UNITY FOR DIGNITY:
EXPANDING THE RIGHT TO ORGANIZE TO WIN HUMAN RIGHTS AT WORK

A Report Issued by the Excluded Workers Congress
December 2010
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We are grateful for the generosity of the United States Human Rights Fund,
which has made this report possible.

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Design by Design Action Collective.
Printed at Inkworks Press on 100% recycled paper.
Worker-owned and managed cooperatives with union labor.
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The Excluded Workers Congress is a collaboration among working people that face exclusion from the protections of core US labor laws, whether by design or by default, based on the industry or social sector in which they work. These sectors include farmworkers, domestic workers/direct care providers, day laborers, tipped minimum-wage workers such as restaurant workers, guestworkers, workers in right-to-work states (especially in the South), taxi drivers, workfare workers, and formerly incarcerated workers. Race and immigration status lie at the core of many of these exclusions. The Congress was launched at the US Social Forum in Detroit, led by the National Domestic Workers Alliance (NDWA), the National Day Laborers Organizing Network (NDLON) and Jobs with Justice (JwJ) as a part of the Inter-Alliance Dialogue (IAD). The IAD includes the following grassroots organizing networks: JwJ, Grassroots Global Justice Alliance, the Right to the City Alliance, Pushback Network, NDLON and NDWA. Together they aim to organize strategic responses to the critical demands and intersections of contemporary society and seek new approaches to building a national grassroots movement connected to international social-change movements.
EXECUTIVE SUMMARY
At the end of the first decade of the 21st century, millions of workers in the United States are excluded from the most basic human right: the right to organize. Either by policy or by practice, millions of workers cannot organize without facing retaliation, cannot bargain, cannot transform their workplace conditions, and cannot access basic labor protections. In short: millions of workers are robbed of dignity.

These workers include more than a million and a half farmworkers, nearly two million domestic workers, millions of public employees in eleven states and private employees in twenty-two states that have right-to-work laws, plus nearly three million tipped workers and hundreds of thousands of guestworkers and day laborers.

The exclusion of these workers from the right to organize has had extraordinary consequences for all workers in the United States: over the last 40 years, as the floor has fallen from under the feet of these workers, wages for all workers have declined. The decline in wages, in turn, has contributed to a US economic recession. As it turns out, the cost of exclusion—once thought of as an issue of “the most vulnerable”—is high for all workers and every sector of US society.

**A New Worker Movement**

In June 2010, against the backdrop of the global recession, nine sectors of excluded workers came together to found the Excluded Workers Congress. They converged around a common dream: to vastly expand the human right to organize in the United States, to win a new era of rights and policies for workers, and to transform the labor movement in this country. The Excluded Workers Congress was formed to bring “the human right to organize” to life.

The nine sectors of the Excluded Workers Congress include domestic workers, farm workers, taxi drivers, restaurant workers, day laborers, guestworkers, workers from Southern right-to-work states, workfare workers and formerly incarcerated workers.

Some of these workers are excluded through explicit policies: farmworkers and domestic workers are named as exceptions to the right to organize, while restaurant workers are defined as “tipped workers” and excluded from minimum wage laws.

Taxi drivers are explicitly excluded from the legal definition of “employee” itself and thus excluded from any labor protections. Other workers are excluded from labor rights and protections through practice—either because existing laws are not enforced or because their precarious economic and legal status make it dangerous for them to claim even their guaranteed rights. But whether these exclusions are explicit or implicit, they undercut workers’ ability to organize. This leads to exploitative and degraded working conditions for excluded workers that, in turn, lower the floor for all workers.

These exclusions have developed out of the convergence of two social dynamics: (1) the historical legacy of racial exclusion that has been institutionalized in US labor law and (2) the impact of globalization, which has rendered much of current labor law structurally ineffective in addressing the changed dynamics of workplaces worldwide.

Fundamental shifts in the organization of global political and economic power have forever transformed the conditions facing workers in the United States and around the world. These shifts—the decline of the manufacturing economy in the United States and its emergence in Latin America and Asia, the development of a service economy in the United States, the rise of international migration—have brought workers together, at least in their conditions. Today, the problems facing excluded workers are not theirs alone. The struggles that they face—low wages, unstable employment and no labor protections to speak of—are the struggles of growing numbers of working class people in the United States.

All of these workers need a new era of rights and protections. The current framework for collective bargaining in the United States has not caught up with these shifts. Our framework for organizing and bargaining, and our framework for labor law, was won in the 1920’s and 1930’s.

The Excluded Workers Congress is imagining an entirely new framework for organizing. Instead of seeking refuge from antiquated labor law, excluded workers are asserting that they have the human right to organize—and building campaigns to prove it. In response to the transformation of the economy and their own conditions, excluded workers are leading transformative campaigns that bring a human rights frame to life.
Workers in right-to-work states have brought the exclusion of public employees from the right to organize to the International Labor Organization.

Domestic workers have campaigned against the exclusion of domestic workers from labor protections, and won a new Bill of Rights in the State of New York; and, internationally, domestic workers have developed a campaign for an ILO convention on Decent Work for Domestic Workers.

In Florida, farmworkers have secured agreements with the tomato industry that raise wages for workers across the industry;

Guestworkers have introduced national legislation to provide legal protection to millions of immigrant workers when employers use the threat of deportation to quash organizing efforts;

Taxi workers have blocked anti-worker backroom deals in the Los Angeles taxi industry;

Day laborers have testified at congressional hearings in Washington about human rights violations that flow from the anti-immigrant climate in Arizona;

Workfare workers have created a transitional jobs program in counties across New York State;

Restaurant workers have organized nationally to push for an increase in the minimum wage, win paid sick days and counter discrimination in their industry; and

Formerly incarcerated workers have campaigned to “ban the box” on job applications that locks formerly incarcerated community out of jobs.

These victories provide the foundation for the vision of the Excluded Workers Congress: to develop and win a new framework for workers’ power in the 21st century. Centrally, this includes the expansion of the right to organize and for collective bargaining that can reflect current economic and political conditions, new rights and just working conditions for all workers; and the transformation of the labor movement.

Excluded workers, who have been organizing in the midst of crisis for years, have a tremendous amount to share with the rest of the labor movement and with broader social justice movements: lessons about organizing in the midst of crisis and insecurity; innovations in methods for building worker power and for winning in the challenging new conditions of the global economy; and—most importantly—potential solutions that can move us all forward.

The Excluded Workers Congress brings together nine sectors of workers who were told they couldn’t organize but who went out and did it anyway. They provide inspiring models for innovative labor organizing for the 21st century. Their hard-won victories provide the foundation for a new framework for a new era of building worker power. These organizations are ready for the long-term movement that it will take to expand the rights of workers—both in the United States and around the world—to organize and to exercise their collective power. This report is an invitation to join that growing movement.
INTRODUCTION
In June 2010, against the backdrop of the global recession, nine sectors of workers converged for a historic Excluded Workers Congress during the 2010 US Social Forum in Detroit, Michigan. Coming from sectors that have historically been excluded from labor protections and underrepresented in the labor movement—domestic workers, farmworkers, taxi drivers, restaurant workers, day laborers, guestworkers, workers from Southern right-to-work states, workfare workers, and formerly incarcerated workers—they held discussions that reflected the lives and struggles of millions of working-class people in the United States, the majority of whom are of color and/or of immigrant descent. On that euphoric afternoon, they gathered together to dream of a vast expansion of the human right to organize and of a rejuvenation and transformation of the labor movement in the United States.

The Excluded Workers Congress came together around a simple premise. Millions of workers in this country are excluded—by either policy or practice—from the right to organize and from collective bargaining. These exclusions severely limit their ability to exercise their collective power as workers and effectively lock them out of workplace democracy. As a result, these workers are subjected to humiliating conditions, severe labor exploitation and coercion that, in the worst cases, have manifested in literal modern-day slavery. The Excluded Workers Congress was formed to develop a common agenda for federal labor-law reform in order to end the exclusion of these workers from their human rights to organize and to exercise their collective power.

The Historic Moment

The conditions these sectors face represent several significant political and economic trends that impact a much broader cross-section of workers in the United States and around the world.

The current framework for US labor law was developed in the 1930s and 1940s during the rise of mass industrial production in the United States. Labor law in that period assumed that most work was being done in large-scale workplaces in the formal economy. Its typical “worker” was the factory worker (often white and male), and it explicitly excluded from protections many other types of workers (specifically farmworkers and domestic workers, who were predominantly people of color). It provided workers with some basic protections, including the right to organize without fear of reprisal, and established a highly regulated process for collective bargaining between unions and employers. These labor laws have now become outdated by transformations in global political and economic systems.

Over the past four decades, globalization has transformed the organization of workplaces in the United States and around the world. The large-scale factories that defined the US economy in the 20th century were shut down as multinational corporations moved their operations overseas in search of lower wages and higher profits. A new service economy—characterized by smaller and more decentralized workplaces—grew up in the space left by the decline of the manufacturing economy. Increasing proportions of the economy shifted into the informal economy, functioning outside of government regulation. As globalized production undermined the economies of Latin America, Asia and the Caribbean, rising numbers of immigrant workers began to come to the United States in search of incomes that could support their families in their home nations. Current labor laws were not designed to function in decentralized workplaces, informal economies and unstable employment. Moreover, workers without citizenship rights in this country face significant barriers to employment and threats of deportation, which severely limit their ability to defend their rights.

These dynamics not only affect workers in our sectors but also working people in the United States as a whole. When wages fall and conditions decline for the most vulnerable, the bottom falls for everyone. Employment for workers in the United States has become increasingly unstable, and many workers’ real wages have plateaued or declined. The current economic recession—which has impacted people of all classes—can be attributed in great part to the overall decline in wages over the last 40 years. All of these conditions can be traced back to the erosion of workers’ power during this period, an erosion accomplished through global political-economic transformations and by restrictions on workers’ right to organize.
A New Workers Movement

The traditional labor movement has had a difficult time addressing these dynamics, given the decline of its established bases of power in the manufacturing economy and the significant new challenges that these sectors present to traditional labor-organizing models.

However, a wave of new workers organizations have begun to emerge from these historically excluded sectors. Over the past two decades, hundreds of independent workers centers have been established in communities across the country. At first, these organizations were seen as hopeful upstarts, but they have grown and matured into well-respected organizations that have built sizable membership bases and won significant and innovative victories. Many of these workers centers have affiliated with national sector-based networks or expanded into national membership organizations: the National Domestic Workers Alliance, Restaurant Opportunities Center United, the National Day Laborers Organizing Network and more. By coming together to build the Excluded Workers Congress, these organizations hope to build a shared basis of power that will allow them to work together with established unions to rebuild and transform the labor movement, to win expansive reforms in federal labor law, and to create a reality in which all workers can exercise their human right to organize.

About This Report

This report provides a cross-sector scan in order to map the landscape of worker exclusion in the United States. It makes the case for the need to establish workplace democracy across many industries. And it paints a portrait of a vibrant labor movement of excluded workers engaging in transformative politics through path-breaking campaigns.

The Excluded Workers Congress aims to rebuild a workers movement in this country that can expand the right to organize to include these historically marginalized sectors and improve the working conditions of the most vulnerable workers and thus raise the floor for all workers. Excluded workers, who have been organizing in the midst of crisis for years, have a tremendous amount to share with the rest of the labor movement and with broader social-justice movements: lessons about organizing in the midst of crisis and insecurity, innovative methods for building worker power and winning in the challenging new conditions of the global economy, and—most important—potential solutions that can move us all forward.

We are ready for the long-term struggle that will be required to vastly expand the human rights of workers in the United States and around the world to organize and to exercise our collective power. Join us in our movement.
UNITY FOR DIGNITY: Expanding the Right to Organize to Win Human Rights at Work

WHAT IS AN “EXCLUDED WORKER”?
Simply put, an “excluded worker” is a worker who is excluded—by either policy or practice—from the right to organize and other crucial labor rights and protections. But exclusion is about more than laws and abstract rights. It is about human lives.

Exclusion has many faces:

- the farmworker who labors for long hours under the hot sun and the domestic worker who provides crucial care work for families but who are both excluded by name from the right to organize to improve their working conditions and from overtime protections;
- the day laborer and the back-of-the-house restaurant worker who technically have the right to organize without fear of reprisal but whose employers use the threat of deportation to prevent them from organizing;
- the front-of-the-house restaurant worker and the home care worker who work long and stressful hours but who are excluded from federal minimum-wage protections;
- the taxi worker who puts in 12-hour shifts in extremely unsafe conditions and the workfare worker who cleans urban streets in order to receive the stipend she needs to feed her children but who are excluded from legal categorization as employees and thus from almost all labor rights and protections;
- the formerly incarcerated person who is trying to build a new life but who is excluded from employment because federal laws allow for discrimination against people with criminal records;
- the white schoolteacher and the black sanitation worker in the Southern right-to-work states who have worked hard to build their unions but who are excluded by law from engaging in collective bargaining to win fair and just contracts; and
- the guestworker who paid exorbitant fees to enable him to get a job in the United States that would allow him to support his family, but who now lives effectively in debt bondage, excluded from the basic human right to live free from enslavement.

These are the kinds of stories and struggles that give real definition to the term “excluded worker.”

As these stories reveal, some workers are excluded through explicit policies: They are designated as exceptions to the right to organize, they are defined as “tipped workers” and excluded from minimum-wage laws, or they are explicitly excluded from the legal definition of “employee” itself. Other workers are excluded from labor rights and protections through practice, either because existing laws are not enforced or because their precarious economic and legal status make it dangerous for them to assert the rights to which they are technically guaranteed. But whether these exclusions are explicit or implicit, they weaken workers’ ability to organize. This process leads to exploitative and degrading working conditions for excluded workers, which in turn lower the floor and weaken the hand of all workers.

These exclusions have developed at the convergence of two distinct social dynamics: (1) the institutionalization of racialized exclusions in labor law and (2) globalization, the impact of which has rendered much of current labor law structurally ineffective in addressing contemporary workplace dynamics.

The Roots of Exclusion: The Legacy of Slavery and Racism

The exclusions that impact today’s workers are rooted in a much longer history of racialized exclusion from labor rights and protections in the United States. The foundation for the current framework for labor rights and protections was developed in the 1930s in response to a wave of massive strikes among industrial workers. The first of these laws was the Fair Labor Standards Act (FLSA), which mandated minimum labor standards. FLSA advocates had to garner support from conservative Southern Democrats in order to pass this landmark legislation, and those Southern Democrats made the exclusion of agricultural and domestic workers a condition of their support. Reflecting the legacy of plantation slavery, agricultural work remained at the core of the Southern economy. Most of the era’s agricultural workers and domestic workers were African American, and maintaining racialized exclusion from labor laws was crucial to weakening their position as workers in order to increase the profits of white Southern landholders and employers. These exclusions were re-institutionalized in the National Labor Relations Act. Thus, implicitly racialized exclusions that reflected the social patterns of slavery were written into US law and many remain on the books. Today, many of these workforces are populated by immigrant workers, most of whom are people of color. While the specific racial composition of the workforce has changed, the pattern of racialized exclusion has not.
The 1940s also saw the passage of the Taft-Hartley Act, which heavily restricted the National Labor Relations Act and, as a result, restricted the power of unions. Among other things, it allowed states to pass right-to-work laws that crippled many unions’ ability to collect membership dues and to negotiate contracts with employers. Although right-to-work laws were passed around the country, they had a particular prevalence in Southern states with heavy concentrations of African-American workers. Thus the legacy of racialized exclusions was manifested in other forms, which in turn undermined the rights and power of white workers as well.

In the 1940s, Western agricultural interests lobbied for the establishment of the Bracero program, which brought 168,000 Mexican workers into the United States to compensate for wartime labor shortages. These workers provided desperately needed labor but were not given the right to remain in the United States upon completion of their work terms. Instead, racialized immigration policies forced them to return to Mexico. Today’s H-2A and H-2B guestworker programs are the policy descendents of the Bracero program, providing a temporary labor force with highly restricted labor and civil rights. Under these programs, workers come legally to the United States under terms of employment dictated by federal law. But these workers—who are lawfully present and lawfully employed—are legally bound to their employers and therefore, do not have the right to quit. They have limited access to the rights covered by other labor laws, and their ability to form unions and to bargain collectively is severely curtailed by their vulnerability. Similarly, today’s undocumented workers are legally excluded from many of the core labor standards that other workers enjoy.

The Changing Global Economy: New Workplaces and New Working Classes

The process of globalization defined by the emergence of transnational production and neoliberal political frameworks has profoundly transformed the organization of the US economy and government policies, rendering much of existing labor law structurally ineffective in protecting today’s workers. Current federal labor law is built on the assumption of a formal economy based on industrial production: highly centralized workplaces with high worker-to-employer ratios that are easily subjected to government regulations. As a result, workers in workplaces that employ 10 or fewer employees are excluded from many crucial labor protections under Occupational Safety and Health Administration (OSHA) and anti-discrimination laws.

As multinational corporations shifted production overseas in search of lower wages, mass industrial production declined in the United States. As a result, the prototypical industrial workplaces that labor laws were designed to regulate began to disappear. In their place emerged legions of smaller, decentralized workplaces, many of them rooted in service industries and functioning within informal economies. Thus more and more of today’s workers find themselves in small workplaces with low worker-to-employer ratios that technically exclude them from labor protections and/or in industries that elude government regulation. For example, many employers have hired subcontractors so that they can pass through the “small workplace” loopholes in wage and hour laws. Many of these workers are thus both de jure excluded from labor protections that are based on the assumption of large workplaces and de facto excluded from centralized regulation.

The anti-union and anti-worker policies that are central to the currently dominant neoliberal paradigm have meant that all workers—whether or not they are technically excluded from labor protections—have seen a roll-back of the labor rights and protections they could access previously. One example of these
anti-worker policies is the loosening of governmental monitoring as to which workers can be classified as “independent contractors” rather than as “employees” who benefit from labor protections. Employers have an incentive to reclassify their workers as independent contractors not only because employers are not required to pay many payroll taxes, Social Security or unemployment insurance to contractors, but also because these workers are not protected under any United States employment law. Indeed, misclassifying workers as independent contractors has become a business model in many industries including: construction, day labor, home health care, child care, agriculture, and the home-based work sectors. Many of these workers (most notably, taxi drivers) are, paradoxically, then subject to hyper-regulation by government agencies.

Increasing numbers of workers in the United States are faced with these types of regressive conditions. Deregulation and privatization have emboldened the corporate lobby to strengthen employer interests at the expense of the basic rights of workers. The position of workers has been further weakened by the recent economic crisis, which has shaken the foundations of our society and led to the massive loss of jobs that are unlikely to return anytime soon. Increasingly over time, the experiences and structural constraints facing excluded workers are being reflected in the lives and struggles of all workers in the United States.

The Many Facets of Exclusion from Labor Laws

Exclusions from the right to organize. The primary law under which workers are guaranteed the right to organize trade unions and to bargain collectively in the United States is the National Labor Relations Act (NLRA). More than 41 million workers in the United States say that they would join a union if they were given a chance. Yet the NLRA excludes many workers because of their industry (for example, agricultural and domestic workers), because of the form of their work (independent contractors such as taxi drivers and non-employees such as workfare participants) or because they are public employees in particular states.

Although undocumented workers are considered “employees” under the NLRA, under current law, workers of irregular migratory status are not afforded the same remedies for violation of the right to organize available to other workers. The right to organize, which makes all existing labor rights within reach of ordinary workers, is unavailable to millions of workers as a consequence of these exclusions. For many others, it is unavailable as a practical matter due to intensive employer interference with organizing campaigns, especially in the 22 states that have right-to-work laws that force unions to represent employees who are not members and therefore deprive these unions of the infrastructure needed to support effective organizing and bargaining. Employers threaten to close the plant in 57 percent of union election campaigns. They discharge workers in 34 percent of elections and threaten to cut wages and benefits in 47 percent of elections. Workers are forced to attend anti-union, one-on-one sessions with a supervisor at least weekly in two-thirds of elections. The intensification of employer anti-union campaigns and the proliferation of right-to-work laws have had a clear impact on union participation rates. In 1983, there were 17.7 million union members in the United States, 20.1 percent of the workforce. In 2009, that proportion was 12.3 percent. In the right-to-work states, union density—the percentage of workers who belong to a union—now averages 6 percent.

Exclusions from minimum wage. The Fair Labor Standards Act (FLSA), which mandated minimum wages and overtime pay, was passed in 1938 as part of the New Deal. As mentioned, the measure garnered the necessary votes from conservative Southern Democrats by excluding agricultural and domestic workers, most of whom were African-American. Those exemptions persist today in exclusions from overtime protection for agricultural workers and live-in domestic workers. Home health care workers are entirely excluded from the protection of minimum wage and overtime laws. Other domestic workers were included in minimum wage laws beginning in 1974, due to the organizing efforts of the Atlanta-based National Domestic Workers Union.

When FLSA was first enacted, it did not cover service and retail establishments. In 1966, Congress finally extended the minimum wage to most service and retail workers but established a special tipped-worker minimum wage, often called the “tip credit.” This special minimum wage remains at $2.13 per hour today, while the federal minimum wage is $7.25 per hour (and 14 states have state minimum wages that are higher).

Discrimination and access to jobs. In the United States, Title VII of the federal Civil Rights Act protects workers’ rights to be free from discrimination based on several factors: sex, color,
race, religion and national origin. Small employers are excluded, though some are re-included under state laws.

For many years, however, communities have complained that the Equal Employment Opportunity Commission (EEOC) process, which oversees enforcement of anti-discrimination laws, is slow and ineffective, and that the agency lacks the resources to tackle race discrimination in a meaningful way. One way in which the agency has fallen behind is in operating as a check on the proliferation of misuse of criminal-background checks. Nearly one in three US adults has a criminal record that shows up on a routine background check. With the increasing use of background checks in all sectors of the economy, qualified workers are being unjustly excluded from employment based on arrest records, old and non-serious convictions, and offenses that are not job related.

Moreover, immigrants without work authorization are excluded from the protection of the Unfair Immigration-Related Employment Practices Act, which protects against discrimination based on citizenship and national origin in employment.

**Exemptions from health and safety laws.** The Occupational Safety and Health Act covers all industries in the United States. Its main goal is to ensure that employers provide employees with an environment free from recognized hazards such as exposure to toxic chemicals, excessive noise levels, mechanical dangers, heat or cold stress, and unsanitary conditions. However, employers with 10 or fewer employees do not need to keep OSHA injury and illness records. Farms with 10 or fewer employees and other small businesses deemed to have a low level of risk are exempted from programmed OSHA safety inspections.

Statistics suggest that health and safety laws are inadequate. In 2008, 5,214 workers were killed on the job—an average of 14 workers every day—and an estimated 50,000 died from occupational diseases. More than 4.6 million work-related injuries were reported, but the true toll of job injuries is two to three times greater—about 9 to 14 million job injuries each year. Latino workers are at an increased risk of job fatalities (at a rate of 4.2 deaths per 100,000 workers, compared with a national rate of 3.7 per 100,000 in 2008), with more than 800 deaths recorded in 2007. Five hundred three deaths were among workers born outside the United States. The federal and state OSHA plans employ a total of 2,218 individuals to inspect the 8 million workplaces under the OSH Act’s jurisdiction. Inspections in the informal sectors are rare.

Workers’ compensation is a state system that provides remuneration for employees who have been injured on the job. In general, it covers the injured employee’s medical costs and allows a worker to continue to receive partial wages during the period s/he is unable to work. Workers’ compensation laws also provide compensation for disabilities incurred on the job and for the family of an employee who dies on the job. In one state, Texas, workers’ compensation coverage is optional. In many states, farmworkers and domestic workers and handymen employed by a homeowner are excluded from workers’ compensation.

**Non-employee exemptions from all labor law protection.** Other groups of workers are not considered “employees” at all, and are left out of all labor protections for that reason. For these workers, the right to bargain collectively is not protected. Nor are they entitled to minimum wage or overtime pay. They get no protection from anti-discrimination laws. No one pays them workers’ compensation or unemployment insurance benefits, nor does anyone make Social Security deductions on their behalf. Because these workers are not protected under any United States employment law, employers have an incentive to call workers independent contractors, often illegally.

Taxi drivers and many day laborers, along with workers in many other industries, are generally classified as independent contractors who are in business for themselves. Similarly, workers who must take jobs as a condition of receiving public benefits under so-called workfare programs are simply classified as non-employees.

**Special rules for immigrants.** As mentioned, in the 1940s, the Bracero program allowed 168,000 Mexican workers into the United States to contribute their labor during wartime, but provided no right to remain in the United States upon completion of their work terms. Today’s H-2A and H-2B guestworker programs are the policy descendents of the Bracero program. Under these programs, workers come legally to the United States under terms of employment dictated, at least in part, by federal law. But these lawfully present, lawfully employed guest-workers have no right to change employers. One court has limited H-2B workers’ ability to recoup recruitment fees under the FLSA, subjecting them to sub-minimum wages.
A SNAPSHOT OF EXCLUDED WORKER SECTORS
Despite their low wages, long hours, and risk of injury on the job, agricultural workers are excluded from the protection of the National Labor Relations Act and from overtime pay under federal law.

Demographics. Approximately 1.6 million workers labor on farms in the United States every year.\(^{24}\) The Department of Labor’s National Agricultural Workers Survey (NAWS), last conducted in 2001-2002, provides an ongoing portrait of crop workers in the United States. Approximately 78 percent were born outside the United States.\(^{25}\) More than half of these workers are undocumented.\(^{26}\) More than half of agricultural jobs are in California, Florida, Texas, North Carolina and Washington.\(^{27}\)

Wages and Hours. The weekly income of a full-time farmworker averages 59 percent of the national median income. The poverty rate for these workers is more than double that of all wage earners.\(^{28}\) Farmworkers were paid an average of $7.25 per hour in fiscal years 2001-2002, compared with $5.52 in 1993-1994.\(^{29}\) Farmworkers’ wages track closely with the minimum wage: They are higher in the states with a higher minimum wage and lower in those states with a minimum wage at the federal level. Farmworkers also generally work more than 40 hours per week, according to the NAWS.

Benefits. In the NAWS, between 8 percent and 12 percent of crop workers indicated that health insurance was an employment benefit they received.\(^{30}\) In the nearly 10 intervening years, this proportion is likely to have gone declined.

Health and Safety. Farmwork generally ranks in the top three industries nationally in terms of workplace injuries and accidents. An estimated 300,000 workers suffer pesticide poisoning each year.\(^{31}\) Preliminary data from the Bureau of Labor Statistics for 2008 show an 18 percent increase in fatalities in 2007 in crop production.\(^{32}\) Children constitute about 9 percent of farmworkers in the United States.\(^{33}\) But child farmworkers account for 40 percent of all work-related fatalities among minors in this country.\(^{34}\)

Forms of Work. The share of workers subcontracted from a primary agricultural firm and employed by a farm-labor contractor increased by 50 percent between 1993-1994 and 2001-2002. As noted in a recent report by Farmworker Justice and Oxfam America, many abuses can be traced to this contracting system and to the failure of the United States Department of Labor (USDOL) to hold employers accountable for contracting abuses.\(^{35}\)

Compliance with Labor Laws. A 1999 USDOL investigative survey of labor practices involving the harvest of lettuce, tomatoes and onions found that employer compliance with FLSA and a specialized agricultural law called the Agricultural Worker Protect Act was between 50 percent and 65 percent.\(^{36}\) Similarly, 70 percent of forestry work is out of compliance with worker protection laws, according to the USDOL report.\(^{37}\)

Legal Context. In addition to exclusions from the right to bargain collectively and to receive overtime pay, and despite that agriculture is one of the most dangerous jobs in America, agricultural employers are not obligated to provide workers’ compensation to farmworkers in 16 states: Alabama, Arkansas, Delaware, Georgia, Indiana, Kansas, Kentucky, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Dakota, South Carolina, Tennessee and Texas.

Projected Growth. Among crop workers, employment in agriculture is expected by the Bureau of Labor Statistics to decline slightly, by 20,000 jobs, between 2006 and 2016.\(^{39}\)

Slavery, Forced Labor and Involuntary Servitude. The US State Department estimates that some 15,000 to 20,000 workers in the United States are subject to labor abuse severe enough to merit the term “human trafficking.”\(^{40}\) For example, in September 2010, federal authorities in Honolulu, Hawaii indicted six labor contractors from Los Angeles-based Global Horizons, Inc. on charges that they imposed forced labor on some 400 Thai farmworkers; justice officials called it the biggest human-trafficking case ever brought by federal authorities.\(^{41}\) And in December 2008, federal prosecutors from the Department of Justice wrapped up a case the Chief Assistant US Attorney called one of Southwest Florida’s “biggest and ugliest” slavery cases ever.

No one can calculate with any precision the exact number of slavery and slavery-like cases that exist in agriculture in the United States. In Florida, where the Coalition of Immokalee Workers has been especially active in bringing these cases to justice. US attorneys have filed nine slavery and forced labor cases in the past 15 years, affecting workers in Florida, Georgia and the Carolinas.\(^{42}\) A Palm Beach Post series on modern-day slavery recounted the details of five slavery prosecutions, three of which occurred in agriculture.\(^{43}\)
I came to the United States 10 years ago from my family’s home in Oaxaca [Mexico]. There were no jobs there. We planted corn and beans just to have something to eat. I told my mother I was going to America so that I could have a little money to buy food and clothes.

When I first came to Immokalee, the grower I worked for said I would earn almost a dollar for every [32-pound] bucket of tomatoes I picked. [In fact, the piece rate was 45 cents for each bucket.] I picked 70 buckets, but then he didn’t pay me at all. I spent a week trying to get paid, but he told me there was no money. Finally I met someone from the Coalition [of Immokalee Workers (CIW)], who said they could help me. I went to their office and they made a phone call to the grower. After that, I got paid.

Now I go to the CIW office every Sunday for the women’s group meeting. We talk about our lives and our jobs, and learn a little English.

I got married after I came to the United States. My husband Francisco also works in the fields. We have three children. I send my mother $100 a month during the high season, but in the summertime I can’t [send her anything] because there is no work and no money. When my father died two years ago, I could not even go home to Oaxaca for his funeral because I couldn’t afford it. I am thinking of going north this summer to pick more crops and earn some money.

The heat in the fields is terrible. At times I ache all over, as if I have the flu. I almost fainted this week. Tomatoes are the worst crop because they put so many chemicals on them. Some people can’t tolerate it. This season, several workers had to go to the hospital because of pesticide exposure. I’m not that sensitive, but the pesticides give me a rash and a cough. The field bosses abuse people while we work, even though we’re not doing anything to deserve maltreatment. It is so hard working in the fields, sometimes I feel like crying. But if we don’t work, how will we support our children? I want my children to study, so that when they are grown, they won’t have to suffer like me.

The grower I work for now sells tomatoes to Publix. Publix has not joined the CIW agreement, so I haven’t received the extra penny a pound. In April, we went on a three-day march over that issue. Because the march was against Publix, I knew that I had to go.
DOMESTIC WORKERS

Domestic workers are excluded from the right to bargain collectively under the NLRA. Like farmworkers, they were originally excluded from minimum wage and overtime laws in an effort to win Southern votes in favor of New Deal legislation. Home health care workers are still excluded from both the minimum wage and overtime laws, and all live-in domestic workers are excluded from overtime pay under federal law.

Demographics. At least 1.8 million workers work as domestic workers in American homes. Domestic work includes at least three occupations: cleaning, child care, and caring for the elderly and the disabled. Most of these workers (95 percent) are female, foreign born and/or persons of color.

Wages and Hours. In 2005, the wages for in-home workers were one-half the national median income. A survey of workers in New York found that 41 percent of these workers earn low wages, with an additional 26 percent earning below poverty-level wages. Half of the workers have overtime hours each week, with a substantial number working 50-60 hours per week. Of these, 67 percent do not receive overtime pay.

Health and Safety. A 2007 survey of domestic workers in the San Francisco Bay Area found that 63 percent of domestic workers consider their jobs hazardous, citing concentrated exposure to toxic cleaning chemicals and human contagions, risk of injury from cleaning high or difficult-to-reach places, and heavy lifting, yet there are no health and safety protections for domestic workers.

Benefits. Nationally, just 13 percent of in-home workers who employed at least half time, year round get health insurance provided by their employers.

Forms of Work. Domestic work encompasses at least two forms of work: direct hire by householders and referrals through agencies, with some of the work occurring outside the home. Some workers work for one employer, while others piece together many jobs under multiple employers. Industry differences also exist between the private pay market and the government-subsidized market, which supports some child care and home health care work.

Compliance with Labor Laws. A recent survey of low-wage workers in three major US cities—New York, Chicago and Los Angeles—found that 41 percent of workers in private households had suffered violations of the minimum-wage law in the week prior to the survey. Child care workers endured the highest rate of violations of their rights, at 66.3 percent. Twenty-nine-and-a-half percent of maids and housekeepers were not paid the minimum wage, and 17.5 percent of home health care workers endured minimum-wage violations. These workers also suffered high rates of overtime violations, with more than 90 percent of child care workers and 82.7 percent of home health care workers experiencing violations.

Legal Context. As previously noted, home health-care workers are completely exempt from the FLSA under an outdated “companion” exemption. Live-in domestic workers are also excluded from overtime under the FLSA. Similarly, domestic workers are exempt from the NLRA, which guarantees workers the right to organize and to bargain collectively. OSHA regulations also exclude domestic workers from protection. Coverage for domestic workers under workers’ compensation laws is voluntary for employers in more than half the states: Alabama, Arkansas, Arizona, Florida, Georgia, Idaho, Indiana, Louisiana, Maine, Mississippi, Missouri, Montana, Nebraska, North Dakota, New Mexico, North Dakota, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin and Wyoming. In some other states, coverage applies only to full-time domestic workers, to those who employ several workers, or only after a dollar threshold of wages is paid to the worker.

Projected Growth. The Bureau of Labor Statistics projects personal and home-care aide jobs to increase 50 percent from 2008-2018, and home health aide jobs to increase by 50 percent in that time frame. The total number of Americans in need of long-term care is expected to rise from 13 million in 2000 to 27 million in 2050, an increase of more than 100 percent. The most significant factor increasing demand for long-term care will be the growth of the elderly population, which is expected to rise from 8 million in 2000 to 19 million in 2050.

Slavery, Forced Labor and Involuntary Servitude. Although it is impossible to calculate how many domestic workers in the United States are subject to forms of slavery and servitude, experts told a New York Times reporter that one-third of the some 15,000 to 20,000 victims of labor trafficking in the United States annually are migrant domestic servants. That article recounted the pending prosecution on Long Island of the employers of two Indonesian women. The employers allegedly made the women sleep in closets of their multi-million-dollar home, forced them to work day and night, deprived them of food, threatened, tortured and beat them, and forbade them
to leave the home. Four other recent cases involve the wife of a Saudi prince, who was convicted in Boston for keeping two house servants for three years in virtual slavery; two Wisconsin doctors, who held a Filipina woman as an indentured servant for 20 years; a Maryland couple, who kept a Brazilian woman in their home as a servant for 15 years, paying her nothing; and finally a California real estate agent who enslaved a Peruvian nanny in her home after luring her to the United States with false promises. In addition, many domestic workers who migrate with an agreement from their employer or through agencies live and work under virtual debt-bondage in order to pay back exorbitant fees they owe for the contract.

My name is Beatriz Garayalde. I’m from Uruguay and I’m a member of Domestic Workers United in New York. I took a job at one employer’s home after they insisted for months, convincing me of the many advantages I would have, that I was the right person, and that they couldn’t think of anyone else to take care of their children. Many of the promises dissolved the day I arrived. The pay was low and was issued only once a month. I didn’t have any hours or days off, holidays, nothing. I don’t think I slept at all during the first three months. I stayed in the room with the children. My only real sleep was between 7 a.m., when the parents came to my room for the children, until 9 a.m., when I went back to work. After getting up, I’d wet my head and stick it out of the window in the dead of winter so I could stay awake. And if I managed to sleep some at night, my brain would be still be alert, listening to the children’s breathing. During the day, I’d do my chores, cook, clean and take care of the children — months passed like this, working day and night — I forgot that I was a person, only looking after the children and the housework.

I loved those children (and still do) and so I put up with the long hours and low pay. I was isolated; I didn’t speak with anyone. I started to fear people on the street, in the parks. When I started asking for time off, I got fired. It was very sad separating from the children and trying to understand how the employers had seen in me the potential for cheap labor.

When one lives and works in a home, not having any other place to go, this creates the perfect condition for abuse to happen in many cases. Employers are unclear about their legal and ethical responsibilities. We make it possible for New Yorkers to work and have personal time because their children, elderly, homes and pets are taken care of and in good hands.

For these reasons, Domestic Workers United fights so that our work is recognized as real work. Working with children is care work that’s carried out under constant pressure. We are responsible for other human lives.

Clearly, we need justice. We need laws that protect us (regardless of whether or not we’re documented). Domestic workers represent a hidden labor force that will remain so while there are no laws to regulate it and bring it to the forefront. We have to recognize the importance of this work — which fuels the economy. As we say in DWU, “We have a dream that one day all work will be valued equally.”
Public employees in 11 states—Arizona, Arkansas, Colorado, Indiana, Louisiana, Missouri, North Carolina, South Carolina, Utah, Virginia, and West Virginia—lack the right to bargain collectively with their employer. In Virginia and North Carolina, collective bargaining is banned outright. In the other states, local government workers can organize a union and, if they somehow convince their employer, sign a union contract. But there is no established method of organization, recognition, or contract enforcement, so public workers in those states have no recourse but their own militancy. In a total of 22 states, laws obstruct the right to organize by requiring unions to represent all workers whether or not they join the union and pay dues, depriving unions of the capacity or resources to win campaigns and contracts. These laws affect many Southern industries, such as catfish and poultry processing. They have a particular impact on people of color and women, because they are more likely to be paid less than their coworkers and are disproportionately employed in sectors regulated by the laws.

**Wages and Hours.** In 2009, average pay in right-to-work states was 11.1 percent lower than in states where workers have the freedom to form unions and to bargain collectively. In 2006, median weekly earnings for African Americans were 36 percent greater for unionized than for non-unionized workers; earnings were 8 percent greater for Asian-American union members and 46 percent greater for Hispanic union members.

**Health and Safety.** The rate of workplace deaths is consistently higher in right-to-work states. Workers’ compensation benefits are also lower in these states. An investigation conducted in North Carolina by the International Commission for Labor Rights found systematic breaches of health and safety norms in public employment in that state.

**Turnover.** The North Carolina Office of State Personnel has estimated that “in FY 2005-2006, the State had a 10.8 percent turnover rate. Using a conservative100 percent cost of turnover, the cost to the state would be approximately $362 million.” This was for one category of about 90,000 state employees. When this figure is extrapolated to North Carolina’s 511,000 full-time-equivalent public employees during the same period, the annual cost of turnover is more than $2 billion.

**Discrimination.** Both a state study and the investigation by the International Commission for Labor Rights point to significant levels of race and gender-based discrimination in hiring, discipline, pay and termination in North Carolina.
I am the President of United Campus Workers [UCW], which is made up of over 1,100 higher education employees on more than seven campuses across the state of Tennessee. UCW-CWA (Communications Workers of America) Local is a member of East Tennessee Jobs with Justice.

Our union, United Campus Workers-CWA Local 3865, has been organizing public higher education workers in Tennessee for the last 10 years. UCW started out as a couple of dozen workers and students fighting for living wages for campus workers at the University of Tennessee, Knoxville. We were not then, nor are we now, recognized by the university or the state as an official employee organization. Nevertheless, we have been able to build power for public workers through constant organizing within our union. We have had success winning decent pay raises, preventing layoffs and improving working conditions.

Although we have been organizing for over 10 years, we cannot bargain with our employer—the state of Tennessee. Our state is one of the many within the Southern region that has a right-to-work-for-less law, severely limiting our ability to form unions and negotiate for dignity and fairness at work.

Collective bargaining would mean a big change in the lives of average workers across Tennessee. It would mean the ability to negotiate contracts with decent wages and regular raises. It would mean a real voice in getting decent, affordable health care and a say in any changes our employers propose. Collective bargaining would mean a real, clear grievance procedure and a way to fight unfair firings and layoffs. It would give us increased power to fight harassment on the job and make sure everyone has a safe workplace. UCW is committed to winning collective bargaining for public workers in Tennessee.

We know that the National Labor Relations Act was the result of a strong labor movement fighting for rights, and was not the beginning of that movement. The men and women of the early unions organized because they knew the only way to win fair treatment and to protect their rights was by banding together to show management that a united workforce would not accept unfair treatment, low wages, and unsafe work conditions.

We in United Campus Workers can relate to those early organizers in many ways. In Tennessee, an “employment at will” state, the chances of public-sector employees getting a collective bargaining agreement in the near future may not be the greatest, but that does not mean we should not fight for our rights.

We cannot sit around and wait for someone to give us a contract. Instead we have to fight for strong public funding of higher education with real living wages for all employees!
GUESTWORKERS

The current US guestworker program is a descendant of the Bracero program, and imports workers to perform work on agricultural (H-2A) and non-agricultural (H-2B) visas.

Guestworkers do not have the ability to organize or the power to bargain—and lose it many times over at each step in the international labor-supply chain. When they arrive for work in the United States, guestworkers experience severe labor exploitation that routinely rises to the level of forced labor, trafficking, peonage and involuntary servitude. Guestworkers cannot transform their workplace, and do not have the right to quit.

The legal structure of the visa binds workers to one employer. Workers plunge their families into debt to buy their visas; if they organize to demand their rights, they are fired in retaliation and deported back into debt servitude. In the current framework for labor migration—in the United States and worldwide—guestworkers are reduced to commodities for lease and sale on an international worker-supply chain.

Demographics. In fiscal year 2009, the United States issued about 105,000 H2-A and H2-B visas, primarily to Mexicans, though the number of guest workers from other, non-Spanish-speaking countries is on the rise.68

Slavery, Forced Labor and Indentured Servitude. Worker-experts and grassroots labor leaders have testified as to how the elements of the guestworker system—including tying workers to a single employer, mandating that workers must return to their home country as a result of losing their job, and tolerating insurmountable debts—lead to indentured servitude, labor trafficking, debt peonage and forced labor.69 Many domestic experts and the International Labour Organization have agreed with these workers.70

“Recruitment Fees.” Among the most significant wage and hour problems for guestworkers are the astronomical “recruitment fees” that many must pay before they ever leave home, and that set the stage for a system of indentured servitude. As worker-experts have testified, labor contractors and recruiters have imposed significant fees, ranging from $500 to well over $10,000, on workers as a condition of gaining access to the job-applicant pool in the foreign country.71 For those working in the H2-B non-agricultural guestworker program, the Fifth Circuit Court of Appeals recently ruled that these fees, which deprive workers of minimum wages, are lawful.72

Forms of Work. Guestworker programs have taken subcontracting to an international level. Virtually no employers hire workers directly. Employers can shop for workers worldwide and online: With the advent of the Internet, they can order up their guestworkers from international labor contractors who advertise on a dozen websites. Guestworkers arrive in the United States to find themselves being leased for profit from one employer to another.

Projected Growth. Guestworker programs are a much-discussed element of comprehensive immigration reform. In the last year that a bill was considered, estimates of the potential increase in these temporary-worker programs were as high as 400,000 per year.
Daniel was among the first guestworkers to arrive in New Orleans after Hurricane Katrina. He is a founding member of the Alliance of Guestworkers for Dignity.

Just after Katrina, I saw an ad in a Peruvian newspaper. An employer in New Orleans was looking for workers. Recruiters for a New Orleans hotel giant, Patrick Quinn, promised us good jobs, fair pay, and comfortable accommodations. They asked for $3,000 for the visa. I plunged my family into debt to pay the fees.

When I came to the United States I found that all the promises they made were false.

Patrick Quinn had brought about 300 workers from Peru, Bolivia and the Dominican Republic on H-2B visas. We were living in atrocious conditions and were subjected to humiliating treatment. When we raised our voices, we were threatened with deportation. And because of the terms of the H-2B visa, we did not have the right to quit. We could not work for anyone else.

In order to receive H-2B visas, Patrick Quinn had to convince the Department of Labor that he could not find a single US worker willing or able to do the work he was offering. When I arrived in New Orleans, I found that his hotels were full of displaced African-Americans — survivors of Hurricane Katrina who were desperately looking for work.

If Quinn had needed workers, all he had to do was to go to his own hotel and offer people work. Instead of hiring workers from the African-American community, he sent recruiters to hire us. At around $6 an hour we were cheaper. As temporary workers, we were more exploitable. We were hostage to the debt in our home countries; we were terrified of deportation; and we were bound to Quinn and could not work for anyone else. We were Patrick Quinn’s captive workforce.

But Patrick Quinn underestimated us. We built an organization and filed a major federal lawsuit against him.

Meanwhile, we heard stories — some much worse than our own — of other guestworkers who were being stripped of their dignity by employers across the Gulf Coast. Employers were holding workers captive in labor camps; confiscating their passports; subjecting them to surveillance; leasing workers for a profit in violation of morality and the law; and trafficking workers into conditions of imprisonment. We decided to fight. We founded a membership organization called the Alliance of Guestworkers for Dignity.

Since our founding, we have fought publicly to defend the rights of guestworkers. We have protested employers who exploit us. We have confronted recruiters, subcontractors, and the police — the white power structure of the racist South. We have conducted citizens’ arrests, triggered federal investigations, and freed guestworkers from conditions of involuntary servitude in labor camps and plantations. We have traveled on foot to Washington, and held hunger strikes to force members of Congress and the US Department of Justice to confront the exploitative realities of the H-2B program.
Day laborers, like many other workers in the United States, are protected by federal and state employment laws that govern wage and hour conditions, workplace health and safety, and the right to workplace organizing. But across the country, day laborers and other immigrants find that their status as excluded workers is enforced by local police and Immigration and Customs Enforcement (ICE), often in collaboration with employers.

While day laborers are in theory covered by US laws, the General Accounting Office found that the Labor Department’s efforts to enforce the protection provisions for day laborers are severely hampered by the complaint-driven investigative process and the short-term nature of the work.73

Some of the most egregious examples of employers calling in the police or immigration authorities have come from the South, in particular the Gulf Coast. Recently, federal immigration agents visited Louisiana oil-spill command centers and checked workers’ immigration status at the request of the St. Bernard Parish sheriff’s department, which said that it was “concerned about criminal elements” coming into the area.74

**Demographics.** On any given day, at least 117,600 workers in the United States are either looking for day-labor jobs or working as day laborers.75 The day-labor workforce in the United States is predominantly immigrant and Latino/a. Most day laborers were born in Mexico (59 percent) and Central America (28 percent). Three-quarters (75 percent) of the day-labor workforce are undocumented migrants.76 About 11 percent of the undocumented day-labor workforce have a pending application for an adjustment of their immigration status.

**Wages and Hours.** Day labor pays poorly. The median hourly wage for day laborers is $10. However, employment is unstable and insecure, resulting in volatile monthly earnings. Even if day laborers have many more good months than bad ones, it is unlikely that their annual earnings will exceed $15,000, keeping them at or below the federal poverty threshold.77

**Benefits.** Only 6 percent of injured day laborers interviewed in the National Day Labor Survey had their injury covered by workers’ compensation insurance. Day laborers working for homeowners are excluded from workers’ compensation in many states via exemptions for “casual labor.”

**Health and Safety.** Workplace injuries are common among day laborers. One in five day laborers has suffered a work-related injury, and more than half of those who were injured in the past year did not receive medical care.78

**Forms of Work.** The vast majority (79 percent) of hiring sites are informal: workers stand in front of businesses (24 percent), home improvement stores (22 percent), gas stations (10 percent) and on busy streets (8 percent). Most of these sites are near residential neighborhoods. One in five (or 21 percent) of day laborers search for work at day-labor worker centers.79

Day laborers are employed primarily by homeowners/renters (49 percent) and construction contractors (43 percent). Their top five occupations include construction laborer, gardener and landscaper, painter, roofer, and drywall installer.

**Compliance with Labor Laws.** Day laborers regularly suffer employer abuse. Almost half of all day laborers experienced at least one instance of wage theft in the two months prior to being surveyed. In addition, 44 percent were denied food, water or breaks while on the job.80 One third of the day laborers surveyed had been abandoned on the job, and one-quarter of the workers had suffered violence at work. A more recent survey focused on day laborers in New Jersey found that 96 percent had suffered wage violations.81

**Projected Growth.** While certainly not all day laborers are hired in construction, construction is the most common occupation for day laborers in the United States, with landscaping a common occupation as well. The construction industry is expected to grow by 535,000 workers by 2016.

**Discrimination.** Day laborers have become a symbol of illegal immigration in the United States and a target for vigilantism; government policies have added to their isolation and to their status outside the protection of the law. In Arizona, where anti-immigrant laws and rhetoric have reached a fever pitch, so-called “crime suppression sweeps” against immigrant communities by Sheriff Joe Arpaio began at a furniture store where day laborers searched for work.82

In its most recent iteration, Arizona state law SB 1070 creates both new violations of the law that affect only day laborers searching for work and new state immigration crimes, and also expands the power of police to enforce immigration law (including civil infractions). The bill’s stated intention is to make
it so difficult to live in Arizona that illegal immigrants flee the state rather than risk arrest. To accomplish this, the bill encourages racial profiling. Recent studies show that in Arizona, African-American and Latino drivers were 2.5 times more likely than white drivers to be searched after being stopped by the highway patrol. Native American drivers were 3.25 times more likely to be searched, even though they were less likely to be found with contraband. On July 28, 2010, a federal judge in Arizona made a preliminary decision that the law was preempted by federal law and enjoined parts of it.

Josue’s Story

After Hurricanes Gustav and Ike forced people living on the Gulf Coast to evacuate, I was recruited to work along with 11 other workers from a day-laborer corner in New Orleans. The employer promised us good work, fair wages, safe conditions and housing in Texas. We believed him. He transported us to Beaumont, Texas — an area hit hard by Hurricane Ike, where the residents had still not been able to return.

When we arrived in Beaumont, we were horrified. We were forced to live in tents in an isolated labor camp at an abandoned oil refinery. We were made to work in toxic conditions without safety equipment. We were subjected to racist and dehumanizing treatment. After we risked our health doing the most dangerous work, the company would send in white workers with safety equipment and protections to finish the rest of the job. They thought we Latinos were disposable workers.

So we organized. When we protested the discrimination and illegal treatment, our employer evicted us from the labor camp in the middle of the night without pay. There was nowhere to go — outside the labor camp there was only devastation for miles around. We demanded the wages he owed us for our work. But he called local police and ICE. We were arrested immediately. Instead of enforcing our labor rights against the company, the police and ICE tried to turn us into criminals.

I spent 78 days in jail for demanding the $250 in unpaid wages. Our arrest was based on lies the employer made to retaliate against us for speaking out. We fought to make the District Attorney recognize this — and we won. She withdrew all of the charges. We should have been released. But ICE detained us.
TAXI DRIVERS

TAXI DRIVERS

Taxi drivers are generally considered “independent contractors” and are thus excluded from all laws that protect “employees.” As independent contractors, taxi drivers are not entitled to a minimum wage, overtime pay, or protection from discrimination. They are not entitled to federal OSHA protections, and they have no federally protected right to collective bargaining.

Demographics. Taxi drivers and chauffeurs held about 232,300 jobs in 2008. Jobs were located throughout the country, but were concentrated in large cities. Some 67,000 workers drive yellow cabs, livery cabs and black cars in New York City. Five thousand primarily immigrant taxi workers drive in Los Angeles.

Wages and Hours. Taxi drivers start work each day with a negative income, owing the company money and paying for gas out-of-pocket. In both New York and Los Angeles, drivers work on average of 12 to 14 hours per day, six days a week, for about $8 per hour including tips. In New York in 2004, drivers’ take home pay ranged from $400 to $500 per week, but at the beginning of the week, drivers took home as little as $22 per day.

Benefits. Because taxi drivers are considered non-employees, the vast majority have no entitlement to government benefits like workers’ compensation and unemployment compensation. In Los Angeles, 61 percent of drivers had no health insurance.

Health and Safety. Taxi drivers are currently 60 times more likely than other workers to be murdered on the job. Taxi drivers carry cash, making them more likely to be crime victims. They may work in dangerous urban neighborhoods, taking people home who fear walking the streets late at night. Many are killed in robberies. Increasingly since September 11, 2001, they are the targets of racial slurs and attacks. According to a 2006 Los Angeles survey of drivers, 36.5 percent of taxi drivers were subjected to racial slurs or hostile comments about their national origin and 25 percent were physically attacked or threatened with physical harm. Back and leg problems arising from long hours behind the wheel are common.

While forms of work vary from city to city, entry into the industry is generally through purchase of a medallion or association with a taxi company. In New York, medallions can cost as high as $400,000 or more. Most drivers lease a permit to drive, a car, or both. In Los Angeles, apart from payment of all business costs and gas, drivers who are owner-operators must purchase “shares” in cooperatives that cost tens of thousands of dollars. At the same time, drivers are closely regulated by city commissions that set fares, impose dress codes, issue licenses and franchises, and impose fines.

Projected Growth. According to the Bureau of Labor Statistics, employment of taxi drivers and chauffeurs is expected to grow 16 percent from 2008-2018, faster than the average for all occupations.

The Excluded Workers Congress brings together nine sectors of workers who were told they couldn’t organize but who went out and did it anyway. They provide inspiring models for innovative labor organizing for the twenty-first century.
I came to the United States in September 1980 at the age of 27. In Ethiopia, I attended police college and rose to the level of lieutenant. However, I became a freedom fighter when I opposed the dictatorship that oppressed my country and my people. I was forced to flee to Sudan as a refugee. I worked there for a year and was then brought to the United States through Catholic Charities. I worked nights, studied English and eventually graduated from Cal State Los Angeles in 1988 with a degree in business. I began driving as a lease driver and bought my own cab in 1992.

For 18 years I drove a cab in L.A., Working 72-84 hours per week to survive, earning only $8 per hour (including tips) and receiving no health insurance, forced to pay many thousands of dollars annually to the cab company for the privilege of driving, suffering from severe back and leg pain and other health problems related to long hours of driving, [and] facing retaliation from cab companies for airing grievances — none of this was acceptable to me.

One day, in 2007, I spoke up at a City Taxi Commission hearing about the poverty wages, health problems and abusive working conditions drivers face. The next day I was fired. I have long been active in organizing for taxi workers’ rights, serving as President of the Yellow Cab Owner Drivers Association. Today, I am President of the Los Angeles Taxi Workers’ Alliance.
Thousands of welfare recipients are required to “work off” their welfare grants and even their food stamps. They are assigned to do workfare in state and local agencies or for non-profits, but are not considered “employees” under the law and are therefore exempt from nearly all workplace rights and benefits. They are often doing the same job as someone next to them who receives a pay check but they are only receiving their cash benefit and food stamps.

**Background.** In 1935, during the Great Depression, US President Franklin Delano Roosevelt introduced the nation’s first federal welfare program. At that time, 88 percent of welfare recipients received assistance because the father of the family had died. Because the nation had a surplus of workers and a shortage of work, keeping widows at home allowed mothers to care for their children and also kept these women from competing with men in the job market. Public work programs for men, such as the Civilian Conservation Corps (CCC) and the Works Progress Administration (WPA), were also created to combat unemployment. The welfare program became Aid to Families with Dependent Children, which remained the federal government’s primary program for poor mothers and children until 1996.

The 1996 welfare-reform law weakened previously existing safety-net programs: With strict work requirements and time limits tied to receipt of benefits, reform effectively eroded the previously existing safety net for people unable to work or to find work. While the reforms were intended to incentivize single mothers to find work, they ended up leaving many individuals and families with no safety net to catch them in the event of loss of employment, resulting in a pronounced problem during periods of extended unemployment.

**Demographics.** “Workfare” is currently a major component of the welfare-to-work programs in New York, California, Ohio, Florida, Massachusetts, Wisconsin, New Jersey and Colorado. According to the New York City Human Resource Administration website, more than 12,000 people in New York City are engaged in workfare in October 2010.

**Wages and Hours.** In each state workfare is different. It is sometimes called community service. In New York City, workfare is called Work Experience Program (WEP). Participants receive a cash benefit check and not a pay check. There are no payments into Social Security or qualification for EITC. The city says that participants receive the minimum wage, but that figure is calculated by taking the sum of the value of their monthly cash grant, rental assistance and food stamps and dividing it by the hours worked. For many, people are working 35 hours at WEP but receiving less than $100 every two weeks.

**Health and Safety.** WEP worksites are not exempt from OSHA, but workfare workers are not entitled to workers’ compensation coverage for injuries suffered on the job.

**Benefits.** WEP participants receive Medicaid. Participants working for the state government or non-profits receive no unemployment benefits, nor do they receive any other work-related benefits such as Social Security payments or Earned Income Tax Credit.

**Legal Context.** According to a 1997 policy brief published by the US Department of Labor, workfare participants engaged in certain programs are not considered employees. These include those engaged in training programs. Where a public agency is the worksite for the state, if the employee is a workfare participant, the state can include all of the individual’s cash assistance as well as any food stamps received as wages for purposes of meeting the minimum wage. Participants may also be required to “work off” the value of their food stamps.

**Projected Growth.** The state of New York recently reminded all counties and New York City that they can require workfare for people who are receiving only food stamps, potentially exposing another 1.3 million people to the workfare system in New York City alone.
I am the mother of five children who are all grown. I have been on and off public assistance throughout my adult life. When I got on public assistance, I thought I could get training to be able to get a better paying job. But even though the City’s public assistance agency, called the Human Resources Administration, claims they offer training, they do not offer it; you have to fight for every opportunity you get.

Instead, I do workfare, which in New York City is called Work Experience Program, or WEP. This means that in order to receive food stamps and some housing assistance, I have to go to a work assignment three days a week and attend work preparation classes called “Back to Work” two days per week. I get no training, and no chance of a real, paying job at the agency where I am doing WEP. I have done WEP assignments at the Board of Education and the Department of Aging.

My WEP supervisor doesn’t pay me, [and] doesn’t contribute into my Social Security account or for unemployment benefits. I am not covered by any workplace laws except health and safety laws. They count up my monthly welfare and food stamps grant and count that towards minimum wage for me. I get a check for $75 every two weeks. I am never at a WEP assignment long enough to develop relationships so that people there can be a reference for me for a job.

New York is very aggressive in its treatment of WEP workers. One time I got my assignment mixed up and went to work preparation instead of my WEP assignment, and I was “sanctioned,” or punished, for doing so.

Right now, I am not on a WEP assignment because I was hired to work with developmentally disabled people in a group home. But that is an on-call position not a regular nine-to-five job. The position only calls me in occasionally, and I am having trouble making ends meet. My employment history is in child care and in home health care. I expect that I will be dropped from any benefits soon. The goal of the program is not to get people out of poverty, but just to slash the caseload.

Workfare or WEP is required of anyone considered employable whether you have a barrier to employment or not. Over 14,000 people in New York City are doing WEP in 2010. Even though you are expected to look for and find a job, the barriers you have to employment are not addressed. Across the country other welfare systems have used NYC as a model and also force people to do WEP.
Nearly one in three adults (31.7 percent) in the United States is estimated to have a criminal record on file with the states that will show up on a routine criminal-background check.97 In the United States, it is communities of color—particularly African-American and Latino workers—who are most negatively impacted by the criminal-justice system.98 More and more jobs are simply unavailable to these workers due to huge increases in criminal-background checks by private and public employers.

**Demographics.** A 2008 study found that Latinos are incarcerated at a rate more than twice that of whites, while African Americans are incarcerated at a rate six times that of whites.99

**Discrimination.** Draconian mandatory minimum sentences and expanded numbers of crimes considered felonies have resulted in more than 13 million people experiencing life-long discrimination because of their past criminal record. While felony records create the biggest hurdles for people returning to their communities, any criminal record—including old and non-serious offenses and arrests that did not lead to conviction—can cause serious problems for a job seeker.

Title VII of the Civil Rights Act of 1964 prohibits both disparate treatment and disparate impact. However, because of the disparate impact of the criminal-justice system on communities of color, the EEOC has found that “an employer’s policy or practice of excluding individuals from employment on the basis of their conviction records has an adverse impact on [African-Americans and Latinos].”100 As such, EEOC policy prohibits employers from imposing blanket hiring prohibitions based on criminal records, and requires an individual assessment of whether the individual’s criminal record is indeed “job related.”

Despite this important federal protection, more than 60 percent of large employers reported that they would “probably not” or “definitely not” consider a job applicant for employment once they became aware that the individual has a criminal record.101 Further contributing to the disproportionate impact on communities of color is the finding that workers of color—particularly African-American men—with a criminal record are even less likely to be offered employment when compared with similarly situated whites.102 These discriminatory practices are creating a permanently unemployed class in our communities of color. It is estimated that 70 percent to 80 percent of all formerly incarcerated people in California alone are unemployed.

The lack of enforcement of Title VII of the Civil Rights Act by the federal government has lead to increasing state restrictions of hundreds of jobs—often entry-level positions—further excluding communities of color from the workforce. The lack of enforcement combined with the increased use of background checks is creating a permanently unemployed class in our communities of color.

**Legal Context.** A California Supreme Court decision from 1971 provides support for the position that barriers to employment for people with criminal records should be subject to a high level of scrutiny by the courts. In that case, the court specified two factors to be used in determining whether a specific group of people should receive civil-rights protections from the court: whether a person suffers due to (1) immutable traits tied to outdated social stereotypes and (2) the stigma of inferiority and second-class citizenship. In California, a felony conviction is essentially “immutable” because, even with the option of a rarely granted pardon from the Governor, the criminal record always remains.103 Thus, a whole class of Californians has been “relegated to an inferior legal status without regard to the capabilities or characteristics of its individual members,” according to the court.104
I worked for a University Hospital in California for many years. My job provided a decent wage, medical and dental benefits for my family, educational opportunities to support me in my position at the University, and the days and hours allowed me to be at home on the weekends with my children. I worked in the office and had no patient contact. I started out in the personnel department, worked in the position of medical secretary and transferred to the Profession Billing Group, where I coded medical procedures for payment. I had many opportunities to advance my career and did this several times during my employment with the university.

The last transfer I obtained was to the Trauma Department, where statistics of trauma patients were collected and sent to a national trauma registry. A specialized position opened up in the trauma department, [one for which] I had experience and a good track record. I wouldn’t apply because at this time the hospital started doing criminal background checks for everyone; no matter how long you worked for the university and whether or not you were a problem employee. I didn’t apply for the new position for fear of being terminated. I knew I couldn’t progress or move to another position without the background check so that meant I couldn’t advance to a more meaningful position. After about a year of the position being posted, I left the university.

When the formerly incarcerated see the question “have you been arrested for a felony” on applications for employment, public services, colleges and even insurance policies, instead of wasting their time, many will just not complete the application. If the person is fortunate enough to be granted employment before the background check is completed, that person will be terminated once it is completed. The fear and reality of discrimination stops us from moving on in a positive way with our lives, and causes us to remain on the fringes of society.
TIPPED WORKERS IN RESTAURANTS AND OTHER INDUSTRIES

Workers who earn tips in the United States include parking attendants, car wash workers, nail salon workers and barbers, baggage porters and bellhops. These workers are entitled under federal law to a minimum wage of only $2.13 per hour. While it was originally set at 60 percent of the minimum wage, the “tipped minimum wage” now equals only 29 percent of the federal minimum wage.

Demographics. No clear statistics exist on the size of the tipped workforce, but 2.9 million restaurant workers alone are in jobs classified as tipped positions. Sixty-two percent of these are women, most of them between the ages of 25 and 44.

Wages and Hours. Tipped workers like waitresses and waiters have triple the poverty rate of the workforce as a whole. A 2010 survey of restaurant workers in San Francisco’s Chinatown found that 50 percent suffered minimum-wage violations and only 5 percent earned a living wage. Among tipped workers, women earn less—an average of $0.40 less per hour than their male counterparts. In restaurants, this difference is $0.70 per hour. According to a 2005 survey, 54 percent worked more than 40 hours per week, and 31 percent more than 50 hours.

Health and Safety. A recently-released report about the health and safety conditions for restaurant workers in New York City found that two-thirds of these workers had suffered burns or cuts at work. None of the immigrant workers interviewed were ever given paid time off for injuries, but majorities of kitchen workers and dishwashers had suffered burns and cuts at work. White workers at the “front of the house” were much more likely to have health insurance provided by the employer than “back of the house” workers, who tend to be people of color and immigrants.

Benefits. Only 10 percent of restaurant workers surveyed in a 2010 five-city survey indicated they had coverage provided by their employer. In San Francisco’s Chinatown, only 3 percent of workers had health care provided by their employers.

Discrimination. A 2009 New York study found that restaurant positions are highly segregated by race, ethnicity and gender. Employment outcomes for job applicants were very different depending on the worker’s race, with applicants of color far more likely to face more intense scrutiny about their experience and knowledge and to receive less-favorable job offers after interviews.

Compliance with Labor Laws. Forty percent of restaurant workers surveyed in the 2010 five-city report were victims of overtime violations. The survey found that tipped workers such as beauty, dry cleaning and repair workers had a 49.6 percent rate of minimum-wage violations on the job, while cooks, dishwashers and food preparers had a 23.1 percent violation rate. When the New York Department of Labor did a compliance audit of car washes, it found tip stealing in 21 percent of car washes statewide and in 39 percent of these workplaces in New York City.

Legal Context. When the tipped-worker minimum wage was established in 1966, it was a fixed percentage of the full minimum wage, so workers who received tips did not fall too far behind other minimum-wage workers. But in 1996, when Congress raised the overall minimum wage, it froze the tipped minimum wage. When finally the minimum wage was again increased in 2007, the tipped minimum wage stayed at $2.13.

Projected Growth. The restaurant industry is the largest private-sector employer in the United States. Nearly all restaurant occupations are expected to grow at a 10 percent or higher rate from 2006 to 2016, according to the Bureau of Labor Statistics. Jobs as manicurists and pedicurists, another tipped-worker group, are expected to grow by 27.6 percent.
I started working in the restaurant industry in 1997 and have made a career of it ever since. In the first few restaurants that I worked in, I noticed how much I was considered an outsider since I have an accent, but not a European one. In most restaurants that I worked in, the managers preferred to hire white Americans — those were the people who they thought were able to entertain guests in conversation. Many of my managers assumed that all immigrants, just because we were not from here, were not able to entertain guests, that we did not know the food, that we could not do a good job.

In one of the restaurants that I worked at, I believe the manager thought I was from the Middle East. He used to watch me extra closely, always observing my every move. He made me cut my mustache, and never gave me the opportunity to deal directly with guests even though I had adequate knowledge and ability of the food and service industry. Only the servers were able to deal with guests. This is the type of clear racial and ethnic discrimination that we face as immigrants.

In most places that I worked, it was very hard for me to get a promotion. They really do not see your talent and upgrade it properly, unless you were very close with the manager. Even the employee handbook had nothing about the proper way to get a promotion from, say, a busser to a runner or a runner to a waiter. One time when I asked for a promotion, the manager told me that I didn’t have any experience to deal with the guests, even though I had been working there for years. Instead, he would only give me a back waiter job on a rotating and on-call basis. But this is not so surprising since the managers and the waiters were all white — I could not be selected or picked because I was not white enough. All the bussers were Bengali and Latino — and I was the only one from Nepal. This is the very common, yet hidden and untold story and pain of people of color.
HOW DOES THE HUMAN RIGHTS FRAME ADDRESS EXCLUSIONS FROM THE RIGHT TO ORGANIZE?
Core labor rights form a well-established body of international human rights law. Three basic international covenants, as well as the work of the International Labour Organization (ILO), guarantee a universal right to organize.

The Universal Declaration of Human Rights (UDHR) is the inspiration for all human rights treaties. The UDHR protects freedom of association and the rights to form and join trade unions. In includes the principles of nondiscrimination, free choice of employment and just and favorable conditions of work. The International Covenant on Civil and Political Rights (ICCPR) protects freedom of association and equality. The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) guarantees the right to organize, outlaws discrimination, and requires states to take affirmative action to fight discrimination.

The Right to Join Trade Unions and Excluded Domestic and Public Sector Workers

In the United States, the First Amendment generally guarantees freedom of association. But it is the NLRA that protects collective bargaining rights—at least for some, at least theoretically. (As has been noted, workers’ voices have continually been silenced by threats, harassment, required participation in anti-union meetings, discharges, and by the laborious, toothless process of the National Labor Relations Board itself). The law is different at the international level. Freedom of association and the right of collective bargaining are considered one interrelated right, which is guaranteed to all. The ILO has always considered that the rights of freedom of association and collective bargaining extend to all workers in every sector. The ILO’s Committee on Freedom of Association handles international complaints about the denial of this freedom. North Carolina public employees have taken advantage of this forum to shine a light on discriminatory practices in the United States.

In North Carolina, a state law explicitly prohibits collective bargaining in the public sector. This law frustrates the ultimate purpose of the freedom to associate by prohibiting collective bargaining, and also functions as an obstacle to advancing racial equality. Organizing groups like the United Electrical Workers and the HOPE coalition (see p. 40) have been fighting for collective-bargaining rights for North Carolina workers for 10 years. In 2006, they took their fight to the ILO and won. The ILO Committee ruled that a collective bargaining framework for the public sector in North Carolina should be established. It said that the state’s anti-collective bargaining law should be repealed in order to bring state legislation into conformity with the human right to organize. “To sum up,” it said, “all public service workers, with the sole possible exception of the armed forces and the police and public servants directly engaged in the administration of the State, should enjoy collective bargaining rights.”

Domestic work has long been a concern of the ILO because in all regions of the world there are domestic workers surviving exploitative living and working conditions. Many are at risk of extreme abuse. Some are even in slavery. Also all over the world, domestic workers are organizing and have come together to form the International Domestic Workers Network. Together, they are calling for an ILO Convention and Recommendation on Decent Work for Domestic Workers. This convention could be an historic step forward—away from a long legacy of slavery, devaluation of women’s work, and exploitation of migrant workers and toward official recognition as workers. This convention would also be a step toward governments, employers, and even unions recognizing and including domestic workers in national employment laws and social-protection schemes. Negotiations on such a convention began at the International Labor Conference (ILC) in June 2010 and will be completed and a vote taken at the ILC in June 2011.

The campaign for the Decent Work for Domestic Workers ILO Convention has impacts even beyond the obvious importance of labor standards for domestic workers. The collaboration between the AFL-CIO and the National Domestic Workers Alliance (see p. 39) in advocating for the convention can serve as a model for how the trade union movement and worker centers can work together with a common vision to build a vibrant labor movement. And, if the ILO adopts this convention, it could represent its renewed commitment to set standards and a new willingness to address the real needs of the majority of workers in the world: those who work in informal sectors.

The domestic-worker-led campaign for the ILO convention has shown domestic worker organizing to be among the most vibrant labor organizing movements around the world; these organizations intend to continue to work together, perhaps toward a global union of domestic workers.

The absolute nature of the right to organize in international law has strong implications for excluded workers in the United States. These principles invite workers and to think of new, creative ways of providing collective bargaining rights to those considered non-employees, like Euline and Sentayehu, and to agricultural workers like Maria and domestic workers like Beatriz, in sectors excluded from the NLRA.
“Non-Discrimination” Under International Human Rights Law and Excluded Immigrants

International treaties typically contain clauses that outlaw discrimination. In the international context, the term “discrimination” has a broader meaning than in the United States, where a discrimination claim can only be brought for unequal treatment based on race, national origin, gender, religion or other narrow bases. Because the principle of discrimination is broadly defined in the international context, it acts as an umbrella under which all substantive rights to all workers in each employment sector are subsumed and protected.

Under the ICERD treaty on race discrimination, differential treatment of any kind is allowed only if it pursues a legitimate aim and is proportional to achievement of that aim. The concept means, for example, that exclusions from labor protections for domestic workers like Beatriz, agricultural workers like Maria, or public employees like Tom are illegal discrimination.

United Nations committees periodically review compliance by member states with UN conventions. This process involves a report by the state, which is followed by a review, questioning, and concluding observations by the committee. In those reviews, the United States has been criticized internationally for both discrimination at work and racial profiling. The ICERD Committee expressed concern that “workers belonging to racial, ethnic and national minorities, in particular women and undocumented workers, continue to face discriminatory treatment and abuse in the workplace, and to be disproportionately represented in occupations characterized by long working hours, low wages, and unsafe or dangerous conditions of work.” In its concluding observations after its 2006 review of US compliance with the ICCPR, the UN Human Rights Committee took on local police enforcement of immigration law, and requested “concrete measures adopted to ensure that only agents who have received adequate training on immigration issues enforce immigration laws.” In 2008, the ICERD voiced a pointed concern about racial profiling and police brutality against immigrants in the United States. Since Arizona’s SB 1070 was signed on April 23, 2010, the Interamerican Commission on Human Rights, Mexico’s President Felipe Calderon, Archbishop Desmond Tutu and others have weighed in with their own concerns about US racial profiling.

The Organization of American States’ (OAS) Inter-American Court of Human Rights has also issued a broad statement that illustrates how the principle of non-discrimination applies. In 2003, after the US Supreme Court’s decision in Hoffman Plastic Compounds, Inc. that undocumented workers did not have the same labor rights as others, 53 US groups signed on to a brief in the Inter-American Court. They asked the court to find that discrimination against undocumented workers violates international law. The court agreed. It said, “the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights, including those related to employment.”

The court explained how the principle of non-discrimination operates as a catchall guarantee that other substantive rights apply equally to all workers. It outlined the different labor rights that it said were fundamental and must be respected by member countries under the principle of non-discrimination, including the core rights to freedom of association, protection against forced labor, fair wages, and safety and health protection.

Labor Rights and Other Human Rights Principles

Slavery, Forced Labor and Debt Bondage. The abolition of slavery and prevention of forced labor are the first principles of international human rights law. The 1815 Declaration Relative to the Universal Abolition of the Slave Trade was the first international human rights instrument, issued in condemnation of the trans-Atlantic slave trade. It is a feature of nearly every regional and international human rights law.

Occupational Health and Safety and the Working Environment. The right to health is protected in the Universal Declaration of Human Rights and in the ICERD. Although occupational safety and health compensation for injuries are not guaranteed in any detail in conventions that the United States has signed, occupational safety and health is the subject of 22 ILO conventions and protocols.

The right to workers-compensation benefits is also a key internationally guaranteed protection for workers in high-risk industries, established in six ILO conventions.

Just and Favorable Remuneration and Conditions of Work. International law also protects a decent standard of living. The UDHR provides that “everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity.” ICERD guarantees equality in economic, social and cultural rights, including the right to work and to just and favorable remuneration. These standards are important touchstones for all excluded workers, especially those like Shailesh, who can legally be paid $2.13 an hour, and those like Euline, who don’t get paid at all for their work.
Workers centers have successfully organized workers under highly challenging conditions—perhaps at small scales, but with highly instructive models for innovation in 21st-century labor organizing. These models include cooperatives; hiring halls; bills of rights; whistleblower protections; wage claim campaigns; holistic organizing around personal, community and policy, and labor issues; and democratic and deep leadership development. Many organizations have consciously used human rights themes to shape campaigns showing that another world is possible. Many have used human rights strategies in democratic organizing that places workers at the center of the struggle. Some have referred directly to human rights instruments and employed human rights mechanisms. The following is a summary of some of those campaigns.
COALITION OF IMMOKALEE WORKERS (CIW)
AND THE FAIR FOOD CAMPAIGN

History and Description. The CIW is a community-based organization of mainly Latino, Mayan Indian and Haitian immigrants working in low-wage jobs throughout the state of Florida. CIW members frame their organizing as a human rights struggle for several reasons. They do so in part because they are denied certain fundamental human rights through exclusions for farmworkers in key US labor laws. They also use a human rights framework because the unstable, isolated nature of their work makes conventional enforcement of the few legal rights they do have very difficult. Finally, they do so because the human rights framework is a familiar, successful organizing framework for many of their members. Human rights thinking aspires to ensure a basic dignity that transcends specific laws. Part of achieving dignity is to be a leader in one’s own struggle. That is why CIW’s organizing is member led.

The CIW’s principal community organizing method is called Popular Education, an approach developed in the members’ home countries, where many of these members had been experienced organizers and participants in community organizations. Through Popular Education, workers come together to analyze how the realities of their daily lives are caused by larger political forces. They reach insights by reacting together to a theatrical presentation, image, or video that reflects their lives. These discussions emphasize and respect life experience rather than formal education and theoretical analysis. This organizing approach has allowed CIW members to develop the analysis and strategy necessary to lead the Campaign for Fair Food, one of very few industry-level consumer campaigns driven by a community-based organization.

To ensure that workers remain in control of their own campaign, CIW members organize tours in which workers travel across the country to meet and organize consumers, host countless visits to Immokalee by allies from all sectors, maintain a website that receives as many as 1.5 million hits a month at peak organizing periods, and speak at events across the country, among other things.

Campaigns and Victories. Between 1996 and 1999, CIW members focused their organizing in Immokalee, primarily employing general strikes against all growers by all farmworkers there. These strikes required intense worker-to-worker organizing among the thousands of migrants in Immokalee. The strikes extracted pay increases from growers and started a shift in the balance of power, but they were clearly not the path to lasting change.

Since 2000, CIW has coordinated students, religious groups, and others to pressure corporate buyers of tomatoes to use their market power over growers to demand an end to human rights violations in the fields. In response, in order to maintain positive images of their brands among consumers, Taco Bell, McDonald’s, Whole Foods and others have begun to include workers’ human rights in their purchasing calculus and to contribute financially to the protection of those rights. CIW has convinced these brand names to shun growers who have used forced labor, to purchase more from those willing to be accountable, and to pay an extra penny per pound to be passed on to the workers.

CIW’s efforts have led to today’s penny-per-pound agreements with eight brand names in the fast food, supermarket, and food services industries. On October 13, 2010, CIW signed an agreement with Pacific Tomato Growers, one of the biggest US producers, to distribute to workers the penny-per-pound surcharge that major tomato buyers agreed to pay for their product. On November 16, 2010, CIW secured a landmark victory—CIW and the Florida Tomato Growers Exchange reached an agreement that will extend the CIW’s Fair Food principles to over 90 percent of the Florida tomato industry.
DOMESTIC WORKERS UNITED,
THE NATIONAL DOMESTIC WORKERS ALLIANCE
AND THE DOMESTIC WORKERS BILL OF RIGHTS

History and Description. Since its founding in 2000, Domestic Workers United (DWU) has created significant change in the domestic work industry through building a grassroots membership base of 4,000 workers; the establishment of the first Nanny Training Course; the passage of groundbreaking legislation in New York City; and winning the New York Domestic Workers Bill of Rights in 2010, the first law to provide protections for domestic workers.

Since 2005, DWU has utilized a human rights framework in its campaign. In October 2005, DWU and Global Rights organized the first Domestic Workers Human Rights Tribunal, which featured testimonies from workers detailing their experiences of human rights abuse in the industry. The tribunal panel included UN Special Rapporteur on Racial Discrimination Doudou Diene, among others. After over an hour of deliberations, the panel of human rights experts recommended serious investigation into the human rights of domestic workers by government agencies, the passage of the Domestic Workers Bill of Rights, and the elimination of exclusions of domestic workers in the labor laws.

Campaigns and Victories. In 2004, DWU launched the Domestic Workers Bill of Rights Campaign. DWU’s campaign for passage of its bill of rights is focused on a group of workers excluded from basic labor protections and on creating a decent standard of living for them, including fair wages, time off from work, and other elements of a dignified work life, as opposed to mere minimum wages. It relied on themes of dignity and respect for the work of nannies, caregivers and housekeepers as its core elements. Its positioning the struggle as fundamentally about respect for these workers as human beings worthy of an adequate standard of living, as well as its intensive organizing efforts, brought many co-sponsors to the bill. The new law was signed by Governor David Patterson on August 31, 2010.

In addition to legislative strategies like the New York bill of rights, domestic workers organizations continue to search for a way for domestic workers to bargain. The National Domestic Workers Alliance is working with domestic workers organizations nationally and internationally, and with the AFL-CIO, to help develop a new ILO convention for decent work and rights for domestic workers.
HEAR OUR PUBLIC EMPLOYEES (HOPE) AND THE CAMPAIGN TO REPEAL NC STATUTE 95-98

History and Description. The HOPE (Hear Our Public Employees) Coalition is a statewide labor community coalition demanding repeal of the North Carolina law prohibiting collective bargaining for public workers. More than 100 organizations support the campaign: Members include public employee unions, such as the State Employees Association of North Carolina/SEIU Local 8, and unions of firefighters, police, teamsters, teachers, university professors and social workers, as well as the NAACP and the Council of Churches. The United Electrical Workers union (North Carolina Public Service Workers Union—UE Local 150) and others have been organizing North Carolina public employees for more than 10 years.

Virulent anti-union sentiments among the Southern elite grew out of lingering fears in the pre-Civil War South about slave uprisings. In the Jim Crow era of the late 1950s, a state law was passed to stop the Teamsters from organizing police and transportation workers in Charlotte. Spurred by fears of union corruption, communism, and people of different races organizing together for better jobs and higher wages, the North Carolina legislature imposed a prohibition on public workers collectively bargaining for a legal contract: General Statute (GS) 95-98.

In 1969, public employees in Charlotte sued the city in Federal District Court, charging that the law was unconstitutional. A three-judge panel ruled in Atkins v. the City of Charlotte that it was indeed unconstitutional to forbid public employees from joining unions. But the court upheld the ban on collective bargaining.

Campaign and Victories. UE 150 has taken a human rights/international solidarity approach to repeal of the North Carolina statute. In 2004, UE launched the International Worker Justice Campaign (IWJC) as its official offensive to win collective bargaining rights for public sector workers. In 2004 and 2005, the IWJC organized a series of public hearings at which public sector workers from universities, hospitals, social service institutions, and city, county, and state government bodies testified before community leaders, ministers, and elected officials about working conditions. In 2006, the International Commission for Labor Rights, at the coalition’s invitation, conducted site visits and legal investigations and prepared a report on working conditions and human rights violations in the public sector in North Carolina to accompany the ILO Committee on Freedom of Association complaint that was lodged, and favorably decided, in 2007.

In October 2006, 53 labor organizations from Mexico, Canada and the United States brought charges that North Carolina’s ban on public employee bargaining violates the labor side agreement to the North American Free Trade Agreement (NAFTA). The ILO ruling that the North Carolina law violates workers’ human rights is a major victory for labor and civil rights organizations in North Carolina, which have been demanding full collective bargaining rights for public employees.

In 2007 and 2009, bills to repeal NC Statute 95-98 were introduced in both the North Carolina House and Senate, and hearings were held. Local HOPE committees in Greenville, Fayetteville and Charlotte continue to focus on garnering support from their state representatives to support repeal and other pro-worker legislation.
History and Description. The Alliance of Guestworkers for Dignity is an emerging national membership organization of H-2B guestworkers across sectors and industries. The Alliance is dedicated to expanding the right to organize and winning human rights for guestworkers. The Alliance was founded by guestworkers arriving in the Gulf Coast after Katrina, but now has members in campaigns in 10 states and is growing. Members of the Alliance work in key industries including the metal trades, hospitality and services, construction, manufacturing, and landscaping. The Alliance is anchored by the New Orleans Workers’ Center for Racial Justice.

Campaigns and Victories. From 2007 to 2010, the Alliance of Guestworkers for Dignity led a groundbreaking campaign to defend and expand the right of guestworkers to organize. The ultimate victory was a watershed in the history of US guestworker programs and led to a major legislative response to attacks on the right of immigrant workers to organize.

In 2006, a Mississippi oil-rig company called Signal International promised jobs, green cards, and family visas to hundreds of welders and pipefitters in India. The catch: workers had to pay up to $20,000 each for the American Dream. Workers plunged their families into debt and sold ancestral land to pay Signal’s recruiters. Then they found that all the promises were false. They had been brought to the United States as guestworkers on H-2B visas. Signal forced them to live 24 to a room in labor camps on company property in Mississippi and Texas. The workers were legally tied to Signal, kept under surveillance, and threatened with deportation back into debt servitude if they asked for basic rights. In January 2007, workers started organizing in the labor camps. On the morning of March 9, 2007, Signal retaliated. The company’s armed guards pulled the organizing committee out of bed to conduct private deportations of the key leaders.

One year later, after painstaking clandestine organizing, workers heroically marched out of Signal’s labor camps and flung their hard hats at the company gates in front of the world’s press, launching a two-year-long campaign to demand protections from the Department of Justice and fundamental shifts in the US guestworker program. In the spirit of Mahatma Gandhi, they travelled by foot from New Orleans to Washington, DC, launched a 29-day-long hunger strike, and became the first H-2B workers to testify before Congress. In February 2010, information obtained through the Alliance’s federal lawsuit revealed that ICE agents had colluded with the company, advising it on private deportations and assisting it to hold workers in involuntary servitude in the labor camps.

The New York Times broke the story, endorsing the campaign’s demands on its editorial page. Weeks later, under pressure from a constellation of allies and the press, the Obama Administration legalized the workers. The campaign won a new definition of involuntary servitude. And as a result of the campaign, Sen. Robert Menendez introduced the POWER (Protect Our Workers Against Exploitation and Retaliation) Act. The proposed legislation protects and expands the right to organize for immigrant workers, creating legal protections if employers use the threat of deportation as a weapon against those organizing. By December 2010, workers will be joined by their families, at which time they will join unions and participate in signing a historic partnership agreement with the AFL-CIO.
NATIONAL DAY LABORER ORGANIZING NETWORK (NDLON) AND CENTRO MACEHUALLI CAMPAIGN AGAINST RACIAL PROFILING IN ARIZONA

History and Description. The National Day Laborer Organizing Network (NDLON) was officially founded in July 2001 in Northridge, California at the first-ever national gathering of day laborer organizations. It was formed as an alliance of 12 community-based organizations and worker centers dedicated to improving the lives of day laborers in the United States. In less than 10 years, NDLON has grown nationwide to include 36 member organizations.

NDLON works to unify and strengthen its member organizations to be more strategic and effective in their efforts to develop leadership, mobilize, and organize day laborers in order to protect and expand their civil, labor and human rights. NDLON fosters safer, more humane environments for day laborers—both men and women—to earn a living, contribute to society, and integrate into the community.

Campaigns and Victories. NDLON and its member organizations have excelled in converting work born of a reaction to abuse into a positive, proactive agenda to promote social change. Together, NDLON’s members serve as the expression of a national effort to empower day laborers to take an active part in society, participate in the construction of policies affecting their lives, and shift the frame of debate from one that objectifies immigrants to one that values their inclusion. NDLON has played an increasingly prominent role in setting a national agenda to defend day laborers and in building a national, grassroots day-laborer movement. NDLON has developed the leadership skills of hundreds of day laborers, organizers, and advocates. It forged a historic partnership with the AFL-CIO and others in organized labor, which paved the way for similar agreements in other sectors. NDLON’s members have brought constituency-based voices to the table in Washington, DC, where Congress is debating changes to US immigration law and have assisted policy makers at the federal, state and local levels to promote proactive, effective policies to address day laborer-related concerns.

Early in its development as an organization, NDLON members became a focal point for anti-immigrant hate speech and abusive actions. While day laborers are subject to human rights abuses across the country, the state of Arizona has become the epicenter of this crisis. From the earliest days of “crime suppression sweeps” by Sheriff Joe Arpaio, NDLON and its affiliate in Arizona, Centro Macehualli, have emphasized human rights, especially the human rights of indigenous communities and protection against racial profiling.

After passage of Arizona law SB 1070, NDLON and Macehualli’s efforts intensified, sparking a new national focus and energy on the need for immigration reform and to stop racial profiling. Now even more in the national spotlight, Arizonans are building a human rights movement by focusing on strategies and tactics not seen since the civil rights movement.

On May 29, 2010, 40 rallies against SB 1070 were reported across the country. The Arizona Human Rights Summer began that day, with a march against SB 1070 in the streets of Phoenix. Three days later, Trail of Dreams students seeking passage of the DREAM Act presented themselves at the offices of Sheriff Arpaio to speak with him not as “undocumented” or “criminal” individuals but as human beings possessing human rights. Centro Macehualli has also presented a community indictment of Jan Brewer, Governor of Arizona, for violations of international treaties, the UN Declaration on the Rights of Indigenous Peoples, the UDHR and the ICERD. On June 10, women and children from Arizona testified at a congressional hearing in Washington about human rights violations that flow from the anti-immigrant climate in Arizona. While it is still too early to tell what effect these actions will have on immigration reform or on the climate of fear in Arizona, they are serving to keep human rights at the forefront of the discussion and national action.
**Los Angeles Taxi Workers Alliance**

**History and Description.** The mission of the Los Angeles Taxi Workers Alliance (LATWA) is to fight for the dignity, respect, and rights of taxi workers and to transform Los Angeles’ taxi industry from a system of “sweatshops on wheels” into a 21st-century, sustainable, “green taxi” public utility that provides living-wage jobs for racially diverse, predominantly immigrant workers while protecting the environment and improving public transportation. Founded in July 2005 by a multiracial group of taxi workers and their allies, LATWA seeks to achieve systemic change through grassroots organizing, policy advocacy, research, litigation, public education and mobilization.

LATWA was formed with the intention of becoming a workers-led organization. Now with a board composed exclusively of current and former taxi workers, LATWA is staffed by a coordinator who drove a Yellow Cab for 18 years after coming to the United States from Ethiopia. LATWA incorporated in the spring of 2008 and, while awaiting tax-exempt status, is under the fiscal sponsorship of South Asian Network (SAN), a non-profit social justice organization based in Artesia, California.

**Campaigns and Victories.** Since July 2005, LATWA has achieved the following victories:

- Won two meter-rate increases and established a $15 airport minimum fare, estimated to result in more than $22 million in additional annual income for drivers (2005–2006);
- Eliminated a city necktie requirement for drivers that posed safety risks (2006);
- Achieved clean drinking water and sanitary bathrooms in the airport holding lot (2006) and assurance of worker protections to be incorporated in the city concession contract (2009–ongoing);
- Won a lawsuit, filed against LATWA by seven taxi companies, designed to harass and intimidate drivers (2008);
- Initiated an economic-environmental-transit alliance with partners in the environmental and public-transit movements to advocate for a 21st-century green-taxi public utility (ongoing);
- Convinced the Los Angeles Board of Taxicab Commissioners to pass a motion proposing that the city conduct a study to create a sustainable green-taxi system (2009);
- Defeated a meter-rate decrease proposed by city officials (2009);
- Organized a public mobilization at which 150 taxicabs surrounded LA City Hall to protest the City of Los Angeles’ awarding of a consultant contract without driver input. The action generated extensive media coverage in *The Los Angeles Times*, on NPR, and in other news outlets (2009);
- Defeated a backroom deal proposed to the city by taxi industry management that would have preserved sweatshop-style working conditions until 2015 (2009).
COMMUNITY VOICES HEARD AND THE COUNT OUR WORK CAMPAIGN

History and Description. Community Voices Heard is a statewide membership organization of low income families in New York. In May of 1994, a group of mostly women—some homeless, many on-welfare, and plenty who were unemployed—came together so that their voices might be heard. They were inspired to action by the federal discourse that was emerging at the time about welfare—depicting single mothers in a stereotypical and racist negative light, and failing to recognize the structural circumstances that were keeping women and their children in poverty. From that first 1994 meeting of 80 people, Community Voices Heard emerged and would eventually become one of the leading organizations working for economic justice in the country.

Community Voices Heard went from being a one-issue, one-chapter organization to now being a multi-issue, multi-chapter force. Continuing to keep welfare, workforce development and job creation as a core area of action, CVH began in 2005 to take on new issue areas that also affected the lives of current and former welfare recipients: the preservation and improvement of public and other subsidized housing as well as the enhancement of community decision-making power in local community and economic development efforts. From one location in NYC, the organization now has additional chapters across NYS in Yonkers, Newburgh and Poughkeepsie. Strategies utilized by the organization include the creation of direct-action issue campaigns, media & public education work, participatory research, legislative & budgetary work, and non-partisan voter engagement.

While the organization has grown in issues and location, it has consistently kept at its core a particular focus of having its low-income base lead the struggle, with a particular focus on lifting up women’s leadership.

Campaigns and Victories. Between 1993 and 1996, attacks on the poor were especially vicious, shrouded in lies and misinformation. Lawmakers were publicly discussing the option of forcing poor women to live in labor houses, making them work off their food and shelter. The 1996 federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) changed federal welfare legislation to “end welfare as we know it” and shifted an entitlement program to one prioritizing work activities and reducing access to training and education. At the time that the federal law was enacted, NYC already had a longstanding work program in place, the Work Experience Program (WEP). The new federal law with increased work requirements gave the go-ahead for rapid expansion of the program. At its peak, over 40,000 individuals participated in WEP. As the City expanded its program, discontent among participants grew. In 1999, CVH initiated a research project to uncover this hidden workforce. The report, The Work Experience Program (WEP): New York City’s Public Sweatshop Economy, documented the critical work that welfare workers were doing for the City as well as the displacement of formerly unionized positions. CVH initiated a campaign to transform the Work Experience Program into a paid transitional jobs program.

In March of 2000, CVH members, along with District Council 37 (the public sector union) and the Ad Hoc Coalition for Real Jobs, were successful in organizing to get the NYC Council to pass the Transitional Jobs Program (Local Law Number 14), which was to create 7,500 paid transitional positions in the public and not-for-profit sectors over a period of three years. The Giuliani Administration, however, refused to implement the program. CVH initiated an organizing campaign and legal challenges to pressure the City to create the jobs. Finally, in March 2001, the Human Resources Administration (HRA, the City welfare agency), set up the Parks Opportunity Program (POP)—the largest public sector jobs program in the country.

A key victory was an alternative to WEP: the creation of a subsidized paid transitional jobs program at the city. Once the city Transitional Jobs Program was won, CVH went on to fight and win the expansion of the program from the Parks Department to the Department of Sanitation and now to include clerical positions in the welfare agency itself. With this victory under its belt at the city level, CVH went on to the state. In 2008, the state welfare agency included Transitional Employment as one of its strategies, creating a competitive grant at the state level for funds to implement such programs. Last year, in 2010, CVH was successful in getting the state to create an even larger statewide program that replicated the transitional jobs program in counties across New York State, bolstered by using Stimulus Emergency TANF Contingency Fund money. This means that all across New York State people who otherwise would have been doing workfare are now getting jobs instead. CVH has joined with groups across the country to fight for the continuation of this funding and is now working on a report highlighting the benefits of the program and expects to use this report to fight for ongoing program support in the year to come. Unfortunately, over 10,000 people every day in New York City are still doing WEP and tens of thousands of people across the state and country are still doing workfare which CVH believes is slave labor and a violation of human rights. The fight continues!
RESTAURANT OPPORTUNITIES CENTER UNITED (ROC-U), MINIMUM WAGE AND ANTI-DISCRIMINATION

History and Description. Initially founded in April 2002 to provide support to restaurant workers displaced from the World Trade Center as a result of the September 11, 2001 tragedy, the Restaurant Opportunities Center (ROC) has expanded to advocate for improved working conditions for restaurant workers across New York City. More recently, in 2008, ROC affiliates in seven cities across the country—Chicago, Detroit, Los Angeles, Miami, New York City, New Orleans and Washington, DC—joined together to form a national restaurant workers organization, ROC-U.

The first city to launch a ROC chapter was New York, just after 9/11. ROC-NY has successfully conducted restaurant workplace-justice campaigns, provided job training and placement, opened its own cooperative restaurant and conducted research and policy work. The new organization engages in six programs: (1) developing new restaurant worker organizing projects; (2) providing training and technical assistance to restaurant worker organizing projects; (3) conducting national research on the restaurant industry; (4) engaging in national policy work to improve working conditions for restaurant workers; (5) coordinating national campaigns of restaurant workers; and (6) convening restaurant workers across the country.

ROC-U is honing its human rights work in all of its programs. It believes that the connection between human rights and workers rights is fundamental, and has implemented a human rights approach comprehensively in its programs.

Campaigns and Victories. Through campaign work, policy work, and research, ROC takes a tri-pronged approach to bringing human rights to restaurant workers. In March 2009, ROC-NY released *The Great Service Divide: Occupational Segregation & Inequality in the New York City Restaurant Industry*. This report chronicled race- and gender-based discrimination at New York City’s fine-dining restaurants. ROC found that people of color, immigrants and women were locked out of these positions due in large part to racial and gender biases and systems that prevent these workers from advancing. Using this report as a tool for education and outreach, ROC is working on a policy campaign that would proactively change industry standards and provide meaningful opportunities for workers of color and women. Along with United Food and Commercial Workers (UFCW) Local 1500, the Community Development Project of the Urban Justice Center, and the AFL-CIO’s Lawyer’s Coordinating Committee, ROC-NY has begun drafting both local and state anti-discrimination legislation that would provide a means by which workers of color, immigrants, and women can better access living-wage positions within the restaurant industry or promotions into those positions.

On February 13, 2010, the symbolic $2.13, which has been the legal federal minimum wage for tipped workers for 18 years, thousands of restaurant workers and their allies engage in actions ultimately aimed at increasing the antiquated tipped-minimum wage to at least 60 percent of the regular minimum wage. On April 14, 2010, ROC led a Restaurant Worker Lobby Day concurrent with the National Restaurant Association’s (NRA) Public Affairs Conference and Lobby visits. The NRA claims to represent all 13 million restaurant workers in America, yet it opposes an increase in the minimum wage and paid sick days for workers. ROC-DC and ROC-NY members visited 11 members of Congress, telling their personal stories about the need for a raise in the tipped-minimum wage and for paid sick days, and seeking their representatives’ support for the legislative proposals.

On September 30, 2010, ROC-U released *Serving While Sick: High Risks & Low Benefits for the Nation’s Restaurant Workforce, and Their Impact on the Consumer.* The report was based on the largest sample of restaurant workers and employers ever conducted: 4,323 workers were surveyed and 240 employers were interviewed in eight states. An additional 500 surveys focused on the health insurance needs of the industry. *Serving While Sick* demonstrated that a large majority of restaurant workers lack paid sick days and employer-sponsored health insurance, and thus two-thirds of these workers reported cooking and serving food while sick, with dramatic impacts on the consumer.
History and Description. All of Us or None is a grassroots organization formed by formerly incarcerated people and their families. All of Us or None members are building a movement to win full restoration of civil and human rights. They are determined to eliminate the discrimination that people with past convictions face, and to fight for the human rights of all prisoners. Discrimination against people with criminal records acts as a barrier to the economic and social recovery of this community, with people with felony convictions and the formerly incarcerated most impacted by this discrimination. The lack of enforcement of Title VII and state anti-discrimination laws permits employers to practice racial discrimination by using a person's criminal record as a way of denying access to employment. All or None of Us believes all city, county, and state laws should specifically prohibit discrimination in employment based on criminal records.

Campaigns and Victories. Employment discrimination based on past convictions makes it almost impossible for people coming out of prison to successfully re-integrate into community life.

The Ban the Box campaign is an effort to reduce discrimination by eliminating questions about past convictions from applications for jobs and for subsidized housing. All of Us or None started the campaign by exposing discrimination in hiring for public employment in San Francisco, and in July 2006 the question was removed from the city’s job application. Alameda County, California, has also revised its hiring process. All of Us or None organizers have initiated the campaign in both the City and County of Los Angeles and in Sacramento, Oakland, San Mateo County, East Palo Alto, and San Bernardino, California. More than 20 other cities and counties around the United States are also changing their applications to reduce discrimination and to offer equal opportunity to people with a conviction history, led by the cities of Boston, Philadelphia, Chicago, Minneapolis, and Grand Rapids, Michigan.
EL COMITÉ DE APOYO A LOS TRABAJADORES AGRÍCOLAS (CATA—THE FARMWORKERS SUPPORT COMMITTEE)

History and Description. El Comité de Apoyo a los Trabajadores Agrícolas (CATA—The Farmworkers Support Committee) is a migrant farmworker organization that is governed by and comprises farmworkers who are actively engaged in the struggle for better working and living conditions in New Jersey, Pennsylvania and the Delmarva Peninsula. It was founded in 1979.

CATA has made a great impact in the lives of the tens of thousands of migrant workers who have lived and worked in the area over the past 31 years. By providing education on workers’ rights, building leadership capacity and organizing the community to provide testimony and coordinate immigrant marches, CATA’s work continues to advance farmworker issues in solidarity with others so that policies affecting all workers are improved.

CATA has advanced based on the belief that only through organizing and collective action can farmworkers achieve justice and fullness of life. CATA’s programs actively involve farmworkers in the process of social change and the analysis and proposed actions come directly from them. CATA’s mission is to empower and educate our membership through leadership development and capacity building so that they are able to make informed decisions regarding the best course of action for their interests.

Campaigns and Victories. In the 1970s and 1980s, workers fought for the Right to Know laws, enabling them to know the dangerous chemicals they work with on a daily basis. They fought for the Right to Access laws so they would not be isolated on farm labor camps and could receive visitors, like CATA staff, to educate them on their rights.

In the 1990s, workers organized unions throughout the mushroom industry in Pennsylvania; the Kaolin Workers Union’s served as the example for others to pursue better wages and safer working conditions. CATA, along with others, created the Farmworker Health and Safety Institute, which provides training and research on farmworker health and safety issues. Thousands of farmworkers have been and still are trained by CATA in the Worker Protection Standard, which helps them reduce their risk of pesticide exposure, and in HIV prevention, to improve their health and that of their families.

In the last decade, CATA has pressed for a just food system by working with partner organizations across the country to establish social-justice standards in organic agriculture. The Agricultural Justice Project and the Domestic Fair Trade Association have become significant players in the national effort for food justice. During this time, CATA received consultative status at the United Nations and now works on migration issues on a global level, allowing the organization to pursue its belief that, viewing their goals through the lens of human rights, workers will have the tools to unmask the discrimination against low-wage workers and workers of color that is inherent in the US legal system.

Currently, CATA is organizing to push for just immigration reform in solidarity with others. Other areas of work include food security, health and safety, and workers’ rights. CATA strategically positions itself to influence these and other policies that benefit not only the immigrant community but the larger community as well.
Each of the innovative campaigns these excluded workers organizations have waged fiercely over the past several decades provides an inspiring story about a number of new workers organizations that have emerged and begun to triumph against all odds and against every prediction of defeat. Given the long-standing challenges facing the labor movement and other progressive movements, these inspiring moments are important in themselves. But more important, taken together, these hard-won victories suggest some larger and more significant patterns and trends, including the emergence of a new framework for labor rights and workers’ power for the 21st century.

The successful passage of the Domestic Workers Bill of Right in New York State has already inspired the introduction of similar legislation in California and the beginnings of similar campaigns in other states around the country. This bill of rights is significant not only because it challenges the decades-long exclusion of domestic workers from basic labor protections. Its provision of paid sick days actually extends the normal range of labor protections, suggesting a model of “collective standards” for all workers.

The New Orleans Workers Center for Racial Justice and the Alliance of Guestworkers for Dignity were able to win full legalization for guestworkers who had been trafficked from India by a major corporation through a dramatic confrontation with immigration authorities. This victory is a demonstration of the ways in which contemporary workers’ struggles must necessarily expand beyond narrow workplace battles and frameworks based on civil rights to incorporate a broader “human rights” framework that can address the international dynamics impacting workers’ lives today.

The HOPE Coalition’s tenacious confrontation against the law in North Carolina that bars public employees from collective bargaining demonstrates that the long-term battle waged by the labor movement against right-to-work policies in the South is far from over. It also suggests that the hope and vibrancy attributed to contemporary immigrant workers’ struggle are actually broader dynamics that are emerging across racial, sectoral and regional lines; these positive developments demonstrate the potential for excluded workers to help rejuvenate and transform the broader labor movement.

Toward 21st-Century Labor Laws

These victories provide the foundation for the Excluded Workers Congress to develop and win a new framework for workers’ power in the 21st century. Centrally, this vision includes the expansion and transformation of the rights to organize and to bargain collectively that reflect current economic and political conditions; the expansion of the rights of all workers; the improvement of their working conditions; and the transformation and rejuvenation of the labor movement.

We know that these new frameworks must end the explicit exclusions that intentionally restrict the rights of our sectors, but we must look beyond inclusion alone. We need to reshape labor laws so that they can reflect the changes in workplace structures and the composition of the workforce in the 21st century. We believe that this new frameworks for the right to organize, the right to bargain collectively, and other workers’ rights and protections must be rooted in human rights, and that they must address the international dynamics of labor in today’s economy. We do not yet know the specific contours of policies that can make this new framework real, but we are excited to begin developing clarity on these issues through shared dialogue and common struggle with our allies in the labor movement and other social justice movements. Following are some concrete steps we believe can help move the development of these new frameworks forward:

- Challenge the legacy of discrimination in current labor laws and eliminate the explicit exclusions that limit excluded workers’ right to organize and that restrict their rights and dignity in the workplace.

- Build solidarity with and support for ongoing campaigns to improve conditions in specific sectors of excluded workers. Some representative sector-based campaigns include the campaign for a Domestic Workers Bill of Rights in California, the Direct Care Workforce Empowerment Act, and national organizing against the criminalization of immigrant communities.

- Expand labor rights and protections for all workers. The Excluded Workers Congress has decided to prioritize one campaign that we see as an important battle on this front: the fight for a meaningful minimum wage. Spearheaded by
the Restaurant Opportunities Center, this campaign aims to (1) eliminate the exclusions that bar many categories of workers (including restaurant workers and other tipped workers, farmworkers and home health care workers) from minimum-wage protections, and (2) work to raise and index the minimum wage at both the state and federal levels.

- Enact policies that support the right to organize for all workers. Beyond ending the explicit exclusion of certain sectors of workers from the right to organize, we also need laws that will enable immigrant workers—who are made more vulnerable to employer pressure due to current anti-immigrant policies and a hostile political climate—to organize against the all-too-common workplace violations they face. In this vein, the Excluded Workers Congress elected to prioritize the campaign for the POWER Act at the federal level. Initiated by the Alliance of Guestworkers for Dignity, the POWER Act would allow immigrants who are victims of serious labor violations to apply for US visas that would provide them with the legal status they need in order to advocate for their rights in the workplace.

- We believe that these victories would not only benefit excluded workers but also help to raise the floor for all workers.

**Toward Strengthening and Expanding the Labor Movement**

We believe that we will be able neither to win these immediate campaigns nor to advance the longer-term development of a new framework for workers’ rights and power if we do not join together with our allies in the trade unions to rejuvenate and transform the broader labor movement. The Excluded Workers Congress hopes to create the conditions for joint practice and strategy with the established labor movement in order to develop and advance this new vision.

- The Excluded Workers Congress hopes to promote and engage in ongoing strategic dialogue across the labor movement—dialogues that bring together excluded-worker organizations and trade unions to share lessons about the limitations of current collective-bargaining policies and to develop new visions toward an expansion of labor protections and the right to organize.

- We hope to build solidarity and mutual support between excluded-worker organizations and trade unions by supporting each other’s campaigns at both the local and national levels. In order to ensure that this mutual support and solidarity manifest in concrete, shared work, we hope to promote the inclusion of excluded-worker organizations in local labor councils and statewide labor federations.

- We hope to develop and participate in collaborative campaigns that unite excluded worker organizations with trade unions in order to reach unorganized groups of workers and to expand the rights and power of all workers.
UNITY FOR DIGNITY: Expanding the Right to Organize to Win Human Rights at Work

These labor laws had mixed results. On the positive side, they led to significant material victories for many workers (particularly industrial workers) and to the establishment of the modern-day labor movement, which still provides the strongest voice for working people in the United States. On the more challenging side, these laws excluded many workers, and—even in the industries which were protected—the regulations required by these labor laws significantly restrained workers’ ability to exercise their power. Regardless of the laws’ limits, employers worked tirelessly against worker rights to organize. By the 1980s, they had succeeded in eroding labor law in ways that severely restricted worker power.

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10 Marc Linder,
19 Id.
23 Castellanos-Contreras v. Decatur Hotels, LLC, --- F.3d ----, 2010 WL 3816016 (5th Cir. 2010).
26 More recent, unpublished NAWS reports estimate higher proportions of agricultural workers are undocumented. The 2008 NAWS report, based on data from 2005-2007, states that 52 percent of the workforce is unauthorized.

28 Id., Kandel.
29 Id., NAWS.
30 Id., NAWS. This percentage is likely smaller in more recent years, given the increase in premiums and decrease in Americans who have health insurance.

31 Id., Like Machines in the Fields.
36 Id.
40 Id., Wage and Hour Division, Compliance Highlights, 1999 Salad Bowl Report, Nov 1999.
41 Id.
42 Id., Weeding Out Abuses.
44 This number is almost certainly an underestimate, given that immigrant workers are likely not correctly represented in the American Community Survey. Laura Dresser, Center on Wisconsin Strategy, “Cleaning and Weeding Out Abuses,” December 7, 2003 at 13, < http://www.palmbeachpost.com/hp/content/moderndayslavery/reports/peonagefarm1207.html >.
46 Id., Dresser.
47 Id., Home is where the work is.
UNITY FOR DIGNITY: Expanding the Right to Organize to Win Human Rights at Work

90 Id., Driving Poor.
92 Id., Unregulated Work.
104 See Sailer Inn, Inc v. Kirkby., 5 Cal.3d 1, 18 (1971).
105 Restoring the Minimum Wage for America's Tipped Workers.
106 Id.
110 Check, Please!
112 Check, Please!
113 Great Service Divide, 13.
114 Id., Behind the Kitchen Door Five City Survey summary.
115 Broken Laces, 31.
116 Id., Dohn & Schniper.
120 The International Labor Organization (ILO) is a specialized agency within the United Nations system formed in 1919. It is focused on achieving tripartite (government, workers and employers) solutions to major employment issues worldwide. While the U.S. has ratified only thirteen of the ILO’s 179 Conventions (Convention Number 105 on the Abolition of Forced Labor and Convention 182 on the Abolition of the Worst Forms of Child Labor), it is nonetheless bound, by virtue of its membership in the ILO, to protect the four fundamental principles included in the 1998 Declaration on the Fundamental Principles and Rights at Work. These include freedom of association and the right to bargain collectively, the abolition of forced labor, the abolition of child labor, and equal opportunity and treatment in employment.
121 See ILO Comm. on Freedom of Asso., Complaint against the Government of the United States presented by the United Electrical, Radio and Machine Workers of America (UE), supported by Public Services International (PSI) Report No. 344, Case(s) No(s). 2460, 2007, < http://www.ilo.org/dolex/cgi-lex/pdconvplf/host=stato1&textbase=ilo-eng&document=4691&chapter=3&querytype=28%25united States%29%40ref &highlight=&querytype=boool&context=0>.
127 Alex Brandon, Associated Press, Felice Calderon calls Arizona Immigration law racial profiling, CHRISTIAN SCIENCE MONITOR, May 20, 2010; Comision Interamericana de Derechos Humanos, Comunicado de Prensa 47, April 28, 2010, CDIH expresa preocupacion por nueva ley sobre inmigracion de Arizona, Estados Unidos; Chisti, Munzaffar & Claire Bergeron, New Arizona Law Engulf Immigration Debate, (Migration Information Source, Migration Policy Institute, May 17, 2010).
129 See, e.g., International Labour Organization, C155 Convention Concerning Occupational Safety and Health and the Working Environment, 1981 Art.1(1) and 2(1); P155 Protocol to the Occupational Safety and Health Convention, 1981.
130 See, e.g., International Labour Organization, C29, Equality of Treatment ( Accident Compensation) Convention, Art. 3, 1925 132 UDHr Article 23.3.
132 The core members of the HOPE coalition UE Local 150, the NC State Association of University Professors – NC, the American Association of University Professors – NC, and the International Union of Police Associations.
133 <http://www.rocunited.org/files/roc_servingwhilesick_v06percent20percent281percent29.pdf>.
THE EXCLUDED WORKERS CONGRESS

In June 2010, at the US Social Forum in Detroit, three national workers rights alliances that are part of the Inter-Alliance Dialogue, including Jobs with Justice, the National Domestic Workers Alliance and the National Day Laborer Organizing Network brought together nine sectors of workers for an Excluded Workers Congress and strategy session. In September, the groups held a three-day meeting in Washington DC to develop a plan for working together. The following alliances and organizations have been involved thus far:

- American Federation of Government Employees, Local 778
- AFL-CIO
- Black Workers for Justice
- Chinese Progressive Association (San Francisco)
- Coalition of Immokalee Workers
- Comité de Apoyo a los Trabajadores Agrícolas (CATA)
- Community Voices Heard
- Direct Care Alliance
- Food Chain Workers Alliance
- Jobs with Justice
- Legal Services for Prisoners with Children / All of Us or None
- Los Angeles Taxi Workers Alliance
- Mississippi Workers Center for Human Rights
- National Day Laborer Organizing Network
- National Domestic Workers Alliance
- New York Taxi Workers Alliance
- Restaurant Opportunities Centers United
- Southern Human Rights Organizers’ Network
- Taxi Workers Alliance of Pennsylvania
- The Alliance of Guestworkers for Dignity
- United Campus Workers – CWA

www.excludedworkerscongress.org