



**Statement by the American Civil Liberties Union (ACLU) to the
UN Human Rights Council 26th Session
June 13, 2014**

Mr. President,

We welcome the special rapporteur's new report on the labor exploitation of migrants and wholly support his recommendations to comprehensively combat and redress labor exploitation of migrants, including groups of migrants specifically at risk of exploitation such as migrant domestic workers and temporary migrant workers.

Across the United States, domestic workers and foreign nationals employed on a temporary basis ("guestworkers") are subjected to numerous civil and human rights violations including trafficking and forced labor. These migrant workers are especially prone to such abuse, due in part to the exploitation of visa application processes by duplicitous employers and recruiters and because of serious defects in the structure of the guestworker program.

The United States is implicated in these abuses through its failure to take reasonable measures to prevent human rights violations and to protect victims and survivors. In particular, the government has failed to regulate and supervise visa schemes appropriately to prevent abuse and has also failed to amend provisions of the guestworker program that facilitate exploitation. When violations have occurred, the government has failed to vigorously enforce existing anti-trafficking and labor laws, policies, and practices to punish perpetrators and provide redress to victims and survivors.

Under U.S. law, diplomats may bring in domestic workers under A-3 visas; employees of international organizations may bring in workers under G-5 visas. Diplomats and international organization personnel exploit the A-3/G-5 visa application process to lure unsuspecting immigrant workers, the majority of them women, to the U.S. with promises of lucrative employment as domestic workers. Once in the country, diplomats confiscate the women's passports and employ other coercive measures to effectively trap them in the diplomats' homes. The women are then forced to toil for extremely long hours for little or no pay. Some have reported being physically or sexually abused.

Unlike other employers, foreign envoys are generally immune from civil, criminal, and administrative processes except when the diplomat's sending country, on a formal request by the U.S., waives their immunity. Such requests are rarely made or granted in trafficking cases. Thus, even when victims have been able to escape their abusers and seek redress, diplomatic immunity laws are often used to prohibit courts from so much as considering their claims. Absent a waiver, diplomats enjoy total impunity to exploit and mistreat domestic workers—at least until they leave their diplomatic posts.

The United States administers two programs that allow employers to bring foreign guestworkers into the country for "unskilled" work on a temporary basis: the H-2(a) program for agricultural workers and the H-2(b) program for non-agricultural workers. Because of serious flaws in the structure of the latter, guestworkers become vulnerable to labor trafficking. This program grants these foreign workers temporary, non-immigrant status in the United States; a status that binds

workers to their “employer-sponsor” and makes the worker’s ability to obtain and retain status entirely dependent on their remaining on good terms with their employer. Their precarious legal situation renders workers disposable commodities of the employer, so, for example, if workers should complain about any aspect of their position, educate other workers about their legal rights, or protest about their compensation, their employer can very easily send them back to their country of origin, irrespective of the conditions of their employment.

This power imbalance is exacerbated by the fact that guestworkers frequently arrive saddled with debt after paying the exorbitant recruitment fees recruiters charge. This debt is often multiplied by the high interest rates charged by “loan sharks” who some workers approach to fund payment of recruitment fees. Currently, there is no effective oversight of the recruitment process by the government to protect guestworkers from abuse. If guestworkers abandon their jobs, they must choose to either return to their home country in crippling debt, or join the ranks of the nation’s undocumented workers. Foreign recruitment networks need not register with the government, agree to follow U.S. law, or honestly disclose the terms and conditions of employment to recruits.

The U.S. government has made some efforts to address abuses of domestic workers employed by diplomats, and in the context of the guestworker program, in 2011 the U.S. Equal Employment Opportunity Commission filed a lawsuit against a marine industry company charging that it trafficked over 500 Indian guestworkers through the H-2(b) program to work in U.S. shipyards where they were exploited and mistreated. In 2012 the U.S. Department of Labor (DOL) passed comprehensive H-2(b) regulations that included stronger protections, but these never came into force because they were successfully challenged by employers who filed a series of lawsuits asserting that DOL has no authority to regulate employers’ use of the H-2(b) program at all. However, these efforts have not gone far enough.

Mr. Crépeau’s new report provides a blueprint for fixing the broken guestworker program and for enhancing protections for migrant domestic workers employed by diplomats in the United States. The United States should enhance governmental oversight of all temporary visa programs and provide robust oversight of labor conditions to prevent trafficking, forced labor, and other exploitation. The U.S. government should also ensure that temporary workers have the ability to leave abusive employers and seek employment with other U.S. employers. The U.S. government should enact enforcement mechanisms verifying that employers comply with the terms of the contract and ensure that guestworkers and domestic workers are protected by the full panoply of U.S. employment and labor laws. Lastly, to meet its international legal obligations under human rights law, the United States should vigorously prosecute and punish all acts of trafficking and forced labor by diplomats and international organization employees, and should hold diplomats and their sending countries criminally, civilly, and administratively accountable for trafficking and forced labor.

Thank you.

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