sup> Employers seeking to participate in the H-2B program must certify to the Department of Labor that they will pay workers the prevailing wage. 8 U.S.C. § 1101(a)(15)(H)(ii)(b); 8 C.F.R. § 214.2(h)(6)(iv); 20 C.F.R. § 655 *et seq.*

<sup>4</sup> 29 U.S.C. § 206(a)(1).

<sup>5</sup> *Arriaga v. Florida-Pacific Farms, LLC*, 305 F.3d 1228, 1235-36 (11th Cir. 2002); *Caro-Galvan v. Curtis Richardson, Inc.*, 993 F.2d 1500, 1513 (11th Cir. 1993).

<sup>6</sup> Idaho Code § 45-609(1).

In both instances, the living conditions violated the AWPAs, which requires that any housing provided by the employer must comply with all applicable health and safety codes, such as those requiring an adequate sanitation facility, potable water, and weather-proofed sleeping quarters.<sup>7</sup>

**2. Inability of petitioners effectively to enforce their labor rights because they had extreme difficulty obtaining legal representation**

**a. Inability of the petitioners to obtain relief from the state and federal departments of labor, in the absence of legal representation**

The Universal Forestry employees have mostly been unsuccessful in persuading the Idaho Department of Labor (“IDOL”) and the U.S. DOL to resolve labor law violations they suffered at the hands of Universal Forestry. On September 1, 2000, the IDOL filed an “apparent violation” complaint with the U.S. DOL on behalf of the six workers, citing the inadequate housing conditions and wage claims. On September 26, 2000, petitioner Perez and one other man filed their own complaints with the U.S. DOL. On October 30, 2000, the remaining four men likewise filed complaints with the U.S. DOL.

For almost ten months, the U.S. DOL failed to investigate the complaints. Instead, on January 3, 2001, the U.S. DOL erroneously informed the IDOL that the AWPAs did not apply to H-2B workers. The IDOL replied the same day with information demonstrating that the AWPAs did cover H-2B reforestation workers. On January 26, 2001, the U.S. DOL acknowledged receipt of the complaints but, in violation of an Executive Order requiring federal agencies to provide services to limited English speakers, said it could not take action because the complaints were in Spanish.<sup>8</sup> The U.S. DOL also said that it would not investigate until the spring because the employer was not in Idaho at the time. It was not until July 16, 2002, that the U.S. DOL actually had an appointment to investigate the employer.

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<sup>7</sup> 29 U.S.C. § 1823.

<sup>8</sup> See Exec. Order 13166, 65 F.R. 50121 (Aug. 11, 2000).

On December 13, 2002, the U.S. DOL informed the IDOL that it had completed its investigation as to petitioner Perez's complaints, and that he was due \$631.25 in back wages. The U.S. DOL made no findings with regard to Mr. Perez's complaints of AWPAs violations.

The other workers' complaints remained unresolved, in part because the U.S. DOL said that it was unable to substantiate their allegations. It is likely that the U.S. DOL's failure to substantiate the workers' allegations is due in large part to the fact that, unlike Mr. Perez, none of the other workers had a fixed U.S. address, with a regular mail box and telephone number and a spouse to review mail and relay messages during his absences from home. The U.S. DOL simply is not equipped to substantiate complaints by migrant workers without a fixed address and with limited English skills. For instance, by the time the U.S. DOL sought a reply from Universal Forestry about the allegations – ten months after the complaints were filed – the workers had moved on to other work or were making their way home. The U.S. DOL also requires that a complainant respond to the employer's allegations within 30 days. U.S. DOL makes no accommodations for the fact that farm and forestry workers regularly work away from home, are unable to check and reply to mail within short time periods, and are often unable to get to a telephone during the U.S. DOL's regular business hours. Consequently, such workers find the U.S. DOL to be of little assistance in enforcing their labor rights.

**b. Inability of petitioners effectively to enforce their labor rights because they had extreme difficulty obtaining legal representation**

Although they had entered the United States legally under an H-2B visa to work under federally protected terms of employment, Petitioner Perez and the other Universal Forestry employees, all of whom were H-2B workers, were ineligible to receive assistance from legal services offices that receive any funding from the federal LSC.<sup>9</sup> Consequently, it took petitioner Perez a considerable amount of time to find legal representation. By the time he found counsel, he had lost contact with the other H-2B workers, so those men are not aware that there is an

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<sup>9</sup> See discussion *infra* § III.

attorney willing to represent them. As time passes, those men are losing the right to bring some of their claims in court.<sup>10</sup>

As the IDOL was preparing the individual complaints for filing with its office and with the U.S. DOL office, it began trying to locate private counsel for the men. Dunnia Burnham, the State Monitor Advocate in the IDOL, knew that it was important for the petitioners to have attorneys, because during her five years as a farm worker monitor advocate she has seen the IDOL and U.S. DOL fail to resolve numerous complaints, in large part because, as mentioned earlier, the U.S. DOL simply is not equipped to assist migrant workers.

Ms. Burnham first tried to obtain representation for the petitioners through the local legal services office in Idaho in late 2000. However, Idaho Legal Aid Services is unable to assist H-2B workers because it receives some LSC funding.<sup>11</sup> That office referred Burnham to the Oregon Law Center (“OLC”), which does not receive any LSC funding. However, the OLC did not have funding that could be used to assist workers with legal claims that had no connection to Oregon, so it agreed to assist the men only if it was able to find a separate source of funding to do so. After four meetings with community leaders and with foundations, in October, 2001, Maria Andrade, then the directing attorney of the OLC office closest to the Idaho border, secured a small foundation grant of \$2,500 from the Impact Fund to investigate the workers’ claims. The grant was made with the explicit understanding that Mr. Perez was interested in filing the instant NAALC complaint – funding to represent him and the other workers likely would not have been available solely for a routine labor rights case in United States courts.

By that time, all of the workers except Mr. Perez had left the area. It was not until March 25, 2002, that Ms. Andrade was able to make telephone contact with one of the remaining five

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<sup>10</sup> See Idaho Code 45-614 (wage claims must be brought within 2 years of the accrual of the claim, unless the employee has been paid something for the period at issue, in which case the statute of limitations is 6 months from the accrual of the claim); Idaho Code § 44-1508(2) (minimum wage claims must be brought 2 years after accrual of the claim); *Barajas v. Bermudez*, 43 F.3d 1251, 1255 (9th Cir. 1994) (for AWPA claims, the statute of limitations from the most analogous state claims is applied); Idaho Code § 5-217 (statute of limitations on oral contract is four years).

<sup>11</sup> See discussion *infra* § III.

workers. By then, that worker's right to file a wage claim in Idaho may have expired because the time limit for filing an Idaho State wage claim depends in part upon the status of a U.S. DOL complaint, and the U.S. DOL would not inform Ms. Burnham of the complaint's status. Consequently, neither Ms. Burnham nor Ms. Andrade could tell the worker whether he still had a viable private lawsuit. Ms. Andrade has not heard from the worker since that time.

The status of the remaining five complaints remains unknown. As discussed above, it is likely that a short statute of limitations period will preclude those workers from bringing their wage claims elsewhere. It is also possible that the U.S. DOL cases have been closed without the complainants' knowledge.

Had the workers been able to obtain legal representation in late 2000, when Ms. Burnham had initially contacted Idaho Legal Aid Services, the likelihood of the U.S. DOL investigating the complaints would have substantially increased. Every piece of correspondence from the U.S. DOL would have been sent to a lawyer with a fixed address; the lawyer could have ensured that the cases were progressing; and the lawyer could have advised the clients of upcoming statutes of limitations to enable the clients to make an informed decision about whether to rely on the U.S. DOL to remedy their situation. This type of legal assistance is particularly important for individuals who live outside of the country, are low-income, and may not have basic telephone services to maintain regular contact with the U.S. DOL.

## **B. Petitioners Camero Torres, Vargas Cisneros, Lira, and Borjas Gonzalez**

### **1. Labor violations**

In November of 2000, petitioners Jose Alfredo Borjas Gonzalez, Manuel Camero Torres, Juan Carlos Lira, and Jose Antonio Vargas Cisneros replied to an advertisement Universal Forestry had placed in a local newspaper in Tamaulipas, Mexico, soliciting applicants for forestry jobs in the United States. The ad had instructed interested persons to contact Nemisino Rivera, an employee of Universal Forestry who lived in Mexico. When they met, Rivera told them the following details about the job, none of which he put in writing:

- The work would be in either Idaho or Mississippi beginning in March or April;

- The pay would be between \$75.00 and \$100.00 per day;
- Universal Forestry would obtain and pay for the needed work visa;
- There would be work for the entire period of the visa (approximately ten months);<sup>12</sup>
- If Universal Forestry was unable to give them work for the entire visa period, the employees would be free to work wherever they wished in the United States;
- Universal Forestry would pay for transportation from Laredo, Mexico to the job site and back;
- Universal Forestry would provide employees with all needed equipment; and
- Universal Forestry would provide housing.

After considering the offer, the petitioners agreed to these terms.

In early March 2001, the petitioners brought Mr. Rivera their passports and other documents, so that he could obtain their visas. At that point, Rivera told the men to each pay \$100.00 U.S. and \$2,000.00 Mexican Pesos “for the processing.” The purpose of these fees remains unknown, although it may have been for visa processing. Although Rivera had previously told the men that the company would pay for the visa processing, they paid the requested fees. The fees violated the AWPA, because Universal Forestry did not initially disclose them to the petitioners.<sup>13</sup> The fees also violated the FLSA, because, as described below, Universal Forestry did not reimburse them for the fees in the first pay period, and consequently the fees brought the men’s wages below the legally mandated minimum wage.<sup>14</sup> This was the first of a series of previously undisclosed charges that Universal Forestry made, some of which the company demanded up front and some of which the company said it would deduct from the men’s paychecks.

Although Rivera had told the men that their visas would be valid beginning on March 15, 2001, and that their work would begin the same month, and although the men regularly but unsuccessfully sought information from Rivera at his house in Mexico, Universal Forestry did not contact the men until on or about May 25, 2001. On that date, Rivera’s daughter told the

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<sup>12</sup> H-2B visas are typically granted for not longer than one year. 8 C.F.R. § 214.2(h)(6)(ii)(B).

<sup>13</sup> 29 U.S.C. § 1821(a).

<sup>14</sup> *Arriaga v. Florida-Pacific Farms, LLC*, 305 F.3d 1228, 1235-36 (11th Cir. 2002); *Caro-Galvan v. Curtis Richardson, Inc.*, 993 F.2d 1500, 1513 (11th Cir. 1993).

men to travel to Laredo on June 3, 2001, where they would meet with a Universal Forestry representative named Nelson and some other workers.

When the men arrived in Laredo, they joined about 15 other Mexican nationals hired by Universal Forestry and Nelson. At that time, Nelson told everyone to pay \$150.00 U.S. for transportation from the border to Idaho. This was the first time that petitioners were told about having to pay for their own transportation, and it violated Rivera's previous statement that Universal Forestry would pay their way to Idaho. The failure to disclose this charge at the time the petitioners were recruited violated the AWPAs.<sup>15</sup> Additionally, because Universal Forestry never paid the men wages and never reimbursed them for the fee, the fee brought the men's wages below the legally mandated minimum wage in violation of the FLSA.<sup>16</sup> All of the petitioners paid the fee, even though most of them carried little more than \$150.00 U.S. for the entire trip. Some of the petitioners had already borrowed money to make the trip and now had to go further into debt.

Nelson arranged for the men, plus a driver, to travel in a van to Idaho. The AWPAs, and Idaho law, require an employer who transports workers to use vehicles that meet health and safety requirements including having insurance, being driven by a licensed driver, and complying with occupancy limits.<sup>17</sup> Contrary to these requirements, the van was old, in poor mechanical condition, and too small for its many passengers. The men, who describe the conditions of the 60-hour trip to Idaho as "inhumane," felt they were being treated like animals due to the discomfort and overcrowding.

The petitioners arrived in Orofino, Idaho on June 6, 2001. They were dropped off at a small house where they were told they would live while in Idaho. The house had only one bathroom and two bedrooms, no telephone, no heat and was already occupied by about 13 men. The petitioners and other men slept wherever they could find space on the floor. These housing

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<sup>15</sup> 29 U.S.C. § 1821(a).

<sup>16</sup> *Arriaga v. Florida-Pacific Farms, LLC*, 305 F.3d 1228, 1235-36 (11th Cir. 2002); *Caro-Galvan v. Curtis Richardson, Inc.*, 993 F.2d 1500, 1513 (11th Cir. 1993).

<sup>17</sup> 29 U.S.C. § 1841; 29 C.F.R. §§ 500.100, 500.105.

conditions violate AWWA, which requires that housing provided by Universal Forestry must comply with local housing ordinances and must be safe and adequate, with heat, restrooms, cooking facilities, and weatherproofing.<sup>18</sup>

Shortly after the petitioners arrived at the house in Orofino, Herbert Matute introduced himself as a representative of Universal Forestry and sold them sleeping bags for \$22.00 each. He told the men that the cost would be deducted from their first paycheck. Had the men actually been paid and the deduction made, it would have violated Idaho law because the company did not obtain written authorization for the charge.<sup>19</sup> Additionally, since the deduction brought the men's wages below \$5.15/hour for the first pay period, it violated the FLSA.<sup>20</sup>

On June 12, 2001, when another group of 12 men arrived at the house after working in the mountains, Matute instructed the petitioners to move to another house nearby. Despite Mr. Rivera's promise that Universal Forestry would provide housing, Mr. Matute informed the men that they would have to pay rent of \$750.00 per month, in violation of both their working arrangement with Universal Forestry and the AWWA.<sup>21</sup> Because the second house also lacked any beds and was overcrowded, it also violated the housing health and safety provisions of the AWWA.<sup>22</sup>

Although Mr. Rivera had told the petitioners that they would not have to purchase equipment, Matute now told the petitioners that they would have to buy their own equipment. To facilitate the purchase, Matute told the men that he would "sell" them the chainsaw, gloves, leg chaps, a helmet and chainsaw oil that they needed to do their job and would deduct between \$700.00 and \$800.00 from their paychecks to cover the cost. Matute told the petitioners that he would buy the chainsaws back at the end of the season if they were in good condition, but said nothing about buying back the other supplies. This violated the working arrangement under

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<sup>18</sup> 29 U.S.C. § 1823.

<sup>19</sup> Idaho Code § 45-609(1).

<sup>20</sup> *Arriaga v. Florida-Pacific Farms, LLC*, 305 F.3d 1228, 1235-36 (11th Cir. 2002); *Caro-Galvan v. Curtis Richardson, Inc.*, 993 F.2d 1500, 1513 (11th Cir. 1993).

<sup>21</sup> 29 U.S.C. § 1822(c).

<sup>22</sup> 29 U.S.C. § 1823.

AWPA, since the company had not previously disclosed the charge. Had the men actually been paid and the deduction made, it would have violated Idaho law because the company did not obtain written authorization.<sup>23</sup> Additionally, since the deduction brought the men's wages below \$5.15/hour for the first pay period, it violated the FLSA.<sup>24</sup>

Contrary to Rivera's promise that the petitioners would have work for the entire visa period, the petitioners had no work through June 13, in violation of AWPA.<sup>25</sup> During this time, they still had to pay housing and food costs. On June 14, 2001, Universal Forestry took the men out for a so-called "training session" at a mountain worksite about four hours from Orofino. The men camped at the site so they could work the entire next day. Universal Forestry provided tents, but said it would deduct the cost from the men's paychecks. This violated the working arrangement under AWPA, since the company had not previously disclosed the charge. Had the men actually been paid and the deduction made, it would have violated Idaho law because the company did not obtain written authorization for the charge.<sup>26</sup> Additionally, since the deduction had brought the men's wages below \$5.15/hour for the first pay period, it violated the FLSA.<sup>27</sup>

The Universal Forestry employee leading the group explained that they would hike into the mountains and then walk down cutting brush and clearing the trail. The next day, the workers hiked for 7 hours, covering 16 miles. Then, they spent 2 hours hiking down and clearing the trail as they went. It was very hot, and one man fainted. The next day, Universal Forestry drove them back to Orofino because of inclement weather.

Recognizing that Universal Forestry had so far violated many of its promises regarding the work, working and living conditions, and pay, the men tried to find out exactly what they were going to be paid. However, Mr. Matute declined to tell them the exact amount, in violation

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<sup>23</sup> 29 U.S.C. § 1821(a); Idaho Code § 45-609(1).

<sup>24</sup> *Arriaga v. Florida-Pacific Farms, LLC*, 305 F.3d 1228, 1235-36 (11th Cir. 2002); *Caro-Galvan v. Curtis Richardson, Inc.*, 993 F.2d 1500, 1513 (11th Cir. 1993).

<sup>25</sup> 29 U.S.C. § 1822(c).

<sup>26</sup> 29 U.S.C. § 1821(a); Idaho Code § 45-609(1).

<sup>27</sup> *Arriaga v. Florida-Pacific Farms, LLC*, 305 F.3d 1228, 1235-36 (11th Cir. 2002); *Caro-Galvan v. Curtis Richardson, Inc.*, 993 F.2d 1500, 1513 (11th Cir. 1993).

of AWPAs, which requires employers to explain the pay rate and to put the information in writing if the workers request it.<sup>28</sup> Talking to other Universal Forestry employees, the men heard that the pay was \$67.00 to \$70.00 per mile of trail cleared, which would be split among all members of the group, with the new employees earning less than the other members of the group because they were not as experienced. Based on this information, they calculated that they would earn around \$2.00 per hour, which is far below the federal minimum wage, in violation of the FLSA, far below the wage rate Mr. Rivera had promised them, in breach of their contract and AWPAs, and below the amount Universal Forestry had promised the U.S. government it would pay, in violation of the terms of the H-2B program.<sup>29</sup>

The petitioners told Universal Forestry they would not work unless it remedied these conditions. In violation of the AWPAs and FLSA, which prohibit employers from retaliating against employees who assert rights under those statutes,<sup>30</sup> Mr. Matute threatened to report them to U.S. immigration authorities who, he threatened, would return them to Mexico. In an unlawful act of conversion, and possibly in violation of the federal law prohibiting involuntary servitude, Matute also told the men that he would keep their immigration documents and not return them unless each paid him \$150.00.<sup>31</sup> The men asked to be paid for the time they had worked, but Matute refused, in violation of the AWPAs, FLSA, and state law.<sup>32</sup>

## **2. Inability of petitioners effectively to enforce their labor rights because they had extreme difficulty obtaining legal representation**

The men had considerable difficulty finding a lawyer to represent them to pursue their labor law claims against Universal Forestry. In August, 2001, they went to Michigan to find

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<sup>28</sup> 29 U.S.C. §§ 1821, 1843.

<sup>29</sup> 29 U.S.C. § 206(a)(1) (FLSA); 29 U.S.C. § 1822(c) (AWPA). As discussed, *infra* n.3, employers seeking to participate in the H-2B program must certify to the Department of Labor that they will pay workers the prevailing wage.

<sup>30</sup> 29 U.S.C. § 1855(a); 29 U.S.C. § 215(3). *See also Lambert v. Ackerley*, 180 F.3d 997, 1004 (9th Cir. 1999) (interpreting FLSA as prohibiting retaliation for complaints to an employer).

<sup>31</sup> *See United States v. Kozminski*, 487 U.S. 931, 952-53 (1988) (interpreting 18 U.S.C. § 1584). *See also* 42 U.S.C. § 1994.

<sup>32</sup> 29 U.S.C. § 1822(a) (requiring payment of wages owed when due); 29 U.S.C. § 206(a)(1) (FLSA provision establishing minimum wage); Idaho Code § 45-606.

work. While there, they contacted Michigan Farmworker Legal Services, a division of an organization then called Legal Services of Southern Michigan. That program was unable to help them, however, because it receives some LSC funding and is consequently prohibited from assisting H-2B workers. Michigan Farmworker Legal Services tried to refer the case to the Idaho Legal Aid Services program, but as an LSC grantee the Idaho program could not help either. Idaho Legal Aid Services referred the case to the OLC.

In light of the severity and number of labor law violations that Universal Forestry appeared to have committed, and because it was unlikely that any other lawyer would help the men, the OLC tried find a way to help the petitioners. However, because its financial resources are extremely limited, and could only be used to assist workers with legal claims in Oregon, the OLC agreed to accept the men's cases only if it could find additional funding to do so and only if the men would agree to allow the OLC to withdraw from the case if no such funding were found. Through spring, 2001, the OLC sought funding. However, in June of 2001, Maria Andrade, the only OLC attorney licensed to practice law in Idaho, decided to leave the OLC. Consequently, OLC would no longer represent the men. With some reluctance, since cases like this are often expensive and difficult to litigate, and with the hope that she would be able to obtain an outside source of funding to cover her costs, Ms. Andrade agreed to take the case with her into private practice. In September, 2002, the Idaho Migrant Council agreed to pay \$5,000 in costs to litigate the claim, in large part in recognition of the severity of the issue and the fact that this NAALC complaint would be filed as a companion to the federal court complaint.

With Ms. Andrade's help, the men filed a civil lawsuit against Universal Forestry. In response, Universal Forestry claimed bankruptcy, requiring Ms. Andrade to find another lawyer who specialized in bankruptcies to assist her. In May 2004, the parties reached a settlement agreement, and the men finally received some compensation in February 2005. Though Universal Forestry's bankruptcy filing prevented the plaintiffs from receiving a just amount of compensation for the labor violations they suffered, it is likely that without the assistance of both Ms. Andrade and the bankruptcy lawyer the men would have received zero compensation.

**C. Petitioners Ceja Carballo, Escamilla Perez, Feria M., Guevara Hernandez, Lozano Guevara, Lopez Garcia, Morales Donis, Morales Gomez, Perez Ramirez, Salas Juarez and other workers from Veracruz, Mexico with H-2B visas employed by Universal Forestry in Idaho**

**1. Labor violations**

Just as the men from Tamaulipas were leaving their employment with Universal Forestry, approximately thirty men from Veracruz were traveling to Orofino to work in forestry work for Universal Forestry as H-2B workers. Among the group were petitioners Basilio Ceja Carballo, Moises Escamilla Perez, Bernabe Feria M., Praxedis Guevara Hernandez, Edgar Lozano Guevara, Salvador Lopez Garcia, Emilio Morales Donis, Domingo Morales Gomez, Alfredo Perez Ramirez, and Jaime Salas Juarez. With the exception of petitioner Emilio Morales, these petitioners were recruited to work for Universal Forestry by Nelson Daniel Robledo M., who told them the following about the job:

- The pay would be \$70.00 to \$100.00 per day;
- They would be paid at an hourly rate (except that petitioners Perez Ramirez and Salas Juarez were told that they would be paid by the acre);
- Housing would be provided to them for \$80.00 per month (except that petitioner Lopez Garcia was told that rent would be \$100.00 per month); and
- No food would be provided.

The men were also asked to pay a fee of \$6,000 to 6,500 Mexican pesos. Some were told the fee would cover the cost of the visa, some that it would also cover transportation from Laredo to Orofino, and some that it would also cover the first month's rent. None of the information was put in writing, in violation of the disclosure requirements of the AWWPA.<sup>33</sup>

The men paid their own way to Laredo, where a representative of Universal Forestry named Nelson put them in two vans for the ride to Orofino. Both vans were in poor condition, and one of them broke down about 16 miles outside the border. At different times during the trip, one of the men was asked to drive, and he did so for several hours. The man did not have an international driver's license or a U.S. driver's license. The transportation violated the AWWPA,

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<sup>33</sup> 29 U.S.C. § 1821(a).

which requires that employer-provided transportation must meet minimum federal safety standards, be properly insured, and be operated by a licensed driver.<sup>34</sup>

Before leaving for Idaho, Nelson collected all of the men's passports. Although the men expressed concern at the time and again upon their arrival in Idaho, Universal Forestry refused to return the passports until the end of July, 2002, in an unlawful act of conversion, and possibly in violation of the federal law prohibiting involuntary servitude.<sup>35</sup> Herbert Matute, a Universal Forestry representative, told the workers that he kept their passports to prevent the men from leaving him and working for somebody else.

One van arrived in Idaho on about June 28, 2001. The one that had broken did not arrive until July 2, 2001. When they arrived, Herbert Matute, a representative of Universal Forestry, dropped them off at a two-bedroom house that was overcrowded and in very poor condition. Although the house had two bathrooms, inadequate water supplies made using both bathrooms at the same time impossible. The door locks did not work, the lights frequently went out, several windows lacked screens, and many windows did not open at all. There was insufficient sleeping space for all of the men, and the petitioners slept on the floor in sleeping bags they bought from Matute for \$14.00. The housing conditions violated the AWWA, which requires that any housing provided by the employer must comply with all applicable health and safety codes, such as those requiring ventilation and windows adequate to ensure both health and fire safety, adequate sleeping space, locking doors to secure personal belongings, and sanitary facilities adequate to meet the needs of all of the occupants.<sup>36</sup> Finally, when Universal Forestry applied to the U.S. government for permission to hire foreign temporary workers it failed to disclose that it intended to provide housing for the workers, in breach of Universal Forestry's contract with the U.S. government.

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<sup>34</sup> 29 U.S.C. § 1841; 29 C.F.R. §§ 500.100, 500.105.

<sup>35</sup> See *United States v. Kozminski*, 487 U.S. 931, 952-53 (1988) (interpreting 18 U.S.C. § 1584). See also 42 U.S.C. § 1994.

<sup>36</sup> 29 U.S.C. § 1823.

After the petitioners' arrival in the United States, Universal Forestry charged them various fees that it had not disclosed upon recruitment, in violation of the AWPAs.<sup>37</sup> For example, upon arrival the petitioners were told that between \$15.00 and \$20.00 per week would be deducted from their paychecks for transportation to and from the worksite. The petitioners also had to buy their own equipment, including leg chaps, chainsaws, weed eaters, helmets, machetes, and other equipment.

As of July 9, 2002, Universal Forestry had not provided the men with any work, and the men's funds were dwindling as they continued to buy food and pay other basic living expenses. Although all of the men eventually did some work for Universal Forestry, by August of 2002 all but six had left their employment with Universal Forestry because there was so little work, the pay was so low, Universal Forestry was charging them for so many things it had not previously disclosed, and they no longer trusted Universal Forestry.

**2. Inability of petitioners to effectively enforce their labor rights because they had extreme difficulty obtaining legal representation**

On July 9, 2002, the men sought help from the local Catholic Church, which contacted Idaho Legal Aid Services. Idaho Legal Aid Services, which as an LSC grantee cannot help the men, referred them to the Oregon Law Center ("OLC"). Approximately 30 of the men sought assistance from the OLC. Many of them had had enough of the poor treatment and were ready to go home, but could not afford to pay their own travel expenses. Some men wanted to work, but could not keep spending money to survive unless they knew they would have work at a fair wage. Given their experience thus far, the men had little faith that they would be paid what they had been promised.

Because its financial resources are extremely limited, the OLC agreed to look for funding to represent them, and to let the men know if it was able to find such funding. When Ms. Andrade, the only OLC attorney licensed to practice law in Idaho, left the OLC, she obtained the men's permission to retain their contact information and agreed to continue looking for funding

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<sup>37</sup> 29 U.S.C. § 1821(a).

to represent them. Finally, in September, 2001, the Idaho Migrant Council committed to pay up to \$5,000 in costs related to the case, enabling Ms. Andrade to represent the men on the condition that she be allowed to withdraw if she could not secure more funding. However, by the time that Ms. Andrade was able to communicate this to the men, fifteen of them had left the area. Even if those fifteen men eventually contact Ms. Andrade or another attorney they will have lost their right to pursue a claim for wages under Idaho law and other of their claims will expire soon.<sup>38</sup>

#### **D. Petitioner Dan Morales**

##### **1. Labor violations**

Petitioner Dan Morales was recruited from his home in southern Mexico by Hector Martinez to pack watermelons in watermelon fields in Arkansas and Texas. Martinez, who arranged for an H-2B guestworker visa for Morales, provided him with squalid, overcrowded housing, in violation of the AWPAs, which requires that any housing provided by the employer must comply with all applicable health and safety codes.<sup>39</sup> Martinez paid Morales by the piece. Morales believes that, given the hours he worked, his hourly wage was less than \$5.15, in violation of FLSA.<sup>40</sup>

After a few weeks, Morales got sick. Martinez told Morales to work in the grower's shed, driving a forklift, although Morales told him that he had no experience driving a forklift. In September 2001, Morales had an accident with the forklift. He woke up in a hospital in Memphis, Tennessee, where his leg had been amputated at the knee.

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<sup>38</sup>Idaho Code 45-614 (wage claims must be brought within 2 years of the accrual of the claim, unless the employee has been paid something for the period at issue, in which case the statute of limitations is 6 months from the accrual of the claim); Idaho Code § 44-1508(2) (minimum wage claims must be brought 2 years after accrual of the claim); *Barajas v. Bermudez*, 43 F.3d 1251, 1255 (9th Cir. 1994) (for AWPAs claims, the statute of limitations from the most analogous state claims is applied); Idaho Code § 5-217 (statute of limitations on oral contract is four years).

<sup>39</sup> 29 U.S.C. § 1823.

<sup>40</sup> 29 U.S.C. § 206(a)(1).

**2. Inability of petitioner to effectively enforce his labor rights because he had extreme difficulty obtaining legal representation**

Morales knew that he needed legal advice about what his rights were. Had he obtained competent legal advice, he would have learned that he was entitled to industrial accident insurance benefits. Morales also would have learned that he had rights under FLSA and AWP, and that he has a potential tort claim against Martinez.

Unfortunately, because Morales did not know how to find a competent lawyer, and because his immigration status caused him to be ineligible for assistance from the local legal services office, he was vulnerable to exploitation. The result was that he has been unable to enforce his legal rights, and that he entered into an ill-advised settlement with Martinez. Additionally, because of his new disability and the delay in enforcing his rights, he has been left without a source of income.

**a. The First Private Lawyer**

While Morales was in the hospital, a hospital worker recommended an attorney who claimed to have “never lost a case.” Morales met with the lawyer, who agreed to represent him, but only if Morales signed a retainer agreement with several onerous and unethical conditions: 1) that Morales was waiving his rights to sue the lawyer for malpractice, and 2) that if Morales fired the lawyer he would owe the lawyer one-third of any pending settlement offer. The two provisions are contrary to the ethics rules applicable in most states, which generally bar lawyers from entering into agreements limiting a client’s right to sue for malpractice without advising the client to obtain an independent opinion, and which generally provide that lawyers may charge their clients only reasonable fees.<sup>41</sup> Unaware of the unusual nature of the retainer agreement, Morales signed the agreement without reading it.

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<sup>41</sup> See, e.g., Texas Disciplinary Rules of Professional Conduct 1.04, 1.08(g). Texas law provides that if a client dismisses a lawyer with whom he has a contingent fee agreement, the client must pay the lawyer what the lawyer would have received under the contract, unless the client dismissed the lawyer with good cause. In such an event, the lawyer is entitled to recover only the value of his services. *Auguston v. Linea Area Nacional-Chile S.A.*, 76 F.3d 658, 662 (5th Cir. 1996); *Rocha v. Ahmad*, 676 S.W.2d 149, 156 (Tex. Ct. App. 1984). Other states have similar laws.

Martinez visited Morales at the hospital and offered him \$15,000 in exchange for Morales signing away all rights that he might have against Martinez. Martinez told Morales that if he did not accept the offer he would “ruin everything for all the other workers.” When Morales told his attorney about the offer, the attorney incorrectly advised him that he had no rights against Martinez because of a law passed 80 years ago, and that he should accept the offer. When Morales refused the offer, the attorney refused to represent him any further.

Morales was discharged from the hospital without being fitted with a prosthesis for his leg, because he had no way of paying for one. He went to live with his brother, who was living in slum housing.

**b. The Second Private Lawyer**

Morales met a translator at the police station who spoke both English and Spanish and who took an interest in Morales’ case. The translator went to an immigrant-rights seminar, where he met one of the few Spanish-speaking attorneys in the city, and asked her to take Morales’ case. She incorrectly responded that Morales had no rights and that he is not covered by workers compensation, and she refused to take his case.

**c. The Legal Services Lawyer**

At the same seminar, the translator also met Mike Holley, a lawyer at Texas Rural Legal Aid’s Southern Migrant Legal Services in Nashville, Tennessee. Holley’s office receives some federal LSC funding, and consequently he can assist only U.S. citizens and certain categories of immigrants. Holley assumed that because Morales was working in the watermelon fields he had an H-2A visa, which would make him eligible for Holley’s assistance. He said that if Morales were eligible and had a valid legal claim, he would take the case. However, on December 3, 2001, when Holley interviewed Morales, he learned that Morales had an H-2B visa and was consequently ineligible for assistance from Holley and from any other lawyer receiving LSC funding.

Holley knew from his experience that there were no non-LSC legal services offices in the region with the experience to handle an employment case on behalf of an H-2B worker. Moreover, most of the non-LSC legal services offices with experience handling farm worker cases handle primarily class actions in order to maximize their effectiveness, and so they would not take a case on behalf of an individual worker.

**d. Two Additional Private Lawyers**

Holley tried to refer Morales to two private attorneys in Texas who had experience representing farm workers, but neither lawyer would take the case. Each lawyer said that the case was logistically too difficult and too expensive and refused to take the case.

**e. Another Private Lawyer**

Holley then referred the case to a plaintiffs' lawyer in Little Rock, Arkansas. The lawyer said that he would take the case but that he needed to find a translator before he could contact Morales. Two months later, the lawyer still had not contacted Morales.

**f. A Non-Lawyer**

Around the same time, Morales met a woman from south Texas who claimed to be a lawyer and promised to help him. Morales told Holley about the lawyer, and Holley did some research on her. He was unable to find her name on the Texas bar roster posted on the Internet, implying that she was not, in fact, licensed to practice law in Texas. When Morales asked her why her name was not on the roster, she stopped returning his telephone calls.

**g. The Department of Labor**

The translator Morales had met at the police station called the Department of Labor on Morales' behalf. An employee of the Department of Labor called Morales, but Morales has never heard from the Department of Labor again.

**h. Morales Represents Himself Pro Se**

Believing that he would not be able to find a lawyer, and wanting his legal proceedings to end quickly so that he could return to his family in Mexico, Morales eventually submitted a

workers' compensation claim against Martinez. Martinez, through his lawyer, responded that Morales should be deported and should not be provided with any benefits. Martinez's papers were in English, so Morales was unable to read them.

#### **h. Another Private Lawyer**

Morales then called Holley, saying that he had not yet heard from the Little Rock lawyer. Holley referred him to a law student working for an attorney in Arkansas, who said she would have someone contact him in a few days.

In the meantime, Martinez contacted Morales and again offered to pay him to settle his case. Doubting that he would ever find a lawyer to help him, desperate after so many months with no income, and eager to return to Mexico, Morales agreed. In exchange for the cash, he signed a release waiving all rights against Martinez.

The next day, the law student working for the Arkansas lawyer contacted Morales, saying she would take his case. Although she is now representing him in his case against Martinez, Morales will have difficulty enforcing his rights because of the release he signed. Although the law student has obtained a prosthetic leg for Morales, he still needs additional medical treatment.

## **II. The labor violations suffered by the petitioners are typical of those suffered by vulnerable immigrant workers in the United States.**

Immigrant workers in the United States covered under the NAALC are extremely vulnerable to violations of their labor law rights.<sup>42</sup> Unskilled immigrant workers are among the

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<sup>42</sup> This complaint will use the general term "labor law" as it is used in the NAALC: laws and regulations, or provisions thereof, that are directly related to:

- a. freedom of association and protection of the right to organize;
- b. the right to bargain collectively;
- c. the right to strike;
- d. prohibition of forced labor;
- e. labor protections for children and young persons;
- f. minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements;
- g. elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party's domestic laws;

people in the United States most vulnerable to labor rights violations.<sup>43</sup> Cultural isolation, physical isolation, minimal or non-existent English language skills, and a lack of understanding of United States laws make many immigrant workers particularly vulnerable to exploitation.<sup>44</sup> Moreover, because many immigrant workers are desperately poor, because they need to recoup the money they spent to travel to the United States, and because they want to find employment in the future, many will accept violations of their labor rights rather than get into disputes with the employers on whom they depend for their livelihoods.<sup>45</sup>

Additionally, the status of being immigrants – even work-authorized immigrants – or of living in families or communities with some undocumented immigrants, makes many immigrants reluctant to report or otherwise defend themselves against violations of their labor rights.<sup>46</sup> Some employers confiscate work permits and other immigration documents to prevent their employees from leaving or from reporting labor violations to the authorities.<sup>47</sup> There are even

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- h. equal pay for men and women;
  - i. prevention of occupational injuries and illnesses;
  - j. compensation in cases of occupational injuries and illnesses;
  - k. protection of migrant workers.

NAALC, Art. 49(1).

<sup>43</sup> United States General Accounting Office, Worker Protection: Labor's Efforts to Enforce Protections for Day Laborers Could Benefit From Better Data and Guidance 11, 14 (Sep. 2002), available at <http://www.gao.gov/new.items/d02925.pdf>.

<sup>44</sup> *Id.*; see also Legal Services Corporation, *The Erlenborn Commission Report*, 15 Geo. Immigr. L.J. 99, 106 (2000); Legal Services Corporation, Overview of Section 1007(h): Summary of Conclusions, Recommendations and Methodology (1979) at 34-36.

<sup>45</sup> Erlenborn Commission Report, *supra* n. 44, at 117-20 (describing the plight of workers with H-2A visas).

<sup>46</sup> A 1995 study by the National Immigration Project of the National Lawyers Guild concluded that “the convergence of immigration and labor law . . . deter[s] alien workers from asserting their rights to the minimum wage, overtime pay, safe working conditions, or union representation to which they are unquestionably entitled.” See Elizabeth Ruddick, *Silencing Undocumented Workers: U.S. Agency Policies Undermine Labor Rights and Standards*, Immigration Newsletter, June 1996, at 1.

<sup>47</sup> This happened to petitioners Torres, Cisneros, Lira, Gonzalez, Ceja-Carballo, Escamilla-Perez, Feria M., Guevara-Hernandez, Lozano Guevara, Lopez Garcia, Morales Donis, Morales Gomez, Perez Ramirez, and Salas Juarez. See discussion *infra* §§ II.A(2)(a) & II.A(3)(a). See also Tracey Middlekauff, *Maid in America*, GothamGazette.com, available at <http://www.gothamgazette.com/commentary/46.middlekauff.shtml>; American Bar Association, Standing Committee on Legal Aid and Indigent Defense (“SCLAID”), *Study of Federally Funded Legal Aid for Migrant Farmworkers* 22-23 (1993).

reports of employers requiring workers to sign contracts obligating the workers to turn over their immigration documents.<sup>48</sup> Even when employers do not actually confiscate work papers, a fear of blacklisting or deportation deters many immigrant workers – even many with valid work authorizations – from reporting workplace violations.<sup>49</sup> Workers on temporary worker visas under the H-2A and H-2B visa programs are particularly vulnerable to abuse because they are allowed to work only for their employers, and their employers can send them home if the workers complain.<sup>50</sup> Other workers whose employers are sponsoring them for legal immigration status are in a similar situation.<sup>51</sup> Likewise, workers with undocumented or non-work-authorized family members may be afraid that those family members will be discovered if the workers complain.<sup>52</sup>

In the most egregious cases, employers have used intimidation and physical force to prevent low-income immigrant workers from complaining about rights violations. For example, in 1995 California state labor officials who raided a sweatshop in El Monte, California discovered 70 Thai workers, mostly women, imprisoned in a gated compound surrounded by

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<sup>48</sup> SCLAID, *supra* n. 47, at 22-23.

<sup>49</sup> See Lora Jo Foo, *The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protection Legislation*, 103 Yale L.J. 2179, 2183-84 (1994); Erlenborn Commission Report, *supra* n. 44, at 117-18; Proceedings of the Erlenborn Commission, March 27, 1999, at 141-43, 149-50 (testimony of Rob Williams, Florida Legal Services) (describing blacklists maintained by employers, and employers who have sent complaining workers home).

<sup>50</sup> See Andrew Scott Kosegi, *The H-2a Program: How the Weight of Agricultural Employer Subsidies Is Breaking the Backs of Domestic Migrant Farm Workers*, 35 Ind. L. Rev. 269, 288 (2001); LSC, *Erlenborn Commission Report*, *supra* n. 44, at 117-19.

<sup>51</sup> See Martha Davis, *No Papers, No Rights, No Safety*, Natl. L.J., Feb. 22, 1993, at 15 (“An undocumented woman from Russia working as a nanny in Minnesota was raped by her employer. Because her employer was sponsoring her for a green card, she did not leave the job and did not report the crime to the police. Similarly, a Chinese woman in the New York area was raped by her employer. To prevent her from reporting the crime, the employer threatened to cut off the sponsorship that he had initiated.”).

<sup>52</sup> See William R. Tamayo, *The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, 33 U.C. Davis L. Rev. 1075, 1082 (2000) (“workers that have undocumented members at home . . . may fear that an employer will retaliate against a complaining employee by calling the Immigration and Naturalization Service . . . and have her deported”).

barbed wire.<sup>53</sup> The workers had been forced to sew garments for some of the nation's major retailers for up to 17 hours a day, earning as little as 60 cents per hour.<sup>54</sup> Workers who attempted to escape were beaten and photographed to serve as a warning to other workers considering fleeing.<sup>55</sup>

One group of immigrant workers who are particularly vulnerable to labor law violations is migrant farm workers. Many live and work in isolated rural labor camps, where they depend upon their crew leaders and employers for food, shelter, transportation, and communication with the outside world.<sup>56</sup> Some workers come to owe their employers money for these expenses, leaving them in a situation resembling indentured servitude.<sup>57</sup> Immigrants doing domestic work often face similarly isolating and exploitative conditions. They often live with their employers and, like farm workers, depend on the employers for food, shelter, and transportation.<sup>58</sup>

As a result of the vulnerability of immigrants to labor law violations, immigrants frequently suffer such violations. For example, wage violations are common in the very sectors of the economy that rely on immigrant workers. Many agricultural workers are denied the minimum wage required by federal and state laws, and many agricultural employers also fail to comply with federal and state laws requiring the maintenance of accurate wage and benefits records.<sup>59</sup> Garment industry workers, many of whom are immigrants, also frequently suffer

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<sup>53</sup> See Fang-Lian Liao, *Illegal Immigrants in Garment Sweatshops: The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights*, 3 Southwestern J. of Law & Trade in the Americas 487, 497 (1996).

<sup>54</sup> Frank Swoboda, *Anti-Sweatshop Program Tailored for the Times*, The Washington Post, May 30, 1996, at A29.

<sup>55</sup> Liao, *supra* n.53, at 498.

<sup>56</sup> Erlenborn Commission Report, *supra* n. 44, at 117.

<sup>57</sup> This happened to all of the individual petitioners. See discussion *infra* §§ II.A(1)(a)(i); II.A(2)(a); II.A(3)(a). See also SCLAID, *supra* n. 47, at 22.

<sup>58</sup> All of the individual petitioners found themselves in this situation. See discussion *infra* § II. Chisun Lee, *Women Raise the City*, Village Voice, March 19, April 9, April 23, 2002.

<sup>59</sup> See *Farm Workers: DOL Making Some Headway in Tackling Lack of Labor Law Compliance in Agriculture*, 162 Daily Labor Report B-1, 2000 (Aug. 21, 2000) (U.S. Department of Labor found low levels of compliance with the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act); *Wage & Hour: Farm Workers Often Denied Minimum Wage, Labor Department Study Says*, 184 Daily Labor Report A-8, 1998 (Sep. 23, 1998) (U.S. Department of Labor found twenty percent of California grape growers and 50%

wage and hour violations. A 1996 United States Department of Labor study found that approximately half of the garment contractors in the United States violate federal minimum wage or overtime laws.<sup>60</sup> Likewise, a California survey of licensed garment contractors similarly found that 51% paid less than the minimum wage, 68% paid no overtime, and 73% did not keep adequate employee records.<sup>61</sup> Day laborers, a large proportion of whom are immigrants, also suffer a high rate of wage and hour violations.<sup>62</sup>

Many immigrants also suffer violations of their right to safe working conditions. For example, Latino workers have a 20% higher rate of work-related deaths than do Whites or African Americans, and foreign-born Latinos have a higher rate of fatalities than do native-born Latinos.<sup>63</sup> One reason for this is that immigrants are concentrated in particularly dangerous types of work. For instance, immigrants are disproportionately represented in agriculture, where many are exposed to pesticides and forced to work without access to basic sanitation facilities.<sup>64</sup> Likewise, day laborers often suffer unsafe working conditions, including a lack of personal protective training and safety training.<sup>65</sup>

Some employers have fired or refused to rehire workers in retaliation for pursuing legal claims. Immigrant workers' fear of retaliation is validated when they see punitive measures

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of farm labor contractors failed to pay federally mandated minimum wage); *Erlenborn Commission Report*, *supra* n. 44, at 108; *SCLAID*, *supra* n. 47, at 18.

<sup>60</sup> *U.S. Labor Department, Close to Half of Garment Contractors Violating FLSA*, 1996 Daily Labor Report 87 d11 (May 6, 1996).

<sup>61</sup> *Ruddick*, *supra* n.46, at 4.

<sup>62</sup> *See United States General Accounting Office, Worker Protection: Labor's Efforts to Enforce Protections for Day Laborers Could Benefit From Better Data and Guidance* 9, 14-15 (Sep. 2002).

<sup>63</sup> *California Working Immigrant Safety & Health Coalition, Improving Health & Safety Conditions for California's Immigrant Workers* 9 (Nov. 2002) (citing Scott Richardson et al., *Hispanic Workers in the U.S.: An Analysis of Employment Distributions, Fatal Occupational Injuries, and Nonfatal Occupational Injuries and Illnesses* (May 2002)). *See also* Nurith C. Aizenman, *Harsh Reward for Hard Labor: For Many Hispanic Immigrants, Work Injuries End Dreams of a New Life*, *Washington Post*, Dec. 29, 2002, at C01 (reporting that a National Academy Sciences report finds "foreign born Latino men are now nearly 2 ½ times more likely to be killed on the job than the average U.S. worker").

<sup>64</sup> *U.S. General Accounting Office, Hired Farmworkers: Health and Well-Being at Risk* GAO/HRD-92-46, at 12, 20 (Feb. 1992); *SCLAID*, *supra* n. 47, at 23-25.

<sup>65</sup> *GAO, Worker Protection*, *supra* n.43, at 15.

taken against fellow workers who complain or seek out legal services. The retaliation is sometimes systematic – Florida sugar cane employers have kept a blacklist of workers that included workers who had sought legal assistance.<sup>66</sup>

**III. The United States denies many immigrant workers appropriate access to a forum to enforce their labor-related rights.**

**A. The United States denies many immigrant workers access to lawyers receiving any LSC funding.**

Since 1974, the United States has funded lawyers in every state to provide legal representation for low-income people in civil cases. The funding is allocated to the Legal Services Corporation, which in turn allocates the funding to independent, non-profit organizations called “legal services offices.” When it created this legal services system, Congress stated that “there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances,” and that “providing legal assistance to those who face an economic barrier to adequate counsel will serve best the ends of justice and assist in improving opportunities for low-income persons . . .”<sup>67</sup>

For fiscal year 2005, Congress allocated \$335,282,000 to LSC, which funded lawyers at 143 legal services offices in every state in the nation.<sup>68</sup> The legal services offices also received approximately an equal amount of money from state and local governments and from private donors.<sup>69</sup>

Since 1996, the United States has barred organizations that receive any funds from the LSC (“LSC grantees”) from providing legal assistance “for or on behalf of any alien unless the alien is present in the United States and is [among the categories specified as eligible for assistance].”<sup>70</sup> The legal services offices are barred not only from using federal government

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<sup>66</sup> Erlernborn Commission Report, *supra* n. 44, at 119.

<sup>67</sup> LSC Act § 1001, 42 U.S.C. § 2996.

<sup>68</sup> Consolidated Appropriations Act, 2005, Pub. L. 108-447 (2004); Helaine Barnett, Welcome to Legal Services, *available at* [http://www.lsc.gov/welcome/wel\\_mes.htm](http://www.lsc.gov/welcome/wel_mes.htm).

<sup>69</sup> Project to Expand Resources for Legal Services, A Chart of Significant Fundraising Activities for Legal Services (on file at the Brennan Center for Justice).

<sup>70</sup> See Omnibus Consol. Rescissions & Approps. Act of 1996, Pub. L. No. 104-134, § 504(a), 110 Stat. 1321, 1321-53 to -56; Omnibus Consol. Approps. Act, 1997, Pub. L. No. 104-

money to represent non-eligible immigrants, but also cannot use money from state or local governments or from private donors to provide this representation. Consequently, the United States not only precludes certain immigrants from obtaining access to federally funded legal services, but it also precludes those immigrants from obtaining access to legal services funded by state and local governments, charitable foundations, and other private donors whenever that funding goes to legal services offices that receive even a dollar of LSC funding. Because LSC grantees are often the oldest and largest no-cost legal services providers in their areas, and because they are frequently the only no-cost legal services providers in their areas, the United States effectively bars many immigrants from obtaining quality, no-cost legal services.<sup>71</sup>

The immigrants who are excluded from receiving assistance include many who are lawfully present and authorized to work in the United States, as well as most undocumented immigrants.<sup>72</sup> Among the many excluded immigrants are, for example, the following:

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208, § 502, 110 Stat. 3009, 3009-59 to -60 (1996); Dep'ts of Commerce, Justice, and State, the Judiciary, and Related Agencies Approps. Act, 1998, Pub. L. No. 105-119, § 502(a)(2), 111 Stat. 2440, 2510-11 (1997); Omnibus Consol. and Emergency Supp. Approps. Act, 1999, Pub. L. No. 105-277, Title V, 112 Stat. 2681, 2681-107 (1998); Consol. Approps. Act, 2000, Pub. L. No. 106-113, Title V, 113 Stat. 1501, 1501-A49 (1999); D.C. Approps.--FY 2001, Pub. L. No. 106-553, Title V, 114 Stat. 2762, 2762A-101 (2000); Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 2002, Pub. L. No. 107-77, 115 Stat. 748, 794 (2001); Consolidated Appropriations Resolution, 2003, Pub. Law 108-7, 117 Stat. 11, 96 (2003); Consolidated Appropriations Act, 2004, Pub. L. 108-199, 118 Stat. 3 (2004); Consolidated Appropriations Act, 2005, Pub. L. 108-447 (2004); *see also* 45 C.F.R. § 1626.

Prior to 1996, LSC grantees were prohibited from using their LSC funds to represent certain categories of aliens but were allowed to use their state or local government funding and the funding they received from private donors to represent those aliens. *See, e.g.,* An Act Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1984, and for Other Purposes, Pub. L. No. 98-166, tit. II, 97 Stat. 1071, 1090 (1983).

<sup>71</sup> *See* discussion *infra* at § III.C.

<sup>72</sup> The only aliens eligible for assistance from LSC grantees are lawful permanent residents, close family members of United States citizens who have pending applications for adjustment of status to permanent resident, refugees, asylees, refugees granted conditional entry prior to April 1, 1980, persons granted withholding of deportation, Canadian-born American Indians at least 50% Indian by blood, members of the Texas band of Kickapoo, special agricultural workers whose status is adjusted to that of temporary resident alien, foreign nationals who seek assistance pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, temporary agricultural workers with H-2A visas (who can receive assistance only with matters relating to their employment contract), certain victims of domestic violence (who are eligible only for legal assistance directly related to the prevention of, or obtaining relief from, battery or cruelty; the assistance cannot be paid for with the lawyer's LSC funding), and

- workers – such as the individual petitioners – recruited and brought into the United States by their employers under the federal H-2B visa program for nonagricultural employees;
- individuals granted temporary protected status because they are from countries, like Honduras and Nicaragua, that the United States has recognized as being unsafe;
- asylum applicants (persons who have been screened by the Department of Homeland Security and found to have a substantial claim to asylum are authorized to engage in employment but not eligible for assistance from LSC grantees until they receive official asylum status);
- other refugee-like immigrants such as those granted Deferred Enforced Departure (DED); applicants for lawful permanent residence under special laws such as the Nicaraguan Adjustment and Central American Relief Act (NACARA), the Haitian Refugee Immigration Fairness Act (HRIFA), section 568 of Public Law 106-429 (Nov. 6, 2000) (providing for the adjustment of certain Southeast Asian parolees); and applicants for withholding of removal, and for relief under the Convention Against Torture.
- people granted permission to enter the United States for humanitarian or other reasons (who may be granted discretionary work authorization);
- applicants for family-based visas who are awaiting processing of their applications, but have been granted permission to work in the United States in the interim (who are eligible for LSC representation only in narrow circumstances);
- special immigrant juveniles (undocumented children adjudicated state dependents because of abandonment, neglect, or abuse).

Each of these categories of workers contributes the value of their labor to the economy of the United States, pays taxes on the income earned in this country, and is entitled, in theory, to the protection of United States labor laws. Yet, without representation by counsel, the ability to enforce these rights is extremely limited. By denying low income workers in these categories eligibility for representation by lawyers who receive any LSC funds, the United States deprives them of that level of access to the justice system that it has found to be appropriate to its own domestic workers.

**B. Workers who obtain assistance from legal services lawyers are more likely to enforce their labor rights.**

Whether workers whose labor rights have been violated can obtain remedies for the violations depends in large part on whether or not the workers are able to obtain legal assistance. As is clear from the stories of the individual petitioners and their co-workers, immigrant workers

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victims of international trafficking. 45 C.F.R. §§ 1626.4, 1626.5, 1626.10, 1626.11; Trafficking Victim’s Protection Act, 22 U.S.C. § 7105(b) (2001).

who are ineligible for LSC-funded services have few options for obtaining help to navigate the justice system and are unlikely successfully to enforce their labor rights. In contrast, workers who receive assistance from LSC-funded programs *are* able to enforce their rights. For example, workers represented by LSC grantee California Rural Legal Assistance (“CRLA”) filed a lawsuit claiming they had toiled for weeks planting, weeding and harvesting asparagus without being paid, and had been forced to live in substandard housing. In September 2001, Victoria Island Farms agreed to pay the workers \$542,969 in back wages and to spend nearly \$268,000 to improve the housing for the farm’s field workers.<sup>73</sup>

Numerous individuals whose labor rights have been violated have secured help from LSC grantee programs in filing complaints with United States governmental agencies like the United States Equal Employment Opportunity Commission (EEOC), prompting the agencies to intervene. For example, Blanca Alfaro, an employee of Tanimura & Antle, one of the United States’ largest employers of migrant farm workers, turned to CRLA after being subjected to sexual harassment by her supervisors. With CRLA’s assistance, Alfaro filed a complaint with the EEOC, which then determined that a Tanimura & Antle production manager had required sexual favors from Alfaro as a condition for employment. After the EEOC filed a lawsuit against the company, the company agreed to pay \$1,855,000 to Alfaro and to other employees who had been sexually harassed by the company’s management. The company also permitted the EEOC to monitor its sexual harassment training efforts for three years.<sup>74</sup>

**C. It is unlikely that immigrant workers can enforce their rights without access to lawyers receiving some LSC funding.**

As the experiences of the individual petitioners demonstrate, it is difficult, and often impossible, for low-income workers in the United States to enforce their labor rights in judicial or administrative forums without access to LSC grantee lawyers. In fact, Congress recognized

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<sup>73</sup> Bruce Spence, *San Joaquin County, Calif., Asparagus Grower to Pay Back Wages*, *The Record*, Sept. 6, 2001, page reference unavailable.

<sup>74</sup> News Release issued by the Equal Employment Opportunity Commission, Feb. 23, 1999, available at <http://www.eeoc.gov/press/2-23-99.html>; Betsy Lordan, *Settlement Focuses Spotlight on Harassment of Latino Migrant Workers*, *Monterey County Herald*, Feb. 26, 1999.

when it created LSC that providing lawyers to low-income people in civil cases is the best way to ensure that justice is served in those cases.<sup>75</sup>

In order to obtain certain remedies for labor law violations, workers must go to court.<sup>76</sup> A prime example is the Migrant and Seasonal Agricultural Worker Protection Act (“AWPA”), because workers can obtain damages or injunctive relief under the AWPA only if they go to court.<sup>77</sup> Although there is an administrative enforcement mechanism through the U.S. Department of Labor (U.S. DOL), the only remedy it can grant is assessing fines.<sup>78</sup> In fact, when Congress created the private right of action under the AWPA, it recognized that administrative mechanisms were inadequate to protect workers, and that providing workers with access to the courts was the only way to protect them, stating:

It has long been apparent that neither volunteerism on the part of agribusiness nor the puny enforcement efforts of the Department of Labor can be expected to make a significant difference in the working conditions of farmworkers. . . . [T]he AWPA provides for a private right of action . . . This, I am sure, will prove to be the most important deterrent against the continued abuse of migrant and seasonal farmworkers.<sup>79</sup>

In addition to pointing to the fact that the U.S. DOL’s administrative mechanism cannot provide some important remedies, Congress has also noted another reason that efforts by farm workers to enforce the AWPA must depend in large part on legal services lawyers: the U.S. DOL historically has been hampered in its enforcement efforts by insufficient funding.<sup>80</sup>

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<sup>75</sup> See discussion *supra* at § III.A.

<sup>76</sup> Government agencies lack legal authority to seek some private remedies for workers, and some agencies choose not to seek even some of the remedies that they are authorized to seek. Erlenborn Commission Report, *supra* n. 44, at 140.

<sup>77</sup> 29 U.S.C. § 1854.

<sup>78</sup> 29 U.S.C. § 1853.

<sup>79</sup> 128 Cong. Rec. H10456 (daily ed. Dec. 20, 1982) (statement of Rep. Ford) (emphasis added). Congress had amended the Farm Labor Contractor Registration Act, the AWPA’s predecessor statute, to create a private right of action precisely because the administrative enforcement mechanisms had proved ineffective in enforcing workers’ rights. See S. Rep. No. 1206, 93d Cong., 2d Sess. 3 (1974) (“It has become clear that the provisions of the Act cannot be effectively enforced. Noncompliance by those whose activities the Act was intended to regulate has become the rule rather than the exception. . . . It is quite evident that the Act in its present form [with solely administrative enforcement] provides no real deterrent to violations.”). See also H.R. Rep. No. 1493, 93d Cong., 2d Sess. 1 (1974).

<sup>80</sup> “As budget cuts undermine the Federal Government’s ability to enforce the law, farm workers will depend increasingly on the private bar and legal services organizations to insure

As the individual petitioners discovered, the U.S. DOL is not set up to deal with – and in fact often places obstacles in the way of – workers who do not speak English, who lack a permanent address, and who lack access to telephones.<sup>81</sup> Additionally, many immigrant workers simply lack knowledge about administrative remedies available to them and about how to pursue those remedies.<sup>82</sup> For these reasons, workers with legal representation are more likely to obtain relief from government agencies.<sup>83</sup>

Workers who must go to court to enforce their rights under the AWPAs and other statutes have a significantly higher chance of succeeding if they are represented by counsel. Although petitioners have not found any studies regarding the effectiveness of counsel in labor cases, a recent study in New York City’s Housing Court found that when tenants were represented by lawyers they were far more likely to prevail.<sup>84</sup> One reason for this is that courts generally disfavor *pro se* litigation, preferring that litigants appear with counsel.<sup>85</sup> Proceeding without counsel is particularly difficult for most immigrant workers, who are unfamiliar with their rights, may not know how to use the legal system to enforce those rights, and may lack the language skills to navigate the system.<sup>86</sup>

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that violators are punished and that they are made whole for their losses and suffering.” 128 Cong. Rec. H10456 (daily ed. Dec. 20, 1982) (statement of Rep. Ford). See also Erlenborn Commission Report, *supra* n. 44, at 140; Human Rights Watch, *Fingers to the Bone: United States Failure to Protect Child Farmworkers*, text accompanying nn. 190-92, 195-96 (2000), available at <http://www.hrw.org/reports/2000/frmwkr/>.

<sup>81</sup> See discussion *supra* §§ II(A)(1)(b), II(A)(1)(c).

<sup>82</sup> Erlenborn Commission Report, *supra* n. 44, at 139.

<sup>83</sup> See discussion *supra* at § III.B.

<sup>84</sup> In particular, the study found that only 32% of represented tenants received final judgments against them, while 52% of unrepresented tenants received such judgments. Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment*, 35 Law & Soc’y Rev. 419, 427 (2001). Tenants with volunteer counsel were less likely to receive eviction orders, and more likely to receive stipulations for repairs or rent abatements. *Id.* at 429. The authors conclude: “The findings from this experiment clearly show that when low-income tenants in New York City’s Housing Court are provided with legal counsel, they experience significantly more beneficial procedural outcomes than their *pro se* counterparts.” *Id.*

<sup>85</sup> See generally Jona Goldschmidt, *The Pro Se Litigant’s Struggle for Access to Justice*, 40 Family Ct. Rev. 36, 36 (2002) (discussing the hostility that judges and judicial staff often express towards *pro se* litigants).

<sup>86</sup> See Deborah J. Cantrell, *Justice for Interests of The Poor: The Problem of Navigating the System Without Counsel*, 70 Fordham L. Rev. 1573, 1586 (2002) (“[P]ro se assistance

Consequently, in order adequately to enforce their rights in court workers who are ineligible for assistance from LSC grantees have no option other than to search for non-LSC low-cost lawyers, or pay for private attorneys out of pocket. As petitioner Morales and the other individual petitioners learned, finding other low-cost lawyers is generally impossible, because in many parts of the country there are no other lawyers available to help immigrants with labor claims.<sup>87</sup> For example, in Arkansas and Wyoming there is no legal services program able to provide assistance to people ineligible for assistance from LSC grantees.<sup>88</sup> Although an unrestricted legal services program exists in Tennessee, it does not take labor cases.<sup>89</sup> In Oregon, where forty-four percent of immigrants report that they have legal problems related to their employment, employment issues such as collection of wages, wrongful discharge, discrimination, and unsafe working conditions are a significant emerging area of unmet legal

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programs that are targeted at the poor have found that while education is correlated with the ability to successfully proceed as a pro se party, there are even more basic factors that need to be considered such as the client's ability to read and speak English, whether the client has emotional or mental disabilities, and whether the client has some degree of self-motivation.”); Charter, The Justice Web Collaboratory, *available at* [http://a2j.kentlaw.edu/a2j/system\\_design/charter.cfm](http://a2j.kentlaw.edu/a2j/system_design/charter.cfm) (“Pro se litigants often face institutional barriers to communication and understanding: specialized legal jargon, procedures required to be completed in English when the litigant’s primary language is not English, and inadequate access for those with sight or hearing disabilities.”).

<sup>87</sup> See discussion *supra* § II(A)(1)(c) (describing inability of petitioners to obtain legal services assistance in Idaho); II(A)(2)(b) (describing inability of petitioner to obtain legal services assistance in Michigan and Idaho); II(A)(3)(b) (describing inability of petitioners to obtain legal services assistance in Idaho); II(A)(4) (describing inability of petitioner Morales to obtain legal services assistance in Texas, and extreme difficulty finding private counsel). See also Erlenborn Commission Report, *supra* n. 44, at 135; Proceedings of the Erlenborn Commission, March 27, 1999, at 148-49 (testimony of Rob Williams, Florida Legal Services) (stating that “[i]n large areas of the South . . . [t]here’s no non-LSC services available, and that even in Florida the non-LSC program does “not handle any cases of individual matters”).

<sup>88</sup> Arkansas Legal Services’ Response to Program Letter 2000-7, Sep. 13, 2002, p.3, *available at* <http://www.rin.lsc.gov/Stplns/Arkansas%20Self%20Evaluation%20Report.pdf>; Letter from Janet Millard, Director, Wyoming Legal Services, to LSC, April 16, 2002, p. 13, *available at* <http://www.rin.lsc.gov/Stplns/Wyoming%20Self%20Evaluation%20Report.pdf>.

<sup>89</sup> Letter from Douglas A. Blaze, Tennessee Alliance for Legal Services, to Randi Youells, LSC, Sept. 20, 2001, at 13.

need.<sup>90</sup> In Florida, the non-LSC program primarily handles class actions, and does not handle individual cases.<sup>91</sup>

Private counsel are unlikely to take on labor claims for many immigrant workers, either on a pro bono basis or a fee for service basis. The American Bar Association's Center for Pro Bono has reported that there are few lawyers in the United States willing to represent immigrants in labor cases on a pro bono basis.<sup>92</sup> Similarly, the National Employment Lawyers Association, the membership organization for lawyers representing plaintiffs in labor cases, has reported that its members are generally unable to represent immigrant agricultural workers.<sup>93</sup> The unavailability of the private bar to handle immigrant workers' labor cases is confirmed by the President of the North Carolina Bar Association, who reports that "there are just not enough civil legal resources available from the private bar, paid or pro bono, to ensure that migrant workers achieve even minimum access to their basic human and contract rights."<sup>94</sup>

There are several reasons for the unwillingness of the private bar to represent immigrant workers in labor cases.<sup>95</sup> For one thing, many private lawyers lack the language skills to communicate with non-English-speaking immigrant workers.<sup>96</sup> Additionally, many private lawyers lack the resources to travel to remote areas where many immigrant workers (particularly agricultural workers) work and reside, and to communicate with migrant workers traveling around the country.<sup>97</sup> Private lawyers with the expertise in agricultural labor law that many immigrant workers require usually represent growers and consequently have conflicts of interest that prevent them from representing workers.<sup>98</sup> Private lawyers are unlikely to take labor cases

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<sup>90</sup> Oregon State Bar et al., *The State of Access to Justice in Oregon, Part I: Assessment of Legal Needs* (March 2000).

<sup>91</sup> Proceedings of the Erlenborn Commission, March 27, 1999, at 149 (testimony of Rob Williams, Florida Legal Services).

<sup>92</sup> Erlenborn Commission Report, *supra* n. 44, at 134.

<sup>93</sup> Erlenborn Commission Report, *supra* n. 44, at 133-34.

<sup>94</sup> Erlenborn Commission Report, *supra* n. 44, at 134 (quoting Larry B. Sitton, North Carolina Bar Association).

<sup>95</sup> See generally SCLAID, *supra* n. 47, at 13-16.

<sup>96</sup> Erlenborn Commission Report, *supra* n. 44, at 131-34.

<sup>97</sup> Erlenborn Commission Report, *supra* n. 44, at 131-34.

<sup>98</sup> SCLAID, *supra* n. 47, at 16.

involving low-wage workers on a fee for service basis, because the damage awards are generally too low to make it worthwhile for lawyers to spend time litigating them.<sup>99</sup> Even when there is private counsel willing and able to take labor claims for immigrant workers, most low-income immigrant workers will find paying for counsel prohibitively expensive. This is clear from a comparison between the hourly rates earned by most lawyers, and those earned by most low-wage workers. For example, the plaintiff-side civil litigation attorneys in Oregon charge their clients \$167 per hour on average,<sup>100</sup> while farm workers earn on average only about \$5.95 per hour.<sup>101</sup>

### **Conclusion**

A fundamental precept of the NAALC is that, while the level of labor protection is left to the discretion of the signatory countries, whatever rights and remedies a country does provide to its workers must be enforceable through an open, accessible and practical process. The United States' system for enforcing its labor laws relies very heavily upon the right to seek remedies in court, and it is a practical reality that to be able to do so, workers must have access to affordable counsel. Prohibiting lawyers who receive any federal funding from assisting employment-authorized foreign workers excludes those workers from any meaningful opportunity to enforce the rights that are afforded them, in theory, under United States law. This exclusion violates the obligations of the United States under the NAALC.

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<sup>99</sup> Erlenborn Commission Report, *supra* n. 44, at 132-34; SCLAID, *supra* n. 47, at 16.

<sup>100</sup> Oregon State Bar, 2002 Economic Survey 32 (2002), *available at* [http://www.osbar.org/\\_docs/econsurv02/ecosurvey02\\_w.pdf](http://www.osbar.org/_docs/econsurv02/ecosurvey02_w.pdf).

<sup>101</sup> U.S. Department of Labor, Findings From the National Agricultural Workers Survey 1997-1998 (2000), at 33, *available at* [http://www.dol.gov/asp/programs/agworker/report\\_8.pdf](http://www.dol.gov/asp/programs/agworker/report_8.pdf).

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