



## **United States of America**

### **Stakeholder Report for the United Nations Universal Periodic Review**

**Submitted by The Advocates for Human Rights,**  
a non-governmental organization in special consultative status  
and  
**Centro de Trabajadores Unidos en la Lucha (CTUL)**

for the 36th Session of the Working Group on the Universal Periodic Review  
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Founded in 1983, **The Advocates for Human Rights** (“The Advocates”) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact-finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers and human trafficking victims in the Upper Midwest region of the United States. The Advocates works to improve Minnesota’s response to human trafficking through research, training, and protocol development.

**Centro de Trabajadores Unidos en la Lucha (CTUL)** organizes low-wage workers from across the Twin Cities to develop leadership and educate one another to build power and lead the struggle for fair wages, better working conditions, basic respect, and a voice in our workplaces. CTUL is an organization of workers and for workers, committed to securing fair working conditions for present and future generations. We believe that we as workers can be the most effective voices and advocates for the betterment of our wages and working conditions. We are devoted to proving that as one united force, we will be able to prove the truth of the words: SI SE PUEDE!

## I. EXECUTIVE SUMMARY

1. This report addresses the United States' compliance with its human rights obligations to prevent and respond to labor exploitation and labor trafficking. The report will discuss shortfalls in protecting victims of trafficking, insufficient protections for workers experiencing labor exploitation, retaliation, subcontracting, worker organizing, and the vulnerabilities of migrant workers.
2. The United States does not have good data regarding the prevalence of labor trafficking nationally or at the state level because most agencies and nongovernmental organizations are not trained to identify cases. As a result, the available numbers almost certainly undercount trafficking victims. In Minnesota, according to a biannual human trafficking report from the State, service providers reported working with 57 victims of labor trafficking in 2016, while law enforcement reported investigating 7 labor trafficking cases.<sup>1</sup> The National Human Trafficking Hotline received calls describing 1,888 cases in 2018 where labor trafficking was present.<sup>2</sup>
3. Labor exploitation is widespread. The State of Minnesota estimates that 39,000 Minnesotans experience wage theft every year, losing in aggregate nearly 12 million dollars.<sup>3</sup> Low-wage, immigrant workers are particularly vulnerable. In a 2016 report on employee abuse conducted by CTUL, nearly half of the respondents said they had experienced wage theft in the past year.<sup>4</sup>
4. The Advocates for Human Rights worked with CTUL to interview workers who had experienced labor exploitation. Uniformly, participants asked that their names be used because they were determined to draw attention to the abuses they experienced and the ways the U.S. government falls short in protecting workers. The Advocates also drew on the experiences of its clients who were victims of labor trafficking but removed all identifying information and included only summaries of their cases. The personal narratives were supplemented with additional research demonstrating that the experiences of these workers are common across the United States.

## II. BACKGROUND AND FRAMEWORK

### A. 2015 Universal Periodic Review of the United States

1. *Ratify international conventions protecting workers and populations vulnerable to exploitation and trafficking.*

#### **Status of Implementation: Partially Accepted, Not Implemented**

5. The United States accepted recommendations to ratify the Convention on the Rights of the Child; the Convention on the Elimination of All forms of Discrimination against Women; the Convention on the Rights of Persons with Disabilities; and International Labor Organization (ILO) Convention 111.<sup>5</sup> The United States has yet to ratify any of these conventions.
  6. The United States did not support recommendations to ratify any of the international human rights treaties not specifically identified above.<sup>6</sup>
2. *Protect all workers from exploitation, especially in the agricultural sector*

### **Status of Implementation: Partially Accepted, Partially Implemented**

7. The United States supported all recommendations to ensure that all workers are protected from exploitation and forced labor, including agricultural workers. However, enforcement of labor and employment laws is insufficient and immigrant workers are at particular risk of exploitation.
  8. The United States did not accept the recommendation to remove the agricultural exemption in the Fair Labor Standards Act.<sup>7</sup>
- 3. Establish and enforce protections for victims of labor or human trafficking, especially women and children*

### **Status of Implementation: Accepted, Partially Implemented**

The United States accepted all recommendations to strengthen protections for victims of human trafficking.<sup>8</sup> However, despite legal protections for trafficking victims, U.S. policy remains heavily focused on domestic minor sex trafficking, leaving labor trafficking victims with fewer resources and protections.

#### **B. Domestic Legal Framework**

9. U.S. law protects workers from slavery regardless of migration status.<sup>9</sup> Federal laws against labor trafficking derive from the Thirteenth Amendment to the U.S. Constitution prohibiting “slavery or involuntary servitude.”<sup>10</sup> The federal Trafficking Victims Protection Act (TVPA), passed in 2000, created criminal statutes to penalize forms of human trafficking, including forced labor; trafficking with respect to peonage, slavery, involuntary servitude, and forced labor; and sex trafficking.<sup>11</sup> In 2015, the federal Justice for Victims of Trafficking Act was authorized to improve the enforcement of trafficking laws.<sup>12</sup> Minnesota passed a trafficking law in 2005, creating separate offenses for labor trafficking<sup>13</sup> and sex trafficking.<sup>14</sup>
10. Federal law provides certain protections to individuals who meet the definition of a “victim of a severe form of human trafficking” found in the TVPA. A severe form of trafficking is when a worker is trapped in involuntary servitude, peonage, debt bondage, or slavery through the use of force, fraud, or coercion.<sup>15</sup> The TVPA provides various types of immigration status to foreign national victims (continued presence, T visas, and U visas), in addition to access to work authorization and public benefits. Minnesota law decriminalizes minors engaged in prostitution-related offenses and provides services for victims of commercial sexual exploitation and trafficking 24 years of age and younger.<sup>16</sup>
11. Federal, state, and municipal laws<sup>17</sup> govern conditions in the workplace, including wage and hour laws. The federal Fair Labor Standards Act regulates minimum wages, overtime pay, child labor, and lactation breaks for nursing mothers.<sup>18</sup> Immigration status is irrelevant when determining whether a worker is protected by the FLSA. A federal appellate court found that “employers who unlawfully hire unauthorized aliens must otherwise comply” with the FLSA.<sup>19</sup>
12. Every state has laws that impose labor standards on employers working in that state, though they vary significantly in the level of protection they offer. The Minnesota Fair Labor Standards Act (MFLSA) is the state law counterpart to the federal FLSA.<sup>20</sup> Like

the FLSA, the MFLSA covers minimum wage, overtime, prevailing wages, as well as meal and rest periods. Minnesota has a separate law that covers breaks for nursing mothers, the Women's Economic Security Act.<sup>21</sup> As with the federal law, immigration status is irrelevant to protection under the state statute.

13. Both the FLSA and MFLSA have significant limitations that weaken their ability to protect workers. Independent contractors and trainees, for instance, are not covered by the FLSA at all.<sup>22</sup> Salaried white-collar professionals are not subject to the FLSA's minimum wage and overtime requirements. The FLSA also exempts certain sectors from minimum wage, overtime requirements, or both. The largest minimum wage exemption is for tipped workers, but the FLSA also allows for paying less than minimum wage to workers under age 20, students, certain workers with disabilities, some seasonal workers, farmworkers on small farms, and domestic companions, among others. Farmworkers and live-in domestic service workers are among those exempt from overtime pay. As a result of all the FLSA exemptions, while 1.2 million workers nationally earn the minimum wage, 1.7 million workers are paid less than the minimum wage.<sup>23</sup>
14. All Minnesota businesses are subject to the MFLSA. However, like the FLSA, certain kinds of workers, such as independent contractors, are entirely excluded from the MFLSA. Others receive less protection. Salaried white-collar professionals are not subject to the minimum wage and overtime requirements, along with certain seasonal workers, salaried farmworkers, taxi drivers, and others. Minnesota does not allow tipped employees to be paid less than minimum wage, addressing one of the largest exemptions under the FLSA. The MFLSA also covers farmworkers and domestic workers, with few exceptions, again compensating for the lack of coverage under the FLSA. Minnesota is not uniformly more protective, however. For example, state law creates a discriminatory standard that leads to certain immigrant workers in seasonal hospitality businesses lawfully being paid less than the state minimum wage.<sup>24</sup>

### **III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS**

#### **Right or area 12.7. Prohibition of slavery, trafficking**

7. Despite a Constitutional prohibition on slavery, the U.S. response to labor trafficking does not sufficiently prevent trafficking or protect workers, especially where it overlaps with the U.S. immigration system. The U.S. immigration system both fuels human trafficking and fails to adequately protect victims once identified.
8. There are very few pathways for low-wage, low-skills workers to legally migrate to the United States and those pathways that do exist contribute to labor trafficking. One of the most common pathways are temporary worker visas. All of the temporary worker visas are tied to the sponsoring employer; the worker cannot work for anyone else without reapplying for their visa.<sup>25</sup> Traffickers take advantage of these visa programs, using their control over the victim's immigration status to compel them to work even when the work is not the same as promised, or the conditions are different, including lower or even no wages. The Advocates has assisted dozens of victims who all worked for the same employer on a temporary visa program for agricultural workers and were forced to pay kickbacks in order to keep their jobs or they were deported. A 2018 report found this

pattern was typical nationwide; the National Trafficking Hotline identified 800 victims of labor trafficking in a two-year period who were in the country on temporary worker visas, nearly half of all victims whose legal status was known.<sup>26</sup>

9. Once in a trafficking situation, U.S. law provides several pathways for victims to gain immigration status: continued presence, T nonimmigrant status, and U nonimmigrant status. In many cases, however, the programs are either not being used as designed or are overwhelmed by need.
10. The TVPA authorizes federal law enforcement officials to permit an individual's "continued presence" in the United States if the individual is a victim of a severe form of trafficking so that they can assist in the investigation and prosecution of their trafficker.<sup>27</sup> However, federal law enforcement officials based in Minnesota request continued presence for very few victims, even in cases where it is clearly allowed under the statute. The Advocates assists one victim who was denied continued presence even though his case is being prosecuted as a forced labor case and he is a key witness, the very scenario for which continued presence was created.
11. The TVPA also created the T visa, which allows foreign victims of trafficking to remain in the United States for up to four years, receive work authorization, and access government benefits, and provides a path to citizenship. However, this visa is only given to victims willing to "comply with any reasonable request for assistance" with criminal investigations into their perpetrators, though there are exceptions for victims under 18 and those unable to cooperate as a result of trauma. The Advocates has found that local, state and federal law enforcement agencies are inconsistent in certifying that victims of trafficking assisted in an investigation, imposing additional restrictions or waiting periods. Though victims can apply without such certification, it makes the process more difficult.
12. The T visa is also too rarely utilized. Federal law provides for 5,000 T-1 visas annually. Since its inception, however, that quota has never been reached. This indicates, in part, the difficulty of identifying victims. However, it also indicates the difficulty of getting a T visa approved. In 2018, there were 1,613 T visa applications; however, USCIS approved only 576 that year—about 35 percent. By comparison, in 2015, USCIS received 1,040 applications and approved more than half.<sup>28</sup> Processing time has also increased dramatically. The Advocates' clients have seen wait times increase from less than a year to 18 months, receiving their visas long after the assistance they received under the TVPA has been exhausted even though they are still not fully eligible for public benefits.
13. Finally, federal law provides important protection against deportation and work authorization through U nonimmigrant status. This status is for victims of labor trafficking that falls short of a "severe form of human trafficking" as well as other serious crimes.<sup>29</sup> The U visa requires that a certifying law enforcement agency confirm that the victim was helpful, currently is being helpful, or will likely be helpful in the investigation or prosecution of the case. The U visa status is limited by a statutory cap that allows only 10,000 visas to be issued each year. Once the cap is reached, applicants are put on a waiting list to receive a visa the following year. As of October 2018, 128,079 victims and 89,999 family members had pending U visa applications.<sup>30</sup>

14. Traffickers often deploy threats of arrest and deportation to keep foreign national victims trapped. These threats are effective because the agency charged with arresting and deporting people who have violated U.S. immigration laws, ICE's Enforcement and Removal Office (ERO), does not prioritize identifying trafficking victims. While the 2008 Trafficking Victims Protection Reauthorization Act requires ICE to screen some unaccompanied immigrant children for trafficking,<sup>31</sup> there is no mandate or reported protocol for screening others for human trafficking, even when those individuals have been reported to ICE by an employer in potential retaliation for a labor complaint. In the case of one client, the trafficker bonded him out of immigration detention. At no point during the victim's arrest or release back to his trafficker did immigration officials identify or even screen for the possibility of labor trafficking.
15. The current anti-immigrant rhetoric and policy exacerbates the problem. Workers who might otherwise attempt to leave a trafficking situation or report their trafficker may be too fearful to do so. Traffickers may use such immigration policies to further exploit laborers, citing increased immigration enforcement as a threat. Additionally, amid the push to ramp up the deportation machine, immigration officers may take less care in determining whether someone is a potential victim or witness of trafficking instead of a deportable migrant.

### **Right or area 23.2. Right to just and favorable conditions of work**

16. As a result of an environment of minimal penalties and insufficient oversight, workers report continuing violations of their rights. Though both federal and state law guarantee certain protections to workers, penalties for non-compliant employers are minimal and the most serious penalties are rarely pursued. The agencies charged with enforcing those laws also lack resources to properly investigate problem industries. Traditionally, the agencies have been reactive and complaint-driven, rather than proactively and independently undertaking investigations that might uncover cases where workers were too afraid to complain. For a more thorough discussion of the problems with the law and enforcement around labor exploitation, see Annex A. This has begun to shift recently, though the change at the state level began in early 2019 and so no results are apparent yet.

#### *Wage theft*

17. When Mario Torres<sup>32</sup> began his employment as a janitor, he often worked 7 days a week for 13 hours each day without any breaks. He had to find time to eat while waiting to be released from each location they cleaned. He received only 10 dollars per hour and no overtime pay for working upwards of 91 hours a week. In the six years that he worked for that employer, he was never afforded a single lunch break and was given no sick days. At one point the company told workers that it went "bankrupt" and failed to pay workers for a month of work. The company changed its name and promised to pay workers what they were owed but never did. Mario did not know that, as a worker in the United States, he was entitled to lunch breaks and overtime pay, so never demanded them for fear of being fired.
18. Later, Mario was forced to register as an independent contractor when working for a cleaning company. The cleaning company required him to set up a business bank account and only paid him monthly, often being one or two months late with payments. Illegally

misclassifying employees as independent contractors is a frequent tool of employers looking to evade state and federal labor standards.

19. Mario's was not the only story about wage theft and workplace abuses. Mayela de la Rosa<sup>33</sup> was originally from Mexico. She currently owns a cleaning business, but when she first began in housekeeping, she was paid only \$800-\$1,000 a month. She was injured in a workplace accident, and as a result was offered fewer hours of work, too little for her to make a living. Her employers, knowing of her undocumented status, told her she could do the job she was assigned or leave; she felt she had no recourse but to stay. Her doctor subsequently imposed workplace accommodations, and she was fired two weeks later.
20. While wage theft and minimum wage violations occur across all populations in the United States, low-wage workers are disproportionately represented. In a study of low-wage workers in three major cities, the National Employment Law Project (NELP) found that 43.6% of workers were not paid on time for all hours worked in the last year.<sup>34</sup> The same study calculated that, as a result of workplace violations, low-wage workers in those cities lose more than \$56.4 million per week.

### *Retaliation*

21. Federal and state law protect workers from retaliation for making a complaint or attempting to take action to address a workplace rights issue. Retaliation can encompass many adverse employment actions, including cutting hours, changing the conditions under which the person works, and firing. Under federal law protecting workers from retaliation, they must show that "but for" their complaint, the adverse employment action would not have happened.<sup>35</sup> This puts the burden of proof on the employee to demonstrate that whatever reason the employer gave for the adverse action is really a pretext, either because it is not true or because decisions are not typically made on that basis. Employers, in contrast, need only to generate a plausible rationale for the adverse action. Even if the employee can prove that retaliation was a motivating factor, that is immaterial if there is also an additional non-retaliatory basis for the action.
22. Mayela's experience not only highlights wage theft and non-compliance with federal and state law on workplace injuries and compensation, but also the retaliation that workers face if they complain. Luz Maria Cantres Morales<sup>36</sup> experienced a hostile work environment, where coworkers and a manager would make fun of her and insult or yell at her. She believed it was based on her age, as she was substantially older than all her coworkers and her manager. She reported to a higher-level supervisor her fear of physical attack from one particular coworker, but when the supervisor spoke to Luz Maria's direct manager, she "didn't hear, didn't listen", and took no action. Luz Maria was subsequently scheduled for fewer hours, with constantly changing days of work. Despite nearly 14 years of working at the job, she was fired a few days after bringing her complaint to the supervisor.
23. Samuel<sup>37</sup> wasn't fired, but experienced other adverse employment actions. According to him, "Subcontractors will always find a way to retaliate. They feel they have all the control." If he took a sick day or did something the subcontractor didn't like, he would be told take off work for 2-3 days with no pay as a punishment.

### *Subcontracting*

24. The problems that workers face in securing their wages and other workplace rights are exacerbated in industries with high rates of subcontracting, such as construction or janitorial services. Both federal and state wage and hour laws primarily govern the relationship between workers and their employers. Some businesses have created a system of subcontracting and independent contracting that attempts to take them out of an employer relationship with their workers. Workers are not able to pursue relief from the company directly receiving the benefit of their work unless the worker can prove that the contracting company is operating as a joint employer. Even when companies accept a bid from a subcontractor that would be impossible to meet without violating labor standards, they are not liable unless they directed the work of the subcontractor's employees.
25. Samuel's experiences demonstrate how subcontracting strips workers of their rights to fair pay. He came to Minnesota to do framing on construction sites and ended up working for a subcontractor. The subcontractor never paid overtime and made them work even in harsh winter conditions. After a month, Samuel's pay was delayed. The subcontractor owed him over \$1000 but only agreed to pay \$500 and only if Samuel kept working. Samuel found that the same subcontractor that had hired him had also contracted with another man who hired 15 other workers at the job site and took a third of the money they were owed. Samuel tried to complain to the developer but was told they couldn't do anything. The developer paid the money to the subcontractor and then it's no longer their business what happens. He is still owed thousands of dollars for his work.

### **Right or area 23.3. Right of workers to organize**

26. Federal law protects the right of workers to take concerted action collectively and discuss their conditions of work, though there are exceptions for supervisors, workers employed by government agencies and workers in agriculture or domestic service. Such collective action is crucial to protecting the rights of workers.
27. Mayela suggests that lack of information is a major contributor to the high incidence of workplace violations in the immigrant community, saying "In the immigrant community, we don't have a lot of information." Language concerns can also be an issue, resulting in what Mario blames as isolation in the immigrant community. Because of this, he thought that undocumented workers did not have the same rights as documented immigrants and American citizens. "People who are born here have information that we don't have," Eduardo reports. His solution is to share his story so "people will have this information and people will know." He supports community level, worker-driven resources, so workers can share stories and knowledge, helping educate others currently experiencing similar labor violations. That is why he, and the others, have become involved with CTUL.
28. Many "workers centers and other non-traditional labor organizations, in addition to being the driving force behind many wage theft laws, also play the watchdog in many low-wage industries with low union density."<sup>38</sup> Unfortunately, such organizations do not exist in all communities. Notably, "[i]n smaller cities or rural areas, they either do not exist or exist in embryonic form."<sup>39</sup>



29. While Mario was working as an independent contractor and was owed two or three months of back pay, he decided to go to CTUL. In response to Mario's situation, CTUL sent letters to the manager of one of the luxury car dealerships that Mario cleaned regularly, detailing the injustice that he experienced. As a result, Mario was ultimately able to receive all his back pay from his employer.
30. After she was terminated from a job where she had worked for 14 years, Luz Maria suspected that she was not being treated fairly. She didn't know all her rights, but an experience at a previous job, where she had signed termination paperwork and was paid for accrued vacation time suggested that her employer had not followed the law completely. Thanks to a friend who insisted she speak with an organizer at CTUL, she was able to sue the company for accrued benefits.
31. Samuel described the process of becoming involved in the worker center: "At CTUL I met Israel, a construction organizer, and he described the process to recover wages. I have learned my rights and how to defend them. If I were to give advice to others, I would tell them not to be afraid to speak the truth. The truth needs to be told. You need to realize that you do have rights that apply to you. I want to be more public, to encourage other workers to speak up."
32. Mario, Eduardo, Mayela, Luz Maria, and Samuel all said that there needs to be more organizations like CTUL. Many immigrant workers do not know that they are entitled to the same rights and protections as citizens and rely heavily on community organizations for worker's rights education and resources.
33. Mario advocates for increased funding and support for community organizations, to aid with ground level education and worker empowerment. Eduardo agrees, looking to the government to increase funding to organizations that provide support structures for people, including education about workers' rights, access to important documents such as a driver's license, and access to legal help.
34. Mayela concluded with a look to the future: "One of my dreams is to feel comfortable... as a person, as a worker, we have rights, human rights. I hope someday it can happen for everyone."

#### **Right or area 34. Migrants**

35. Immigrant workers, especially those with irregular status, are particularly vulnerable to labor exploitation. One study found that among foreign born respondents, unauthorized workers were more than 50 percent more likely to suffer from minimum-wage violations than authorized workers.<sup>40</sup>
36. Mario moved to the United States from Mexico in 1996. In the United States, he was desperate for a job, so he began working at a restaurant as a dishwasher and then a line cook, and now works as a janitor. He experienced multiple labor violations, but his status as an undocumented immigrant kept him from suing or reporting his mistreatment. He was afraid that getting involved in the court system would result in his deportation.
37. Unfortunately, this fear is not unfounded. In some cases, federal immigration agents have even appeared at labor dispute proceedings looking for undocumented workers.<sup>41</sup> In some instances, undocumented workers have been deported for asserting their rights as workers.<sup>42</sup> Perhaps unsurprisingly, this practice has resulted in "immigrant workers

refusing to cooperate in investigations due to fears that they will be reported to [Immigration and Customs Enforcement] ICE and deported.”<sup>43</sup>

38. Employers know about workers’ fears and take advantage of it. Eduardo Clara<sup>44</sup> came to the United States from Mexico looking for a better job and a better life, and he worked in diverse jobs including gardening, cooking, and janitorial work. His employers have threatened explicitly to call immigration, and when he was in a car accident, he was warned not to call the police. Eduardo had seen other workers in similar positions as himself be deported and believes that is why immigrants are not standing up against labor violations. Samuel was directly threatened by his employer, who did not pay the full amount Samuel was owed for months of work. The manager said if the workers wanted to complain, he would call immigration, and added “Do what you want to do. This is not a place for you. You are illegal.”
39. ICE’s policy explains that, “worksite enforcement strategy continues to focus on the criminal prosecution of employers who knowingly break the law and on the use of I-9 audits and civil fines to encourage compliance with the law.”<sup>45</sup> However, such enforcement actions are glaringly one-sided. Recent data indicates that for the 12-month period between April 2018 and March 2019, only 11 individuals and no companies were prosecuted for employing undocumented workers.<sup>46</sup> Yet, for that same period, more than 125,000 people were prosecuted for illegal entry, illegal re-entry, and illegally harboring or bringing in immigrants.<sup>47</sup>
40. Mario had to go through an assault resulting in hospitalization before he was able to obtain legal documentation through a U-visa, an immigration status available to immigrant victims of serious crimes. He explained that once he received a Social Security number and joined a union, employers were more likely to treat him fairly. He now works five days a week and regularly receives scheduled lunches and breaks.

#### **IV.RECOMMENDATIONS**

41. This stakeholder report suggests the following recommendations for the Government of the United States:
  - Provide legal migration pathways that are not tied to a single employer for low-wage workers in construction, agriculture, hospitality, and other industries with large numbers of temporary migrant workers.
  - Establish binding standards for requesting and approving continued presence that ensures victims are protected throughout their trafficking cases.
  - Remove the requirement that victims must cooperate with law enforcement in order to receive a T or U visa.
  - Increase the number U visas available each year to eliminate the current backlog and improve processing times of T and U visas.
  - Require federal immigration enforcement officers to effectively and consistently screen for victims of human trafficking prior to detaining or removing a person from the United States.

Remove exemptions from the FLSA so all workers of covered employers receive minimum wage and overtime protections, regardless of industry or type of worker, especially in high risk industries such as construction, domestic service, and agriculture.

The federal Department of Labor should expand its proactive investigations into industries with high rates of labor exploitation and provide guidance and incentives to ensure state agencies adopt proactive rather than complaint-driven models.

Fully fund federal and state labor enforcement agencies including enough investigators per capita.

Incorporate into federal employment law a rebuttable presumption that any adverse employment action taken within 90 days of a worker complaint is retaliation.

Amend wage and hour laws to ensure that companies that employ subcontractors and independent contractors/freelancers cannot shield themselves from responsibility for the treatment of their workers.

Provide funding in amounts equal to the funding available to labor enforcement agencies to civil society organizations focused on worker rights and worker empowerment, which provide the most effective outreach, education, and identification of labor exploitation, especially among low-wage workers.

Expand the options for securing legal immigration status to victims of serious forms of labor exploitation, even when no criminal conduct occurred.

## Endnotes

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<sup>1</sup> Office of Justice Programs, “Human Trafficking in Minnesota: A Report to the Minnesota Legislature,” Minnesota Department of Public Safety, January 2017, <https://www.leg.state.mn.us/docs/2017/mandated/170683.pdf>.

<sup>2</sup> Polaris, “2018 Statistics from the National Human Trafficking Hotline,” [https://polarisproject.org/sites/default/files/Polaris\\_National\\_Hotline\\_2018\\_Statistics\\_Fact\\_Sheet.pdf](https://polarisproject.org/sites/default/files/Polaris_National_Hotline_2018_Statistics_Fact_Sheet.pdf)

<sup>3</sup> MN Department of Labor and Industry, “Wage Theft in Minnesota: Employer Information,” [https://www.dli.mn.gov/sites/default/files/pdf/wage\\_theft\\_employer\\_information.pdf](https://www.dli.mn.gov/sites/default/files/pdf/wage_theft_employer_information.pdf)

<sup>4</sup> Centro de Trabajadores Unidos en Lucha, “Confronting Exploitation: The Face of Low-Wage Work in the Twin Cities,” November 2016, 1, <https://www.scribd.com/doc/289479974/FINAL-Confronting-Exploitation-CTUL-Report-on-Low-wage-Economy-English-Spanish-for-Print>.

<sup>5</sup> Report of the Working Group on the Universal Periodic Review: United States of America, (July 20, 2015), U.N. Doc.A/HRC/30/12, ¶¶ 176.1-176.72.

<sup>6</sup> Report of the Working Group on the Universal Periodic Review: United States of America: Addendum 1, (July 20, 2015), U.N. Doc.A/HRC/30/12/Add.1, 22.

<sup>7</sup> Report of the Working Group on the Universal Periodic Review: United States of America: Addendum 1, (July 20, 2015), U.N. Doc.A/HRC/30/12/Add.1, 19.261

<sup>8</sup> Report of the Working Group on the Universal Periodic Review: United States of America, (July 20, 2015), U.N. Doc.A/HRC/30/12, ¶¶ 176.254, 176.266, 176.268, 176.269, 176.270, 176.271, 176.272, 176.273.

<sup>9</sup> Report of the Working Group on the Universal Periodic Review: United States of America: Addendum 1, (July 20, 2015), U.N. Doc.A/HRC/30/12/Add.1, ¶¶ 17.254, 17.262, 17.328, 17.331, 20.38.

<sup>10</sup> U.S. Constitution, 13th Amendment.

<sup>11</sup> Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386, 106th Cong. (2000 and all subsequent reauthorizations) 114 §1464.

<sup>12</sup> Report of the Working Group on the Universal Periodic Review: United States of America: Addendum 1, (July 20, 2015), U.N. Doc.A/HRC/30/12/Add.1, ¶¶ 17.262, 17.266, 17.331

<sup>13</sup> Minnesota Revised Statutes, §609.281.

<sup>14</sup> Minnesota Revised Statutes, §609.322.

<sup>15</sup> Trafficking Victims Protection Act, U.S. Code 22 §7102(9)(B).

<sup>16</sup> Minnesota Revised Statutes, §145.4716.

<sup>17</sup> The Fair Labor Standards Act, U.S. Code 29 §201-262; Minnesota Revised Statutes, §177.21-177.44; Minneapolis City Ordinances, Title 2, Chapter 40.

<sup>18</sup> The Fair Labor Standards Act, U.S. Code 29 §201-219.

<sup>19</sup> *Lucas et al. v. Jerusalem Café*, 721 F.3d 927, 933 (8th Cir. 2013); see also *Lamonica v. Safe Hurricane Shutters, Inc.*, 711 F.3d 1299 (11th Cir. 2013) (finding that undocumented immigrants may recover unpaid wages under the FLSA).

<sup>20</sup> Minnesota Revised Statutes, §177.21-177.35.

<sup>21</sup> “Frequently Asked Questions about the Women’s Economic Security Act,” Minnesota Department of Labor and Industry, <http://www.dli.mn.gov/LS/FaqWesa.asp>.

<sup>22</sup> Information on exemptions from “Basic Minimum Wage and Overtime Requirements – and the Exemptions from Those Requirements,” *Wage and Hour Handbook: Federal and Minnesota*, Minnesota CLE, 2011, 35-60.

<sup>23</sup> “Characteristics of Minimum Wage Workers, 2014,” U.S. Bureau of Labor Statistics, Report 1054, April 2015, 1, <http://www.bls.gov/opub/reports/cps/characteristics-of-minimum-wage-workers-2014.pdf>.

<sup>24</sup> Minnesota Revised Statutes, §177.24(1)(2)(d) provides that migrant workers who are working under the authority of a summer work travel exchange visitor program (J) nonimmigrant visa may be paid less than other workers if the employer is a “hotel or motel,” “lodging establishment,” or “resort” and the contract includes a food or lodging

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benefit. Minnesota Administrative Rules 3300.2015, subp. 6 permit that workers in supported employment may be exempted from federal minimum wage requirements pursuant to Fair Labor Standards Act, U.S. Code 29 §214(c) and Code of Federal Regulations 29 part 525.

<sup>25</sup> U.S. Citizenship and Immigration Services, “Temporary (Nonimmigrant) Workers,” February 2017, <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/who-needs-form-i-9/temporary-nonimmigrant-workers>.

<sup>26</sup> Polaris, “Human Trafficking on Temporary Work Visas,” June 2018, <https://polarisproject.org/human-trafficking-temporary-work-visas-data-analysis-2015-2017>.

<sup>27</sup> U.S. Immigration and Customs Enforcement, “Continued Presence: Temporary Immigration Status for Victims of Human Trafficking,” <https://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf>.

<sup>28</sup> All data from U.S. Citizenship and Immigration Services, “Number of Form I-914, Application for T Nonimmigrant Status By Fiscal Year, Quarter, and Case Status Fiscal Years 2008-2019 (Fiscal Year 2019, Quarter 2)”

[https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t\\_visastatistics\\_fy2019\\_qtr2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2019_qtr2.pdf).

<sup>29</sup> U.S. Citizenship and Immigration Services, “Victims of Criminal Activity: U Nonimmigrant Status,” June 2018, <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

<sup>30</sup> All data from U.S. Citizenship and Immigration Services, “Number of Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status, 2009-2018,” [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u\\_visastatistics\\_fy2018\\_qtr3.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2018_qtr3.pdf).

<sup>31</sup> Colleen Owens and others, “Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States,” Urban Institute, October 2014, 80,

<http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>.

<sup>32</sup> Mario Torres, Personal interview, Centro De Trabajadores Unidos En Lucha, September 19, 2019, Minneapolis, MN.

<sup>33</sup> Mayela de la Rosa, Personal interview, Centro De Trabajadores Unidos En Lucha, September 19, 2019, Minneapolis, MN.

<sup>34</sup> Annette Bernhardt and others, “Broken Laws, Unprotected Workers,” National Employment Law Project, 2009, 20, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>.

<sup>35</sup> U.S. Equal Employment Opportunity Commission, EEOC Enforcement Guidance on Retaliation and Related Issues, August 2016, [https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm#b.\\_Manner](https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm#b._Manner).

<sup>36</sup> Luz Maria Cantres Morales, Personal interview, Centro De Trabajadores Unidos En Lucha, September 25, 2019, Minneapolis, MN.

<sup>37</sup> Samuel, Personal interview, Centro De Trabajadores Unidos En Lucha, September 19, 2019, Minneapolis, MN.

<sup>38</sup> Nicole Hallett, *The Problem of Wage Theft*, 37 Yale L. & Pol’y Rev. 93, 139 (2019).

<sup>39</sup> Nicole Hallett, *The Problem of Wage Theft*, 37 Yale L. & Pol’y Rev. 93, 139 (2019).

<sup>40</sup> National Employment Law Project, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities*, <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf> (2009) (indicating that among foreign born respondents, 21.3 percent of authorized workers were victims of minimum wage violations, whereas 37.1 of unauthorized workers were victims of the same).

<sup>41</sup> Nicole Hallett, *The Problem of Wage Theft*, 37 Yale L. & Pol’y Rev. 93, 132 (2019) (citing Sam Levin, *Immigration Crackdown Enables Worker Exploitation, Labor Department Staff Say*, Guardian (Mar. 30, 2017).

<sup>42</sup> *L.A. Times*, Natalie Kitroeff, Officials say immigration agents showed up at labor dispute proceedings. California wants them out, <https://perma.cc/8JSE-8JUS> (Aug. 3, 2017) (“Federal immigration agents have shown up twice at

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California labor dispute proceedings to apprehend undocumented workers, in what state officials believe may be cases of employer retaliation.”)

<sup>43</sup> Monica Campbell, “For undocumented workers, demanding better work conditions could mean deportation,” Aug. 26, 2019, *Public Radio International*, <https://www.pri.org/stories/2019-08-26/undocumented-workers-demanding-better-work-conditions-could-mean-deportation> (describing an undocumented worker who filed suit alleging that he was fired after being injured on the job).

<sup>44</sup> Eduardo Clara, Personal interview, Centro De Trabajadores Unidos En Lucha, September 19, 2019, Minneapolis, MN.

<sup>45</sup> U.S. Immigration and Customs Enforcement, “Worksite Enforcement,” August 2019, <https://www.ice.gov/worksite>.

<sup>46</sup> TRAC Immigration, “Few Prosecuted for Illegal Employment of Immigrants,” May 2019, <https://trac.syr.edu/immigration/reports/559/#f1>.

<sup>47</sup> TRAC Immigration, “Few Prosecuted for Illegal Employment of Immigrants,” May 2019, <https://trac.syr.edu/immigration/reports/559/#f1> (explaining that for the period between April 2018 and March 2019, 11 prosecutions of individual employers in seven cases compares with 85,727 prosecutions for illegal entry, 34,716 prosecutions for illegal re-entry, and 4,73 prosecutions for illegally bringing in or harboring immigrants).