

**TO THE HONORABLE MEMBERS OF THE INTER-AMERICAN COMMISSION ON
HUMAN RIGHTS, ORGANIZATION OF AMERICAN STATES**

**PETITIONER'S FINAL OBSERVATIONS ON THE MERITS
PETITION No. 1418-07, SITI AISAH AND OTHERS v. UNITED STATES OF
AMERICA**

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I. INTRODUCTION

In their Final Observations on the Merits, Petitioners Siti Aisah, Hildah Ajasi, Otilia Huayta, Raziah Begum, Mabel Gonzalez Paredes, and Susana Ocares (Individual Petitioners) and Andolan, Break the Chain and CASA of Maryland (Organizational Petitioners) provide the Inter-American Commission on Human Rights (“Commission”) with an update on the factual history of this case and legal arguments made in support of their Petition No. 1481-07 filed with the Commission on November 15, 2007, and which the Commission found admissible on August 27, 2020.¹

Individual Petitioners are six women formerly employed as domestic workers by diplomats in the United States. Organizational Petitioners are organizations who provide legal and other forms of assistance to domestic workers in the United States, including those employed by diplomats. These Petitioners have been joined by additional declarants in support of Petitioners—five domestic workers and six organizations—national and local in scope, that provide legal and other forms of assistance to these workers. Petitioners and declarants in support of Petitioners seek to hold the United States accountable for its violation of the rights under the American Declaration on the Rights and Duties of Man (“the American Declaration”) of all domestic workers in the United States.

The over 2 million domestic workers laboring in the United States do so in a context of exploitation and inequality. The United States has created this context through discriminatory

¹ Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats (“Petition”), Inter-Am. Comm’n H.R., (Nov. 15, 2007), <http://www.aclu.org/files/womensrights/employ/unworkers/petition.pdf>; Petition No. P-1481-07 Domestic Workers Employed by Diplomats, Observation in Response to the United States of America (“Petitioners’ Response”) (June 7, 2019), https://www.law.uchicago.edu/files/2020-08/2019.06.07_petition_no._p-1481-07_petitioners_response_to_us_govt_002.pdf

legal exclusions, lack of enforcement of existing protections, and a failure to regulate the conditions of employment of this vulnerable sector of workers who are predominantly women, people of color and migrants. All domestic workers in the United States are deprived of rights in some manner under major U.S. labor and employment legislation. These include laws, policies and regulations that set basic wages and compensation, impose documentation requirements on employers, guarantee safe and healthy workplaces, provide security and other benefits to workers, ensure workers leave for personal emergencies, and protect workers from abuse, sexual harassment, and other forms of discrimination. The United States has failed in its duty to protect and enable these workers' rights under the American Declaration and has done so in a manner that violates fundamental prohibitions on discrimination.

Petitioners and some domestic workers also face an additional legal barrier imposed by the United States by virtue of being employees of diplomats and other foreign officials: they cannot hold their employers accountable for violations of the limited rights they are afforded. Because the United States grants immunity from its legal jurisdiction to diplomats and other foreign officials, domestic workers employed by them, while already extremely vulnerable, are rendered essentially powerless. The United States has violated the rights of these workers by depriving them of rights and remedies as guaranteed under the American Declaration.

Unsurprisingly, accounts of abuse and exploitation of domestic workers in the United States are common and well-documented.² Domestic workers report underpayment (often below

² E.g. Linda Burnham & Nik Theodore, *Home Economics: The Invisible and Unregulated World of Domestic Work*, ix (Nat'l Domestic Workers All., 2012), <https://domesticworkers.org/sites/default/files/HomeEconomicsReport.pdf>; Human Rights Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, Vol. 13 No.2(G), 4 (June 2001), <http://www.hrw.org/reports/2001/usadom/usadom0501.pdf>; The Institute for Public Studies & National Domestic Workers Alliance, *Notes from the Storm: Black Immigrant Domestic Workers in the Time of COVID-19*, 2 (2020), <https://domesticworkers.org/sites/default/files/IPS-WDiB-survey-brief.pdf>; Lauren Hilgers & Sharif Hamza, *Out of the Shadows*, N.Y. Times (Feb. 2019), <https://www.nytimes.com/interactive/2019/02/21/magazine/national-domestic-workers-alliance.html>.

the minimum wage), excessive hours without additional pay, unsafe working conditions, sexual harassment, psychological abuse, rape, physical abuse and human trafficking. The examples are endless – Petitioners and declarants alone describe being denied freedom of movement, being closely monitored, made to work for extremely long hours without break, and denied pay. They describe being harassed, sexually abused, told they were slaves and treated accordingly. They also describe being made to work without proper protective equipment for long hours, subjected to injuries—sometimes purposefully—and then being denied medical care.³

Petitioners filed this Petition nearly fourteen years ago, yet little has changed in the past decade and a half for domestic workers laboring in the United States. Despite advocacy efforts by domestic workers for national-level reform, supported by a few Congressional allies including former Congresswoman and current Vice-President Kamala Harris,⁴ the United States has made little progress in the way of substantive reform. The sector of domestic work continues to be one of low-wage workers, primarily migrant women and women of color who are overworked, underpaid, abused and ill-treated with little to no government protection or intervention. Domestic workers employed by diplomats, in addition, labor without *any* viable means of enforcing their rights.

As these Observations will detail, the United States is responsible for violating Petitioners and other U.S. domestic workers’ rights because it (1) failed through its laws, policies and practices to protect their rights and to act with “due diligence” to prevent private actors from violating them; and (2) failed to enforce its non-discrimination laws, and instead drew

³ See Appendix 1, Appendix 2, Appendix 3.

⁴ Press Release, *Harris Jayapal Announce Domestic Workers Bill of Rights*, Kamala D. Harris, U.S. Senator for California (July 15, 2019), <https://www.harris.senate.gov/news/press-releases/harris-jayapal-announce-domestic-workers-bill-of-rights>; Domestic Workers Bill of Rights Act, S. 2112, 116th Cong., § 2(2) (2019)

distinctions and exclusions in its laws, policies and practices resulting in discriminatory deprivations of domestic workers' rights under Articles I, VII, IX, X, XI, XII, XIV, XV and XVIII. The United States is also responsible for violating the rights of Petitioners and other domestic workers employed by diplomats and other foreign officials by granting these employers immunity and failing to protect and ensure the rights of these workers under the American Declaration.

Petitioners and declarants in support of this Petition present, herein, the final allegations on the merits of the case, including all facts and legal arguments necessary for the Inter-American Commission on Human Rights (“Inter-American Commission,” “Honorable Commission,” or “Commission”) to find the United States in violation of Articles I, II, VII, IX, X, XI, XII, XIV, XV and XVIII.

II. FACTUAL AND LEGAL BACKGROUND

A. Petitioners

“Individual Petitioners” are former domestic workers employed by diplomats and employees of international organizations in the United States. Their declarations attached in Appendix A, along with those of “Organizational Petitioners” (Appendix 1) and “Declarants in Support of Petitioners” (Appendices 2 and 3), comprise the facts submitted in support of these Observations demonstrating the abuses and exploitation experienced by domestic workers in the United States.⁵ “Organizational Petitioners” are non-profit and advocacy organizations that

⁵ All facts contained in the prior briefing of this Petition should also be considered as incorporated in the factual allegations of these Observations. *See* Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats (“Petition”), Inter-Am. Comm’n H.R., (Nov. 15, 2007), <http://www.aclu.org/files/womensrights/employ/unworkers/petition.pdf>; Petition No. P-1481-07 Domestic Workers Employed by Diplomats, Observation in Response to the United States of America (“Petitioners’ Response”) (June 7, 2019), https://www.law.uchicago.edu/files/2020-08/2019.06.07_petition_no._p-1481-07_petitioners_response_to_us_govt_002.pdf.

support, assist and advocate on behalf of domestic workers in the United States who have experienced abuse and exploitation. “Declarants in Support of Petitioners” are domestic workers in the United States who have been subjected to deprivation of rights protected under the American Declaration and organizations who advocate on behalf of domestic workers.

Petitioners incorporate by reference the facts and law set forth in Section II of the Petition⁶ and the Facts and Law in the 2019 Admissibility Brief,⁷ and supplement those facts in these Observations.

1. Individual Petitioners

Individual Petitioners arrived in the United States under an A-3 or G-5 visa, special nonimmigrant employment visas issued to live-in domestic workers who are employed by diplomats and employees of international organizations. A-3 visas are granted to domestic workers employed by ambassadors, diplomats, consular officers, public ministers, and their family members.⁸ G-5 visas are issued to domestic workers who are employed by officers and employees of international organizations and their families.⁹

Petitioner Siti Aisah was a domestic G-5 visa worker from Indonesia who worked for two years for Mr. Ali Fahad Al-Hajri, the Ambassador to the Qatar Mission of the United Nations and his family in New York City, N.Y.¹⁰ Ms. Aisah’s employers confiscated her passport when she arrived in the United States, and she subsequently had to work more than fifteen hours a day. Her earnings were less than \$150 per month. Throughout her time at work,

⁶ Petition, at 5-49.

⁷ Petitioners’ Response, at 3-30.

⁸ Visa Pages: U.S. Temporary Foreign Workers Visas, A-3 and G-5 Visas 3 (Justice in Motion, 2015), https://683ba61a-c54c-40f0-acc5-a9f6c778d737.filesusr.com/ugd/d83957_600b1759244746a2ad0f4cffe8dffe81.pdf.

⁹ *Id.*

¹⁰ The complete facts of Petitioner Ms. Siti Aisah are set forth in her affidavit in Appendix 1A.

Ms. Aisah was constantly isolated from the outside world. She was not allowed to speak to or call anyone, and she was not allowed to leave the apartment without her employer. Ms. Aisah ran away with the help of the organization Andolan. While Ms. Aisah wanted to take legal action against her employers, she feared that this path of action would lead to negative consequences. Due to her employer's diplomatic status, Ms. Aisah believed that it was almost impossible for her to recover her wages.

Petitioner Hildah Ajasi is a national of Zimbabwe, and she worked for Ms. Poppy Majingo, a diplomat of the Botswana Embassy, and her family in Washington, D.C.¹¹ Ms. Ajasi worked for Ms. Majingo for five years, four years in Zimbabwe and one year in the United States, with an A-3 visa. Unlike what was in her original contract, Ms. Ajasi had to work for more than sixteen hours a day, and she was forced to sleep with her employer's baby at night. She worked seven days a week with no time off, vacation, or holidays. Ms. Ajasi was required to work for her employer's friends once a month as well. Additionally, Ms. Ajasi's freedom of movement was severely constrained by her employer, and she was forced to go to church with her employer even though she did not belong to her employer's denomination. Lastly, even though Ms. Ajasi faced medical problems throughout her employment, her employer refused to provide her medical care. Ms. Ajasi received a salary of \$250 per month. She obtained legal assistance from Ayda and the Break the Chain Campaign. Because of her employer's diplomatic status, Ms. Ajasi did not bring a lawsuit against Ms. Majingo.

Petitioner Raziah Begum is a national of Bangladesh who worked for two and a half years for Mr. F. A. Shamim Ahmed, the Deputy Permanent Representative to the Bangladesh Mission to the United Nations, and his family in New York City, N.Y.¹² Ms. Begum's passport

¹¹ The complete facts of Petitioner Ms. Hildah Ajasi are set forth in her affidavit in Appendix 1B.

¹² The complete facts of Petitioner Ms. Raziah Begum are set forth in her affidavit in Appendix 1.

was confiscated upon arrival in the United States, and she was treated like a slave. For two years, she was not allowed to leave her employer's apartment, and she worked for more than thirteen hours a day without rest. Ms. Begum was not allowed to take breaks during the day, and she was forbidden from sitting anywhere in the apartment and from eating at the table. Ms. Begum also had to sleep on the floor or under the dining room table. Ms. Begum received \$29 per month, which her employers sent to her son in Bangladesh. After two years, her employers allowed her to leave the apartment for thirty-minute intervals, and in one of those intervals, she met someone who worked for the organization Andolan. With the help of Andolan, Ms. Begum escaped. Due to the diplomatic status of her employer, Ms. Begum did not pursue legal action against them.

Petitioner Lucia Mabel Gonzales Paredes is from Paraguay and a resident of Argentina. She worked under an A-3 visa for one year for Mr. Jose Luis Vila, a diplomat in the Argentine Embassy and his family in Washington, D.C.¹³ Contrary to promises made in her employment contract, she was paid \$500 per month and denied overtime compensation and health insurance. Her employers forced her to work for more than fifteen hours a day, with few Sundays off. Ms. Gonzales Paredes was also required to perform complex physical therapy on her employer's infant child. When Ms. Gonzales Paredes was hospitalized, her employers did not pay for her medical treatment. She was also coerced into signing false receipts that portrayed her wages at a higher rate than she actually received. Ms. Gonzales Paredes left their home when her employer refused to increase her salary. In 2006, Ms. Gonzales Paredes filed a complaint against her employers in the U.S. District Court for the District of Columbia. The Court eventually dismissed the case, holding that her employers were immune from the suit due to their diplomatic immunity.

¹³ The complete facts of Petitioner Ms. Lucia Mabel Gonzales Paredes are set forth in her affidavit in Appendix 1D.

Petitioner Otilia Luz Huayta is a national of Bolivia who worked for a Bolivian diplomat in Maryland under an A-3 visa.¹⁴ Ms. Huayta lived in her employer's home with her daughter, Carla. Ms. Huayta was required to work over fifteen hours a day, seven days a week. Her employers expected Carla to perform chores and to take care of her employer's four-year-old child. Ms. Huayta was compensated \$200 per month, which was contrary to what was stated in her employment contract. Ms. Huayta was also required to clean the home of her employer's friends. Ms. Huayta and her daughter were isolated from the outside world, and her employer utilized threats to prevent them from leaving the house. Ms. Huayta and Carla were forbidden from eating the same food as the family, and with her meager salary, Ms. Huayta was unable to produce enough nutritional food for her daughter at school, which caught Carla's teacher's attention. Carla's schoolteacher, along with CASA of Maryland, helped Ms. Huayta escape in 2006. With the help of CASA, Ms. Huayta requested the intervention of the Bolivian Embassy, which was an alternative to litigation because she knew diplomatic immunity would be a barrier to success. Her employer agreed to an out-of-court settlement that paid Ms. Huayta her wages on the condition that the employer remain confidential.

Petitioner Susana Ocares is a national of Chile who worked for one year for a diplomat in the Chilean Embassy in Washington, D.C. under an A-3 visa.¹⁵ Contrary to the terms in her contract, Ms. Ocares was required to work for twelve hours a day and with minimal rest time or days off. Ms. Ocares was paid \$950 per month, but she was never compensated for her overtime hours. Additionally, Ms. Ocares was subjected to insults and degrading treatment. When she sought legal advice from CASA, CASA attorneys advised her that if she sought legal action,

¹⁴ The complete facts of Petitioner Ms. Otilia Luz Huayta are set forth in her affidavit in Appendix 1E.

¹⁵ The complete facts of Petitioner Ms. Susana Ocares are set forth in her affidavit in Appendix 1F.

diplomatic immunity would prevent her lawsuit from continuing. At the time Ms. Ocares was thrown out of the house by her employer, she was owed more than \$25,000 in wages.

2. Organizational Petitioners

Organizational Petitioners provide legal and social services to domestic workers as well as advocate for their rights through legislative and policy reform.

Andolan – Organizing South Asian Workers is a non-profit, membership-based organization that advocates and organizes on behalf of low-wage immigration South Asian workers.¹⁶ Andolan has been conducting advocacy efforts since 1998 in New York City, and it was founded by South Asian domestic workers. Andolan provides support to domestic workers, as well as workers in the restaurant and retail industry, through education, peer exchange, community organization, and litigation. When required, Andolan helps domestic workers file lawsuits against their employers with the help of pro bono attorneys.

Break the Chain Campaign (“BTCC”) of the Institute for Policy Studies is a non-profit organization that is engaged in advocacy efforts, while also providing direct services, for workers who are trafficked, enslaved, and/or exploited.¹⁷ Break the Chain was created in 1997 after its involvement in an investigation that demonstrated the abuse and exploitation that migrant workers who were employed by diplomats faced in Washington, D.C. Its direct services include case management, legal services, and social services.

CASA of Maryland, Inc. (“CASA”) is a non-profit organization that works towards the advancement of immigrant rights in Maryland.¹⁸ CASA was founded in 1985, and it provides

¹⁶ Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats, Inter-Am. Comm’n H.R., 24-27 (Nov. 15, 2007), <http://www.aclu.org/files/womensrights/employ/unworkers/petition.pdf>.

¹⁷ *Id.*

¹⁸ *Id.*

social, education, and legal and advocacy services to low-wage immigrant workers. Since the 1990s, CASA has represented hundreds of domestic workers.

3. Domestic Worker Declarants in Support of Petitioners

Edith Mendoza is a national of the Philippines who worked for a German diplomat and his family in Westchester County, New York from January 2015 until June 2016. Ms. Mendoza was brought to the United States by her employer under an A3-visa, which was converted to a G-5 visa six months after Ms. Mendoza's arrival in the country.¹⁹ During her employment, she suffered various forms of abuse and exploitation. In violation of her employment contract, which stipulated that Ms. Mendoza would take care of the children and do some light housekeeping, Ms. Mendoza was required to maintain and complete deep cleaning of the six-bedroom, six-bathroom home, and two-car garage, which included sweeping, dusting and mopping; doing the laundry; taking out the garbage; preparing all meals; caring for the family pets; and cleaning the family cars. She worked over 90 hours a week, from Monday through Saturday. While she worked, Ms. Mendoza was not allowed to take any breaks. Due to her long work hours, she was only able to sleep for four to five hours per night. Ms. Mendoza received \$350.70 per week, and even though she asked, her employers refused to pay her overtime compensation. Additionally, Ms. Mendoza was not given any protective equipment needed for her work. She purchased her own safety equipment such as gardening supplies and gloves and face masks to protect her from inhaling or having contact with the strong chemicals she used for cleaning. Ms. Mendoza was subjected to surveillance, as her employer placed cameras all around the house without telling her. There was also a security alarm around the house, whose security code was not shared with

¹⁹ Mendoza, *Declaration of Edith Mendoza*, Appendix 3A ¶ 1-2, 6-10, 15-16, 20-23, 29-30, 44-47.

Ms. Mendoza. Thus, she was unable to leave the house without permission. For the first year of her employment, Ms. Mendoza was not given permission to see the doctor. Her employer threatened to fire Ms. Mendoza when she was ill and did not respect a medical certification from Ms. Mendoza's doctor—whom she saw on her first day off after a year of work—prescribing time off work. Finally, Ms. Mendoza escaped her employer's home with the help of the Urban Justice Center and filed a lawsuit against her employer based on the inhumane working conditions and the negative impact on her health. The lawsuit was ultimately dismissed because of diplomatic immunity. Ms. Mendoza received a T-visa after a finding that she was a victim of labor trafficking but was never compensated for the violations she suffered.

Faith Sakala, a national of Zambia, worked as a G-5 domestic worker for a couple employed by the Zambian Embassy and the World Bank in Washington, D.C.²⁰ She accepted this job in reliance on her employer's promise that she would work as a nanny while obtaining her college education. Even though her contract stipulated she would work for 35 hours a week and receive sick days, vacation and overtime pay, these terms were all violated. For example, Ms. Sakala was required to work for eighteen hours a day, Monday through Sunday. She received no wages or any other form of compensation for her work. Even though she was promised food and clothes, her employer provided her one used jacket for the wintertime and gave her used underwear. Ms. Sakala was not allowed to call her family back in Zambia, and when she was sick, her employer refused to fill her prescription. Ms. Sakala was kicked out of her employer's home in September 2015, while being owed over \$14,000 USD in wages. The World Bank paid this amount on her employer's behalf, but this amount only covered her wages for the hours in her original contract (thirty-five-hours a week) and did not account for her

²⁰ The complete facts of Petitioner Ms. Faith Sakala are set forth in her affidavit in Appendix 2A.

overtime. After she left her first employer's home, Ms. Sakala worked for another family who overworked and abused her as well. In 2016, after Ms. Sakala had been abused by two separate employers, she tried to switch jobs to become a nanny. The man who falsely recruited her to work as a babysitter for his sister ended up drugging and raping her, leading to a pregnancy. Ms. Sakala was granted a T-visa in 2018 after a finding that she was a victim of labor trafficking but has not been compensated for the abuse she suffered at the hands of her first employer. Ms. Sakala has filed a lawsuit with the help of lawyers against her first employer.

Suzu Gurung is a national of India and is of Nepali descent. She worked as a G-5 worker for an Indian diplomat and his family in New York City from 2005 to 2009.²¹ Although the U.S. Embassy provided her information on the salary, workplace benefits, and educational offerings available to her, she received none of these benefits once she started her work. Ms. Gurung was not provided a contract, but she was promised eight-hour work days, time off on weekends, paid vacation, sick leave, and enrollment in English classes. None of these promises were fulfilled. Ms. Gurung never received any of her wages, and she did not get any time off for three years and four months, the time she worked for her employers. She worked far more than eight hours per day and on weekends, and was responsible for cooking, cleaning, laundry, and taking care of frequent houseguests. Ms. Gurung's food was severely restricted and monitored, and she always went hungry. Ms. Gurung was not allowed to buy toiletries, and her employers did not provide sufficient hygiene supplies, making it difficult for Ms. Gurung to clean herself. She also faced mental harassment from her employers and was often told that if she left the house, she would be raped and beaten by the police, have her money taken away, and be sent back to India. Ms. Gurung's movements were closely monitored and restricted. She was only allowed to access

²¹ Gurung, *Declaration of Suzu Gurung*, Appendix 3B ¶ 1, 3-7, 9, 11, 19-23.

certain rooms in the house, yet she was rarely allowed to leave the house, and when she bought groceries for the family, her trips were timed. Ms. Gurung was not allowed to go back to India when she asked, and was prevented from visiting her family on a trip to India with her employers. Ms. Gurung suffered from trauma from her employer's treatment. With the help of the organization Adhikaar, Ms. Gurung escaped. She did not report her treatment to the police at first due to the fear that her employers had instilled in her. However, after escaping, she filed a lawsuit against her employer. The lawsuit is still ongoing; Ms. Gurung won the initial case, which ordered that the diplomat pay her \$1.5 million dollars. However, since her employer had already left the country by the time of the judgment, Ms. Gurung did not receive this compensation. Ms. Gurung has received a T-Visa after a finding that she was a victim of human trafficking.

Ruben Apolonio Bitas is a national of the Philippines who worked under an H-2B visa in Florida and California from 2008 to 2009.²² During his employment, he suffered wage theft, unpaid overtime labor, threats of deportation, and restrictions on his movements. Although Mr. Bitas met with the U.S. Embassy when applying for the H-2B visa, they did not ask to see his contract with the hiring agency or inform him of his rights. Mr. Bitas worked at Starwood Vacation Owner Resort in Orlando, Florida, through a hiring agency and was given a contract that did not discuss job duties or allow Mr. Bitas overtime pay and sick leave. Mr. Bitas was told by his employers that if he terminated his contract, his visa would be revoked, and he would be deported. Mr. Bitas was made to pay over the agreed-upon fee for an apartment provided by the hiring agency—which coordinated with Starwood Vacation Owner Resort—and live in cramped quarters. In violation of his employment contract, which stipulated that Mr. Bitas would receive

²² Bitas, *Declaration of Ruben Apolonio Bitas*, Appendix 3C ¶¶ 1-3, 9-19, 24-27, 29-30, 33, 44.

\$8 an hour, substantial tips, and work 40 hours a week, Mr. Bitas had to skip meals to finish cleaning 14 villas within eight hours, received \$80 for the first two weeks of work, only \$3 in tips for the duration of his employment, and had his housing payment automatically deducted out of his paycheck. The hiring agency monitored and restricted Mr. Bitas's movements by requiring him to ask permission anytime he wanted to leave his workplace or home. Mr. Bitas's access to his phone during work and the computer at his apartment was also restricted. Mr. Bitas was mistreated by his supervisors. On several instances, his main supervisor purposefully dirtied a villa Mr. Bitas had already cleaned and required him to clean it again. Mr. Bitas escaped from Starwood Vacation Owner Resort after working there for two months. Mr. Bitas worked next at three different caregiving facilities in California. At each facility, Mr. Bitas was overworked, underpaid, and threatened with deportation if he looked for other work. At the first facility, Mr. Bitas was promised \$1,500 a month to work eight hours per day, six days per week, and an extra \$100 for every additional day worked. After a month of working twelve-hour days and many nights, Mr. Bitas only received \$810. At the second facility, Mr. Bitas was fired without notice or cause. At the third facility, Mr. Bitas worked 10 hours a day, did not receive overtime pay, and was made to sleep in the living room of the caregiving facility with other caregivers. At each facility, Mr. Bitas often worked overtime without pay. Mr. Bitas's lawyer, has reported his working conditions to the Santa Monica Police Department, but law enforcement has not yet responded to his request for an investigation.

Erika Velasco Umlas is a national of the Philippines who worked in the Middle East and the United States on two different occasions.²³ During her employment, she was subjected to involuntary servitude, abuse, and exploitation. From 2008 to 2011, Ms. Umlas worked as a

²³ Umlas, *Declaration of Erika Velasco Umlas*, Appendix 3D ¶ 1-4, 6, 10-12, 20-25, 27-30, 35, 37, 49.

domestic worker in Jordan. Ms. Umlas's employer continually insulted her and monitored her food intake. Ms. Umlas's employer smashed her hand in a second story window that she was cleaning from the outside, causing her to fall to the ground and endure a three-month hospital stay for multiple fractures in her back. In January 2018, Ms. Umlas worked as a domestic worker for a different family in Dubai. In violation of her employment contract, which stipulated that Ms. Umlas would have possession of her passport and identity documents, that she would work eight to ten hours a day, six days a week, and that she would only take care of one child, Ms. Umlas's passport was taken away, she was required to work 18 hours a day, seven days a week, take care of six children, and clean the house for 1,500 dirhams or \$400 per month. Her employer dehumanized and insulted her, and only allowed her to eat leftovers and expired food. Ms. Umlas's employer deducted money from her salary as punishment for making any mistake. In June 2018, Ms. Umlas's employer in Dubai forced her to move with them to the United States under a one-year B-2 visa and a new contract. In violation of her new employment contract, which said that Ms. Umlas would only care for one child and get paid \$10.50 an hour, Ms. Umlas took care of all the children, cooked, cleaned, and ironed, working 18-hour days. Ms. Umlas never received any of these wages. Ms. Umlas was prevented from contacting friends and family. With the help of the Pilipino Workers Center of Southern California, Ms. Umlas escaped. Ms. Umlas is currently applying for a T-Visa.

4. Organizational Declarants in Support of Petitioners

Damayan Migrant Workers Association (Damayan) is a non-profit grassroots and membership-based workers' organization based in New York and New Jersey, led by Filipino

domestic workers.²⁴ Damayan is a co-founder of the National Domestic Workers Alliance and co-anchor of the Alliance's Beyond Survival campaign to end the human trafficking of domestic workers in the U.S. Damayan educates, organizes, and mobilizes low-wage Filipino workers – especially women domestic workers – to fight for their labor, health, gender and immigration rights, while challenging the root causes of our forced migration through membership engagement, leadership development, basic health services, legal support and campaigns. Damayan's membership, Board, staff, and volunteers include people who have survived labor trafficking in the United States. Damayan's services include helping survivors develop escape plans, secure emergency housing and financial assistance, access social and legal services, find employment, and facilitate family reunifications. Most of Damayan's members are labor and human trafficking survivors. Damayan has observed weak enforcement of existing laws and State Department policies to protect domestic workers.

Additionally, over the past four years, Damayan observed that it has become harder for their members to obtain a T-Visa. Damayan has observed little regulation over domestic workers' working conditions and employers' contractual obligations. For example, in the case of Edith Mendoza, an A3-G5 domestic worker in the house of a United Nations employee, and an Individual Supporting Petitioner and member of Damayan, there were no mechanisms in place to ensure that the employer was abiding by their contractual obligations and treating Edith with dignity. Edith had no clear contact in the government or her community to whom she could call and complain.

²⁴ Ortiz, *Declaration of Riya Ortiz on behalf of Damayan Migrant Workers Association*, Appendix 3E ¶¶ 1, 2, 4, 6, 7, 9, 11, 12, 13, 14, 18, 19, 21

The National Domestic Workers Alliance (NDWA) works for respect, recognition, and labor protections for domestic workers.²⁵ NDWA is strengthened by its 70 affiliate organizations and local chapters and by the tens of thousands of domestic worker members in all 50 states. NDWA works to improve working conditions for domestic workers - leading policy advocacy, research, and the development of innovative solutions. NDWA also works toward building a powerful movement rooted in the rights and dignity of domestic workers, immigrants, women, and their families. In 2013, NDWA launched the Beyond Survival campaign to end the human trafficking of domestic workers in the United States. In 2017 the campaign released a report, "The Human Trafficking Of Domestic Workers In The United States: Findings from the Beyond Survival Campaign," based on 110 domestic worker trafficking cases. Eighty-five percent of the survivors had at least part of their pay withheld, 80% had been tricked with false or deceptive employment contracts, 78% had employers threaten to report them for deportation if they complained about their working conditions, 75% had their movements and communication restricted or monitored by their employers, 62% had their passports or other identification confiscated, 74% reported emotional or verbal abuse by their employer, 66% reported physical or sexual abuse, either by their employer or a family member of their employer, and 45% reported fearing physical harm if they tried to leave. NDWA has advocated for legal and policy changes, including Domestic Worker Bills of Rights, at the state and municipal level in nine states and two cities. NDWA is also working to champion a national Domestic Worker Bill of Rights, a piece of federal legislation first introduced in 2019 but not yet passed. NDWA has observed widespread exploitation of domestic workers by their employers. In a 2012 survey of over 2,000 domestic workers, NDWA found that 23% of domestic workers are paid below state

²⁵ Poo, *Declaration of Ai-jen Poo on Behalf of the National Domestic Workers Alliance*, Appendix 3F ¶ 2, 3, 9, 10, 13-18, 29-31, 50, 51.

minimum wages, and 30% have had their employer disregard at least one provision of their employment contracts. Domestic workers who have submitted their stories to the NDWA have not been paid for their work, have been fired without notice, have had their movement restricted and monitored, and have been sexually harassed.

Adhikaar, meaning “rights” in Nepali, is a New York-based nonprofit organizing the Nepali-speaking community to promote human rights and social justice for all.²⁶ Since 2005, Adhikaar has assisted thousands of individuals and families with immigration, health, and workers’ rights issues, trained hundreds of new Nepali-speaking leaders, and successfully changed worker-focused policies and created new laws at local, state, national, and international levels, including the New York State Domestic Workers Bill of Rights and the International Domestic Workers’ Convention. Adhikaar has 5,000 members, all of whom are low-wage workers in the New York area. Its members work in healthcare, nail salons, and as domestic workers and nannies. Adhikaar serves an estimated 10,000 individuals per year. The experiences of Adhikaar’s members employed as domestic workers have shown that domestic workers are vulnerable to abuse and exploitation by their employers. Adhikaar’s domestic worker members are verbally promised certain work conditions by their employers, but the employers later deviate from these agreements or abandon them altogether. These false promises and broken contracts frequently relate to things like exceeding the described or agreed-to work hours/schedule, denying vacation days or personal time, adding job responsibilities beyond what was discussed, and failure to pay for hours worked, whether regularly scheduled or overtime. Women domestic workers have described facing physical and verbal abuse, harassment, and discrimination, with their employers insulting or degrading them or their work based on their gender, nationality

²⁶ Chhetri, *Declaration of Narbada Chhetri on Behalf of Adhikar*, Appendix 3G ¶ 1, 5, 6, 7, 16, 18, 19, 24.

and/or ethnicity. Others have described being injured at work, either through accidents or as a result of the ordinary physical demands of domestic work, combined with long hours and use of cleaning supplies or tools with inadequate protective equipment such as gloves and masks. Adhikaar's members who are live-in domestic workers are often given poor living quarters.

Adhikaar has observed that employers of trafficked domestic workers regularly use tactics of isolation to control their workers. For example, employers of A-3/G-5 workers prohibit live-in domestic workers from leaving the home through commands, threats, or even physical restraints. They may prevent or forbid their domestic workers from communicating with family members, friends, or other domestic workers in or outside the house. Workers are frequently monitored with video cameras and recorders. Another particularly harmful feature of the A-3/G-5 program is that workers are infrequently able to publicize the out-of-court settlements they reach with their abusers because these settlements often come with nondisclosure agreements.

Fe y Justicia Worker Center (FJWC) is a worker rights community organization in Houston, Texas.²⁷ FJWC was founded more than fourteen years ago, and its mission is to provide a safe space for low-wage workers so they may gather and learn about their rights in the workplace, network for various social services, file complaints with government agencies, meet with attorneys, and connect with community allies. FJWC also organizes campaigns to improve wages, benefits, and working conditions for low-wage workers. FJWC has observed abuse of domestic workers in the Houston metropolitan area. Domestic workers in the Houston metropolitan area face sexual harassment. These domestic workers routinely experience deviations from employment terms initially agreed to, such as variances in hours, pay, work schedule, and promised time off. Often, these workers have their wages and hours decreased

²⁷ Trigos-Kukulski, *Declaration of Daniana Trigos-Kukulski on Behalf of Fe y Justicia Worker Center*, Appendix 3H ¶ 1-3, 5-6, 8-9.

without explanation and are not given time off for routine health procedures. Live-in domestic workers in the Houston metropolitan area routinely do not have access to their personal documents, such as passports and visa documents, and are prevented from speaking with people aside from their employers. The majority of domestic workers do not have written contracts with their employers, which prevents them from holding their employers accountable for abuse and wage theft.

Centro de los Derechos del Migrante (CDM) is a Mexico City and Baltimore-based nonprofit organization that supports largely Mexico-based migrant workers to defend and protect their rights as they move between their home communities in Mexico and their workplaces in the United States.²⁸ CDM advocates for migrant workers who come to the U.S. on a variety of temporary work visa programs by providing community-based client education, legal service provisions, and campaign advocacy here and abroad. CDM works with J-1 *au pairs* who are often treated as underpaid domestic workers and easily abused. Host families often set strict rules that limit the *au pair's* access to food, healthcare, and freedom of movement. *Au pairs* who are injured on the job often have difficulty accessing proper medical treatment. Host families threaten their *au pair* by saying they will call Immigration and Customs Enforcement (ICE) if they disobey their orders. Host families violate the terms of the J-1 contract by preventing the *au pair* from achieving the educational component of the J-1 visa program. Two *au pairs* whom CDM represents, Tatiana Cuenca-Vidarte and Sandra Peters, were abused verbally and emotionally by the same host family. The host family routinely threatened deportation if they failed to continue working excessively long hours as demanded by the host family. Both women were not allowed to eat certain foods, occupy certain spaces in the house, travel outside

²⁸ Guzmán, *Declaration of Sulma Guzmán on Behalf of Centro de los Derechos del Migrante*, Appendix 3I ¶¶ 1, 2, 5, 6, 7, 8, 10, 12, 13, 14, 15.

the home, or interact with certain people. Both women routinely worked in excess of the 45 hours per week they were promised by their *au pair* agencies and were directed to perform work that was far beyond childcare and child-related tasks. Both women were cheated out of their legally mandated wages through manipulated contracts purporting to entitle plaintiffs to only \$195.75 for 45 hours of work, in violation of federal and state minimum wage and overtime laws. CDM observed that the experiences of these women are not uncommon in the J-1 program.

The Human Trafficking Legal Center (HTLC) is an organization that works with pro bono attorneys to fight for justice for trafficking survivors.²⁹ HTLC maintains comprehensive databases of federal civil and criminal trafficking cases filed in U.S. federal courts. These databases contain many cases involving the trafficking of domestic workers. The majority of domestic worker victims are foreign-born nationals who have been recruited to work in the United States. In a large number of federal criminal and civil trafficking cases, victims have legal visas to work as domestic workers. A large number of federal civil trafficking cases have been filed by A-3 and G-5 visa holders who were trafficked by diplomats or international officials. Criminal prosecutions of employers of A-3 and G-5 domestic workers – indeed, prosecutions of any employers of domestic workers – are rare in the United States. Threats of deportation are a common means of coercion in trafficking cases. In more than two-thirds of federal civil cases involving domestic workers (69 total), defendants allegedly threatened victims with deportation in order to compel their labor. Threats of deportation were alleged in about half of all federal criminal domestic servitude prosecutions (16 total). Physical and sexual violence are also common features of domestic servitude cases. More than 40% of federal civil domestic servitude cases (45 total) involved actual physical violence or threats of violence, and in federal criminal

²⁹ Bessell, *Declaration of Sarah L. Bessell On Behalf of The Human Trafficking Legal Center*, Appendix 3J ¶ 1, 2, 4, 5, 6, 7, 8, 10, 11, 12.

domestic servitude cases, the rate of violence or threats of violence was even higher. In some cases, employers recruit domestic workers with promises of educational opportunities in the United States. The trafficker-employers then deny domestic workers access to education. Employers also frequently create a climate of fear, causing domestic workers to remain in situations of forced labor or involuntary servitude due to fear of arrest or deportation. These threats can continue even after a domestic worker escapes. More than a quarter of civil domestic servitude cases included allegations that employers used retaliatory or intimidation-based tactics to limit domestic workers' access to courts.

B. Background and Overview of Domestic Labor

1. Definition

The International Labor Organization (ILO) defines domestic workers as workers who perform domestic labor, defined as “work performed in or for a household or households,” “within an employment relationship,” and excludes anyone who performs domestic work “only occasionally or sporadically and not on an occupational basis.”³⁰ The United States employs a similar definition of domestic workers in its labor and employment laws. The Department of Labor defines domestic workers as those who “provide services of a household nature in or about a private home,” including companions, babysitters, cooks, waiters, maids, housekeepers, nannies, nurses, janitors, caretakers, handypeople, gardeners, home health aides, personal care aides, and family chauffeurs.³¹

³⁰ Int'l Labour Org., C189 - Domestic Workers Convention art. 1, 2011 (No. 189), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189.

³¹ Fact Sheet #79: Private Homes and Domestic Service Employment Under the FLSA, U.S. Dep't of Labor: Wage and Hour Div. (Sep. 2013), available at <https://www.dol.gov/agencies/whd/fact-sheets/79-flsa-private-home-domestic-service>.

Consistent with these definitions, for the purposes of these Observations, “domestic workers” are individuals employed part-time or full-time in a household or private residence and excludes those who perform domestic work “only occasionally or sporadically and not on an occupational basis.”³² Domestic workers may work as cooks, servers, servants, butlers, nurses, childminders, caretakers for elderly or disabled persons, personal servants, barkeepers, chauffeurs, porters, gardeners, washer people, or guards.³³ They may reside in the household of the employer (live-in) or may reside in their own residences (live-out).³⁴

2. Domestic Work: A Global Perspective

Across the globe, domestic work is simultaneously “vital and sustaining” while also “demeaned and disregarded.”³⁵ Domestic workers perform the most necessary labor, caring and cleaning in private homes.³⁶ These workers provide critical assistance to individual and families, enabling many who would otherwise be engaged in domestic work, to participate in economically productive activities outside the home.³⁷ As societies struggle to meet the needs of childcare for working families and care options for the elderly, domestic workers fill this gap.³⁸ The importance of this form of work and its centrality to a functioning economy are well-

³² *Id.*

³³ U.N. Econ. & Soc. Council, Comm’n on Human Rights, Specific Groups and Individuals: Migrant Workers, U.N. Doc. E/CN.4/2004/76 (January 12, 2004) ¶ 12, Ex. F(1) [hereinafter “Migrant Workers”] (prepared by Gabriela Rodriguez Pizarro). According to the International Labor Organization, the work of domestic service employees includes: sweeping or vacuuming; cleaning or washing and waxing floors, doors, windows, furniture and various objects; washing, ironing, and mending bed and table linen and other household linen for personal use; washing dishes; preparing, cooking, and serving meals and drinks; buying food and various articles for domestic use; performing related tasks; and supervising other workers. *Id.*, ¶ 13.

³⁴ *Who are domestic workers?* Int’l Labor Org., https://www.ilo.org/global/docs/WCMS_209773/lang-en/index.htm.

³⁵ Bridget Anderson, *Doing the Dirty Work? The Global Politics of Domestic Labour* 1 (2000).

³⁶ *About the National Domestic Workers Alliance*, National Domestic Workers Alliance (2020), <https://www.domesticworkers.org/about-us>.

³⁷ Peggie R. Smith, “Work like Any Other, Work like No Other: Establishing Decent Work for Domestic Workers,” 15 EMP. Rts. & EMP. POL’y J. 159, 160 (2011).

³⁸ In 2014, only 7% of U.S. employers provided childcare at or near the worksite. *Percentage of U.S. employers providing child care assistance to employers in 2014*, Statista (2014), <https://www.statista.com/statistics/323602/us->

documented.³⁹ As populations grow, societies age and women’s role in the home evolves towards equality, the contribution of domestic workers will only become more significant.⁴⁰

Yet, as is also well-documented, domestic workers are often underpaid, overworked, abused and remain unprotected in many States.⁴¹ This form of work finds its roots in gender, race and ethnic inequality as well as slavery, colonialism and other forms of servitude.⁴² Today, it continues to be treated as “invisible” labor—conducted inside the home, often unpaid and unrecognized.⁴³ According to Human Rights Watch, domestic workers are “among the most exploited and abused workers in the world.”⁴⁴ When domestic work is recognized as labor, it is still monetarily undervalued and is often relegated to the informal sector.⁴⁵ It tends to not be perceived as regular employment,⁴⁶ and remains left out of labor and employment protections and standards, “render[ing] domestic workers vulnerable to unequal, unfair and often abusive treatment.”⁴⁷

[employers-providing-child-care-assistance/](https://www.statista.com/statistics/323602/us-employers-providing-child-care-assistance/). Additionally, private-sector employers are legally required to support or provide childcare in only 26 out of 189 world economies. *Women, Business and the Law 2019*, World Bank Group 1 (July 15, 2019), <https://www.statista.com/statistics/323602/us-employers-providing-child-care-assistance/>. A 2015 study conducted by the International Labour Organization found that over half of the world’s older persons lack quality long-term care. Only 5.6% of the global populations lives in countries that provide universal long-term care. *More than half of the world’s older persons lack quality long-term care*, International Labour Organization (October 1, 2015), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_406984/lang--en/index.htm.

³⁹ Int’l Labour Conf., Fourth Item on the Agenda Decent Work for Domestic Workers, Report of the Comm. on Domestic Workers ¶ 16 (99th Session, Geneva, 2010), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_141770.pdf.

⁴⁰ Laura Addati et al., *Care Work and Care Jobs For the Future of Decent Work*, International Labour Organization (June 28, 2018), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633166.pdf.

⁴¹ Decent Work for Domestic Workers: The Case for Global Labor Standards 3 (Human Rights Watch 2007), https://www.hrw.org/sites/default/files/related_material/HRW_ILO_brochure_lores.pdf.

⁴² *Id.*, ¶ 1 and ¶ 2. See also Domestic Service and the Formation of European Identity: Understanding the Globalization of Domestic Work, 16th–21st centuries (Antoinette Fauve-Chamoux, 2004); Gender, Migration and Domestic Service (Janet Henshall Momsen, 1999); A rapid assessment of bonded labour in domestic work and begging in Pakistan, Working Paper, Collective for Soc. Sci. Res., Karachi (Int’l Labour Off., 2004).

⁴³ Int’l Labour Conf., Report IV (1): Decent Work for Domestic Workers, Fourth Item on the Agenda ¶ 4 (Int’l Labour Org., 2010), available at https://www.ilo.org/public/libdoc/ilo/2009/109B09_24_engl.pdf.

⁴⁴ *Domestic Workers*, Human Rights Watch (2012), <https://www.hrw.org/topic/womens-rights/domestic-workers>.

⁴⁵ *Supra* note 43 at ¶ 4

⁴⁶ *Id.*

⁴⁷ *Id.*

Globally, approximately 67 million individuals are domestic workers. In 2013, about 34.9 percent of the world’s migrant domestic workers resided in Asia, 27.4 percent in Arab States, 19.9 percent in Europe, 6.5 percent in Latin America and the Caribbean, 5.6 percent in Africa, and 5.5 percent in Northern America.⁴⁸ The demand for paid domestic and care work continues to grow rapidly worldwide.⁴⁹ Three main trends explain this growth: the integration of women in developed countries into the paid labor market outside the home; a rapidly aging population with increased life expectancies and lower fertility rates; and weakening social and public care services requiring families to arrange for services that were once provided by the government.⁵⁰

Domestic work is considered ‘women’s work.’⁵¹ The overwhelming majority—about 80 percent—of domestic workers are women.⁵² Domestic work was historically performed by housewives for no pay;⁵³ around the world, the vast majority of unpaid child care, cooking and cleaning work is still performed by women.⁵⁴ Because household work has always been essential, and women in the homes have performed this labor for free, domestic work is perceived as having little to no economic value: it “takes place outside the boundary of the

⁴⁸Labour Migration Branch & Dep’t of Stat., ILO Global estimates on migrant workers: Results and methodology, Special focus on migrant domestic workers 16 tbl 2.8 (Int’l Labour Org, 2013),

https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436343.pdf.

⁴⁹ Women Domestic Workers: Undervalued, Unprotected, Invisible (Int’l All. Of Women, 2017)

<https://www.womenalliance.org/3726-2/>.

⁵⁰ *Id. see also* Marie-José Tayah, Decent Work for Migrant Domestic Workers: Moving the Agenda Forward 26-29 (Int’l Labour Org., 2016), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_535596.pdf.

⁵¹ See Terri Nilliasca, Note “Some Women’s Work: Domestic Work, Class, Race, Heteropatriarchy, and the Limits of Legal Reform”, 16 Mich. J. Race & L. 377 (2011); Judith Rollins, *Between Women: Domesticity and Their Employers* 21-24, 59 (1985).

⁵² Domestic Workers, Women in Informal Employment: Globalizing and Organizing,

<https://www.wiego.org/informal-economy/occupational-groups/domestic-workers>.

⁵³ Taunya Lovell Banks, “Toward A Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate”, 3 J. Gender Race & Just. 1, 6 (1999); Megan Brenan, *Women Still Handle Main Household Tasks in U.S.*, Gallup (Jan. 29, 2020), <https://news.gallup.com/poll/283979/women-handle-main-household-tasks.aspx>.

⁵⁴ Redistribute unpaid work, U.N. Women (2017), <https://www.unwomen.org/en/news/in-focus/csw61/redistribute-unpaid-work>.

world's economy as men see it.”⁵⁵ Women domestic workers continue to work in the lower paying cleaning and care services.⁵⁶ The men that labor in domestic work are mostly gardeners, drivers or butlers, often higher paid labor.⁵⁷ Moreover, the proportion of the overall female workforce engaged in domestic work, one in thirteen,⁵⁸ is far higher than that of the male workforce, which is one in a hundred.⁵⁹

Domestic workers also tend to be women who are members of poor, marginalized communities, often from economically struggling countries, representing historically oppressed racial and ethnic groups.⁶⁰ Around the world, they tend to come from historically disadvantaged backgrounds. Seventy percent of domestic workers in Guatemala, for example, are indigenous, many are non-Spanish speakers, and most migrate from rural communities.⁶¹ Mayan women in particular are so identified with domestic service in some countries that “every Mayan woman is frequently considered to be or to have been a ‘servant’ or is treated or seen as one.”⁶² Domestic

⁵⁵ Banks, *supra* note 53, (quoting Hilda Scott, *Working Your Way to the Bottom: The Feminization of Poverty* 129 (1984)).

⁵⁶ Martha Alter Chen, “Recognizing Domestic Workers, Regulating Domestic Work: Conceptual, Measurement, and Regulatory Challenges”, 23 *Can. J. Women & L.* 167, 168 (2011); Domestic workers across the world: Global and regional statistics and the extent of legal protection 19-21 (Int’l Labour Org., 2013), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf.

⁵⁷ ILO, *supra* note 34.

⁵⁸ ILO, *supra* note 56, at 19.

⁵⁹ Women Domestic Workers, *supra* note 49; ILO, *supra* note 56, at 19, 20.

⁶⁰ Louisa Reynolds, *Guatemalan Domestic Workers Reveal a Dirty Business*, *We News* (May 4, 2015), <https://womensenews.org/2015/05/guatemalan-domestic-workers-reveal-a-dirty-business/>; From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force (Human Rights Watch, 2002), https://www.hrw.org/reports/2002/guat/guat0102A.jude-03.htm#P635_135935 (Section IV. Background on Domestic Workers).

⁶¹ Asha D’Souza, *Moving towards Decent work for Domestic workers: An Overview of the ILO’s work* 27 (Int’l Labour Off., 2010), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_142905.pdf; *supra* note 60, Reynolds, *From the Household to the Factory*.

⁶² From the Household, *supra* note 60, at n. 177 (citing Amanda Pop Bol, *Racismo y Machismo: Deshilando la opresión (Racism and Machismo: Unraveling Oppression)*, in *Identidad: Rostros sin Máscara. Reflexiones sobre Cosmovisión, Género y Etnicidad (Identity: Faces without Masks. Reflections on Cosmovision, Gender and Ethnicity)* 129 (Morna Macleod, M. Luisa Cabrera Pérez-Armiñan, and Maya Nojib'sa, 2000)).

workers from India tend to be from the lowest castes, as their lack of opportunities domestically push them to find work outside their hometowns.⁶³

Domestic workers also tend to be migrants in many States. In fact, migrant domestic workers represent nearly one in five domestic workers globally.⁶⁴ Domestic workers usually migrate from poorer to richer countries⁶⁵—from Uganda, Sierra Leone and other African countries to Greece,⁶⁶ from the Philippines and Indonesia to Singapore and Hong Kong,⁶⁷ from India and Bangladesh to rich Gulf States, from Mexico, El Salvador and China to the United States.⁶⁸ Migrant domestic workers tend to face even greater challenges than those faced by domestic workers employed in their home countries.⁶⁹ On account of their lack of social support, limited knowledge of the local laws and customs, and language barriers, migrants are especially prone to isolation and exploitation by employers. Moreover, migrant domestic workers sometimes lack regular migration status.⁷⁰ The fear of deportation often chills these workers from asserting their legal rights, making power dynamics in the employment relationship even more unequal. Migrant domestic workers also often have their visas tied to specific employers.

⁶³ Fundamentals, Indispensable Yet unprotected: Working conditions of Indian domestic workers at home and abroad iii, (Int'l Labour Org., 2015), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_378058.pdf.

⁶⁴ Women Domestic Workers, *supra* note 49.

⁶⁵ *Migrant Domestic Workers*, Int'l Labor Org., available at <https://www.ilo.org/global/topics/care-economy/migrant-domestic-workers/lang--en/index.htm>.

⁶⁶ European Policy Brief: Trafficking in domestic work in Greece: a demand-side approach 2 (Demand AT, 2016), available at http://www.demandat.eu/sites/default/files/D8%2012_PolicyBrief_Greece_DAngeli.pdf.

⁶⁷ Modern Slavery in East Asia: Protecting the rights and promoting the autonomy of domestic migrant workers from Indonesia and the Philippines (Farsight, 2016), available at <http://un-act.org/publication/view/modern-slavery-in-east-asia-protecting-the-rights-and-promoting-the-autonomy-of-domestic-migrant-workers-from-indonesia-and-the-philippines/>.

⁶⁸ *In the Shadow of the State: Recruitment and Migration of South Indian Women as Domestic Workers to the Middle East*, Int'l Labour Org., https://www.ilo.org/beirut/publications/WCMS_751402/lang--en/index.htm; Omar Zahid, *The Ongoing Plight of Migrant Domestic Workers in the Middle East*, The Global Pol. Inst. (Mar. 26, 2020), <https://gpilondon.com/people/omar-zahid/the-ongoing-plight-of-migrant-domestic-workers-in-the-middle-east>.

⁶⁹ See, e.g., Domestic Workers Across the World, *supra* note 56, at 44.

⁷⁰ Women Domestic Workers, *supra* note 49.

Therefore, if they leave or are fired from their jobs, they may lose their lawful immigration status and become undocumented and vulnerable to deportation.⁷¹

Across the globe, domestic workers face “alarming rates of wage exploitation, lack of rest, excessive working hours, inadequate living conditions, lack of access to care, [and] arbitrary terminations of contract.”⁷² Psychological, physical and sexual abuse are also common. Exacerbating these conditions, States often exclude domestic workers from general labor legislation that covers other workers. In fact, only one in ten domestic workers is covered by the general labor legislation.⁷³ The ILO attributes the exploitation of domestic workers to “gaps in national labour and employment legislation” as well as “discrimination along the lines of sex, race and caste.”⁷⁴ Domestic work is predominantly seen as a “women’s job,” and given less social significance and economic value.⁷⁵

Some States have recognized this rampant and long-standing exploitation and have taken measures to protect domestic workers. Argentina adopted a domestic worker law in March 2013 providing for maximum 48-hour work week, weekly rest guarantees, overtime pay, vacation days, sick leave, and maternity protections.⁷⁶ Brazil adopted a constitutional amendment in 2013 that entitles its domestic workers to overtime pay, unemployment insurance, a pension, a maximum 8-hour work day, and a 44-hour work week.⁷⁷ Belgium has developed a service

⁷¹ *Id.*

⁷² *Id.*

⁷³ See, e.g., International Labor Organization, Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection 95 (ILO, 2013), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf.

⁷⁴ *Who are Domestic Workers*, International Labor Organization, <https://www.ilo.org/global/topics/domestic-workers/who/lang--en/index.htm>.

⁷⁵ Women Domestic Workers, *supra* note 49, ¶ 7.

⁷⁶ Régimen Especial de Contrato de Trabajo para el Personal de Casas Particulares, Law No. 26.844, Mar. 13, 2013, B.O. 32617 (Arg.), arts. 14.1.a-b, 18, 25, 29, 39, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/210000-214999/210489/norma.htm>.

⁷⁷ Emenda Constitucional, No. 72 de 2 de Abril de 2013, Constituição Federal [C.F.] [Constitution] (Braz.), http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc72.htm; ILO News, *Victory for Domestic*

voucher system to protect domestic workers from underpayment that requires employers to pay the government directly, which in turn issues payment to domestic workers.⁷⁸ France's National Collective Agreement of Employees of Individual Employers, adopted in 1999, requires written contracts, sets maximum working hours at 40 per week, limits and compensates for overtime, and provides workers with four weeks of paid annual leave.⁷⁹ In addition, 31 States, including Chile, Colombia, Peru, Finland, Germany and Italy, have ratified the ILO's Domestic Workers Convention,⁸⁰ which requires States to provide the same rights and protection—including minimum wage, paid leave and overtime pay—to domestic workers as provided to other workers.⁸¹

3. Domestic Workers in the United States

a. Generally

Like domestic workers around the world, domestic workers laboring in the United States face numerous vulnerabilities due to their gender, race, ethnicity, socio-economic and immigration status. Compounding these vulnerabilities, the United States has excluded these workers from the majority of labor and employment protections and failed to address conditions that make enforcement of their limited rights difficult and perilous. This combination of

Workers in Brazil, Equal Times (April 3, 2013), <http://www.equaltimes.org/news/victory-for-domestic-workers-in-brazil>.

⁷⁸ Beatriz Camargo Magalhaes, *The Influence of Labor Market Policies on Gender and Migration in Belgium: The Case of Domestic Work*, KNOMAD 10- 11 (July 2017), https://www.knomad.org/sites/default/files/2017-11/KNOMAD%20WP29_The%20Influence%20of%20Labor%20Market%20Policies%20on%20Gender%20and%20Migration_0.pdf

⁷⁹ Effective Protection for Domestic Workers: A Guide to Designing Labour Laws 9, 17, 50, 52, 53, 65 (Int'l Labour Off., 2012), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173365.pdf.

⁸⁰ Int'l Labour Org., C189 - Domestic Workers Convention Ratifications, 2011 (No. 189), https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460.

⁸¹ ILO, *supra* note 30, arts. 7, 10, 11.

circumstances has created well-known and widely reported experiences of exploitation, abuse, and severe inequality among domestic workers.

There are over 2.2 million domestic workers in the United States, according to a 2020 Current Population Survey.⁸² Ninety percent of domestic workers in the United States are women.⁸³ Over half are women of color (Black, Hispanic, Asian-American/Pacific Islander).⁸⁴ Over a third (35.1 percent) were born outside of the United States.⁸⁵ Most low wage foreign-born women workers come from Mexico, El Salvador, China, the Philippines and Vietnam, and the top occupation for these workers is domestic work.⁸⁶ While immigration status in any sector is difficult to track, a Pew Research Center Study from 2016 found that an estimated 22 percent⁸⁷ of those employed in private households are undocumented.⁸⁸ Domestic workers work throughout the country, with sizeable populations in urban areas of California (~358,000), New York (~258,200), Texas (213,900), Florida (~104,500), and Illinois (~84,600).⁸⁹

The United States has omitted or severely restricted protections for domestic workers under its labor and employment laws.⁹⁰ As scholars and courts have noted, this denial of legal

⁸² Julia Wolfe et al., Domestic Workers Chartbook 1 (Econ. Policy Inst., 2020), <https://files.epi.org/pdf/194214.pdf>. This estimate includes house cleaners, nannies, providers of home childcare and home care aids, but excludes cooks, gardeners, and chauffeurs.

⁸³ *Id.* at 6.

⁸⁴ *Id.* at 10.

⁸⁵ *Id.* at 11 (“[C]ompared with just 17.1 percent of the rest of the workforce [being foreign-born].”).

⁸⁶ *The Impact of Immigrant Women on America’s Labor Force*, American Immigration Council (Mar. 8, 2017), <https://www.americanimmigrationcouncil.org/research/impact-immigrant-women-americas-labor-force>

⁸⁷ Jeffrey S. Passel & D’Vera Cohn, *Size of U.S. Unauthorized Immigrant Workforce Stable After the Great Recession*, Pew Research Center (Nov. 3, 2016), <https://www.pewresearch.org/hispanic/2016/11/03/industries-of-unauthorized-immigrant-workers/>

⁸⁸ Legal Info. Inst., *Undocumented Immigrant*, Cornell L. Sch., https://www.law.cornell.edu/wex/undocumented_immigrant (defining undocumented immigrants as, “foreign nationals who lack proper authorization to be in the United States,” including immigrants who “entered the [U.S.] without going through proper authorization according to immigration procedures, or entered the [U.S.] on a temporary visa and stayed beyond the expiration date of the visa.”).

⁸⁹ Wolfe et al., *supra* note 82, at 44-46.

⁹⁰ Fair Labor Standards Act (FLSA), 29 U.S.C. § 213(b)(21); National Labor Relations Act (NLRA), 29 U.S.C. §152(3); Occupational Safety and Health Act (OSHA), 29 C.F.R. § 1975.6 (2008); Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e, 2000e-17 (1964); Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213. Age Discrimination in Employment Act, 29 U.S.C. §§621-634.

protections is a vestige of slavery, colonization and systemic racism in the United States.⁹¹ During slavery and post-emancipation, domestic workers were primarily Black women.⁹² The cultural image of “Mammy” typifies the view of Black women during this period: an ever faithful domestic servant to White households, judged by how she “raises the children of the dominant race.”⁹³ In the 1930s, when the U.S. Congress passed its first labor protections as part of Franklin D. Roosevelt’s New Deal policy platform, domestic workers were largely excluded.⁹⁴ The first major piece of New Deal legislation was the Social Security Act. Southern members of Congress refused to pass the bill if it included protections for domestic workers and farm workers, who were then predominantly African-American.⁹⁵ In arguing against the extension of labor protections to these workers, the legislators knew “explicitly racialized arguments would have been found to be in violation of the fourteenth amendment, so they spoke in more coded language.”⁹⁶ When the National Labor Relations Act (NLRA)—which established the right of

⁹¹ See *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 475 P.3d 164, 176 (Wash. 2020) (stating “[r]acism directly influenced” the exclusion of certain workers from major labor reforms during the New Deal, including organizing and collective bargaining rights under the National Labor Relations Act, minimum wage protections in the Fair Labor Standards Act, and old-age benefits and unemployment insurance in the Social Security Act); Juan F. Perea, *Destined for Servitude*, 44 U.S.F. L. Rev. 245, 248–251 (2009); Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 Ohio St. L.J. 95, 114–118 (2011); Shirley Lin, “*And Ain’t I A Woman?*”: *Feminism, Immigrant Caregivers, and New Frontiers for Equality*, 39 Harv. J. L. & Gender 67, 75-76 (2016); Llezlie Green Coleman, *Rendered Invisible: African American Low-Wage Workers and the Workplace Exploitation Paradigm*, 60 How. L.J. 61, 84–86 (2016); See also, *supra* note 43 ¶ 2; *supra* note 42 at Fauve-Chamoux.

⁹² Nilliasca, *supra* note 51, at 384.

⁹³ *Id.*

⁹⁴ Tess Bon, *Activist: Exclusion of domestic workers from federal labor law ‘a legacy of slavery,’* The Hill (July 16, 2019), <https://thehill.com/hilltv/rising/453397-activist-exclusion-of-domestic-workers-from-federal-labor-laws-a-legacy-of->

⁹⁵ *Id.*

⁹⁶ Harmony Goldberg, *The Long Journey Home: Contested Exclusion and Inclusion of Domestic Workers from Federal Wage and Hour Protections in the United States*, 12 n. 7 (Int’l Labour Org., 2015), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_396235.pdf. In one instance, Ohio representative Thomas Jenkins asked Virginia Representative Howard Smith, a known segregationist, whether states could differentiate between people of different races in their provision of old age benefits. Smith defensively responded: “I do not think so, and you will not find in my remarks any suggestion to that effect. It just so happens that that race is in our State very much of the laboring class and farm laboring class. But you will find no suggestion in my remarks of any suggested amendment that would be unconstitutional, if I may use that expression.” *Id.* at note 7 (quoting Robert C. Lieberman, *Shifting*

workers to form unions—and the Fair Labor Standards Act (FLSA)—which established minimum wage, overtime pay, record keeping, and youth employment standards⁹⁷—passed, the precedent for exclusions had been established and domestic workers and farm workers were deprived of the most fundamental labor and employment rights.

As detailed below, domestic workers today are afforded little more protection than they received in the 1930s. Despite repeated calls for reform, the United States has engaged in only cosmetic changes to laws and policies affecting domestic workers, refusing time and again to put in place adequate measures that would protect domestic workers from the long-standing abuse to which they have been subjected. Domestic workers are still *de jure* and *de facto* excluded from most key legislation that protects the majority of other workers and provides them with redress when their rights under those laws are violated. These racialized exclusions of domestic workers from labor protections, compounded by the gender discrimination associated with this form of labor, have tragically shaped working conditions for the many female migrants and women of color working as domestic workers in the United States for more than 80 years.⁹⁸

The United States has continued to deprive domestic workers of legal protection despite the increasingly critical role these workers play in the U.S. economy. Aside from conducting essential labor, domestic workers “make[] all other work possible. . . . [w]ithout the millions of domestic workers caring for children, seniors, and individuals with disabilities, and cleaning homes, much of the economy would come to a standstill.”⁹⁹ Domestic work is predicted to

the Color Line: Race and the American Welfare State, Cambridge, Mass.: Harvard University Press, pp. 52-53 (1998)).

⁹⁷ See NLRA, 29 U.S.C. § 157; FLSA, 29 U.S.C. § 213; see also, *Wages and the Fair Labor Standards Act*, U.S. Dep’t of Labor: Wage and Hour Div., <https://www.dol.gov/agencies/whd/flsa>.

⁹⁸ Bon, *supra* note 94.

⁹⁹ Domestic Workers Bill of Rights Act, S. 2112, 116th Cong., § 2(2) (2019); see also, Linda Burnham & Nik Theodore, *Home Economics: The Invisible and Unregulated World of Domestic Work*, ix (Nat’l Domestic Workers All., 2012), <https://domesticworkers.org/sites/default/files/HomeEconomicsReport.pdf>;

become the biggest workforce in the United States in the next decade.¹⁰⁰ It cannot be outsourced and is not close to being automated.¹⁰¹ Yet the United States, through its actions and omissions, has ensured this job is one of the “hardest, least secure jobs in the nation.”¹⁰²

b. Impact of Covid-19

The COVID-19 pandemic, which has caused widespread loss of life, unemployment, and financial loss, has provided a devastating illustration of the consequences that ensue from the lack of protections domestic workers receive in the United States. A recent survey conducted by the National Domestic Workers Alliance gathered testimony from more than 20,000 Spanish-speaking domestic workers in the United States on how the pandemic had affected their livelihood.¹⁰³ Findings of the study demonstrated that the pandemic led to staggering job losses among the workers, leaving most of them without a safety net. By late March of 2020, “more than 90% of workers lost jobs due to COVID-19,”¹⁰⁴ and most had not received unemployment insurance¹⁰⁵ nor stimulus checks from the federal government. In fact, around 75 percent of the workers did not receive any kind of compensation when they lost their jobs.¹⁰⁶ As of October, the percentage of those unemployed was four times as high as before the pandemic.¹⁰⁷ Even those

¹⁰⁰ Lauren Hilgers & Sharif Hamza, *Out of the Shadows*, N.Y. Times (Feb. 2019), <https://www.nytimes.com/interactive/2019/02/21/magazine/national-domestic-workers-alliance.html>.

¹⁰¹ Domestic Workers, *supra* note 99 § 2(2).

¹⁰² Hilgers & Hamza, *supra* note 100.

¹⁰³ National Domestic Workers Alliance, *6 Months in Crisis, The Impact of COVID-19 on Domestic Workers*, 4 (Oct. 2020), https://domesticworkers.org/sites/default/files/6_Months_Crisis_Impact_COVID_19_Domestic_Workers_NDWA_Labs_1030.pdf (while the study did not ask about immigration status, the National Domestic Workers Alliance describes that “it is reasonable to conclude that a significant percentage of [the respondents] are immigrants”) *Id.* at 6 [hereinafter NDWA].

¹⁰⁴ *Id.* at 4.

¹⁰⁵ Most of the respondents to the survey did not apply for unemployment insurance because they did not believe they qualified. While 14% of respondents eventually applied, less than half received unemployment benefits. *See Id.* at 4, 22.

¹⁰⁶ *Id.* at 18.

¹⁰⁷ *Id.* at 4.

domestic workers who have been able to find a job as a domestic worker again are earning lower average hourly wages than before then pandemic.¹⁰⁸ Additionally, domestic workers who were able to find work faced a lower amount of work hours available to them.¹⁰⁹ Lastly, the pandemic left a majority of domestic workers facing food and housing insecurity for their families. For six months in a row, more than half of those surveyed were not able to pay their rent or mortgage.¹¹⁰ Among those surveyed, 90 percent were mothers and 75 percent were the primary breadwinners in their families.¹¹¹

Another study focused on the impacts of COVID-19 on Black immigrant domestic workers in New York City, Massachusetts, Miami-Dade, and Florida. Similar to the study focusing on Spanish-speaking domestic workers, this study found that Black immigrant domestic workers faced severe unemployment. Seventy percent of Black domestic workers had lost their jobs due to the pandemic.¹¹² Immigration status, or a lack thereof, worsened their situation as well. For example, undocumented domestic workers were twice as likely as documented workers to be fired from their jobs,¹¹³ and more than half of respondents were afraid of seeking resources from the federal, state, or local government due to their immigration status.¹¹⁴ Similar to their Spanish-speaking counterparts, Black immigrant domestic workers also faced housing insecurity, with 65 percent of respondents being afraid that they would be evicted in the next three months

¹⁰⁸ *Id.* at 21.

¹⁰⁹ *Id.* at 4.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 24.

¹¹² Adewale Maye, *The COVID-19 Crisis Underscores the Need for Sustainable Domestic Worker Protections*, CLASP, 4 (Sept. 2020)

https://www.clasp.org/sites/default/files/publications/2020/10/2020_SustainableDomesticWorkerProtections.pdf.

¹¹³ The Institute for Public Studies & National Domestic Workers Alliance, *Notes from the Storm: Black Immigrant Domestic Workers in the Time of COVID-19*, 2 (2020), <https://domesticworkers.org/sites/default/files/IPS-WDiB-survey-brief.pdf>.

¹¹⁴ Maye, *supra* note 112, at 4.

or that their utilities would be shut off.¹¹⁵ Lastly, half of the domestic workers that still were employed did not have access to personal protective equipment or health insurance, increasing their exposure to COVID-19.¹¹⁶ These staggering facts demonstrate the disproportionate negative consequences that domestic workers face simply because of their type of employment.¹¹⁷

c. Domestic Workers Employed by Diplomats

An important subset of domestic workers who often face severe abuse and a lack of redress is domestic workers who are employed under the A-3 and G-5 visa system. Most of the employers are foreign diplomats who are allowed to bring their “attendants, servants, and personal employees” to the United States under these two visas.¹¹⁸ A-3 visas are given to employees of foreign government officials, whereas G-5 visas are granted to employees of international organizations.¹¹⁹ The United States grants approximately 1,500 to 2,000 A-3 and G-5 visas per year.¹²⁰ These visas are granted for one to three years and can be renewed in two-year increments.¹²¹ As a result, the number of A-3 and G-5 holders exceeds the numbers of individuals granted visas yearly.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ NDWA, *supra* note 103, at 4.

¹¹⁸ Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(v) (“The term ‘immigrant’ means every alien except an alien who is within one of the following classes of nonimmigrant aliens—. . . attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees”).

¹¹⁹ Justice in Motion, *Visa Pages: U.S. Temporary Foreign Worker Visas A-3 and G-5 Visas*, 3 (Dec. 2015), https://683ba61a-c54c-40f0-acc5-a9f6c778d737.filesusr.com/ugd/d83957_600b1759244746a2ad0f4cffc8dffe81.pdf.

¹²⁰ Dep’t of State, *Table XV(B): Nonimmigrant Visas Issued by Classification*, 1-2 (2020), https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2020AnnualReport/FY20AnnualReport_TableXV_B.pdf (issuing 1,049 A-3 and 598 G-5 visas in FY16, 1,031 A-3 and 583 G-5 in FY17, 830 A-3 and 541 G-5 in FY18, 857 A-3 and 404 G-5 in FY19, and 415 A-3 and 149 G-5 in FY20 (noting the COVID-19 pandemic policy has significant impacts on visas issuances in FY20)).

¹²¹ Human Rights Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, Vol. 13 No.2(G), 4 (June 2001), <http://www.hrw.org/reports/2001/usadom/usadom0501.pdf>.

Reports demonstrate that, in comparison to domestic workers who live in their own homes, live-in domestic workers are much more likely to experience workplace violence, abuse, and wage theft.¹²² The experience of live-in domestic workers employed by diplomats and other foreign officials is especially dire due to linguistic differences, cultural and social isolation, and the A-3/G-5 visa limitations. Contrary to what the U.S. State Department claims, the lack of enforcement of the newly required contracts perpetuates the cycle of isolation and abuse that domestic workers of foreign diplomats have faced for decades.¹²³

Additionally, similar to the visas available for domestic workers of regular employers in the United States, A-3/G-5 visas remain conditionally tied to specific employers. For these types of visas, domestic workers are required to work for the same employer to keep the visa. Thus, the fear that changing employers may lead to deportation creates an acute power imbalance between these domestic workers and their employers.¹²⁴

C. Context of Discrimination Impacting Domestic Workers

Domestic workers labor in a legal, political and social context that discriminates against them on the basis of their gender, race, ethnicity, nation of origin, and immigration status. These various forms of discrimination have created conditions of severe inequality in their employment. This section summarizes the conditions of discrimination against women, immigrants and people of color in the United States that impact domestic workers.

1. Gender

¹²² Petition No. P-1481-07, *supra* note 5, at 6.

¹²³ Petition No. P-1481-07, *supra* note 5, at 7.

¹²⁴ See, e.g. Barjo v. Cherian, 349 F. Supp. 3d 510, 513 (D. Md. 2018); Lipenga v. Kambalame, 219 F. Supp. 3d 517, 522 (D. Md. 2016); Carazani v. Zegarra, 972 F. Supp. 2d 1, 10 (D.D.C. 2013); Kiwanuka v. Bakilana, 844 F. Supp. 2d 107, 111 (D.D.C. 2012).

As has been well-documented, discrimination against women in labor and employment continues to be a significant problem in the United States. Women are paid less for equal work, provided with fewer opportunities for advancement, perform significant amounts of unpaid labor, are subjected to sexual harassment, and are segregated into lower pay and lower value occupations.¹²⁵ In domestic work, a field that has long been “feminized,” both in the sense that it is performed mostly by women (women account for 90 percent of domestic workers in the United States) and reflects labor considered “women’s work,” these various gender inequalities converge. In other words, domestic workers, because they are mostly women performing women’s labor, are paid little, have no opportunity for advancement, have no benefits,¹²⁶ are subjected to harassment and abuse and perform work in an undervalued and, therefore, unregulated occupation. The discrimination against domestic work is an extreme manifestation of the *de facto* and *de jure* discrimination against women generally in the United States.¹²⁷

a. Discrimination Against Women in U.S. Law and Policy

(i) *Inadequate Constitutional Protections: Intermediate Scrutiny and the Absent Equal Rights Amendments*

¹²⁵ See Jay Shambaugh & Ryan Nunn, *How Women are Still Left Behind in the Labor Market*, Brookings (Apr. 10, 2018), <https://www.brookings.edu/blog/up-front/2018/04/10/how-women-are-still-left-behind-in-the-labor-market/>; Hermina Ibarra, Nancy M. Carter & Christine Silva, *Why Men Still Get More Promotions Than Women*, Harvard Bus. Rev. (Sept. 2010), <https://hbr.org/2010/09/why-men-still-get-more-promotions-than-women>; Terry Gross, *Pandemic Makes Evident 'Grotesque' Gender Inequality In Household Work*, NPR (May 21, 2020), <https://www.npr.org/2020/05/21/860091230/pandemic-makes-evident-grotesque-gender-inequality-in-household-work>; Minda Zetlin, *54 Percent of Women Report Workplace Harassment. How Is Your Company Responding?*, Inc. (Apr., 2018), <https://www.inc.com/magazine/201804/minda-zetlin/sexual-harassment-workplace-policy-metoo.html>; Kelly Field, *Why Are Women Still Choosing the Lowest-Paying Job?*, The Atlantic (Jan. 25, 2018), <https://www.theatlantic.com/education/archive/2018/01/why-are-women-still-choosing-the-lowest-paying-jobs/551414/>.

¹²⁶ For example domestic workers who are mothers are deprived of access to childcare. Wolfe et al., *supra* note 82; Kate Reilly & Belinda Luscombe, *The Childcare Crisis* (2020), <https://time.com/child-care-crisis/>.

¹²⁷ Wolfe et al., *supra* note 82.

The founding documents of the United States promised a guarantee of equality.¹²⁸ Following the American Civil War, the Fourteenth Amendment to the U.S. Constitution, which guarantees equal protection of the law, was adopted for the purpose of protecting Black Americans from racial discrimination.¹²⁹ For nearly 80 years after the Amendment’s adoption, the intent was effectively circumvented, as a result of decisions like *Plessy v. Ferguson*, which sanctioned racial segregation.¹³⁰ But in the 1960s, the United States declared segregation unconstitutional, and transformed the concept of equal protection to meaningfully prohibit racial and other forms of discrimination.¹³¹

Sex-based discrimination has also been interpreted by the Court to be prohibited by the equal protection clause.¹³² But gender equality is given a subpar status by U.S. courts, which apply a lenient standard of review to any distinctions in the law based on gender, termed “intermediate scrutiny.”¹³³ This lower standard of scrutiny means that discrimination that is almost categorically impossible for cases involving more suspect classifications, such as race, is often cabined or overlooked where the discrimination is based on gender. This has allowed for the exclusions of women from the draft to be upheld because of restrictions on women’s ability

¹²⁸ The Declaration of Independence para. 2, (U.S. 1776) (“ . . . all men are created equal . . . ”).

¹²⁹ *Equal Protection*, Encyclopedia Britannica (Jun. 18, 2004), <https://www.britannica.com/topic/equal-protection>; Brian T. Fitzpatrick & Theodore M. Shaw, *Common Interpretation: The Equal Protection Clause*, Nat’l Const. Ctr., <https://constitutioncenter.org/interactive-constitution/interpretation/amendment-xiv/clauses/702#:~:text=No%20State%20shall%20make%20or,equal%20protection%20of%20the%20laws>; Legal Info. Inst., *Equal Protection and Race*, Cornell L. Sch., <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/equal-protection-and-race>.

¹³⁰ *Equal Protection*, *supra* note 129.

¹³¹ Fitzpatrick & Shaw, *supra* note 129.

¹³² See *Reed v. Reed*, 404 U.S. 71, 77 (1971).

¹³³ See Joel Alicea & John D. Ohlendorf, *Against the Tiers of Constitutional Scrutiny*, Nat’l Aff. (Fall 2019), <https://www.nationalaffairs.com/publications/detail/against-the-tiers-of-constitutional-scrutiny#:~:text=%22Intermediate%20scrutiny%22%20is%20similar%20to,more%20burdensome%20than%20reasonably%20necessary>. Under the “intermediate scrutiny” analysis currently applied, courts may permit certain forms of discrimination so long as the government demonstrates that the law serves an “important or substantial interest,” and the means chosen to advance that interest are “no more burdensome than reasonably necessary.”; See generally Debora Brake, et al., *Two Decades of Intermediate Scrutiny: Evaluating Equal Protection for Women Centennial Panel*, 6 Am. U. J. Gender and L. 1 (1997-1998). For decades, activists, lawyers and academics have advocated for U.S. courts to apply a “strict scrutiny” level of review, the same standard used for race-based discrimination.

to progress in combat, “support[ing] the perpetuation of traditional gender stereotypes under the guise that inherent differences between men and women justify disparate treatment of the sexes.”¹³⁴

The United States legal system tolerates discrimination against women. Moreover, on issues central to women’s equality, such as domestic violence and abortion, U.S. courts do not even address the discriminatory impact on women, where elsewhere the question of non-discrimination would be considered the central issue.¹³⁵ Moreover, some conservative thinkers and theorists have rejected the reading of the Fourteenth Amendment to include sex at all, believing it to not reflect the original intent of the nation’s founders.¹³⁶ In the face of an increasingly conservative federal judiciary, already permissive protections for women are under threat, and vulnerable to being rolled back.¹³⁷

¹³⁴ [Rostker v. Goldberg, 453 U.S. 57 \(1981\)](#); Angela D. Hooton, *Constitutional Review of Affirmative Action Policies for Women of Color: A Hopeless Paradox?*, 15 Wis. Women's L.J. 391, 417 (2000). See also Rogillio v. Diamond Shamrock Chemical Co., 446 F. Supp. 423, 19 Fair Empl. Prac. Cas. (BNA) 1513, 17 Empl. Prac. Dec. (CCH) ¶ 8448 (S.D. Tex. 1977) (ability to command respect and exert discipline as a function of size not a discriminatory qualification for lifeguard); *Holdman v. Olim*, 59 Haw. 346, 581 P.2d 1164 (1978) (bras required to be worn by female visitors in male prison); [Associated Gen. Contractors, Inc. v. City and County of San Francisco, 813 F.2d 922, 940 \(9th Cir. 1987\)](#) (striking down the racial preference of an affirmative action contracting program under strict scrutiny while upholding the gender-based preference of the same policy under intermediate scrutiny); *State v. Wright*, 563 S.E.2d 311, 312-15 (S.C. 2002) (finding that women and men are not similarly situated for purposes of the “difference in gender aggravator” in the offense of criminal domestic violence because of the “realistic physiological size and strength differences of men and women”).

¹³⁵ See *Castle Rock v. Gonzales*, 545 U.S. 748, 780 (2005) (Stevens, J., dissenting) (“The crisis of underenforcement had various causes, not least of which was the perception by police departments and police officers that domestic violence was a private, “family” matter and that arrest was to be used as a last resort) *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11 (2011); *Gonzales v. Carhart*, 550 U.S. 124, 172 (2007) (Ginsburg, J., dissenting) (“legal challenges to undue restrictions on abortion procedures do not seek to vindicate some generalized notion of privacy; rather, they center on a woman's autonomy to determine her life's course, and thus to enjoy equal citizenship stature). See Reva Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 Stan. L. Rev. 261, 263 (1992) (“there are serious constitutional concerns presented by abortion-restrictive regulation that Roe does not address. Restricting women's access to abortion implicates constitutional values of equality as well as privacy. . .”).

¹³⁶ See Paul Courson, *Scalia comments show need for new rights amendment, backers say*, CNN Politics (Jan. 6, 2011), <http://edition.cnn.com/2011/POLITICS/01/06/era.scalia/>.

¹³⁷ Robn Bleiweis, *The Equal Rights Amendment: What You Need to Know*, Ctr. for Am. Progress (Jan. 29, 2020), <https://www.americanprogress.org/issues/women/reports/2020/01/29/479917/equal-rights-amendment-need-know/>.

For these and other reasons, advocates for women’s equality have sought an Equal Rights Amendment (ERA) in hopes of increasing protections for women’s equality, ensuring as well that Congress could not amend or repeal anti-discrimination laws by a simple majority, as it may do today, and that the Executive Branch diligently enforce and reform anti-discrimination laws.¹³⁸

The ERA was proposed in 1923, four years after women secured the right to vote.¹³⁹ Activists hoped the Amendment would enshrine equal rights under the law regardless of sex, gender identity, and sexual orientation.¹⁴⁰ At the time, women openly played a secondary role to men in society, and were relegated to certain defined spaces by virtue of their gender.¹⁴¹ The ERA successfully passed in both houses of Congress in 1972, but was not ratified by the necessary 38 states by the deadline of 1982.¹⁴² The failed ratification is largely attributable to the “remarkably successful” opposition campaign to the amendment, called the Stop ERA campaign, led by conservative advocates allied with the religious right.¹⁴³ The Stop ERA campaign argued the measure would lead to gender-neutral bathrooms, same sex marriage, women in combat, and abortion.¹⁴⁴ Despite the failed ratification, in every session of Congress since, the ERA has been reintroduced by those in support.¹⁴⁵ Nevada was the first state to ratify the measure since 1977 in

¹³⁸ *Frequently Asked Questions*, Equal Rts. Amend. (last accessed Mar. 4, 2021), <https://www.equalrightsamendment.org/faq>.

¹³⁹ Bleiweis, *supra* note 137.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *History of the Equal Rights Amendment*, Equal Rts. Amend. (last accessed Mar. 4, 2021), <https://www.equalrightsamendment.org/the-equal-rights-amendment>. The original deadline was in 1979 but was extended by Congress to June 30, 1982 as a result of public pressure as the original deadline neared. *Id.*

¹⁴³ Alex Cohen & Wilfred U. Codrington III, *The Equal Rights Amendment Explained*, Brennan Ctr. For Just. (Jan. 23, 2020), <https://www.brennancenter.org/our-work/research-reports/equal-rights-amendment-explained>; *see also* Schlafly sees Senate floor as custard’s next stand, *The Salina J.* (Jan. 27, 1983), <https://www.newspapers.com/clip/514654/1983-01-27-senate-era-reintroduction-sen/>.

¹⁴⁴ *Id.*

¹⁴⁵ *See* Cohen & Codrington, *supra* note 143; *see generally* Mary Frances Berry, *Why ERA Failed: Politics, Women’s Rights and the Amending Process of the Constitution* (1986).

2017.¹⁴⁶ In January of 2020, Virginia became the 38th state to ratify the amendment, but the amendment has still not been adopted.¹⁴⁷

(ii) *Inadequate International Protections: U.S. Failure to Ratify CEDAW*

At the international level, the United States has failed to commit to widely accepted gender-equality standards reflected in the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁴⁸ CEDAW, which has been currently ratified by 189 states, was signed by the United States over three decades ago but never ratified. CEDAW requires states parties to eliminate discrimination against women and create conditions of actual equality, often termed substantive equality, for women in all aspects of life.¹⁴⁹ The United States remains one of only seven States that has failed to ratify CEDAW—a short list which includes Iran, Somalia, and Sudan.¹⁵⁰ Over the past 25 years, the U.S. Senate has held hearings on CEDAW five times, each time failing to bring the agreement to a vote.¹⁵¹

¹⁴⁶ Cohen & Codrington, *supra* note 143.

¹⁴⁷ See Julie C. Suk, *Save the Equal Rights Amendment*, Boston Rev. (Oct. 8, 2020), <http://bostonreview.net/law-justice-gender-sexuality/julie-c-suk-save-equal-rights-amendment>; Julie C. Suk, *We the Women: The Unstoppable Mothers of the Equal Rights Amendment* (2020).

¹⁴⁸ Convention on the Elimination of All Forms of Discrimination Against Women, Sep. 3, 1981, 1249 U.N.T.S. 13 [hereinafter CEDAW]. The U.S has refrained from ratifying other key regional and international instruments—including the Inter-American Convention on Human Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (including its individual complaint procedure), and the individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination—that embody the international consensus on non-discrimination and equality. Rivera Juaristi, Francisco J. "U.S. Exceptionalism and the Strengthening Process of the Inter-American Human Rights System." Human Rights Brief 20, no. 2 (2013): 19-25. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, United Nations Treaty Collection (March 10, 2021), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=en. Maya K. Watson, *The United States' Hollow Commitment to Eradicating Global Racial Discrimination* (January 6, 2020) https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future-part-ii/the-united-states-hollow-commitment-to-eradicating-global-racial/#:~:text=The%20goal%20of%20eradicating%20global.%E2%80%94until%20October%2021%2C%201994.

¹⁴⁹ See *id.*; *Frequently Asked Questions (FAQ) about CEDAW*, U.N. Women: Asia and the Pacific, <https://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights/faq>.

¹⁵⁰ Lisa Baldez, *U.S. Drops the Ball on Women's Rights*, CNN: Opinion (Mar. 8, 2013), <https://www.cnn.com/2013/03/08/opinion/baldez-womens-equality-treaty/index.html>.

¹⁵¹ *Id.*

Among its many protections for women’s equality, CEDAW Article 11 requires states parties to prevent the discrimination of women in employment by, *inter alia*, ensuring equal remuneration, benefits and conditions of service, and the right to social security, paid leave, and protection of health and safety in working conditions. As discussed below, the United States has failed to guarantee these rights to domestic workers, a majority of whom are women.¹⁵²

*(iii) Inadequate Statutory Protections:
Limitations of Title VII*

Title VII, the statute that prohibits workplace discrimination, and the government agency tasked with its enforcement, the Equal Employment Opportunity Commission (EEOC), have been criticized for failing to adequately protect victims of workplace discrimination and harassment. Title VII’s prohibitions on discrimination include an individual’s sex.¹⁵³ The EEOC investigates complaints of workplace discrimination and is empowered to file civil discrimination suits against employers on behalf of victims.¹⁵⁴ Since 2017, over 30 percent of charges filed with the EEOC relate to sex-discrimination.¹⁵⁵ There are a number of ways in which Title VII and the EEOC fail to adequately safeguard victims.

First, Title VII relies on plaintiff-enforcement. The Second Circuit has observed that Title VII’s role in combatting unlawful employment practices relies on “employee initiative”¹⁵⁶ and imposes strict requirements on employees to promptly report and assert discrimination claims to the EEOC.¹⁵⁷ The statute of limitations is not only short in comparison to analogous laws, being

¹⁵² CEDAW, *supra* note 148, art. 11.

¹⁵³ Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) [hereinafter Title VII].

¹⁵⁴ U.S. Equal Emp. Comm’n, *Overview*, <https://www.eeoc.gov/overview>.

¹⁵⁵ U.S. Equal Emp. Comm’n, *Charge Statistics (Charges filed with EEOC) FY 1997 Through FY 2020*, <https://www.eeoc.gov/statistics/charge-statistics-charges-filed-eeoc-fy-1997-through-fy-2020>.

¹⁵⁶ *Jute v. Hamilton Sundstrand Corp.*, 420 F.3d 166, 174-75 (2d Cir. 2005).

¹⁵⁷ Deborah L. Brake & Joanna L. Grossman, *The Failure of Title VII as a Rights-Claiming System*, 86 N.C. L. Rev. 859, 866 (2008).

significantly shorter than those governing many other anti-discrimination laws, but is short in reference to the needs of discrimination complainants.¹⁵⁸ The reliance on victims to promptly claim their rights leaves little room for their “gaps in knowledge, hesitation in responding, or fears of retaliation to delay rights-claiming.”¹⁵⁹ As a result, the complaint mechanism requires behavior that “contrasts starkly with extensive social science research on how people perceive and respond to discrimination in the real world.”¹⁶⁰

Second, employees who do step forward are provided with inadequate support from the EEOC; the EEOC has “become a crowded waystation in an overwhelmed bureaucracy, with wait times often stretching years.”¹⁶¹ The agency is strapped for cash.¹⁶² The EEOC has had the same budget, when adjusted for inflation, since 1980.¹⁶³ After the increase in sexual harassment complaints from the #MeToo movement in 2018, the EEOC was allotted some additional funding, but cases also increased significantly.¹⁶⁴ The lack of resources has led the EEOC to focus on “slam dunk” cases and close more cases before they are even investigated.¹⁶⁵ Paychex, a company that provides payroll, human resource, and benefit outsourcing services to small and medium sized businesses, analyzed EEOC complaints from 1997 to 2018.¹⁶⁶ According to its

¹⁵⁸ Joanna Grossman & Deborah Brake, *An Overlooked Problem with Title VII's Protections Against Discrimination: Procedural Obstacles to Invoking the Law*, FindLaw (Sep. 4, 2007), <https://supreme.findlaw.com/legal-commentary/an-overlooked-problem-with-title-viis-protections-against-discrimination-procedural-obstacles-to-invoking-the-law-1.html>.

¹⁵⁹ Brake & Grossman, *supra* note 157, at 859.

¹⁶⁰ *Id.*

¹⁶¹ Juliet Linderman, *At the EEOC, harassment cases can languish for years*, AP News (Apr. 9, 2018), <https://apnews.com/article/fbd80007a30b44d69bb61f46c2a62e4a>.

¹⁶² *See Id.*

¹⁶³ Patricia Barnes, *Is the EEOC Protecting Workers or Discriminatory Employers?*, Forbes (Sep. 4, 2019), <https://www.forbes.com/sites/patriciabarnes/2019/09/04/is-the-eeoc-protecting-workers-or-discriminatory-employers/?sh=181328425407>.

¹⁶⁴ Linderman, *supra* note 161.

¹⁶⁵ Maryam Jameel, *More and more workplace discrimination cases are being closed before they're even investigated*, Vox (June 14, 2019), <https://www.vox.com/identities/2019/6/14/18663296/congress-eeoc-workplace-discrimination>.

¹⁶⁶ Barnes, *supra* note 163.

analysis, the EEOC failed to find discrimination in 87 percent of the almost 1.9 million cases filed by discrimination victims.¹⁶⁷ The EEOC found no reasonable cause for discrimination in 64.3 percent of cases and closed 18.3 percent for administrative reasons.¹⁶⁸ In only 4.6 percent of complaints did the EEOC find reasonable cause for discrimination, and only in 3.2 percent of complaints did it consider filing a lawsuit.¹⁶⁹

Where the EEOC has found no reasonable cause for discrimination, the EEOC sends complainants a “right to sue” letter at their own cost in a litigation system that is, for many, prohibitively expensive. Moreover, by that time, many workers feel disillusioned by the EEOC’s “dismissive handling” of their complaint, and “considerable time has lapsed” since the discriminatory events.¹⁷⁰ As such, the EEOC’s administrative process “may actually discourage workers from taking discriminatory employers to court.”¹⁷¹ The process is “really emotionally draining.”¹⁷² Patricia Barnes for Forbes wrote “it is clear that Congress has failed to provide sufficient funding and oversight of the EEOC to promote fair and effective enforcement of America's civil rights laws.”¹⁷³

Finally, those employees who do step forward are left with “grossly inadequate protection from retaliation.”¹⁷⁴ As many as 60 percent of sexual harassment claimants experience retaliation; and 25 percent of the EEOC’s docket revolves around retaliation complaints.¹⁷⁵ Despite the existence of legal protections against retaliation, in practice, plaintiffs often still suffer from retaliatory treatment. It is very difficult to meet the retaliation doctrine’s high

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Jameel, *supra* note 165.

¹⁷³ Barnes, *supra* note 163.

¹⁷⁴ Brake & Grossman, *supra* note 157, at 859.

¹⁷⁵ Grossman & Brake, *supra* note 158.

standards of proof—which requires plaintiffs to prove that retaliatory acts have both a materially adverse effect and that employee complaints of discrimination rest on reasonable beliefs in unlawful discrimination.¹⁷⁶ In short, women are inadequately protected from workplace discrimination under Title VII.

b. Cultural and Societal Discrimination Against Women

Women in the United States continue to face societal barriers in the pursuit of their livelihoods and professions. While diversification has occurred in the kinds of labor women engage in, cultural expectations of women’s abilities, capacities, roles, and interests significantly impacts their livelihoods and opportunities. Women remain underrepresented in certain industries and occupations, such as scientific and technical services and construction, and are overrepresented in sectors in which women have traditionally worked, such as education and health and social services.¹⁷⁷

Women’s inequality in the workplace is evident. American women are paid just under 85 cents for every American man’s dollar.¹⁷⁸ When controlling for characteristics such as race and ethnicity, level of education, potential work experience and geographic division, the gap widens, with women paid about 82 cents for every man’s dollar.¹⁷⁹ Women are less likely to be promoted than men. For every 100 men who receive their first promotion from the entry level to manager, only 79 women receive the same promotion.¹⁸⁰ At the top of the corporate ladder, the

¹⁷⁶ *Id.*

¹⁷⁷ *Gender Inequality and Women in the U.S. Labor Force*, Int’l Labour Org., https://www.ilo.org/washington/areas/gender-equality-in-the-workplace/WCMS_159496/lang--en/index.htm (last visited Jan. 10, 2021).

¹⁷⁸ Elise Gould, Jessica Schieder & Kathleen Geier, *What is the gender pay gap and is it real?*, Econ. Pol’y Inst. (Oct. 20, 2016), <https://www.epi.org/publication/what-is-the-gender-pay-gap-and-is-it-real/>.

¹⁷⁹ *Id.*

¹⁸⁰ McKinsey Podcast, *What you need to know about women at work*, McKinsey & Co. (Oct. 24, 2019), <https://www.mckinsey.com/featured-insights/gender-equality/what-you-need-to-know-about-women-at-work>.

underrepresentation of women is stark. Among the 3,000 largest U.S. publicly traded companies, only one in five board members are women, and nearly one in 10 boards have no women.¹⁸¹

While about 14 percent of men report having personally experienced sexual harassment,¹⁸² this phenomenon is by far more common among women. Studies estimate that between almost a quarter and more than eight in ten women will experience sexual harassment at work in their lifetimes.¹⁸³

In general, occupations with more women, like domestic work, tend to pay less than occupations with more men;¹⁸⁴ a number of researchers attribute this phenomenon to employers “devaluing” work when it is done by women.¹⁸⁵ As support for this theory, when women’s participation in a particular occupation generally rises, the occupation’s overall wages tend to decrease.¹⁸⁶ Even in female-dominated occupations, men tend to be paid more than women.¹⁸⁷ This trend is borne out in the domestic worker context, with men still earning more than women.¹⁸⁸

¹⁸¹ Lily Jamali, *A Push To Get More Women On Corporate Boards Gains Momentum*, NPR (Mar. 5, 2020), <https://www.npr.org/2020/03/05/811192459/a-push-to-get-more-women-on-corporate-boards-gains-momentum>.

¹⁸² Peter Balonon-Rosen & Kimberly Adams, *One in 7 men say they’ve been sexually harassed at work*, Marketplace (Mar. 9, 2018), <https://www.marketplace.org/2018/03/09/we-asked-if-you-d-been-sexually-harassed-work-one-7-men-said-yes/>.

¹⁸³ Elyse Shaw, Ariane Hegewisch & Cynthia Hess, Inst. Women’s Pol’y Res., *Sexual Harassment and Assault at Work: Understanding the Costs 1* (2018), https://iwpr.org/wp-content/uploads/2020/09/IWPR-sexual-harassment-brief_FINAL.pdf.

¹⁸⁴ Gould, Sheider & Geier, *supra* note 178.

¹⁸⁵ See e.g., Philip N. Cohen & Matt L. Huffman, *Individuals, Jobs, and Labor Markets: The Devaluation of Women’s Work*, 68 Am. Socio. Rev. 443, <https://www.jstor.org/stable/1519732?seq=1>; Kristalina Georgieva, Cristian Alonso, Era Dabla-Norris & Kalpana Kochhar, *The Economic Cost of Devaluing “Women’s Work,”* IMFBlog (Oct. 15, 2019), <https://blogs.imf.org/2019/10/15/the-economic-cost-of-devaluing-womens-work/>; Erik Voeten, *Why is work by women systematically devalued?*, Wash. Post (Oct. 4, 2013), <https://www.washingtonpost.com/news/monkey-cage/wp/2013/10/04/why-is-work-by-women-systematically-devalued/>; Mary Babic & Barbara Gault, *The economy undervalues ‘women’s work,’ and that needs to change*, PBS NewsHour (Nov. 30, 2016), <https://www.pbs.org/newshour/economy/column-economy-undervalues-womens-work-needs-change>.

¹⁸⁶ Gould, Sheider & Geier, *supra* note 178.

¹⁸⁷ *Id.*

¹⁸⁸ Wolfe et al., *supra* note 82.

Legally, female and male workers must receive equal pay for equal work. The Equal Pay Act (EPA), which requires men and women in the same workplace to be given equal pay for substantially equal work, applies to workplaces of even one employee.¹⁸⁹ In practice, it is very difficult to establish an EPA claim. Employees must identify a higher-paid comparator of the opposite sex who performs virtually identical jobs, as measured by skill, effort, responsibility and working conditions.¹⁹⁰ Moreover, the plaintiff must identify a particular comparator, and may not compare herself to a hypothetical or “composite” member of the opposite sex.¹⁹¹ In an examination of employee success rates on appeal from 1970 to 2009, 90 percent of plaintiffs compared themselves to existing co-workers, 4.6 percent to predecessors, 5 percent to successors, and the remainder to both a successor and predecessor.¹⁹² Claims based on coworker comparators are slightly more successful than those based on successor comparators, but a majority of plaintiffs still lose their cases.¹⁹³ In the context of domestic work, most domestic workers work in houses which employ just one employee, so a coworker comparator is very difficult to establish in practice. A domestic worker would need their particular employer to have hired a man to perform their almost exact job before or after their tenure. The domestic worker would also need to be aware of this history in order to establish a prima facie case. As a result, we are aware of no EPA claims involving domestic workers.

¹⁸⁹ *Equal Pay/Compensation Discrimination*, U.S. Equal Emp. Opportunity Comm’n, <https://www.eeoc.gov/equal-paycompensation-discrimination> (last visited Jan. 12, 2020); *I. Do the federal employment discrimination laws enforced by EEOC apply to my business?*, U.S. Equal Emp. Opportunity Comm’n, <https://www.eeoc.gov/employers/small-business/1-do-federal-employment-discrimination-laws-enforced-eeoc-apply-my> (last visited Jan. 12, 2020).

¹⁹⁰ *Evans v. Int’l Paper Co.*, 936 F.3d 183, 196 (4th Cir. 2019); *A Fair Share for All: Pay Equity in the New American Workplace: Hearing on S. 182 and S. 904 Before the S. Comm. on Health, Educ., Labor & Pensions*, 111th Cong. (2010) (statement of Deborah L. Brake, Professor of Law, University of Pittsburgh), <https://www.help.senate.gov/imo/media/doc/brake.pdf>.

¹⁹¹ *Santiago v. U.S.*, 107 Fed. Cl. 154, 158 (2012).

¹⁹² Deborah Thompson Eisenberg, *Shattering the Equal Pay Act’s Glass Ceiling*, 63 SMU L. Rev. 17, 33 (2010), https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1897&context=fac_pubs.

¹⁹³ *Id.*

2. Immigrants and Immigration Status

Many domestic workers in the United States are immigrant workers with variable types of immigration status. More than a third of domestic workers were born outside of the United States, with at least 20 percent being foreign-born noncitizens.¹⁹⁴ Although precise figures as to the proportion of domestic workers that are undocumented are difficult to estimate, a study of domestic workers in the Texas-Mexico border region found that only a minority of domestic workers surveyed—or 43 percent—had secure documentation status in the form of U.S. citizenship or permanent residency.¹⁹⁵ In particular, more than 80 percent of housecleaners were unauthorized to work in the United States.¹⁹⁶

As noted by many scholars and commentators, discrimination against immigrants in the United States has been particularly acute in the last decade.¹⁹⁷ This, along with the insecure citizenship under which many immigrant domestic workers labor, has made these workers “particularly vulnerable to substandard working conditions.”¹⁹⁸ Moreover, U.S. law offers

¹⁹⁴ Wolfe et al., *supra* note 82.

¹⁹⁵ Linda Burnham et al., *Living in the Shadows: Latina Domestic Workers in the Texas-Mexico Border Region*, National Domestic Workers Alliance (June 2018), [https://actionnetwork.org/user_files/user_files/000/024/054/original/Living_in_the_Shadows_rpt_Eng_final_screen_\(1\)_1.pdf](https://actionnetwork.org/user_files/user_files/000/024/054/original/Living_in_the_Shadows_rpt_Eng_final_screen_(1)_1.pdf).

¹⁹⁶ *Id.* at 4.

¹⁹⁷ Erika Lee, *America for Americans: a History of Xenophobia in the United States* (2019).

Engy Abdelkader, *As Hate Crimes Grow More Violent, Here are Some Policy Recommendations to Protect the Communities They Impact*, ABA J. (Mar. 8, 2021), <https://www.abajournal.com/columns/article/as-hate-crimes-grow-more-violent-here-are-some-policy-recommendations-to-protect-the-communities-they-impact>. Julia G. Young, *Making America 1920 Again? Nativism and US Immigration, Past and Present*, 5 J. on Migration & Hum. Sec. 1 (2017), <https://journals.sagepub.com/doi/pdf/10.1177/233150241700500111>. *US Racism on the Rise, UN Experts Warn in Wake of Charlottesville Violence*, Office of the High Commissioner, UN Human Rights (Aug. 16, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21975>. Nick Miroff, Maria Sachetti & Josh Dawsey, *Trump Put Up Walls to Immigrants, with Stingy Rhetoric and Barriers Made of Steel and Regulation*, Washington Post (Oct. 31, 2020), https://www.washingtonpost.com/immigration/trump-immigration-walls/2020/10/31/e43453cc-09a3-11eb-991c-be6ead8c4018_story.html. Ibram X. Kendi, *The Day Shithole Entered the Presidential Lexicon*, The Atlantic (Jan. 13, 2019), <https://www.theatlantic.com/politics/archive/2019/01/shithole-countries/580054/>. Florian Bieber, *Is Nationalism on the Rise? Assessing Global Trends*, 17 ETHNOPOLITICS 519–540 (2018).

¹⁹⁸ Burnham et al., *supra* note 195, at 4.

limited protections to workers in irregular status, protections which also remain largely inaccessible. Because of the lack of regulation, employers run little risk in subjecting workers to exploitative work conditions. In contrast, workers in irregular status run the risk of exposure and deportation, in addition to the loss of employment, should they complain about workplace violations.

a. Discrimination Based on National Origin

Discrimination against immigrants in the U.S., especially those in the low-wage sector, is widespread and well-documented. Most recently, former U.S. President Donald Trump described Mexican border-crossers as “rapists” and “murderers,” and was quoted as having said he did not want immigrants arriving from “shithole countries” such as Haiti and African Nations.¹⁹⁹ Early in his administration, he issued an order banning people from seven predominantly Muslim countries from visiting the United States.²⁰⁰ He denied green cards to immigrants who may need public assistance, in what critics labeled a wealth test.²⁰¹ He railed about groups of migrants coming to the border and dispatched the military, began a project to add 450 miles of wall to the southwest border, and once the pandemic began, expelled almost everyone under an emergency authorization.²⁰²

During his administration, Trump also instituted a “zero tolerance” policy against immigrants entering the United States unlawfully, directing the U.S. Department of Justice to

¹⁹⁹ Ben Fox, *Trump leaves mark on immigration policy, some of it lasting*, AP News (Dec. 29, 2020), <https://apnews.com/article/joe-biden-donald-trump-politics-immigration-united-states-a5bfcbea280a468b431a02e82c15a150>; Terje Solsvik & Camilla Knudsen, ‘Thanks, but no thanks’ - Norwegians reject Trump’s immigration offer, Reuters (Jan. 12, 2018), <https://www.reuters.com/article/us-usa-trump-immigration-norway/thanks-but-no-thanks-norwegians-reject-trumps-immigration-offer-idUSKBN1F11QK>.

²⁰⁰ Fox, *supra* note 199.

²⁰¹ *Id.*

²⁰² *Id.*

prosecute all immigrants found guilty of unlawful entry under 8 U.S.C. §§ 1325-1326.²⁰³ While prior administrations had exercised discretion in pursuing prosecutions for unlawful entry, often opting for alternatives that did not involve imprisonment, Trump's policy resulted in a massive rise in imprisonment of immigrants for merely attempting to enter the country without a visa. In 2016, violations of 8 U.S.C. §§ 1325 and 1326 were the most federally prosecuted offenses, constituting almost half of all prosecutions in federal court.²⁰⁴ In this massive effort to incarcerate immigrants, Trump separated immigrant families and jailed immigrant children.²⁰⁵ He all but eliminated the U.S. refugee program, placing the United States in violation of its duties under the Protocol to the Refugee Convention.²⁰⁶ In total, Trump made more than 400 immigration policy choices to limit, restrict and penalize immigrants.²⁰⁷ While the Biden administration has promised to remedy some of the worst immigration policies of the Trump administration, anti-immigrant sentiment is arguably at an all-time high, with immigrants in the United States likely to continue facing difficulties even assuming a full-rehaul of the system under the Biden administration.²⁰⁸

Moreover, while the policies under the Trump administration clearly represent the worst of U.S. cruelty towards immigrants, they were merely extreme versions of already long-standing policies that embodied an exploitative and discriminatory attitude towards low-wage migrant

²⁰³ See ABA Comm'n on Immigr., *Background on Separation of Families and Prosecution of Migrants at the Southwest Border*, Am. Bar. Ass'n (July 31, 2018),

https://www.americanbar.org/groups/public_interest/immigration/resources/memo-on-family-separation/.

²⁰⁴ Am. Civil Liberties Union, Fact Sheet: Criminal Prosecutions for Unauthorized Border Crossing 3 n.1, <https://www.aclu.org/other/operation-streamline-issue-brief> (last visited Mar. 8, 2021).

²⁰⁵ ABA Comm'n on Immigr., *supra* note 203.

²⁰⁶ *Trump Administration Enacts Rule Gutting Protection for Refugees and Asylum Seekers*, Human Rts. First (Dec. 10, 2020), <https://www.humanrightsfirst.org/press-release/trump-administration-enacts-rule-gutting-protection-refugees-and-asylum-seekers>.

²⁰⁷ Fox, *supra* note 199.

²⁰⁸ Sabrina Rodriguez, *Biden promised a 'fair and humane' immigration overhaul. What he inherited is a mess.*, Politico (Feb. 26, 2021), <https://www.politico.com/news/2021/02/26/biden-immigration-policy-471748>.

workers.²⁰⁹ For decades, advocates and this Commission have noted that U.S. policy and practice on migrant and immigrant labor favors employers and penalizes workers.²¹⁰ In fact, employers in the United States may subject immigrant domestic workers to unfair work conditions with little fear of reprisal. First, as explained below, domestic workers are not protected under Title VII from discrimination based on their national origin because of the small firm exception; they are also not protected against national origin discrimination under the Immigration and Nationality Act (INA), which would otherwise provide for such protection, because of a similar small-workplace exception.²¹¹

Immigrants are particularly vulnerable in their workplaces. The exploitation of migrants in the labor market is “often culturally accepted.”²¹² They earn less than U.S.-born citizens in 45 states; in at least 29 states, U.S.-born residents out-earn immigrants by thousands of dollars.²¹³ Immigrants are often more vulnerable than other workers because they often lack language fluency, social networks, and an understanding of cultural norms.²¹⁴ The informational asymmetry may make them more prone to abusive practices of employers, such as common

²⁰⁹ Inter-Am. Comm’n on H.R., OAS/Ser.L/V/II. 155, Doc. 16, Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America (2015); U. Chi. Law Sch. Int’l Human Rts. Clinic, ACLU Border Litig. Project of San Diego and Imperial Counties & ACLU Border Rts. Project, Neglect and Abuse of Unaccompanied Children by U.S. Customs and Border Protection (2018), <https://chicagounbound.uchicago.edu/ihrcl/1/>.

²¹⁰ *Undocumented Workers v. United States Of America*, Case 12.834, Inter-Am. Comm’n H.R., Report No. 50/16, OEA/Ser.L/V/II.159, doc. 59 (2016); Rebecca Smith et al., *Undocumented Workers: Preserving Rights and Remedies after Hoffman Plastic Compound*, National Employment Law Project, <http://stage.nelp.org/wp-content/uploads/2015/03/wlghoff040303.pdf>.

²¹¹ See Sect. II(D)(2)(a); 8 U.S.C. § 1324b(a)(2).

²¹² *States must act now to protect migrants vulnerable to human trafficking and exploitation, says UN rights expert*, United Nations High Comm’n for Human Rts. (June 21, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23240&LangID=E>.

²¹³ Caren Weiner Campbell & Lauren McMullen, *What Immigrants Earn in Each State and How Much They Send Abroad*, NerdWallet (Mar. 6, 2017), <https://www.nerdwallet.com/article/banking/what-immigrants-earn-in-each-state-how-much-they-send-abroad>.

²¹⁴ Stacey Fitzsimmons, Jen Baggs & Mary Yoko Brannen, *Research: The Immigrant Income Gap*, Harv. Bus. Rev. (May 7, 2020), <https://hbr.org/2020/05/research-the-immigrant-income-gap>.

practices of unfair documentary practices relating to employment eligibility, wage theft, and unsafe working conditions.²¹⁵

Wage theft is common for low-waged workers; according to a study by the National Employment Law Project, more than two thirds of low-wage workers in New York City, Chicago, and Los Angeles experienced wage theft in their previous workweeks.²¹⁶ In 2019, the U.S. Department of Labor recovered a record of \$322 million in wages owed to workers, a small indication of the prevalence of wage theft in the country.²¹⁷

Additionally, foreign-born workers are at greater risk for occupational injuries and illnesses. Cultural barriers play a role—if occupational health professionals do not provide safety and health information in an understandable and culturally appropriate manner, immigrant workers may be disadvantaged in their ability to fully conceptualize workplace risks.²¹⁸ Compounding this issue is the fact that immigrants have less access to health care, partly due to socioeconomic factors, unauthorized status, and unfamiliarity with the American health care

²¹⁵ *Types of Discrimination*, U.S. Dep't of Justice, <https://www.justice.gov/crt/types-discrimination> (last updated Apr. 30, 2019); Rachel Deutsch, *How Can We Combat Wage Theft And Protect Immigrant Workers?*, Common Dreams (Nov. 27, 2017), <https://www.commondreams.org/views/2017/11/27/how-can-we-combat-wage-theft-and-protect-immigrant-workers>.

²¹⁶ Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities 2*, 20 *tbl.* 3.1 (2009), <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.

²¹⁷ U.S. Department of Labor Delivers Record \$322 Million in Recovered Wages for Workers in Fiscal Year 2019, U.S. Dep't of Labor (Oct. 28, 2019), <https://www.dol.gov/newsroom/releases/whd/whd20191028>.

²¹⁸ Linda A. McCauley, *Immigrant Workers in the United States: Recent Trends, Vulnerable Populations, and Challenges for Occupational Health*, 53 *Workplace Health & Safety J.* 313, 316-17 (2005), <https://journals.sagepub.com/doi/pdf/10.1177/216507990505300706>; Paola Bollini & Harald Siem, *No real progress towards equity: health of migrants and ethnic minorities on the eve of the year 2000*, 41 *Soc. Sci. & Med. J.* 819 (1995), <https://pubmed.ncbi.nlm.nih.gov/8571153/>; Carlos F. Corvalan et al., *Role of migrant factors in work-related fatalities in Australia*, 20 *Scandinavian J. Work. Env't. & Health* 364 (1994), <https://pubmed.ncbi.nlm.nih.gov/7863300/>; Eric Zuehlke, *Immigrants Work in Riskier and More Dangerous Jobs in the United States*, Population Reference Bureau (Oct. 30, 2009), <https://www.prb.org/usimmigrantsriskyjobs/>; Arturo Vargas Bustamante & Philip J. Van der Wees, *Integrating Immigrants into the U.S. Health System*, 14 *Am. Med. Ass'n J. Ethics* 318 (2012), <https://journalofethics.ama-assn.org/article/integrating-immigrants-us-health-system/2012-04>.

system.²¹⁹ They may also not file worker's compensation claims, for reasons such as fear of employer actions, lack of workers' compensation insurance benefits, failure of management to inform workers they have workers' compensation coverage, or fear of legal problems.²²⁰

Migrant workers are also at greater risk of workplace harassment than native-born workers. Approximately one in 10 charges of workplace harassment filed at the EEOC allege harassment on grounds of national origin.²²¹ Immigrants are also overrepresented in fields where sexual harassment is the highest: restaurant, agricultural, and domestic work.²²² Thus, their immigration status intersects with other risk factors, increasing their vulnerability to workplace mistreatment.

b. Discrimination Based on Immigration Status

(i) *Temporary Work Visas*

Many immigrant domestic workers are additionally vulnerable to exploitation because of the terms set by the United States for their temporary work visas. U.S. employers may sponsor domestic workers for temporary work visas through a B-1, H-2B, or J-1 visa. B-1 visas are granted to temporary business visitors to the United States.²²³ Through this visa, employers may hire migrant domestic workers as long as both the employer and the domestic worker meet

²¹⁹ Fernando A. Wilson & Jim P. Stimpson, *Federal and State Policies Affecting Immigrant Access to Health Care*, JAMA Health F. (Apr. 6, 2020), <https://jamanetwork.com/channels/health-forum/fullarticle/2764349>; Leighton Ku & Sheetal Matani, *Left Out: Immigrants' Access To Health Care And Insurance*, 20 Health Affairs 247 (2001), <https://www.healthaffairs.org/doi/10.1377/hlthaff.20.1.247>.

²²⁰ McCauley, *supra* note 218.

²²¹ *Charge Statistics (Charges filed with EEOC) FY 1997 Through FY 2020*, U.S. Equal Opportunity Commission, <https://www.eeoc.gov/statistics/charge-statistics-charges-filed-eeoc-fy-1997-through-fy-2020>.

²²² *AG James: Bill Protecting Immigrant Workers From Workplace Harassment Signed Into Law*, NYS Attorney General (July 29, 2019), <https://ag.ny.gov/press-release/2019/ag-james-bill-protecting-immigrant-workers-workplace-harassment-signed-law>.

²²³ Sweta Khandelwal, *Domestic Worker Visa Options*, Legal IO (Aug. 19, 2015), <https://www.legal.io/guide/55d4cc7b777773657000051/Domestic-Worker-Visa-Option>.

certain requirements.²²⁴ Employers may also hire migrant domestic workers under H-2B visas (for non-agricultural and low-skilled work) or J-1 visas (for *au pairs* and other caregiving work).²²⁵

With the exception of the J-1 visa, these temporary work visas are employment-dependent, requiring continued employment with a particular employer. Thus, workers under these visas run the risk of deportation should they complain about substandard work conditions. This visa arrangement creates an imbalanced power structure that leaves domestic workers disproportionately dependent on their employers for the retention of legal status in the United States.²²⁶

Exploitation is common in all of these temporary work visa programs.²²⁷ Two primary causes for this exploitation are workers' unfamiliarity with their rights, as well as institutions that could protect their rights, and the lack of government supervision of employers requesting these visas, including the under-enforcement of program requirements and terms.²²⁸ These factors allow employers to easily misrepresent labor rights and entitlements to their workers.²²⁹

²²⁴ *B-1 Temporary Business Visitor*, U.S. Citizenship & Immigr. Serv., <https://www.uscis.gov/working-in-the-united-states/temporary-visitors-for-business/b-1-temporary-business-visitor> (last visited Nov. 1, 2020).

²²⁵ Daniel Costa, *Frequently asked questions about the H-2B temporary foreign worker program*, Econ. Pol'y Inst. (June 2, 2016), <https://www.epi.org/publication/frequently-asked-questions-about-the-h-2b-temporary-foreign-worker-program/#2>; Zack Kopplin, 'They Think We are Slaves,' Politico Mag. (Mar. 27, 2017), <https://www.politico.com/magazine/story/2017/03/au-pair-program-abuse-state-department-214956>.

²²⁶ *Human Trafficking at Home*, Polaris (July 2019), <https://polarisproject.org/wp-content/uploads/2019/07/Domestic-Worker-Fact-Sheet.pdf>.

²²⁷ See, e.g., *Jimenez v. GLK Foods LLC*, No. 12-C-0209, 2013 WL 3936928, at *1 (E.D. Wis. July 30, 2013); *Ruiz Ramos v. Stone Forestry Servs., Inc.*, No. 2:18-CV-02942, 2019 WL 1170769, at *1 (D.S.C. Mar. 13, 2019); *Aviles-Cervantes v. Outside Unlimited, Inc.*, 276 F. Supp. 3d 480, 485 (D. Md. 2017); *Beltran v. InterExchange, Inc.*, 176 F. Supp. 3d 1066 (D. Colo. 2016); see also Sameera Hafiz & Michael Paarlberg, Inst. Pol'y Stud. & Nat'l Domestic Workers All., *The Human Trafficking Of Domestic Workers In The United States 21* (2017), https://ips-dc.org/wp-content/uploads/2017/03/Beyond-Survival-2017-Report_FINAL_PROOF-1-1.pdf.

²²⁸ Andolan: Organizing South Asian Workers et al., *Domestic Workers' Rights in the United States: A report prepared for the U.N. Human Rights Committee In response to the Second and Third Periodic Report of the United States 3, 7* (2019), <https://law.unc.edu/wp-content/uploads/2019/10/domesticworkersreport.pdf>.

²²⁹ *Id.*; Hafiz & Paarlberg, *supra* note 227, at 9.

Even though J-1 visas holders²³⁰ have the possibility of changing host families, this “au pair” program has received recent criticism as well due to numerous reports of workers being overworked, underpaid, and abused by their employers.²³¹ Whereas *au pairs* are technically supposed to earn the federal minimum wage at a minimum, “it is prevailing practice for au pairs to receive what amounts to \$4.35 an hour.”²³²

(ii) *Unauthorized or “Undocumented” Immigrants*

Approximately, 11 million undocumented individuals live in the U.S.²³³ There are 16.7 million people living in the United States who have one or more family members living in their household.²³⁴ Undocumented or “unauthorized workers” make up over 3 percent of U.S. population.²³⁵ Just under half come from Mexico, almost 20 percent come from Central America, and about 14 percent come from Asia.²³⁶ About two thirds have lived in the United States for 10 years or longer.²³⁷ Reliable estimates do not exist of the number of domestic workers that are undocumented but, given the informal status of this sector, it is highly likely that many domestic workers are undocumented. Domestic worker trafficking organizations who worked with

²³⁰ These visas are usually available for one to two years to au pairs. *Au Pair Program*, BridgeUSA, <https://j1visa.state.gov/programs/au-pair/> (last visited Nov. 1, 2020).

²³¹ See Kopplin, *supra* note 225.

²³² Hafiz & Paarlberg, *supra* note 227, at 21.

²³³ Elaine Kamarck & Christine Stenglein, *How many undocumented immigrants are in the United States and who are they?* Brookings Institute (November 12, 2019), <https://www.brookings.edu/policy2020/votervital/how-many-undocumented-immigrants-are-in-the-united-states-and-who-are-they/>.

²³⁴ Olivia Sanchez, *Endless fear: Undocumented immigrants grapple with anxiety, depression under Trump*, USA Today (August 25, 2019), <https://www.usatoday.com/story/news/nation/2019/08/25/undocumented-immigrants-struggle-mental-health-survival-mode/1816672001/>.

²³⁵ *Millions of Undocumented Immigrants Are Essential to America’s Recovery, New Report Shows*, Ctr. Am. Progress (Dec. 2, 2020), <https://www.americanprogress.org/press/release/2020/12/02/493404/release-millions-undocumented-immigrants-essential-americas-recovery-new-report-shows/>.

²³⁶ Kamarck & Stenglein, *supra* note 233.

²³⁷ *Id.*

Mexican and Central American domestic workers found that less than 25 percent of its survivors had lawful status, for example.²³⁸

Studies have shown repeatedly that undocumented workers are essential to the U.S. economy.²³⁹ These workers make up 4.4 percent of the country's workforce.²⁴⁰ Nearly 3 in 4 undocumented workers are considered essential workers according to the U.S. Department of Homeland Security's guidance.²⁴¹ These workers are employed in most low-wage sectors, including construction, food and agricultural work, cleaners, landscaping, drivers, building painters, and domestic work.²⁴² Undocumented workers and their households contribute massively to the U.S. economy through taxes, making \$79.7 billion in federal tax contributions and \$41 billion in local tax contributions.²⁴³

Undocumented immigrants are frequently subjected to abysmal working conditions, including harassment and physical and sexual abuse, and are disproportionately paid substandard wages.²⁴⁴ Undocumented domestic workers are not exception, especially because such workers are particularly dependent on their employers for shelter, wages, and protection from deportation.²⁴⁵ Because of this one-sided relationship, and their relative isolation, they are more

²³⁸ Hafiz & Paarlberg, *supra* note 227, at 21.

²³⁹ *Millions of Undocumented*, *supra* note 235.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² Nicole Prchal Svajlenka, Ctr. Am. Progress, Protecting Undocumented Workers on the Pandemic's Front Lines (2020), <https://www.americanprogress.org/issues/immigration/reports/2020/12/02/493307/protecting-undocumented-workers-pandemics-front-lines/>.

²⁴³ *Millions of Undocumented*, *supra* note 235.

²⁴⁴ See, e.g., Nancy Zarate Byrd, *The Dirty Side of Domestic Work: An Underground Economy and the Exploitation of Undocumented Workers*, 3 DePaul J. Soc. Just. 245 (2010), <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=1058&context=jsj>. Transcript: *Rape in the Fields*, PBS (June 25, 2013), <https://www.pbs.org/wgbh/frontline/film/rape-in-the-fields/transcript/>; Shannon Sims & Verónica G Cárdenas-Vento, *Undocumented, vulnerable, scared: the women who pick your food for \$3 an hour*, Guardian (July 10, 2019), <https://www.theguardian.com/us-news/2019/jul/10/undocumented-women-farm-workers-texas-mexican>.

²⁴⁵ Byrd, *supra* note 244, at 264.

vulnerable to mistreatment.²⁴⁶ Many are subjected to economic exploitation.²⁴⁷ Employers may pay low wages while rationalizing their behavior by thinking that they treat their workers well.²⁴⁸ Other employers lie to workers about their ability to engage in part-time work on the side to make up for the low pay.²⁴⁹ Sexual and psychological abuse is not uncommon—most victims are paralyzed by fear, of their employer, of losing their job or being deportation, and do not report their attacks.²⁵⁰

Despite rampant discrimination and exploitation, the U.S. system of laws and policies provide little protection. The Immigration Reform and Control Act (IRCA) requires employers to fire workers who are unauthorized to work.²⁵¹ While the Immigration and Nationality Act (INA), provides that immigration status may not be used to retaliate against workers who assert their legal rights, the reality is that workers are too afraid to challenge such acts—and domestic workers are not protected by federal anti-discrimination laws in any case.²⁵² Where undocumented workers receive some protection from labor and employment laws, they are

²⁴⁶ *Id.* at 263-64.

²⁴⁷ *Id.* at 264.

²⁴⁸ *Id.* at 254.

²⁴⁹ *Id.* at 262-63.

²⁵⁰ *Id.* at 263.

²⁵¹ *Undocumented Workers*, Workplace Fairness, <https://www.workplacefairness.org/undocumented-workers#5> (last visited Mar. 8, 2021).

²⁵² AFL-CIO, IMMIGRANT WORKERS AT RISK: THE URGENT NEED FOR IMPROVED WORKPLACE SAFETY AND HEALTH POLICIES AND PROGRAMS 7–8 (2005) (“[W]orkers repeatedly risk adverse consequences for attempting to complete the steps necessary to document [injury] cases, while the systems to ensure completion of documentation are weak or absent. Underreporting especially occurs among workers with insecure immigration status Researchers [have] found that low-wage and immigrant workers are most likely to be fired or threatened for complaining.”). *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960) (“[F]ear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions.”); REBECCA SMITH ET AL., NAT’L EMP’T LAW PROJECT ET AL., ICED OUT: HOW IMMIGRATION ENFORCEMENT HAS INTERFERED WITH WORKERS’ RIGHTS 7 (2009) (“[E]mployers commonly threaten to turn workers into immigration authorities to gain the upper hand in a labor dispute”); AMY M. TRAUB ET AL., DRUM MAJOR INST. FOR PUB. POLICY, PRINCIPLES FOR AN IMMIGRATION POLICY TO STRENGTHEN AND EXPAND THE AMERICAN MIDDLE CLASS 12 (2009) (“Technically, minimum wage and overtime laws and health and safety regulations extend to every worker in the U.S., regardless of immigration status. But in practice, undocumented immigrants face the threat of deportation if they try to exercise any of these rights.”).

effectively denied many important remedies and face barriers to enforcing their rights. In *Hoffman Plastic Compounds, Inc. v. NLRB*, the Supreme Court ruled that the ICRA prevents undocumented workers from being able to recover backpay, an important remedy granted by core labor and employment legislation.²⁵³ Prospective remedies are also not available to undocumented workers like front pay or reinstatement.²⁵⁴ An undocumented worker may also not be entitled to damages, such as unpaid wages or overtime pay under the Fair Labor Standards Act (FLSA), because not all employment is protected under the FLSA. In other words, the limited rights provided to undocumented workers are often provided with extremely limited remedies, rendering such rights ineffectual in compensating workers or discouraging employer abuses in practice.

Moreover, an undocumented worker always risks deportation. Just as it has the power to deport undocumented workers during the ordinary course of business, the Immigration and Customs Enforcement (ICE) may attempt deportation as a follow up to an undocumented worker's report of retaliatory termination.²⁵⁵ The constant and real threat of immigration enforcement is often leveraged by employers to justify poor pay, unsafe working conditions, mistreatment and abuse of unauthorized domestic workers.²⁵⁶

²⁵³ *Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, 535 U.S. 137 (2002).

²⁵⁴ *Undocumented Workers*, Workplace Fairness, <https://www.workplacefairness.org/undocumented-workers#6> (last visited Mar. 8, 2021).

²⁵⁵ Josselyn Andrea Garcia Quijano, *Workplace Discrimination and Undocumented First-Generation Latinx Immigrants*, 2020 *Advocates' F.* 27, 29, <https://www.ssa.uchicago.edu/advocates-forum-2020-workplace-discrimination-undocumented-immigrants>; Louis Pechman & Laura Rodriguez, *Rights of Undocumented Workers in Wage Theft Cases*, Law.com (Mar. 13, 2020), <https://www.law.com/newyorklawjournal/2020/03/13/rights-of-undocumented-workers-in-wage-theft-cases/>.

²⁵⁶ See, e.g., *United States v. Calimlim*, 538 F.3d 706, 710 (7th Cir. 2008); *Carazani v. Zegarra*, 972 F. Supp. 2d 1, 10 (D.D.C. 2013); *United States v. Alzanki*, 54 F.3d 994, 999 (1st Cir. 1995); *United States v. George*, 779 F.3d 113, 116 (2d Cir. 2015). Some states have attempted to increase protections against immigration enforcement: California and New York have bills to protect undocumented-worker rights in lawsuits, for example, but there is no such federal protection.

3. Race and Ethnicity

Racial and ethnic discrimination in the U.S. has also been well-documented and impacts the work environment of people of color, including domestic workers. Generally, racial and ethnic minorities make up a substantial portion of the U.S. workforce. Seventeen percent of workers in the U.S. workforce identify as Hispanic or Latino (of any race), 13 percent as Black, 6 percent as Asian, 1 percent as American Indian and Alaska Natives, less than 1 percent as Native Hawaiians and other Pacific Islanders, and 2 percent as two or more races.²⁵⁷ More than half of the 2.2 million domestic workers in the United States are Black, Hispanic, or Asian/Pacific Islander women.²⁵⁸

Minorities tend to be more vulnerable in the labor market than white non-Hispanic (hereinafter White) workers. They tend to work in worse jobs with lower pay and less stability.²⁵⁹ The racial wage gap is significant. In 2015, White men out-earned black and Hispanic men and all groups of women.²⁶⁰ Black non-Hispanic (hereinafter Black) workers in particular earn just 75 percent that of Whites in median hourly earnings.²⁶¹ The Black-White wage gap today is worse than it was in 2000.²⁶² Minorities in the United States—which has one of the most unequal educational systems in the industrialized world—have worse educational

²⁵⁷ U.S. Bureau of Labor Stat., *Labor force characteristics by race and ethnicity, 2018*, (Oct. 2019), <https://www.bls.gov/opub/reports/race-and-ethnicity/2018/home.htm>.

²⁵⁸ Wolfe et al., *supra* note 82, at 1.

²⁵⁹ See Elin Johnson, *Racial Inequality, at College and in the Workplace*, Inside Higher Ed (Oct. 18, 2019), <https://www.insidehighered.com/news/2019/10/18/racial-inequality-college-and-workplace>; Connor Maxwell & Danyelle Solomon, *The Economic Fallout of the Coronavirus for People of Color*, Ctr. Am. Progress (Apr. 14, 2020), <https://www.americanprogress.org/issues/race/news/2020/04/14/483125/economic-fallout-coronavirus-people-color/>.

²⁶⁰ Eileen Patten, *Racial, gender wage gaps persist in U.S. despite some progress*, Pew Res. Ctr. (July 1, 2016), <https://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/>.

²⁶¹ *Id.*

²⁶² Elisa Gould, *Black-white wage gaps are worse today than in 2000*, Econ. Pol’y Inst. (Feb. 27, 2020), <https://www.epi.org/blog/black-white-wage-gaps-are-worse-today-than-in-2000/>; see also Christian E. Weller, *African Americans Face Systemic Obstacles to Getting Good Jobs*, Ctr. Am. Progress (Dec. 5, 2019), <https://www.americanprogress.org/issues/economy/reports/2019/12/05/478150/african-americans-face-systemic-obstacles-getting-good-jobs/>.

outcomes, a function of their unequal access to key educational resources including skilled teachers and quality curricula.²⁶³ But even when factors such as education, years of experience, occupation, and other compensable factors are controlled for, most men and women of color still earn less than White men.²⁶⁴ In addition, workers of color are far more likely to be paid poverty-level wages than White workers, with Hispanics being more than twice as likely to be paid at poverty level than White workers (at 19.2 percent compared to 8.6 percent respectively).²⁶⁵ Recessions hit people of color harder and for a longer duration than White people.²⁶⁶

People of color also report widespread discrimination at work. One in four Black and Hispanic workers report recent discrimination at work.²⁶⁷ For Glassdoor's 2019 Diversity and Inclusion Study, The Harris Poll surveyed over 5,000 employees in the U.S., U.K., France and Germany. Of the 1,113 U.S. workers surveyed, 42 percent agreed with the statement, “I have experienced or witnessed racism in the workplace”—the highest percentage of any of the

²⁶³ Linda Darling-Hammond, *Unequal Opportunity: Race and Education*, Brookings (Mar. 1, 1998), <https://www.brookings.edu/articles/unequal-opportunity-race-and-education/>; CJ Libassi, *The Neglected College Race Gap: Racial Disparities Among College Completers*, Center for American Progress (May 23, 2018), <https://www.americanprogress.org/issues/education-postsecondary/reports/2018/05/23/451186/neglected-college-race-gap-racial-disparities-among-college-completers/>; Kenneth Shores, Ha Eun Kim and Mela Still, *Categorical Inequalities Between Black and White Students are Common in US Schools—but They Don't Have to Be*, Brookings (Feb. 21, 2020), <https://www.brookings.edu/blog/brown-center-chalkboard/2020/02/21/categorical-inequalities-between-black-and-white-students-are-common-in-us-schools-but-they-dont-have-to-be/>.

²⁶⁴ *The Racial Wage Gap Persists In 2020*, PayScale, <https://www.payscale.com/data/racial-wage-gap> (last visited Mar. 9, 2021).

²⁶⁵ David Cooper, *Workers of color are far more likely to be paid pverty-level wages than white workers*, Econ. Pol’y Inst. (June 21, 2018), <https://www.epi.org/blog/workers-of-color-are-far-more-likely-to-be-paid-poverty-level-wages-than-white-workers/>.

²⁶⁶ Amanda Novello, *Looming Unemployment Cliff Will Hit Women and People of Color the Hardest*, Century F. (Dec. 11, 2020), <https://tcf.org/content/commentary/looming-unemployment-cliff-will-hit-women-people-color-hardest/?session=1>.

²⁶⁷ Camille Lloyd, *One in Four Black Workers Report Discrimination at Work*, Gallup (Jan. 12, 2021), <https://news.gallup.com/poll/328394/one-four-black-workers-report-discrimination-work.aspx>.

countries included.²⁶⁸ Discrimination reports were even higher among young Black employees.²⁶⁹ Three in four Black workers said the discrimination they felt was race-based.²⁷⁰

Many of the experiences of workers of color detailed above apply to domestic workers, of which a majority are persons of color.²⁷¹ As discussed above, domestic work was built on the “centuries-long economic exploitation of Black women.”²⁷² Black and Hispanic domestic workers earned less, and have higher poverty rates, than their White counterparts.²⁷³ Black domestic workers in particular report widespread discrimination and harassment.²⁷⁴

D. Exclusions and Limitations of Federal Legal Protections for Domestic Workers

The United States sets basic terms and conditions of employment for all workers in a federal framework of statutes, regulations and enforcement agencies. This federal framework generally establishes, *inter alia*, a minimum wage of \$7.25 per hour, a maximum weekly hour limit requiring excess pay for additional hours worked, recordkeeping requirements for the employer to ensure accuracy of wages, and prohibitions on child labor.²⁷⁵ Federal laws also generally ensure workplace safety and health, requiring employers to adhere to safety and health regulations, enforced through a government agency that receives complaints and conducts

²⁶⁸ *Glassdoor Survey Finds Three in Five U.S. Employees Have Experienced or Witnessed Discrimination Based on Age, Race, Gender or LGBTQ Identity at Work*, Glassdoor (Oct. 23, 2019), <https://about-content.glassdoor.com/en-us/diversity-inclusion-2019/>.

²⁶⁹ Lloyd, *supra* note 267.

²⁷⁰ *Id.*

²⁷¹ Wolfe et al., *supra* note 82, at 1.

²⁷² Poo Decl. ¶ 5; *see generally* Kristi L. Graunke, “Just Like One of the Family”: Domestic Violence Paradigms and Combating on-the-Job Violence Against Household Workers in the United States, 9 Mich. J. Gender & L. 131 (2002).

²⁷³ Wolfe et al., *supra* note 82, at 48.

²⁷⁴ Poo Decl. ¶ 11.

²⁷⁵ U.S. Dep’t of Lab. (DOL), *Handy Reference Guide to the Fair Labor Standards Act*, 1, 7, 9, 12-13 (Sept. 2016), <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh1282.pdf> [hereinafter DOL].

inspections and investigations of workplaces.²⁷⁶ Lastly, federal laws generally provide for employee benefit security, freedom of association through union membership, and unpaid family and medical leave.²⁷⁷

The vast majority of these protections are either not available to domestic workers or only applicable to these workers with significant limitations that render the protections far less effective or, in many cases, wholly ineffectual.²⁷⁸ Taken together, domestic workers in the United States labor in a workplace with scarce minimal standards and benefits, unprotected from discrimination, with few requirements imposed by the State on the employer and significantly restricted access to remedies in the event of abuse.

1. Explicit Exclusions of Domestic Workers

The United States' denial of legal rights, protections and benefits to domestic workers takes several forms. The first is an outright denial of equal protection of the law through explicit exclusions from federal protections, such as in the 1945 National Labor Relations Act (NLRA) (29 U.S.C. 151),²⁷⁹ the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. 201),²⁸⁰ and the Occupation Safety and Health Act (OSHA) (29 U.S.C. 651).²⁸¹

a. The National Labor Relations Act (NLRA)

²⁷⁶ DOL, *Summary of the Major Laws of the Dep't of Labor*, <https://www.dol.gov/general/aboutdol/majorlaws> (last visited Mar. 9, 2021).

²⁷⁷ *Id.*

²⁷⁸ For example, the minimum wage is often not enough to meet decent living standards. Andrew Bloomenthal, *Can a Family Survive on the U.S. Minimum Wage?*, Investopedia (March 3, 2021), <https://www.investopedia.com/articles/personal-finance/022615/can-family-survive-us-minimum-wage.asp>. Domestic workers are excluded from the protection of earning even this basic wage. Cary Nadeau & Amy K. Glasmeier, *Minimum Wage: Can an Individual or a Family Live on It?*, Living Wage Calculator (January 6, 2016), <https://livingwage.mit.edu/articles/15-minimum-wage-can-an-individual-or-a-family-live-on-it>.

²⁷⁹ NLRA, *supra* note 90 §§ 151-169.

²⁸⁰ FLSA, *supra* note 90 §§ 201-219.

²⁸¹ OSHA, 29 U.S.C. §§ 651-678 (current through Pub. L. No. 116-282 (excluding Pub. L. No. 116-260)).

The NLRA guarantees the right of workers to form unions and bargain collectively.²⁸² However, the NLRA expressly excludes domestic workers from coverage, stating “the term ‘employee’ . . . shall not include any individual employed. . . in the domestic service of any family or person at his home.”²⁸³ Through this explicit exclusion, domestic workers are denied the right to freedom of association in the workplace—to form unions and equalize their power vis-à-vis that of their employers.²⁸⁴ Despite attempted challenges to this exclusion, courts, including the U.S. Supreme Court, have confirmed the exclusion of domestic workers from the NLRA.²⁸⁵

The right to organize is particularly important for domestic workers who often work by themselves in private households and face an imbalanced power relation with their employers. Since domestic workers do not have the ability to report negative encounters with their employers to any kind of supervisor, this imbalance leaves domestic workers more vulnerable than workers in public spaces who have accountability mechanisms for employers. Additionally, because the home is implicitly thought of as a “man’s castle”²⁸⁶ impenetrable from government interference, domestic workers are discouraged from speaking up against the family household. Without the aid of a union representative to collectively bargain with employers, domestic

²⁸² NLRA, *supra* note 90 § 151.

²⁸³ *Id.* at §152(3).

²⁸⁴ Burnham & Theodore, *supra* note 99, at 8.

²⁸⁵ See, e.g., *Greene v. Dayton*, 806 F.3d 1146, 1149 (8th Cir. 2015) (“Although Congress exempted domestic service workers from the NLRA, Congress did not demonstrate an intent to shield these workers from all regulation. Rather, Congress merely concluded that domestic service worker disputes were not significant enough to regulate federally because they did not impact national ‘labor peace.’” (citing *Harris v. Quinn*, 573 U.S. 616, 649 (2014))).

²⁸⁶ Ai-jen Poo, *Domestic Workers Bill of Rights: A Feminist Approach for a New Economy*, 8.1 Scholar & Feminist Online, Barnard Ctr. Rsch. on Women (Fall 2009), http://sfonline.barnard.edu/work/print_poo.htm.

workers have faced steep challenges when advocating for their rights, especially their rights to be free from abuse, harassment and exploitation.²⁸⁷

As detailed below in Part G, U.S. domestic workers have experienced myriad abusive working conditions, which they were not able to address with lawfully protected organizing efforts.²⁸⁸ As is evident from their declarations, Individual Petitioners and Individual Declarants in Support of Petitioners experienced exploitative working conditions as well.²⁸⁹ They were forced to work extremely long days,²⁹⁰ were harassed, told they were slaves and treated accordingly, denied freedom of movement, closely monitored, made to work constantly, and denied pay.²⁹¹ For example, Ms. Begum explains that “for those two and a half years, Mr. and Mrs. Ahmed kept me as a prisoner in their house, and made me a slave to their demands. They treated me no better than they would treat a stray dog. They tried to take from me my humanity.”²⁹²

Moreover, Organizational Petitioners and Organizational Declarants in Support of Petitioners noted that domestic workers routinely experience abusive and exploitative working conditions.²⁹³ CASA of Maryland shared that fifty percent of domestic workers seeking legal representation from CASA had been exploited by their employer.²⁹⁴ Domestic workers’ bodies and time are highly regulated by their employers, especially in the case of live-in domestic

²⁸⁷ James Lin, *A Greedy Institution: Domestic Workers and a Legacy of Legislative Exclusion*, 36 *Fordham Int’l L. J.* 706, 708 (2013).

²⁸⁸ Sect. II(G)

²⁸⁹ Aisah Decl.; Ajasi Decl.; Begum Decl.; Paredes Decl.; Huayta Decl.; Ocares Decl.; Mendoza Decl.; Sakala Decl.; Gurung, Decl.; Bitas, Decl.; Umlas, Decl.

²⁹⁰ Aisah Decl. ¶ 10; Ajasi Decl. ¶ 12; Begum Decl. ¶ 10

²⁹¹ Ajasi Decl. ¶¶ 10, 29; Begum Decl. ¶¶ 6, 25; Huayta Decl. ¶ 5; Paredes Decl. ¶ 3; Gurung Decl. ¶ 19; Umlas Decl. ¶ 4.

²⁹² Begum Decl. ¶ 6.

²⁹³ Ortiz Decl.; Poo Decl.; Chhetri Decl.; Trigoso-Kukulski Decl.; Guzmán Decl.; Bessell Decl.; *See* Petition at 24-27.

²⁹⁴ *See* Petition at 26.

workers, who often do not receive adequate living quarters.²⁹⁵ The National Domestic Workers Alliance found that 30 percent of domestic workers surveyed by their organization reported having their employer disregard at least one provision of their employment contracts.²⁹⁶

b. The Fair Labor Standards Act (FLSA)

The FLSA establishes the right of employees working in the private and government sectors to federal minimum wage as well as overtime pay eligibility²⁹⁷ and sets recordkeeping requirements for employers.²⁹⁸ As originally drafted, the FLSA provided no protection for domestic workers.²⁹⁹ As with the NLRA, the exclusion was motivated by racist prejudices.³⁰⁰ In 2015, some minimal protections were added for a limited subset of domestic workers. FLSA protections now apply to some domestic workers, who are not live-in and do not provide certain kinds of services, as long as the amount of wages they receive are sufficient to count as wages under the Social Security Act³⁰¹ and so long as they work more than eight hours a week for the

²⁹⁵ Chhetri Decl. ¶ 16.

²⁹⁶ Poo Decl. ¶ 9.

²⁹⁷ FLSA, *supra* note 90 §207(a)(1) (stating “[N]o employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employer shall employ any of his employees a rate not less than one and one-half times the regular rate at which he is employed.”).

²⁹⁸ DOL, *Fact Sheet #79C: Recordkeeping Requirements for Individuals, Families, or Households Who Employ Domestic Service Workers under the Fair Labor Standards Act (FLSA)*, (Sep. 2013), <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs79c.pdf>.

²⁹⁹ *Fact Sheet: Application of the Fair Labor Standards Act to Domestic Service, Final Rule*, U.S. Dep’t of Labor (2013) (“The FLSA did not initially protect workers employed directly by households in domestic service, such as cooks, housekeepers, maids, and gardeners.”), <https://www.dol.gov/agencies/whd/fact-sheets/flsa-domestic-service>.

³⁰⁰ Perea, Juan F., *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 OHIO ST. L.J. 195 (2011).

<https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1150&context=facpubs>. The words of Representative Mark Wilcox of Florida at the time of the bill’s passage are indicative of the prevailing attitudes: “There has always been a difference in the wage scale of white and colored labor. So long as Florida people are permitted to handle the matter, this delicate and perplexing problem can be adjusted; but the Federal Government knows no color line and of necessity it cannot make any distinction between the races. We may rest assured, therefore, that . . . it will prescribe the same wage for the Negro that it prescribes for the white man.... [T]hose of us who know the true situation know that it just will not work in the South. You cannot put the Negro and the white man on the same basis and get away with it. Not only would such a situation result in grave social and racial conflicts but it would also result in throwing the Negro out of employment and in making him a public charge. There just is not any sense in intensifying this racial problem in the South, and this bill cannot help but produce such a result.” 82 Cong. Rec. 1404 (1937).

³⁰¹ Social Security Administration, *Household Workers*, (Jan. 2021), <https://www.ssa.gov/pubs/EN-05-10021.pdf>.

employer.³⁰² Still, the FLSA specifically excludes domestic workers who provide companionship services³⁰³ to the elderly and infirm and certain live-in domestic workers.³⁰⁴ The former are excluded from all protections including minimum wage and overtime pay,³⁰⁵ and the latter are exempt from overtime protections.³⁰⁶ As such, live-in domestic workers can be required to work an unlimited amount of hours per week for their regular rate. Since live-in domestic workers are “especially subject to unreasonable and uncompensated demands on their time,” this exclusion is particularly harmful.³⁰⁷ Additionally, many domestic workers are misclassified as independent contractors by their employers which excludes them from FLSA protections.³⁰⁸

For the year of 2021, if a cleaning person, cook, gardener, or babysitter gets paid at least \$2,300 in 2021, the employer must deduct Social Security and Medicare taxes from the wages, pay those taxes to the Internal Revenue Service, and report the wages to Social Security. With ten years of work, workers may qualify for retirement benefits, disability benefits, survivor benefits, and Medicare benefits. *Id.*

³⁰² DOL, *supra* note 275, at 3.

³⁰³ See DOL, Wage and Hour Division, *Fact Sheet: Application of the Fair Labor Standards Act to Domestic Service, Final Rule*, (Sept. 2013), <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfsFinalRule.pdf>. According to the DOL, “‘companionship services’ means the provision of fellowship and protection for an elderly person or person with an illness, injury, or disability who requires assistance in caring for himself or herself. Under the Final Rule, ‘companionship services’ also includes the provision of ‘care’ if the care is provided attendant to and in conjunction with the provision of fellowship and protection and if it does not exceed 20 percent of the total hours worked per person and per workweek.” *Id.* Additionally, if more than 20% of a worker’s workweek is spent on companionship services, then the worker is entitled to federal minimum wage and overtime protection. *Id.*

³⁰⁴ *Id.* (stating, “Live-in domestic service workers who reside in the employer’s home permanently or for an extended period of time and are employed by an individual, family, or household are exempt from overtime pay, although they must be paid at least the federal minimum wage for all hours worked. Live-in domestic service workers who are solely or jointly employed by a third party must be paid at least the federal minimum wage and overtime pay for all hours worked by that third party employer.”).

³⁰⁵ FLSA, *supra* note 90 § 213(a)(15).

³⁰⁶ DOL, Wage and Hour Division, *Domestic Service Final Rules Frequently Asked Questions (FAQs)*, <https://www.dol.gov/agencies/whd/direct-care/faq#g1> (last visited Mar. 9, 2021); FLSA, *supra* note 90 §213(b)(21).

³⁰⁷ Burnham & Theodore, *supra* note 99, at 9.

³⁰⁸ Independent contractors fall outside the scope of “employees” for FLSA purposes. Fair Labor Standards Act (FLSA), 29 U.S.C.A. § 213. A number of domestic workers have sued their employers for FLSA protections because of their employers’ refusals to appropriately classify their employer labor status. *See, e.g., Velez v. Sanchez*, 693 F.3d 308, 326 (2d Cir. 2012). *Williams v. Sweet Home Healthcare, LLC*, 325 F.R.D. 113, 118 (E.D. Pa. 2018). *Acosta v. At Home Pers. Care Servs. LLC*, No. 118CV549LMBIDD, 2019 WL 1601997, at *5 (E.D. Va. Apr. 15, 2019). The Department of Labor, in propagating its latest 2015 FLSA regulations, acknowledged the potential for employees to be misclassified as independent contractors or other non-employees. <https://www.federalregister.gov/documents/2013/10/01/2013-22799/application-of-the-fair-labor-standards-act-to-domestic-service>.

Recordkeeping requirements are also relaxed or lifted for most domestic workers.³⁰⁹ Recordkeeping is not required at all for domestic workers who perform companionship services.³¹⁰ The lack of official documentation describing hours worked, wages paid, and any deductions makes it difficult for an employee to challenge employers on the ground of being overworked or underpaid.³¹¹

These basic protections denied to domestic workers—a basic wage, maximum hour limitations and documentation of the terms of employment—have been upheld by U.S. courts. Courts have also upheld the companionship exception³¹² as well as the overtime exception for domestic workers.³¹³ In 2010, the federal court of appeals for the Second Circuit upheld the overtime exception in a case where two employers were sentenced to jail for forcing their domestic servants to engage in forced labor, holding them in a condition of peonage, and severely physically abusing them. The Court still found that the domestic servants were exempted from the overtime provision, even if paid by third party agencies, thus preventing

³⁰⁹ DOL, *supra* note 298.

³¹⁰ *Id.*

³¹¹ *Effective Protection for Domestic Workers: A Guide to Designing Labour Laws*, International Labour Office, at 53-54, https://hrbaportal.undg.org/wp-content/files/wcms_173365.pdf.

³¹² See *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 161-62 (2007) (holding the DOL regulation applying the FLSA's "companionship services" exemption from minimum wage and maximum hours rules to such services rendered by persons employed by third parties, as opposed to family or household of recipient, is valid and binding.); see also *McCune v. Oregon Sr. Servs. Div.*, 894 F.2d 1107 (9th Cir. 1990) (affirming district court summary judgment finding live-in attendants seeking minimum wage for all hours worked under the FLSA are specifically exempt from that Act).

³¹³ See *Sanchez v. Ruiz*, No. 7:16-CV-00445, 2017 U.S. Dist. LEXIS 162584, at 5 (S.D. Tex. Sept. 29, 2017) ("While it is clear that Plaintiff wishes to recover unpaid minimum wage under the FLSA, it is unclear whether she is seeking to recover unpaid overtime under the FLSA. Insofar as Plaintiff's FLSA claim can be construed as one for unpaid overtime wages, Plaintiff's motion for summary judgment must be and is DENIED because the FLSA overtime provision is categorically inapplicable in the domestic servant context."); *Manliguez v. Joseph*, 226 F. Supp. 2d 377, 388 (E.D.N.Y. 2002) (finding that while FLSA may have domestic worker exceptions for overtime compensation, "FLSA does not, however, pre-empt state regulation of wages and overtime if the state's standards are more beneficial to workers."); *Almeida v. Aguinaga*, 456 F. Supp. 2d 505, 506 (S.D.N.Y. 2006) ("Plaintiff's claim under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201-219 (1998) (FLSA), against her former employers is dismissed because her pay exceeded the FLSA's minimum wage, and because as a live-in domestic service employee she is statutorily excluded from the FLSA's provisions concerning time-and-a-half overtime pay.").

overtime from being used in a damages calculation.³¹⁴ Even though the Department of Labor eventually changed the rule to no longer exempt third-party agencies, the Court’s deference to the Congressional exemptions in the FLSA means that domestic workers who have been excluded from the FLSA by the legislative branch are unable to turn to the courts for more relief.

As detailed in Part G, domestic workers are regularly subject to wage theft and other denials of compensation.³¹⁵ Individual Petitioners and Individual Supporting Petitioners experienced wage violations during their employment.³¹⁶ Lucia Mabel Gonzales Paredes’ employer informed her that he intended to pay her only \$500 per month, despite the terms in her contract stipulating that Ms. Paredes would make \$6.72 per hour plus overtime. Ms. Paredes’ employer coerced her into lying about the wages she would receive to the U.S. Embassy, and pressured her to sign receipts that misrepresented her salary.³¹⁷ Erika Mendoza was similarly denied her wages. In violation of her contract, Ms. Mendoza’s employer deducted from her salary when she made any mistake. Ms. Mendoza’s employer withheld her salary and she was not paid for months of work.³¹⁸ Moreover, Organizational Petitioners have noted that domestic workers are frequently exploited out of their wages.³¹⁹ For example, Break the Chain Campaign worked with a domestic worker who worked seventy hours a week and received less than \$150 a month.³²⁰ Andolan frequently assists clients to file lawsuits against employers in violation of

³¹⁴ *U.S. v. Sabhnani*, 599 F.3d 215, 256 (2d Cir. 2010) (“Because there is no doubt that Samirah and Enung lived in the Sabhnanis’ house and did so as permanent residents for a considerable time, we conclude that the maids were ‘employee[s] who [were] employed in domestic service in a household and who reside[d] in such household’ for the purpose of the § 213(b)(21) exemption.”).

³¹⁵ Sect II(g)(1)

³¹⁶ Aisah Decl.; Ajasi Decl.; Begum Decl.; Paredes Decl.; Huayta Decl.; Ocares Decl.; Mendoza Decl.; Sakala Decl.; Gurung, Decl.; Bitas, Decl.; Umlas, Decl.

³¹⁷ Paredes Decl. ¶¶ 7, 20.

³¹⁸ Mendoza Decl. ¶¶ 20, 25, 26, 38.

³¹⁹ *See* Petition at 24, 25.

³²⁰ *See* Petition at 26.

state minimum wage laws.³²¹ Organizational Declarants in Support of Petitioners note that 85 percent of trafficked domestic workers had at least part of their pay withheld, and that domestic workers' pay typically varies from what was initially agreed upon.³²²

c. The Occupation and Safety Health Act (OSHA)

OSHA establishes basic health and safety conditions in most workplaces.³²³ However, the Act excludes any person who privately employs another person to perform “commonly regarded as ordinary domestic household tasks, such as house cleaning, cooking, and caring for children.”³²⁴ The traditional rationale for this is focused on protecting employers from fines and lawsuits.³²⁵ As a result of this policy, domestic workers are not legally entitled to a workplace that meets basic standards of health and safety. Studies indicate that “domestic service exposes workers to a wide range of health and safety issues including home-based environmental risks such as exposure to second-hand smoke, cleaning chemicals, faulty electrical wiring in a client’s home, and attacks by dogs located in or around a client’s home.”³²⁶ Additionally, the nature of domestic work may lead to overexertion, especially when providing services to the elderly or infirm. Because domestic workers typically work alone, they are prone to injury when lifting heavy items or moving individuals. Domestic workers thus face “debilitating workplace injuries at a rate higher than workers in coal mines and steel mills.”³²⁷ Nearly one-third of domestic

³²¹ See Petition at 24.

³²² Poo Decl. ¶ 29; Trigoso-Kukulski Decl. ¶ 5.

³²³ See generally, OSHA, *supra* note 281.

³²⁴ OSHA, *supra* note 90 § 1975.6.; 29 U.S.C. § 651(b) (2006); *1975.6 – Policy as to domestic household employment activities in private residences*, United States Department of Labor OSHA, <https://www.osha.gov/laws-regs/regulations/standardnumber/1975/1975.6>.; *What Companies Are Required to Meet OSHA Regulations?*, Chron (July 7, 2020), <https://smallbusiness.chron.com/companies-required-meet-osha-regulations-66435.html>.

³²⁵ Cf. *Dana's Housekeeping v. Labor & Indus.*, 886 P.2d 1147, 1153 (Wash. Ct. App. 1995).

³²⁶ Peggie Smith, *The Pitfalls of Home: Protecting the Health and Safety of Paid Domestics*, 23 Can. J. Women & L. 309, 310 (2011).

³²⁷ *Id.* at 330.

workers surveyed in the Texas-Mexico Border region reported having been injured at work. Care workers for people with disabilities and elder care workers in particular were the most likely to suffer serious injuries at work, with 14 percent and 12 percent, respectively, reporting serious injuries.

As further detailed in Part G, domestic workers are often subjected to dangerous working conditions.³²⁸ Individual Petitioners Raziah Begum and Otilia Luz Huayta, as well as all Individual Declarants in Support of Petitioners, experienced unsafe and dangerous working conditions.³²⁹ For example, Ms. Begum's skin became broken and cracked from the washing and cleaning, and she was made to sleep without a blanket or mattress on the floor, leaving her very cold in the winter.³³⁰ Suzu Gurung, along with Edith Mendoza and Otilia Luz Huayta, did not receive sufficient nourishment. Ms. Gurung often went hungry, and ate leftovers off her employers' plates to supplement her diet.³³¹ Moreover, Organizational Declarants in Support of Petitioners noted unsafe working conditions for domestic workers.³³² The National Domestic Workers Alliance found that 29 percent of domestic workers they surveyed reported having medical problems resulting from their work.³³³ Centro de los Derechos del Migrante noted a prevalence of accounts of J-1 *au pair*'s who were injured in their employer's house only to be told the pain would eventually go away.³³⁴ Adhikaar observed that the ordinary physical demands of domestic work, combined with the use of cleaning supplies and tools with inadequate protective measures, has led to injury sustained by domestic workers.³³⁵

³²⁸ Sect. II(G)(1)

³²⁹ Begum Decl.; Huayta Decl.

³³⁰ Begum Decl. ¶¶ 23, 17.

³³¹ Gurung Decl. ¶ 9; Huayta Decl. ¶ 18; Mendoza Decl. ¶ 36.

³³² Poo Decl.; Chhetri Decl.; Guzmán Decl.

³³³ Poo Decl. ¶ 10.

³³⁴ Guzmán Decl. ¶ 10.

³³⁵ Chhetri Decl. ¶ 7.

2. De Facto Exclusions of Domestic Workers

In addition to the explicit statutory exclusions described above, domestic workers are effectively excluded from most other labor and employment protections by the scope of coverage which is limited “only to enterprises with multiple employees.”³³⁶ This limitation excludes most domestic workers’ workplaces. The relevant laws include protections from discrimination and guarantees of leave: Title VII of the Civil Rights Act,³³⁷ the American with Disabilities Act (ADA),³³⁸ the Age Discrimination in Employment Act (ADEA),³³⁹ the Family and Medical Leave Act (FMLA), the Affordable Care Act (ACA), and the Pregnancy Discrimination Act (PDA).³⁴⁰

a. Title VII

Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin. However, employers with less than fifteen workers are exempt from Title VII.³⁴¹ Because most domestic workers work individually in a household setting, they are effectively excluded from protections against discrimination.³⁴² By shielding small firms from complying with federal anti-discrimination law, U.S. federal law provides no restrictions on employers of domestic workers who sexually harass and discriminate against their workers. State law often does not provide a saving grace of protection, as only nine states—Oregon, California, Connecticut, Illinois, New York, Massachusetts, Hawaii, New Mexico and Nevada—have

³³⁶ See Burnham & Theodore, *supra* note 99, at 8.

³³⁷ See Title VII, *supra* note 90 §§ 2000e – 2000e-17.

³³⁸ See ADA, *supra* note 90 §§ 12101-12213.

³³⁹ See ADEA, *supra* note 90 §§621-634.

³⁴⁰ Family and Medical Leave Act (FMLA), 29 U.S.C. §§ 2601-2654.

³⁴¹ Alexia Fernandez Campbell, *Housekeepers and nannies have no protection from sexual harassment under federal law*, Vox (Apr. 26, 2018), <https://www.vox.com/2018/4/26/17275708/housekeepers-nannies-sexual-harassment-laws>.

³⁴² See *Id.*

extended discrimination protections to domestic workers.³⁴³ Domestic workers have systematically faced sexual harassment for years, and while there have been social movements to try to bring to light the fact that there are “millions of women suffering in silence,” no meaningful reform has occurred that provides federal protection to domestic workers.³⁴⁴

As further detailed in Part G, domestic workers are often subjected to gender discrimination and sexual harassment.³⁴⁵ Individual Petitioners Hildah Ajasi and Otilia Luz Huayta and Individual Declarant in Support of Petitioners, Faith Sakala, experienced severe gender discrimination and harassment.³⁴⁶ For example, Mrs. Ajasi’s employer threatened to falsely tell Mrs. Ajasi’s husband that she was with other men if Mrs. Ajasi left the house alone and asked Mrs. Ajasi’s husband to beat her when she arrived home.³⁴⁷ Ms. Sakala was drugged and raped by a man who falsely promised to hire her for babysitting work.³⁴⁸ Organizational Declarants in Support of Petitioners noted that domestic workers often face sexual violence and abuse.³⁴⁹ The National Domestic Workers Alliance found that 66 percent of domestic workers they surveyed reported physical or sexual abuse at their place of employment.³⁵⁰ The Fe y Justicia Worker Center shared that sexual harassment is an endemic problem for domestic workers, and often occurs under the radar, making it hard for the domestic worker to complain.³⁵¹

³⁴³ *Id.*; see also Wolfe et al., *supra* note 82, at 2.

³⁴⁴ See, e.g., Doe v. Howard, No. 1:11-CV-1105, 2012 WL 3834867, at *2 (E.D. Va. Sept. 4, 2012); Franco v. Diaz, 51 F. Supp. 3d 235, 244 (E.D.N.Y. 2014); Swarna v. Al-Awadi, 622 F.3d 123, 130 (2d Cir. 2010); Udeozor v. United States, No. CIV. PJM 09-3172, 2010 WL 4941998, at *1 (D. Md. Nov. 30, 2010).

³⁴⁵ Sect. II(G)(2)

³⁴⁶ Ajasi Decl.; Huayta Decl.; Sakala Decl.

³⁴⁷ Ajasi Decl. ¶¶ 20, 34.

³⁴⁸ Sakala Decl. ¶ 58.

³⁴⁹ Bessell Decl. ¶ 6; Poo Decl. ¶ 29.

³⁵⁰ Poo Decl. ¶ 29.

³⁵¹ Trigos-Kukulski Decl. ¶ 3.

b. American Disabilities Act (ADA)

The ADA prohibits discrimination based on disability, but similarly to Title VII, the law applies to employers with more than fifteen employees.³⁵² This exclusion means that domestic workers who face any kind of injury or chronic pain that limits major life activities³⁵³ have no protection under the ADA. Disabled domestic employers thus face lower job prospects and discrimination. Rather than having the right to work in a household that provides reasonable accommodations, qualified disabled domestic employers are not protected if employers choose to discriminate against them in the hiring process as well as on the job. As further detailed in Part G, domestic workers with disabilities experience workplace discrimination.³⁵⁴ Individual Petitioner Hildah Ajasi experienced discrimination based on disabilities.³⁵⁵ Ms. Ajasi suffered from backaches while working, and her employer refused to acknowledge that Ms. Ajasi was in pain, and needed care, telling her she was “not sick.”³⁵⁶

c. Age Discrimination in Employment Act (ADEA)

The ADEA prohibits employment discrimination based on age, yet it only applies to employers that have twenty or more employees.³⁵⁷ The ADEA also protects applicants and employees that are at least 40 years old.³⁵⁸ The de facto exclusion of domestic workers from age

³⁵² ADA, *supra* note 90 § 12111(5)(a).

³⁵³ DOL, *ADA Amendments Act of 2008 Frequently Asked Questions*, <https://www.dol.gov/agencies/ofccp/faqs/americans-with-disabilities-act-amendments#Q5> (last visited Mar. 9, 2021) (“Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”).

³⁵⁴ Sect. II(G)(2)

³⁵⁵ Ajasi Decl.

³⁵⁶ Ajasi Decl. ¶¶ 25, 26.

³⁵⁷ U.S. Equal Employment Opportunity Commission, *Fact Sheet: Age Discrimination*, <https://www.eeoc.gov/laws/guidance/fact-sheet-age-discrimination#> (last accessed Mar. 9, 2021) [hereinafter EEOC].

³⁵⁸ *Id.*

discrimination means that older domestic workers who face harassment or discrimination, for example, in the hiring or the firing process, due to their age have no protection under federal law. As further detailed below in Part G,³⁵⁹ older domestic workers have experienced discrimination.

d. Family and Medical Leave Act (FMLA)

The FMLA requires employers to provide employees up to twelve weeks of unpaid time to care for themselves, a sick family, or a child, but this federal law only applies to employers with more than 50 employees.³⁶⁰ This exclusion prevents domestic workers from having the flexibility to respond to family or medical emergencies without the fear of losing their jobs.

As further detailed in Part G, domestic workers have faced barriers in seeking leave for health and personal reasons.³⁶¹ Individual Supporting Petitioners Faith Sakala, Ruben Apolonio Bitas, Suzu Gurung, and Edith Mendoza experienced these barriers.³⁶² For example, Ms. Mendoza was unable to go to the doctor after one year of being employed because her employer refused to give her a day off, even though she was feeling very ill. Ms. Mendoza's doctor wrote her a note prescribing four days off work, and her employer responded that was unacceptable. Ms. Mendoza's condition continued to worsen.³⁶³ Ms. Gurung requested leave to visit her family and ailing mother while on a trip with her employer in India and was denied this request.³⁶⁴ Organizational Declarants in Support of Petitioners noted that many domestic workers are denied access to adequate medical treatment by their employers.³⁶⁵ The Human Trafficking Legal Center found that this abuse was alleged in half of federal civil domestic servitude cases and in

³⁵⁹ Sect. II(G)

³⁶⁰ FMLA, *supra* note 340 § 2611(4)(A)(i).

³⁶¹ Sect. II(G)(2)

³⁶² Sakala Decl.; Bitas Decl.; Gurung Decl.; Mendoza Decl.

³⁶³ Mendoza Decl. ¶¶ 33, 34, 37.

³⁶⁴ Gurung Decl. ¶ 13.

³⁶⁵ Poo Decl.; Guzmán Decl.; Trigos-Kukulski Decl.; Bessell Decl.

about a third of federal criminal prosecutions.³⁶⁶ In one case, a domestic worker suffered severe pain but was denied treatment. When she ran away, she was diagnosed with cancer.³⁶⁷ In a survey conducted by the National Domestic Workers Association, 82 percent of domestic workers did not receive paid sick leave.³⁶⁸

e. The Affordable Care Act (ACA)

The United States does not have a federal law that guarantees health care coverage for all domestic workers. While the Affordable Care Act (ACA) extended healthcare coverage to millions of uninsured Americans in 2010, domestic workers that are unlawfully present in the United States have no federal coverage under the ACA. The Health Insurance Marketplace is only available to U.S. citizens, U.S. nationals, and lawfully present immigrants.³⁶⁹ Undocumented immigrants are also not eligible to receive tax credits or other savings for plans in the Marketplace.³⁷⁰

As further detailed in Part G, domestic workers often labor without health insurance.³⁷¹ Individual Petitioner Lucia Mabel Gonzalez Paredes and Individual Supporting Petitioner Ruben Apolonio Bitas described laboring without health insurance as well.³⁷² For example, Ms. Paredes was promised health insurance by her employer, but was never provided with such insurance while working in the United States. When Ms. Paredes was hospitalized, she had to pay \$300 in medical bills without help from her employer.³⁷³ Mr. Bitas could not address his physical health

³⁶⁶ Bessell Decl. ¶ 8.

³⁶⁷ Bessell Decl. ¶ 9.

³⁶⁸ Poo Decl. ¶ 10.

³⁶⁹ U.S. Ctr. for Medicare and Medicaid Serv., *Health Coverage for Immigrants*, <https://www.healthcare.gov/immigrants/coverage/> (last accessed Mar. 9, 2021).

³⁷⁰ *Id.*

³⁷¹ Sect. II(G)(1)

³⁷² Paredes Decl.; Bitas Decl.

³⁷³ Paredes Decl. ¶ 10, 18.

issues because he could not afford his medical bills.³⁷⁴ Moreover, Organizational Supporting Petitioner, the National Domestic Worker’s Alliance, noted that 65% of domestic workers they surveyed reported having no health insurance.³⁷⁵

f. The Pregnancy Discrimination Act (PDA)

The PDA prohibits employment discrimination based on pregnancy, yet it only applies to employers that have fifteen or more employees. The de facto exclusion of domestic workers from pregnancy discrimination means that domestic workers who face harassment or discrimination due to their pregnancy have no protection under federal law. Similarly, this means that pregnant domestic workers are not entitled to temporary disability, accommodations, and maternity and parental leave.³⁷⁶

E. Exclusions of Domestic Workers from State Legal Frameworks

There have been some piecemeal efforts by certain states within the United States to lessen the impact of U.S. federal exclusions, but no state has given domestic workers equal rights to those of other workers. Moreover, the provision of employment protections on a state-by-state basis provides domestic workers with a poor substitute for the basic rights and entitlements that a national scope provides other workers.

1. State Legal Framework for Protecting Workers

Few states within the United States have attempted to compensate for the lack of protections provided for domestic workers at the national level. Even the states with the majority

³⁷⁴ Bitas Decl. ¶ 40.

³⁷⁵ Poo Decl. ¶ 10.

³⁷⁶ *Pregnancy Discrimination*, U.S. Equal Employment Opportunity Comm’n, <https://www.eeoc.gov/pregnancy-discrimination> (last visited Mar. 10, 2021).

of the domestic workers population have failed to adequately address these exclusions. To illustrate, seven states in the United States are home to just over half of the nation’s domestic worker population.³⁷⁷ None of these states afford domestic workers the same rights provided to other types of workers. Only three out of the seven states with the largest populations of domestic workers have introduced some protections for domestic workers through state-level Domestic Worker Bills of Rights (“bills of rights”, “DWBR”),³⁷⁸ yet none of these bills offers protection to domestic workers on an equal basis with other workers. In the other four states with sizable domestic worker populations,³⁷⁹ protections for domestic workers are mostly or completely absent.

In states without bills of rights, but with large domestic worker populations,³⁸⁰ domestic workers have very few protections.³⁸¹ For some worker protections, such as guaranteed overtime pay and sick days, OSHA protections, and the right to organize unions, states abide by federal regulation, which exempts domestic workers from these protections.³⁸² Even state and municipal governments that have passed bills of rights fail to protect domestic workers completely and on

³⁷⁷ Wolfe et al., *supra* note 82.

³⁷⁸ These three states are California, New York, and Illinois. *See*, Cal. Lab. Code § 1450 (West); 2009 NY S. B. 2311E; 2016 Ill. Legis. Serv. P.A. 99-758 (H.B. 1288) (West). Several other states with smaller domestic worker populations have passed a DWBR, but most U.S. states similarly exclude domestic workers from workplace protections. *See Learn about our other victories*, (2020) <https://www.domesticworkers.org/>.

³⁷⁹ These states are Texas, Pennsylvania, Florida, and Ohio. Wolfe et al., *supra* note 82.

³⁸⁰ These states are collectively home to over one-fifth of domestic workers in the United States. *Id.*

³⁸¹ In Pennsylvania and Ohio, domestic workers are specifically exempted from critical worker protections, such as the right to a minimum wage, overtime pay, and protection against sexual harassment. *See* 43 Pa. Stat. Ann. § 333.105 (West); Ohio Rev. Code Ann. § 4111.03 (West); Ohio Rev. Code Ann. § 4112.01 (West); 43 Pa. Stat. Ann. § 954 (West). In Pennsylvania, domestic workers are also exempted from workers' compensation and the right to organize unions. *See* 43 Pa. Stat. Ann. § 753 (West); 43 Pa. Stat. Ann. § 211.3 (West). In Florida and Texas, domestic workers are not mentioned in laws regulating protections against sexual harassment, citizenship discrimination, and the right to unionize, leaving the status of their protection ambiguous. *See* F.S.A. § 760.02 (West); F.S.A. § 447.42 (West); V.T.C. A., Lab. Code § 21.002 (West); V.T.C. A., Lab. Code § 101.001 (West).

³⁸² *State Plans*, OSHA U.S. Dep’t of Lab., <https://www.osha.gov/stateplans>.; *Ohio Employment and Labor Laws*, Emp’t Law Handbook (2020), <https://www.employmentlawhandbook.com/state-employment-and-labor-laws/ohio/>.; *Florida Employment and Labor Laws*, Emp’t Law Handbook (2020), <https://www.employmentlawhandbook.com/state-employment-and-labor-laws/florida/>.; *Texas Guidebook for Employers*, Tex. Workforce Comm’n, <https://www.twc.texas.gov/news/eftc/tocmain2.html>.

par with other workers. Each state’s bill of rights contains its own set of loopholes and exclusions, resulting in a patchwork of incomplete and inconsistent guarantees that have failed to compensate for the federal-level exclusions.³⁸³

New York State was the first state to pass a Domestic Worker Bill of Rights, but the bill extended minimal additional protections to domestic workers.³⁸⁴ Many of the new provisions duplicated pre-existing legal rights that most domestic workers had been previously unable to enforce.³⁸⁵ Several provisions were dropped from the bill before it passed, such as provisions requiring employers to give termination notice, severance pay, and paid holidays.³⁸⁶ In addition, the New York bill of rights definition of “domestic worker” excludes workers who provide companionship services, as defined under the FLSA.³⁸⁷ These exempted workers are particularly

³⁸³ See, *State Plans*, *supra*, note 382; *Employee Rights Under the National Labor Relations Act*, Nat’l Lab. Relations Bd. (Sep. 2011), https://hr.cornell.edu/sites/default/files/employee_rights_nlra.pdf; *Domestic workers protest Governor Newsom’s veto of SB 1257 (Durazo), denying domestic workers the right to health and safety protections at work, as wildfires and pandemic rage on*, Cal. Domestic Workers Coalition (Oct. 1, 2020) <https://www.cadomesticworkers.org/news/domestic-workers-protest-governor-newsoms-veto-of-sb-1257-durazo-denying-domestic-workers-the-right-to-health-and-safety-protections-at-work-as-wildfires-and-pandemic-rage-on/>; 820 Ill. Comp. Stat. Ann. 191/21 (West). As in New York, California, and Illinois, bills of rights in states with smaller domestic worker populations do not protect all domestic workers. In Hawaii, Connecticut, Massachusetts, Nevada, and Oregon, part-time domestic workers, such as babysitters, are not covered under the respective bills of rights. 2014 Mass. S.B. 2132 (which excludes personal care attendants); 2015 Conn. Raised H.B. 5527 (which does not mandate overtime for all domestic workers); 2014 Haw. S.B. 535; 2015 Or. S.B. 552 (which excludes workers who provide care for seniors or disabled people and does not give domestic workers the right to any paid leave or sick days); 2017 Nev. S.B. 232 (which does not give domestic workers the right to any paid leave or sick days). Hawaii and Nevada explicitly exempt domestic workers from their OSHA protections. See *About Us*, State of Haw. Occupational Safety and Health (2021) <https://labor.hawaii.gov/hiosh/about-us/>; *Worker Safety (Occupational Safety and Health – Conn-OSHA)*, Connecticut Department of Labor (2021) <https://www.ctdol.state.ct.us/osha/osha.htm>; *Nevada OSHA: What you need to know*, BLR (2021) <https://www.blr.com/Workplace-Safety/Safety-Administration/OSHA--in-Nevada>. In Massachusetts and Connecticut, private workers fall under Federal OSHA, which does not protect domestic workers. *State Plans*, *supra* note 382. Portions of Virginia’s newly passed DWBR that would include domestic workers under the Virginia Workers’ Compensation Act were removed. *More rights for Va. disabled and domestic workers*, Fauquier Now (March 5, 2021) https://www.fauquiernow.com/fauquier_news/article/fauquier-lawmakers-amend-virginia-human-rights-act-2021. And, crucially, most of the aforementioned state’s DWBRs do not allow domestic workers the right to organize a union.

³⁸⁴ 2009 NY S. B. S2311E.

³⁸⁵ Nilliasca, *supra* note 51.

³⁸⁶ *Id.*

³⁸⁷ *Id.* at 400 Companionship services include part-time workers and babysitter and elder sitters. See also Samantha Malone, *Domestic Work in the United State: Gender, Immigration, and Personhood*, 10 Geo. J. L. & Mod. Critical Race Persp. 65, 84 (2018).

vulnerable to workplace abuses and wage theft, as they are not protected under FLSA minimum wage and overtime laws.³⁸⁸ Finally, domestic workers in New York lack OSHA protections.³⁸⁹

Under California's Domestic Worker Bill of Rights,³⁹⁰ domestic workers still do not have the right to organize unions³⁹¹ and are excluded from Cal/OSHA protections.³⁹² On October 1, 2020, Governor Gavin Newsom vetoed SB 1257, a much advocated-for bill, which would have ended domestic worker's exclusion from Cal/OSHA protections.³⁹³ In the two years after the passage of the California bill of rights, the bill has faced legislative threats that sought to create a sleep exclusion of up to eight hours for live-in or 24-hour shift domestic workers, meaning these workers would not be paid for up to eight hours of compensable work.³⁹⁴

Finally, the Illinois Domestic Worker Bill of Rights, passed in 2017, amended four state laws that had previously excluded domestic workers.³⁹⁵ Like New York's, the Illinois bill of rights excludes part-time domestic workers who labor less than eight hours per week for one employer, such as babysitters.³⁹⁶ Domestic workers who work for multiple employers but are still classified as working on a casual, part-time basis, are particularly vulnerable to this exemption. The Illinois bill of rights also lacks a few basic worker protections: domestic workers are not guaranteed the right to sick days³⁹⁷ and are not covered by OSHA protections.³⁹⁸

³⁸⁸ Malone, *supra* note 387.

³⁸⁹ *State Plans*, *supra* note 382.

³⁹⁰ *More about the Bill (California)*, Nat'l Domestic Workers Alliance (2020) <https://www.domesticworkers.org/bill-of-rights/california>.

³⁹¹ *Employee Rights Under the National Labor Relations Act*, *supra* note 383.

³⁹² 2020 Cal. S.B. 1257.

³⁹³ *Domestic workers protest Governor Newsom's veto of SB 1257*, *supra* note 383.

³⁹⁴ *Victories*, Cal. Domestic Workers Coalition, <https://www.cadomesticworkers.org/policy-advocacy/victories/>.

³⁹⁵ The amended laws include the Minimum Wage Law, the Illinois Human Rights Act, the One Day of Rest in Seven Act, and the Wages of Women and Minors Act. *More About the Bill*, The Nat'l Domestic Workers Alliance (2020) <https://www.domesticworkers.org/bill-of-rights/illinois>.

³⁹⁶ Joanna Pawlowska, *Cleaning up the Act - The Illinois Domestic Workers' Bill of Rights Act: Necessity, Purpose, and Effect*, 22 Pub. Int. L. Rep. 88, 92 (2017).

³⁹⁷ 820 Ill. Comp. Stat. Ann. 191/21 (West)

³⁹⁸ *State Plans*, *supra* note 382.

The foregoing exclusions have resulted in the vast majority of domestic workers across the United States being denied fair conditions on par with other workers, even in the more progressive states that have passed bills of rights. For example, a 2019 survey by the Economic Policy Institute (EPI) revealed that in California and New York—states where domestic workers are entitled to the state minimum wage—domestic workers made under the state minimum.³⁹⁹ The wage gap was most drastic for foreign-born noncitizen domestic workers. In California, these domestic workers made \$.95 less than minimum wage, and noncitizen domestic workers in New York City made almost \$3 less than minimum wage.⁴⁰⁰ The 2019 EPI survey also found that 45.3% of domestic workers surveyed reported working part-time.⁴⁰¹ Given the lack of protections for part-time domestic workers working below a certain number of hours per week under these bills of rights, many of these part-time domestic workers are not guaranteed any rights.

Furthermore, the lack of OSHA protections in most bills of rights are reflected in the poor working conditions of domestic workers. The California Domestic Workers Coalition (CDWC) published numerous accounts of workplace safety violations for domestic workers in their fight to pass SB 1257, The Health and Safety for All Workers Act, which Governor Newsom vetoed in October 2020.⁴⁰² In 2018, Vicenta Martinez, a housecleaner in LA, had to continue cleaning the two houses where she worked, despite the poor air-conditions, ash, and toxic emissions from the Malibu fires. She said that “[t]he bosses never gave me a mask or gloves or any protection”

³⁹⁹ Wolfe et al., *supra* note 82 at Supplemental Tables. In New York State, domestic workers working outside of the New York City metropolitan area made above the minimum wage, but domestic workers in New York City and the surrounding counties made \$2.80 and \$.80 less than the minimum, respectively.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² *Domestic workers protest Governor Newsom’s veto of SB 1257, supra* note 383.

and she had to continue using “toxic cleaning chemicals” to clean the house.⁴⁰³ Noemí Cruz, another domestic worker, says she has experienced health problems from exposure to toxic cleaning chemicals.⁴⁰⁴ Anabel Garcia of Santa Rosa was “hired through insurance companies after California wildfires to clean houses covered in ash, while smoke hung heavy in the air. With no protective gear, she had trouble breathing and developed allergies.”⁴⁰⁵

The “COVID-19 pandemic and recent devastating wildfires in California ha[ve] exacerbated the dangers that domestic workers [...] face on a daily basis because they are excluded from CAL/OSHA protections and regulations.”⁴⁰⁶ In a July 2020 study, *Hidden Work, Hidden Pain: Injury Experiences of Domestic Workers in California* published by the CDWC, 51 percent of domestic workers surveyed said they had experienced pressure from an employer to work in dangerous conditions, and 85 percent reported workplace injuries resulting in chronic pain.⁴⁰⁷ As these reports show, state bills of rights do not represent an adequate solution to securing rights and protections for domestic workers across the United States.

F. Exclusions of Domestic Workers Employed by Foreign Diplomats from All Forms of Legal Protection

The facts substantiating the deprivation of rights particular to domestic workers employed by diplomats were provided in Petitioner’s Response Brief, filed with the Commission

⁴⁰³ Jacqueline Garcia, *Domestic workers ask governor to extend workplace protections*, Cal Matters (Sep. 23, 2020) <https://calmatters.org/california-divide/2020/09/domestic-workers-ask-governor-to-extend-workplace-protections/>.

⁴⁰⁴ *Id.*

⁴⁰⁵ Carolyn Said, *California House Cleaners, Nannies, Caregivers Could Get New Workplace Protections*, California Domestic Workers Coalition (Sep. 23, 2020) <https://www.cadomesticworkers.org/news/california-house-cleaners-nannies-caregivers-could-get-new-workplace-protections/>.

⁴⁰⁶ *Campaigns*, Cal. Domestic Workers Coalition (2020) <https://www.cadomesticworkers.org/policy-advocacy/campaigns/>.

⁴⁰⁷ *Report: Hidden Work, Hidden Pain: Injury Experiences of Domestic Workers in California*, Cal. Domestic Workers Coalition (2020) <https://www.cadomesticworkers.org/news/report-hidden-work-hidden-pain-injury-experiences-of-domestic-workers-in-california/>.

on June 7, 2019. This section incorporates those facts and provides additional updated information as indicated below.

1. Application of Diplomatic Immunity to Render Diplomats and Other Foreign Officials Immune from Criminal, Civil, and Administrative Jurisdiction

Diplomatic immunity prevents domestic workers from having access to adequate recourse in U.S. courts. Diplomats are immune from criminal, civil, and administrative jurisdiction of the legal system of the United States, which includes the United States' judicial and law enforcement system.⁴⁰⁸ These immunities are extended to permanent representatives, ambassadors, and ministers of foreign nations to the United Nations.⁴⁰⁹

a. Absolute Immunity in Criminal Proceedings

Under the Vienna Convention, diplomats and foreign representatives in the United States receive absolute immunity from the criminal jurisdiction of the United States.⁴¹⁰ Absolute immunity does not have any exceptions, which means that diplomats and foreign officials are not punished even when they subject their domestic workers to human trafficking, involuntary servitude, or assault. A diplomat's absolute immunity extends not only to their person, but also their property and home. In the United States, diplomats are not "liable to any form of arrest or

⁴⁰⁸ Vienna Convention on Diplomatic Relations, art. 31, Apr. 18, 1961, 500 U.N.T.S. 95 (entered into force Apr. 24, 1964) [hereinafter Vienna Convention].

⁴⁰⁹ Under an agreement between the U.S. and the U.N., these individuals are "entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it." Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations, Ch. 482, Art. V, § 15, 61 Stat. 756 (1947) [hereinafter U.N. Headquarters Agreement]; see *Ahmed v. Hoque*, No. 01 Civ. 7224, 2002 WL 1964806, at *5 (S.D.N.Y. Aug. 23, 2002), Ex. C(1) (noting that U.N. representatives and ministers are accorded full diplomatic immunity under the Vienna Convention, while staff members and employees of the U.N. are accorded only functional immunity). In addition, the U.S. accords permanent observers to the Organization of American States (OAS) and their staffs, and representatives of OAS member nations and their staffs "the same privileges and immunities, subject to corresponding conditions and obligations, as are enjoyed by diplomatic envoys accredited to the United States." Exec. Order No. 11931, 41 Fed. Reg. 32689 (Aug. 3, 1976).

⁴¹⁰ Vienna Convention, *supra* note 408, at art. 31(1).

detention,”⁴¹¹ cannot be required to testify in court,⁴¹² and their property may not be entered or searched, even if a domestic worker calls 911 to report a crime of violence.⁴¹³ Consequently, evidence of crimes are almost impossible for law enforcement agents to attain. Even if law enforcements were able to gather evidence, diplomats are only subject to criminal prosecution if their sending states waive immunity, an extremely rare occurrence.⁴¹⁴

As of 2016, diplomatic waivers had only been requested on two occasions: the case against Somduth Soborun, the Ambassador of Mauritius, and in the case against Devyani Khobragade, India’s Deputy Consul General.⁴¹⁵ In 2012, Mauritius’s ambassador to the United States, whose immunity was waived, pled guilty to charges that he did not pay his domestic workers minimum wage or overtime pay.⁴¹⁶ His case was resolved “quietly and diplomatically,” with a waiver, a plea to a lesser charge, and payment of back wages.⁴¹⁷ Mr. Soborun did not have to serve any time in prison.⁴¹⁸ In 2013, the United States arrested Ms. Khobragade for the abuse of her domestic worker. With the approval of then U.S. Secretary of State John Kerry, India reassigned Ms. Khobragade’s to India’s mission to the United Nations, a position that received full diplomatic immunity and thereby shielded Ms. Khobragade from prosecution.⁴¹⁹

⁴¹¹ *Id.* at art. 29.

⁴¹² 2 F.A.M § 232.1-1(a), <https://fam.state.gov/FAM/02FAM/02FAM0230.html>.

⁴¹³ *Id.* Vienna Convention at arts. 22, 32.

⁴¹⁴ It is the policy of the Department of State with respect to criminal conduct by persons with immunity that in all cases where a prosecutor informs the State Department that they would prosecute absent immunity, the Department will formally request a waiver of criminal immunity from the sending state in order to allow for prosecution. 2 F.A.M. § 233.3(a)(2); U.S. Dep’t of State, Diplomatic Circular Note at 4 (May 20, 1996) [hereinafter Diplomatic Circular Note 1996], <https://2009-2017.state.gov/documents/organization/32298.pdf>.

⁴¹⁵ See Martina E. Vandenberg & Sarah Bessell, *Diplomatic Immunity and the Abuse of Domestic Workers: Criminal and Civil Remedies in the United States*, 26 Duke J. Comp. & Int’l L. 595, 599 (2016).

⁴¹⁶ *Id.* at 604.

⁴¹⁷ *Id.*

⁴¹⁸ *Id.* at 604-605.

⁴¹⁹ Even though the United States requested that Ms. Khobragade leave the United States, which she did before the indictment occurred, a federal judge dismissed the indictment. Two days after the dismissal, an indictment was re-issued, making Ms. Khobragade subject to arrest if she returns to the United States, labeling her a an “international fugitive. *Id.* at 600 (2016).

b. Immunity in Civil Proceedings

In civil and administrative proceedings, diplomats also receive immunity, with three exceptions: for actions relating to immovable property, succession of property, and professional or commercial activities.⁴²⁰ Of these, the most important exception for domestic workers employed by foreign diplomats is the commercial activities exception.⁴²¹ Various courts in the United States have ruled that this exception does not apply to the employment relationship between a domestic worker and a foreign diplomat.⁴²² Thus, when a domestic worker brings a case against a diplomat-employer, the Department of State intervenes to assert diplomatic immunity.⁴²³ Because it is long settled that U.S. courts grant “substantial deference” to the policy choices of the Department of State, domestic workers face major hurdles when challenging this restrictive interpretation of the commercial activities exception in civil cases. In the few cases that have challenged the State Department’s interpretation, the Petitioners have ultimately failed.⁴²⁴

In cases where domestic workers have attempted to argue that customary international law, most specifically, the prohibition of slavery and involuntary servitude, trump the shield that the Vienna Convention provides foreign diplomats, Petitioners have also encountered minimal

⁴²⁰ Vienna Convention, *supra* note 408, at art. 31(1).

⁴²¹ This exception states that diplomats are immune to civil actions that “relat[e] to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.” *Id.* at art. 31(1)(c).

⁴²² *Tabion v. Mufti*, 73 F.3d 535, 539 (4th Cir. 1996) (because hiring domestic servants was a “service [] incidental to daily life, diplomats are to be immune from disputes arising out of them”); *Gonzalez Paredes v. Vila*, 479 F. Supp. 2d 187 (D.D.C. 2007); *Crum v. Kingdom of Saudi Arabia*, No. 05-275, 2005 WL 3752271, at *4 (E.D. Va. July 13, 2005) (finding that where the Plaintiff was employed as a chauffeur for the Ambassador, the Plaintiff’s job, like the domestic worker in *Tabion*, “consisting of driving the Ambassador, his family, staff, and guests, from place to place, was incidental to daily life and Defendants are therefore immune from claims arising out of those duties”); *Sabbithi v. Al Saleh*, 605 F. Supp. 2d 122, 130 (D.D.C. 2009) (hiring a domestic servant was not a commercial activity under the Vienna Convention); *Montuya v. Chedid*, 779 F. Supp. 2d 61, 64 (D.D.C. 2011) (holding the same); *Fun v. Pulgar*, 993 F. Supp. 2d 470, 474 (2014).

⁴²³ *See, e.g., Ahmed*, 2002 WL 1964806, at *5.

⁴²⁴ *See, e.g., Gonzalez Paredes*, 479 F. Supp. 2d 187; *Crum*, 2005 WL 3752271, at *4; *Montuya*, 779 F. Supp. 2d at 64.

success.⁴²⁵ Cases where Petitioners have claimed that constitutional rights, such as the right to be free from slavery in the Thirteenth amendment, trump diplomatic immunity have also generally met with failure.⁴²⁶ Moreover, even in few cases where the courts have entered default judgements against diplomats, Petitioners have been unable to recover damages.⁴²⁷ Although Congress mandated the Secretary of State in 2015 to “assist in obtaining payment of final court judgments awarded to A-3 and G-5 visa holders[,]...assistance in enforcing these judgments is rare.”⁴²⁸ As of 2016, there are four outstanding civil judgements, totaling more than four million dollars in compensatory and punitive damages.⁴²⁹ Lastly, when a diplomat returns to their home country, it is extremely challenging to serve them and to compel them to participate in U.S. court proceedings.⁴³⁰

The way that diplomatic immunity has been interpreted in U.S. courts has allowed diplomats to enjoy blanket immunity for heinous actions. According to a study of criminal and civil complaints brought by domestic workers in the United States between 2003 and 2016, at least twenty-eight domestic workers attempted to pursue federal civil trafficking cases against

⁴²⁵ For example, in *Ahmed v. Hoque*, a court rejected Petitioner’s argument that treaty-based immunity defense could not violate his constitutional and international rights to be free from slavery and held that Petitioner’s claims did not modify diplomatic immunity. *See, Ahmed*, 2002 WL 1964806, at *8.

⁴²⁶ *See, e.g., Sabbithi*, 605 F. Supp.2d at 129; *Ahmed*, 2002 WL 1964806, at *6-7 (“[T]he plaintiff has cited no authority to suggest that a constitutional claim trumps the applicability of diplomatic immunity.”)

⁴²⁷ *See, e.g.* Default Judgment and Order, *Velasco v. Peña*, No. 1:07cv147 (E.D. Va. 2007); *Interview with Jayesh Rathod, Practitioner-in-Residence, Int’l Human Rights Law Clinic*, Am. Univ. Wash. Coll. of Law (Oct. 10, 2007) (stating that even though the Plaintiff was awarded \$43,486 plus attorney’s fees, Plaintiff had been unable to recover the money); *E-mail from Martina Vandenberg, Counsel for Plaintiff Mazengo, Jenner & Block, to Jennie Pasquarella, Staff Attorney/ Kroll Family Human Rights Fellow, Women’s Rights Project, ACLU* (Oct. 21, 2007, 4:22 PM EST) (on file with ACLU) (stating the challenges in the *Mazengo* case whose damages trial was set to commence after the diplomat returned to Tanzania).

⁴²⁸ *See Vandenberg & Bessell, supra* note 415, at 620.

⁴²⁹ *Id.* (citing Final Judgment, *Ballesteros v. Al-Ali*, No. 1:11-cv-00152 (D.R.I. Dec. 26, 2012) (entering a judgment of \$1,231,800); Order Granting Default Judgment, *Butigan v. Al-Malki*, No. 1:13- cv-00514 (E.D. Va. May 12, 2014) (entering a judgment of \$492,717); Order Granting Default Judgment, *Carazani v. Zegarra*, No. 1:12-cv-00107 (D.D.C. July 3, 2013) (entering a judgment of \$1,188,688.77); Decision and Order, *Gurung v. Malhotra*, No. 1:10-cv-05086 (S.D.N.Y. Mar. 16, 2012) (entering a judgment of \$1,458,335)).

⁴³⁰ *See e.g., Gurung v. Malhotra*, 851 F. Supp. 2d 583 (S.D.N.Y. 2010); *Butigan v. Al-Malki*, No. 13-CV-00514, 2017 WL 3097772 (E.D.Va. 2013); *Carazani v. Zegarra*, 972 F. Supp. 2d 1 (D.D.C. 2013); *Ballesteros v. Al-Ali*, No. 11-CV-00152, 2012 WL 13047582 (D.R.I. 2012); *Lipenga v. Kambalame*, 219 F. Supp. 3d 517 (D. Md. 2016).

foreign diplomats and officials in U.S. federal courts.⁴³¹ Only four of these cases led to criminal prosecutions.⁴³² This study also found that since the Trafficking Victims Protection Act was passed in 2000, only nine criminal cases have been brought by domestic workers against diplomats.⁴³³ The near-blanket immunity that the United States accords to diplomats and foreign officials prevents domestic workers from having effective legal recourse when abused, leaving them alone and vulnerable in their employment.

2. Inadequate Protection for A-3 and G-5 Domestic Workers

Due to a widespread campaign that demonstrated the severe abuse and impunity of foreign diplomats with domestic workers, the Department of State adopted changes to their A-3 and G-5 visa regime to provide more protections for domestic workers.⁴³⁴ However, the reforms created by the Department of State do not amount to a U.S. law or regulation,⁴³⁵ meaning that they are not enforceable and can be changed at the whim of the Department.

Indeed, organizations that work on behalf of domestic worker clients have observed “weak enforcement of existing laws to protect domestic workers, especially of A-3 and G-5 domestic workers in the United States. For example, Section 203 of the 2008 William Wilberforce Act, which reauthorized the Trafficking Victims Protection Act, “requires the Secretary of State to suspend, but for such period as the Secretary determines necessary, the issuance of A-3 or G-5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that

⁴³¹ Vandenberg & Bessell, *supra* note 415, at 598.

⁴³² *Id.* at 597, n. 6.

⁴³³ *Id.* at 599.

⁴³⁴ See Petitioners’ Response at 21-39.

⁴³⁵ The reforms were adopted as policies for the Department of State and the Foreign Service, the Foreign Affairs Manual (FAM), and the Department of State Circular Diplomatic Notes.

(1) one or more employees of such mission or international organization have abused or exploited one or more A-3 or G-5 visa holder, and (2) that the diplomatic mission or international organization tolerated such conduct.” This authority of the Secretary of State is very rarely enforced. Indeed, only one country – Malawi – has ever been suspended. The enforcement of Section 203 of the Act will reduce the number of offending diplomats and consular employees, and the likelihood of trafficking of domestic workers in these workplaces. These issues still persist today, ten years since Damayan’s anti-trafficking campaign, Baklas, was launched in 2011.⁴³⁶

The ineffectiveness of recent measures adopted by the State Department is evidenced by ongoing incidents of trafficking and exploitation of domestic workers by diplomats and other foreign officials. Recent accounts of abuse and exploitation of A-3 and G-5 domestic workers echo experiences cited in the Petition⁴³⁷ and Petitioners’ Response.⁴³⁸ Ms. Gurung was a G-5 domestic worker from India. At the age of 17, they started working for an Indian diplomat in New York and faced daily psychological abuse: “They reminded me every day that if I ever left the house, the police would pick me up, rape and beat me, and then load me up in a cargo plane and send me back to India...They would not let me leave the house other than once or twice a week to get groceries. The diplomat would time how long my trips to the store would take me. When I took too long, she would tell me to hurry up or reprimand me.”⁴³⁹ She eventually had to leave the A3-G5 program because her employers confiscated her passport; at no point did the U.S. State Department inspect the household or intervene on her behalf.⁴⁴⁰

⁴³⁶ Ortiz Decl. ¶ 11.

⁴³⁷ See Petition at 13-27.

⁴³⁸ See Petitioners’ Response at 6-8.

⁴³⁹ Gurung Decl. ¶¶ 11, 14.

⁴⁴⁰ Gurung Decl. ¶ 24.

As this case and so many others⁴⁴¹ demonstrate, domestic workers continue to face extreme violence and abuse by foreign diplomats and foreign representatives from international organizations. Through its failure to enact and enforce adequate laws and policies, the United States has allowed diplomats to abuse domestic workers and deprive them of their basic rights with impunity.

G. Impact of Discrimination and Legal Exclusions on Domestic Workers in the United States

The impact of the legal exclusion of domestic workers from most labor and employment protections and the additional context of discrimination against women, immigrants, and people of color was described by Individual and Organizational Petitioners in appendix A, and Individual and Organizational Declarants in Support of Petitioners in appendices B and C. This section presents data, research, and cases that provide additional factual evidence on the adverse impact the exclusions and discriminatory context have on domestic workers in the United States.

1. Domestic Workers in the United States Are Subjected to Substandard Wages, Benefits, and Working Conditions

According to all accounts, domestic workers receive extremely low pay and are subjected to exploitative and substandard working conditions. A landmark study of domestic workers published by the National Domestic Workers Alliance and the Center for Urban Economic Development of the University of Illinois at Chicago Data Center titled “Home Economics: The Invisible and Unregulated World of Domestic Work” revealed that almost a quarter of domestic

⁴⁴¹ See also, *Rana v. Islam*, 887 F.3d 118 (2d Cir. 2018) (Mr. Rana, a domestic worker, was granted a visa and possessed a written employment agreement that, presumably, was reviewed by the U.S. However, upon arrival in the U.S., he was subjected to patently unlawful working conditions, working 17 hours each day for nearly 19 months straight).

workers surveyed were paid below their states' minimum wages, in violation of the law.⁴⁴² For live-in workers, the proportion of domestic workers paid below the minimum wage of their respective states jumped to two-thirds.⁴⁴³ On average, a domestic worker in the United States received \$12.01 per hour, including overtime, tips, and commissions.⁴⁴⁴ By comparison, all other workers were paid \$19.97 per hour on average.⁴⁴⁵ Even controlling for education and demographics—including gender, nativity, race and ethnicity—domestic workers were paid almost 26 percent less than other similarly-situated workers in the United States.⁴⁴⁶

Domestic workers often face “acute financial hardships.”⁴⁴⁷ They are three times as likely to live in poverty as other workers, and almost three times as likely to lack the income necessary to meet basic needs.⁴⁴⁸ Less than 2 percent of domestic workers in the United States received retirement or pension benefits; less than 9 percent worked for employers who paid into Social Security; and only 4 percent received employer-provided health insurance (65 percent of workers reported not having any health insurance).⁴⁴⁹

Domestic workers generally have “little control over their working conditions,” and employment is mostly arranged without formal contracts, which is not the norm in the United States.⁴⁵⁰ In a study of Latina Domestic Workers in the Texas-Mexico Border Region, for example, two-thirds of the 516 care workers surveyed worked without written contracts; housekeepers and nannies in particular were least likely to have contracts (with three and 13

⁴⁴² Burnham and Theodore, *supra* note 99.

⁴⁴³ *Id.*

⁴⁴⁴ Wolfe et al., *supra* note 82.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.* The other factors the study's authors controlled for were age, marital status and census geographical division.

⁴⁴⁷ Burnham et al., *supra* note 195.

⁴⁴⁸ Wolfe et al., *supra* note 82.

⁴⁴⁹ *Id.*; see also Jason Scott Johnson, *The Statute of Frauds and Business Norms: A Testable Game-Theoretic Model*, 144 U. Penn. L. Rev. 1863 (1996).

⁴⁵⁰ Burnham et al., *supra* note 195.

percent, respectively, having written contracts).⁴⁵¹ In practice, key worker protections provided in standard work agreements—such as receiving pay during scheduled hours when work is not needed, job-related medical expenses, paid sick leave, vacation times or holidays—are often excluded from employment agreements.⁴⁵² In the Texas-Mexico Border Region, only two percent of domestic workers reported receiving paid sick leave, vacation and holidays, and only three percent reported receiving overtime pay.⁴⁵³

Even where workers have written contracts or other agreements, contracts are not guarantees against unfair and abusive working environments. In fact, a significant portion of domestic workers with contracts are forced to accept the terms of their contracts or otherwise sign contracts they do not understand. In a recent case in California state courts, S.C., an Indonesian woman, had been recruited by her employer’s sister in Indonesia to work for the employer, and was instructed to misrepresent their relationship and the purpose of her travel to the United States.⁴⁵⁴ She believed she would be paid \$250 per month plus a \$50 monthly stipend for the first year.⁴⁵⁵ Two days before departing from Indonesia, she was pressured into signing a five-year contract. When she arrived in the United States, she surrendered her passport.⁴⁵⁶ For two years, she worked 16 hours per day, seven days a week, without any time off. She then asked her employer if she could return to Indonesia but was told she was still under contract.⁴⁵⁷ She was able to escape and seek help from the Coalition to Abolish Slavery and Trafficking (CAST) organization while her employers were out of town.⁴⁵⁸

⁴⁵¹ *Id.*

⁴⁵² *Id.*, at 25.

⁴⁵³ *Id.*

⁴⁵⁴ *People v. Halim*, 14 Cal. App. 5th 632, 638, 223 Cal. Rptr. 3d 491, 496 (2017).

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

When domestic workers do understand the contractual provisions, employers often disregard the terms. About 30 percent of workers surveyed in the “Home Economics: The Invisible and Unregulated World of Domestic Work” report stated that their employers had disregarded at least one of the agreed-to provisions in the prior 12 months.⁴⁵⁹ In a case filed in federal court, *Carazani v. Zegarra*, Virginia Carazini, a housekeeper from Bolivia employed by a World Bank executive, was provided a written contract that specified she would work forty-hour work weeks, receive a minimum wage, be paid overtime, receive vacation and sick days, and have her medical expenses paid for.⁴⁶⁰ In practice, she worked between 66 and 75 hours a day, seven days per week.⁴⁶¹ She was paid “the \$8.50 necessary to keep her bank account open, a requirement under World Bank rules.”⁴⁶² She received no time off, except for the four days in which she spent in the hospital; the \$35,849.33 in expenses she incurred ended up being paid for by her family, despite the medical insurance stipulation in her employment contract.⁴⁶³ In another case, *Mesfun v. Hagos*,⁴⁶⁴ Tzighe Mesfun, a 57-year-old Eritrean woman with a fourth-grade education, was lured by her employers to the U.S. on the promise of “pleasant working conditions, that the job would last for three years, and that she would be paid \$300 per month for the first two years and would get a raise at the beginning of her third year.”⁴⁶⁵ She was told that she would not have to work as a domestic servant or a housekeeper, but would just have to take care of her employer’s children when they were not at school.⁴⁶⁶ As soon as she arrived, her employers confiscated her passport and all her possessions, and was told to cook, clean the

⁴⁵⁹ Burnham & Theodore, *supra* note 99, at xii.

⁴⁶⁰ *Carazani v. Zegarra*, 972 F. Supp. 2d 1, 9 (D.D.C. 2013).

⁴⁶¹ *Id.*

⁴⁶² *Id.* at 10.

⁴⁶³ *Id.*

⁴⁶⁴ *Mesfun v. Hagos*, No. CV 03-02182, 2005 WL 5956612, at *1 (C.D. Cal. Feb. 16, 2005).

⁴⁶⁵ Plaintiffs Trial Brief, *Mesfun v. Hagos et al.*, No. CV 03-02182, 2007 WL 5395969 (C.D. Cal. Feb. 10, 2007).

⁴⁶⁶ *Id.*

house, and do yard work.⁴⁶⁷ Her wages were frequently stolen.⁴⁶⁸ Her life soon fell into a “repetitive, exhaustive, and grinding regimen.”⁴⁶⁹ She asked to be returned home because the job was not one she had agreed to perform, but her employers refused, telling her she must reimburse them for the plane ticket.⁴⁷⁰ One employer refused to discuss the subject further, screamed at Mesfun, threatened her with arrest and deportation, and told her, “you are my servant and have to do everything I tell you to do.”⁴⁷¹ In yet another case, Alemnesh Deressa, an Ethiopian woman, signed an employment contract with the Gobenas, an Ethiopian husband and wife living in Virginia, promising compensation at \$5.75 per hour with overtime pay for any hours over 40 hours per week, to be paid at one and a half times the hourly rate.⁴⁷² Instead, the Gobenas required her to work or be on call for 17 hours per day, every day of the week. For the six years that she was employed in the home, she received no compensation until the end of her employment, when the Gobenas paid her \$5,000 in exchange for releasing them from all legal claims.⁴⁷³

In addition to breaches of working agreements—including the common occurrence of wage theft and excessive hours—domestic workers are also subjected to grueling working conditions. As discussed above, Tzinghe’s work schedule caused her to suffer headaches, back pain, knee pain, loss of appetite, exhaustion, and other injuries. She often informed her employers about the pain and asked them for medicine or medical treatment, which the employers routinely refused.⁴⁷⁴

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

⁴⁷² *Deressa v. Gobena*, No. 1:05CV1334, 2006 WL 335629, at *1 (E.D. Va. Feb. 13, 2006).

⁴⁷³ *Id.*

⁴⁷⁴ Plaintiffs Trial Brief, *supra* note 465.

2. Domestic Workers in the United States are Subjected to Discrimination, Exploitation, and Abuse

In addition to a myriad of labor and employment violations, domestic workers are also subjected to extreme forms of abuse and exploitation, including sexual harassment, physical and sexual abuse, human trafficking and forced labor.⁴⁷⁵ While consolidated data on the abuse of domestic workers is not available, reports are plentiful and studies have documented this abuse.⁴⁷⁶ Even the U.S. State Department has recognized that domestic servitude can create “unique vulnerabilities” for abuse.⁴⁷⁷ Domestic work is performed behind closed doors, in decentralized and intimate settings which has been demonstrated to facilitate abuse.⁴⁷⁸ Domestic workers do not have human resources personnel, anonymized internal reporting mechanisms, bystanders or colleagues whom they can turn to report their harassment: “safeguards like grievance procedures, review committees, and appeals boards do not exist within a household.”⁴⁷⁹ Often, the person who has the power to change the domestic worker’s conditions is the perpetrator of the abuse. Because the work and abuse of domestic workers is not highly visible, data collection efforts are largely done on an *ad hoc* basis. Furthermore, domestic work is often done informally, on a temporary basis, and not infrequently by workers lacking proper immigration status, compounding the difficulty of tracking the abuse.

⁴⁷⁵ Burnham & Theodore, *supra* note 99, at xii.

⁴⁷⁶ See e.g., Hafiz & Paarlberg, *supra* note 227; Lillian Agbeyegbe et al., Polaris & Nat’l Domestic Workers All., Human Trafficking at Home: Labor Trafficking of Domestic Workers (2019), https://polarisproject.org/wp-content/uploads/2019/09/Human_Trafficking_at_Home_Labor_Trafficking_of_Domestic_Workers.pdf; Human Rts. Watch, Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States (2001), <https://www.hrw.org/reports/2001/usadom/>; Allyson Auerbach, Kathleen McCabe & Eliza Davenport Whiteman, Health Res. in Action, A Health Impact Assessment of the Massachusetts Domestic Workers’ Bill of Rights (2014), <https://hria.org/wp-content/uploads/2016/02/DomesticWorkersHIA.pdf>.

⁴⁷⁷ *About Human Trafficking*, U.S. Dep’t of State, <https://www.state.gov/humantrafficking-about-human-trafficking/>.

⁴⁷⁸ Domestic workers across the world: Global and regional statistics and the extent of legal protection, at v (Int’l Labour Off., 2013), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf.

⁴⁷⁹ James Lin, *A Greedy Institution: Domestic Workers and a Legacy of Legislative Exclusion*, 36 Fordham Int’l L. J. 706, 712 (2013).

The “Home Economics: The Invisible and Unregulated World of Domestic Work” study provides a comprehensive look at the abusive working conditions of many domestic workers. The study found that over 90 percent of the surveyed domestic workers who encountered problems with their working conditions in the past year did not complain out of a fear of losing their job.⁴⁸⁰ Eighty-five percent of undocumented immigrants who encountered poor working conditions did not complain out of fear of having their immigration statuses used against them.⁴⁸¹

Domestic workers have repeatedly reported verbal, psychological and physical abuse on the job, often without recourse, to community groups such as the National Domestic Workers Alliance (NDWA). Almost one in five domestic workers surveyed by the NDWA reported being objectified, demeaned, commanded and controlled.⁴⁸² Many reported verbal abuse “laced with racial slurs or threats regarding immigration status.”⁴⁸³ Some workers reported being subjected sexual harassment and assault. Etelbina Hauser told her story of on-the-job sexual abuse to *Vox* in 2018. Ms. Hauser moved from Honduras to the United States in 1999, and mostly worked as a housecleaner, although she sometimes worked as a home care aide as well.⁴⁸⁴ She described a recurrent scenario: while alone, cleaning a home, the husband of the household would call her into the bedroom, expose himself, and suggest a sexual act or massage. She would run out of the house and start looking for another job. This cycle followed her to more than 24 jobs, in three states. June Barrett told the *Washington Post* that her client, “a mentally sharp but fragile elderly man, grabbed her breast in full view of his adult daughter,” who saw what happened and laughed. Ms. Barrett felt betrayed and isolated; the one person whom she believed would call out

⁴⁸⁰ Burnham & Theodore, *supra* note 442, at xii.

⁴⁸¹ *Id.*

⁴⁸² *Id.* at 33.

⁴⁸³ *Id.*

⁴⁸⁴ Alexia Fernández Campbell, *Housekeepers and nannies have no protection from sexual harassment under federal law*, *Vox* (Apr. 26, 2018), <https://www.vox.com/2018/4/26/17275708/housekeepers-nannies-sexual-harassment-laws>.

her client’s wrongdoing demonstrated an apparent unwillingness to do so.⁴⁸⁵ Nilsa Franco was brought from Paraguay to the United States to work for her employers, a husband and wife.⁴⁸⁶ When the wife was out of town, the husband attempted to rape Ms. Franco. The husband told her that if she reported it, she would be deported, a fear that had been drilled into her since her arrival in the United States, at which point her passport had been taken from her by her employers and declared “lost.”⁴⁸⁷

Live-in workers are especially vulnerable to abuse. They are particularly dependent on their employers, as they are required to live in their employers’ homes; they may find it particularly difficult to leave abusive environments. In the case discussed above, *Carazani*, Ms. Carazani’s employer refused to renew her visa, forcing her to become an undocumented immigrant, which increased her financial dependence on her employer and gave her employer a means by which her employer could control her—by threatening deportation.⁴⁸⁸ Carazani was eventually able to escape with the help of a local NGO and law enforcement.

They are often socially isolated as well. According to the “Home Economics: The Invisible and Unregulated World of Domestic Work” study, thirty-one percent of live-in workers are deprived of access to private communication, such as telephone, mail, or Internet. They are effectively isolated from the support and empathy of family and friends, as well as available avenues to report substandard conditions and workplace violations.⁴⁸⁹ In *Mesfun*, Mesfun’s employers took “full advantage of plaintiff’s presence in a foreign culture, thousands of miles away from her friends, family, and the only world she had known, to keep her confined in their

⁴⁸⁵ Janell Ross, *Sexual Assault Endured by Domestic Workers Overlooked in National Conversation*, Wash. Post (Nov. 29, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/11/29/sexual-assault-endured-by-domestic-workers-overlooked-in-national-conversation/>.

⁴⁸⁶ *Franco v. Diaz*, 51 F. Supp. 3d 235, 241 (E.D.N.Y. 2014)

⁴⁸⁷ *Id.* at 241.

⁴⁸⁸ *Carazani*, 972 F. Supp. at 10.

⁴⁸⁹ Burnham & Theodore, *supra* note 99, at 33.

home,” and strictly monitored her.⁴⁹⁰ Her employers monitored her calls and told her she would be abducted and killed if she ever attempted to leave the home or contact the police.⁴⁹¹ Mesfun was subjected to such a “hellish existence of almost total isolation, ceaseless work, emotional deprivation, and physical pain” that she contemplated suicide.⁴⁹²

These conditions make domestic work ripe for human trafficking.⁴⁹³ The National Human Trafficking Hotline reports that domestic work was the top venue or industry for labor trafficking in 2019.⁴⁹⁴ Domestic workers are subjected to labor trafficking over twice as much as the next most common industry for labor trafficking in the United States.⁴⁹⁵

The National Domestic Workers Alliance interviewed 110 survivors of human trafficking in 2017. Many of them reported having been subject to conditions that, according to the International Labor Organization (ILO), indicate the presence of forced labor.⁴⁹⁶ Eighty-five percent of these workers reported having their wages withheld or being paid well below minimum wage, 81 percent described living in abusive living conditions, 80 percent described being tricked with false or otherwise deceptive contracts, 77 percent reported their movements were restricted, 75 percent reported feeling socially isolated, 66 percent reported having

⁴⁹⁰ Plaintiffs Trial Brief, *supra* note 465.

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ The Palermo Protocol defines human trafficking “as the recruitment, transportation, transfer, harboring or receipt of an individual by means of threat or use of force or other forms of coercion for the purpose of exploitation.” *What are Child Labor, Forced Labor, and Human Trafficking?*, Bureau Int’l Lab. Aff., <https://www.dol.gov/agencies/ilab/resources/what-is-child-labor-human-trafficking> (last visited Mar. 9, 2021).

⁴⁹⁴ *Hotline Statistics*, Nat’l Human Trafficking Hotline, <https://humantraffickinghotline.org/states> (last visited Mar. 9, 2021).

⁴⁹⁵ *Id.*

⁴⁹⁶ Forced labor is “all work or service extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Bureau Int’l Lab. Aff., *supra* note 493. The variables the ILO identifies as signaling forced labor include: vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions and excessive overtime. Hafiz & Paarlberg, *supra* note 227, at 22.

experienced physical or sexual abuse, and 62 percent claimed to have had their passports or other IDs taken away from them by their employers.⁴⁹⁷

The Urban Institute found that approximately 82 percent of cases of domestic worker trafficking it had reviewed involved workers entering the United States on nonimmigrant work visas.⁴⁹⁸ Accordingly, the State Department's *2020 Trafficking in Persons Report* recognizes migrant laborers, including undocumented workers, participants in visa programs for temporary workers, and foreign national domestic workers in diplomatic households, as being particularly vulnerable to trafficking in the United States.⁴⁹⁹

Time and time again, all across the country, migrant domestic workers are lured to the United States with promises of a better life and subjected by their employers to abuse and human trafficking.⁵⁰⁰ Samirah was one such migrant trafficking victim. She was brought from Indonesia to the United States to work in the home of Mahhdender Sabhnani and his wife Varsha Sabhnani, both naturalized U.S. citizens born in India and Indonesia respectively. Prior to coming to the United States, Samirah had worked as a rice vendor in Indonesia; she spoke no English.⁵⁰¹ She did not know what a visa was, or how to drive a car, or use an American telephone.⁵⁰² She agreed to work for \$200 a month, but her salary, which was sent by her entirely by the Sabhnanis to her daughter in Indonesia, ended up amounting to only \$100 per month.⁵⁰³ From February 2002 and May 2007, she worked as the Sabhnanis' domestic servant, even though the visa

⁴⁹⁷ Hafiz & Paarlberg, *supra* note 227, at 6.

⁴⁹⁸ Urban Inst., Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States 26 (2014), <https://www.urban.org/sites/default/files/publication/33821/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>.

⁴⁹⁹ U.S. Dep't of State, Trafficking in Persons Report 523 (2020), <https://www.state.gov/trafficking-in-persons-report/>.

⁵⁰⁰ See, e.g., *Lunkes v Yannai*, 882 F. Supp. 2d 545 (S.D.N.Y. 2012); *Manliguez v Joseph*, 226 F. Supp. 2d 377 (E.D.N.Y. 2002); *Baxla v. Chaudhri*, 225 F. Supp. 3d 588 (E.D. Va. 2016).

⁵⁰¹ *United States v. Sabhnani*, 599 F.3d 215, 225 (2d Cir. 2010).

⁵⁰² *Id.*

⁵⁰³ *Id.*

obtained allowed her to work in the country only until May 2002.⁵⁰⁴ She was subjected to abhorrent working conditions. She was required to sleep on the carpet outside the bedroom of one of the children, and then on a mat on the floor of a kitchen in the residence.⁵⁰⁵ She was often forced by hunger to eat from the garbage, as the Sabhnanis did not provide her adequate food to eat. Various witnesses testified that Samirah wore tattered rags used for cleaning the floor, and clothing that left her “private part ... visible.”⁵⁰⁶ Samirah was also the victim of abuse. One time, Samirah drank milk directly from the container. One of the Sabhnani children reported Samirah to Varsha, who responded by beating Samirah and pouring scalding hot water on her arm.⁵⁰⁷ This was not an isolated incident.⁵⁰⁸ Sometimes, Samirah would be beaten with a broom, umbrella, and a rolling pin; Varsha would pull Samirah’s ears until they bled, causing scabs and scars; Samirah was cut with a knife, and forced to drink hot chili peppers until she vomited or involuntarily emptied her bowels.⁵⁰⁹ Samirah often asked to be returned to Indonesia, or given away, and she was told by Varsha that she would have to make up the money to pay for the expenses the Sabhnanis had incurred in bringing her to the United States. Varsha told Samirah that Samirah’s children would be killed if she ever escaped, and she would be sent to prison, as Varsha would falsely report Samirah to the police for stealing food and jewelry.⁵¹⁰ Samirah was eventually able to escape the home on her own. Samirah’s story is merely one case out of many in which migrant domestic workers are trafficked and abused in the United States.

In another example, Lagasan, a Filipino woman, was trafficked through Qatar to the United States and “forced to work excessive hours in abominable working and living conditions

⁵⁰⁴ *Id.*

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.* at 226.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.* at 227.

for meager wages.”⁵¹¹ When she arrived in the country, her employers confiscated her passport and visa, forced her to work “at least 18 hours per day, seven days a week, for as little as \$200 per month.”⁵¹² She was not allowed breaks, and “if she tried sitting down, she would be yelled at.”⁵¹³ She was forced to sleep on the floor of a small bedroom used for storage or the floor of a closet.⁵¹⁴ She was prohibited from leaving the house, and communicating with anyone outside their presence, and was denied access to medical care.⁵¹⁵ She stayed with her employers “because she had nowhere else to go; she spoke limited English, had little money, and was unfamiliar with the area surrounding the apartment.”⁵¹⁶ Her neighbors saw her while she was carrying out her daily duties, and contacted the National Human Trafficking Resource Center (NHTRC). NHTRC then contacted ICE, who helped Lagasan escape.⁵¹⁷

Yet another example is Abafita, an Ethiopian woman, who was also trafficked into the United States. Abafita was initially recruited to work in the United Arab Emirates by Aldukhan, for the equivalent of \$343.00 per month.⁵¹⁸ When she arrived in the UAE, Aldukhan seized Abafita’s passport, and brought Abafita to a compound.⁵¹⁹ Aldukhan promised to pay Abafita approximately \$190 per month.⁵²⁰ Abafita was forced “to work 21-hour days cooking, cleaning and babysitting for Defendant Aldukhan, her mother and six other families.”⁵²¹ Abafita was subjected to “inhumane living conditions and constant verbal abuse, which kept Abafita in a

⁵¹¹ *Lagasan v. Al-Ghasel*, 92 F. Supp. 3d 445, 449 (E.D. Va. 2015).

⁵¹² *Id.*

⁵¹³ *Id.* at 452.

⁵¹⁴ *Id.*

⁵¹⁵ *Id.* at 449.

⁵¹⁶ *Id.* at 452.

⁵¹⁷ *Id.*

⁵¹⁸ *Abafita v. Aldukhan*, No. 1:16-cv-06072, 2019 WL 6735148, at *2 (S.D.N.Y. Apr. 4, 2019), *report and recommendation adopted*, No. 16 Civ. 6072, 2019 WL 4409472 (S.D.N.Y. Sept. 16, 2019).

⁵¹⁹ *Id.*

⁵²⁰ *Id.*

⁵²¹ *Id.*

persistent state of exhaustion.”⁵²² Abafita was prohibited from taking food breaks or leaving the compound unescorted. Aldukhan called Abafita “filthy,” “dirty” and “a dog.”⁵²³ Abafita was threatened with deportation if she didn’t obey Aldukhan’s orders, and with jail if she attempted to escape.⁵²⁴ She was told that she would have to pay Aldukhan 28 times her monthly salary if she wanted to return home, as a reimbursement for the costs Aldukhan had incurred in bringing Abafita to the UAE. ⁵²⁵ Aldukhan eventually lured Abafita to the U.S. with the promise of higher wages (\$1,610.04 per month), fewer hours (eight hours per day, five days per week), overtime compensation (at a rate of 1.5x normal wages), medical expenses coverage, sick and vacation leave, and the retention of her passport.⁵²⁶ When Abafita arrived in the U.S., she began working for a couple, Alusawaidi and Almansoori. Her working conditions were “much harder.”⁵²⁷ She worked 19 to 22-hour days with no days off, taking care of the couple’s children and performing domestic tasks.⁵²⁸ She was prohibited from leaving the home alone, prevented from speaking to anyone outside the couple’s presence, and threatened with having her throat slashed if she did speak to anyone outside the home.⁵²⁹ When she was in extreme pain, Alsuwaidi, after initially denying Abafita medical care, took her to the emergency room. The doctor explained to Alsuwaidi that Abafita had painful ovarian cysts. Alsuwaidi translated to Abafita that nothing was wrong with her and that she had been faking her illness.⁵³⁰ Abafita was fortunately able to escape the next month.

⁵²² *Id.*

⁵²³ *Id.*

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ *Id.*

⁵²⁷ *Id.* at *3.

⁵²⁸ *Id.*

⁵²⁹ *Id.*

⁵³⁰ *Id.*

3. Domestic Workers Employed By Diplomats are Further Deprived of the Limited Legal Protections Available to Domestic Workers

Each year, around 1,300 migrant domestic workers come to the United States to labor in the homes of foreign diplomats.⁵³¹ They travel on special A-3, G-5 and NATO-7 visas issued by the U.S. to domestic workers of foreign officials representing their governments in embassies, consulates, foreign missions to international organizations.⁵³² They are almost exclusively women and are lured into the country on promises of fair wages and working conditions. Many of these workers find themselves trapped in situations of exploitation where they are required to perform difficult labor for long hours at illegal and substandard wages. Some of these workers find themselves physically and sexually assaulted and subjected to forced labor and human trafficking.

They are generally from poor and marginalized communities where women face sizeable socioeconomic challenges to their ability to provide for themselves and their families. Alone and dependent on their employers, these domestic workers face barriers of language, education, and culture, isolation in the home, and discrimination based on race and gender and are, thus, particularly vulnerable to abusive employers. Because of their employers' profession, however, these women are rendered even more defenseless because, in the United States, diplomats are

⁵³¹ U.S. Dep't of State, Table XV(B): Nonimmigrant Visas Issued by Classification (Including Border Crossing Cards) Fiscal Years 2016-2020, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2020AnnualReport/FY20AnnualReport-TableXVB.pdf>.

⁵³² *Domestic Employees of Diplomats*, U.S. Embassy in Switz. & Liech., <https://ch.usembassy.gov/visas/nonimmigrant-visas/domestic-employees-diplomats/> (last visited Mar. 9, 2021).

immune from the criminal and civil jurisdiction of U.S. courts.⁵³³ In other words, they cannot be held accountable for their illegal actions by U.S. law.⁵³⁴

Vishranthamma Swarna, a citizen of India, was trafficked by her employers, which included a diplomat at the Kuwaiti Mission to the United States, to the U.S.⁵³⁵ She suffered extreme physical, verbal, and psychological abuse. Her employers “threatened to have her tongue cut out, and was dragged by her collar on several occasions.”⁵³⁶ She was referred to as a “dog” or “donkey” and had her hair forcibly cut against her will.⁵³⁷ She cried herself to sleep often.⁵³⁸ She was repeatedly raped by her employer on many occasions, and her employer threatened to kill her if she told anyone about the abuse.⁵³⁹ She was isolated: threatened with arrest if she left the apartment, not allowed to speak with anyone, including handymen performing maintenance in the apartment, not allowed to learn English, and severely restricted in her communications.⁵⁴⁰ She was eventually able to flee the home.⁵⁴¹

Fainess Lipenga, a citizen of Malawi, worked for Jane Khambalame while she was a diplomat at the Embassy of the Republic of Malawi in Washington, D.C.⁵⁴² Her employer told Lipenga that “because of her diplomatic status, she could never get in trouble with the

⁵³³ The U.S. has interpreted its obligations under the Vienna Convention on Diplomatic Relations as requiring it to find that diplomats are immune from criminal and civil jurisdiction. Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95 (entered into force Apr. 24, 1964).

⁵³⁴ Cases are routinely dismissed involuntarily on diplomatic immunity grounds. *See, e.g., Bardales v. Consulate Gen. of Peru in New York*, No. 1:17-CV-8897 (ALC), 2020 WL 5764390 (S.D.N.Y. Sept. 28, 2020); *Villarreal v. Tenorio*, No. 11-cv-2147 (D. Md. Filed Aug. 9, 2011); *Rios Fun v. Pulgar*, No. 13-cv-03679 (D.N.J. filed June 13, 2013); *Gonzalez Paredes v. Vila*, 479 F. Supp. 2d 187 (D.D.C. 2007). Cases are also frequently settled, without criminal indictment brought against the diplomat by federal prosecutors. *See, e.g., Waru v. Madhvani*, No. 1:05-cv-00662 (D.D.C. Apr. 1, 2005); *Sabbithi v. Al Saleh*, No. 1:07-cv-00115 (D.D.C. Jan. 18, 2007); *Leo v. Al Naser*, No. 1:08-cv-01263 (D.D.C. July 22, 2008); *Lipenga v. Kambalame*, No. 14-cv-03980 (D. Md. Dec. 29, 2014); *Rana v. Islam*, No. 1:14-cv-01993 (S.D.N.Y. Mar. 21, 2014).

⁵³⁵ *Swarna v. Al-Awadi*, 622 F.3d 123, 128 (2d Cir. 2010).

⁵³⁶ *Id.* at 129-30.

⁵³⁷ *Id.* at 130.

⁵³⁸ *Id.*

⁵³⁹ *Id.*

⁵⁴⁰ *Id.* at 129.

⁵⁴¹ *Id.*

⁵⁴² *Lipenga v. Kambalame*, 219 F. Supp. 3d 517, 522 (D. Md. 2016).

authorities.”⁵⁴³ Lipenga was required to work sometimes on no sleep, and was paid at a rate of less than 50 cents per hour.⁵⁴⁴ Lipenga was berated and belittled as she worked, prompting tears which would be recorded on camera and played back to further torment Lipenga.⁵⁴⁵ Lipenga was not allowed to use the family’s shampoo or soap to avoid “contaminating” the family’s belongings. Her employer would humiliate her in front of other people, “falsely accusing her of stealing from the family and sleeping with [her employer’s] live-in boyfriend.”⁵⁴⁶ The rumors were embarrassing, and alienated Lipenga from members of the local Malawain community. Lipenga eventually escaped from the home; her deteriorating health, for which she was denied medical attention, caused her to fear death if she did not escape her employer’s control.⁵⁴⁷ After Lipenga escaped, she was diagnosed with tuberculosis, HIV, and depression, which had gone untreated for years.⁵⁴⁸

Sophia Kiwanuka, a Tanzanian woman, was lured to the United States by her employer, an economist at the World Bank, with the promise of “reasonable working conditions, educational opportunities, and decent pay.”⁵⁴⁹ When she arrived, her passport was confiscated, she was held in isolation, and manipulated into working long hours as a domestic servant and nanny with the threat of deportation.⁵⁵⁰ She was subjected to regular verbal and psychological abuse.⁵⁵¹

⁵⁴³ *Id.* at 523.

⁵⁴⁴ *Id.*

⁵⁴⁵ *Id.*

⁵⁴⁶ *Id.*

⁵⁴⁷ *Id.*

⁵⁴⁸ *Id.* at 524.

⁵⁴⁹ *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107, 111 (D.D.C. 2012).

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.*

III. THE UNITED STATES VIOLATED THE RIGHTS OF PETITIONERS AND ALL DOMESTIC WORKERS UNDER ARTICLES I, II, VII, IX, X, XI, XII, XIV, XV, AND XVIII OF THE AMERICAN DECLARATION.

The United States violated Petitioners' rights under the American Declaration because they were "domestic workers in the U.S." and "domestic workers in the U.S. employed by diplomats."⁵⁵² The Commission found the following violations admissible: Articles I (life, liberty and personal security), II (equality before law), VII (protection for mothers and children), IX (inviolability of the home), X (inviolability and transmission of correspondence), XI (preservation of health and well-being), XII (education), XIV (work and fair remuneration), XV (leisure time and the use thereof) and XVIII (fair trial).⁵⁵³ The Commission stated it would analyze "whether the discriminatory effect of the exclusion of certain domestic workers from the scope of application of regulations relating to labor and employment standards, if proven, could constitute a violation of Article II (equality before law) of the Declaration."⁵⁵⁴

The United States is responsible for violating Petitioners' and other domestic workers rights because it (1) has failed though its laws, policies, practices, to protect their rights and to act with "due diligence" to prevent private actors from violating them; and (2) has failed to enforce its non-discrimination laws, and instead drawn distinctions and exclusions in its laws, policies and practices between the rights and entitlement those laws, policies and practices provide to domestic workers and those provided to other workers, resulting in discriminatory deprivations of their rights under Articles I, VII, IX, X, XI, XII, XIV, XV and XVIII.⁵⁵⁵ The

⁵⁵² See, Petition, at 7-11, 77-79, 123-24. See also, Petitioners' Response, at 1, 3-6, 19-20.

⁵⁵³ Inter-Am. Comm'n H.R., *Report on Admissibility of Siti Aisah and Others*, OEA/Ser.L/V/II, Doc. 238 August 27, 2020, ¶ 19.

⁵⁵⁴ *Id.* at ¶ 19.

⁵⁵⁵ All rights under the American Declaration are construed in light of developments in the field of international human rights law. The Commission has held that "pursuant to the principles of treaty interpretation, the Inter-American Court of Human Rights has likewise endorsed an interpretation of international human rights instruments that takes into account developments in the *corpus juris* of international human rights law over time and in present-day conditions." See *Undocumented Workers Decision*, ¶ 68. Thus, relevant developments may be drawn from other

United States is also responsible for violating the rights of Petitioners and other domestic workers employed by diplomats and other foreign officials by granting these employers immunity and failing to protect and ensure the rights of these workers under the American Declaration.

Thus, the United States has violated Petitioners' rights and other U.S. domestic workers because it has failed to enact and enforce a legal and policy framework that adequately protects their rights from being violated by the United States and private actors, and that is also applied in a discriminatory manner. The United States is responsible for violations by private actors because it knew of the reasonable risk of such violations but failed to act with due diligence to protect Petitioners and other domestic workers.⁵⁵⁶ Due diligence in this context requires the United States to take reasonable measures to protect, investigate, hold perpetrators accountable, provide redress to victims, and provide effective guarantees of non-repetition.⁵⁵⁷ Moreover,

prevailing international and regional human rights instruments. This includes the American Convention on Human Rights, which "in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration." *See id.* ¶69. In 1977, the United States signed the Convention, but has not ratified it. The Commission has made clear that even when a member state has not ratified the Convention, its provisions are still relevant when interpreting the American Declaration. *Id.*; *see also* Inter-Am. Comm'n H.R., *Report of the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev. (February 28, 2000), ¶ 38; *Garza v. United States*, Case No. 12.275, Annual Report of the IACHR 2000, ¶¶ 88-89.

⁵⁵⁶ *See, e.g., Lenahan (Gonzales) v. United States*, Case No. 12.626, Report No. 80/11, Nov. 1, 2012 ¶¶ 126, 172-173, 178; Inter-Am. Comm'n H.R., Report No. 51/13, Case 12.551, Merits, *Paloma Angélica Escobar Ledezma et al.* (Mexico), July 12, 2013, ¶¶ 152-53; *see, generally*, Inter-Am. Comm'n H.R., Report No. 53/13, Case 12.777, Merits, *Claudina Velasquez Paiz et al.* (Guatemala), November 4, 2013. The obligation to exercise due diligence does not render the State accountable for *all* private interference with protected rights. It does, however, require the State to take reasonable steps to protect and ensure these rights, especially where the deprivation of rights occurs against vulnerable populations that find themselves in situations of added vulnerability. *See, id.* at ¶ 134 (citing the Eur. Ct. H.R., *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009 ¶ 136; *E. and Others v. the United Kingdom*, no. 33218/96 ¶ 99.).

⁵⁵⁷ Apart from recent case law that affirms the due diligence principle in the Inter-American Commission, the due diligence principle has been widely adopted by other international bodies, including the Inter-American Court, the CEDAW Committee, and the ECHR. *Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, 32d Sess., Jan. 26, 2005, Communication No. 02/2003, *Ms. A.T. v. Hungary*, ¶ 9.3 (2005) ("the obligations of the State party . . . extend to the prevention of and protection from violence against women, which obligations in the present case, remain unfulfilled and constitute a violation of the author's human rights and fundamental freedoms"). *See also Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of*

states have a heightened due diligence obligation to take measures to protect certain vulnerable groups, including women of color and immigrants, from rights violations committed by state and private actors.⁵⁵⁸

A. The United States Has Violated Petitioners' and Other U.S. Domestic Workers' Rights to Equality Under Article II

Discrimination against Women, 39th Sess., Aug. 6, 2007, Communication No. 6/2005, *Yildirim v. Austria* (2007); *Velásquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 (July 29, 1988); *Pueblo Bello Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 120 (Jan. 31, 2006); *Ximenes Lopes v. Brazil*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶¶ 124-25 (July 4, 2006); *Mapiripán Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 232 (Sep. 15, 2005); *Sawhoyamaya Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 153 (Mar. 29, 2006); Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 140 (Sept. 17, 2003); *Maria da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am Comm'n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. at 704, ¶¶ 55-56 (2000) ("The failure to prosecute and convict the perpetrator under these circumstances is an indication that the State condones the violence suffered by Maria da Penha. . . . Given the fact that the violence suffered by Maria da Penha is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case involves not only failure to fulfill the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices."); *Campo Algodonero v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009); *Osman v. United Kingdom*, App. No. 87/1997/871/1083 (Eur. Ct. H.R. Oct. 28, 1998), <http://hudoc.echr.coe.int/eng?i=001-58257>; *Opuz v. Turkey*, App. No. 33401/02 (Eur. Ct. H.R. June 9, 2009), <http://hudoc.echr.coe.int/fre?i=003-2759276-3020932>. The principles of this state obligation are also mirrored in the International Covenant on Civil and Political Rights (ICCPR) and other major human rights treaties and bodies. See G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 2(1) (Dec. 19, 1966); Human Rights Council Res. 14/12, U.N. Doc. A/HRC/RES/14/12 (June 30, 2010); G.A. Res. 67/144 (Feb. 27, 2013); Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem do Para," June 9, 1994, 33 I.L.M. 1545; Council of Europe, Convention on Preventing and Combating Violence Against Women and Domestic Violence art. 5, May 11, 2011, E.T.S. No. 210; Rep. of the Comm. on the Elimination of Discrimination against Women, 11th Sess., U.N. Doc. A/47/38, General Recommendation No. 19 (Jan. 20-30, 1992); see also Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

⁵⁵⁸ See generally Rashida Manjoo, *State Responsibility to act with Due Diligence in the Elimination of Violence against Women*, Int'l H.R. L. Rev. 2, 240-265 (2013); Katja Samuel, *The Legal Character of Due Diligence: Standards, Obligations, or Both?*, 1 Central Asian Yearbook of Int'l Law (2018); Carin Benninger-Budel, *Due Diligence and Its Application to Protect Women from Violence* (2008); John Morrison & David Vermijs, *The "State of Play" of Human Rights Due Diligence*, Inst. for Hum. Rts. and Bus. (2011), https://www.ihrb.org/pdf/The_State_of_Play_of_Human_Rights_Due_Diligence.pdf; U.N., *The Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises*, A/73/163 (2018), <https://undocs.org/Home/Mobile?FinalSymbol=A%2F73%2F163&Language=E&DeviceType=Desktop>. See, e.g., Human Rights Council Res. 14/12 U.N. Doc. A/HRC/14/L.9/Rev.1 (Jun. 16, 2010) (adopted without a vote); G.A. A/RES/64/137, (Feb. 11, 2010) (adopted without a vote); G.A. Res. 48/104 A/RES/48/104 (Feb. 23, 1994) (adopted without a vote). See also, U.N. GAOR, 58th Sess., U.N. Doc. A/Res/58/147 (Feb. 19, 2004) (adopted without a vote).

1. The United States must protect petitioners and other U.S. domestic workers rights to substantive equality and freedom from discrimination.

All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.”⁵⁵⁹ This right of equality and non-discrimination is a “fundamental principle of the inter-American system of human rights,”⁵⁶⁰ which serves as the “backbone of the universal and regional systems for the protection of human rights” broadly.⁵⁶¹ The principle of non-discrimination “permeates the guarantee of all other rights and freedoms under domestic and international law.”⁵⁶²

The right to equality and non-discrimination has two necessary components: formal and substantive equality. First, formal equality prohibits arbitrary differentiated treatment in law or policy.⁵⁶³ Thus, states have an obligation to ensure equality before the law and to refrain from “arbitrary differentiated treatment—in the understanding that differentiated treatment encompasses all distinction, exclusion, restriction, or preference.”⁵⁶⁴ While “substantive provisions of the law need not be the same for everyone,” differences that exist in the law must be based on “reasonable differentiations between individuals or groups of individuals.”⁵⁶⁵ Distinctions are only permissible where the state has an “objective and reasonable justification,” that furthers a “legitimate objective,” where the “means are reasonable and proportionate to the

⁵⁵⁹ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX (1948), O.A.S. Official Rec., OEA/Ser.L.V/II.23, Doc. 21, Rev. 6 at art. XVIII (1998).

⁵⁶⁰ *Lenahan*, *supra* note 556 (citing Inter-Am. Comm’n H.R. Report 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, ¶ 163); Inter-Am. Comm’n H.R. Report 67/06, Case 12.476, *Oscar Elias Bicet et al.* (Cuba), October 21, 2006, ¶ 228; Inter-Am. Comm’n H.R., *Report on Terrorism and Human Rights*, Doc. OEA/Ser.L.V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, ¶ 335.

⁵⁶¹ *Id.* (citing the Int’l Covenant on Civil and Political Rights (Articles 2 and 26); Int’l Covenant on Economic, Social and Cultural Rights (Articles 2.2 and 3); European Convention on Human Rights (Article 14); African Charter on Human and People’s Rights).

⁵⁶² *Maya Indigenous Community* (Belize), *supra* note 560.

⁵⁶³ See Inter-Am. Comm’n H.R., Compendium on Equality and Discrimination, O.A.S. Official Rec., OEA/Ser.L/V/II.171. Doc. 31 ¶ 7 (2019).

⁵⁶⁴ *Id.*

⁵⁶⁵ Inter-Am. Comm’n H.R., Report 57/96, Case 11.139, *William Andrews* (United States), December 6, 1996, ¶ 173.

end sought.”⁵⁶⁶ Distinctions are never permissible where their application has a discriminatory impact.⁵⁶⁷

Second, States have an obligation to promote material, real, or substantive equality.⁵⁶⁸ This more robust component of equality requires States to create the conditions of real equality for “groups that have been historically excluded and who have a higher risk of being discriminated.”⁵⁶⁹ Formal equality may not be enough to ensure the equality of marginalized groups, and laws may have a discriminatory impact “even when their formulation or wording appears neutral, or they apply without textual distinctions.”⁵⁷⁰ Therefore, the circumstances of a disadvantaged group “might necessitate a difference in treatment because equal treatment could have the effect of limiting or encumbering their access to some service or good or the exercise of a right.”⁵⁷¹ Accordingly, the State has an obligation to take affirmative steps to level the playing field.⁵⁷² This obligation “requires a State to craft preventive policies, especially with regard to

⁵⁶⁶ Inter-Am. Comm’n H.R. Report 50/16, Case 12.834, *Undocumented Workers* (United States), November 30, 2016, ¶ 74. The Inter-American Court has provided that “there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review.” I/A Court. H.R., *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Advisory Opinion OC-4/84 of January 19, 1984 ¶ 57

⁵⁶⁷ *Lenahan*, *supra* note 556, ¶ 109.

⁵⁶⁸ Inter-Am. Comm’n H.R., *Access to Justice for Women Victims of Violence in the Americas*. OEA/Ser.L/V/II. Doc. 68. January 20, 2007, ¶ 99. *See also* Inter-Am. Comm’n H.R., *Compendium on Equality and Discrimination*, *supra* note 563 ¶ 38.

⁵⁶⁹ Inter-Am. Comm’n H.R., Merit Report 81/13, Case 12.743, *Homero Flor Freire* (Ecuador.) November 4, 2013, ¶ 92. *See also* *Compendium on Equality and Discrimination*, *supra* note 563 ¶ 38.

⁵⁷⁰ Inter-Am. Comm’n H.R., Merits Report No. 5/14. Case 12.841, *Ángel Alberto Duque* (Colombia), April 2, 2014, ¶ 61; Inter-Am. Comm’n H.R., *Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II. Doc. 208/17 (2017) ¶ 124; Inter-Am. Comm’n H.R., *The Road to Substantive Democracy: Women’s Political Participation in the Americas*, OEA/Ser.L/V/II. Doc. 79 ¶ 14 (2011).

⁵⁷¹ *Access to Justice for Women*, *supra* note 568 ¶¶ 89-99; Inter-Am. Comm’n H.R., *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc. 30/14 (2014) ¶ 137; Inter-Am. Comm’n H.R., *Report on Poverty and Human Rights in the Americas*, OEA/Ser.L/V/II.164 Doc. 147 (2017) ¶ 160; Inter-Am. Comm’n H.R., *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69 (2010) ¶ 70.

⁵⁷² Inter-Am. Comm’n H.R., Merits Report No. 4/16, Case 12.690, *V.R.P y V.P.C* (Nicaragua), April 13, 2016 ¶ 130; *See also* *Compendium on Equality and Discrimination*, *supra* note 563 ¶ 37.

widespread discriminatory practices or structurally discriminatory situations, even when those practices and situations are attributable to private persons.”⁵⁷³

a. Petitioners and Other U.S. Domestic Workers Embody the Characteristics of Vulnerable Groups Requiring Heightened Measures of Protection.

The Commission has identified particular groups as likely to suffer from discriminatory treatment because of a specific condition or situation of “historical discrimination,” including women, migrants, and persons impacted by racial discrimination.⁵⁷⁴ Most U.S. domestic workers embody most or all of these vulnerable groups: 90 percent are women, over half are people of color, and over a third were born outside of the United States.⁵⁷⁵ As such, U.S. domestic workers personify a number of historically marginalized identities that render them susceptible to multiple layers of discrimination.⁵⁷⁶

First, Petitioners and the majority of U.S. domestic workers are vulnerable to the worst forms of discrimination, violence and abuse targeting women because of their gender.⁵⁷⁷ In *Jessica Lenahan (Gonzales) v. United States*, the Commission recognized gender-based violence as “one of the most extreme and pervasive forms of discrimination, severely impairing and

⁵⁷³ *Id.* Compendium on Equality ¶ 71.

⁵⁷⁴ *Access to Justice for Women*, *supra* note 568 ¶¶ 93,118; Inter-Am. Comm’n H.R., *Guidelines for Preparation of Progress Indicators for Economic, Social, and Cultural Rights*, OEA/Ser.L/V/II.132 Doc. 14 (2008) ¶ 55. Inter-Am. Comm’n H.R., *Strategic Plan 2017-2021*, OEA/Ser.L/V/II.161, Doc. 27/17 (2017) at 31.

⁵⁷⁵ Sect. II(B)(3).

⁵⁷⁶ Sect. II(B)(2).

⁵⁷⁷ Bessell Decl. ¶ 6 (“Physical and sexual violence are common features in domestic servitude cases. More than 40% of federal civil domestic servitude cases (45 total) involved actual physical violence (27% or 29 cases) or threats of violence (15% or 16 cases.)”). See *Arma v. Prakoso*, 8:14-cv-03113 (D.Md.); *Butigan v. Al-Malki*, 1:13-cv-00514 (E.D.Va.); *Dumapias v. Haybyrne*, 1:20-cv-00297 (E.D.Va.); *Doe v. Amal*, 1:12-cv-01359 (E.D.Va.); *Abafita v. Aldukhan*, 1:16-cv-06072 (S.D.N.Y.); *Doe v. Khobragade*, 1:18-cv-11134 (S.D.N.Y.); *Doe v. Penzato*, 3:10-cv-05154 (N.D.Cal.); *Elat v. Ngoubene*, 8:11-cv-2931 (D.Md.); *Gurung v. Malhotra*, 1:10-cv-05086 (S.D.N.Y.); *Lagasan v. Al-Ghasel*, 1:14-cv-01035 (E.D.Va.); *Laamime v. Abouzaid*, 1:13-cv-00793 (E.D.Va.); *Mouloki v. Epee*, 1:14-cv-05532 (N.D.Ill.); *Oluoch v. Orina*, 1:14-cv-421 (S.D.N.Y.) (prev: 11-cv-3117 (S.D.N.Y.)); *Ouedraogo v. Bonkougou*, 1:15-cv-01345 (S.D.N.Y.); *Pattaiso v. Alahmad*, 1:14-cv-00041 (M.D.Pa.); *Waru v. Madhvani*, 1:05-cv-00662 (D.D.C.).

nullifying the enforcement of women’s rights.”⁵⁷⁸ States have an obligation to protect women from violence due to their gender, including when such violence is perpetrated directly by private actors.⁵⁷⁹ Certain groups of women are particularly vulnerable to violence because of additional characteristics, such as their race and ethnic origin.⁵⁸⁰ In these circumstances, States have a heightened duty of due diligence to implement special measures of care, prevention and guarantee.⁵⁸¹

The Commission, through its adoption of various thematic and country reports and its establishment of the Special Rapporteurship on the Rights of Women in 1994,⁵⁸² has demonstrated its commitment to developing “policies and practices to combat violence against women.”⁵⁸³ Moreover, in its 2015 annual report addressing gender equality and women’s rights, the Commission emphasized the nexus between discrimination and violence against women, the necessity for States to act with due diligence to “prevent, investigate, and punish swiftly and without delay all acts of violence against women” by both state and non-state actors, and States’ affirmative obligation “to implement actions to eradicate discrimination against women and the stereotyped patterns of behavior that promote their treatment as inferior in their societies.”⁵⁸⁴

⁵⁷⁸ *Lenahan, supra* note 556 ¶ 110.

⁵⁷⁹ *Id.* at ¶ 111.

⁵⁸⁰ *Id.* at ¶ 113.

⁵⁸¹ Gonzales Decl. ¶ 164 (“the State had a reinforced duty of due diligence to protect them from harm and from deprivations of their life due to their age and sex, with special measures of care, prevention and guarantee.”).

⁵⁸² Inter-Am. Comm’n H.R. *Special Rapporteurship on the Rights of Women: Background and Mandate*, <http://www.cidh.oas.org/women/mandate.htm> (last visited Jan. 16, 2021).

⁵⁸³ *See, e.g.*, III Summit of the Ams., *Plan of Action* (Apr. 20-22, 2001), <http://www.summit-americas.org/Documents%20for%20Quebec%20City%20Summit/planofaction-template-eng.htm>. The 2019 annual report clearly states that the Commission has “identified women, girls, and adolescents as persons at risk for discrimination in the region, and consequently, has prioritized this line of work to promote and guarantee their fundamental human rights.” Inter-Am. Comm’n H.R., *Violencia y discriminación contra mujeres, niñas y adolescentes: Buenas prácticas y desafíos en América Latina y en el Caribe* ¶ 3, <http://www.oas.org/es/cidh/informes/pdfs/ViolenciaMujeresNNA.pdf>.

⁵⁸⁴ Inter-Am. Comm’n H.R., *Legal Standards Related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application*, OEA/Ser.L/V/II. 143, Doc. 60 (2011) at 19, <http://www.oas.org/en/iachr/reports/pdfs/LegalStandards.pdf>.

These principles and obligations are guaranteed in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará).⁵⁸⁵ The Convention, which reflects a “hemispheric consensus” on the grave problem of violence against women,⁵⁸⁶ expresses the commitment of States to address the issue, including through applying “due diligence to prevent, investigate, and impose penalties for violence against women,” adopting legal measures to reduce violence against women, and ensuring “fair and effective legal procedures” for victims.⁵⁸⁷

Petitioners and U.S. domestic workers are also subject to discrimination in the form of unequal employment conditions due to their gender.⁵⁸⁸ Generally, women are paid less for equal work, are provided with fewer opportunities for advancement, perform significant amounts of unpaid labor, and are segregated into lower pay and lower value occupations.⁵⁸⁹ Domestic workers, most of whom are women, are particularly vulnerable to exploitative conditions of work because they perform work that has historically been, and continues to be, undervalued.⁵⁹⁰ The unequal conditions of work, exploitation, and workplace harassment that domestic workers face is a direct result of their status as women fulfilling a role that has been traditionally gendered and therefore unrecognized.⁵⁹¹

⁵⁸⁵ Organization of American States: Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”), June 9, 1994, 33 I.L.M. 1535 [hereinafter Convention of Belém do Pará]. Because of the broad adoption of the Convention of Belém do Pará, there is a strong evidence that the basic principles of the Convention reflect general principles of international law. See OAS Department of International Law, General Information of the Treaty: A-61, <https://www.oas.org/juridico/english/sigs/a-61.html> (last visited Feb. 12, 2021).

⁵⁸⁶ See Inter-Am. Comm’n H.R., *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44 (2003) ¶ 103; Inter-Am. Comm’n H.R., *da Penha Fernandes v. Brazil*, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111, Doc. 20 rev. (2000) ¶ 51.

⁵⁸⁷ Convention of Belém do Pará, *supra* note 585, at art. 7.

⁵⁸⁸ Sect. II(C)(1).

⁵⁸⁹ *Id.*

⁵⁹⁰ *Id.*

⁵⁹¹ *Id.*

Second, as many domestic workers are migrants, Petitioners and many domestic workers are subject to the worst forms of discrimination against migrants.⁵⁹² Foreign nationals, regardless of immigration status, are protected under Article II.⁵⁹³ The State and its individuals are not obligated to offer employment for undocumented workers, but once an employment relationship is established, “the Commission considers that the protections accorded by law to workers, with the range of rights and obligations covered, must apply to all workers without discrimination, including on the basis of documented or undocumented status.”⁵⁹⁴

Third, many domestic workers in the U.S. are women of color, and as such they are subjected to discrimination on the basis of race and ethnicity.⁵⁹⁵ In the United States, Black and Hispanic workers are paid less than their white non-Hispanic counterparts; they report widespread discrimination and harassment, and the exclusions of the profession as a whole are tied up with a legacy of slavery and colonialism.⁵⁹⁶ The international community, including the Commission, unanimously condemns racial discrimination, which “infringes the equality and dignity inherent in all human beings.”⁵⁹⁷ Institutional racism is deeply rooted in State bodies and institutions.⁵⁹⁸ It is a holdover from the history of slavery and a result of State failures to acknowledge and sufficiently address this form of discrimination, which has largely been

⁵⁹² Sect. II(C)(2).

⁵⁹³ *Undocumented Workers v. United States Of America*, *supra* note 210 ¶ 74.

⁵⁹⁴ *Id.* ¶ 76.

⁵⁹⁵ Sect. II(C)(3).

⁵⁹⁶ *Id.*; *see also* Sect. II(B)(2) and II(B)(3).

⁵⁹⁷ Inter-Am. Comm’n H.R., Report No. 86/10, Case 12.649, Merit, *Community of Rio Negro of the Maya Achi People and its members* (Guatemala) (July 14, 2010) ¶ 352; Inter-Am. Comm’n H.R., Report. No. 174/10, Case No. 12.688, Merits, *Nadege Dorzema et al. (Guayubin Massacre)* (Dominican Republic) (Feb. 11, 2010), ¶ 195; Inter-Am. Comm’n H.R., Report No. 125/12, Case 12.354, Merits, *Kuna Indigenous People of Madungandi and Embera Indigenous People of Bayano and Their Members* (Panama) (Nov. 13, 2012) ¶ 286; *see also* 35 *East African Asians v. the United Kingdom* (European Commission), page 8 (“discrimination based on race could, in certain circumstances, of itself amount to ‘degrading treatment’”). *Cyprus v. Turkey* § 310 (Grand Chamber, EU) (“the discriminatory treatment attained a level of severity which amounted to degrading treatment”). Convention on the Elimination of Racism and Discrimination. American Declaration Art. II. African Charter Art. 2. European Convention Art. 14.

⁵⁹⁸ *Compendium on Equality and Discrimination*, *supra* note 563, at 93.

rendered invisible until recent years.⁵⁹⁹ States must “continuously reaffirm society’s condemnation of racism” by identifying and abolishing regulations that imply direct or indirect discrimination, as well as adopting laws that expressly and comprehensively punish racial discrimination.⁶⁰⁰

In short, domestic workers are vulnerable to discrimination on account of their gender, nationality, ethnicity and race. Each of these grounds, on its own, renders domestic workers extremely vulnerable to abuse and exploitation. But many U.S. domestic workers often manifest *multiple* marginalized identities, creating a state of heightened vulnerability. As has long been understood by scholars in the field, the interaction of multiple marginalized identities places certain groups not only at the outer margins of social protections, but often wholly excluded or even harmed by policy decisions neutral in character or aimed at remedying a social injustice targeting individuals with a particular vulnerable identity.⁶⁰¹ Thus, the United States has a heightened duty to protect all domestic workers from discrimination and ensure their substantive equality.

Finally, some domestic workers are rendered even more vulnerable because they are employed by diplomats, whom the United States exempts from accountability for unlawful actions in U.S. courts. This lack of accountability has created a climate of impunity whereby diplomats and other foreign workers know that they can exploit, abuse and discriminate against their domestic workers without facing meaningful consequences.⁶⁰² Domestic workers in this

⁵⁹⁹ Inter-Am. Comm’n H.R., *Situation of Human Rights in the Dominican*, OAS/Ser.L/V/II. Doc. 45/15. December 31, 2015.

⁶⁰⁰ Inter-Am. Comm’n H.R., *Situation of People of African Descent in the Americas*, OAS/Ser.L/V/II. Doc. 62 (2001) ¶ 202; Inter-Am. Comm’n H.R., Merits Report No. 26/09, Case 12.440, *Wallace de Almeida* (Brazil), (2009) ¶ 139.

⁶⁰¹ Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, Stan. L. Rev. 43, 1241 (1990).

⁶⁰² Sect. II(F).

position are not only deprived of relief for the abuse they have already suffered but, fearing further abuse and violence, they are also conditioned to acquiesce to their employers' demands and refrain from seeking justice. In this way, they are trapped in a position of forced submission and extreme vulnerability without recourse.

- b. The United States Has an Affirmative Obligation to Enact and Enforce Laws and Policies That Protects Petitioners and Other U.S. Domestic Workers' From Discrimination in the Workplace.

Article II requires the United States to create laws and policies that protect workers from discrimination.⁶⁰³ For non-discrimination and equal protection to exist in employment, the United States must ensure “the right of access to employment, especially for disadvantaged and marginalized individuals and groups,” and must avoid implementing any measure “that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups.”⁶⁰⁴ “It is vital that the States not only refrain from practicing discrimination and tolerating discrimination in the workplace, but that they also fulfill their obligation to create the conditions that will make it easier for women [and other marginalized groups] to enter and remain in the workforce.”⁶⁰⁵ “State[s] incur[] international responsibility when, faced with the existence of structural discrimination, [they] fail[] to adopt specific measures” to address the victimization of vulnerable individuals.⁶⁰⁶

⁶⁰³ See generally *Undocumented Workers*, *supra* note 210 ¶ 90.

⁶⁰⁴ Inter-Am. Comm'n H.R., *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143, Doc. 59 (2011) ¶ 96 (citing Committee on Economic, Social and Cultural Rights, General Comment 18: The Right to Work (Article 6 of the International Covenant on Economic, Social and Cultural Rights), 2005, ¶ 31).

⁶⁰⁵ *Id.* at ¶ 17.

⁶⁰⁶ Inter-Am. Comm'n H.R., *Case of Hacienda Brasil Verde Workers v. Brazil*, Judgment (Oct. 20, 2016) ¶ 338, https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_ing.pdf

This Commission, and other human rights bodies, has recognized the prevalence of workplace discrimination on the basis of gender,⁶⁰⁷ legal status,⁶⁰⁸ ethnicity,⁶⁰⁹ class and caste identities.⁶¹⁰ The U.N. Working Group on the discrimination against women and girls has recognized that heightened risks of wage theft, violence, harassment and abuse are a form of discrimination that specifically affect domestic workers.⁶¹¹ Workplace harassment against women, which “persist[s] at shocking levels,”⁶¹² and domestic workers in particular,⁶¹³ constitutes a form of sex-based discrimination. Equality in employment is “seriously impaired” when women are subjected to gender-specific violence, including remarks of a sexual nature and unwelcome sexual behavior and advances.⁶¹⁴ In light of the power imbalances inherent in certain female-dominated industries, including domestic work, the U.N. Committee on Economic, Social and Cultural Rights has recommended that States give particular attention to securing the right of domestic workers to organize and join work organizations.⁶¹⁵ Indeed, the ability to join

⁶⁰⁷ Crenshaw, *supra* note 601 ¶ 14 (“Women still encounter a number of entrenched obstacles in the labor market, such as the sexual division of labor, an unsatisfied demand for childcare services, occupational segregation, and others.”)

⁶⁰⁸ Compendium on Equality and Discrimination, *supra* note 563 ¶ 74 (“Afrodescendant persons and communities continue to encounter many obstacles. . . participating effectively in the formal labor market, having access to a decent job, and in general exercising their rights on an equal footing”).

⁶⁰⁹ See generally *Undocumented Workers*, *supra* note 210 ¶ 90 (finding the U.S.’s failure to extend certain legal protections to undocumented workers constituted a form of discrimination).

⁶¹⁰ U.N. Report on Women’s Human Rights in the Changing World of Work, U.N. Doc A/HRC/44/51 (Apr. 16, 2020) ¶ 30.

⁶¹¹ *Id.* at ¶ 30.

⁶¹² *Id.* at ¶ 15; Elyse Shaw, Ariane Hegewisch, & Cynthia Hess, *Sexual Harassment and Assault at Work: Understanding the Costs*, Inst. for Women’s Policy Research (October 2018), https://iwpr.org/wp-content/uploads/2020/09/IWPR-sexual-harassment-brief_FINAL.pdf.

⁶¹³ National Domestic Workers Alliance, <https://www.domesticworkers.org/timesup-sexual-harassment>.

⁶¹⁴ Committee on the Elimination of All Forms of Discrimination Against Women, *Views of the Committee on the Elimination of Discrimination against Women under article 7 (3) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixty-first session) concerning Communication No. 45/201*, ¶ 3.3, U.N. Doc. CEDAW/C/61/D/45/2012 (July 13, 2015).

⁶¹⁵ U.N. Committee on Economic, Social and Cultural Rights, *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 25, U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005).

work associations is a fundamental right according to the Commission,⁶¹⁶ Inter-American Court⁶¹⁷, and the Protocol of San Salvador.⁶¹⁸

Accordingly, the United States has an obligation to “[a]dopt legislative measures to make sexual harassment a punishable offense in the criminal, civil and administrative jurisdictions, and support these measures with the regulations and training that law enforcement personnel require.”⁶¹⁹ And laws that do not protect women from work-related hazards can amount to discrimination against women.⁶²⁰ Therefore, the United States must “take steps to offer work-related protections prescribed by law to . . . domestic workers,” and those groups of women who are overrepresented in domestic work, including Afro-descendant women, migrant women, indigenous women, and women working in the informal sector.⁶²¹

- c. The United States Failed to Enact and Enforce a Law and Policy Framework that Prevents, Protects and Remedies Discrimination Against Domestic Workers on the Basis of Their Gender, Race, Ethnicity and Immigration Status.

(i) The United States Has Failed to Guarantee Equal Protection of the Law to Petitioners and All Domestic Workers.

The United States has failed to guarantee equal protection of the law to U.S. domestic workers—most of whom are women of color, and many of whom are of immigrant backgrounds—by refusing to extend to them the basic labor protections that it extends to other

⁶¹⁶ Inter-Am. Comm’n H.R., Scope of State Obligations Under the Inter-American System with Regard to the Guarantee of Trade Union Freedom, Its Relationship to Other Rights, and Its Application From a Gender Perspective (Jul, 31, 2019) ¶ 2, https://www.corteidh.or.cr/docs/solicitudoc/soc_3_2019_ing.pdf.

⁶¹⁷ *Id.* at ¶ 19; Inter-Am. Comm’n H.R., *Case of Lagos del Campo v. Peru*, Preliminary objections, merits, reparations and costs, judgment (ser. C) No. 340, ¶ 157 (Aug. 31, 2017).

⁶¹⁸ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” art. 8, Nov. 17, 1988, O.A.S.T.S. No. 69.

⁶¹⁹ *The Work, Education*, *supra* note 604 ¶ 169.

⁶²⁰ *Id.* at ¶ 169.

⁶²¹ *Id.* at ¶ 169.

workers.⁶²² Under the NLRA, domestic workers are explicitly denied the right to unionize and collectively bargain.⁶²³ They are also largely deprived of legal protections that afford other workers fair labor standards and basic occupational health and safety under the FLSA and OSHA, respectively.⁶²⁴ Additionally, they are excluded de facto from Title VII, ADA, EDEA, and FMLA protections.⁶²⁵ The justifications provided for their exclusions are neither objective nor reasonable and do not further a legitimate state goal. They are, instead, rooted in discriminatory legacies of exclusion of domestic work from much-needed government protection.⁶²⁶

Domestic workers have been excluded from the protection of the NLRA since the 1930s.⁶²⁷ This exclusion is rooted in a legacy of racism and slavery.⁶²⁸ When the United States permitted other workers with the right to unionize in 1935 to “affirmatively alter the power disparities between workers and employers to promote the free flow of commerce,” domestic and agricultural workers were not.⁶²⁹ The subtext was that workers of color did not deserve equal treatment under the law.⁶³⁰ The continued failure of the United States to grant domestic workers the ability to freely and legally unionize has no objective or reasonable justification. It simply serves to deprive domestic workers—who are mostly women of color—of the right to be equal before the law and realize substantive equality.⁶³¹

⁶²² Sect. II(D).

⁶²³ Sect. II(D)(a)(1).

⁶²⁴ Sect. II(D)(a)(2) and Section II(D)(a)(3).

⁶²⁵ Sect. II(D)(b).

⁶²⁶ Sect. II(B)(3)(a), *supra* note 85.

⁶²⁷ Sect. II(B)(3)(a); *supra* note 88.

⁶²⁸ Sect. II(B)(3)(a).

⁶²⁹ Sect. II(B)(3)(a); *see also* Perea, *Echoes*, *supra* note 91; Jonathan Fox Harris, Note, *Worker Unity and the Law: A Comparative Analysis of the National Labor Relations Act and the Fair Labor Standards Act, and the Hope for the NLRA's Future*, 13 N.Y. City L. Rev. 107, 110 (2009).

⁶³⁰ *Id.*; *See* Perea, *Echoes*, *supra* note 91, at 116-17 (citing *The Fair Labor Standards Act of 1937: Joint Hearings on S. 2475 and H.R. 7200 Before the S. Comm. on Education & Labor and the H. Comm. on Labor*, 75th Cong. 571, 573-74 (1937) (statement of John P. Davis, National Negro Congress)).

⁶³¹ *Id.*

Similarly, the United States has historically excluded domestic workers from the FLSA. To this day, key provisions of the FLSA do not apply to many domestic workers.⁶³² Live-in domestic workers are exempted from overtime pay entirely.⁶³³ As for live-out workers, if a worker is primarily providing care and assistance to an elderly person or person with an illness or disability, described by regulations as the labor of fellowship⁶³⁴ or protection⁶³⁵, the employer need not pay minimum wage, overtime pay, or keep any records of the hours worked.⁶³⁶ Live-in workers providing such “companionship services” must be paid minimum wage but are not entitled to overtime pay or recordkeeping.⁶³⁷ The continued exclusion from basic labor protections to individuals providing companionship services “delegitimize[s]” their work.⁶³⁸ Finally, many domestic workers are misclassified as independent contractors and excluded from FLSA protections by their employers.⁶³⁹ The United States’ failure to extend protection to many domestic workers under the FLSA is neither objective nor reasonable because it stems from a racist history and continues to perpetuate the devaluation of a gendered profession.

In addition, domestic workers as a class are excluded from OSHA protections, which guarantee most private-sector workers safe and healthful working conditions.⁶⁴⁰ In the past, the government has indicated a willingness to extend OSHA protections to workers, only to retract.

⁶³² Sect. II(D)(a)(2).

⁶³³ *Id.*; *Domestic Service Final*, *supra* note 306.

⁶³⁴ Sect. II(D)(a)(2). Defined as engaging the person “in social, physical, and mental activities, such as conversation, reading, games, crafts, accompanying the person on walks, on errands, to appointments, or to social events.” *Fact Sheet # 79A: Companionship Services Under the Fair Labor Standards Act (FLSA)*, U.S. Dep’t Labor, <https://www.dol.gov/agencies/whd/fact-sheets/79a-flsa-companionship> (last visited Mar. 11, 2021).

⁶³⁵ Sect. II(D)(a)(2). Defined as being “present with the person in their home, or to accompany the person when outside of the home, and to monitor the person’s safety and well-being.” *Fact Sheet # 79A*, *supra* note 634.

⁶³⁶ *Id.* *Fact Sheet # 79A*, *supra* note 634.

⁶³⁷ *Id.*

⁶³⁸ Samantha Malone, Note, *Domestic Work in the United States: Gender, Immigration, and Personhood*, 10 *Geo. J.L. & Mod. Critical Race Persp.* 65, 84 (2018).

⁶³⁹ Sect. II (D)(a)(2). Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60,453 (Oct. 1, 2013) (to be codified at 29 C.F.R. pt. 552).

⁶⁴⁰ Sect. II(D)(a)(3)

At the federal level, in 1997, the Occupational Safety and Health Administration articulated in a letter that OSHA applied to work performed in employers' homes and that employers would be responsible for complying with the agency's health and safety standards in home offices for "preventing or correcting hazards to which the employee may be exposed in the course of her work."⁶⁴¹ The letter appeared to signal that domestic workers would be extended OSHA protections, as privacy concerns of the home could apparently be overcome when a legitimate regulatory requirement existed.⁶⁴² Instead, the Secretary of Labor quickly announced that the letter would be "withdrawn," citing the potential for unforeseen consequences and mass confusion.⁶⁴³ Recently, in California, Governor Newsom walked back his position that domestic service employees need workplace protections under Cal/OSHA for similar reasons.⁶⁴⁴

However, the justifications cited in both cases were neither objective nor reasonable. First, simply because a regulation is difficult to comply with does not justify leaving an entire sector unregulated. Second, the privacy reasoning overlooks the fact that one person's home—the employer—is another person's workplace—that of the domestic worker. The existence of privacy interests for some individuals does not justify disregarding the extreme breaches in workers' health and safety, especially when the workers are an already marginalized population vulnerable to abuse. Moreover, although enforcement of OSHA may be more difficult in the

⁶⁴¹ Randolph J. May, *Ruling Without Real Rules-or how to Influence Private Conduct Without Really Binding*, 32 Admin. L.J. 1303, 1304 (2001).

⁶⁴² Adam J. Hiller and Leah H. Saxtein, *Falling Through the Cracks: The Plight of Domestic Workers and Their Continued Search for Legislative Protection*, 27 Hofstra Lab. & Emp. L.J. 233, 244-245 (2009).

⁶⁴³ May, *supra* note 641, at 1306.

⁶⁴⁴ According to Newsom, extending such obligations to employers would extend these obligations to persons "who lack the expertise to comply with OSHA obligations, such as the requirements to establish, implement, and maintain an effective written Injury and Illness Prevention Program (IIPP), and to inform Cal/OSHA of injuries or illnesses" and would create an "unworkable situation that would raise significant policy concerns around Cal/OSHA conducting investigations in private residences." Jessica Pliner, *United States: Domestic Workers in California Will Not Receive OSHA Protections*, Mondaq (Oct. 16, 2020), <https://www.mondaq.com/unitedstates/health-safety/994970/domestic-workers-in-california-will-not-receive-osh-protections> (last visited Mar. 11, 2021).

private setting, OSHA already “regulates the working conditions of other people who enter private homes on a regular basis.”⁶⁴⁵ If an individual hires a person to paint her house or build an addition onto it, assuming that the employer has some control over the job, she is subject to OSHA regulations even in her home.⁶⁴⁶ As such, the arguments put forth by those who justify excluding domestic workers from OSHA protections do not hold up to scrutiny.

Domestic workers are also excluded from most anti-discrimination protections under federal law.⁶⁴⁷ Title VII prohibits sex, national origin and race-based discrimination, the ADA prohibits disability discrimination, the ADEA prohibits age discrimination, and the INA prohibits discrimination on the basis of immigration status. Most domestic workers do not qualify for protection under these laws, as they work individually or with few coworkers and therefore fall under these laws’ ‘small business’ exemption.⁶⁴⁸ At the time of Title VII’s enactment, congressional debates primarily centered on the need to spare small firms from the otherwise “disproportionate burden of compliance” and to protect “personal” relationships that characterize these workplaces from unwarranted government interference.⁶⁴⁹ Presumably, this logic permeates the other exclusions. The United States’ failure to provide anti-discrimination protections to domestic workers exacerbates the vulnerabilities they already have as employees in an “inherently servile” profession.⁶⁵⁰ Indeed, Title VII provides a legal framework to combat violence against women in the workplace in the United States; however, domestic workers, especially live-in domestic workers, work in private homes with less than fourteen other co-

⁶⁴⁵ Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 Nw. U. L. Rev. 1, 77 (1996).

⁶⁴⁶ *Id.* at 77.

⁶⁴⁷ Sect. II(D)(b).

⁶⁴⁸ *Id.*

⁶⁴⁹ Richard Carlson, *The Small Firm Exemption and the Single Employer Doctrine in Employment Discrimination Law*, 80 St. John’s L. Rev. 1197, 1203-4 (2006), <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1216&context=lawreview>.

⁶⁵⁰ Sect. II(B)(1).

workers. This exemption in the federal legal system, in effect, leaves domestic workers unprotected from violence and sexual harassment by their employers.

Finally, domestic workers are also excluded from the FMLA, which grants employees the ability to take unpaid job-protected leave to take care of themselves or their loved ones. Unpaid maternity leave and newborn child-care are among the rights protected by the FMLA and from which domestic workers are excluded.⁶⁵¹ Such exclusion directly contravenes the State's obligation, according to this Commission, to ensure that the "umbrella of maternity protections is as wide as practicable, encompassing all groups of working women—including those working in the informal sector and women working as domestics—while paying particular attention to the needs of those groups of women whose human rights are especially susceptible to violation, such as girls, Afro-descendant women and indigenous women."⁶⁵² As such, the Commission should recognize the United States' exclusion of domestic workers from the FMLA as neither objective nor reasonable and in violation of Article II of the American Declaration.

Many of the above exclusions in U.S. law rest on the notion that private employers need to be protected from government overreach and that increased regulations will impose high economic burdens on businesses that cannot afford those burdens. The potentially legitimate reasons to afford more latitude to private employers in employment regulations must be weighed against the protections that would be reasonable for domestic workers to forgo. Domestic workers are in a far more vulnerable position than their employers; as such, the absence of labor protections means domestic workers are highly vulnerable to debilitating workplace injuries; are free to be treated in a discriminatory and degrading way on the basis of a number of

⁶⁵¹ Sect. II (D)(b)(4).

⁶⁵² The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.143, doc. 59 rev. ¶ 152 (2011), <http://www.cidh.oas.org/pdf%20files/womendesc2011.pdf>.

vulnerabilities such as sex, national origin, age and disability status; are not entitled to unpaid time off when they or a loved one are in need of care; and are denied fair and livable wages.⁶⁵³ The harms that domestic workers face from the lack of protections far outweigh the burdens on convenience or on the financial savings of their employers.

Finally, the United States has rendered a subset of domestic workers unable to assert any rights or entitlements – those employed by diplomats. Through its rigid interpretation and implementation of diplomatic immunity, the United States has effectively deprived such workers of any meaningful access to redress for the abuse, violence and discrimination they have suffered at the hands of their employers.⁶⁵⁴ Through this *de facto* exclusion from the basic right to access justice, the United States has deprived domestic workers of diplomats and other foreign officials of equal protection under the laws.

(ii) The United States Has Failed to Take Affirmative Steps to Guarantee Substantive Equality for Domestic Workers.

In addition to depriving domestic workers of equality before the law through a daunting list of legislative exclusions, the United States has failed to take adequate affirmative steps to ensure domestic workers' free and actual enjoyment of their rights without interference by private actors. Thus far, the United States has made little effort to enact a national legal

⁶⁵³ Sect. II(D). The minimum wage, designed to provide “more than a bare sustenance level, is often not enough to meet decent living standards. The hourly rate has not been adjusted for increases to the cost of living since the late 1960s. It is difficult enough for individuals, and even more difficult for families, to survive earning a minimum wage. Andrew Bloomenthal, *Can a Family Survive on the U.S. Minimum Wage?*, Investopedia (March 3, 2021), <https://www.investopedia.com/articles/personal-finance/022615/can-family-survive-us-minimum-wage.asp>. For a single-mother with two children earning the federal minimum wage, for example, she would need to work 139 per week, or almost 20 hours per day, to earn a living wage.¹⁸ Domestic workers are excluded from the protection of earning even this basic, and arguably deficiently low, wage. Cary Nadeau & Amy K. Glasmeier, *Minimum Wage: Can an Individual or a Family Live on It?*, Living Wage Calculator (January 6, 2016), <https://livingwage.mit.edu/articles/15-minimum-wage-can-an-individual-or-a-family-live-on-it>.

⁶⁵⁴ Sect. II(F)(a).

framework that ensures conditions of substantive equality in the workplace, as well as adequate protection against abuse and exploitation for domestic workers. Despite a long history of well-documented exploitation and abuse, U.S. senators and representatives have only recently recognized that legislative reform may be needed to protect domestic workers. In July 2019, Former U.S. Senator (now Vice President) Kamala Harris and U.S. Representative Pramila Jayapal introduced the Domestic Workers Bill of Rights, the first national legislation protecting the rights of domestic workers in the United States.⁶⁵⁵ This bill would provide domestic workers overtime pay, guarantees “safe and healthy working conditions, and freedom from workplace harassment and discrimination.”⁶⁵⁶ It also would create rights such as written contracts, healthcare and retirement benefits, fair scheduling, and more.⁶⁵⁷ Additionally, the bill would address enforcement issues by guaranteeing ““know-your-rights information, mechanisms to prevent retaliation, a confidential hotline and emergency access tool to address harassment, affordability for Medicaid consumers, and a worker and employer-led federal taskforce.”⁶⁵⁸ While innovative and groundbreaking, the Bill is still in the introduction stage and has yet to be passed. After its introduction in July 2019, the Senate read it twice and referred it to the Committee on Health, Education, Labor, and Pensions.⁶⁵⁹ No further action has ensued at the federal level.

A few states within the United States (nine of fifty) have passed state-level Domestic Workers Bills of Rights in an effort to offset the impact of the absence of national protections for domestic workers.⁶⁶⁰ This effort, while welcome, impacts a limited number of domestic workers

⁶⁵⁵ Press Release, *Harris*, *supra* note 4.

⁶⁵⁶ *Id.*

⁶⁵⁷ *Id.*

⁶⁵⁸ *Id.*

⁶⁵⁹ Domestic Workers Bill of Rights Act, S.2112, 116th Cong. (2019), *All Actions*, <https://www.congress.gov/bill/116th-congress/senate-bill/2112/all-actions> (last visited Mar. 10, 2021).

⁶⁶⁰ Wolfe et al., *supra* note 82.

in the U.S. and has not even placed these workers on equal footing with other workers in the state.⁶⁶¹ Such a state by state approach to regulation of domestic labor provides partial, piecemeal and geographically limited protections to these workers, an approach that stands in stark contrast to the sweeping federal regulation of nearly all other workplaces intended to protect the American worker and set basic living standards and expectations of quality of life for American families. Adequate affirmative measures would require enacting a legal and policy framework with national reach which does the same for domestic workers laboring in the U.S., protecting them not only from standard labor violations but also from the types of workplace exploitation, abuse, and discrimination that are endemic in this sector.⁶⁶²

The United States has failed to take other affirmative steps to address status discrimination in the workplace that would help ensure equality and non-discrimination for domestic workers who are overwhelmingly women, migrants and people of color.⁶⁶³ It has failed to adopt a policy approach for immigrant labor that remedies the “second class” status these workers occupy in the workplace.⁶⁶⁴ It has failed to address racially motivated discrimination in society generally and in the workplace in particular.⁶⁶⁵ It has failed to address gender discrimination and sexual harassment in the workplace, as has been recently illustrated by the #MeToo movement and the many reports of workplace sexual abuse that came to light.⁶⁶⁶ It has also failed to promote respect and acknowledgment of labor traditionally associated with women and so systematically undervalued.⁶⁶⁷ Among the many reasonable steps the U.S. could take to promote women’s equality would be to enshrine a provision in its Constitution guaranteeing

⁶⁶¹ Sect. II(E)(a).

⁶⁶² Wolfe et al., *supra* note 82.

⁶⁶³ Sect. II(D).

⁶⁶⁴ *Id.*

⁶⁶⁵ Sect. II(C)(3).

⁶⁶⁶ Sect II(C)(1); *Statistics, me too*, <https://metoomvmt.org/learn-more/statistics/>.

⁶⁶⁷ Sect. II(C)(1).

gender equality, which would ensure that discrimination on the basis of gender receives an adequate response from the legislature and is treated with the highest level of scrutiny by its courts.⁶⁶⁸ Despite ongoing attempts by advocates to push for an Equal Rights Amendment, the United States has so far chosen to exclude gender equality from its Constitution,⁶⁶⁹ signaling that it does not prioritize protecting women against discrimination through affirmative measures and making more difficult the enactment of such measures.

The United States has also failed to bind itself to international treaties that would better ensure protections for domestic workers. It has refrained from ratifying key regional and international instruments—including the Inter-American Convention on Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (including its Optional Protocol), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (including its individual complaint procedure), and the individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination—that embody the international consensus on non-discrimination and equality. These instruments not only enshrine important gender- and nationality-based protections, including those related to labor, but they also incorporate enforcement mechanisms that are instrumental for ensuring the actual implementation of standards.⁶⁷⁰ The fact that the United States is one of a few countries in the world that has failed to ratify these instruments is

⁶⁶⁸ Courts have adopted an “intermediate scrutiny” analysis when determining cases that allege discrimination on the basis of gender or sex. Meanwhile, discrimination based on other suspect categories such as race receives a higher level of scrutiny, “strict scrutiny.” Systematically applying a lower level of scrutiny to gender discrimination claims makes it clear that the United States legal system conceptualizes equality very differently for those affected by race discrimination rather than gender discrimination. *See* Section II at II(B)(1)(a)(1).

⁶⁶⁹ Robin Bleiweis, *The Equal Rights Amendment: What You Need to Know*, Ctr. Am. Progress (Jan. 29, 2020), <https://www.americanprogress.org/issues/women/reports/2020/01/29/479917/equal-rights-amendment-need-know/>.

⁶⁷⁰ Sect. II(C)(1)(a)(2).

indicative of its lack of recognition for the need to guarantee substantive equality on the basis of gender, nationality, legal status, race and ethnicity.⁶⁷¹

Finally, the United States has failed to take reasonable affirmative measures to protect immigrant domestic workers employed by diplomats and other foreign officials under A-3 and G-5 visas. These workers suffer from additional discrimination due to their citizenship and the supra-legal status granted by the U.S. to their employers.⁶⁷² The United States has argued that it has taken “numerous steps to regulate the visa process” to protect their rights.⁶⁷³ However, none of the regulatory steps taken before⁶⁷⁴ or after⁶⁷⁵ their Petition was filed adequately or effectively protected Petitioners’ rights from being violated, as evidenced by ongoing reports of discrimination, exploitation and abuse of these workers.⁶⁷⁶ In particular, the United States has failed to establish an adequate mechanism of oversight and enforcement with national reach that ensures employers abide by the terms of their contracts with A-3 and G-5 domestic workers.⁶⁷⁷ Domestic workers employed by diplomats are entitled to the same rights under the American Declaration as other workers and should be effectively on equal footing in access to those rights. The United States has failed to enact a policy framework that recognizes this entitlement, instead continuing a pattern of inequality, discrimination and neglect of a vulnerable group of migrant women of color laboring within its borders.

⁶⁷¹ *Id.*

⁶⁷² Sect. II(F)(a)

⁶⁷³ Domestic Workers Employed by Diplomats, Petition No. P-1481-07, Response of the United States (May 4, 2016), at 46-47.

⁶⁷⁴ Petition, at 83-100. Sect. II(B)(3)(a).

⁶⁷⁵ Petitioner Response, at 21-22.; Sect. II(B)(3)(a).

⁶⁷⁶ Sect. II(A); Sect. II(B)(3); Sect. II(C); Sect. II (G)

⁶⁷⁷ Petitioners’ Response, at 21-30.; Sect. II(F)(b) , Mendoza Decl. ¶ 7, Aisah Decl. ¶ 8, Ajasi Decl. ¶ 7, Gonzales Paredes Decl. ¶ 7-9.

(iii) U.S. Domestic Workers Who Are Exploited, Abused, and Subjected to Unjust and Unequal Working Conditions by their Employers.

By failing to guarantee equality under the law and to take affirmative measures to protect U.S. domestic workers from discrimination, the United States has created conditions of inequality for domestic workers that has caused them extreme harm, from deprivations of rights in the workplace to severe exploitation and abuse.⁶⁷⁸ The United States has created a workplace for domestic workers in which they have no security, few rights and entitlements under the law, and are subject to retaliation with little to no bargaining power in their employment relationships.

Domestic workers are frequently subject to exploitation and chronic underpayment. They are paid far below the federal minimum wage, often in violation of their oral or written contracts,⁶⁷⁹ and forced to work extra hours—sometimes in other homes—without pay.⁶⁸⁰ They are deprived of time off without pay,⁶⁸¹ expected to work extremely long hours without break,⁶⁸² and threatened with being fired or reported to the police if they do not comply.⁶⁸³ As if their work conditions and remuneration were not already substandard, domestic workers reported being victims of wage theft. Ms. Gurung recounted: “Once I started working, they told me they were depositing my earnings in a bank account for me. I did not have the information for this account and never saw or received the money they promised me. I did not get any time off or sick leave benefits for the entire three years and four months I worked for the family. When I said I wanted to go back to India because I wasn't being paid, they ignored my requests.”⁶⁸⁴ Such stories are not atypical: the National Domestic Workers Alliance has documented cases where

⁶⁷⁸ Sect. II; Aisah Decl., Ajasi Decl., Begum Decl., Gonzales Paredes Decl., Huayta Decl., Ocares Decl.

⁶⁷⁹ Sect. II(A)(1) (Petitioners Huayta, Begum, Gonzales Paredes)

⁶⁸⁰ Huayta Decl. ¶ 15-17, Ocares Decl. ¶ 4,17.

⁶⁸¹ Sect. II(A)(1) (Petitioners Aisah, Ajasi, Begum, Ocares, Mendoza)

⁶⁸² Sect. II(A)(1) (Petitioners Aisah, Ajasi, Begum, Gonzales Paredes, Ocares, Huayta)

⁶⁸³ Guzmán Decl. ¶¶ 13, 25, 22.

⁶⁸⁴ Gurung Decl. ¶ 6.

domestic workers were owed \$350 per week in one case, and \$500 per week in another, totaling \$11,000, in stolen wages.⁶⁸⁵

With regard to migrant domestic workers specifically, the United States has made their situation even more precarious by making their legal status in the country conditional on continued employment by the same employer.⁶⁸⁶ In doing so, the United States has further diminished migrant domestic workers' bargaining power vis-à-vis their employers, exposing them to threats, exploitation and abuse. Employers, meanwhile, capitalize on the power imbalance that the United States has created by threatening to report domestic workers to immigration authorities if they refuse to comply with the employers' demands.

Petitioner Mendoza was afraid to ask for wages or other payments owed to her by her employers “because my visa depended on my position with them.”⁶⁸⁷ Petitioner Gonzales Paredes, upon asking for the wages she was entitled to under her employment contract, was threatened with being sent back to her home country.⁶⁸⁸ Petitioner Huayta's employer threatened to report her to immigration were she ever to leave the home.⁶⁸⁹ Petitioner Begum similarly feared the repercussions of escape; because her employers were “very powerful people,” she feared they would “find a way to deport [her] back to Bangladesh” if she ever left.⁶⁹⁰ Ms. Gurung's employers “reminded [her] every day that if I ever left the house, the police would pick me up, rape and beat me, and then load me up in a cargo plane and send me back to India.”⁶⁹¹ These petitioners had work authorization in the U.S.; the fear of deportation is unsurprisingly more imminent and severe for those workers who lose their lawful status, sometimes because of their

⁶⁸⁵ Poo Decl. ¶¶ 12, 14.

⁶⁸⁶ Guzmán Decl. ¶ 8; Poo Decl. ¶¶ 33, 36; Bitas Decl. ¶ 11.

⁶⁸⁷ Mendoza Decl. ¶ 25.

⁶⁸⁸ Gonzales Paredes Decl. ¶¶ 19-22.

⁶⁸⁹ Huayta Decl. ¶ 33.

⁶⁹⁰ Begum Decl. ¶ 34.

⁶⁹¹ Gurung Decl. ¶ 11.

employer's actions, or do not have this authorization to begin with. The employer of Virginia Carazini refused to renew Carazini's visa, making her all the more vulnerable to coercive conditions.⁶⁹²

Domestic workers systematically face sexual harassment and violence,⁶⁹³ leading to “millions of women suffering in silence.”⁶⁹⁴ In two examples recounted in Vox and the Washington Post, respectively, Etelbina Hauser⁶⁹⁵ and June Barrett⁶⁹⁶ describe the humiliating and repeated instances of sexual harassment they experienced on the job as domestic workers. June, a live-in homecare worker, was assigned by a recruiting agency to work for a male employer. “On her very first night on the job, he asked her to get into bed with him. Over the course of the next several months, he groped her repeatedly. June felt she could not tell the agency she worked for about the harassment because she knew they would take her off the job, and she needed the income to pay for her medication and rent. She felt isolated and alone and did not know where to turn for help.”⁶⁹⁷ The sexual harassment that domestic workers face is a result

⁶⁹² Carazani v. Zegarra, 972 F. Supp. 2d 1, 9 (D.D.C. 2013).

⁶⁹³ Poo Decl. ¶ 30; Bessel Decl. ¶ 7 (“Sexual violence against domestic workers occurred in 16% of federal civil domestic servitude cases (18 total). Again, the figure was higher in federal criminal cases, with 40% of prosecutions (14 total) alleging sexual violence.”). See Arma v. Prakoso, No. 8:14-cv-03113 (D. Md. filed Oct. 2, 2014); Balite v. Bishman, No. 6:11-cv-6252 (D. Or. filed Aug. 10, 2011); Chere v. Taye, No. 2:04-cv-06264 (D. N.J. filed Dec. 21, 2004); Doe v. Amal, No. 1:12-cv-01359 (E.D. Va. filed Nov. 27, 2012); Doe v. Howard, No. 1:11-cv-01105 (E.D. Va. filed Oct. 12, 2011); Doe v. Penzato, No. 3:10-cv-05154 (N.D. Cal. filed Nov. 12, 2010); Doe v. Pletin, No. 2:18-cv-06974 (E.D.N.Y. filed Dec. 6, 2018); Doe v. Zinsou, No. 1:19-cv-07025 (S.D.N.Y. filed July 26, 2019); Josenia Ferreyra Santos v. Villalona et al., No. 1:20-cv-05253 (S.D.N.Y. filed July 8, 2020); Judavar v. Al Mannai, No. 1:11-cv-00625 (D.D.C. filed Mar. 25, 2011); Leo v. Al Naser, No. 1:08-cv-01263 (D.D.C. filed July 22, 2008); Maysaroh v. American Arab Communications, LLC, No. 1:13-cv-01743 (D.D.C. filed Nov. 5, 2013) (later No. 1:14-cv-00866 (E.D. Va. filed July 11, 2014)); Mistry v. Udwardia, No. 5:12-cv-00034 (W.D. Ok. filed Jan. 10, 2012); Nabong v. Paddayuman, No. 1:17-cv-00400 (D.D.C. filed Mar. 6, 2017); Ouedraogo v. Bonkoungou, No. 1:15-cv-01345 (S.D.N.Y. filed Feb. 24, 2015); Paucar v. Marquez, No. 1:13-cv-24067 (S.D. Fla. filed Nov. 8, 2013); Roe v. Howard, No. 1:16-cv-00562 (E.D. Va. filed May 20, 2016); Woods v. Armand, No. 1:17-cv-02550 (E.D.N.Y. filed Apr. 28, 2017).

⁶⁹⁴ Supra note 341.

⁶⁹⁵ Sect. II(G)(2).

⁶⁹⁶ Sect. II(G)(2).

⁶⁹⁷ Poo Decl. ¶ 18.

of the exclusion of a large portion of domestic workers from federal protections.⁶⁹⁸ Since sexual harassment is a civil violation, even if domestic workers go to the police, they have little recourse unless they can prove they have been raped or assaulted.⁶⁹⁹ State laws are, by and large, also not protective of women in these contexts.⁷⁰⁰

As another symptom of the discrimination they endure under the radar, domestic workers are also repeatedly subjected to insults and name-calling, often with racial overtones.⁷⁰¹

Petitioner Ocares was frequently insulted and given dirty looks. She described the difficulties of working in an environment in which she was constantly spoken ill of.⁷⁰² Petitioner Ajasi, when she attempted to assert her rights, was told she could not possibly know her rights because she was uneducated, and was then labeled a “slave” by her employer.⁷⁰³ Indeed, a report by the U.N. Special Rapporteur found that “[m]igrant domestic workers are frequently the victims of racism and xenophobia and of verbal abuse by all members of the family, including children.”⁷⁰⁴

Petitioner Ajasi’s employer, rather than directly taunting Ajasi with xenophobic sentiments, exploited Ajasi’s fear of xenophobia to exert further control. Ajasi was told that if she ever left the home, Americans would kill her, as they did not like Zimbabweans.⁷⁰⁵

Despite having knowledge of domestic workers’ multiple layers of vulnerability—on account of their gender, race and immigration status—the United States excludes them, *de jure* and *de facto*, from legal protections offered to most other workers. The United States has *also*

⁶⁹⁸ Alexia Fernández Campbell, *Housekeepers and nannies have no protection from sexual harassment under federal law*, Vox (Apr. 26, 2018), <https://www.vox.com/2018/4/26/17275708/housekeepers-nannies-sexual-harassment-laws>.

⁶⁹⁹ *Id.*

⁷⁰⁰ *Id.*

⁷⁰¹ Petition, Appendix G4.

⁷⁰² Ocares Decl. ¶ 23.

⁷⁰³ Ajasi Decl. ¶ 28.

⁷⁰⁴ Petition, Appendix F1.

⁷⁰⁵ Ajasi Decl. ¶ 20.

failed to take reasonable measures, such as through enacting an alternate or additional legal and policy framework of protection, to ensure domestic workers' substantive equal treatment vis-à-vis other types of workers. The United States' failures are particularly acute when it comes to the domestic workers of diplomats, given the way the United States has chosen to apply diplomatic immunity to render those employers impervious to accountability and their workers devoid of legal remedies. By doing so, the United States has violated U.S. domestic workers' right to be free from non-discrimination and rendered them especially vulnerable to violations of several of their other rights under the American Declaration.

B. The United States Has Violated Petitioners' and Other Domestic Workers' Rights Under Articles I, VII, IX, X, XI, XII, XIV, XV, And XVIII By Failing to Adequately Ensure The Fundamental Enjoyment of These Rights.

The United States has failed to uphold the basic standards necessary to reasonably enable the rights protected by the American Declaration under Articles I, VII, IX, X, XI, XII, XIV, XV, AND XVIII. Without the discriminatory treatment the United States has imposed upon domestic workers in relation to other workers, the United States has also violated the basic standards for these rights for domestic workers.

1. Article VII: The United States Failed to Protect Domestic Workers Who Are Mothers and Children From Abuse and Exploitation.

“[A]ll women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.”⁷⁰⁶ Article VII is closely related to the right to substantive equality under Article II, because it requires States to consider the specific vulnerabilities of

⁷⁰⁶ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, 9th Int'l Conference of American States, art. 7, O.A.S. Official Record, OEA/Ser.L/V./II.23, doc. 21 rev. ¶ 6 (1948) [hereinafter American Declaration]. *See also* American Convention on Human Rights, art. 41, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; European Convention on the Exercise of Children's Rights, Jan. 25, 1996, 35 I.L.M. 651, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/160>.

certain populations and to afford them special protection.⁷⁰⁷ The United States violates Article VII by failing to enact and enforce a legal and policy framework that protects the rights of U.S. domestic workers and their children, including their right to be free from violence and abuse.

This heightened obligation to protect mothers and children is well recognized under international law.⁷⁰⁸ The obligation requires states to protect working mothers during pregnancy and their nursing period.⁷⁰⁹ States must therefore ensure that they are not discriminated against or fired because of their pregnancy; that women are guaranteed maternity leave (with pay or comparable social benefits and without loss of employment); and that women are granted special protections during pregnancy from work that is harmful to them.⁷¹⁰

However, the United States denies these protections to most domestic workers. The Pregnancy Discrimination Act (PDA) excludes domestic workers from protection against discrimination on account of pregnancy under the small business exception to the PDA. In addition, domestic workers are generally not entitled to unpaid job-protected leave under the FMLA. And domestic workers are not protected under the ADA, again because of the small-

⁷⁰⁷ In line with this understanding, the Inter-American Court of Human Rights has reaffirmed that States should not only refrain from violating the rights of vulnerable groups, but they must also “adopt positive measures, to be determined according to the specific needs of protection of the legal person, either because of his personal condition or the specific situation he is in.” See *Ximenes Lopes v. Brazil*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 103 (July 4, 2006); *Pueblo Bello Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 123 (Jan. 31, 2006); *Sawhoyamaya Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 154 (Mar. 29, 2006); *Mapiripán Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 117 (Sep. 15, 2005).

⁷⁰⁸ See, e.g., *Alexandru Enache v. Romania*, App. No. 16986/12, ¶ 77 (Mar. 10, 2017) (“the Court accepts that motherhood has specific features which need to be taken into consideration, sometimes by means of protective measures. It notes for example that Article 4 § 2 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women expressly provides that adoption by States Parties of special measures aimed at protecting maternity shall not be considered discriminatory . . . and that similar provision is made in norms of international law.”); Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

⁷⁰⁹ The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.143, doc. 59 rev. ¶ 32 (2011), <http://www.cidh.oas.org/pdf%20files/womendesc2011.pdf>.

⁷¹⁰ Convention on the Elimination of All Forms of Discrimination against Women art. 11, Dec. 18, 1978, 1249 U.N.T.S. 13, U.N. Doc. A/34/180 [hereinafter CEDAW].

business exception, which means that employers need not make reasonable accommodations for a disability related to pregnancy absent undue hardship; that is, if a domestic worker is impaired because of a pregnancy-related condition, such as gestational diabetes or preeclampsia, the employer need not make any modifications to enable the domestic worker to safely perform her job functions.⁷¹¹ By including and perpetuating such exclusions in its legislative framework, the United States violates Article VII. .

The United States also fails to protect mothers who are domestic workers by depriving them of access to childcare.⁷¹² States must provide or promote the organization of childcare services wherever feasible.⁷¹³ This is essential for safeguarding the needs of working mothers, who need to reconcile work and family obligations, as well as the needs of children in evolving capacities required to exercise their rights.⁷¹⁴ But the United States has not taken adequate steps to provide affordable childcare resources to domestic workers and their young children, who are too often unable to otherwise secure these resources.⁷¹⁵ Even in the few progressive states that have attempted to provide additional protections to domestic workers, their Bills of Rights still do not adequately protect the needs of mothers and children. For example, the New York Domestic Worker’s Bill of Rights does not account for childcare support for domestic worker mothers who “leave their own children to take care of their employers’ children.”⁷¹⁶ This issue

⁷¹¹ *Pregnancy Discrimination*, U.S. Equal Employment Opportunity Comm’n, <https://www.eeoc.gov/pregnancy-discrimination> (last visited Mar. 10, 2021).

⁷¹² Sect. II(C)(1)(a)(1).

⁷¹³ *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.143, doc. 59 rev. ¶ 138 (2011), <http://www.cidh.oas.org/pdf%20files/womendesc2011.pdf> (citing ILO-UNDP, *Work and Family: Towards new forms of reconciliation with social co-responsibility* 86 (2009)).

⁷¹⁴ *Id.*; *Towards the Effective Fulfillment of Children’s Rights: National Protection Systems*, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.166, doc. 206/17 rev. ¶ 349, <http://www.oas.org/en/iachr/reports/pdfs/FulfillmentRights-Children.pdf>.

⁷¹⁵ Sect. II(C)(1)(a)(1); *Trigoso-Kukulski Decl.* ¶ 15; *Huayta Decl.* ¶ 19.

⁷¹⁶ *Domestic Workers Bill of Rights*, 2010 N.Y. Sess. Laws 1313 (McKinney) (codified at N.Y. Exec Law §§ 292, 296-b, N.Y. Lab. Law §§ 2, 160, 161, 170, 651; N.Y. Workers’ Comp. § 20)1; *Chhetri Decl.* ¶ 13.

has significantly worsened during the COVID-19 pandemic. For those domestic workers fortunate enough to keep their jobs, childcare is a serious challenge with state-mandated school closures.⁷¹⁷

Lack of access by domestic workers to childcare can have serious repercussions on their children, including increasing their exposure to abuse. An FJWC domestic worker client reported that her seven-year-old daughter had been assaulted by the 17-year-old son of her employer. She had brought her daughter to work because she did not have childcare.⁷¹⁸ Petitioner Huayta and her young daughter worked in slave-like conditions where they were psychologically abused and underpaid for their work. The abuse was so serious that it led Petitioner Huayta to lack the sufficient needs to provide her daughter with meals at school, catching the attention of school officials.⁷¹⁹ The abuse Petitioner Huayta faced led her child to experience malnourishment and child labor.

The United States must take reasonable measures to protect mothers and their children, especially those who are at-risk, and to ensure the exercise of their full “social, economic, civil and political interests,”⁷²⁰ including their rights to education, adequate nourishment, and freedom from child labor.⁷²¹ The United States violates Article VII by failing to take these affirmative obligations to protect mothers and children from violations of these rights by their employers—

⁷¹⁷ Chhetri Decl. ¶ 13.

⁷¹⁸ Trigos-Kukulski Decl. ¶ 4.

⁷¹⁹ Huayta Decl. ¶¶ 18-23, 26-27, 34.

⁷²⁰ See Villagran-Morales et al. v. Guatemala, Merits, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 185 (Nov. 19, 1999) (“State measures are necessary in the case of at risk children. According to the Commission, this special State obligation encompasses the protection of a wide range of social, economic, civil and political interests of the child.”).

⁷²¹ American Declaration, *supra* note 706, at arts. 11-12. Sect. III(B)(5). See also Press Release, Org. Am. States, IACHR Urges States to Take Immediate, Effective Steps to Eliminate the Worst Forms of Child Labor (June 11, 2015), https://www.oas.org/en/iachr/media_center/PReleases/2015/067.asp.

by failing to implement adequate mechanisms such as on-site investigations of workplaces in which children are suspected of being mistreated.

2. Article I: The U.S. Failed to Enact and Enforce a Legal and Policy Framework That Protects Petitioners’ and Other Domestic Workers’ Rights to Life, Liberty and Security of The Person.

Everyone “has the right to life, liberty and the security of [their] person.”⁷²² Article I encompasses a broad range of prohibited conduct including Petitioners and other domestic workers’ rights to be free from inhuman and degrading treatment, restrictions on their movement, involuntary servitude, forced labor, child labor, and trafficking.⁷²³ And, the United States has failed to enact and enforce an adequate legal and policy framework to protect Petitioners and all other domestic workers from these rights-violations by state and private actors, the United States is responsible for these violations.

a. The United States Has Failed to Protect Petitioners and Other Domestic Workers from Inhuman and Degrading Treatment.

⁷²²American Declaration, *supra* note 703, art. 1.

⁷²³ See, e.g., *Parque São Lucas v. Brasil*, Case 10.301, Inter-Am. C.H.R., Report No. 40/03, OEA/Ser.L./V/II.114, doc. 70 rev. ¶ 1, at 677 (2003) (detention of prisoners); *Haitian Ctr. for Human Rights et al. v. United States*, Case 10.675, Report No. 51/96, OEA/Ser.L./V/II.95, doc. 7 rev. ¶ 170 (1997) (forcible repatriation of Mariel Cubans); Inter-Am. C.H.R., *Report on the Situation of Human Rights in Ecuador*, at 88, OEA/Ser.L./V/II.96, doc. 10 rev. ¶ 1 (Apr. 24, 1997) (environmental pollution). *Hacienda Brasil Verde Workers v. Brazil*, Case 12.066, Preliminary Objections, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C), Report No. 169/11 (Oct. 20, 2016), https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_ing.pdf; Report on the Human Rights of Persons Deprived of Liberty, Inter-Am. Comm’n H.R., OAS/Ser.L./V/II, doc. 64 (2011), <http://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf> [hereinafter IACHR Deprived of Liberty Report]; U.N. Hum. Rts. Comm., Gen. Comment No. 27: Art 12 (Freedom of Movement), U.N. Doc. CCPR/C/21/Rev.1/Add.9 (Nov. 1, 1999) [hereinafter UNHRC Gen. Comment No. 27].

Article I prohibits cruel, degrading and inhumane treatment.⁷²⁴ It incorporates prohibitions similar to those of Article 5 of the American Convention, which prohibits cruel, inhuman, and degrading treatment.⁷²⁵

States have a responsibility to prevent already-identified practices of “subject[ing] human beings to...degrading and inhumane conditions.”⁷²⁶ The United States is, or reasonably should be, aware that domestic workers (who are mainly women of color and immigrants) are vulnerable to cruel treatment by their employers. Their employers socially isolate their employees, verbally abuse them, and require them to perform their work duties in unnecessarily degrading ways.⁷²⁷ But despite this knowledge, the United States has not enacted laws or policies to protect them. Instead, the United States excludes them from Title VII, which protects workers in most other workplaces from harassment that is sufficiently “severe or pervasive” as to create an environment that a “reasonable person would consider intimidating, hostile, or abusive.”⁷²⁸

Domestic workers are routinely subjected to humiliating and degrading treatment by their employers and have little or no recourse against them when such mistreatment occurs.⁷²⁹

Petitioner Begum was forbidden from sitting down in the house, except for on a small stool in the kitchen.⁷³⁰ She was also only allowed to use her employer’s daughter’s bathroom, and even then she was expected to clean it after every use.⁷³¹ Begum also was required to sleep under the dining room table, huddled up against the wall, whenever overnight guests stayed in the

⁷²⁴ IACHR Deprived of Liberty Report, *supra* note 723 ¶ 67.

⁷²⁵ Report on Terrorism and Human Rights, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.116, doc. 5 rev. 1 ¶ 155 (2002), <http://www.cidh.org/Terrorism/Eng/toc.htm> (citing Juan Antonio Aguirre Ballesteros, Case 9437, Inter-Am. Comm’n H.R. 43, OEA/Ser. L./V/II.66, doc. 10 rev. 1 (1985) (Annual Report 1984-1985).

⁷²⁶ *Hacienda Brasil Verde Workers*, *supra* note 723 ¶ 328

⁷²⁷ Aisah Decl., Ajasi Decl., Begum Decl., Gonzales Paredes Decl., Ocares Decl., Huayta Decl.

⁷²⁸ *Harassment*, U.S. Eq. Emp. Opportunity Comm’n, <https://www.eeoc.gov/harassment>.

⁷²⁹ *Salas Galindo v. U.S.*, Case 10.573, Inter-Am. Comm’n H.R., Report No. 121/18, OEA/Ser.L/V/II.169, doc. 138 ¶ 411 (2018).

⁷³⁰ Begum Decl. ¶ 20.

⁷³¹ Begum Decl. ¶ 22.

apartment, all but to ensure her invisibility.⁷³² Many petitioners described being subjected to an unusual form of degrading treatment: they were required to wash clothing by hand, despite the presence of a working washing machine. Petitioner Aisah was not permitted to use the same washing machine as used by her employers, contributing to her sense of worthlessness and isolation.⁷³³ Petitioner Ajasi was required to wash her employer's underwear, which had been discolored in the wash, by hand as a form of punishment. "Her actions . . . were degrading and demeaning," said Ajasi.⁷³⁴

Employers sometimes use psychological methods to further humiliate and subjugate their domestic workers.⁷³⁵ Petitioner Aisah described her employers treating her as "less than human."⁷³⁶ This sentiment was echoed by Petitioner Begum. "I never felt like a human being in my employers' home," she said.⁷³⁷ Begum described being kept a prisoner in her employer's home and being made a slave to their demands. She described her dignity being denied by her employer's treatment of her as property.⁷³⁸ "They treated me as they would treat a dog," said Begum, "[n]ot the way people in America treat their dogs, but the way people in Bangladesh treat stray dogs on the street."⁷³⁹ The Centro del los Derechos del Migrante has documented cases of *au pairs* on J-1 visas abused verbally and emotionally by their employers, who routinely threatened deportation if the employees failed to continue working excessively long hours. The women were controlled in the foods they could eat, the spaces in the house they were allowed to be in, and the people with whom they were allowed to interact. The employer routinely screamed

⁷³² Begum Decl. ¶ 24

⁷³³ Aisah Decl. ¶ 16.

⁷³⁴ Ajasi Decl. ¶ 28.

⁷³⁵ See, e.g., Ajasi Decl. ¶¶ 34-36.

⁷³⁶ Aisah Decl. ¶ 3.

⁷³⁷ Begum Decl. ¶ 32.

⁷³⁸ Begum Decl. ¶ 32.

⁷³⁹ *Id.*

at the women that they were “dirty” and made explicit threats that they would press sexual abuse charges against the women in order to ensure their continued labor.⁷⁴⁰

The United States has done little to protect them from such abuse, resulting in long-term suffering and trauma.⁷⁴¹ The United States has also not included domestic workers within a legal and policy framework that protects them from their employers or that is capable of holding their perpetrators accountable.

b. The United States Has Failed to Protect Petitioners and Domestic Workers Against Restrictions on their Free Movement.

The “[l]iberty of movement is an indispensable condition for the free development of a person” protected by Article 1.⁷⁴² States must take reasonable measures to protect this right.⁷⁴³ States violate the right by restricting an individual’s freedom of movement by threats and harassment whether by state or non-state actors.⁷⁴⁴

The United States failed to take reasonable measures to protect domestic workers’ rights to freedom of movement. The United States has exacerbated immigrant domestic workers’ insecure legal status and resultant vulnerability by compelling them to reveal their immigration status to their employers as a condition of their conditional employment, creating a situation that employers frequently exploit.⁷⁴⁵ Employers confiscate their passports and otherwise restrict them from leaving the home by threatening them with deportation. All the Petitioners, reported their passports being confiscated by their employers.⁷⁴⁶ Some described their employers confiscating

⁷⁴⁰ Guzmán Decl. ¶¶ 13, 25, 22.

⁷⁴¹ Bitas Decl. ¶ 38; Mendoza Decl. ¶ 49.

⁷⁴² UNHRC Gen. Comment No. 27, *supra* note 723 ¶ 1.

⁷⁴³ *Hacienda Brasil Verde Workers*, *supra* note 723 ¶ 227.

⁷⁴⁴ *Gudiel Alvarez v. Guatemala*, Case 12.590, Inter-Am. Comm’n H.R., Report 116/10, ¶ 509 (Oct. 22, 2010).

⁷⁴⁵ Guzmán Decl. ¶ 8; Poo Decl. ¶¶ 33, 36; Bitas Decl. ¶ 11.

⁷⁴⁶ Aisah Dec. ¶ 17, Begum Decl. ¶ 7, Huayta Decl. ¶ 31, Sakala Decl. ¶ 10, Ajasi. Decl. ¶ 33, Mendoza Decl. ¶ 10.

passports falsely claiming that they were assisting the Petitioners in obtaining work authorizations.⁷⁴⁷ Although aware of these violations, the United States has failed to take reasonable measures to protect domestic workers from such abuse and to prevent the continuation of these violations.⁷⁴⁸

Many domestic workers report that their employers prohibited them from leaving their employers' homes.⁷⁴⁹ Petitioner Mendoza's employers maintained a security alarm for the home and did not give the passcode for enabling or disabling it to Mendoza; as a result, she could not leave the home without obtaining her employer's express permission.⁷⁵⁰ Petitioners' employers also exaggerated the risks of leaving the home, scaring the Petitioner's to leave the home. Petitioner Begum's employer told her that she would be in danger if she went outside because there were "bad people in the world that would do bad things to [her]."⁷⁵¹ Petitioners Sakala and Ajasi were told they would be killed if they ever left the home, with Ajasi—a Zimbabwean—specifically being told to fear being murdered on account of Americans not liking people from her country.⁷⁵²

The United States is responsible for the violations yet has failed to take reasonable measures to protect domestic workers from their employers violating this right.⁷⁵³

c. The United States Has Failed to Protect Petitioners and Domestic Workers from Forced Labor, Involuntary Servitude and Trafficking.

⁷⁴⁷ Mendoza Decl. ¶ 10, Sakala Decl. ¶ 10, Ajasi ¶ 23.

⁷⁴⁸ Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States 13, Hum. Rts. Watch (2001), <https://www.hrw.org/reports/2001/usadom/usadom0501.pdf> at 13.

⁷⁴⁹ See Aisah Decl. ¶ 13, Mendoza Decl. ¶ 28, Ajasi Decl. ¶ 20, Huayta Decl. ¶ 25.

⁷⁵⁰ Mendoza Decl. ¶ 30.

⁷⁵¹ Begum Decl. ¶ 25.

⁷⁵² Sakala Decl. ¶ 15; Ajasi ¶ 20.

⁷⁵³ Guzmán Decl. ¶ 8, Poo Decl. ¶ 33, 36; Bitas Decl. ¶ 11.

Articles I (life, liberty and personal security) and XIV (work and fair remuneration) guarantee everyone the right to be free from slavery-like practices, including involuntary servitude, forced labor and human trafficking. The Commission has recognized that the “prohibition of slavery and similar practices, such as trafficking, are part of customary international law and *jus cogens*.”⁷⁵⁴

The United States is aware of the vulnerability of domestic workers to forced labor and trafficking, but has failed to take reasonable measures to protect them from such abuse by enacting a legal and policy framework.⁷⁵⁵ Instead, the United States excludes domestic workers from FLSA, allowing employers to subject domestic workers to exploitative work arrangements without legal consequences.⁷⁵⁶ The United States has also exposed many domestic workers to abuse and exploitation by making domestic workers’ legal status conditional on their continued employment, thereby creating the conditions for their exploitation and entrapment.⁷⁵⁷ Domestic workers who work for diplomats face a heightened threat of abuse and exploitation by their employers because of their immigration status and diplomatic immunity.⁷⁵⁸

The United States has failed to investigate allegations of abuse and exploitation and to hold employers accountable and to provide redress to victims from such abuse and exploitation.⁷⁵⁹

⁷⁵⁴ Human Mobility Inter-American Standards, Inter-Am. Comm’n H.R., OAS/Ser.L/V/II, doc. 46/15 ¶ 219 (2015), ¶ 219, <http://www.oas.org/en/iachr/reports/pdfs/humanmobility.pdf>; See also *Siliadin v. France*, App. No. 73316/01, Eur. Ct. H.R., ¶ 123 (2005); *Hacienda Brasil Verde Workers*, *supra* note 723, ¶ 259 (citing *Prosecutor v. Kunarac*, Case No. IT-96-23-T, Int’l Crim. Trib. For the Former Yugoslavia, ¶ 542 (2001))

⁷⁵⁵ Sect. II(F)(b); *About Human Trafficking*, U.S. Dep’t of State, <https://www.state.gov/humantrafficking-about-human-trafficking/>.

⁷⁵⁶ *Hacienda Brasil Verde Workers*, *supra* note 723 ¶ 320.

⁷⁵⁷ Guzmán Decl. ¶ 8; Poo Decl. ¶¶ 33, 36.

⁷⁵⁸ 2 F.A.M. 232.1-1(a) (2006), <https://fam.state.gov/FAM/02FAM/02FAM0230.html>; Vienna Convention at arts. 22, 32.

⁷⁵⁹ *Hacienda Brasil Verde Workers*, *supra* note 723 ¶ 320.

In sum, the United States is responsible for trafficking and forced labor of domestic workers in the United States because it has failed to protect domestic workers from these rights violations. The legal and policy framework does not effectively protect Petitioners and other U.S. domestic workers.

3. Articles IX and X: The United States Violated Petitioners and Other U.S. Domestic Workers' Right to Privacy

Articles IX and X guarantee the right to privacy.⁷⁶⁰ “[T]he sphere of privacy is characterized by being exempt from and immune to abusive and arbitrary invasion or attack by third parties or public authorities.”⁷⁶¹ The right “protects conversations using telephone lines installed in private homes or in offices, whether their content is related to the private affairs of the speakers, or to their business or professional activity.”⁷⁶²

The United States violated Petitioners' rights to privacy by failing to adequately protect their privacy rights from infringement by private employers.⁷⁶³ Employers' interference with domestic workers' reasonable expectations of privacy⁷⁶⁴ are widespread and well publicized.⁷⁶⁵

⁷⁶⁰ Second Report on the Situation of Human Rights Defenders in the Americas, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II, doc. 66 at 22, n. 117 (2011), <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> [hereinafter IACHR Hum. Rts. Def. Report].

⁷⁶¹ See, e.g., *Ituango Massacres v. Colombia*, Judgement, Inter-Am. Ct. H.R. (ser. C), ¶ 194 (July 1, 2006); *Escué Zapata v. Colombia*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C), ¶ 95 (July 4, 2007), *Donoso v. Panama*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C), ¶ 55 (Jan. 27, 2009).

⁷⁶² *Escher et al. v. Brazil*, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C), ¶ 114 (July 6, 2009).

⁷⁶³ “Article 11 of the Convention prohibits all arbitrary or abusive interference in the private life of individuals, setting out different aspects of this, such as the privacy of their families, their home or their correspondence. In this regard, the Court has stated that ‘the sphere of privacy is characterized by being exempt and immune from abusive and arbitrary invasion by third parties or public authorities.’” *Escher*, *supra* note 762, at 31, n. 116 (citing *Ituango Massacres*, ¶ 194; *Zapata v. Colombia*, ¶ 95, *Donoso v. Panama*, ¶ 55); see also Hum. Rts. Comm., Gen. Comment No. 16, as contained in U.N. GAOR, 43rd Sess, Supp. 40, Annex VI, [1], UN Doc A/43/40 (1988); *Bărbulescu v. Romania*, App. No. 61496/08, Eur. Ct. H.R. (2017) (requiring that States positively ensure that privacy rights are respected even as between private parties).

⁷⁶⁴ Domestic workers' workplaces coincide with their homes. However, even if employer's actions are thought of as interfering with domestic worker's privacy expectations exclusively within a business setting, workers are still entitled to reasonable expectations of privacy. See ECHR cases *Bărbulescu v. Romania*, *supra* note 763 ¶ 73; *Libert v. France*, App. No. 588/13, Eur. Ct. H.R., ¶¶ 23-25 (2018) and references cited therein.

⁷⁶⁵ See, e.g., Laura Daily, *As homeowners find new uses for security cameras, checking law should be first step*, Wash. Post (Aug. 27, 2019), <https://www.washingtonpost.com/lifestyle/home/as-homeowners-find-new-uses-for->

The United States’ is responsible for the violation of Petitioners’ and other domestic workers’ rights to privacy under Article IX and X because it failed to take reasonable measures to protect domestic workers from their employers’ violating their rights to privacy—by conducting site-visits of workplaces to ensure labor compliance, as the Department of Labor routinely does⁷⁶⁶

Without an enforcement mechanism to secure domestic workers’ privacy rights, employers routinely encroach upon that privacy—by denying domestic workers separate living quarters or sleeping arrangements, visually surveilling them, restricting them from independently communicating with their families, and sometimes forbidding them from communicating with the employer’s children or guests within the home. Petitioners and other U.S. domestic workers reported being surveilled by their employers. Petitioner Mendoza’s employers placed cameras throughout the home, without initially informing her of their placement.⁷⁶⁷ Eventually, Mendoza figured out she was being surveilled, hinted by her employer’s comments about Mendoza’s activities when she was alone in the home.⁷⁶⁸ “The cameras made me feel like I had no privacy,” she said.⁷⁶⁹ Ruben Apolonio Bitas, a domestic worker in support of Petitioners, was forced to stay in an apartment with five other employees, as prescribed by his employer, and was not allowed to find alternate housing, or else he would be terminated.⁷⁷⁰

[security-cameras-checking-law-should-be-first-step/2019/08/26/595152f2-c460-11e9-b72f-b31dfaa77212_story.html](https://www.brookings.edu/blog/techtank/2021/01/05/how-employers-use-technology-to-surveil-employees/); Darrell M. West, *How employers use technology to surveil employees*, Brookings (Jan. 05, 2021), <https://www.brookings.edu/blog/techtank/2021/01/05/how-employers-use-technology-to-surveil-employees/>; La Risa Lynch, *A long fight for employment protections for domestic workers*, *The Chi. Reporter* (Oct. 5, 2016), <https://www.chicagoreporter.com/a-long-fight-for-employment-protections-for-domestic-workers/>; Hidden in the Home, *supra* note 748.

⁷⁶⁶ *Fact Sheet #44: Visits to Employers*, U.S. Dep’t of Lab. (Jan. 2015), <https://www.dol.gov/agencies/whd/fact-sheets/44-flsa-visits-to-employers>.

⁷⁶⁷ Mendoza Decl.

⁷⁶⁸ Mendoza Decl.

⁷⁶⁹ Mendoza Decl.

⁷⁷⁰ Bitas Decl. ¶ 15.

Petitioners also report being denied private sleeping arrangements. Petitioner Ajasi not only had to sleep with her employer's baby but was also expected to move out of the guest bedroom which she normally slept in every time visitors came.⁷⁷¹ When she moved out of the visitor's room, she had to sleep in the attic.⁷⁷² Petitioner Begum had to sleep on the floor of her employer's daughter's bedroom; she was not provided with a mattress or blanket of any kind.⁷⁷³ Petitioner Huayta and her daughter also did not have their own rooms in the house. They lived in a hallway in the basement, which others would frequently traverse through.⁷⁷⁴

Domestic workers reported being tightly controlled and monitored in their interactions with others inside and outside the home.⁷⁷⁵ Petitioner Aisah was forbidden from verbally communicating with anyone, including the employer's children.⁷⁷⁶ Many Petitioners and other domestic workers reported being forbidden from making and receiving phone calls.⁷⁷⁷ Petitioner Aisah was only permitted by her employers to send letters to communicate with her family in Indonesia.⁷⁷⁸ She was required to pay for the postage herself, which, given her meager salary, she struggled to afford.⁷⁷⁹ Petitioner Begum was also expected to correspond with her son via letters. Given her illiteracy, she struggled to communicate much of anything via letters.⁷⁸⁰ Petitioner Huayta's employers went through her voice messages just to ensure she not receive correspondence by phone.⁷⁸¹ The only person she was allowed to speak to was her nun at church;

⁷⁷¹ Ajasi Decl.

⁷⁷² Ajasi Decl. ¶ 24

⁷⁷³ Begum Decl. ¶ 23.

⁷⁷⁴ Huayta Decl. ¶ 7

⁷⁷⁵ Sect. II (A)(1, 3)

⁷⁷⁶ Aisah Decl. ¶ 12.

⁷⁷⁷ Guzmán Decl. ¶ 7; Bitas Decl. ¶ 18.

⁷⁷⁸ Aisah Decl. ¶ 14.

⁷⁷⁹ Aisah Decl. ¶ 14.

⁷⁸⁰ Begum Decl. ¶ 27.

⁷⁸¹ Huayta Decl. ¶ 26.

even communicating with her daughter’s teacher required giving written notes to her daughter who would then further transmit the messages.⁷⁸²

The United States has not taken any steps to protect domestic workers’ privacy rights from violation by their employers or to prevent such violations. It has not conducted any investigations into credible allegations of these violations, nor held perpetrators accountable or provided redress to victims.

4. Article XI: The United States Has Failed to Take Adequate Measures to Ensure Petitioners and Other U.S. Domestic Workers’ Access to Healthcare.

Article XI guarantee everyone “the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”⁷⁸³ The right to health encompasses the right to control one’s health, body, and the right to be free from interference and the right to “a system of health protection which provides equality of opportunity to enjoy the highest attainable level of health.”⁷⁸⁴

The United States does not have a universal healthcare system. It has failed to enact a legal and policy framework that ensures domestic workers access to basic healthcare, occupational health and safety, disability protection and family leave.⁷⁸⁵ The United States has *also* excluded these workers from key aspects of the federal legal framework that protects other

⁷⁸² Huayta Decl. ¶¶ 28–29.

⁷⁸³ American Declaration of the Rights and Duties of Man, Apr. 30, 1948, O.A.S. Official Rec., OEA/Ser.L./V./11.23, doc. 21, rev. 6 (1998), art. XI.

⁷⁸⁴ Comm. on Econ., Soc., and Cultural Rts, Gen. Comment No. 14: Art. 12 (The Right to the Highest Attainable Standard of Health) ¶ 8 U.N. Doc E/C.12/2000/4 (Aug. 11, 2000).

⁷⁸⁵ Because the nature of domestic work often leads to overexertion and other health and safety issues, domestic workers are exposed to workplace vulnerabilities that many other workers do not encounter. *See, e.g.,* Peggie Smith, *The Pitfalls of Home: Protecting the Health and Safety of Paid Domestic Workers*, Canadian J. of Women & the Law, Wash. Univ. in St. Louis Legal Studies Research Paper No. 11-03-03, 2 (2011).

workers—including protections under the Occupation and Safety Health Act⁷⁸⁶ and the Family and Medical Leave Act.⁷⁸⁷

Although under the Affordable Care Act (ACA) health insurance is technically open to workers with legal status in the United States the United States does not require employers of domestic workers to pay for such insurance. But given the underpayment of domestic workers, domestic workers are unable to afford the cost of insurance.⁷⁸⁸ Consequently, 65% of domestic workers do not have any health insurance, and less than 20% of domestic workers receive employer-provided health insurance.⁷⁸⁹ Even in states that aim to protect domestic workers through specific Domestic Workers Bill of Rights, there are limitations to the provisions that cover health care. For example, New York’s Bill of Rights does not mandate health coverage or retirement planning assistance for tax-paying domestic workers.⁷⁹⁰ This lack of protection leaves domestic workers vulnerable to medical emergencies. Furthermore, when it comes to domestic workers who have lost their legal status—due to changes in the employment relationship or for other reasons—the United States has completely deprived them of access to affordable health insurance.⁷⁹¹ Moreover, even if they could afford it, domestic workers who become undocumented do not have the possibility to access preventative health care or any other routine medical appointments under the ACA.⁷⁹²

⁷⁸⁶ 29 U.S.C. §§ 651(b), 1975.6; *What Companies Are Required to Meet OSHA Regulations?*, Hous. Chron. (July 07, 2020), available at <https://smallbusiness.chron.com/companies-required-meet-osh-regulations-66435.html>

⁷⁸⁷ Family and Medical Leave Act, 29 U.S.C. 2611(4)(A)(1).

⁷⁸⁸ Poo Decl. ¶ 9; Bitas Decl. ¶ 40 (“pain from where I previously had surgery before coming to the U.S. intensified, but I could not care for it because I could not afford medical bills or take time off of work to get it checked out”).

⁷⁸⁹ Wolfe et al., *supra* note 82, at ix; Jason Scott Johnson, *The Statute of Frauds and Business Norms: A Testable Game-Theoretic Model*, 144 U. Penn. L. Rev. 1859, 1863 (1996), <https://www.jstor.org/stable/pdf/3312642.pdf?refreqid=excelsior%3A1f3569334e0fe19aa21b1a9aca7fee6b>.

⁷⁹⁰ Adhikaar Decl. ¶ 6.

⁷⁹¹ *Health coverage for immigrants*, U.S. Center for Medicare and Medicaid Services, <https://www.healthcare.gov/immigrants/coverage/> (last accessed Mar. 10, 2021).

⁷⁹² *Id.*

A right closely related to Article XI is the right to enjoy the basic civil rights, which includes the right to work (Article XVII).⁷⁹³ The OAS Charter has described that article as the right to have life, health, and a decent standard of living for workers and their families.⁷⁹⁴ Accordingly, when interpreting Article XVII, the Commission has held that “payments for medical care due to injuries suffered on the job and disability payments, among others, are precisely those types of conditions that ensure life, health, and a decent standard of living when a circumstance, such as an accident, deprives a worker of the possibility of working.”⁷⁹⁵

Petitioners and other U.S. domestic workers almost unanimously reported being subjected to conditions that endangered their health and well-being. For example, Petitioner Ajasi’s employment contract specified that the employer would pay for her asthma medication. Her employer ignored the contract when the medication was needed and told her to just use the leftover medication from the employer’s nine year old asthmatic daughter.⁷⁹⁶ Similarly, after Supporting Petitioner Sakala was taken to the hospital due to severe stomach pain, her employer refused to take her to get her prescription filled.⁷⁹⁷ Additionally, Supporting Petitioner Mendoza was unable to take time off to see a doctor, which led to adverse health consequences.⁷⁹⁸ Likewise, when Petitioner Ajasi experienced back pain, her employers refused to take her to a doctor.⁷⁹⁹ Petitioner Gonzales Paredes’ employer promised her employer that she would have her health insurance paid for in the United States, yet she was not.⁸⁰⁰

⁷⁹³ *Undocumented Workers v. U.S.*, *supra* note 210 ¶ 96.

⁷⁹⁴ Charter of the Organization of American States, Org. of Am. Sts. No A-41 (Jan 29, 1996) arts. 34 (g), 45 (b) [hereinafter OAS Charter]; American Declaration, *supra* note 783, at art. XIV.

⁷⁹⁵ *Undocumented Workers v. U.S.*, *supra* n. 210, ¶ 96.

⁷⁹⁶ Ajasi Decl. ¶ 25.

⁷⁹⁷ Sakala Decl. ¶¶ 27-28.

⁷⁹⁸ Mendoza Decl. ¶¶ 33-37.

⁷⁹⁹ Ajasi Decl. ¶ 26.

⁸⁰⁰ Gonzales Paredes Decl. ¶ 10.

Petitioners and other domestic workers also lacked access to basic necessities including toiletries, clothes, and food. Petitioner Aisah was required to purchase her own soap, shampoo, and toothpaste, basics for hygiene, yet she could not afford this due to her meager salary.⁸⁰¹ Petitioner Gurung was not allowed to buy her own toiletries and was forced to use the hotel samples that her employer would provide her.⁸⁰² Sakala lacked essential clothing in the cold⁸⁰³, and as mentioned before, Petitioner Huayta was unable to provide her daughter with sufficient meals, leading to malnutrition.⁸⁰⁴ Throughout her employment, Petitioner Gurung explained how she was only given small amounts of food and “always went to bed hungry.”⁸⁰⁵ Guzman, writing on behalf of supporting organizational petitioner Centro de los Derechos Migrantes, reported a case where a domestic worker was only provided cheap processed food items, even though the family had access to fresh fruits and vegetables. The domestic worker was told that she could only eat the cheaper and less nutritious food and was prevented access to filtered water.⁸⁰⁶ As a result of this restricted nutrition and the verbal abuse she suffered from her employers, the domestic worker lost hair, gained weight, and developed anxiety and low self-esteem.⁸⁰⁷

Petitioners faced harsh conditions of work that negatively affected their health and well-being. With very minimal, or nonexistent, days of rest for Petitioners Aisah,⁸⁰⁸ Ajasi,⁸⁰⁹ Begum,⁸¹⁰ Huayta,⁸¹¹ Ocares,⁸¹² and Supporting Petitioner Mendoza,⁸¹³ these domestic workers

⁸⁰¹ Aisah Decl. ¶ 14.

⁸⁰² Gurung Decl. ¶ 8.

⁸⁰³ Sakala Decl. ¶ 22.

⁸⁰⁴ Huyata Decl. ¶ 18.

⁸⁰⁵ Gurung Decl. ¶ 7.

⁸⁰⁶ Guzman Decl. ¶ 21.

⁸⁰⁷ *Id.* ¶¶ 23, 27.

⁸⁰⁸ Asiah Decl. ¶ 10.

⁸⁰⁹ Ajasi Decl. ¶ 12.

⁸¹⁰ Begum Decl. ¶ 15.

⁸¹¹ Huayta Decl. ¶¶ 14, 22.

⁸¹² Ocares Decl. ¶ 15.

⁸¹³ Mendoza Decl. ¶ 17.

often found themselves exhausted and overworked. Apart from the never-ending work, they also were not provided protective wear for household chores. For example, Petitioner Begum’s skin was constantly broken and cracked from all the hand washing and cleaning she was required to do.⁸¹⁴ Supporting Petitioner Guzman, writing on behalf of CDM, knew of a domestic worker who was forced to work with cleaning chemicals without gloves, leading to a chemical sensitive to cleaning supplies that persists to this day.⁸¹⁵ Supporting Petitioner Mendoza was also refused safety equipment.⁸¹⁶

The United States is responsible violating Petitioners and other domestic workers’ rights of access to basic healthcare, occupational health and safety, disability protection and family leave by excluding them from existing federal protections and by failing to enact a legal and policy framework that addresses their heightened vulnerabilities.

5. Article XII: The United States Has Failed to Guarantee Petitioners and Other Domestic Workers’ Right to an Education.

Article XII guarantees everyone the right to education,⁸¹⁷ Education is one of the “essential pillars to ensure the enjoyment of a decent life.”⁸¹⁸ States must promote, protect, and fulfill the right to education for all without discrimination.⁸¹⁹ Where significant inequalities persist that limit the enjoyment of this right, States have an obligation to remedy these inequalities.⁸²⁰

⁸¹⁴ Begum Decl. ¶¶ 16–17.

⁸¹⁵ Guzman Decl. ¶ 19.

⁸¹⁶ Mendoza Decl. ¶

⁸¹⁷ American Declaration, *supra* note 783, at art. XII.

⁸¹⁸ IACHR & OAS, *How to ensure access to the right to education for children and adolescents during the COVID-19 pandemic?*, 7 (2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/301A.pdf.

⁸¹⁹ American Declaration, *supra* note 783, at art. XIII; American Convention, art. 1, 26; Comm. on Econ., Soc., and Cultural Rts, Gen. Comment No. 13: Art. 13 (The Right to Education) ¶ 46 U.N. Doc E/C.12/1999/10 (Dec. 8, 1999).

⁸²⁰ IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143, doc. 59, ¶ 336 (2011),

U.S. domestic workers have significantly lower educational attainment than non-domestic workers.⁸²¹ Their lack of education makes them more vulnerable to exploitation in their working environments. Petitioner Ajasi was told by her employer that she was a slave, and that she could not possibly know her rights because she was uneducated.⁸²² The United States has a duty to examine and eliminate discrimination that adversely impacts the ability of women, persons of color and migrants to access education.⁸²³ Where a State knows that there is a reasonable risk that private parties will violate a person’s right to access education, and the State fails to take reasonable measures to prevent the violations, the State is responsible for those violations.⁸²⁴ J-1 visa au pairs agree to perform domestic work in the United States in exchange for educational opportunities. When they arrive in the United States, their host family often breaks this agreement,⁸²⁵ and the au pair agency often takes no action when au pairs complain about this breach.⁸²⁶ The State Department provides “almost no oversight of au pair agencies.”⁸²⁷ J-1 visa au pairs are not the only domestic workers promised educational access—Petitioner Ajasi, , was denied the right to study as promised in her employment agreement⁸²⁸—and the United States government does even less by way of regulation for these workers than it does for

<http://www.cidh.oas.org/pdf%20files/womendesc2011.pdf>; Marselha Goncalves Margerin, *The Right to Education : A Multi-Faceted Strategy for Litigating before the Inter-American Commission on Human Rights*, 17 Hum. Rts. Br. 19, 21 (2010), <https://www.corteidh.or.cr/tablas/r24373.pdf>.

⁸²¹ Wolfe et al., *supra* note 82, at xi.

⁸²² Ajasi Decl. ¶ 28.

⁸²³ *The Work, Education and Resources of Women*, *supra* note 604, at 81-82; *see also Annual Report of the Inter-American Commission on Human Rights (1984-85): Brazil*, Case No. 7615, Inter-Am. Comm’n H.R., Res. No. 12/85, OEA/Ser.L/V/II.66 (Mar. 5, 1985) (finding that Brazil needed to carry out appropriate education programs to uplift Yanomami Indians).

⁸²⁴ *See Costello-Roberts v. U.K.*, App. No. 13134/87, Eur. Ct. H.R., ¶ 27 (1993) (finding that the state could not “absolve itself from responsibility by delegating its obligations [to secure to the children their right to education] to private bodies or individuals”).

⁸²⁵ Protections for Domestic Workers: Spotlight on Au Pairs, Nat’l Domestic Workers Alliance (Apr. 2016), https://www.domesticworkers.org/sites/default/files/bs_ndwa_au_pair_fact_sheet.pdf.

⁸²⁶ *Id.*

⁸²⁷ *Id.*

⁸²⁸ Ajasi Decl. ¶¶ 5, 11.

au pairs, who are at least included in a formal government program. Article XII requires the United States to establish mechanisms to monitor employer compliance with contractual agreements that provide for domestic worker’s educational attainment.

The state has a heightened obligation to provide educational access for children.⁸²⁹ When employers restrict the ability of children of their live-in domestic workers to fully participate in educational opportunities—by forcing them to work, for example—the State may incur responsibility where it knew of a risk of violations occurring yet failed to act with due diligence to protect them and to prevent violations occurring. Petitioner Huayta’s employer required her underage daughter Carla to assist her mother with work and caretaking activities for her employer’s daughter.⁸³⁰ Because of Carla’s travel with her mother, a participant in the A-3 visa program, the United States was aware of the risk that Carla would not be educated yet failed to take reasonable measures to protect her by establishing an oversight over her employers to ensure that her employers did not deprive her of her right to access education.

6. Articles XIV and XV: The United States Has Violated Petitioners and Domestic Workers’ Rights to Decent Work Conditions and Leisure Time.

Article XIV enshrines the right to decent work, fair remuneration and humane working conditions.⁸³¹ States’ have a heightened obligation to guarantee this right with regard to women in the workplace.⁸³² “[E]very person has the right to leisure time, to wholesome recreation, and to the opportunity for advantageous use of his free time to his spiritual, cultural and physical benefit.”

⁸²⁹ Children are given the “right to special protection, care and aid.” American Declaration, *supra* note 783, at art. VII.

⁸³⁰ Labor and Trade Union Rights: Inter-American Standards, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II., doc. 331, 77-78 (2011), http://www.oas.org/en/iachr/reports/pdfs/LaborRights_EN.pdf.

⁸³¹ American Declaration, *supra* note 783, at art. XIV.

⁸³² Labor and Trade Union Rights, *supra* note 830, at 79-85.

The Charter elaborates on the nature of these workplace protections. Article 34(g) provides that workers should receive “fair wages, employment opportunities, and acceptable working conditions for all.”⁸³³ Article 45(b) states that “[w]ork is a right and a social duty, it gives dignity to the one who performs it,” and that “it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working.”⁸³⁴

The Commission has also emphasized the need for States to take actions to eliminate the wage gap and harassment that women face in the workplace, which often lead to unequal opportunities.⁸³⁵ States must “adopt immediate, deliberate and concrete measures to eliminate the obstacles that restrict women’s access to and control over economic resources, particularly the problem of discrimination and the need to take steps to ensure women’s true equality in this area.”⁸³⁶

The United States is responsible for the violation of Petitioners and other U.S. domestic workers’ rights to decent work because it failed to take reasonable measures to protect them and to prevent violations occurring by enacting a legal and policy framework and by failing to enforce that framework. The United States excludes all domestic workers from the NLRA, which prevents them from organizing and forming unions,⁸³⁷ perpetuating a condition of extreme power inequality between domestic workers and their employers. The United States has also excluded

⁸³³ OAS Charter, *supra* note 794, at art. 34(g).

⁸³⁴ *Id.* at art. 45(b).

⁸³⁵ Labor and Trade Union Rights, *supra* note 830, at 79-85

⁸³⁶ *Id.* at 84-85.

⁸³⁷ See Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 Ohio St. L.J. 95, 98, 136-7 (2011).

many domestic workers—including those who provide companionship services⁸³⁸ to the elderly and the infirm and certain live-in domestic workers⁸³⁹—from the FLSA, which establishes a federal minimum wage, overtime pay, and remedies. Live-in workers are already at greater risk of being exploited and underpaid, and such an exclusion exacerbates their vulnerability.⁸⁴⁰ And the United States excludes domestic workers from OSHA, thereby denying them access to proper work conditions and a safe work environment.⁸⁴¹

As a result of their exclusion, domestic workers face chronic underpayment and work exploitation. The United States has denied Petitioners and other domestic workers fair and adequate remuneration, far below the federal minimum wage. For example, though Petitioner Huayta’s contract was denied in her embassy interview for having too low of a salary (\$200/month), her employer paid her \$200 per month once she arrived in the United States. This lack of payment was coupled with the fact that her employer forced her underage daughter to work and entertain her own children, paying her \$15 per month.⁸⁴² Even though the employer was aware that \$215 per month was unfair remuneration for Petitioner Huayta and her daughter,

⁸³⁸ See FLSA, 29 U.S.C. § 213(a)(15) (2020) (excluding companionship services from minimum wage and overtime); U.S. Dep’t of Labor (DOL), Wage and Hour Division, *Fact Sheet #79C: Recordkeeping Requirements for Individuals, Families, or Households who Employ Domestic Service Workers under the Fair Labor Standards Act (FLSA)*, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs79c.pdf> (excluding employers of companionship services from recordkeeping requirements).

⁸³⁹ See DOL, Wage and Hour Division, *Domestic Service Final Rules Frequently Asked Questions (FAQs)*, 19-20 Q., <https://www.dol.gov/agencies/whd/direct-care/faq#g1> (last visited Mar. 10, 2021) (excluding live-in domestic workers from overtime protections); see also FLSA, *supra* note 90 §213(b)(21) (exempting live-in domestic employees from maximum hour requirements outlined in FLSA § 207(7)).

⁸⁴⁰ Poo Decl. ¶¶ 8-9, 12, 15.

⁸⁴¹ See DOL, Occupational Safety & Health Admin. (OSHA), 1975.6, <https://www.osha.gov/laws-regs/regulations/standardnumber/1975/1975.6> (“As a matter of policy, individuals who, in their own residences, privately employ persons for the purpose of performing for the benefit of such individuals what are commonly regarded as ordinary domestic household tasks, such as house cleaning, cooking, and caring for children, shall not be subject to the requirements of the Act with respect to such employment.”); Chron Contributor, *What Companies Are Required to Meet OSHA Regulations?*, Chron (July 7, 2020), <https://smallbusiness.chron.com/companies-required-meet-osh-regulations-66435.html> (“OSHA exempt industries include businesses regulated by different federal statutes such as nuclear power and mining companies, **domestic services employers**, businesses that do not engage in interstate commerce, and farms that have only immediate family members as employees.” (emphasis added)); see generally OSHA, 29 U.S.C. § 651(b) (2006).

⁸⁴² Huayta Decl. ¶ 15.

she was told that her contract “did not mean anything.”⁸⁴³ Petitioner Begum was also never directly paid her wages. Instead, her employers sent her 2,000 taka (approximately \$29) per month to her son in Bangladesh. Her son was required to travel from his village to Dhaka, where her employers’ family lived, to collect the money. Because of the distance, he collected the salary every four or five months, on average.⁸⁴⁴ The last seven months of Begum’s salary was never paid to her or her son. Begum told her son to not attempt to collect the money, fearing that her employer’s family would hurt her son in retaliation of her escape.⁸⁴⁵ Additionally, when Begum received tips from the friends of her employers, the wife would pocket the money for herself.⁸⁴⁶ Furthermore, Petitioner Gonzales Paredes was forced to sign receipts that did not reflect the actual amount she was paid by her employers. When she confronted her employers and asked for her wages, her employers offered only \$50 extra per month and refused to allow her to seek outside employment. Her employers consequently threatened to send her back to her home country.⁸⁴⁷ Petitioner Gurung was told that her wages were being deposited in a bank account for over three years, but she never saw or received the money that was promised to her.⁸⁴⁸

Domestic workers have no say when employers decide to lend them out to their friends for work without additional pay. Petitioner Huayta was sent to her employer’s friends to do work, and her new temporary employer noted that her wages with her original permanent employer were too low.⁸⁴⁹ Even though her new temporary employer encouraged her original employer to pay Huayta higher wages, the original employer refused and in fact encouraged her

⁸⁴³ *Id.*

⁸⁴⁴ Begum Decl. ¶ 12.

⁸⁴⁵ *Id.* ¶ 13.

⁸⁴⁶ *Id.* ¶ 14.

⁸⁴⁷ Gonzales Paredes Decl. ¶ 19-22.

⁸⁴⁸ Gurung Decl. ¶ 6

⁸⁴⁹ Huayta Decl. ¶ 16.

friend to pay Huayta less money so she would not “get used to having money.”⁸⁵⁰ On another occasion, Huayta’s original employer was enraged when another friend paid Huayta money for taking care of her children.⁸⁵¹ Huayta had to return the wages to her original employer, and her employer took a third of the payment away.⁸⁵² Similarly, Petitioner Ocares was told that she would be lent out to her employer’s friends, even if she did not want to work for other people.⁸⁵³

Petitioners and many domestic workers also reported having to work extremely long hours without a break. Petitioners Aisah and Begum, on a normal day, worked fifteen or sixteen hours a day, from 6 a.m. until 9 or 10 p.m.⁸⁵⁴ Ms. Huayta,⁸⁵⁵ and Ms. Ocares⁸⁵⁶ worked similar hours. When Petitioner Aisah’s employers threw a party, she was expected to work until as late as 3 a.m. the next day.⁸⁵⁷ Petitioner Begum’s employers would frequently have guests over at the apartment and throw parties. On those days, Begum would work past midnight.⁸⁵⁸ Additionally, Petitioner Ajasi worked anywhere from sixteen hours to twenty-four hours a day. She was required to sleep with her employer’s infant child, who would wake up Ajasi at all hours of the night.⁸⁵⁹ Similarly, in addition to household work, Gonzales Paredes was required to take employer’s epileptic infant daughter. This additional task required Gonzales Paredes to perform physical therapy on her employer’s daughter almost daily.⁸⁶⁰

⁸⁵⁰ *Id.*

⁸⁵¹ *Id.* ¶ 17.

⁸⁵² *Id.*

⁸⁵³ Ocares Decl. ¶ 17.

⁸⁵⁴ Aisah Decl. ¶ 9; Begum Decl. ¶ 11.

⁸⁵⁵ Huayta Decl. ¶ 14.

⁸⁵⁶ Ocares Decl. ¶ 4.

⁸⁵⁷ Aisah Decl. ¶ 10.

⁸⁵⁸ Begum Decl. ¶ 11.

⁸⁵⁹ Ajasi Decl. ¶ 12.

⁸⁶⁰ Gonzales Paredes Decl. ¶ 15.

Domestic workers are often deprived of access to paid time off. Ms. Gurung did not get any time off or sick leave benefits for the three years she worked for her employer.⁸⁶¹ Petitioners Ocares⁸⁶² and Mendoza⁸⁶³ were only permitted only some Sundays off per month, while Petitioners Aisah,⁸⁶⁴ Ajasi,⁸⁶⁵ Begum,⁸⁶⁶ and Huayta⁸⁶⁷ were refused days of rest.

The United States is responsible for these violations of Petitioners' and other domestic workers' rights because although it has known of these patterns of abuse for decades, it has not taken reasonable measures to address them and to protect domestic workers and to prevent violations occurring by enacting legislation, investigating violations, holding perpetrators accountable and providing redress to victims.

7. Article XVIII: The United States Violated Petitioners and Other U.S. Domestic Workers' Right to Legal Remedies.

Article XVIII enshrines the right of all persons to resort to the courts to ensure respect for their legal rights.⁸⁶⁸ The right to access legal remedies, enshrined in Article XVIII, is echoed in a plethora of other international human rights instruments.⁸⁶⁹ As explained in *Velasquez*, each

⁸⁶¹ Gurung Decl. ¶ 6.

⁸⁶² Ocares Decl. ¶ 15.

⁸⁶³ Mendoza Decl. ¶ 17.

⁸⁶⁴ Aisah Decl. ¶ 10.

⁸⁶⁵ Ajasi Decl. ¶ 12.

⁸⁶⁶ Begum Decl. ¶ 15.

⁸⁶⁷ Huayta Decl. ¶¶ 14, 22.

⁸⁶⁸ American Declaration, *supra* note 783, at art. XVIII (providing that “[t]here should likewise be available to [them] a simple, brief procedure whereby the courts will protect [them] from acts of authority that, to [their] prejudice, violate any fundamental constitutional rights.”).

⁸⁶⁹ International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR] (requiring the U.S. to provide a judicial or administrative forum for addressing rights violations under domestic law and the Covenant, including the rights to be free from discrimination, slavery, servitude, and forced labor); *Id.* art. 26 (“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”); *id.* art. 8(1) (“No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited”); *id.* art. 8(2) (“No one shall be held in servitude.”); *id.* art. 8(3)(a) (“No one shall be required to perform forced or compulsory labour”); *see also* Human Rights Committee, General Comment 31, *Nature of the General Legal Obligation on States Parties to the Covenant*, U.N.

State has a duty to “take reasonable steps to prevent human rights violations and to use the means at its disposal ... to ensure the victim adequate compensation.”⁸⁷⁰ In order for individuals to meaningfully enjoy their human rights, they must have access to independent courts of law that provide remedies for the abuse of those human rights.⁸⁷¹

In some cases, the prohibitive cost of the proceedings in view of an individual’s financial capacity may unduly interfere with a person’s ability to access courts.⁸⁷² Domestic workers in the United States face steep practical and financial barriers to accessing justice—not only do most domestic workers come from marginalized and low-income backgrounds, but they also lack access to funds because of the deprivation of fair remuneration and even theft engaged in by their employers.⁸⁷³ In order to make their right of access to a court “practical and effective,”⁸⁷⁴ the United States must take measures to ensure domestic workers are not denied their fair trial rights on account of their relative lack of economic resources.

Individuals may also be denied justice where the requirements for burden of proof are overly rigid.⁸⁷⁵ Domestic workers often do not have written contracts because they are not required to by law; when a dispute arises, they often cannot point to a contract to prove wrongful behavior by their employer.⁸⁷⁶ The United States, by setting a high burden of proof and failing to demand written contracts for the employment of domestic workers which can later be referred to

Doc. CCPR/C/21/Rev.1/Add.13, 6 (2004) (explaining that Article 2(3) requires States Parties to make reparation to an individual when their rights are violated).

⁸⁷⁰ Velasquez Rodriguez Case, Judgement, IACHR (ser. C) No. 4 ¶ 174 (July 29, 1988).

⁸⁷¹ See Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 Calif. L. Rev. 451, 481 (1990).

⁸⁷² See Kreuz v. Poland, App. No. 28249/95, Eur. Ct. H.R. §§ 60-67 (2001); Podbielski and PPU Polpure v. Poland, App. No. 39199/98, Eur. Ct. H.R. §§ 65-66 (2005); Weissman and Others v. Romania, App. No. 63945/00, Eur. Ct. H.R. § 42 (2006); Georgel and Georgeta Stoicescu v. Romania, App. No. 9718/03, Eur. Ct. H.R. §§ 69-70 (2011); Stankov v. Bulgaria, App. No. 68490/01 Eur. Ct. H.R. § 59 (2007).

⁸⁷³ Sect. II(G); Gurung ¶ 6; Poo Decl. ¶¶ 14, 16.

⁸⁷⁴ Bellet v. France, App. No. 23805/94, Eur. Ct. H.R. § 38 (1995); Zubac v. Croatia, App. No. 40160/12, Eur. Ct. H.R. §§ 76-79 (2018).

⁸⁷⁵ See Tence v. Slovenia, App. No. 37242/14, Eur. Ct. H.R. §§ 35-38 (2016).

⁸⁷⁶ Fe y Justicia Decl. ¶ 8.

by domestic workers in the event of dispute, creates a legal environment where it is unduly difficult for domestic workers to prevail on claims. The U.S. must enforce a written contract requirement for domestic workers and adopt an adverse inference where the employer refuses to concretize domestic workers' contractual terms.

A third barrier to effective justice is lack of awareness of one's rights.⁸⁷⁷ Many domestic workers, especially migrant workers, are unfamiliar with the U.S. legal system.⁸⁷⁸ Petitioner Sakala, for example, affirmed she "did not receive any help—whether in terms of money, support services, information about where to get legal or medical help—from the U.S. government in connection with my complaint to the World Bank."⁸⁷⁹ The United States' failure to institute reasonable measures to educate these workers on their rights—particularly when the workers enter the United States as part of well-established visa programs—amounts to a violation of Article XVIII.

Moreover, persons may be denied appropriate remedies, and thus be denied access to legal remedies by U.S. courts. A significant number of domestic workers are undocumented; undocumented workers are denied prospective remedies of front pay, back pay, or reinstatement, because these remedies violate the IRCA.⁸⁸⁰ Moreover, domestic workers may be denied the damages guaranteed to other workers because of the lack of protections provided by labor laws, such as the FLSA.⁸⁸¹ The U.S. must remedy the gaps in protective coverage of its labor laws to ensure that domestic workers, including undocumented workers, are guaranteed effective access to courts and legal remedies.

⁸⁷⁷ See U.S. Inst. of Peace, *Necessary Condition: Access to Justice*, <https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice> (last visited Mar. 10, 2021).

⁸⁷⁸ Poo Decl. ¶ 25.

⁸⁷⁹ Sakala Decl. ¶ 40.

⁸⁸⁰ See *Undocumented Workers*, Workplace Fairness Q. 4, <https://www.workplacefairness.org/undocumented-workers#4> (last visited Mar. 10, 2021).

⁸⁸¹ Sect. II(D)(a)(2).

The United States’ failure to guarantee domestic workers their Article XVIII rights is particularly accentuated when it comes to those working under A-3 and G-5 visas.⁸⁸² The United States’ rigid adherence to diplomatic immunity when it comes to abuses against domestic workers of diplomats exceeds globally minimum standards of treatment.⁸⁸³ As other human rights bodies have affirmed, limitations on individuals’ access to courts must not impair the very essence of the right, must pursue a legitimate aim, and must have a reasonable relationship between the means employed and the aim sought to be achieved.⁸⁸⁴ The practice of shielding diplomats from prosecution—even after those diplomatic employers have subjected their domestic workers to slavery, forced labor, human trafficking, and abuse of people of vulnerable backgrounds—violates the workers’ basic right to legal remedies because such immunity destroys any reasonable possibility of accountability. Petitioners Gonzales Paredes and Mendoza were amongst those who had their claims dismissed because their employer’s conduct was held by courts not to fall under the “commercial or professional activities exception” in the Convention on Diplomatic Relations.⁸⁸⁵

Not only does the United States’ rigid application of diplomatic immunity impede domestic workers who have suffered abuses from accessing courts, but it also establishes a climate of impunity and fosters future abusive behavior by employers. This, in turn, renders the

⁸⁸² Sect. II(B)(3)(c); Sect. II(F)(b).; Poo Decl. ¶ 39; Bessell Decl. ¶ 14.

⁸⁸³ See Francisco Orrego Vicuna, *Diplomatic and Consular Immunities and Human Rights*, 40 Int’l & Comp. L.Q. 34 (1991). Some countries have declined to apply diplomatic immunity to the employment relationship of the domestic worker and diplomat specifically, in favor of preserving the domestic worker’s fundamental right to a remedy. See, e.g., U.S. Dep’t of State, *Trafficking in Persons Report 2008, - Belgium*, 4 June 2008, <https://www.refworld.org/docid/484f9a0332.html> at 63 (stating “[t]o combat trafficking, special ID cards are issued to diplomatic household personnel, whose employers can be tried in Belgium’s system of Labor Courts”).

⁸⁸⁴ See, e.g., *Philis v. Greece*, App. No. 12750/87, Eur. Ct. H.R. § 59 (1991); *De Geouffre de la Pradelle v. France*, App. No. 12964/87, Eur. Ct. H.R. § 28 (1992); *Stanev v. Bulgaria*, App. No. 36760/06, Eur. Ct. H.R. § 229 (2012); *Baka v. Hungary*, App. No. 20261/12, Eur. Ct. H.R. § 120 (2016); *Nait-Liman v. Switzerland*, App. No. 51357/07, Eur. Ct. H.R. §§ 113, 115 (2018); *Lupeni Greek Catholic Parish and Others v. Romania*, App. No. 76943/11, Eur. Ct. H.R. § 89 (2016).

⁸⁸⁵ *Gonzales Paredes Decl.* ¶ 30; *Mendoza Decl.* ¶ 46.

domestic workers of diplomats—as well as domestic workers generally—increasingly reluctant and fearful of resorting to the judicial system courts. Indeed, several Petitioners did not attempt to utilize U.S. courts, with the knowledge that their claims would be barred from diplomatic immunity. Petitioners Aisah, Ajasi, Ocares and Huayta were informed by lawyers and friends that bringing their cases would be futile.⁸⁸⁶ As a result, the Petitioners could not seek damages in court for the wages owed.⁸⁸⁷ Even in the few cases where domestic workers manage to win their civil lawsuits against employers, those employers are often “able to avoid paying wages after judgments are entered against them by moving outside of the U.S.”⁸⁸⁸

Petitioners were also scared to bring their cases because of the leverage diplomats were perceived to hold over them. “[D]iplomats have so much power and a special legal protection called immunity. I was afraid of taking any risks and feared that if I brought a case against them, I could be sent back to Indonesia,” said Petitioner Aisah. Petitioner Begum “didn't file a complaint against my employers or take any legal action because I was scared about what repercussions taking such action might have. I worried that my employers would take it out on my son back home.” According to the Human Trafficking Legal Center, “[m]ore than a quarter of civil domestic servitude cases included allegations that employers used retaliatory or intimidation-based tactics to limit domestic workers’ access to courts. Similar attempts to limit access to courts occurred in about 15% of criminal cases.”⁸⁸⁹

⁸⁸⁶ Aisah Decl. ¶ 24; Ajasi Decl. ¶ 38; Ocares Decl. ¶ 26; Huavata Decl. ¶ 36.

⁸⁸⁷ Aisah Decl. ¶ 24; Ajasi Decl. ¶ 38; Ocares Decl. ¶ 26; Huavata Decl. ¶ 36.

⁸⁸⁸ Poo Decl. ¶¶ 37-38.

⁸⁸⁹ Bessell Decl. ¶ 12 (“In *Kiwanuka v. Bakilana*, a domestic worker was allegedly trafficked from Tanzania on a G-5 visa by an employee of the World Bank. The employer promised that she could finish her studies in the United States. Kiwanuka was able to escape with the help of the FBI. Federal authorities prosecuted Bakilana for lying to the FBI, ordering her to pay restitution of \$41,626.80 to Kiwanuka in back wages. Defendants allegedly began searching for the victim, making inquiries about her location with her family back in Tanzania. Kiwanuka stated that she was fearful for her safety and forced to live in hiding.”).

Lastly, even when domestic workers who are victims of trafficking and other crimes muster the courage to bring cases against their employers, U.S. prosecutors refuse to criminally try the perpetrators. Indeed, a “large number of federal civil trafficking cases have been filed by A-3 and G-5 visa holders who were trafficked by diplomats or international officials,” but criminal prosecutions of those employers “with diplomatic immunity are practically non-existent.”⁸⁹⁰ Data collected by the Human Trafficking Legal Center demonstrates that “domestic workers often must resort to federal civil cases in order to have a day in court” despite the criminal nature of the violations against them.⁸⁹¹ The lack of prosecutorial resources and will to support domestic workers who have been criminally abused, exploited and enslaved underscores the United States’ failure to meet its obligations under Article XVIII of the American Declaration.

The United States is responsible for all the violations described above because its Congress, state legislatures, courts, U.S. State Department officials and law enforcement—whom the United States directed and controlled—directly participated in violating the rights of Petitioners and all domestic workers in the United States. Additionally, the United States is responsible for violating the rights of Petitioners when it failed to effectively investigate violations, hold those responsible accountable, or provide the Petitioners with an effective remedy. “[A]ny violation of rights...carried out by an act of public authority or by persons who use their position of authority is imputable to the State.”⁸⁹² Agents of a State include government

⁸⁹⁰ *Id.* ¶¶ 4, 13.

⁸⁹¹ *Id.* ¶¶ 13-14 (“Domestic servitude federal prosecutions overall are low: just 39 cases since 2009. In the same period, 2009 to January 2021, domestic workers brought 108 civil cases in the federal courts alleging forced labor and/or involuntary servitude . . . The subset of diplomatic/international organization domestic servitude cases paints an even more stark portrait of the de facto impunity that abusive employers enjoy in the United States. Since 2009, federal prosecutors have brought only 11 criminal cases against perpetrators alleged to have held A-3 or G-5 domestic worker visa-holders in forced labor. In contrast, domestic workers with A-3 and G-5 visas brought 38 civil cases against their employers in the same period.”).

⁸⁹² Velasquez-Rodriguez, *supra* note 870 ¶ 172.

officials, employees and any organ of the State—whether the organ exercises legislative, executive, judicial or other functions, or is not of the central government but of a territorial unit—as well as any individual or organization that acts under the “direction and control” of the State.⁸⁹³

States also incur responsibility for their failure to take affirmative measures to protect rights.⁸⁹⁴ Affirmative measures include “organiz[ing] the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”⁸⁹⁵ States incur responsibility for their failure to “to prevent, investigate and punish any violation” or “restore the right violated and provide compensation as warranted for damages resulting from the violation”⁸⁹⁶ And, because States are deemed to support, tolerate or have acquiesced in human rights violations in these circumstances, States may be held responsible for failing to properly respond with due diligence to violations committed by non-state actors.⁸⁹⁷

The United States is directly responsible for violations of Petitioners’ rights that were committed by its agents. U.S. agents have failed to enact a legal and policy framework to adequately ensure the respect and realization of the relevant American Declaration rights of domestic workers and have failed to enforce existing protections to prevent and address violations of the rights of U.S. domestic workers, including the Petitioners’, by non-state and private actors. The actions of U.S. agents are directly imputable to the United States.

⁸⁹³ See Int’l Law Commission, *Draft articles on the Responsibility of States for Internationally Wrongful Acts with commentaries*, art. 4, U.N. Doc. A/56/10 (2001); *El-Masri v. United States*, Case 419-08, Inter-Am. Comm’n. H.R., Report No. 21/16, OEA/Ser.L/V/II.157 doc. 25, ¶ 25 (2016).

⁸⁹⁴ *Jessica Lenahan (Gonzales) v. U.S.*, Case 12.626, Inter-Am. Comm’n. H.R., Report No. 80/11, ¶ 118 (finding that states must “adopt affirmative measures to guarantee that the individuals subject to their jurisdiction can exercise and enjoy the rights contained in the American Declaration”).

⁸⁹⁵ *Velasquez-Rodriguez*, *supra* note 870 ¶ 166.

⁸⁹⁶ *Id.*

⁸⁹⁷ *Lenahan*, *supra* note 894 ¶ 116; *Velasquez-Rodriguez*, *supra* note 870 ¶ 172.

IV. CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons, the United States of America has violated the rights of Petitioners and all domestic workers in the United States under Articles I, II, VII, IX, X, XI, XII, XIV, XV, and XVIII of the American Declaration. Petitioners and all domestic workers have suffered egregious human rights abuses at the hands of employers as a result of the United States' discriminatory treatment and failure to adopt reasonable affirmative steps to guarantee domestic workers' enjoyment of their rights under the Declaration. The United States has also failed to protect domestic workers from these abuses and to provide an appropriate remedy for such violations. The United States' obligation to exercise due diligence and provide a remedy for violations for all U.S. domestic workers, including those employed by diplomats, is not modified by the Vienna Convention on Diplomatic Relations. Therefore, Petitioners request that this Honorable Commission grant the following relief:

1. Provide an oral hearing for Petitioners;
2. Investigate, with hearings and witnesses as necessary, the facts alleged by Petitioners herein;
3. Declare the United States of America in violation of Articles I, II, VII, IX, X, XI, XII, XIV, XV, and XVIII of the American Declaration; and
4. Declare that the United States must protect and ensure the rights under the American Declaration of all domestic workers in the United States, including those employed by diplomats, on the basis of equality with other workers, and exercise due diligence in protecting these workers from interference with their rights by private employers;

5. Recommend such remedies as the Commission considers adequate and effective to address the violations of the fundamental human rights of Petitioners and all U.S. domestic workers, including through:
 - a. Amendment of laws, regulations and policies to bring all domestic workers laboring in the United States within the full protection of federal laws that guarantee fair labor standards (including paid overtime, paid sick days, paid family leave and rest breaks), occupational health and safety, as well as freedom from workplace discrimination, violence and sexual harassment;⁸⁹⁸
 - b. Enactment of legislation and implementing regulations with national applicability and reach that:
 - i. Create new protections to address the unique challenges of domestic work, including but not limited to, mandatory written agreements, fair scheduling, a new wage and standards board, and support for survivors of sexual harassment;
 - ii. Ensure that domestic workers have access to know-your-rights resources and education, as well as information about legal assistance available in their area;
 - iii. Implement mechanisms against retaliation by employers; and

⁸⁹⁸ Towards this end, enacting the national Domestic Worker Bill of Rights Act introduced by Vice-President Kamala Harris and U.S. Representative Parimla Jayapal would bring the United States much closer to protecting domestic workers in a manner that is adequate and places them on equal footing with other workers. Domestic Workers Bill of Rights Act, S.2112, 116th Cong. (2019- 2020), *All Actions*, <https://www.congress.gov/bill/116th-congress/senate-bill/2112/all-actions?overview=closed#tabs> (last visited Oct. 19, 2020).

- iv. Provide any other needed protections and entitlements to fully realize domestic workers' rights under the American Declaration on equal footing with other workers;
- c. Amendment of laws, policies and guidelines ensuring the application of diplomatic immunity under the Vienna Convention on Diplomatic Relations does not deprive domestic workers of the protection and exercise of their rights under the American Declaration, including through:
 - i. Adoption of policies and practices that ensure that when diplomatic immunity applies, other punitive, investigatory and compensation schemes are available and pursued to the full extent of the law;
 - ii. Codification of State Department policies, guidelines and practices aimed at preventing domestic worker abuse into laws or regulations to ensure their consistent and systematic implementation;
- d. Promulgation and/or amendment of laws, policies or guidelines to ensure migrant domestic workers are not rendered even more vulnerable by their immigration status, including by:
 - i. Establishing that migrant domestic workers across a range of visa employment categories—including those working for diplomats and other foreign officials under A-3 and G-5 visas—may change their employers or leave their employment without jeopardizing their legal status;
 - ii. Adopting policies and practices to ensure migrant domestic workers have access to recourse and remedies from government agencies and

- U.S. courts without fear of deportation, including by ensuring immigrant status cannot be used by employers as a deterrent to discourage domestic workers from asserting their rights; and
- iii. Revising immigration enforcement practices to meet the needs of domestic worker trafficking survivors and improving their access to benefits and remedies by ending the involvement of state and local police in immigration enforcement and restoring prosecutorial discretion that prioritizes family reunification and human rights;
- e. With regard to A-3 and G-5 domestic workers in particular, adoption and implementation of preventative and remedial measures, such as by:
- i. Ensuring that all A-3 *and* G-5 visa domestic workers across the United States have an in-person meeting with State Department officials within 30 days of their arrival, and ensuring that these workers have periodic check-in meetings with the Department of State to assess their health and welfare;
 - ii. Ensuring the pamphlet given to A-3 and G-5 domestic workers during the State Department's consular interviews with A-3 and G-5 applicants is carefully explained to them, in a language they can understand, and continuing to provide a second copy of the pamphlet in a language the worker can read at the in-person registration meeting after the worker arrives in the United States.

- iii. Providing information about legal aid organizations and resources for migrant workers available in their area to workers at in-person registration and check-in meetings;
- iv. Conducting national follow-up with the domestic workers of diplomats and international organization employees, including through periodic check-ins (by phone, if necessary) as well as in-person welfare check-ins, to ensure employers are complying with the terms of the contracts and respecting domestic workers' rights under the American Declaration;
- v. Providing domestic workers, during their regular check-in meetings, with updated information, in a language they can understand, about workers' rights as well as anti-trafficking organizations in their area (not just the national hotline number);
- vi. Contacting NGO advocates and support organizations when domestic workers disclose labor rights or human trafficking violations;
- vii. Sharing the list of A-3 and G-5 workers with civil society NGOs and other support groups so they have an opportunity to offer their legal assistance and conduct follow up with domestic workers employed in their area;
- viii. Investigating every allegation of trafficking, providing "Continued Presence"⁸⁹⁹ to domestic workers who report abuse, requesting waivers

⁸⁹⁹ "Continued presence" is a way for law enforcement to ensure trafficking victims get the services they need as quickly as possible while allowing them to stay legally in the United States to help with a criminal investigation or prosecution. See 22 U.S.C. § 7105(c)(3)(A)(i).

of immunity for diplomats who engage in trafficking, and prosecuting these diplomats—as well as members of royal families—to the full extent of the law. In addition, taking steps to:

1. Prevent foreign officials with lesser forms of immunity from adjusting their status to obtain full immunity to avoid prosecution; and
 2. Press diplomats' sending states for *ex gratia* payments to cover judgments in human trafficking cases brought by A-3 and G-5 domestic workers; and
- ix. Convening diplomatic employers on a regular basis to discuss domestic workers' rights both under domestic and international law, and educate them about their duty to respect those rights at all times.

Respectfully Submitted,



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Submitted: March 12, 2021

Before the

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ORGANIZATION OF AMERICAN STATES

**Domestic Workers Employed by Diplomats
vs.
The United States of America**

**Petition No. P-1481-07
OBSERVATIONS CONCERNING THE MAY 4, 2016
RESPONSE OF THE UNITED STATES GOVERNMENT
March 12, 2021**

APPENDIX 1

**EXHIBITS IN SUPPORT OF PETITIONER'S MARCH 12, 2021
OBSERVATIONS CONCERNING THE
MAY 4, 2016 RESPONSE OF THE UNITED STATES GOVERNMENT**

INDIVIDUAL PETITIONERS

Exhibit 1A: Declaration of Siti Aisah, Dated October 25, 2007

Exhibit 1B: Declaration of Hildah Ajasi, Dated November 7, 2007

Exhibit 1C: Declaration of Raziah Begum, Dated October 19, 2007

Exhibit 1D: Declaration of Lucia Mabel Gonzales Paredes, Dated October 28, 2007

Exhibit 1E: Declaration of Otilia Luz Huayta, Dated September 25, 2007

Exhibit 1F: Declaration of Susana Ocares, Dated November 3, 2007

ORGANIZATIONAL DECLARANTS IN SUPPORT OF PETITIONERS

Exhibit 1G: Statement of Interest of Boat People SOS, Dated July 13, 2007

Exhibit 1H: Statement of Interest of Domestic Workers United, Dated November 15, 2007

Exhibit 1I: Statement of Interest of the International Human Rights Law Clinic at American University Washington College of Law, Dated November 15, 2007

EXHIBIT 1A

DECLARATION OF SITI AISAH

Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

I, SITI AISAH, declare as follows:

1. I am a petitioner in the case of *Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats* before the Inter-American Commission on Human Rights.
2. I am a national of Indonesia. My native language is Bahasa Indonesia and I am fluent in English.
3. From October 1998 until March 2000, I worked as a domestic worker in the Manhattan apartment of Mr. Ali Fahad Al-Hajri, the Ambassador to the Qatar Mission of the United Nations, his wife and six children. During the course of my employment, my employers treated me as less than human. I felt like a slave in their household.

Background

4. I attended school in Indonesia only until the 6th grade, because my parents could not afford to continue to send me to school. I helped my parents on their farm instead. When I was 14 years old, I migrated to the city of Bekasi, Indonesia to find work. I worked in a factory until I was 18 years old.
5. At the age of 18, I learned about the possibility of working as a domestic servant in Saudi Arabia. My friends told me that in this job I could earn and save money for a good future. In Jakarta, I paid a recruitment agency to find me a domestic servant job. I did not know where they would send me.
6. The recruitment agency required me to remain on the premises of the agency until my visa came through. I lived at the recruitment agency for three months until I received my visa, during which time I was not allowed to leave or to work. I finally received a visa for travel to Qatar. The agency sent me to Doha, Qatar.
7. Upon arrival in Qatar, the agency informed me that I would actually be sent to work for a family in the United States. The agency had me sign a two-year employment contract with my employer that stated I would be paid 550 Qatar Riyals or \$150 U.S. per month. The agency gave me a copy of my employment contract. The agency told me that I would need to wait in Qatar for my visa to travel to the United States. For one month, I worked in the home of a relative of my U.S. employers until I received my G-5 visa so that I could go to the United States.

8. The son of my employers took me to the U.S. Embassy in Doha, Qatar to get my visa. The officer at the Embassy spoke with the son, but not with me directly. The officer never asked for my employment contract nor did the officer ask me any questions.

Working Conditions

9. In October 1998, I traveled to the United States. When I arrived at the home of my employers, the Ambassador's wife told me to call her "Madam" and confiscated my passport.
10. I was responsible for cooking and cleaning the house, doing the laundry and ironing, taking the children to school, and shopping for the household every day. On a normal day, I worked fifteen or sixteen hours a day, from 6 a.m. until 9 or 10 p.m. When my employers threw a party, I was required to work until as late as 3 a.m. I was not allowed a single day of rest.
11. My employers only paid me \$150 per month.
12. I did not speak Arabic or English at the time, although my employers taught me some basic Arabic words to describe my chores. My employers forbid me to speak to anyone, including their children. They told me never to talk to anyone outside their apartment because there were many bad people.
13. My employers only permitted me to leave the apartment to buy groceries, but for the first year they would not permit me to leave unaccompanied. After one year had passed, my employers began to let me leave the house by myself to buy groceries.
14. I was not allowed to use the telephone and was only permitted to communicate with my family in Indonesia by letters. My employers required me to pay for the postage myself. They also required me to buy my own soap, shampoo and toothpaste out of my small salary. I could not afford these items. My employers also required me to pay them a fee every time I sent money home to my family.
15. My employers required me to wear a uniform at all times in the apartment. My employers only gave me four uniforms for the year, but only two fit me. They gave me two sets of pajamas to sleep in. My employers would not allow me to be seen in the apartment wearing anything other than my uniform and a hijab.
16. My employers never allowed me to use the washing machine; I had to wash my uniforms and clothes by hand.

My Escape

17. After a year and a half, I resolved to run away because I was treated so poorly. I was terrified about what would happen to me if I ran away. I was afraid for my safety and

feared I might be sent back to Indonesia. I did not have my passport because my employers had confiscated it. I was completely alone.

18. About six months before I ran away, I met a woman in the supermarket who was concerned about the way my employers treated me. She gave me her telephone number and told me to call her if I escaped. This woman helped me begin to see that there were people who could help me and that I could be safe if I managed to escape.
19. Then, another employee who was concerned about my treatment began to encourage me to escape. This employee arranged for me to stay with his friends after I escaped. I was terrified of what might happen to me if I escaped. But this employee helped give me the courage to leave.
20. When I ran away from my employers, I left everything behind except I took with me the copy of my employment contract.
21. About two weeks after I escaped, I called a woman I met once in the supermarket, who was a member of Andolan, an organization that helps domestic workers. The woman gave me comfort that I would be safe and she introduced me to the Director of Andolan, Nahar Alam.
22. When I met Ms. Alam, she asked me if I wanted to take my employers to court. I told Ms. Alam that I was afraid. A friend had told me that if I brought a case against my employers I would lose because diplomats have so much power and a special legal protection called immunity. I was afraid of taking any risks and feared that if I brought a case against them, I could be sent back to Indonesia.
23. I told Ms. Alam that all I wanted was my passport back, but that I did not want to have anything more to do with my employers. Andolan helped me get my passport back.
24. I never sought the wages my employers owed me because I was so afraid and I was convinced I would have no chance against my employers because of their diplomatic status. I never consulted with a lawyer as a result.
25. I still live in New York. I have since made a life for myself here. I am married and I have a small child. I am a legal permanent resident in the United States. Since escaping from my employers, I have also become fluent in English.
26. My story is just a small part of the experience of domestic workers employed by diplomats in the United States. I hope that by sharing my story I can help to make a difference for other domestic workers in similar situations.
27. I believe that just because someone is a diplomat, it does not mean that they can do whatever they want. There should be punishment for those diplomats who cause physical and mental suffering on their domestic workers. We are human too, and we deserve to work with dignity and respect.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: 10.25.2007

Executed in Queens



Siti Aisah

EXHIBIT 1B

DECLARATION OF HILDAH AJASI

Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

I, HILDAH AJASI, declare as follows:

1. I am a petitioner in the case of *Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats* before the Inter-American Commission on Human Rights.
2. I am a national of Zimbabwe. I have received immigration relief from the United States government. I currently reside in the Washington, DC metropolitan area. I speak English fluently.
3. For four years in Zimbabwe, I was employed as a domestic worker for Ms. Poppy Majingo, a diplomat who worked in the Embassy of Botswana in Zimbabwe.
4. In September of 2004, Ms. Majingo brought me to the United States to work in her home when she was transferred to the Botswana Embassy in Washington D.C. and given the post of Secretary for Economics.
5. In order to get a visa to come to the United States, Ms. Majingo took me to the U.S. Embassy in Zimbabwe.
6. In order to receive my visa, the Embassy required a signed employment contract between Ms. Majingo and me. In addition to a number of other clauses, the contract stated that Ms. Majingo would provide food and accommodations, would not require me to work more than eight hours a day, and would pay me \$6.80 per hour.
7. We gave an original copy of the contract to the Embassy and I kept an unsigned copy. The consular official at the Embassy only interviewed Ms. Majingo; the official did not talk to me separately. She did not discuss the details of the contract with Ms. Majingo. Rather, the official merely read over the contract and said it was fine.
8. The consular official issued me a G-5 visa. However, when I arrived in the United States, the immigration officials told Ms. Majingo that I was issued the wrong visa. They said that I should have received an A-3 visa. As a result, they gave me an I-94 with a shorter time period than normal.
9. In the United States, my work involved caring for her children, cooking, and cleaning the house. Ms. Majingo's household consisted of six persons, including myself: Ms. Majingo, her husband, three children (9 years, 5 years, and 19 months), and me.

Wages

10. After the first month of working for Ms. Majingo in the United States, I received my first salary in cash, and was surprised to see that it was only \$250. I expected to receive around \$1088 based on the wage of \$6.80 per hour that we agreed to in the employment contract. When I complained to Ms. Majingo, she became angry and yelled at me. I did not bring it up again, because her yelling frightened me.
11. I was paid \$250 each month, except for the last month, when I left. Every month, I sent money from my salary to my husband, who remained in Zimbabwe.

Hours

12. Ms. Majingo's family never allowed me to rest. I worked anywhere from sixteen hours up to twenty-four hours a day, if one counts sleeping with the baby as working hours. I slept with the baby four days each week, which required waking up in the middle of the night and giving the baby a bottle.
13. On a typical day, I prepared the two older children for school, made sure they got to school, and then I returned to the house to prepare breakfast and lunch. Then I began cleaning the house. When the children came back at three o'clock, I helped them with their homework. Ms. Majingo often did not come home until eight o'clock at night.
14. I worked seven days a week. Ms. Majingo never gave me a day off.
15. In fact, in addition to my own job responsibilities at Ms. Majingo's house, Ms. Majingo required me to clean the house of a friend of hers once a month.
16. I never had a moment to rest. There was no free time because I was with the toddler all the time. I didn't even have time to sit down and eat lunch. I had no time for exercise, nor any personal time to read or listen to music. The few occasions I was allowed to watch television, I still had to watch over the toddler.
17. I told Ms. Majingo several times that I was getting tired, and that I wanted a day off during the week where I did not have to care for the children. Ms. Majingo refused each time to grant my request.

Liberty

18. The family took me to their Seventh Day Adventist church to care for the children. When I asked Ms. Majingo if I could go to my own church, she told me I should just go to hers. If I went to another church, I would have had to take the children with me.
19. I could only use the telephone while Ms. Majingo was in the house.

20. Ms. Majingo forbade me from leaving the home alone. If I needed something, the whole family went together. Ms. Majingo intimidated me into not leaving the house by threatening to tell my husband that I was with other men if I went out alone. She also told me that Americans did not like Zimbabweans, and that Americans would kill me if I left the house.
21. Only on two occasions did Ms. Majingo permit me to leave the house without her supervising me. I was allowed to go to the grocery store to buy carrots and tomatoes. However, I had to take the children with me, and we had to walk since I do not know how to drive. At the grocery store, I bought the children candy and kept the receipt. Ms. Majingo became angry that I bought the children candy and told me to pay her back.
22. Prior to my leaving Zimbabwe, a friend of mine told me she had a sister in Maryland, not far from where I was to live with Ms. Majingo. I was scared that Ms. Majingo would not allow me to see a sister of a friend, so I told Ms. Majingo that I had a "cousin-sister" in Maryland. While we were still in Zimbabwe I asked her if it would be all right if I went to see my "cousin-sister" and she told me it would be fine. After we were in the U.S. for a while, I again asked Ms. Majingo for permission to visit my "cousin-sister". She allowed me one visit. After that I was not allowed to visit her again. I asked a couple of times, but Ms. Majingo kept making excuses as to why I could not visit her again. I was allowed to make brief phone calls to her a couple of times.
23. Three months after I arrived in the United States, Ms. Majingo asked for my passport. She told me she was going to work on fixing my visa, so I handed her my passport. Around a month later, I asked her what was happening and if there was any paperwork I needed to complete. She became angry when I asked about the paperwork and she asked me if I thought she was keeping my passport. She finally returned my passport without having done anything with my visa. Around seven months after my arrival, she asked for my passport again so she could work on my visa, because it was about to expire. I gave her my passport again. About a month later, she gave me some paper work to sign. In the end, however, nothing was done and my visa was never renewed.

Safety, Health, and Well-Being

24. I lived in the guest bedroom, but I had to move out of the room whenever visitors came, so I didn't consider it to be my own space. For example, I had to leave for a month when Ms. Majingo's grandmother came. Whenever I moved out of the visitor's room I slept in the attic with one closet and a small bed.
25. I have asthma. My employment contract stated that Ms. Majingo would pay for my medications and asthma medicine. However, Ms. Majingo did not comply with the contract. She just told me to use her nine year old daughter's asthma medicine.
26. I had backaches while I was working. Ms. Majingo said that I was not sick, and refused to take me to the doctor. I was not able to go to the doctor until I left Ms. Majingo's employ.

Mental Abuse

27. At anytime, Ms. Majingo would harass me about the smallest of cleaning details. When Ms. Majingo found out that her underwear had been discolored in the wash, she told me I had to wash her underwear by hand. Her actions toward me in this regard were degrading and demeaning.
28. On August 24, 2005, I went to talk to Ms. Majingo's husband about my working conditions. He waited for Ms. Majingo to get back before talking. I told them that I knew my rights, that I was not being paid enough, and that I was working too many hours. Ms. Majingo said that I didn't know my rights because I was uneducated. She told me that I was a slave. Then she told me to get out of her house.
29. Ms. Majingo yelled at me many times, including the first month when I asked about money and again on August 24, 2005. Both time, she screamed and told me to get out of her house.
30. After Ms. Majingo yelled and screamed at me that I was a slave, she took her husband to the airport because he was going to Botswana. When Ms. Majingo left me alone, a neighbor came over to the house to see if everything was okay. The neighbor told me that I should not be treated this way in the United States and that it was not fair.

My Escape

31. After I complained to Ms. Majingo on August 24, 2005, she came to me and told me that the U.S. Department of State refused to give me the visa. She bought me a plane ticket to Zimbabwe and told me, "You need to pack your things; I'm going to take you to the airport today at 5:00 p.m."
32. When Ms. Majingo told me to leave the country, I called the police, and told them about the unfair wages. They would not help me, and they told me to return to Zimbabwe.
33. On September 10, 2005, Ms. Majingo took me to the airport. Some other diplomats from the Embassy came with us. Ms. Majingo gave me my passport in the car. Ms. Majingo made sure that I checked in for my flight, but I never got on the airplane. I hid in the airport and then went to my cousin-sister's house that I had met once before.
34. After leaving me at the airport, Ms. Majingo called my husband to say that he should beat me when I returned home because I had boyfriends in the U.S. This was not true. Because she was so determined to force me to return to Zimbabwe, my husband and I thought it was a good idea that he report back to her that I had arrived and that he had indeed beaten me. My husband told Ms. Majingo these things because we were afraid she would discover that I had not returned to Zimbabwe and that she would come after me or hurt my family back home. Ms. Majingo also called the Botswana Embassy in Zimbabwe to see if I had arrived.

35. Two months after I was supposed to have departed the United States, I ran into Ms. Majingo's colleague when I was out shopping. After that, Ms. Majingo must have discovered who I was staying with. She called the friend I was staying with, the friend I knew from Ms. Majingo's church, as well as the Pastor of her church, and told them that I was here illegally.
36. I believe that she took these actions to frighten me so that I would not take any legal action against her. Since then, my only contact with Ms. Majingo and her family has been mean and nasty emails I received from her daughter.

Legal Assistance

37. After leaving Ms. Majingo's employment, I went to Ayuda, a legal and social services agency in Washington, D.C. The attorneys there referred me to another organization in the area, Break the Chain Campaign. They assisted me with my immigration status.
38. I wanted to claim the wages I was owed from Ms. Majingo. My lawyer at the Break the Chain Campaign, however, informed me that there was no way to get compensation through a lawsuit because Ms. Majingo was a diplomat who has diplomatic immunity.
39. I did not contact the Botswana Embassy to inform them of the abuse I suffered. Because Ms. Majingo had immunity, it seemed like such action would be useless. I felt as though I had no rights. I was frightened and felt that even if I tried to pursue something, I would be harmed or my family in Zimbabwe would be harmed.
40. I have since met with a support group at Break the Chain Campaign to address the mistreatment of domestic workers. Based on my understanding of my rights, I think that it is important for domestic workers to try to pursue our claims, which are claims of human rights.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Dated: 11/07/07, 2007

Executed in Washington DC

H.T. AJASI
Hildah Ajasi

EXHIBIT 1C

DECLARATION OF RAZIAH BEGUM

Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

I, RAZIAH BEGUM, declare as follows:

1. I am a petitioner in the case of *Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats* before the Inter-American Commission on Human Rights.
2. My birth name is Raziah, but I am known as "Shaku."
3. I am a national of Bangladesh. I am a native speaker of Bengali; I do not speak very much English.
4. I currently reside in New York and have legal permanent residency in the United States.
5. For two and a half years, I worked as a household worker for Mr. F. A. Shamim Ahmed, the Deputy Permanent Representative to the Bangladesh Mission to the United Nations, and his wife, Shabnam Ahmed. They had a son and a daughter. I lived and worked in their Manhattan apartment at 211 E 70th St, Apt. 11G.
6. For those two and a half years, Mr. and Mrs. Ahmed kept me as a prisoner in their house, and made me a slave to their demands. They treated me no better than they would treat a stray dog. They tried to take from me my humanity.

Coming to the United States

7. In June of 1997, I traveled to the United States on a special visa that allowed me to work for my employers. I do not know exactly what visa I had because my employers confiscated my passport as soon as I arrived in the United States and they never returned it.
8. I remember that my employers made me sign something in order to obtain my visa to come to the United States. I believe it was an employment contract. However, because I do not know how to read or write, I do not know what the contract said.
9. My employers promised me that if I agreed to work for them in the United States, they would arrange to bring my son over. I took the job and traveled to the United States in reliance on this promise. After I arrived in the U.S., I frequently asked my employers when my son would be coming, but they always refused to talk about it and would get angry with me when I brought it up.

Hours

10. My work was very strenuous. On a normal day, I would rise around 6 a.m. to begin work. Sometimes I was required to start work earlier. On occasion, my employers would wake me in the middle of the night. I was always "on call" during the night to wake and attend to their needs.
11. On a day when my employers did not have guests to the apartment, I could expect to finish my work by 9 or 10 p.m. However, my employers very often had guests to the apartment. Once a week they had a party and every couple weeks they had big parties. On the days when there were guests to the apartment, I would finish my work around 11 or 12 p.m. or sometimes later.

Wages

12. I was paid 2,000 taka per month (approximately \$29). This money was not paid to me directly; rather, it was paid to my son in Bangladesh when he went to collect it from my employers' family in Dhaka. My son lived in a village very far from Dhaka, so he was only able to travel to Dhaka to collect my salary every four or five months.
13. I was not paid for the last seven months of my work because, after I escaped my employers, I told my son not to collect my salary from the family in Dhaka. I told him this because I feared they would hurt him.
14. My employers never paid me a cent directly during the time I worked for them. In fact, guests to the apartment would often leave me tips for my work, but the wife always kept these tips for herself and never gave them to me.

Working Conditions

15. My work conditions were very, very bad. I was required to do all the cooking, cleaning, and washing. There was a lot of work. As soon as I finished one task, there would be another waiting. I was never given an opportunity to rest or take a break. I was never given a day off.
16. I was required to wash all bedding, clothing and dishes by hand, even though they had a washing machine and a dishwasher. There were five beds in the house and washing all of that bedding by hand was extremely difficult.
17. There were three bathrooms to clean. There were lots of antiques in the house, which I regularly had to clean and polish. My skin was always broken and cracked from the washing and cleaning.
18. I cooked all the meals for the husband and wife and their two children. Often I would have to cook special meals for the two children. I also was regularly required to cook for guests, since guests came so frequently to the apartment. When they had parties, these

parties would include 10-30 people. I had to cook for all of the guests and do all the cleaning afterwards.

19. In the mornings, I tended to the children by making them breakfast, making their beds, and ironing their clothes before school.
20. My employers forbid me to sit anywhere in the house except on a small stool in the kitchen. The stool was the only place I was ever allowed to sit and eat. I was never allowed to eat at the table, and I was never allowed to eat or sit in front of guests.
21. I was only allowed to eat my meals after everyone else had been fed and all of my work was complete. My employers forbid me from eating dinner, for example, until all the family and guests had eaten and all the cleaning after the dinner was finished. Often this meant that I did not eat lunch until mid-day and dinner until late at night.
22. My employers only allowed me to use the daughter's bathroom. Sometimes the wife would nag and berate me after I used the bathroom, saying that I should clean it after using it.
23. My employers denied me adequate sleeping conditions. I slept on the hard floor in the daughter's bedroom. My employers never gave me a mattress or blankets of any kind. As a result, I used the only thing I had, a thin handmade sheet that I brought from Bangladesh, to sleep on and to cover myself. I had one small pillow. In the winter, I was terribly cold and had to sleep in many layers of clothing.
24. On those occasions when there were overnight guests in the apartment, my employers made me sleep under the dining room table, huddled up against the wall, so that the guests would not see me.

Isolation and Physical Confinement

25. For two years, I never stepped outside my employers' apartment. My employers prevented me from ever going outside. When I asked to go outside, they said I would have problems if I went out because there were bad people outside that would do bad things to me. Sometimes the wife would lose her temper at me when I asked and tell me that if I wanted to go outside so badly that I should "just go and leave forever!" I wanted to leave, but my employers had my passport and their threats about what might happen if I left scared me.
26. My employers never allowed me to phone my son. During the two and half years of my employment, I spoke to my son only on two or three occasions because he called me. I only could speak to him for a couple minutes.
27. Sometimes my employers allowed me to send letters to my son. But since I could not really read and write, I could not communicate very much through letters.

28. My employers always kept me isolated from any guests to the apartment. They did not allow me to be seen or to interact with their guests, even with other Bangladeshi guests. When there were guests to the house, they would keep me in the kitchen so that I could not interact with the guests or be seen by them.
29. My employers were the only people I was allowed to communicate with for two and a half years. But they didn't treat me like another human being.
30. After two years of being a prisoner in their apartment, I was desperate to go outside. I tried to convince my employers that I did not feel well and that I needed to get some air outside. The wife was very angry that I kept insisting on going outside.
31. Finally, she allowed me to go outside for a half an hour or an hour at a time. I only went outside like this a few times.

My Escape

32. I never felt like a human being in my employers' home. They treated me as they would treat a dog. Not the way people in America treat their dogs, but the way people in Bangladesh treat stray dogs on the street. They treated me as a piece of property. They tried to deny me my dignity.
33. I became very desperate to escape my employers. I worked so hard for two and a half years believing that my employers would carry out their promise to bring my son to the United States. But eventually I realized that they were never going to bring him over. When I realized this, I felt like I had come to work in the United States for nothing. I felt that I had wasted my time and suffered for nothing.
34. Nevertheless, I was very scared about leaving. I did not know what would happen if I left. I feared that my employers would find me and find a way to deport me back to Bangladesh, since they were very powerful people. I was also scared of the police because I thought they were like police in my country. I thought about returning to Bangladesh on my own, but I didn't have any money or anyone to go back to in Bangladesh except my son. I did not have a husband or a family there.
35. On one of the few occasions when I left my employers' apartment, I met a woman named Anu, who was a member of Andolan, an organization that helps South Asian domestic workers. Anu understood my desperation and encouraged me to escape.
36. Finally, I found the courage to escape. I put some clothes and my Koran into a bag. The wife saw me doing this and yelled: "what are you doing?!" I told the wife that I was leaving for good that day. But the wife didn't believe me, and yelled at me that I should "just go, just leave!" I was so scared that I was shaking. I got up the courage to walk out the door, but I was so nervous and scared that I didn't have the courage to grab the bag with my clothes and Koran. I left empty-handed. I had no money.

37. After I left, my employers owed me seven months of salary, but I was scared for my son's safety so I instructed him not to go retrieve the salary from my employer's family in Dhaka. They are very powerful people and I feared that if he went to them, they would probably hurt him in retaliation for my escape.
38. After I escaped, Andolan helped me. I didn't file a complaint against my employers or take any legal action because I was scared about what repercussions taking such action might have. I worried that my employers would take it out on my son back home.
39. Andolan told me about diplomatic immunity. I learned that, because of immunity, my employers had even more power than I thought. I understood that there was no way I could ever get from them the money they owed me in wages.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: 10/19/07

Executed in Woodside NY

Raziah Begum
Raziah Begum

DECLARATION OF INTERPRETATION

I, Nahar Alam, declare under penalty of perjury under the laws of the United States that the following is true and correct:

1. I am over the age of eighteen and am competent to act as an interpreter of written documents in English into oral Bengali.
2. I read the foregoing Declaration of Ragiah Begum in Bengali.

Dated this 5 day of Oct, 2007 at Jamaica, NY.



Nahar Alam
116-34 Merrick Blvd., 2nd F.
Jamaica, NY 11434

EXHIBIT 1D

DECLARACIÓN DE LUCIA MABEL GONZALEZ PAREDES

Petición Alegando Violaciones por los Estados Unidos de América de los Derechos Humanos de Trabajadoras Domésticas Empleadas por Diplomados

Yo, LUCIA MABEL GONZALEZ PAREDES, declaro lo siguiente:

1. Soy la peticionaria en el caso de *Petición Alegando Violaciones por los Estados Unidos de América de los Derechos Humanos de Trabajadoras Domésticas Empleadas por Diplomados* ante la Comisión Interamericana de Derechos Humanos
2. Soy una ciudadana de Paraguay y una residente de Argentina. Mi primer idioma es español. También hablo portugués con fluidez y leo, escribo, y hablo guaraní con fluidez.
3. Estaba empleada como trabajadora doméstica en la casa de un diplomático de Argentina, Sr. Jose Luis Vila, y su esposa, Sra. Monica Nielsen. Trabajé para estos empleadores desde febrero del 2004 hasta febrero del 2005.
4. Durante el tiempo que estaba empleada como trabajadora doméstica en los Estados Unidos, mis empleadores me trataron como una esclava. Jamás me compensaron por el trabajo excesivo y arduo que me exigieron cumplir.

Antecedentes de Mi Contrato de Empleo y Solicitación de la A-3 Visa

5. Antes de mudarme a los Estados Unidos, trabajé para mis empleadores en Argentina por aproximadamente cinco semanas. En abril del 2004, ellos me ofrecieron empleo en los EE.UU. Ví la posición como una gran oportunidad, y acepté la oferta.
6. Dentro de unas semanas de aceptar esta oferta de empleo, mis empleadores y yo comenzamos el proceso de solicitud de una A-3 visa.
7. El día o alrededor del día 20 de abril del 2004, firmé un contrato de empleo con Sr. Vila para cumplir con los requisitos de la A-3 visa. Sr. Vila me dio aproximadamente 30 minutos para leer y firmar el contrato. Después de obtener mi firma, Sr. Vila llevó el documento y entregó una copia a la Embajada de EE.UU. en Buenos Aires. Nunca me dio una copia del contrato.
8. En el camino hacia la entrevista para mi A-3 visa, Sr. Vila me informó que me iba a pagar \$500.00 por mes en vez de la cantidad especificada en el contrato, que fue de \$6.72 por hora, mas sobretiempo. Antes de la entrevista para la A-3 visa, Sr. Vila también me dijo que para obtener la A-3 visa, debería decir a los empleados de la Embajada de EE.UU. que yo iba a recibir el sueldo indicado en el contrato.
9. Sr. Vila justificó este sueldo reducido a causa de que el seguro médico, la comida, y el alquiler era demasiado caro en EE.UU., y que no podía pagarme más que los \$500.00 por mes.

10. Cuando un oficial de la Embajada me preguntó, durante mi entrevista en la Embajada de EE.UU., cuanto me iban a pagar para mi trabajo en EE.UU., Sr. Vila se giró para ponernos cara a cara y me señaló de una forma que interpreté de significar que debería hacer lo que me había dicho anteriormente. Conforme a su gesto, respondí al oficial Americano que me pagarían el sueldo indicado en el contrato.
11. Mientras todavía estuvimos en Argentina, Sr. Vila prometió a proveerme el seguro médico durante mi tiempo en los Estados Unidos. A pesar de las promesas de mis empleadores, nunca recibí seguro de salud durante mi estadia de empleo por ellos en los Estados Unidos.
12. Llegué a los Estados Unidos el 29 de abril del 2004 con mis empleadores y su nena recién nacida. Inmediatamente comencé vivir con ellos y trabajar para la familia de mis empleadores.

Condiciones del Trabajo

13. Viví en la casa de mis empleadores en Washington, D.C. Hubo tres personas más viviendo en la casa: mis dos empleadores y su nena.
14. Fui responsable de limpiar, cocinar, servir la comida a la familia, y atender a cualquiera otra necesidad de la casa. Estas tareas incluyeron limpiar la casa y cumplir con tareas domesticas, tales como lavar y planchar la ropa y las sábanas, arreglar las camas, pasar la aspiradora, limpiar la cocina y los baños, despolvar, trapear, y arreglar cada habitación y las áreas comunes de la casa.
15. No hubo un horario fijo. Durante la semana, normalmente me despertaba a las 7:00 a.m. cada mañana y trabajaba hasta aproximadamente las 10:30 p.m. cada noche. Los días sábado, normalmente trabajaba desde las 7:00 a.m. hasta aproximadamente las 4:00 p.m. No los días domingo.
16. Además de las tareas, cuidé la nena de mis empleadores quien tenía epilepsia, cuya condición médica requería atención especial. A causa, fui responsable para aprender como efectuar y responsable por efectuar terapia compleja con la hija. Fui entrenada para efectuar las tareas de terapia física por dos fisioterapeutas quienes trabajaban a medio tiempo para mis empleadores y quienes ganaron aproximadamente \$180.00 por hora. Efectué las terapias necesarias por la nena casi diariamente.
17. Esta responsabilidad incluyó dando la alimentación en horas especializadas y los métodos especializados para preparar la comida, sacando el peso y la medida de ingestión y salida de la comida, masaje terapéutico, monitorear cuidadosamente la salud de la nena, y ayudar a la fisioterapeuta con sus tareas.
18. Mi tiempo libre fue estrictamente limitada a los días sábado por la tarde, los días domingo, y de vez en cuando, una visita con amigos. Pocas veces tuve tiempo de descanso durante los feriados americanos o argentinos.

19. A principios de diciembre del 2004, me enfermé y estuve hospitalizada para un virus en el Upper Cardozo Clinic en Washington, D.C. Por falta de seguro médico, tuve que pagar todos los gastos médicos sin el apoyo de mis empleadores. Estos gastos se sumaron a aproximadamente \$300.00.
20. Un día a principios del 2005, intenté obtener una copia de mi contrato de empleo de Sra. Nielsen, pero denegó entregármela. En vez de entregármelo, Sra. Nelson me dijo que yo no necesitaba una copia del contrato y que mi pasaporte fue documentación suficiente.
21. En otra ocasión, Sr. Vila me obligó firmar unos recibos que supuestamente reflejaban el sueldo que me pagaron. Le dije a Sr. Vila que las cantidades apuntados en los recibos no fueron las cantidades que realmente recibí. Sabiendo que fueron falsificados, intenté evitar firmarlos correctamente, dibujando círculos en ellos, pero sin embargo, por la insistencia de Sr. Vila, a regañadientes firmé todos los recibos de una vez.
22. El 19 de febrero de 2005, enfrenté a mis empleadores y solicité un aumento de sueldo o permiso de buscar otro empleo. Mi empleador me ofreció solamente \$50.00 más por mes, y me rehusó permiso de buscar empleo afuera de la casa. Denegué la oferta de mis empleadores y les informé que rehusó seguir trabajando bajo esas condiciones.
23. En respuesta a mi demanda por un sueldo decente, mis empleadores me amenazaron con comprarme un boleto de avión para volver a Argentina. Poco después, salí de su casa.

Falta de Remedia

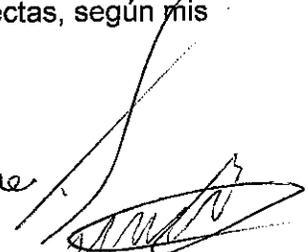
24. Busqué por la primera vez consejo legal de CASA de Maryland, una organización comunitaria, durante el invierno de 2004-2005. CASA de Maryland intentó negociar con mis empleadores y la Embajada de Argentina por varios meses para el pago de mi sueldo debido. Sin lograr un acuerdo, CASA de Maryland transfirió mi caso a la Clínica Legal de Derechos Humanos del Washington College of Law de American University en agosto del 2005.
25. El 18 de enero del 2006, entregué una demanda contra mis empleadores en el U.S. District Court for the District of Columbia.
26. Después de ser servido con la demanda en febrero del 2006, mis empleadores alegaron que no iban a intentar declarar inmunidad diplomática como una defensa. De hecho, durante las negociaciones con mis abogados a finales de febrero del 2006, mis empleadores dijeron que habían solicitado del Gobierno de Argentina una dispensa de inmunidad.
27. Entre el 10 de marzo y el 15 de junio del 2006, el caso estuvo efectivamente estancado, a consecuencia de las solicitudes de mis empleadores para extensiones de tiempo para contestar la demanda. Mis empleadores dijeron que estaban esperando al Gobierno de Argentina para aprobar su solicitud de la dispensa de inmunidad diplomática. Mis empleadores insistieron que aceptarían la jurisdicción de la Corte y que contestarían la demanda.

28. El 15 de junio del 2006, mis empleadores finalmente contestaron la demanda, declarando inmunidad y buscando un sobreseimiento del caso por la Corte.
29. Fui informada por mis abogados que el 1 de noviembre del 2006, la Corte pidió la opinión del U.S. Department of State sobre si mi demanda debe continuar o, por que soy una trabajadora domestica y mis empleadores son diplomáticos, si su conducta extendió fuera del alcance del sistema legal. Mis abogados me dijeron que el Department of State respondió que mi demanda no debe ser permitido seguir debido al estatus de mis empleadores como diplomático y que mis circunstancias no crearon una excepción a su estatus de inmunidad.
30. La Corte adoptó la opinión del Department of State, y el 29 de marzo del 2007, desestimó mi caso. La Corte concluyó que mis empleadores fueron exentos de una demanda por que su conducta no se incluye en la "comercial or professional activities exception (excepción para actividades profesionales o comerciales)" de la Convención de Relaciones Diplomáticas.
31. La ley actual de los Estados Unidos extiende privilegios a diplomáticos inmunes que infringen mucho a los derechos de trabajadores como yo. Tales privilegios incluyen ignorar cuando los diplomáticos violan las leyes fundamentales de EE.UU., incluyendo las leyes de los sueldos mínimos. La falta de parte de los oficiales de EE.UU. de reconocer y rectificar estos abusos permite que los diplomáticos intencionalmente explotan trabajadores domesticas, como yo, con impunidad.

Juro, bajo la pena de perjurio bajo las leyes de los Estados Unidos, que las declaraciones antes mencionadas son verdaderas y correctas, según mis conocimientos.

Fecha: 10 - 28 - 07 de 2007

Ejecutado en Liners, Buenos Aires Argentina



Lucia Mabel Gonzalez Paredes

DECLARATION OF LUCIA MABEL GONZALEZ PAREDES

Petition Alleging Violations of Human Rights by the United States against Domestic Workers Employed by Diplomats

Inter-American Commission on Human Rights
Petition No. _____

I, LUCIA MABEL GONZALEZ PAREDES, under penalty of perjury declare as follows:

1. I am a petitioner in the case of *Petition Alleging Violations of Human Rights by the United States against Domestic Workers Employed by Diplomats* before the Inter-American Commission on Human Rights.
2. I was employed as a domestic worker in the household of a diplomat from Argentina, Mr. Jose Luis Vila, and his wife, Ms. Monica Nielsen. I worked for these employers from February 2004 to February 2005. As my signature below affirms, my former employers are diplomats, and the nature of the abuses I suffered was not attributable to their particular posts.
3. While employed as a domestic worker in the United States, my employers treated me like a slave by barely compensating me for the excessive and arduous work they demanded I perform.

Background on Employment Contract and A-3 Visa Application

4. Before moving to the United States, I worked for my employers in Argentina for approximately five weeks. In April 2004, I was offered employment in the U.S. I viewed the position as a great opportunity, and I accepted the offer.
5. Within a few weeks of accepting that offer of employment, my employers and I began the process for applying for an A-3 visa.
6. On or about April 20, 2004, I signed an employment contract with Mr. Vila to fulfill the requirements of obtaining an A-3 visa. Mr. Vila gave me approximately 30 minutes to read and sign the contract. After obtaining my signature, Mr. Vila took the document and submitted a copy to the U.S. Embassy in Buenos Aires. I was never provided with a copy of the contract.
7. On the way to my A-3 visa interview at the U.S. Embassy, Mr. Vila informed me that he intended to pay me \$500.00 per month instead of the amount set forth in the contract, which was \$6.72 per hour, plus overtime. Prior to the A-3 visa interview, Mr. Vila also told me that in order to obtain the A-3 visa, I should tell the U.S. Embassy employees that I would be receiving the wage set forth in the contract.

8. Mr. Vila justified this reduced wage by claiming that health insurance, food, and rent were very expensive in the United States, and that he could not afford to pay me more than \$500.00 per month.
9. When I was asked, during my interview at the U.S. Embassy, how much I would be paid for my work in the U.S., Mr. Vila turned to face me and gestured to me in a way I interpreted to mean I should do as previously told. In compliance, I replied to the American officials I would be paid the wage indicated in the contract.
10. While still in Argentina, Mr. Vila promised to provide me with health insurance. Despite my employers' assurances, I was never provided health insurance during the period of time I was employed by them in the United States.
11. I arrived in the United States on April 29, 2004, with my employers and their newborn daughter. I immediately commenced living with and working for my employers' family.

Working Conditions

12. I lived in my employers' house in Washington, D.C. There were three other people living in the household – my two employers and their infant daughter.
13. I was responsible for cleaning, cooking, serving food to the family, and doing anything else that was needed for the household. Such tasks included cleaning the house and performing household chores, including washing and ironing clothes and bed sheets, making beds, vacuuming, cleaning the kitchen and bathrooms, dusting, mopping, and straightening up individual rooms and common areas.
14. There were no set hours for my work. I usually woke up at 7:00 am each morning and worked until approximately 10:30 pm every night. On Saturdays, I typically worked from 7:00 am to approximately 4:00 pm.
15. In addition to these tasks, I cared for my employers' epileptic infant daughter, whose medical condition required special attention. As a result, I was responsible for learning to perform and for performing complex physical therapy on the child. I was trained to perform these physical therapy tasks by my employers' part-time physical therapist, who was paid approximately \$180.00 per hour. I performed the required therapies on the child almost every day.
16. This responsibility involved administering specialized feeding times and methods, specialized food preparation, weighing and measuring the child's intake and outtake, massage therapy, carefully monitoring the child's health condition, and helping the physical therapist with her tasks.
17. My time off during this period was limited and consisted of attending my church on Sunday mornings and occasional visits with friends. I rarely received time to rest during U.S. or Argentine holidays.

18. In early December 2004, I became sick and was hospitalized with a virus at Upper Cardozo Clinic in Washington, D.C. Due to the lack of health insurance, I had to pay all of the medical bills without the help of my employers. These costs amounted to approximately \$300.00.
19. At one point in early 2005, I attempted to obtain a copy of my employment contract from Ms. Nielsen, but was denied my request. Instead, I was told I did not need a copy of the contract and that my passport was sufficient documentation.
20. On another occasion, I was forced by Mr. Vila to sign receipts that were supposed to reflect wages paid to me. I told Mr. Vila the amounts stated on the receipts were not the amounts I had actually received. Knowing they were false, I attempted to avoid properly signing them by drawing circles on them, but upon Mr. Vila's insistence, I reluctantly signed all the receipts at once.
21. On February 19, 2005, I confronted my employers and requested additional pay or permission to seek other employment. My employers offered me only \$50.00 more per month, and refused me permission to seek outside employment. I rejected my employers' offer and informed them I refused to continue working under those conditions.
22. In response to my demand for a decent wage, my employers threatened to just get me a plane ticket back home. Soon thereafter, I left their home.

Lack of Remedy

23. I first sought legal advice from Casa de Maryland, a community organization, during the winter of 2004-2005. Casa de Maryland attempted to negotiate with my employers and the Embassy of Argentina for several months. Unable to reach a settlement, Casa de Maryland transferred my case to the International Human Rights Law Clinic at American University's Washington College of Law in August 2005.
24. On January 18, 2006, I filed a complaint against my employers in the U.S. District Court for the District of Columbia.
25. After being served with the complaint on February 2006, my employers claimed they did not intend to raise diplomatic immunity as a defense. In fact, during negotiations with my attorneys in late February 2006, they stated they had requested a waiver of immunity from the Government of Argentina.
26. Between March 10 and June 15, 2006, the case was effectively on hold, as a result of my employers' filing requests for extensions of time to answer the complaint. My employers claimed to be waiting for the Government of Argentina to grant their request and waive diplomatic immunity. My employers insisted they would accept the Court's jurisdiction and answer the complaint.

27. On June 15, 2006, my employers finally answered the complaint by asserting diplomatic immunity and seeking to have the case dismissed from Court.
28. On November 1, 2006, the Court requested the opinion of the U.S. Department of State. The Court asked the Department of State whether my employers' conduct fell under the "commercial or professional activities" exception to diplomatic immunity in Article 31(1)(c) of the Vienna Convention on Diplomatic Relations (Convention on Diplomatic Relations). The Department of State responded that my employers' conduct did not fall within the exception, explaining a diplomat is not engaged in a "commercial or professional activity" when he or she employs a domestic worker.
29. The Court adopted the Department of State's views, and on March 29, 2007, dismissed my case. The Court held my employers were immune from suit since their conduct did not fall under the "commercial or professional activities exception" to the Convention on Diplomatic Relations.
30. Current law in the United States extends privileges to immune diplomats that greatly infringe upon the rights of workers like me. Such privileges include turning a blind eye whenever diplomats violate fundamental U.S. laws, including minimum wage laws. The failure by U.S. officials to acknowledge and rectify these abuses allows diplomats to exploit domestic workers, such as myself, deliberately and with impunity.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Dated: _____, 2007
Washington D.C.

DECLARATION OF INTERPRETATION

I, Erik Swanson, declare under penalty of perjury under the laws of the United States that the following is true and correct:

1. I am over the age of eighteen and am competent to act as an interpreter of written documents in English into written Spanish.
2. I translated the foregoing Declaration of Mabel Gonzalez from English into Spanish.

Dated this 29 day of OCTOBER, 2007 at 3pm [place] Clinic (Washington, DC)



Erik Swanson

EXHIBIT 1E

RECEIVED
OCT 01 2007

DECLARATION OF OTILIA LUZ HUAYTA

*Petition Alleging Violations of the Human Rights of Domestic Workers Employed by Diplomats
by the United States of America*

I, OTILIA LUZ HUAYTA, declare as follows:

1. I am a petitioner in the case of *Petition Alleging Violations of the Human Rights of Domestic Workers Employed by Diplomats by the United States of America* before the Inter-American Commission on Human Rights.
2. I am a national Bolivia. I currently reside in Oxon Hill, Maryland. I am a native speaker of Spanish and do not speak English.
3. From October 28, 2005 to June 2, 2006, I was employed as a live-in domestic worker in the household of a diplomat from Bolivia in suburban Maryland. During this time, I lived in the home of my diplomat employer, employer spouse of the diplomat, their family, and my 12 year old daughter Carla.
4. I have omitted specific information about my employer because I am prohibited from revealing certain information by the terms of my settlement agreement with the employer. However, on information and belief, my employer is a diplomat.
5. My employers treated me horribly. My employers made me work in abusive conditions for very low wages and excessive hours, with no vacation or free time, and without any privacy. I was isolated from my family and from other contacts and I was not allowed to leave the home without an escort. My employers and their family intimidated me from escaping, threatened to deport me, and confiscated my passport. The ordeal caused enormous suffering to both me and my daughter Carla.

My Employment Contract and A-3 Visa Application

6. Before coming to the United States, I worked for my employer in Bolivia for three years. In 2005, my employer was offered a two-year contract in the United States. She asked me if I would come with her to the United States to work for her in her home. I thought it would be great and I agreed to go.
7. Within two weeks, we began the visa application process for an A-3 visa. My employer gave me an employment contract. I took the contract and my passport and identification documents to the United States Embassy in Bolivia. My employer did not accompany me to the Embassy because she was already in the United States at the time.
8. When I went to the Embassy and showed an official my employment contract, the official denied my application because the wages in the employment contract were too low. The contract stated that I would receive \$200 per month.

9. I contacted my employer and told her that the visa had been denied. She asked her daughter who was living in Bolivia to draw up a new contract that would comply with U.S. wage standards. My employer had her daughter sign the contract on her behalf.
10. The next day, I went back to the Embassy with the new contract, and this time the visa was accepted. The consular official looked over the contract, made a copy, and wished me a good trip to the United States.
11. I arrived in the United States with my daughter, Carla, on October 28, 2005 and immediately commenced living with and working for my employer.

Working Conditions

12. We lived in my employer's house in suburban Maryland. There were seven people living in the household -- my employer, her husband, her two teenage children, her four-year old baby, and my daughter, Carla, and I.
13. I was responsible for cleaning, cooking, serving food to the family, taking care of the baby, and doing anything else that was needed for the household. My employer also made my daughter Carla play with the baby; Carla also helped with some of the chores.
14. There were no set hours for my work. I usually woke up at 6:45 a.m. each morning and worked until 11:00 p.m. every night. Sometimes I worked until later, depending on the time the family ate dinner and went to bed. At first, I did not work on the weekends, but eventually I was required to work every day of the week.
15. As soon as I arrived and began working, my employer told me that the employment contract did not mean anything. She told me that I would be paid \$200 each month, and that my daughter, Carla, would be given \$15 per month.
16. After a couple months, I realized that there was a problem with my wages. I heard from Yolanda, a friend of my employer, that my wages were too low. My employer required me to work for Yolanda to clean her house. Yolanda told my employer that she should not be paying me so little and that I deserved to be paid more. My employer would not agree to increase my wages. To make it worse, she told Yolanda not to pay me too much for my cleaning services. My employer said she did not want me to get used to having money. Yolanda was sympathetic to me, but at the same time, she was a friend of my employer's, so there was no way I could fully trust her to be able to help me.
17. Another problem arose when one of my employer's friends, Ms. Norma, tried to pay me for my babysitting services. My employer had been bringing her friend's children to stay at the house, and required me to take care of them. Ms. Norma gave me \$300 and told me it was payment for two weeks of childcare. I accepted the money for the work I performed. My employer was outraged when she found out that Ms. Norma paid me. She scolded me, yelling at me for accepting the money. She was angry that the money

was paid to me and not to her, and that it was given in cash. My employer said the money belonged to her because she paid for the house, the utilities, and other incidentals while I babysat the children. Even though I felt this was unjust, especially because Ms. Norma had brought her own food for the children, I handed the money back to my employer. She took out \$100 for herself, and returned \$200 to me. Later, my employer's husband told me that he was "disappointed" that I accepted Ms. Norma's money and said that I only cared about material things. His comments made me very uncomfortable. I was very upset about this incident and it completely changed the way that I felt about the family.

18. The wages that I made were not enough to support my daughter. Because I had to work all of the time, and because my pay was so inadequate, I could not arrange for proper meals or nutrition for my daughter. Carla did not have proper lunches when she went to school. She was only taking slices of bread and water. A teacher at the school, Alicia, called me to ask why Carla's lunches were so poor. I told her that I didn't know what else to do because my employer was not helping us. Alicia called again later and told me that the teachers were getting together to fill out paperwork for Carla to get free lunches through the school.
19. My daughter Carla also was doing work around the house and she was often forced to play with my employer's four-year old child. If Carla did homework instead, the child would complain to her parents. My employer would then call Carla to play with the child again. Carla was unable to do her homework because of this.
20. We were unable to eat freely from the food that was in the house. I was doing all the cooking for breakfast, lunch and dinner for the entire household. My employer wanted me to separate the food and cook something for each child. Carla and I were not allowed to eat this food. Even then, my employer would accuse us and blame us for eating all the food.
21. Carla and I were not allowed to eat with the family and we were expected to serve their meals to them. When my employer's husband came home every day with his son, I served dinner to both of them. My employer did not allow my daughter and I to sit down to eat. Instead, we had to eat while standing in the kitchen. We had to wait in the kitchen until everybody had finished their meals, and then clean up after them. They ate very late, and some days it took until 11:30 pm or midnight to finish cleaning. We felt bad that we were treated that way, and I was especially sad that my daughter had to go through this.
22. My employer never gave us holidays or vacation time. I worked every day of the week, including Saturdays and Sundays.
23. There was not much personal time or free time. I always had the four-year old child with me, and this limited what I could do. Some days I could not even bathe because there was no time. My daughter, Carla, didn't have much free time either. If we watched the television, we could only watch the channels that the child wanted to watch.

24. We did not have our own room in the house and there was no privacy. Carla and I lived in a hallway in the basement, in a corridor that led to the washing room. It was six feet wide and the space was mostly taken up by the two beds. Anybody could walk through the hallway at any moment. There were also other tenants living in the basement, and my employer's teenage son had his room right next to us and he often walked through without his shirt on, no matter how many times I asked him not to. I hated having Carla see a half-naked teenager walking around our room.
25. My employer told me to never leave the house without her permission. The only time I left the house was to go to church with my employer and sometimes to go with her to the mall. Carla went to school on the weekdays and attended the Youth Program at the church. My employer said I should never leave the house alone because Americans could not be trusted. She said that I should especially be afraid of African-Americans.
26. My employer did not allow me to make phone calls. After Carla's schoolteacher called about Carla's lunches, my employer realized that I was receiving phone calls. After that, she forbade me from making calls. She forbade me to call home to Bolivia, or communicate with anybody. Suddenly, I stopped receiving calls and didn't know if anybody called because the ringer was turned off. My employer and her family would listen to the voice messages, but they would not tell me if I had a message. I don't know if anybody tried to call me.
27. I could not communicate with anybody outside the household. I could only send notes to Alicia, the school teacher, by sending and receiving written notes through Carla.
28. My employer did not want me talking to anybody besides herself. She was worried that Yolanda and I were talking, and she told Yolanda several times not to talk to me about my wages. My employer also warned me to be careful about saying anything about her family to Yolanda, because sooner or later my employer would find out about it.
29. Besides Alicia and Yolanda, the only other person I could talk to about my situation was Sister Helen at the church. Sister Helen said that my situation was terrible and told me to tell the pastor about it. But I didn't want to tell the pastor because I knew that he and my employer were doing some important work together for the church at the time, and that they were planning for a graduation ceremony. Sister Helen told me that I should escape from my employer's house. At one point, Sister Helen made a plan to take me with her to the market to go shopping, but when she asked my employer to let me go, my employer refused.
30. Around March of 2006, I was very upset by the conditions in the household. Not only had there been problems with my wages and working conditions, but my employer had been falsely accusing me of doing things, like making disrespectful faces to her four-year old child. I was extremely upset when she told this to me and I wanted to go back to Bolivia. But my employer said she did not have the money to send me back. She said if

I left the house, she would report me to immigration. I reassured her that I would not try to escape.

31. In May of 2006, my employer and her husband took my passport and refused to give it back. My employer had asked for my passport and identification, saying that she wanted to give me severance pay. Then she asked me to sign papers for it. But she would not allow me to look at the papers or take them to anybody else to review. I refused to sign the papers. My employers became very upset about this. They brought out a tape recorder. They yelled at me and followed me around the house with the tape recorder, telling me that they were going to get me to say on tape that I would not sign the papers. They did not return my passport.
32. My employer told me that I was ungrateful for everything they had done for me, especially after they had spent so much money on the plane ticket to bring me to the United States. I told her the pay was miserable and that I should have been making three times as much. I did everything for my employer and gave everything that I could to her family.
33. My employer threatened to deport me if I didn't return to my "old attitude." By that point, I did not want to leave the United States because Carla needed to finish the school year and it would be a big setback for her to repeat the year again in Bolivia. My employer told me that she was buying my ticket to Bolivia. I was very worried and sent a message to Carla's school teacher, Alicia. Alicia advised me to apologize to my employer for the time-being and ask for forgiveness. I apologized. My employer told me she would not send us back to Bolivia if I went back to being the "same person" as I was when I started working for her.
34. Sometime in May 2006, Alicia sent me a note through Carla saying that she was going to rescue us. I replied through Carla that we could not escape because the husband would be home all week and had been watching me closely. Alicia then sent a message that she was going to come with the police. On the planned day, I went out onto the patio. The little girl started crying and told me not to leave. I said that I was just going out to the patio to talk to a friend. The husband saw at the door that the police had come. He called his spouse on her cell phone. The police came inside the house. They were with Alexis De Simone and Elizabeth Keyes from CASA of Maryland, a legal services organization. With their help, I was able to finally leave the house, but even with them it took several hours.
35. Throughout my ordeal, I did not have anybody to talk to and share my suffering. I felt like I was suffering so much injustice. Worst of all, it was people from my own country who had treated my daughter and I like slaves. We lived within the four walls of the home and had no communication with anybody. Above everything, I felt alone. I was suffering and it hurt me that Carla had to witness all this and go through it with me. I did everything for my employers but they did not care about me. Even though I cared for their children, she only cared about herself and her family. Now that we are out of the

house, I am more in touch with society and with other people. I know my rights. I feel free and I have more courage.

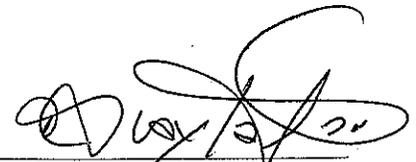
Lack of Remedy

36. Attorneys at CASA of Maryland informed me that my employer and her family are diplomats and that there have been no successful cases where diplomats have been sued in court for the types of violation I suffered.
37. With the help of CASA of Maryland, I formally denounced my employer to the Department of State, Immigration and Customs Enforcement (ICE), and the Montgomery County Police Department.
38. I filed a written report with each of these agencies. I have not heard back from these agencies, and do not expect that I will get a response. From what I understand, they usually do not intervene in cases involving diplomats.
39. I also requested help and intervention from the Bolivian Embassy, from the Bolivian Ambassador, Gustavo Guzman, and from the former Bolivian Minister of Justice, Casimira Rodriguez. With the assistance and support of the Embassy and these individuals, my employer agreed to an informal settlement with me for my wages on the condition that I not reveal her name in connection with the abuses that were committed against me.
40. Because I had no other recourse, I settled my case outside the legal structure, informally and without the assistance of the U.S. government or legal system. Although the settlement does not come close to fully compensating me for my claims, I felt it was the only option I had. I knew that because my employer was a diplomat, my demands would not be successful in U.S. courts.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Dated: 25-9-07 2007

Executed in Spanish



Otilia Luz Huayta

DECLARATION OF INTERPRETATION

I, Alexis De Simone declare under penalty of perjury under the laws of the United States that the following is true and correct:

1. I am over the age of eighteen and am competent to act as an interpreter of written documents in English into oral Spanish.
2. I read the foregoing Declaration of Otilia Luz Huayta in Spanish.

Dated this 25th day of September, 2007 at Oxon Hill, Maryland.



Alexis De Simone

EXHIBIT 1F

DECLARATION OF SUSANA OCARES

Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

I, SUSANA OCARES, declare as follows:

1. I am a petitioner in the case of *Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats* before the Inter-American Commission on Human Rights.
2. I am a national of Chile. I currently reside in Rockville, Maryland. I am a native speaker of Spanish and I speak a basic level of English.
3. Beginning in January 2006, I was employed as a domestic worker in the household of a diplomat from Chile. I recently left his employ.
4. During my employment, I often worked in excess of 40 hours each week, overtime that should have been compensated according to my employment contract. My employer refused to honor that contract. Although he owes me approximately \$25,000 in overtime wages, I cannot recover these wages from him because he is a diplomat.

My Employment Contract and Visa Application

5. I found my job with my employer because I had previously worked for his friend. When my employer asked me to work for him in the United States, he promised to treat me better than his friend, my previous employer. Specifically, he promised to pay for the extra hours I worked and for food expenditures.
6. Before traveling to the United States, my employer presented me with an employment contract and had me sign it.
7. The employment contract stated that I would work 40 hours a week, over a five or six day week, but never on a Sunday. The contract set my salary at \$6.15 per hour. The contract required overtime compensation of 1.5 times the hourly rate for every hour worked over 40 hours in the workweek. The contract also gave me three weeks of paid vacation and holidays.
8. I went to the United States Embassy in Chile as part of the visa application process. I did not have the employment contract with me and was not asked for it by the official at the Embassy. My employer may have given the Embassy the contract on another occasion.
9. On December 16, 2005, the U.S. government issued me an A-3 visa. I arrived in the United States in January 2006.

Working Conditions

10. I lived in the home of my diplomat employer and his wife and their two children who are six years old.
11. My work consisted of taking the kids to school, cleaning the house, cooking, ironing, and helping the butler.
12. I received my monthly wages through direct deposit. I was paid approximately \$950 each month, which is the minimum wage for forty hours each week.
13. Although I worked over 40 hours most weeks, I have never received overtime pay. On a few occasions, I received a \$500.00 bonus. Yet this was no substitute for the wages I should have been receiving.
14. Typically I began my day at 7:30 a.m., but there was no set time for when my work day ended. I dropped the children off at school in the morning and then worked in the house doing cleaning, dishes, and cooking. I picked up the children at 3:30 pm. I worked in the evening until about 7:00 pm when I handed over the children to their parents. However, if their parents had late parties or other activities to attend, I worked much later into the night until the children fall asleep.
15. My employer initially agreed that I would have Sundays off and one afternoon free each week. My employment contract also required Sunday to be a day off. Despite the agreement, I worked at least one Sunday out of every month, and sometimes more, depending on my employer's needs. Every time my employer went out of town, I worked the entire week and weekend, all day and night. This happened at least three times last year when my employer and his wife left for long trips, leaving the children at home with me.
16. My vacation time was determined by the family's schedule. The family's trips controlled the time of year when I could take vacation. Even though I got three weeks of vacation each year, there was no guarantee that I can take it at a time that would be best for me. This year I wanted to take vacation in April for my birthday. But I could not do so because the family wanted to travel to Boston at that time.
17. I first noticed that there was a problem with my wages and working hours in December 2006. A friend of my employer's wife had asked me to take care of her children for \$7.00 an hour. When I asked her how many hours I would work, she seemed annoyed and told me to forget about it. My employer's wife became angry because she felt that I had not simply done what she wanted me to do and because I declined to work for her friend. She then told me that she could "lend" me out to work for other people. I responded that I would go if I was sent, but that I would not go if I had a choice.

18. On December 26, 2007, my employer and his wife went to London. I looked over my employment contract. I realized that my salary of \$950 per month was for a 40 hour work-week, and that the contract required me to be paid for overtime hours at 1.5 times the wage rate for every hour that I worked over the 40 hours each week.
19. In January 2007, I began to keep track of my hours so that I would know how much my employer was not paying me. These hours were consistent with the hours that I worked during my entire first year of work for him. Based on these working hours and calculating a wage of 1.5 times the \$6.15 per hour for minimum wage, my employer currently owes me approximately \$25,000 in overtime wages.
20. I asked my employer in January about collecting my overtime wages. My employer said that the contract we signed was an "example" and it was not actually my salary. He said that I should be grateful for being at his house.
21. In a later conversation, my employer referred to the bonus he gave to me as payment for overtime. I told him that would be fine if the bonuses were paid each month. Instead, they were paid on a quarterly basis. He refused to pay the overtime wages. I then apologized to him because I felt the conversation was tense and I became nervous and fearful.
22. Besides the issue of the wages, I suffered verbal insults from my employer's wife. Following the incident when she said she could "lend" me out to work for other people, she continued to insult the quality of my work, stating that I didn't know how to cook or take care of someone who is sick, and that I was not worth anything. She also blamed me for taking food from the house, even though I buy my own food. She asked her husband not to pay me bonuses anymore. My employer's wife stopped talking to me earlier this year which made me very uncomfortable. Because of this, we did not have a trusting relationship and I could not predict her behavior.
23. I felt degraded by the way my employer treated the issue of the employment contract and the overtime wages, and by the insults, dirty looks, and comments of his wife. It was difficult to work in a household where individuals spoke badly about me. It was very distressing working for someone who said they can force you to work for someone else, as though I was simply property of theirs to lend out. It is sad that I was treated this way by fellow Chileans.
24. On August 20, 2007, while my employer was out of town, his wife, in a moment of anger, threw me out of the house. I never could have imagined that a human being could treat another human being in such a cruel and degrading way, especially knowing that I had nowhere to go, did not have money, and did not speak English.

Lack of Remedy

25. I sought legal advice from CASA of Maryland in February 2007, and again in August 2007.

26. A CASA attorney explained to me that I cannot recover overtime wages from my employer in court because he is a diplomat.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Dated: 11/13, 2007

Executed in Silver Spring, MD



Susana Ceares

Certification of Translator

I, Jessica Salsbury, hereby declare under the penalty of perjury that I completely and accurately translated the foregoing document from English into Spanish. I speak both English and Spanish and am competent to translate from Spanish into English.



Jessica Salsbury

11-3-2007
Date

EXHIBIT 1G

BOAT PEOPLE SOS



RECEIVED
JUL 13 2007

Victims of Exploitation and Trafficking Assistance
(VETA) Program
6066 Leesburg Pike, Suite 100, Falls Church, VA 22041
Phone (703) 538-2190; Fax: (703) 538-2191; www.bpsos.org

Statement of Interest for Inter-American Commission on Human Rights

Boat People SOS provides legal services and case management to victims of human trafficking through its VETA (Victims of Exploitation and Trafficking Assistance) Program. Since the inception of our program in 2002, we have worked with over 250 trafficking clients from over 20 different countries, including over 20 clients who were forced to work in the homes of their diplomat employers. We are highly concerned with the special challenges that our clients face in pursuing justice against traffickers with diplomatic immunity.

First, trafficking victims who are enslaved by diplomats are subject to elevated fear and control as a result of their employers' diplomatic status. Traffickers use the power associated with their diplomatic status as a threat to keep the victims under their control. Take for example, Sina, one of our clients, trafficked in Maryland by her diplomat employer from an African country.¹ Sina's trafficker stated many times that if she ever tried to run away, immigration and the local police would find her and arrest her. He stated that no one would believe her if she accused him of abusing her, since he was a high-ranking embassy official. Sina believed him, especially since Sina knew that in their home country, diplomatic officials are known to have the power to make anything happen.

Second, trafficking victims enslaved by diplomats face an elevated fear of extreme hardship if they are returned to their home country. Diplomatic officials have high political standing in their country and strong connections to the home country government. If a trafficking survivor were to return permanently to the sending country, she would face extreme danger of retaliation by her trafficker or the government. Trafficking victims who report their case to law enforcement or pursue civil litigation against their trafficker are placed in even greater danger of retaliation from the trafficker or those connected to the trafficker upon returning home.

Third, trafficking victims who wish to pursue criminal justice against their diplomat traffickers have very little chance of seeing an investigation or prosecution by law enforcement against their former employers. Most investigations end after the initial victim report or a single interview of the victim. This is extremely disappointing for the client who wishes to seek criminal justice for what has been done to her, and also places a higher burden on trafficking survivors who are pursuing a T visa application. One of the required elements of a T visa application is that the applicant show how she has cooperated with reasonable requests of assistance from law enforcement in the investigation or prosecution of a trafficking crime. Because diplomatic cases often result in minimal law enforcement response, T visa applicants have a higher burden of obtaining proof of their cooperation.

¹ Name has been changed to protect client's identity.

Fourth, even if a trafficking victim escapes from the home of her diplomat employer, the diplomat can generally obtain a new visa and obtain another person to enslave in her place. This creates a revolving door of trafficking victims. Since there is minimal oversight of the issuance of temporary visas for employees of diplomatic officials, these applications are likely to be approved without any investigation into the departure of the previous worker. In the case of our client, within weeks of her escape from the home of her diplomat employer, Sina heard that there was a new person working in her previous position.

Finally, victims trafficked by diplomatic officials are unable to pursue civil litigation to the same extent as other victims. Diplomatic officials generally raise immunity as an absolute defense once a case has been brought against them, leaving the trafficking victims with few legal options. Trafficked victims must rely on negotiations with the embassy and/or trafficker and pressure through media attention to achieve any resolution. The trafficker's diplomatic immunity essentially makes him "untouchable" in the eyes of the law. This immunity usually prevents the trafficking victims from receiving just compensation for the work that they have done at the homes of their traffickers, restitution from any harm or threats they have faced, or even the return of personal property (including identity documents) that were left behind in the process of their escape. Thus, the legal tools that are generally available to other trafficking victims are unavailable to these trafficking victims.

Employers in the diplomatic community continue to abuse, exploit, and traffic their employees without facing any repercussions for their actions. As a result, trafficking victims are left with little or no compensation and are unable to achieve justice for the crimes committed against them. All traffickers, regardless of their position, should be held accountable for their actions. Diplomats should not be given special treatment because of the nature of their work. If the United States government is serious about combating trafficking, the government must ensure that all trafficking victims, including those who are trafficked by diplomats, have equal access to the civil and criminal justice systems.



Dr. Nguyen Dinh Thang
Executive Director

EXHIBIT 1H

DOMESTIC WORKERS UNITED
STATEMENT OF INTEREST

Domestic Workers United [DWU] is an organization of African, Latina and Caribbean domestic workers in New York organizing for power, respect, fair labor standards and to help build a movement to end oppression for all. Founded in 2000, DWU's organizing involves membership basebuilding, leadership development, grassroots campaigns for justice for exploited workers, and for policy that will establish standards and improve conditions, building alliances and fundraising. In 2003, DWU helped pass New York City legislation to compel employment agencies to inform workers of their rights and employers of their legal obligations. In addition, the organization has won over \$300,000.00 in unpaid wages for domestic workers. DWU is currently organizing for the passage of a new law in New York State to establish labor standards for domestic workers, including a living wage and basic benefits. DWU currently has a membership of 1500, and a Steering Committee of sixteen workers and organizers.

Some of the first cases DWU worked on involved diplomat employers of domestic workers. In those instances the workers were from Africa and the employers were African and European. One case involved a domestic worker from the Democratic Republic of the Congo who was brought to the U.S. by a European diplomat, to work as a nanny. She worked over 14 hours per day, 7 days per week, with only several hours off to attend church activities. She was in dire need of rest and medical attention, and was denied. She was falsely accused of stealing. For all that she endured, she was paid under \$3 per hour. In the other case, a worker from Botswana worked 7 days per week and was forbidden from attending church. She was occasionally woken up from sleep in the night to work, including clean the windows. She was promised an education and a decent salary, and received neither. There are many other stories like this that we have seen.

Despite diplomatic immunity, DWU worked with the workers to file lawsuits for unpaid wages and abuse. In both cases, the employers settled, largely due to the public

pressure we bring to cases like these in the media and the community-at-large. Without organizing, the workers would have had little chance at justice.

All domestic workers in New York are vulnerable to abuse – they have faced systematic exclusion from the definition of “employee” in the labor laws and from almost all basic labor protections. They are treated as “unskilled,” disposable workers, despite the importance of their labor in supporting the local and global economy. Thirty-three percent of all domestic workers face some form of abuse.

Compounding the vulnerabilities all domestic workers face, workers who work for diplomats face the added challenge that their employers are “untouchable.” Thousands more domestic workers are in positions of abuse and exploitation at the hands of diplomats, and with the power that diplomats carry in the community, reinforced by diplomatic immunity, workers will always fear the implications of asserting their rights. We feel that diplomats *in particular* should be held accountable for such outrageous violations of basic human rights standards and labor laws. And strong local labor laws that protect the rights and dignity of domestic workers *as real workers*, must be established to provide a strong foundation of protection for all domestic workers.

EXHIBIT 11

Statement of Interest

The International Human Rights Law Clinic at American University's Washington College of Law is one of the oldest and largest human rights clinics operating for academic credit in the world. Students, working under the supervision of full-time faculty supervisors, provide representation to individuals, families, and organizations alleging violations of recognized or developing human rights norms, before international and domestic judicial bodies.

In the area of immigrants' rights, the Clinic provides representation on a broad range of cases involving immigrant communities in the Washington, D.C. area, including trafficked individuals, asylum and non-asylum immigration cases, and language rights cases. The Clinic also represents exploited low-wage immigrant workers, and has filed cases on their behalf in federal district court, in the courts of Maryland and D.C., in Immigration Court, and before federal and state agencies.

Over the last several years, the Clinic has developed an expertise in the representation of domestic workers employed by diplomats, consular officers, and employees of international organizations in the D.C. metropolitan area. Specifically, the Clinic has represented domestic workers who have suffered multiple forms of abuse at the hands of employers with diplomatic posts. The current state of U.S. law, and the privileges and immunities it bestows upon diplomats, has allowed these employers to act with impunity, and has left most of these domestic workers without a meaningful remedy under U.S. law.

The Clinic represents petitioner Lucia Mabel Gonzalez Paredes, a Paraguayan domestic worker, whose affidavit is included with this Petition. Other cases handled by the Clinic include the following:

- The Clinic represents a domestic worker from Ecuador, who was employed by an Ecuadorian diplomat and her husband who were living in the suburbs of Washington, D.C.. The Clinic has filed a suit in federal court on behalf of the domestic worker, alleging, *inter alia*, failure to pay the minimum wage, breach of contract, and fraud. Thus far, the employer has plainly refused to acknowledge the legal action brought by the Clinic.
- The Clinic represents a domestic worker who was trafficked into the United States by a high-ranking diplomat. United States officials have not taken any formal action against the diplomat. Indeed, he eventually returned to the sending state, where he was promoted. The diplomat and his Embassy are both aware that our client is considering filing a claim against him and his Embassy; our client has received retaliatory threats from the diplomat, suggesting that he may exercise his power against her family, who also reside in the sending state. Assuming the safety of the family can be secured, our client will face additional challenges relating to diplomatic immunity upon filing a claim.

Through its litigation and advocacy work, the Clinic has worked to ensure that domestic workers employed by diplomats in the United States are treated with dignity, and have meaningful access to justice, in a manner consistent with regional and international human rights principles. The

intervention of the Commission on this matter will be an important step towards the realization of these goals.

Before the
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ORGANIZATION OF AMERICAN STATES

Domestic Workers Employed by Diplomats

vs.

The United States of America

Petition No. P-1481-07
OBSERVATIONS CONCERNING THE MAY 4, 2016
RESPONSE OF THE UNITED STATES GOVERNMENT
March 12, 2021

APPENDIX 2

EXHIBITS IN SUPPORT OF PETITIONER'S MARCH 12, 2021
OBSERVATIONS CONCERNING THE
MAY 4, 2016 RESPONSE OF THE UNITED STATES GOVERNMENT

INDIVIDUAL DECLARANTS IN SUPPORT OF PETITIONERS

Exhibit 2A: Declaration of Edith Mendoza, Dated June 7, 2019

Exhibit 2B: Declaration of Faith Sakala, Dated June 7, 2019

ORGANIZATIONAL DECLARANTS IN SUPPORT OF PETITIONERS

Exhibit 2C: Declaration of Linda Oalican on behalf of Damayan Migrant Workers Association, Dated June 7, 2019

Exhibit 2D: Declaration of Ai-jen Poo on behalf of National Domestic Workers Alliance, Dated June 7, 2019

EXHIBIT 2A

DECLARATION OF EDITH MENDOZA

Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

I, Edith Mendoza, swear and affirm that the following is true and correct to the best of my information, knowledge, and belief:

1. I am a national of the Philippines, and have lived and worked abroad to financially support my family. My family has continued to live in the Philippines during this period. My native language is Tagalog, and I am proficient in English.
2. From January 2015 to June 2016, I worked as a domestic worker for German Diplomat Pit Koehler, his wife, Marieke Koehler and their four children in their Westchester County home. During the course of my employment, my employers treated me as less than human. I felt like a slave in their household.

Background

3. I was contacted by Pit Koehler and Mrs. Koehler in 2014 while working in Qatar as a domestic worker. They found me through the website “greaupair.com.”
4. At the time, Mr. Koehler was working at the United Nations in New York City. He lived with his family in a home outside the City.
5. After my interview, Mr. Koehler offered me employment and agreed to sponsor me for a visa to enter the United States. I entered into a contract with Mr. Koehler “for domestic staff” in 2014.
6. In 2014, I went to the U.S. consulate in Qatar for a visa interview to obtain a G-5 visa.
7. I showed my employment contract to the U.S. consular official in Qatar. No one at the U.S. embassy told me about my rights under the contract or if I had a dispute with my employer. Additionally, no one at the embassy gave me any information about my rights as a worker or my rights against discrimination and harassment under U.S. law.
8. After my interview, I was issued an A visa even though I was seeking a G-5 visa. When I informed Mr. and Mrs. Koehler about this error, they insisted that I nevertheless travel to the U.S. to begin working for them and said that they would convert it to a G-5 after my arrival.
9. When I entered the U.S. in 2015, I showed immigration officials at the airport my passport, visa, and employment contract. No one provided me any information about how to enforce these rights or where to go if I needed legal or emergency assistance.

10. Mrs. Koehler picked me up from the airport and drove me directly to their home. Upon arrival, they took my passport for approximately 5-6 months until they obtained a G-5 visa for me.
11. Soon after I began working for Mr. Koehler and his family, it was clear that they did not care about my rights or about honoring our contract terms concerning hours, pay, or responsibilities.
12. They also spoke to each other in German while at home, a language that I did not understand, though we all spoke English. I felt further isolated and discriminated against because they continued to speak in this language all the time. It was almost as if they did that to pretend I was not there, so they would not have to talk to me or be aware of my presence unless they were talking to me about work.

Working Conditions

13. The employment contract stated that the Koehlers would pay me at the rate of \$10.02 per hour for a 35-hour workweek, and provide room and meals without charge. The contract also required them to pay me at 1.5 times my hourly rate for any hours worked over 40 each week.
14. During my phone interview and again upon arrival in the U.S., Mr. Koehler and Mrs. Koehler said my primary responsibility would be childcare. They said that I would also have to do some "light" housekeeping, as needed.
15. Despite our contract and conversations, my job duties included much more than just childcare. In addition to looking after the youngest child during the day and older children (all under age 10) when they came home, the Koehlers expected me to maintain and complete deep cleaning of the six bedroom, six bathroom-home and two-car garage. This meant that I was required to regularly sweep, vacuum, and mop the floors; scrub the walls; dust and clean air-conditioning vents, light fixtures, windows, and the fireplace; clean the garage and wash the two cars; clean up after the family pets; collect every one's dirty clothes, then wash, iron, and fold all the laundry, with occasional sewing to fix missing buttons or other repairs; change bed sheets, tidy closets; organize the children's toys from smallest to largest in each room; take out the garbage; occasional grocery shopping; prepare breakfast and pack lunch for the children, catering to each child's food preferences; make daily dinner for the family, as well as meals for occasional guests and visitors; seasonal work such as shoveling snow; cleaning after the pet birds (who were uncaged in the home part of the time) and other tasks, if requested.
16. As a result, in spite of what my contract said, I regularly worked over 90 hours per week for the Koehlers. For the duration of my employment, my work schedule was Monday

through Thursday from approximately 6:30am to 10:30pm, Friday 6:30am to 12:30am or 1:00am, and Saturday 7:30am to 4:00pm.

17. Sundays were usually my one day off, but if the family was away for the day or on vacation, I was required to take care of the pets, plants, pick up mail, and other chores.
18. Mr. Koehler and his wife did not permit me to take any breaks during working hours. Because Mrs. Koehler worked from home, if she saw me taking a break, she would remind me there was work still to be done and direct me to something or another. I basically did not have any real break until night, after the family had gone to sleep.
19. Even when she did not say anything, the sheer amount of work I had to complete left me with no time to take a break. She required me to finish a lot of duties during the day, before the children came home since I would have to take care of them when they arrived too. So, for instance, rather than taking a meal break during the work day, I typically ate a little here and there while carrying out my work responsibilities.
20. I was able to get an average of only four or five hours of sleep per night. During the winter, it was hard to sleep even this much because my room was cold and they had asked me to turn off the heater at night because it created a bad smell that went upstairs, where they slept.
21. Throughout the entire tenure of my employment, the Koehlers paid me only \$350.70 per week, which was deposited directly into my bank account.
22. A few months into the job, I asked about overtime pay as was agreed upon in our contract. The Koehlers refused, saying that I was already getting free housing, food, and laundry. Even though these things were part of our agreement and not a substitute for overtime pay, the Koehlers never paid me overtime and instead suggested I was being ungrateful or too demanding by asking them to fulfill their half of the employment contract.
23. There were multiple things I bought related to my work responsibilities with my own money, including things to protect me from inhaling or having contact with the strong chemicals that I had to use for cleaning. They never bought or provided me any protective tools, so I purchased things like gardening supplies, gloves, and face masks myself.
24. Whenever I asked for reimbursement, they would tell me to just remind them later, but they would not pay me.
25. I felt shy about asking my employer repeatedly for payment and also afraid because my visa depended on my position with them. Eventually I gave up asking for the wages or other payments my employers owed me.

26. During the time I was employed with the Koehlers, I did not consult a lawyer about my rights.

Liberty

27. I had never been to the U.S. before my employment with the Koehlers. When Mrs. Koehler brought me from the airport to their home, I had no sense of where I was being taken.

28. Once at their home, I did not know anything about the city in which I was living. I did not know whether there was any local public transportation. I did not know how to contact emergency services or a church I could attend. In fact, early on, I did not leave the house for three months because I did not know the area around me and I had no means of transportation. I slowly learned about taxis, trains, and other basic matters on my own, often through the internet, not because Mr. Koehler or his family provided me any information on how to get around if I ever left the house or needed help.

29. The Koehlers did not inform me, and for months I did not know, that they had placed cameras throughout the home. I only found out when Mrs. Koehler made comments about act/events no one could have seen. The cameras made me feel like I had no privacy.

30. Mr. Koehler and his family also had a security alarm system for their house but they never told me the passcode for turning it off or on. Therefore, I could never leave the house when I wanted to unless I had their permission or they knew I was leaving.

31. Although I was not required to purchase my own food or groceries, I was not free to eat anything I wished. For example, for dinner, I cooked whatever the family wanted and ate some portion of that. Only sometimes, I cooked separate Filipino food for myself. I was never reimbursed for the cost of my own food, even though they had told me meals would be provided.

32. Eating during the day was difficult because of the work I needed to do and because the family did not allow me meal breaks. Between feeling that I was being watched, could not take breaks, had so much work to do, and needed to keep my employer happy, I began eating less and less so that it wouldn't require me to take breaks and no one would notice any missing food. I ate little by little from what I bought for me to get energy.

33. I was unable to go to the doctor until one year after being employed because the Koehlers refused me to give me a day off and I was unable to find a doctor available to see me on Sundays, which was my regular day of rest.

Health and Well-Being

34. In late 2015, I asked for a day off from work to see a doctor because I was feeling very ill, but Mr. Koehler told me I had to wait until they left for vacation, which was not until the end of the year. But because I needed to care for their pets, plants, maintain the house while they were gone and prepare for their return, it was not realistic for me to take time off then to see a doctor. They finally gave me a day off on my birthday, which was the first time I saw a doctor since my arrival around one year prior.
35. I tried to find a doctor in the same town as or close to the Koehlers' home, but I could not find a place that would accept my insurance. The Koehlers provided me no help. I tried multiple places and eventually found a doctor located about an hour away from the house.
36. My doctor told me that I had high cholesterol and asked me about my diet. I explained that I depended on my employers for the food I had to eat and could not do my own separate grocery shopping, given the restraints on my time and freedom of movement.
37. My doctor also told me I needed to take some rest days and he gave me a medical certification saying that I needed at least four days off. When I gave the note to Mr. Koehler and his wife, they were upset and said such time off was not acceptable. They began insisting that I sign a contract saying I agreed that I would not receive two weeks' pay because I was taking time off.
38. I refused to sign the contract, but in early 2016, my illness continued to worsen. I had terrible headaches, felt dizzy, and had blurry vision. My menses was irregular to the point where I was bleeding non-stop for several weeks.
39. During one visit to my doctor, there was a severe snowstorm and I was unable to return to the Koehlers' house. They were furious.
40. I stayed with someone for a few days to rest for my health and to recuperate, all the time scared and stressed about the Koehlers' reaction. When I returned to work, they were very upset and told me my leave was unreasonable.
41. Soon after this event, the Koehlers claimed they had told immigration authorities I was no longer working for them. I was scared that I might be in trouble or my visa might be in jeopardy, and tried to make the Koehlers happy with my work.
42. As I continued to work without a break, my sickness persisted. A few months later, I visited the doctor twice during one month in the spring. After the second appointment, Mr. Koehler threatened to fire me if I missed work again.
43. The following month, I knew I needed to see the doctor again for follow-up care. I knew this also meant that the Koehlers would fire me and that, maybe, they would turn me over to immigration officials, even though my health was declining. Over several weeks, I

gathered the courage to leave their home permanently, without telling them in advance. Over several weeks, I slowly snuck out my belongings a little at a time and left them with some friends. Eventually, all I had left fit in one small bag, and I snuck out one night. Consequently, they fired me.

44. In the first year after I escaped, I had an extremely difficult time. I had nowhere to go, no work. I did not always know where to go for help. Through a Filipino church community, I was connected with free social and legal services through a local organization.

Legal Assistance

45. In the year after I left Mr. Koehler and his wife, I met another woman who also had been a domestic worker for them and who had been subject to the same inhumane conditions. Almost a year after I left my job with Mr. Koehler, and through the help of Urban Justice Center, a community advocacy and legal organization, I filed a lawsuit in federal district court in the U.S. against Mr. Koehler and his wife based on the conditions we were required to work under and the negative impact on our health and well-being.

46. A few months later, the federal court judge dismissed the lawsuit based on diplomatic immunity.

Conclusion

47. I received a T-visa a few months after I left the Koehlers' home which has allowed me to stay in the U.S. because I am a survivor of labor trafficking. I have since made a life for myself here.

48. I currently work as a community organizer at Damayan, fighting labor trafficking, labor fraud and wage theft. I use my experience as a tool to help others demand fair labor standards to achieve economic and social justice for domestic workers and other low-wage workers.

49. However, my experience has had lasting effects on me and my family in the Philippines. In addition to the toll that the long work hours, physical labor, lack of sleep, and poor nutrition had on my body, I am still dealing with the emotional trauma of being totally disregarded as a human being. I fight depression, have difficulty sleeping, feel angry and frustrated, and remember the feelings of helplessness, sadness, and isolation I felt when I worked for the Koehler family.

50. Even while I was working there, connecting with family and making friends was difficult because of my emotional state. That disconnection from my family has had particularly long-term and devastating impact on my family. While working for the Koehlers, because of my long work hours, the time difference, and my own sadness and exhaustion, I could not have regular or meaningful conversations with my teenage daughter in the

Philippines. While I am recovering emotionally now, my daughter has developed depression and attempted suicide in part because of the stress of knowing her mother's living conditions and worrying about me, in addition to her own self and the rest of my family. While working, I was able to provide at least some financial support for them, but that decreased and stopped altogether for a time, while I tried to restart my life after leaving the Koehler house.

51. My story is just a small part of the experience of domestic workers employed by diplomats in the United States. While still traumatic, I continue to share my story so that I can help make a difference for other domestic workers.

52. I believe that just because someone is a diplomat, it does not mean that they can do whatever they want. We are human too, and we deserve to work with dignity and respect.

I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Name: /s/ Edith Mendoza
Edith Mendoza

Date: June 7, 2019

City, State: New York, NY

EXHIBIT 2B

DECLARATION OF FAITH SAKALA

Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

I, Faith Sakala, swear and affirm that the following is true and correct to the best of my information, knowledge, and belief:

1. My name is Faith Sakala. I was born on December 14, 1995 in Lusaka, Zambia. My native language is Nyanja and I am fluent in English.
2. I arrived in the U.S. in November 2014 based on the promise of fair employment as a nanny and the chance to obtain a college education. However, after bringing me here, my employers – a husband-wife couple working for the Zambian Embassy and World Bank – subjected me to inhumane work conditions and refused to send me to secondary school.

Employment Offer by World Bank & Consular Employee

3. Before coming to the United States, I was attending high school in Zambia. However, my schooling was not as consistent as I would have liked. Factors such as money or security meant that I could not always attend regularly. Moreover, my father became very ill, and I wanted to find a way to contribute to the costs of his medical care.
4. In 2014, a family member introduced me to the Milunga family. Mrs. Milunga knew about my father's health problems and related expenses. She offered to hire me as a nanny for her infant child in the U.S. She said that her family would pay me for the work and provide housing, meals, and clothing without charge. Mrs. Milunga also said that she would pay for me to attend school. Mrs. Milunga told me that I would be able to communicate with my family on a regular basis. Because I wanted to help support my father and receive a better education, I accepted her offer.
5. I entered into a written contract, which was in English, with the Milungas while still in Zambia. The contract stated that the Milungas would pay me at a rate of \$9.50 per hour for 35 hours per week. My work hours would be Monday through Friday from 10 AM to 5 PM, with weekends off. Overtime hours would be paid at 150% of my base rate. The Milungas also agreed to grant me one day of paid holiday time per year, 15 paid sick days per year, and 10 unpaid vacation days per year. The contract also guaranteed me room and board, among other things. Furthermore, we agreed that Mrs. Milunga would finance my schooling in the United States.
6. Mrs. Milunga helped obtain a passport for me, and I remember meeting someone who I thought was a government employee as part of this process.

7. By the time I went to the U.S. embassy in Zambia for a visa interview, the Milungas were already in the United States. At the interview, I was given a document about my rights and granted a G5 visa.

Work & Living Conditions Under the Milungas

8. I entered the United States on November 22, 2014 at Dulles International Airport. Mrs. Milunga picked me up in her car and drove me to her house in Silver Spring, Maryland.
9. Initially, Mrs. Milunga was kind to me. She said that, for the first four months, I would work Monday through Friday 10 AM to 5 PM caring for her infant son, cooking, cleaning, and doing laundry. The Milungas promised me that I would be able to start school after this period.
10. Soon after I arrived, she took me to get a social security card, which she said was my identification card and was needed to pay taxes on my wages. However, after a couple days in her house, she asked me for my passport and new social security card. I gave these items to her because I trusted her.
11. For approximately two months, I worked caring for the Milungas infant child without pay and without any mention of enrolling in any classes or school. At the time, I did not say anything to the Milungas about these things. Mrs. Milunga had told me that I would start school three or four months after I arrived, so I was still patient.
12. Around then, Mrs. Milunga told me that the World Bank was holding an orientation for domestic workers. I had not received any information about such an orientation when I was at the U.S. embassy in Zambia or upon my arrival in the U.S. Mrs. Milunga told me I was to go to the orientation, but warned me that I should lie and say she was paying me if anyone asked.
13. At the orientation, officials advised us to report mistreatment and withholding of payment. I did not say anything to the officials about my unpaid wages, and I continued to work for the Milungas without saying anything to them.
14. But after another month passed and nothing changed, what was said at the orientation inspired me to ask Mrs. Milunga about holding up her end of our contract. I asked why she was not paying me and why I was not attending school. That is when her demeanor changed.
15. At this point she was no longer kind to me. She told me to remember that she had brought me to the United States and she could send me back to Zambia. Mrs. Milunga threatened

me, saying that if I ever told anyone I was doing unpaid work for her, she would “send me back to Zambia.” She and her husband told me not to ever leave the house because it was dangerous outside. They told me I could be killed if I went outside.

16. Despite what Mrs. Milunga had said and what my contract stated about my hours and work responsibilities, I had to work much longer hours every day of the week and had many more duties. I was required to be up at 5 AM every morning and care for both of the Milungas’ children. I had to wake them up, dress them, cook breakfast, pack food for the older child, as well as the parents, and then care for the infant during the day.
17. Throughout my employment with the Milungas, I was required to prepare all of the family’s meals and complete all chores. I had to do laundry; make the beds; vacuum and dust; clean the bathrooms, bedrooms, living and dining areas, and kitchen; and take out the trash. I also had to fully attend to any guests the Milungas invited, including parties.
18. One day, when I was not feeling well and asked Mrs. Milunga for help with the children, she told me, “You are not in America to rest. You are here to work.”
19. Over the course of my employment with the Milungas, I regularly worked 18-hour days, Monday through Sunday.

Loss of Liberty and Freedom

20. When I was preparing to leave Zambia, Mrs. Milunga had told me not to worry about packing many clothes because she would provide them for me. In place of personal belongings, she asked me to pack Zambian food for her and her family in the U.S. I did as she asked and filled my suitcase with her requested items, thinking she would honor her promise to buy me clothes and food.
21. Before I left Zambia, she also asked me to send money to her brother who still resided in the country. I did so, thinking that Mrs. Milunga would pay this money back to me when I was in the U.S. However, in addition to not paying me the wages promised, she also never repaid me for this cost.
22. Even though I arrived in Washington D.C. at the start of winter in November with little clothing pursuant to Mrs. Milunga’s instructions, she did not buy me essential clothing such as a winter coat. When I asked Mrs. Milunga about buying a coat, she refused. While I worked for the Milungas, she gave me one of her old coats to wear. Another time, she gave me three pairs of her old underwear and took me to a thrift shop where she bought me a few dresses.

23. At some point, Mrs. Milunga took me to Capital One Bank to open an account in my name. She opened it with \$50. However, I never used this account. Instead, Mrs. Milunga used all the money in that account.
24. Mrs. Milunga did not trust me around her husband. Mr. Milunga was initially nice to me, and we would eat dinners together. After I asked about unpaid wages and schooling, Mrs. Milunga became frustrated if I were around her husband. She commanded me to go to my bedroom whenever her husband was present, meaning that much of my day was spent alone, sequestered in my room. We also no longer ate dinner together; instead, Mrs. Milunga forced me to eat by myself after her family had finished the meal I prepared.
25. Although Mrs. Milunga gave me a cell phone when I arrived to stay in touch with my family in Zambia, after I raised questions about my pay and education, she became more domineering and would not let me use the phone freely. She knew this meant that I would not be able to stay in regular touch with my sick father.
26. During my employment with the Milungas, I did not receive any regular medical check-ups. I also was not given any sick days, as promised in my contract, when I felt ill. I was expected to continue working, no matter my condition.
27. At one point, when I was sick with severe stomach pains that could not be ignored, Mrs. Milunga took me to the hospital. Once there, however, she did all the talking to the doctors.
28. The doctors at the hospital gave me a prescription. Mrs. Milunga refused to take me to fill this prescription. Instead, she gave me some medicine she had around her house and told me to take that. I do not know what the medicine she gave me was, nor do I know what she did with my prescription.

Taking Refuge with Another Family

29. One day, Mrs. Milunga took me to IKEA with her. While there, we were speaking in our native tongue, and another woman recognized our language. Even though she was from Zimbabwe, she spoke the same language as we did. I learned that this woman's name was Mrs. Monica Mzezewa. Mrs. Milunga invited Mrs. Mzezewa and her husband, Nicholas Mzezewa, for dinner. Mrs. Milunga lied to the Mzezewas and said I was her niece.
30. Mrs. Milunga informed Mrs. Mzezewa that I was not happy, so Mrs. Mzezewa wanted to figure out why this was the case. She questioned me when she first visited Mrs. Milunga's house, but I did not tell her anything about my working for Mrs. Milunga. I kept quiet because I was scared that Mrs. Milunga might be fishing for information or

would otherwise find out I had told someone about how she treated me and would retaliate against me. I was uncomfortable and did not know whether I could trust Mrs. Mzezewa.

31. One day in the fall of 2015, I overheard Mrs. Milunga speaking on the phone, and I believe she was speaking with my mother. She was yelling and saying something about how she believed I had money. Later that day, Mrs. Milunga started yelling at me.
32. Afraid for my safety, I texted Mrs. Mzezewa about what was happening. Mr. Mzezewa picked me up from Mrs. Milunga's house and took me to their house. There, I disclosed how Mrs. Milunga had promised to pay me a salary and send me to school but had done neither. Mrs. Mzezewa called Mrs. Milunga and told her she could not do this to me and that her actions were wrong.
33. Mrs. Milunga responded by telling Mrs. Mzezewa that, if she wanted to help me, she should keep me at her house. She kicked me out and told me never to return to her house.
34. When I did return to the house to try to collect my things, I saw that Mrs. Milunga was there, but she did not let me in. I was unable to retrieve any of my belongings and was left with only the dress I was wearing.
35. I began to live with the Mzezewas on September 18, 2015 at their house in Montgomery Village, Maryland. Mrs. Mzezewa was a pastor at the United Methodist Church. Her husband used to care for somebody but did not work when I moved in with them.
36. Mrs. Mzezewa said she wanted to help me and viewed me as a daughter. Unlike Mrs. Milunga, the Mzezewas let me come and go from their house, and let me call my family. They did not expect me to pay them for their hospitality. Initially, I believed they were helping me even though they also asked me to cook most of their meals and clean their house.
37. Soon, however, after they "helped" me obtain compensation from the World Bank for the conduct of the Milungas, they took advantage of me as well.

Insufficient and Ineffective Relief

38. Working with the Mzezewas, I reported Mrs. Milunga to the World Bank. The World Bank responded by suspending her from work until she paid "the minimum amount of money owed to [me] under the G5 contract." This amount came to \$14,140.85 or approximately what I would have earned if I had only worked 35 hours per week during my time with the Milungas. In reality though, I worked more than 90 hours per week.

39. Though Mrs. Milunga never paid me, the World Bank paid me this amount on her behalf, and I accepted it although I did not have representation.
40. The World Bank did not help me recover my passport or social security card. I also did not receive any help – whether in terms of money, support services, information about where to get legal or medical help – from the U.S. government in connection with my complaint to the World Bank. Ultimately, I worked with a lawyer, Alex Chanthunya, to get a passport from the Zambian Embassy and replacement social security card.
41. During the entire period that I worked for the Milungas, I never met with any U.S. government officials about my work conditions. The Milungas never told me of any such contact and, unlike the World Bank’s mandatory orientation, never sent me to any mandatory meetings with U.S. officials.
42. Upon leaving the Milungas, I was no longer in possession of a valid visa since my G5 visa depended on staying employed with them. The settlement with the World Bank did not alter this situation. I knew that without immigration status, I was at risk.
43. Even when local police learned about what had happened to me, I did not get any assistance. At one point after leaving the Milungas, local police arrived at Mrs. Mzezewa’s house asking for me. Although I was there, she told them I was not. They left a business card and said I should contact them. I called them and agreed to meet them in Rockville. It seemed that Mrs. Milunga had reported me to the police, although I am not sure exactly what she said. I went to meet the police officers and took my contract with Mrs. Milunga with me. I explained how Mrs. Milunga had trafficked me and showed them the contract. After hearing my story and seeing the contract, they did not see any reason to investigate me. They also did not direct me to any resources for survivors of trafficking or other forms of assistance.
44. I remained uncertain of my ability to stay in the U.S. or of deportation risk until I applied for a T-visa in 2017 and was granted one in January 2018, as a survivor of labor trafficking.

Continued Exploitation and Abuse as a Domestic Worker

45. In 2016, I began living with the Mzezewas. By this time, I was 21 years old and still was not attending school while living with Mzezewas. I went to Montgomery College once and took an English exam, but I never had a chance to move forward with my education.
46. Believing the Mzezewas would help me manage the money I had received from the World Bank, I opened checking and savings accounts, and agreed to add Mr. Mzezewa’s

name on the account, when Mrs. Mzezewa insisted. I did so because I trusted them at the time.

47. Mrs. Mzezewa and her husband took \$4000 as cash out of the approximately \$14,000 in my account and split the rest between checking (\$2000) and savings (\$8000). I wanted to send money to my mother and my sick father, but they told me I could not do so because they had invested my money to grow interest.
48. I later realized that Mrs. Mzezewa would use my bankcard to buy groceries and gas. Sometimes, she would lie about how she was using my money. One day, she and her husband called me home saying there was an emergency and told me to pay \$400 in unpaid tolls that Mr. Mzezewa had accrued.
49. In September 2016, Mrs. Mzezewa demanded that I buy a laptop from Best Buy using money from my account. She always used this laptop, and I rarely had access to it. She would not let me keep the password secret from her. I did not feel comfortable with these actions, and I was unhappy with the Mzezewas, but I did not feel confident challenging the Mzezewas since they were caring for me and housing me.
50. Meanwhile, during the same month, my father passed away. Until that time, since Mrs. Milunga had never paid me and the Mzezewas first refused me access to my money and then used my funds, I had never been able to contribute to his care. Now, I could not attend his funeral either.
51. Eventually, I wanted to apply for a work permit. To do so, I needed a bank statement. When I went to the bank, they told me that all the money in my checking and savings accounts was gone.
52. The bank showed me transfers from my accounts to the Mzezewas' account (listed as CHK 9604 on the bank statements) and to their children's bank accounts done under Mrs. Mzezewa's name. Some had gone to their son in Zimbabwe (listed as Moyo, WITZ on the bank statements), and some had gone to their daughter in New York (listed as mzezewa, TARIRO on the bank statements). Of all the listed transactions, I was only responsible for one or two small withdrawals in September 2016.
53. When I confronted Mrs. Mzezewa, she lied to me and became very angry. She claimed she used the \$4000 in cash to pay my lawyer, but I knew this could not be true because my lawyer had worked for me pro bono. I confirmed this fact with Mr. Chanthunya, and he said Mrs. Mzezewa never paid him any money.

54. Thereafter, Mrs. Mzezewa began demanding that I pay rent and bills, which we had never discussed. She insisted I had money that I did not have. She had never said she expected any payment until I discovered she was stealing my money.
55. Normally, I kept my few clothes in the front closet of their house. One day in November 2016, I returned to find all my clothes packed in the garage. I took this as a sign that I had to leave. I was unable to take the laptop she had forced me to buy. When I later contacted Mrs. Mzezewa about returning the money she stole from me, she blocked my number and cut off contact.
56. While I had been living with the Mzezewas, I met a priest by the lakefront near their house. He asked me about myself and could tell that things were not going well for me. On the day the Mzezewas kicked me out, I encountered him again and explained what had happened. I previously told him the Mzezewas were my parents, but at this point, I told him the truth. He offered to let me stay with him, his sister, and his brother at his house. The priest's name is Jack Betako, and his sister is Janet Bismua. I accepted his offer and began living with them in November 2016.
57. After moving in with Mr. Betako and his family, I wanted to find work as a babysitter so that I could help support myself and be productive during the day when they were out.
58. In November 2016 when I was at the library, I was speaking on the phone to a friend about my job search. A man interjected and said his sister needed a babysitter and he could connect the two of us. He asked me to meet him at the mall on another day. I went to meet this man as we planned and found out he had lied about his sister and the potential job. He drugged me and raped me. I was hurt and terrified.
59. Then in January, I missed my period. After going to the doctor, I discovered that I was pregnant. I was scared to share this news with anyone, in particular with Mr. Betako and his sister because I worried they would not approve and kick me out of their house.

Seeking Justice

60. I am working with my attorney to communicate with law enforcement and report the crimes I have suffered. Initially, I was scared to report what happened to me because the Milungas, the Mzezewas, and my rapist all had greatly taken advantage of me.
61. Since having left the Mzezewas, I have been working with an investigator with the World Bank, and I have reported my trafficking to the Diplomatic Security Service.

62. I fear returning to Zambia because I may face re-victimization. My experience in the U.S. has left me very vulnerable. Due to the Millungas' and Mzezewas' exploitation of me and because of my rape, I have become more withdrawn, anxious, and depressed and have suffered other psychological and physical ailments. In Zambia, I would not have enough familial or financial support. My father has passed away and my mother is on her own. Mrs. Milunga has contacted members of my family in Zambia, telling them not to host me and to "Tell Faith to be careful." Furthermore, I would not have access to any of the emotional, psychological, and social services that will help me as a victim of trafficking and sexual assault and as a soon-to-be new mother.
63. I also fear the threats of re-victimization in Zambia where trafficking and gender-based violence remain significant issues. I know I will not be able to receive a quality education and will lack adequate support.
64. It is important to me that I get better—for myself and for my coming baby. In Zambia, I do not feel confident I will have access to the services and programs that will help me take care of myself and my baby. Here in the U.S., I am currently working with a social worker from Ayuda to procure these resources. Additionally, I have found a strong support system in the family with whom I am currently staying.
65. With the help of a civil attorney, I have filed a federal lawsuit in the U.S. District Court for the District of Maryland against the Milungas (*Sakala v. Milunga*, 8:16-CV-00790-PWG (D. Md.)) and I am considering pursuing a case against the Mzezewas. I did not have the financial resources to bring any lawsuits or to even help me recover my passport, so I was fortunate to find lawyers willing to help me free of charge.
66. My story is just a small part of the experience of domestic workers employed by diplomats and consular employees in the United States. I hope that by sharing my story I can help to make a difference for other domestic workers in similar situations.

I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

/s/ Faith Sakala

Faith Sakala

Date: June 7, 2019

EXHIBIT 2C

**DECLARATION OF LINDA OALICAN,
ON BEHALF OF DAMAYAN MIGRANT WORKERS ASSOCIATION**

*Petition Alleging Violations by the United States of America of the Human Rights of Domestic
Workers Employed by Diplomats*

1. Damayan Migrant Workers Association (Damayan) is a non-profit grassroots and membership-based workers' organization based in New York and New Jersey, led by Filipino domestic workers. We are a co-founder of the National Domestic Workers Alliance and co-anchor of the Alliance's Beyond Survival campaign to end the human trafficking of domestic workers in the U.S.
2. Damayan means "to help each other" in Filipino. Our mission is to educate, organize and mobilize low-wage Filipino workers – especially women domestic workers – to fight for their labor, health, gender and im/migration rights, while challenging the root causes of our forced migration through membership engagement, leadership development, basic health services, legal support and campaigns.
3. Damayan's membership, Board, staff, and volunteers include people who have survived labor trafficking in the United States. Together, we provide other labor trafficking survivors the support they need to restore their freedom, assert their basic human rights, and move towards economic stability. Our services include helping survivors develop escape plans, secure emergency housing and financial assistance, access social and legal services, find employment, and facilitate family reunifications.
4. Trafficking is a problem that particularly impacts workers from the Philippines. According to the U.S. government, the home country of the most people granted T-visa certifications between 2001 and 2017 was the Philippines.¹ The T Non-Immigrant Status Visa allows survivors to remain legally in the U.S., access basic services, and potentially reunite with family members, if they can demonstrate that they were trafficked into the U.S. and cooperate with law enforcement in the investigation and/or prosecution of their traffickers.
5. Since 2007, through our network of pro bono attorneys, Damayan has helped more than 40 domestic workers escape slave-like conditions, recover unpaid wages, obtain special immigration protections, seek accountability from their employers through the courts and through public campaigns, secure housing, reunite with their families, and much more.
6. Among these survivors is a one distinct group: domestic workers who have worked in slave-like conditions for diplomats and other foreign officers working for international organizations. As home to the United Nations and the second largest number of diplomatic missions in the U.S., the New York City-area is an area where such trafficking of domestic workers has been – and in 2019, continues to be – a pressing problem.

¹ <https://www.acf.hhs.gov/otip/resource/fscertdata>

7. Based on our personal experiences as trafficked domestic workers and those of the many we have helped, the U.S. government is still falling short of taking meaningful action that could minimize if not prevent such trafficking and help survivors obtain justice once they begin their lives anew.
8. Employment with a diplomat or consular official is even more risky than ordinary domestic work. These high-ranking individuals always have far greater social and often political power than their domestic workers have, whether in their community in the U.S. or in their home country.
9. Additionally, unlike typical employers, the A-3/G-5 employer is covered by diplomatic immunity. As a result of this immunity, they cannot be sued in U.S. courts unless their country waives this immunity. This means that if a domestic worker is denied wages, required to work 18-hour days, denied healthcare, or even assaulted, the default scenario is that the person will not be able to get any justice or relief from their abuser.
10. In 2015, the U.S. issued 1,113 new A-3 visas and 711 new G-5 visas. Of these, the largest numbers were granted to people whose country of origin was the Philippines (294 A-3 and 135 G-5).
11. In recent years, Damayan has assisted approximately a dozen A-3 or G-5 visa holders escape trafficking at the hands of diplomats and other foreign officials. However, through our outreach and other community work, we know that, as of May 2019, many more A-3 and G-5 domestic workers continue to work under exploitative conditions and were convinced to come to the U.S. under false pretenses.
12. Even though many have received a pamphlet from the U.S. consulate providing them information for the National Human Trafficking Hotline in recent years, many remain do not realize that they fall under the definition of a trafficking survivor to the extent they were brought into the country pursuant to fraudulent agreements or representations about their jobs.
13. Among our members who were trafficked, almost none have ever used the Hotline. Most realize that they were trafficking survivors through their own research on the internet or through contact with Damayan members or our social media.
14. Because the validity of a person's A-3/G-5 visa depends on their continued employment with their trafficker or abuser, even those who are aware of their rights or that they have been trafficked are reluctant to call the Hotline out of fear of being placed in immigration detention or being deported.
15. Workers who recognize their employers have violated the terms of their employment agreement or are treating them unlawfully are often unable to remedy their situation because of the same fear of law enforcement and immigration authorities. When some have confronted their employers about unpaid wages or 90+ hour workweeks, they have

EXHIBIT 2D



DECLARATION OF AI-JEN POO

ON BEHALF OF THE NATIONAL DOMESTIC WORKER ALLIANCE

I, Ai-Jen Poo, swear and affirm that the following is true and correct to the best of my information, knowledge, and belief:

1. The National Domestic Workers Alliance (NDWA) is the nation's leading voice for dignity and fairness for the millions of domestic workers in the United States. Founded in 2007, NDWA works for respect, recognition, and inclusion in labor protections for domestic workers.
2. The Alliance is powered by over 65 affiliate organizations and local chapters, and by thousands of domestic worker members in all 50 states. NDWA works to improve working conditions for domestic workers - leading policy advocacy, research, and the development of innovative solutions to address the unique challenges of this sector - while building a powerful movement rooted in the rights and dignity of domestic workers, immigrants, women, and their families.

DOMESTIC WORKERS IN THE U.S.

3. There are over 2.5 million domestic workers in the United States, who work in individual homes as caretakers for seniors, people with disabilities, children, and homes. Unfortunately, being a domestic worker too often means living in poverty and tolerating abuse.
4. Domestic work is often hidden and workplaces are unregistered and unregulated. As a workforce that is predominantly women, immigrants, and people of color, domestic workers have endured a long history of exclusion from basic labor protections - such as the Fair Labor Standards Act, Occupational Safety and Health Act, and Title VII protections against harassment and discrimination - rooted in the legacy of slavery and a perception that care work is not "real" work.
5. These long-standing exclusions have contributed to the vulnerability of domestic workers to exploitation by their employers - both day to day undervaluing and indignities, and more extreme forms of abuse like trafficking - and to significant barriers to accessing the remedies available to other workers.
6. A survey of over 2,000 domestic workers in 14 cities conducted by NDWA and the University of Illinois Chicago's Center for Urban and Economic Development found that

23% of domestic workers (and 67% of live-in workers) were paid below state minimum wages, and 30% reported having their employer disregard at least one provision of their employment contracts.

7. These are in addition to general problems of low pay and abusive conditions: 70% of all respondents were paid less than \$13 an hour and were not paid any overtime, 65% reported having no health insurance, 82% did not receive paid sick leave, 29% reported having some kind of long-term medical problems resulting from their work, and 25% of live-in workers reported getting no more than 5 hours of sleep at night. 20% of respondents reported having trouble paying for food in the previous month because of their low wages.¹

DOMESTIC WORKER TRAFFICKING IN THE U.S.

8. Due to the characteristics of the workforce and nature of the workplace, domestic workers are particularly vulnerable to human trafficking: overwhelmingly women, many immigrants unfamiliar with US laws, working in the homes of their employers, dependent on their employers not only for salaries but in many cases for shelter, food and immigration status.
9. Recruitment by international labor recruiters, who commonly charge fees for obtaining jobs and visas, is a common method of job placement and can result in indebtedness and indentured servitude.
10. Because their stay in the US is contingent on their employment, domestic workers on employment visas are often reluctant to denounce abuse or seek help, as are those who come to work outside of legal channels.

FINDINGS OF THE BEYOND SURVIVAL CAMPAIGN

11. NDWA launched the Beyond Survival campaign in 2013. The mission of the campaign is to end the human trafficking of domestic workers in the US. Beyond Survival focuses on lifting up the experience and vision of trafficked domestic workers, developing the leadership of domestic worker survivors to organize to end human trafficking and to win federal policy changes that expand resources and protections for domestic workers and hold traffickers accountable.
12. The campaign is led by nine local grassroots organizations that are affiliates of NDWA: Damayan Migrant Workers Association, Adhikaar, Matahari Women Workers Center, Miami Worker Center, Pilipino Worker Center, Fe y Justicia Worker Center, Domesticas Unidas, Fuerza del Valle, and the Labor Justice Committee.
13. In 2017 the campaign released a report, “The Human Trafficking Of Domestic Workers

¹ Linda Burnham and Nik Theodore, *Home Economics: The Invisible and Unregulated World of Domestic Work*, National Domestic Workers Alliance, Center for Urban Economic Development and the University of Illinois at Chicago DataCenter (2012), available at <http://www.domesticworkers.org/sites/default/files/HomeEconomicsEnglish.pdf>.

In The United States: Findings from the Beyond Survival Campaign,” based on data from 110 domestic worker trafficking cases where organizations from the campaign provided various forms of support to survivors.

14. While the specific conditions and forms of abuse varied among the cases, there were certain indicators that were present in a majority of the cases included in the findings. 85% of the survivors had at least part of their pay withheld, 80% had been tricked with false or deceptive employment contracts, 78% had employers threaten to report them for deportation if they complained about their working conditions, 75% had their movements and communication restricted or monitored by their employers, 62% had their passports or other identification confiscated, 74% reported emotional or verbal abuse by their employer, 66% reported physical or sexual abuse, either by their employer or a family member of their employer, and 45% reported fearing physical harm if they were to try to leave.²
15. Among the organizations in the campaign, a majority of the survivors they work with, around 75%, came to the US with employment-related visas. These survivors came primarily on A-3, G-5 and B-1 visas but others had come on J-1 visas, as students (F-1) or on low-skilled seasonal visas (H2-B).

Eliminating Immigration Vulnerability

16. Domestic worker survivors of trafficking whose status in the US is tied to an employment visa, and those who lack immigration status or employment authorization, face tremendous hurdles accessing justice and holding their employers accountable.
17. To reduce vulnerabilities to exploitation inherent in these and other work visa programs, a comprehensive overhaul is needed, including regulation of labor recruiters, access to rights information and legal help, and the ability of workers to change employers while working in the US.

Promoting Accountability

18. Most of the organizations in Beyond Survival have worked with survivors who have pursued civil litigation against their employers, and some have been successful in winning back stolen wages. However, accountability continues to be a major problem, particularly for workers in the US on A3/G5 visas in cases involving traffickers who are diplomats who can take advantage of legal protections such as diplomatic immunity to circumvent legal protections for domestic workers.
19. Other employers are often able to avoid paying wages after judgments are entered against them by moving outside of the US or through other means. Further advocacy efforts are

² Sameera Hafiz and Michael Paarlberg, *The Human Trafficking Of Domestic Workers In The United States: Findings from the Beyond Survival Campaign*, National Domestic Workers Alliance and the Institute for Policy Studies (2017), available at https://www.domesticworkers.org/sites/default/files/bs_report2017.pdf

needed to change policies and practices to ensure that domestic workers across the range of employment visa categories are afforded the same rights and protections as other workers, and that there are effective systems in place for workers to access justice and accountability for employers who commit trafficking and other forms of abuse.

Involving Community-Based Organizations

20. In addition to expanding the Department of State registration and monitoring program for domestic workers employed by diplomats to other cities with a high number of these visa holders, the State Department should work with culturally and linguistically appropriate community-based organizations that can help provide workers with information on human trafficking and rights education and ensure that workers have access to support and referrals to legal or other resources in cases of trafficking or abuse. This is an important strategy for the prevention and early identification of trafficking.

Eliminating Erosion of Survivor Protections

21. Beyond strengthening prevention and identification of trafficking, existing protections for survivors must be safeguarded. Under the Trump Administration, legal protections for survivors of trafficking are also under threat.
22. One of the critical protections that has enabled many immigrant survivors to escape their situations of trafficking and address their longer term needs and safety is the T visa, which allows certain immigrant survivors of trafficking to obtain a visa to remain in the US.
23. Currently however, these protections are under threat due to: narrower interpretations of eligibility and increasing difficulty getting law enforcement or labor agencies to certify T visa applications and lower USCIS approval rates;³ potential applicants being deterred by the rule change that visa applicants that are denied will be automatically issued a Notice to Appear by USCIS;⁴ and the elimination by the Department of Justice of immigration judge's ability to administratively close cases, a recourse that has been used by survivors of violence who are eligible for immigration relief but are currently in deportation proceedings and faced with lengthy wait times for their visas.⁵
24. Furthermore, increasingly harsh and indiscriminate immigration enforcement measures

³ Grant, M.G. (2018, August 22). It Is Now Even Harder for Trafficking Survivors to Get Visas. The Appeal. Retrieved from <https://theappeal.org/it-is-now-even-harder-for-trafficking-survivors-to-get-visas/>

⁴ U.S. Citizenship and Immigration Services. (2018, June 28). Notice to Appear Policy Memorandum.. Retrieved from <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum>

⁵ Brayman, L. (2018, June 4). The End of Administrative Closure: Sessions Moves to Further Strip Immigration Judges of Independence. Catholic Legal Immigration Network, Inc. Retrieved from <https://cliniclegal.org/resources/end-administrative-closure-sessions-moves-further-strip-immigration-judges-independence>

under the Trump Administration, coupled with a rise in anti-immigrant rhetoric and hate crimes, have created added fear and barriers for immigrant survivors of trafficking to access safety.

25. Several law enforcement agencies share responsibilities for investigating claims of labor trafficking, but the Department of Homeland Security's Immigration and Customs Enforcement is often the primary federal investigating agency for cases of domestic worker trafficking involving immigrants (both with or without authorization). Given ICE's role in deporting unauthorized immigrants, and an increase in very visible community and worksite raids, trafficked domestic workers are reluctant to report crimes committed against them.
26. This fear has been exacerbated by the increasing entanglement of ICE with state and local law enforcement agencies, which create the impression of local law enforcement as a federally deputized deportation force.
27. To ensure immigrant survivors can access safety and help, immigration enforcement practices must be changed to meet the needs of trafficking survivors and improve access to benefits and remedies. Such changes should include ending the involvement of state and local police in immigration enforcement, ensuring immigrant workers can assert their labor rights without fear of deportation and restoring prosecutorial discretion that prioritizes family reunification and human rights.

I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Name: /s/ Ai-jen Poo
Ai-Jen Poo
Executive Director
National Domestic Workers Alliance

Date: June 7, 2019

Before the

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ORGANIZATION OF AMERICAN STATES

**Domestic Workers Employed by Diplomats
vs.
The United States of America**

**Petition No. P-1481-07
OBSERVATIONS CONCERNING THE MAY 4, 2016
RESPONSE OF THE UNITED STATES GOVERNMENT
March 12, 2021**

APPENDIX 3

**EXHIBITS IN SUPPORT OF PETITIONER'S MARCH 12, 2021
OBSERVATIONS CONCERNING THE
MAY 4, 2016 RESPONSE OF THE UNITED STATES GOVERNMENT**

INDIVIDUAL DECLARANTS IN SUPPORT OF PETITIONERS

Exhibit 3A: Declaration of Edith Mendoza, Dated March 5, 2021

Exhibit 3B: Declaration of Suzu Gurung, Dated March 2, 2021

Exhibit 3C: Declaration of Ruben Apolonio Bitas, Dated February 25, 2021

Exhibit 3D: Declaration of Erika Velasco Umlas, Dated February 25, 2021

ORGANIZATIONAL DECLARANTS IN SUPPORT OF PETITIONERS

Exhibit 3E: Declaration of Riya Ortiz on behalf of Damayan Migrant Workers Association, Dated March 8, 2021

Exhibit 3F: Declaration of Ai-jen Poo on behalf of National Domestic Workers Alliance, Dated March 8, 2021

Exhibit 3G: Declaration of Narbada Chhetri on behalf of Adhikaar, Dated March 9, 2021

Exhibit 3H: Declaration of Daniana Trigoso-Kukulski on behalf of Fe y Justicia Worker Center, Dated March 5, 2021

Exhibit 3I: Declaration of Sulma Guzmán on behalf of Centro de los Derechos del Migrante, Dated March 4, 2021

Exhibit 3J: Declaration of Sarah L. Bessell on behalf of the Human Trafficking Legal Center, Dated March 1, 2021

EXHIBIT 3A

Declaration of Edith Mendoza

Final Observations on the Merits Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

I, Edith Mendoza, swear and affirm that the following is true and correct to the best of my information, knowledge, and belief:

1. I am a national of the Philippines and have lived and worked abroad to financially support my family. My family has continued to live in the Philippines during this period. My native language is Tagalog, and I am proficient in English.
2. From January 2015 to June 2016, I worked as a domestic worker for German diplomat Pit Koehler, his wife, Marieke Koehler, and their four children in their Westchester County home. During the course of my employment, my employers treated me as less than human. I felt like a slave in their household.

Background

3. I was contacted by Pit Koehler and Mrs. Koehler in 2014 while working in Qatar as a domestic worker. They found me through the website “greaupair.com.”
4. At the time, Mr. Koehler was working at the United Nations in New York City. He lived with his family in a home outside the city.
5. After my interview, Mr. Koehler offered me employment and agreed to sponsor me for a visa to enter the United States. I entered into a contract with Mr. Koehler “for domestic staff” in 2014.
6. In 2014, I went to the U.S. consulate in Qatar for a visa interview to obtain a G-5 visa.
7. I showed my employment contract to the U.S. consular official in Qatar. No one at the U.S. Embassy told me about my rights under the contract or if I had a dispute with my employer. Additionally, no one at the Embassy gave me any information about my rights as a worker or my rights against discrimination and harassment under U.S. law.
8. After my interview, I was issued an A3-visa even though I was seeking a G-5 visa. When I informed Mr. and Mrs. Koehler about this error, they insisted that I nevertheless travel to the U.S. to begin working for them and said that they would convert it to a G-5 after my arrival.
9. When I entered the U.S. in 2015, I showed immigration officials at the airport my passport, visa, and employment contract. No one provided me any information about how to enforce these rights or where to go if I needed legal or emergency assistance.
10. Mrs. Koehler picked me up from the airport and drove me directly to their home. Upon arrival, they took my passport for approximately 5-6 months until they obtained a G-5 visa for me.
11. Soon after I began working for Mr. Koehler and his family, it was clear that they did not

care about my rights or honoring our contract terms concerning hours, pay, or responsibilities.

12. They also spoke to each other in German while at home, a language that I did not understand, though we all spoke English. I felt further isolated and discriminated against because they continued to speak in this language all the time. It was almost as if they did that to pretend I was not there, so they would not have to talk to me or be aware of my presence unless they were talking to me about work.

Working Conditions

13. The employment contract stated that the Koehlers would pay me at the rate of \$10.02 per hour for a 35-hour workweek and provide room and meals without charge. The contract also required them to pay me at 1.5 times my hourly rate for any hours worked over 40 each week.
14. During my phone interview and again upon arrival in the U.S., Mr. Koehler and Mrs. Koehler said my primary responsibility would be childcare. They said that I would also have to do some "light" housekeeping, as needed.
15. Despite our contract and conversations, my job duties included much more than just childcare. In addition to looking after the youngest child during the day and older children (all under age 10) when they came home, the Koehlers expected me to maintain and complete deep cleaning of the six-bedroom, six-bathroom home, and two-car garage. This meant that I was required to regularly sweep, vacuum, and mop the floors; scrub the walls; dust and clean air-conditioning vents, light fixtures, windows, and the fireplace; clean the garage and wash the two cars; clean up after the family pets; collect everyone's dirty clothes, then wash, iron, and fold all the laundry, with occasional sewing to fix missing buttons or other repairs; change bedsheets, tidy closets; organize the children's toys from smallest to largest in each room; take out the garbage; occasionally do grocery shopping; prepare breakfast and pack lunch for the children, catering to each child's food preferences; make daily dinner for the family, as well as meals for occasional guests and visitors; do seasonal work such as shoveling snow; cleaning after the pet birds (who were uncaged in the home part of the time) and other tasks, if requested.
16. As a result, in spite of what my contract said, I regularly worked over 90 hours per week for the Koehlers. For the duration of my employment, my work schedule was Monday through Thursday from approximately 6:30 am to 10:30 pm, Friday 6:30 am to 12:30 am or 1:00 am, and Saturday 7:30 am to 4:00 pm.
17. Sundays were usually my one day off, but if the family was away for the day or on vacation, I was required to take care of the pets, plants, pick up mail, and do other chores.
18. Mr. Koehler and his wife did not permit me to take any breaks during working hours. Because Mrs. Koehler worked from home, if she saw me taking a break, she would remind me there was work still to be done and direct me to some thing or another. I did not have any real break until night after the family had gone to sleep.
19. Even when she did not say anything, the sheer amount of work I had to complete left me

with no time to take a break. She required me to finish many duties during the day before the children came home since I would have to take care of them when they arrived too. So, for instance, rather than taking a meal break during the workday, I typically ate a little here and there while carrying out my work responsibilities.

20. I was able to get an average of only four or five hours of sleep per night. During the winter, it was hard to sleep even this much because my room was cold, and they had asked me to turn off the heater at night because it created a bad smell that went upstairs, where they slept.
21. Throughout the entire tenure of my employment, the Koehlers paid me only \$350.70 per week, which was deposited directly into my bank account.
22. A few months into the job, I asked about overtime pay as was agreed upon in our contract. The Koehlers refused, saying that I was already getting free housing, food, and laundry. Even though these things were part of our agreement and not a substitute for overtime pay, the Koehlers never paid me overtime and instead suggested I was being ungrateful or too demanding by asking them to fulfill their half of the employment contract.
23. I bought multiple things related to my work responsibilities with my own money, including things to protect me from inhaling or having contact with the strong chemicals that I had to use for cleaning. They never bought or provided me any protective tools, so I purchased things like gardening supplies, gloves, and face masks myself.
24. Whenever I asked for reimbursement, they would tell me to remind them later, but they would not pay me.
25. I felt shy about asking my employer repeatedly for payment and also afraid because my visa depended on my position with them. Eventually, I gave up asking for the wages or other payments my employers owed me.
26. During the time I was employed with the Koehlers, I did not consult a lawyer about my rights.

Liberty

27. I had never been to the U.S. before my employment with the Koehlers. When Mrs. Koehler brought me from the airport to their home, I had no sense of where I was being taken.
28. Once at their home, I did not know anything about the city in which I was living. I did not know whether there was any local public transportation. I did not know how to contact emergency services or a church I could attend. In fact, early on, I did not leave the house for three months because I did not know the area around me, and I had no means of transportation. I slowly learned about taxis, trains, and other basic matters on my own, often through the internet, not because Mr. Koehler or his family provided me any information on how to get around if I ever left the house or needed help.

29. The Koehlers did not inform me, and for months I did not know, that they had placed cameras throughout the home. I only found out when Mrs. Koehler made comments about acts/events no one could have seen. The cameras made me feel like I had no privacy.
30. Mr. Koehler and his family also had a security alarm system for their house, but they never told me the passcode for turning it off or on. Therefore, I could never leave the house when I wanted to unless I had their permission or they knew I was leaving.
31. Although I was not required to purchase my own food or groceries, I was not free to eat anything I wished. For example, for dinner I cooked whatever the family wanted and ate some portion of that. Only sometimes, I cooked separate Filipino food for myself. I was never reimbursed for the cost of my own food, even though they had told me meals would be provided.
32. Eating during the day was difficult because of the work I needed to do and because the family did not allow me meal breaks. Between feeling that I was being watched, not being able to not take breaks, having so much work to do, and needing to keep my employer happy, I began eating less and less so that it wouldn't require me to take breaks and no one would notice any missing food. I ate little by little from what I bought for myself to get energy.
33. I was unable to go to the doctor until one year after being employed because the Koehlers refused to give me a day off, and I was unable to find a doctor available to see me on Sundays, which was my regular day of rest.

Health and Wellbeing

34. In late 2015, I asked for a day off from work to see a doctor because I was feeling very ill, but Mr. Koehler told me I had to wait until they left for vacation, which was not until the end of the year. But because I needed to care for their pets, plants, and maintain the house while they were gone, and prepare for their return, it was not realistic for me to take time off then to see a doctor. They finally gave me a day off on my birthday, which was the first time I saw a doctor since my arrival around one year prior.
35. I tried to find a doctor in the same town as or close to the Koehlers' home, but I could not find a place that would accept my insurance. The Koehlers provided me no help. I tried multiple places and eventually found a doctor located about an hour away from the house.
36. My doctor told me that I had high cholesterol and asked me about my diet. I explained that I depended on my employers for the food I had to eat and could not do my own separate grocery shopping, given the restraints on my time and freedom of movement.
37. My doctor also told me I needed to take some rest days, and he gave me a medical certification saying that I needed at least four days off. When I gave the note to Mr. Koehler and his wife, they were upset and said such time off was not acceptable. They began insisting that I sign a contract saying I agreed that I would not receive two weeks' pay because I was taking time off.

38. I refused to sign the contract, but in early 2016, my illness continued to worsen. I had terrible headaches, felt dizzy, and had blurry vision. My menses was irregular to the point where I was bleeding non-stop for several weeks.
39. During one visit to my doctor, there was a severe snowstorm, and I was unable to return to the Koehlers' house. They were furious.
40. I stayed with someone for a few days to rest for my health and to recuperate, all the time scared and stressed about the Koehlers' reaction. When I returned to work, they were very upset and told me my leave was unreasonable.
41. Soon after this event, the Koehlers claimed they had told immigration authorities I was no longer working for them. I was scared that I might be in trouble or my visa might be in jeopardy, and I tried to make the Koehlers happy with my work.
42. As I continued to work without a break, my sickness persisted. A few months later, I visited the doctor twice during one month in the spring. After the second appointment, Mr. Koehler threatened to fire me if I missed work again.
43. The following month, I knew I needed to see the doctor again for follow-up care. I knew this also meant that the Koehlers would fire me and that maybe they would turn me over to immigration officials, even though my health was declining. Over several weeks, I gathered the courage to leave their home permanently, without telling them in advance. Over several weeks, I slowly snuck out my belongings a little at a time and left them with some friends. Eventually, all I had left fit in one small bag, and I snuck out one night. Consequently, they fired me.
44. In the first year after I escaped, I had an extremely difficult time. I had nowhere to go, no work. I did not always know where to go for help. Through a Filipino church community, I was connected with free social and legal services through a local organization.

Legal Assistance

45. In the year after I left Mr. Koehler and his wife, I met another woman who also had been a domestic worker for them and who had been subject to the same inhumane conditions. Almost a year after I left my job with Mr. Koehler, and through the help of Urban Justice Center, a community advocacy and legal organization, I filed a lawsuit in federal district court in the U.S. against Mr. Koehler and his wife based on the conditions we were required to work under and the negative impact on our health and well-being.
46. A few months later, the federal court judge dismissed the lawsuit based on diplomatic immunity.

Conclusion

47. I received a T-visa a few months after I left the Koehlers' home, which has allowed me to stay in the U.S. because I am a survivor of labor trafficking. I have since made a life for myself here.
48. Until July 2020, I worked as a community organizer at Damayan, fighting labor

trafficking, labor fraud, and wage theft. I used my experience as a tool to help others demand fair labor standards to achieve economic and social justice for domestic workers and other low-wage workers.

49. My experience has had lasting effects on my family in the Philippines and me. In addition to the toll that the long work hours, physical labor, lack of sleep, and poor nutrition had on my body, I am still dealing with the emotional trauma of being totally disregarded as a human being. I fight depression, have difficulty sleeping, feel angry and frustrated, and remember the feelings of helplessness, sadness, and isolation I felt when I worked for the Koehler family.
50. Even while I was working there, connecting with family and making friends was difficult because of my emotional state. That disconnection from my family has had a particularly long-term and devastating impact on my family. While working for the Koehlers, because of my long work hours, the time difference, and my own sadness and exhaustion, I could not have regular or meaningful conversations with my teenage daughter in the Philippines. While I am recovering emotionally now, my daughter has developed depression and attempted suicide in part because of the stress of knowing her mother's living conditions and worrying about me, in addition to her own self and the rest of my family. While working, I was able to provide at least some financial support for them, but that decreased and stopped altogether for a time while I tried to restart my life after leaving the Koehler house.
51. My story is just a small part of the experience of domestic workers employed by diplomats in the United States. While still traumatic, I continue to share my story so that I can help make a difference for other domestic workers.
52. I believe that just because someone is a diplomat does not mean that they can do whatever they want. We are human too, and we deserve to work with dignity and respect.

Update

53. In January 2021, I received news that Mr. Koehler and his wife had resettled to Germany at some point since I escaped their household. In the last six months, Mr. Koehler was invited to speak on his history of international human rights advocacy as a German diplomat at Bauhaus University in Weimar, Germany. We learned about this through a Filipino worker advocate in Germany, connected to Damayan's expansive advocacy network. The Koehlers still owe me roughly \$75,000 for unpaid wages.
54. In July 2020, I left my community organizer role at Damayan to focus on my spiritual advocacy within the Filipino community as a pastor in Queens, New York. I am still seeking justice for the abuses I endured in the Koehler household.

I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Name: Edith Mendoza

Date: March 5, 2021

City, State: New York, New York

EXHIBIT 3B

Declaration of Suzu Gurung

Final Observations on the Merits Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

1. My name is Suzu Gurung, and I was born in India in 1988. I am of Nepali descent and speak Nepali and Hindi.
2. My father worked in the Indian army, and my mother was a housewife. We lived in a middle-class household. My elder sister worked as a domestic worker in an Indian diplomat's house, which prompted me to look for work as a domestic worker.
3. I started working as a G5 domestic worker in New York at age 17 in 2005. I was hired by an Indian diplomat. Before I left Delhi, India, I had to go to the local U.S. Embassy to receive my physical copy of the G5 visa. At the Embassy, they gave me information on my salary and the workplace benefits and educational offerings available to me as a G5 visa recipient. I did not receive these benefits when I arrived at the diplomat's house in the U.S.
4. I did not have a written contract with the diplomat – nor did I have a contract or written agreement detailing my rights with the U.S. Embassy. Before my arrival to the U.S., I was told that the diplomat would help me further my studies by enrolling me in an English class, as I only spoke Hindi and Nepali. She and her husband informed me that I would only work eight hours a day, after which I would be able to rest. They promised me that I would be paid \$9.50 an hour. They promised me time off on weekends, paid vacation time, and sick leave. I did not receive any of these basic rights.
5. During the three years and four months that I worked for the diplomat and her family, I worked nonstop, far more than the 8 hours of daily work that we had agreed upon when I started the position. I also worked on weekends. I had to cook every meal, making different food for the diplomat and her husband; after one year, the diplomat's mother moved in with them in New York. I had to clean the diplomat's house, do her and her family's laundry, polish their shoes, and do any number of involved tasks. I also was required to take care of my employer's guests. The diplomat had between three and four guests stay at the house every month. My employer and I had no agreements about guests before I began.
6. The diplomat and her husband had promised me about \$9.50 an hour before I started the job. Once I started working, they told me they were depositing my earnings in a bank account for me. I did not have the information for this account and never saw or received the money they promised me. I did not get any time off or sick leave benefits for the entire three years and four months I worked for the family. When I said I wanted to go back to India because I wasn't being paid, they ignored my requests.
7. When I asked my employer about the English lessons that had been promised to me, they ignored my inquiries.

8. I was constantly monitored and controlled by my employers. There were no video cameras in the house, but they would look the house over when they got home to make sure I had not touched anything, question me about what tasks I had finished while they were gone, and check the fridge and pantry to see if I had eaten anything while they were out. I was only allowed to eat when they permitted me to. On one occasion, when my employers were out of the house, I ate a piece of bread because I was really hungry. As soon as the diplomat came home from the office, she went straight to the fridge to see if I had eaten anything. She immediately interrogated me about whether I had eaten any of the bread. She figured out that I had eaten a piece because she had counted eight slices of bread in the loaf, one less than had been there in the morning. She yelled at me for eating the slice.
9. My employers instructed me to cook only enough food for the two of them – often with products shipped from India – with only a little leftover food for me. I would get one piece of roti. I craved rice, but there was never enough for me. I was always instructed to cook only half a glass of rice for them. I told them I needed more food, specifically rice, but they said it was too expensive and refused. Sometimes I would eat the leftovers off their plates because I was so hungry. When our groceries got low, they would blame it on me, telling me that I was eating too much, even though I was not getting enough to eat. I always went to bed hungry.
10. My employers would not let me buy my own toiletries, like shampoo or soap. Instead, the family would save the small toiletry samples they received when they stayed in hotels and give them to me to use one by one. These toiletry samples were very small. I had to ration them. They were not sufficient to clean myself. I had one toothbrush for over a year and a half.
11. I also faced daily mental harassment from my employers. They reminded me every day that if I ever left the house, the police would pick me up, rape and beat me, and then load me up in a cargo plane and send me back to India. I remember the diplomat's husband telling me, "If you stay here without us, the government will not let you work. They take all the money you've earned from you. They will send you back right away."
12. I suffered from trauma from my employers' treatment for a very long time. Once I escaped their household, I would shiver and have panic attacks when I had flashbacks. The sight of mangoes triggered me. It reminded me of the family: When they ate mangoes, they would only give me the seeds. I am better now, but I still cannot eat fruits, and every time I see mangoes, it reminds me of them.
13. The diplomat took me back to India once during my employment with her when her family went on vacation there. I wanted to visit my mother, who was sick at the time, but the family did not let me. Instead, I was made to stay in the house all day, taking care of the diplomat, her husband, her mother-in-law, and her two brothers and their wives.
14. Fear was one way my employers controlled me. Otherwise, they simply restricted where I moved. They would not let me leave the house other than once or twice a week to get groceries. The diplomat would time how long my trips to the store would take me. When

I took too long, she would tell me to hurry up or reprimand me. She also monitored what foods I purchased for the house. If the price of milk was five or ten cents more than her allotted milk budget, she would make me return it.

15. When they left for work, the diplomat and her husband would lock their bedroom so I could not enter. When they returned from work, they would make me clean their bedroom while watching me. If they went somewhere on vacation, they would take all the decorations from the living room and lock them in their room until they came back. As soon as they returned home – whether from work or a vacation – they would check everything in the house to make sure I had not eaten or stolen anything. I don't know why they hid the decorations from me. I once asked them why they did that, and they said in Hindi, "What's it to you. Shut up and don't talk back." I felt really bad that they didn't trust me. I don't know why they kept me there if they didn't trust me.
16. If they came back to the house late at night, I was required to wait up until they returned to make them food. They did not give me prior notice about when they would return to the house. It was expected that I be at their constant beck and call throughout the majority of my employment – three and half years.
17. We lived in an apartment building where other diplomats lived. Those diplomats also employed domestic workers. I saw these workers in the elevator on my way out to run errands. They were older domestic workers, above 40, always women, who were shy, not very educated, and who spoke limited or no English. They seemed scared and refused to talk to others. I think they were fearful of people outside their household like I was. I believe these qualities made them easy targets for employers to take advantage of – just like me, though I was much younger than they were, having started working for this family at 17.
18. Even though I met other domestic workers in the elevator, these interactions were limited. I felt isolated, particularly because I only spoke Nepali and Hindi and could not easily speak with most people outside our household. I had to control my thoughts not to get depressed. My mind would go to dark places stuck in the house all day. I felt completely alone.
19. After three years and four months working at the diplomat's house – being abused, surveilled, and refused pay – I was out grocery shopping when I heard someone speaking Nepali on the phone. I introduced myself. The woman worked as a nanny. She told me about Adhikaar and gave me their number. I did not know about Adhikaar before that, and I did not have a passport or paperwork, as the diplomat kept them locked up at her house, so I could not escape with the woman at that moment. Later, I called the woman secretly on the diplomat's home phone – as I was not allowed access to my own phone – and let her know my employers were not paying me and that I needed to escape from my living situation. She invited me to stay with her. When my employers were out of the house, I took a cab to her house and stayed with her for 14 days. After two weeks at her house, recuperating from the abuse I had endured, I called Adhikaar and shared my story with them. I went into Adhikaar's office, and they helped me get settled in a new home. My employers could not contact me because I did not have a phone or any means for

them to contact me. The unfortunate reality of this was that I did not have my passport or any other of my paperwork, which limited the jobs I could get.

20. I did not report the treatment I faced before this because of my fear of the police that my employers had instilled in me. I was sure that if I went to the police, they would rape me and throw me in jail.
21. Before I ran into the Nepali-speaking woman at the grocery store, I did not have anybody to rely on while working in the diplomat's house.
22. After escaping my workplace, I filed a lawsuit against the diplomat with the help of Adhikaar, which connected me to pro bono lawyers.¹ My fight for justice is still ongoing. I won the case, and the diplomat was ordered to pay me 1.5 million dollars, but by that point, she had already left the country and had started working as an ambassador to Italy, covered by her diplomatic immunity. Even though I won the lawsuit, I have not received justice nor compensation for the work I performed that I wasn't paid for. Who do I ask for that compensation from? The U.S. government? The Indian government? Where is my justice?
23. Since leaving that workplace, I received a green card through the T-visa program. I currently work as a domestic worker, where I am paid a livable wage for my work and am regarded as an equal to my employer. I work for a couple on the Upper West Side of New York until March 2020. The husband is a banker, and the wife owns a café. I am responsible for their one child, who is almost two years old.
24. I had to leave the A3-G5 program because my employers took my passport, and I was left with no paperwork in the U.S. In my current job, I know my rights, so I am able to speak up for myself.
25. When the pandemic began, I was very scared that I would lose my job. My fear was confirmed when I was let go in March 2020 by my previous employees. As a result, I had to go on unemployment until June 2020, when I got my new job. Many friends, also domestic workers, lost their jobs when the pandemic began. They are still unemployed. Without income, they are struggling to pay rent and feed their families. If they do have a job, it is often for lower pay than what they were making before the pandemic.
25. The main obstacles to maintaining my safety in the A3-G5 program were the unsafe working conditions and the expectation that I constantly work. I was not given enough to eat, my wages were withheld from me, and my mental wellbeing was threatened by the constant fear of the world outside my employer's household, from the authorities to neighbors.
26. Before they enter the U.S., domestic workers should meet with an advisor or someone who makes sure that all workers are aware of their rights in the country. I went to the U.S. Embassy before coming to the states, but I just repeated things that my employer

¹ *Gurung v. Malhotra*, 851 F. Supp. 2d 583 (S.D.N.Y. 2012).

had instructed me to say. They did nothing to ensure that I was going to be working in a safe environment.

27. Laws and regulations are ultimately just words. Domestic worker authorities need to work to ensure that these laws and regulations are being followed in the workplace by creating a domestic work standards board.
28. Because of this experience, I have learned the importance of education. I would caution advise anyone coming to the U.S. to fully understand the laws and systems here before arriving in their workplace. I also would recommend that the U.S. government put in safeguards to ensure workers maintain possession of their own legal documents and do not give them up to their employers.
29. Educating workers on their rights is important to make sure they are not abused in the home or workplace. Just knowing that domestic workers have rights will not create change: We must be educated on our rights. Education allows workers like me to feel empowered to speak up when our rights are violated.
30. To make sure that domestic workers are safe on the job, government agencies should establish programs where they routinely check in on workers to make sure their living and working conditions are safe. Domestic workers and their employers need to be aware of the rules and regulations for hiring domestic workers, and it is the role of the government that admits domestic workers to work inside their borders to ensure that they are aware.

I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Name: Suzu Gurung

Date: March 2, 2021

City, State: New York, New York

EXHIBIT 3C

Declaration of Ruben Apolonio Bitas

Final Observations on the Merits Alleging Violations by the United States of America of the Human Rights of Hotel Workers and Domestic Workers

I, Ruben Apolonio Bitas, swear and affirm that the following is true and correct to the best of my information, knowledge, and belief:

1. My name is Ruben Apolonio Bitas. I was born on October 27, 1962 in Negros Occidental, Philippines. I currently live in Los Angeles, California, and work as a caregiver.
2. In 2008, I flew from the Philippines to the U.S. with a H-2B Temporary Non-Agricultural Worker visa with the goal of working to support my family back home.
3. When I arrived in the U.S., I worked as a hotel worker/domestic worker at a resort in Orlando, Florida. Eventually, I began working as a caregiver in facilities in California where I dealt with wage theft, unpaid overtime labor, threats of deportation, and employers who did not fulfill their end of the contract. I am a victim of human trafficking.

Background

4. In 2007, I had been working as a teacher in the Philippines for 18 years, but I was looking for opportunities for a new job that would help me support myself and my family better. That's when a friend of mine referred me to Northwest Placement Inc. – an agency that specializes in sending people to work abroad.
5. The agency promised that working in the U.S. as a housekeeper would pay significantly more than my teaching job in the Philippines. I was immediately interested in the opportunity because I believed it to be a chance for a better life for my family and me.
6. During one of Northwest Placement Inc.'s preparation meetings, they told me and the other workers in the program that they would place us in an apartment that would cost \$400 a month.
7. I applied to work abroad through the agency and prepared to leave for the U.S. shortly after. I had to pay over \$5,000 in job placement, program, medical, and transportation fees to the agency. The agency recommended a specific lending company to loan money from, but I did not go to them because there was a large interest fee of over 35% per year and compounded interest. I could not afford this fee, so I borrowed money from my brother-in-law.
8. The agency did not give me a contract until I arrived in the U.S., but they did promise me I would be making more than enough money to quickly pay back my loans, support my family, and take care of myself. The agency also told me I would

have a one-year worker's visa that I could renew after eight months.

9. Before leaving the Philippines, I had an interview with the U.S. Embassy. I paid \$150 for the interview. The agency urged me not to tell the U.S. Embassy staff about my work experience as a teacher or my graduate degree because I would be considered overqualified for the visa. They asked me a few questions about my life in the Philippines and why I wanted to go to the U.S. At no point during the interview did they ask for the agency's contract or inform me of my rights.
10. In January 2008, I arrived in Detroit, Michigan. When I arrived, I had to speak with a U.S. Customs and Border Protection agent at the airport, but they did not inquire about my work or contracts. That same day, I flew to Orlando, Florida, and soon after started working at Starwood Vacation Owner Resort in Orlando, Florida.

Working Conditions

11. Before starting my job at the Starwood Vacation Owner Resort, I went through orientation led by one of the Resort managers and a representative from the U.S. counterpart of Northwest Placement Inc. During the orientation, the manager and the agency representative gave me a seven-month contract and told me I had seven months before my H-2B visa expired. I was confused because in the Philippines, I was told by the agency that my visa would last one whole year. The manager said that if I tried to terminate my contract or move to another state, my visa would be revoked, and U.S. Immigration and Customs Enforcement (ICE) would find me and deport me.
12. According to the joint contract provided by Northwest Placement Inc. and Starwood Vacation Owner Resort, I was set to work as a housekeeper at Starwood Vacation Owner Resort for one year. My promised salary was \$8/hour plus a substantial amount in tips with an 8 hour/day, 40 hour/week work schedule. We were to be paid every two weeks. The contract did not outline job duties, overtime pay, or sick leave.
13. The contract also stated that housing would be provided if we paid over \$400 a month each, plus \$70 in rental insurance. My coworkers and I were surprised because when we had meetings with the agency in the Philippines, the agency representatives made it seem like the total rent would be \$400 a month, with no additional fees. We also thought there would be two to three people per apartment, but there were six people assigned to one apartment.
14. I was assigned to clean 14 villas – eight that needed deep cleaning after check-out, six that required routine housekeeping – in one 8-hour day, five days a week. Each villa had three bedrooms and two bathrooms. If I did not complete all 14 villas by the end of the workday, I would get yelled at. If I worked overtime to complete those duties, I was not allowed to work the following day. To complete my assigned villas, I would have to skip meals, or else I would not be able to finish my work within eight hours.
15. For my first two weeks of work, I received a total of \$80 after a housing fee and taxes

were deducted. For the duration of my time working there, I was only given a total of \$3 in tips; the housekeeper supervisor would take the majority of the tips. Payment for housing, which was an apartment shared by six people, was automatically deducted from my paycheck. I was not allowed to look for housing anywhere else. I was told it was part of my contract to live there and that I would not be allowed to move until my contract was completed.

16. The agency representatives of the U.S. counterpart to Northwest Placement Inc. always checked to see where I was going and tried to monitor my movements. They would ask my coworkers where I was going even when I was just walking to the grocery store to get food. My coworkers who came with me from the Philippines and I had to ask for permission to go anywhere besides home or the resort.
17. My main supervisor often talked down to me. There were instances where she would go to a villa I had already cleaned and spill liquids on the countertops and mirrors so that I would have to clean it again. She would threaten that I would not have work the next day if I did not work faster.
18. There was no access to phones during work. We had to put our devices in a locker. After work, we were allowed to use our phones, but I could not afford a phone at that time. We were allowed to use the computer at the office in the apartment complex we were forced to live in, but we had to ask for permission from the apartment staff first, and we were only allowed to use the computer for one hour a day.
19. Because I was overworked, underpaid, poorly treated, and felt like the agency's promises were lies, I began planning my escape from the resort after working there for one month.
20. Some of my coworkers and roommates, who also were from the Philippines, left after a week of working at the resort. I messaged them on Facebook, asking them how they were able to leave and find a plane ticket.
21. I messaged my cousin who lived in San Francisco, California on Facebook to book a plane ticket for me because I didn't want any of my housemates or coworkers to see that I was planning on leaving. My cousin booked my ticket for me and found a nurse in Fairfield, California, a town in the Bay Area, who owned a caregiving facility that I could work at.
22. In late February 2008, I left the apartment and went to the airport early in the morning, at around 4 am, when everyone was still sleeping. I didn't tell anyone, except for my cousin in San Francisco, that I was planning on leaving because I was afraid my coworkers would tell my supervisor.
23. I took a taxi to the airport, used the ticket my cousin had booked for me and left for San Francisco. When I arrived in San Francisco, the owner of the next caregiving facility I would work at in Fairfield picked me up and drove me to the facility.

24. From March 2008 to July 2008, I worked at three different caregiving facilities in California under the same H-2B visa I had when I first arrived in the States. I worked at the caregiving facility in Fairfield, California in March, a caregiving facility in Orange County, California in April, and a caregiving facility in West Covina, California, from May through July.
25. Similar to my situation in Florida, I ended up leaving each caregiving facility because I was being overworked, underpaid and threatened with deportation or the police if I looked for other work.
26. None of these facilities provided me with a written contract or agreement. But at the first caregiving facility, located in Fairfield, California, I was promised \$1,500 a month to work 8 hours/day and 6 days/week and an extra \$100 for every additional day I worked. After a month of work, I had worked 12-hour days and most nights and only received \$800 with an extra \$10 for an additional day I worked.
27. My boss at the Fairfield facility said that if I left or looked for other work, I would get reported to the police or ICE and deported as soon as my visa expired.
28. Because of the threats of deportation and being underpaid, I texted my cousin and told him I wanted to leave the facility. We planned my escape and one morning, at 2 am, I snuck out of the facility and was brought back to San Jose, California, by my cousin by car. Again, I did not tell any of my coworkers because I feared they would tell my boss and that the boss would force me to stay at the facility.
29. A few days later, I left that cousin's house for Long Beach, California, to work at another caregiving facility that my cousin connected me with. I found work at a second caregiving facility there, located in Orange County, California. I worked as a reliever. My hours and pay varied greatly from week to week, but after the first three weeks of working there, my boss told me I was being offered a permanent job and receiving a raise for the great work I was doing. I accepted his offer. Two days later, I was fired because I had arrived to work a few minutes late. At that time, I did not have my own car, so I relied on another cousin there for transportation who also had his own job and responsibilities. Because the hours I had to work at that facility changed from day to day, my cousin was not always available to drive me when I needed him to. That was the first time I was late, but without any warning, I was fired.
30. I began working at another caregiving facility a few days later. At this third caregiving group, located in West Covina, California, I worked five days a week, 10 hours a day, for \$7.50 an hour. I did not get paid overtime. I was not given a room to sleep in or a place to stay. Instead, I slept in the living room of the caregiving facility with other caregivers.
31. This caregiving group oversaw ten different facilities within West Covina, Covina, and

Glendora. I was responsible for working at all ten facilities. The owner often drove me from one facility to another each day I worked. Many times, I had to take the bus back to one of the West Covina facilities where I stayed from whichever facility I was brought to work. I had to pay for my own travel.

32. Because I was not getting paid enough to support myself or my family and I had heard of another caregiving facility in Santa Monica, California, I resigned from this job and left for Santa Monica shortly after.
33. At all three caregiving facilities, I was responsible for assisting the needs of several clients, which included grooming, caring for hygiene, cleaning rooms, doing laundry, feeding, giving medication, showering, and helping clients exercise. I often worked overtime without pay because I was expected to take care of multiple clients' needs at all times.

Liberty

34. After leaving the third caregiving facility, I worked at a caregiving facility in Santa Monica, California from 2009 to 2013. In 2013, I was hired by one of the clients who previously lived in the Santa Monica caregiving facility to do one-on-one in-home caretaking.
35. In my fourth and fifth workplaces, I was finally treated with respect and paid well. However, I am still expected to work 24/7. This makes it very difficult to take care of my legal matters and health.
36. Because my H-2B visa expired after leaving the caregiving facility in West Covina in 2008, I feel like I am in hiding.

Health and Wellbeing

37. Now in Santa Monica, I like my workplace more and I have found a community of other trafficking survivors and domestic workers through Pilipino Workers Center of Southern California ("PWC"). However, I am still stressed, tired, anxious, depressed, and do not want to socialize or be around people. I have nightmares and cannot sleep at times. I am afraid that my former supervisor at Starwood Vacation Owner Resort reported me to ICE after I left Florida because my supervisors repeatedly warned us that immigration would come after us if we escaped. I cry about what happened to me, and I am scared that I will be deported back to the Philippines.
38. Recently, PWC connected me with a psychologist so I could get a diagnosis that would be used towards my T-visa application. PWC scheduled the test and coordinated the appointment. I met with a psychologist who helped me understand why I have been feeling so depressed, anxious, hopeless, keep to myself, cannot sleep much at night, and

have nightmares. It was because of my trafficking experience. She told me that I have clinical depression and post-traumatic stress disorder.

39. PWC has invited me to health and wellness workshops that have helped me deal with some of these issues. However, I often cannot attend these workshops because I am expected to care for my client at all times as a one-on-one caregiver.
40. I am also dealing with some physical health issues. My work at Starwood Vacation Owner Resort was physically demanding; pain from where I previously had surgery before coming to the U.S. intensified, but I could not care for it because I could not afford medical bills or take time off of work to get it checked out. I also developed an ulcer from consistently skipping meals to complete my work while in Florida.
41. In 2020, I tested positive for COVID-19. I was not allowed to isolate and had to continue my work as a caregiver because no one else was able to care for the client. I no longer have COVID-19, but that was a difficult time for me.

Legal Assistance

42. For years after my final escape, I did not know that there was help for people like me. I learned through PWC about the different types of help that are available to trafficking victims and about a lawyer who may be able to help me. I have been working with this lawyer to prepare and submit a T-visa application to allow me to stay in this country.
43. My first T-visa application was declined. I was connected to a different lawyer through PWC who appealed my initial T-visa application. The appeal was denied twice. We are working on re-applying now.
44. In 2017, my previous lawyer reported my case to the Santa Monica Police Department on my behalf, and I have been ready and willing to share what happened to me with them so that they can investigate or prosecute my traffickers. However, we have not been contacted yet for any interview. I remain ready and available to help law enforcement.

Conclusion

45. Now, I am focused on healing and obtaining legal status, so I no longer live in fear and anxiety.
46. Many of the domestic workers I met during my time at the resort and the caregiving facilities also were threatened and taken advantage of by their employers, then-current and past. As domestic workers, we are constantly looking over our shoulders, uneasily aware of the dangers of this profession, while also working hard to provide for ourselves and our families.

47. I want to live in an America where domestic workers are recognized and appreciated for our work. One where we are not threatened because we came from a different country. When I can, I share my story with others to empower people who have been or currently are in a similar situation to the one I was in.

I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Name: /s/ Ruben Apolonio Bitas

Date: February 25, 2021

City, State: Los Angeles, CA

EXHIBIT 3D

Declaration of Erika Velasco Umlas

Final Observations on the Merits Alleging Violations by the United States of America of the Human Rights of Domestic Workers

I, Erika Velasco Umlas, swear and affirm that the following is true and correct to the best of my information, knowledge, and belief:

1. My name is Erika Velasco Umlas. I was born on August 30, 1990 in San Antonio Sasmuan, Pampanga, Philippines. I have two young children in the Philippines. I currently live in San Dimas, California, where I work as a caregiver to support my family.
2. In the Philippines, my struggle to help my family survive led me to work abroad in the Middle East on two separate occasions, where the families I worked for subjected me to involuntary servitude. The second family that I worked for brought me to the U.S., where I continued to work in a state of involuntary servitude.
3. From 2008 to 2011, I worked as a domestic worker for Waleed Ariqat, his wife, Diana Ariqat, and their four children in Jordan. In 2018, I worked as a domestic worker for Jamal Al Sharif, his wife, Patricia Segura, and their six children in Dubai and then moved with them to the U.S. for temporary business.
4. Under both employers, I was treated with hostility and underwent physical and emotional abuse. I never felt secure or safe while working for them.

Background (Jordan)

5. I applied for a job as a domestic worker with an agency based in Bacolor, Pampanga, Philippines. The agency helped me to get a tourist visa to travel to Amman, Jordan. When I arrived in Jordan another agency called Al Facker helped me get a job for one day for which I was not paid. Then the agency moved me to another house, where I worked for one month. I got paid \$200 for the entire month and the agency deducted \$100 from my pay. I asked the agency if they could find an employer who could give me more regular work.
6. The agency helped me get a two-year contract to take care of Waleed and Diana Ariqat's children. They had four children, Khalid, Hussam, Dana, and Jody. When I worked there, Khalid was 11 years old, Dana was 10 years old, Hussam was 8 years old, and Jody was 2 years old.
7. Mr. Waleed worked in Saudi Arabia. He would stay in Jordan for about two weeks each month. I was always with Ms. Diana and the children in Jordan.

Working Conditions (Jordan)

8. Every day, I woke up at 5:45 am. I prepared the lunch boxes for the family's three children. I made them breakfast. While the other children were at school, I took care of

the youngest child, Jody. I cleaned the house. Then I prepared lunch for Jody, fed her, gave her a bath, and put her to bed for afternoon naps.

9. Ms. Diana was out of the house and with her friends almost every day. After a year, Mr. Waleed found out that Ms. Diana was having an affair. Things changed after that. She suspected that I told Mr. Waleed. It was actually one of the children who saw that Ms. Diana was letting a man inside the house.
10. Ms. Diana started calling me names. She complained about me and everything I did, from my Filipino accent to the food I would make for the kids. I tried to be patient with her, but she became very mean to me. She would tell me what not to eat, and she would count the groceries to make sure I didn't take anything.
11. One day, I was cleaning the windows on the second level of the house, which were very big and tall. I was standing on the roof over the first floor as I cleaned them. As I was trying to get back inside the house, Ms. Diana deliberately closed the window on my hand and locked me outside. It was so painful that I released my grip and fell from the second floor to the ground below. Khalid saw what his mother did.
12. I tried to get up, but my knees were weak. I just laid on the ground. Ms. Diana came down and sprayed a bottle of perfume over my face. I wanted to sneeze, but I could not because of the pain. She took a bucket of cold water with ice and poured it all over my body. After that, I did not feel anything. I could not even open my eyes, but I could hear everything that was happening around me. Ms. Diana said that I was just being dramatic.
13. Mr. Waleed and his father stopped Ms. Diana from taunting me. They told her to wait for the ambulance to pick me up. She lied about closing the window on my hand to them and told them I had fallen.
14. The ambulance brought me to a hospital in Amman, Jordan. There I was treated for eight different fractures throughout my back. I ended up staying in the hospital for about three months, but I felt like I was neglected by the hospital staff because of my ethnicity and because I was not Muslim.
15. At the beginning of my hospital stay, a police officer took my statement, but I decided not to file a case because I thought about the children. I decided to go home after that, so I could heal and take a break. I wanted to be with my family. In the Philippines, my mother took care of me. I just wanted to go home and be around family. I stayed home for seven years.

Background (United Arab Emirates)

16. In 2016 and 2017, while in the Philippines, I got married and gave birth to my daughter.
17. At that time, my husband was a construction worker. To support our family, he applied for a job in Canada as a fruit packer. I borrowed 200,000 pesos from a lending agency so

that he could pay the recruitment agency's program and placement fees, but the recruitment agency ended up being a scam. We were left with a large debt.

18. Once I healed, I decided to work again as a domestic worker in Dubai, United Arab Emirates. My husband was supposed to go with me, but because there was a pending case against the recruiters who scammed him, the Philippine immigration services did not allow him to leave the country.
19. I arrived in Dubai by myself on January 15, 2018. Through the recruitment agency I had previously gone to, I was sent to work for Mr. Jamal Al Sharif, a restaurant and studio owner, and his wife, Ms. Patricia Segura. They had six children named Hamda Jamal, Mohamad, Rashed, Khalid, Aliah, and Essa.

Working Conditions (United Arab Emirates)

20. According to the contract I had signed, the other domestic workers and I hired by Mr. Jamal and Ms. Patricia should have had possession of our own passports and identity documents, but she hid these documents from us. The contract also stated that we would work eight to ten hours a day, six days a week, but we actually worked from 5:30 am until 11:30 pm, seven days a week. Additionally, my contract said I would only be taking care of one child, but I took care of all six children, and I was responsible for cleaning the house. It said that I would get one day off per week, but I never got any days off. I was paid 1,500 dirhams, the currency in the United Arab Emirates, or about \$400 U.S. dollars per month.
21. My work included bathing the children, preparing each meal, snacks, and drinks for the family, cleaning the seven-bedroom house, and doing the family's laundry. I also was tasked with driving the children to and from school and to their extracurriculars, feeding the younger children, and watching the children at all times.
22. The family employed three other Filipina servants while I worked for them. Ms. Patricia often dehumanized all of us. She would tell us, "If I see dirt on the floor, you will have to lick the floor." She would often call us stupid and say that we came from a country of "fucking poor people." Some of the children would call me names like "stupid," "idiot," and "damn donkey."
23. The other servants and I would take turns eating. Ms. Patricia would time us while we ate, often only giving us ten minutes to make ourselves food and eat. We were only allowed to eat leftovers and expired food.
24. One time, one of the other servants lost the house key. As punishment, Ms. Patricia made all four of us sleep in the hallway right outside the main door to the house.
25. If we broke anything or made mistakes with the laundry, we would get salary deductions. I got a deduction for sending some clothes for dry cleaning when I should not have.

26. Ms. Patricia always told the other workers and me that she did not care about the contract and that she had her own laws. She said that since she was paying us, we had to do whatever she told us to do.

Background (U.S.)

27. In June 2018, Ms. Patricia told me that we were going to the United States because the family owned property in San Diego, California. I was forced to come with them and was brought to the U.S. through a B-2 visa that would expire in one year.

28. They promised me that the only thing I had to do was to take care of the youngest child, Essa, when we got to the U.S., and that they would pay me \$10.50 per hour. I signed a contract agreeing to such, which they presented to the U.S. Consulate in Dubai.

29. At my U.S. Consulate interview, the U.S. State Department official explained that if my employers did not follow the contract, I should not hesitate to complain. The family was not allowed to go into the interview with me, but they called me throughout it. I took pictures of the contract with my cell phone while I was in the consulate bathroom to send to Mr. Jamal and Ms. Patricia because I felt pressured by them. The U.S. Consulate gave me a number to call if I needed help. Unfortunately, I did not have time to take a picture of that number, and I lost it. After I left the U.S. Consulate, Ms. Patricia took away my contract and my passport. I was allowed to use my passport to get into the U.S., but then she took it away from me again.

Working Conditions (U.S.)

30. In San Diego, California, I worked from 6:00 am until midnight, sometimes until 1:00 am, for almost two months. I took care of Essa, but I also did everything else, including cooking, laundry, ironing clothes, cleaning, taking care of all the children. I also had to bring the six children to the park.

31. My schedule in the U.S. was similar to my schedule in Dubai. Ms. Patricia and Mr. Jamal went out often and left all of their children with me most days. They frequently went to Los Angeles and did not come back until late at night.

32. I worked more in the U.S. because I was solely responsible for the six children and all of the household chores. In Dubai, three other servants shared these responsibilities with me.

33. One other servant came with us. Her responsibility was to take care of the needs of Mr. Jamal's mother. She was taking care of one person, and I was taking care of six. Mr. Jamal kept both of our passports.

34. I only had time to sleep at midnight or 1:00 am. I was not allowed to sleep until all of the children were asleep. I slept on the couch downstairs, and the other servant slept on the other couch.

35. I never had a day off. I didn't even get a real break during the day. I was not allowed to speak to friends or family or speak in my native language, Tagalog. I was given a cell phone by Mr. Jamal and Ms. Patricia, but I could only use it to communicate with them and no one else.
36. It was hard to eat because Ms. Patricia watched me while I ate. I would eat the family's leftover food after they ate.
37. In the U.S., Ms. Patricia and Mr. Jamal never paid me. I asked for my salary because I was trying to pay the medical bill for my grandfather who had to go to the emergency room in the Philippines around that time. Ms. Patricia said she would pay the other servant and me when we returned to Dubai because she wanted to pay us in dirham and not in USD. She wanted to wait until we returned to Dubai so that they could pay me my regular salary there of \$400 instead of the wages I was entitled to in the U.S.
38. Two of the family's servants remained behind in Dubai to take care of their house. Ms. Patricia called them each day, telling them what to do. They were not being paid, and they did not have any fresh food, only frozen food. They escaped even though they did not have their passports. After they escaped, they submitted a complaint to the Philippine Embassy that helped them get their passports back.

Liberty

39. While I was still working in San Diego, my husband's cousin called me while Ms. Patricia was out of the house and asked how I was. His cousin also was located in San Diego. I told her about my situation, and that day she called some of her trusted friends, who lived in San Diego and volunteered at Pilipino Workers Center of Southern California ("PWC"), a nonprofit organization that does anti-human trafficking work, to try and see if they could help me.
40. Through my employment with Ms. Patricia and Mr. Jamal, I still had my B-2 visa that was good for eight more months. Ms. Patricia and her family were about to return to Dubai. I wanted to escape before they brought me back to Dubai. I knew where Ms. Patricia kept my passport. I took it while I was cleaning and put it in my pocket. When I escaped, all that I had was my passport, nothing else. I didn't take my luggage because I didn't want to look suspicious. I left around 6:00 pm in August 2018. My husband's cousin's friend from PWC picked me up while I was taking baby Essa's dirty diapers out to the trash. I stayed with my husband's cousin after that.
41. Since then, I have worked as a one-one caregiver for a few different clients. I got connected to my first caregiving job through my husband's cousin and my second caregiving job through PWC. I finally have my own room and access to my own belongings. The work is still hard, and the hours are long, but I feel safe, and I am treated with dignity.

Health and Wellbeing

42. I am currently receiving help from PWC. They help me with rent money and have given me a food card. They have given me the strength to stay in the U.S., to fight for my rights.
43. Sometimes I cannot sleep because I think about what will happen to me. I worry if I did the right thing. I wonder whether I will have the chance to take care of my children again. PWC has helped me to get into therapy.

Legal Assistance

44. I am currently not pursuing any lawsuits against the Ariqat or Al Sharif-Segura families but would be open to doing so if I had the chance. But right now, I am focused on applying for my T-visa. I do not know where I would even start if I were to pursue a lawsuit or if I would have enough money to support my family and sue my abusers at the same time.
45. PWC has connected me to a lawyer to get my T-visa application processed. We have not filed the application yet, but I hope we will file it soon. I am nervous but hopeful that my application will be approved. If it is approved, I will be less anxious about my immigration status, and I will hopefully be able to bring my husband and children to the U.S. and see them again after all these years.

Conclusion

46. Since escaping my trafficking situation in 2018, I have gained the strength, courage, and support to fight for my rights and for my family. I have found a community and support system in PWC that is helping me apply for my T-visa, get connected to mental health resources, and find a caregiving facility to work at that is safe.
47. Although I finally feel safe and secure, the years of exploitation and hostility I endured with both families still affect my life on a daily basis. When I think about those times or hear stories of domestic workers in similar situations, my body aches. I often cannot sleep because I am filled with anxiety and fear that I will be put in a trafficking situation again.
48. I cannot go back to my children and family in the Philippines because I would not be able to access the resources and protection that I have here in the U.S. I fear that I would be vulnerable to being trafficked a third time because I would have to work abroad again to support my children.
49. Many of the domestic workers I have worked with share this same pain and fear. We came to the U.S. expecting the land of opportunity but found opportunities constantly being stolen from us, if they were even offered in the first place. We are seeking protection for ourselves and accountability for those who mistreated us.

I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Name: Erika Velasco Umlas

Date: February 25, 2021

City, State: Los Angeles, CA

EXHIBIT 3E

Declaration of Riya Ortiz on Behalf of Damayan Migrant Workers Association

Final Observations on the Merits Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

- 1.) My name is Riya Ortiz, I am the Lead Organizer and Case Manager at Damayan Migrant Workers Association (“Damayan”). Damayan is a 501(c)(3) membership-based and workers' led organization in New York and New Jersey. Damayan means “to help each other” in Tagalog. Founded in 2002 by a group of Filipino domestic workers, our mission is to educate, organize and mobilize low-wage Filipino workers, especially women domestic workers, to promote their labor, health, gender and immigration rights; and in particular to fight labor and human trafficking and wage theft, and to achieve economic and social justice for all.
- 2.) Damayan’s domestic worker advocacy goes back to our founding in 2002. In 2007, we co-founded the National Domestic Workers Alliance (NDWA) and served on their board of directors for roughly four years. In 2008, Damayan campaigned for member Marichu Baoanan to revoke her trafficker’s diplomatic immunity – a historic first in New York – and in the process retrieved her unpaid wages and assisted her in getting her T Nonimmigrant Status Visa (“T-visa”). This program allows survivors to remain legally in the U.S., access basic services, and file cases against their traffickers. In 2010, we joined the New York coalition that campaigned and passed the New York Domestic Workers’ Bill of Rights, which set basic working conditions and wage standards for domestic workers in the state, the first in the country. Currently, we advise Beyond Survival, NDWA’s national campaign to end the human trafficking of domestic workers in the U.S.
- 3.) In 2015, Damayan received the Wellstone Award from the Freedom Network USA in recognition of our work and contribution to the national fight against labor and human trafficking. In 2017, after four years of campaigning, we signed the first-ever anti-trafficking Memorandum of Understanding (MOU) with the Philippine Consulate. The MOU formalized cooperation between Damayan and the Consulate to provide outreach and assistance to Filipino nationals that become victims and survivors of labor trafficking and work towards the prevention of labor trafficking more broadly.
- 4.) Through our extensive network of pro-and low-bono attorneys, we ensure trafficking survivors are able to apply for T-visas. This program also allows survivors to remain legally in the U.S., access basic services, and file cases against their traffickers. It also allows eligible survivors to file for T-visa derivatives for their children and spouses, leading to successful family reunifications. Since 2007, Damayan has helped more than 60 domestic workers escape slave-like labor trafficking conditions. In 2011, we launched the “Baklas” (a Tagalog word meaning “break free”) Campaign. Through Baklas, we have helped 51 survivors receive T-visas. To date, we have reunified 31 of the 51 survivors with their families, bringing a total of 60 children and 17 spouses to the U.S.

- 5.) My role as the lead case manager is to oversee our case management work for our 38 currently-active cases, all labor trafficking cases, often with wage theft claims. I supervise our case manager and I directly handle complicated trafficking cases, especially those with requests for evidence (RFE). As the lead organizer, I ensure that all our survivors receive know-your-rights education and training on labor trafficking, and attend and complete Damayan's Workers Academy, which provides political education to labor trafficking survivors and aims to develop survivors into social justice leaders.
- 6.) To fight the labor trafficking of Filipino domestic workers, we do targeted one-on-one outreach to victims and survivors. We largely rely on survivors to identify and encourage victims that are still in hiding or not public about the abuses they have endured to get the help they need and seek justice. We recognize the right of victims and survivors to decide for themselves if and when they want to apply for t-visas, attempt to reclaim their unpaid wages, and file cases against their traffickers. When they are ready, we provide the support they need to restore their freedom, assert their basic human rights, and assist them move towards economic stability. Our services include helping survivors develop escape plans, secure emergency housing and financial assistance, access social and legal services, find employment, and reunite with their families. We provide comprehensive case management and organize and empower victims, survivors, and their families through education and know-your-rights trainings on trafficking, workers and immigrant rights, political education. We encourage our members to become leaders through Baklas.
- 7.) We also help survivors and workers retrieve unpaid wages and fight labor abuses and labor fraud. Damayan has helped workers recover more than \$850,000 in unpaid wages. Additionally, we assist uninsured and undocumented workers access basic health services through collaborative health fairs and referrals to our partner health providers, like the Family Health Centers in NYC.
- 8.) In the fight against labor and human trafficking, we address the root causes of Filipino forced migration: massive poverty and unemployment in the Philippines. These economic factors drive Filipinos overseas to find work. Every day, thousands of Filipino migrant workers leave the Philippines. These workers leave to ensure their family's economic survival. They migrate to countries around the world, often opting to work in the U.S. and other Western countries when given the chance, with the understanding that "*the West is best*" for pay, social service provision, and quality of life.
- 9.) Damayan's members are Filipino migrant workers, mostly domestic workers, including nannies, babysitters, family cooks, and housekeepers. Others work as room cleaners in hotels, as doormen in apartment buildings, and in restaurants as cooks, servers, and dishwashers. These migrants enter the country to work under the A3-G5 program, for workers hired by diplomatic officials, the B-1 program, for workers hired by business professionals, the B-2 program, a program intended for tourism but sometimes used by workers, the H-2B program, for temporary non-agricultural workers, and the J-1 program, a visa program for au pairs and other workers seeking cultural exchange-based work. Most workers with A3-G5, B-1, B-2, and H-2B visas are in their thirties, forties, and fifties. J-1 visa holders are often younger, in their twenties. These workers speak

mostly Tagalog and Bisaya. Many of our members are labor and human trafficking survivors.

- 10.) Our domestic worker community can be broken down even further into two types: workers of middle and upper-middle class backgrounds and migrants of lower income backgrounds in the Philippines. The former come to the U.S. with work experience as small business owners, college-educated professionals, and other white-collar positions. The latter group comes to the U.S. as former domestic workers, street vendors, janitors, and other unskilled positions. While both types of workers face the threat of labor abuse in their workplaces, and are infrequently versed in their labor rights – those who come from lower income backgrounds, often lacking formal education, and who may have worked as domestic workers in the Philippines (called “circular domestic workers”) – often do not have previous work experience in fields where they have been able to demand justice when their rights are violated. This is typically either because labor standards in their fields of work were not enforced or because they were not educated on their rights in these jobs. Thus, these workers, inexperienced in voicing labor complaints, are at an even higher risk of being abused as domestic workers when they arrive in the U.S.
- 11.) Damayan has observed weak enforcement of existing laws to protect domestic workers, especially of A-3 and G-5 domestic workers in the United States. For example, Section 203 of the 2008 William Wilberforce Act, which reauthorized the Trafficking Victims Protection Act, “requires the Secretary of State to suspend, but for such period as the Secretary determines necessary, the issuance of A-3 or G-5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that (1) one or more employees of such mission or international organization have abused or exploited one or more A-3 or G-5 visa holder, and (2) that the diplomatic mission or international organization tolerated such conduct.”¹ This authority of the Secretary of State is very rarely enforced. Indeed, only one country – Malawi – has ever been suspended.² The enforcement of Section 203 of the Act will reduce the number of offending diplomats and consular employees, and the likelihood of trafficking of domestic workers in these workplaces. Domestic worker trafficking still persists today, ten years since Damayan’s anti-trafficking campaign, Baklas, was launched in 2011.
- 12.) The lasting impact of the Trump Administration’s policy-driven anti-immigrant agenda also is of concern. This presidency changed the cultural perception of migrant domestic workers, and their treatment by the agencies responsible for their protection and immigration status oversight. The Trump Administration’s xenophobic immigration agenda painted the picture that all immigrants, migrants, both documented and undocumented, are dangerous and unworthy of staying in the United States.

¹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 22 U.S.C. § 203 (2008).

² *US Suspends Visas for Malawi Diplomats’ Domestic Workers*, BBC (June 21, 2019), <https://www.bbc.com/news/world-africa-48724294>.

- 13.) One way that this has impacted domestic workers is in the U.S. Citizenship and Immigration Services' (USCIS) treatment of T-visa applicants who have endured trafficking or labor rights violations. Prior to 2016, Damayan had a largely positive track record of obtaining T-visa status for our trafficked domestic worker members. After the election of former President Trump, this began to change. Our previously-trafficked worker members, seeking T-visa status, began to receive RFE notices from USCIS, requiring they submit additional information like very detailed psychiatric evaluations from licensed psychiatrists to report the number, dates, and content of the sessions with the victim. Before the Trump Administration, it was enough to submit a short general statement from the psychiatrist noting that the potential victim was suffering from trauma. Once someone has received an RFE, we have found there to be a fifty-fifty chance that the applicant will be denied a T-visa.
- 14.) Our clients began to see more of their applications denied beginning in 2016, for inane and irrelevant reasons. One of our client's application was denied because she had not signed one document out of an entire application. Another client had her entire mental health history reviewed and interrogated. Many of our clients experienced negative physical and mental health side effects, including suicidal ideation, as a result of the harsher, more invasive T-visa interviewing and application process. As soon as Damayan and other worker advocates became familiar with how to assist their clients during the new USCIS processes, the agency would change its application review process – formally or informally – requiring us and domestic workers to relearn how to navigate these opaque and complicated processes. Time will tell if the Biden Administration will change their approach to the T-visa application review process, but we worry about the lasting impact of the Trump Administration's xenophobic practices on internal USCIS practices.
- 15.) This problem exemplifies the harsh reality of what it is to be a visa-holding domestic worker in the United States: one's immigration status is tied to one's working status. If the latter becomes compromised – whether by dismissal, or worse, trafficking or labor abuse – so does the person's legal status. In the case of the A3-G5 program, where employers are not subjected to criminal procedures if they abuse their employees, domestic workers must rely on the moral uprightness of their diplomat to abide by labor laws and establish good working conditions for them.
- 16.) When a domestic worker is trafficked or abused, forcing them to leave their workplace, their work visa status is revoked, leaving them in the lurch without formal legal status. As the Trump Administration's increased denial of these workers' T-visa applications suggests, this series of events can lead to a worker's deportation. One recommendation for the U.S. government is to ensure that previously-trafficked workers be guaranteed a work permit and access to Medicaid health services during the pendency of their cases. It is only right that these workers, after enduring severe abuse and poor working conditions, be guaranteed an income, healthcare, and a sense of stability after they have been mistreated.

- 17.) Many elements challenge domestic worker safety. Here, we detail these challenges *before, during, and after* a domestic worker has been trafficked. While the hurdles experienced by domestic workers are varied in each stage, each is defined by a lack of accountability and oversight.
- 18.) Before a domestic worker arrives to the workplace, there is little oversight in the terms of agreement around their employment, whether these are verbal or written contracts. Workers are often promised certain working conditions – a particular hourly rate, an agreed-upon fixed schedule, established time off, sick leave – which are easy to manipulate by the employer once the domestic worker has agreed to take the job. Damayan’s client population, Filipino domestic workers, often choose to come to the U.S. because of a combination of factors: debt, health, familial support, and other elements. The reality of these life factors pushes workers to accept work without applying scrutiny towards their future working conditions. Even so, the establishment of working conditions and terms of employment that allow for a domestic worker to work safely and securely should mainly be the responsibility of the U.S. government. These visa programs are, after all, regulated by the U.S. government, and inherently pro-employer. Employers – whether diplomat or other – pay cheaper wages for domestic work than is often mandated by local minimum wage laws, among other benefits. Domestic workers, on the other hand, frequently endure poor working conditions only to be denied wages or have their pay reduced, against the terms of their contract. Thus, it is only fair – and undeniably necessary – that the U.S. government should improve domestic workers’ worksite conditions and labor standards by better and more extensively regulating employers’ workplace conduct and domestic worker treatment. The U.S. government is the only actor that can truly force employers to take care of their workers.
- 19.) Once a domestic worker arrives on the job, there is little regulation over the domestic worker’s working conditions and the employer’s contractual obligations. The case of Edith Mendoza illustrates this well.³
- 20.) Edith Mendoza was an A3-G5 domestic worker in the house of Pit Koehler, a United Nations employee, and his family, in New York from January 2015 to June 2016. She was contracted by the Koehler family through the website “greataupair.com.”
- 21.) Edith’s contract stated that her starting salary would be \$10.02 per hour based on a 35-hour week, plus room and meals, and that she would receive 1.5 times her hourly rate for any hours worked over 40 in a week. It also stated her hours of work would be Monday to Friday, from 7:00 am to 9:00 pm, and a Saturday morning shift, which would be included in the 40-hour work week. Her actual work schedule was Monday to Thursday from approximately 6:30 am to 10:30 pm, Friday 6:30 am to 12:30 am, and Saturday from approximately from 7:30 am to 4:00 pm, totaling around 90.5 hours per week. The Koehlers did not allow her any breaks during her work hours. Edith was paid \$350.70 per week for her work and never any overtime compensation or spread-of-hours compensation. In New York State, domestic workers are entitled to overtime pay – that

³ *Pahagas et al. v. Koehler et al.*, 7:17-cv-04898 (S.D.N.Y Nov. 17, 2017).

is, one-and-a-half times their hourly rate for all hours worked over her weekly schedule. They also are entitled to spread-of-hours pay – one hour’s worth of pay at the regular rate on any day where the difference between the time they start work and end work is more than ten hours.

- 22.) Edith also was constantly monitored: there was a camera installed in the house, which tracked her movements. She could only ever leave the house twice a day to pick up the newspaper on the front steps; the Koehlers ensured this by setting an alarm on the house’s doors that would beep when opened. They interrogated her about her trips outside the house. Her employers also demonstrated flagrant disregard for Edith’s bodily health. As she continued to work for the Koehlers, she began to have issues with her menstruation. Despite her frequent asks to get time off to see a doctor, they only permitted her time off on Sundays, when all doctors’ offices were closed. On one occasion, she was so sick that she bled an entire bathtub’s worth of blood.⁴ Instead of taking care of her, Edith’s employers instead instructed her to respect and honor them, almost like deities.
- 23.) There were no mechanisms in place to ensure that Mr. Koehler was abiding by his contractual obligations and that Edith was being treated with dignity. Similarly, there was no clear contact to whom she could call and complain.
- 24.) Edith only managed to escape from the Koehler’s household after mustering up the courage to carry out a careful and well-orchestrated plan. Weeks before she left for good, she began to move her personal possessions out of her employer’s house, taking bag after bag to a friend’s house on her one day off a week. On the day she left, she slipped out of the house in a contracted taxi. Unfortunately, she ended up in another compromised housing situation, with no funds and very little possessions. Ultimately, however, Damayan assisted her find a job, allowing her to find stable housing, something that does not always happen after a domestic worker is trafficked. In cases like Edith’s, many abused domestic workers end up in domestic violence situations, fleeing one dangerous situation for another, because they perceive their partner to be a safe haven after enduring the abuses of their workplace. Other workers begin new jobs and keep working under conditions similar to their previous abusive work situations because they do not know what they can demand of their employers.
- 25.) At no point did the U.S. State Department offer any assistance to Edith after her trafficking experience, a clear failure to protect a worker it brought into the country and promised to protect, just like all other A3-G5 workers.
- 26.) Experiences like Edith’s are common as much as they are grim. For this reason, a good deal of Damayan’s outreach work is about instilling dignity in our member population. We aim to encourage our members to understand their worth as people and as workers, something their migration experiences, and former workplaces, have not done. Part of this work is political education: we encourage our members to think about how power,

⁴ The cruel irony of such horrific treatment is that Mr. Koehler was a human rights advocate who promoted gender justice throughout his professional career.

race, class, and other intersectional identities oppress some and privilege others. Aside from this, we teach our members about their rights and ways that employers may try to violate them, so that they will be more equipped to speak out if that occurs.

- 27.) The U.S. government has argued that they have made changes to the A3-G5 program that have resulted in better accountability and oversight measures. One such measure they point to is the A3-G5 in-person registration program, instituted in 2015, at the heed of domestic worker advocates, including Damayan, Human Trafficking Legal Center, and others. This program aims to ensure that trafficking does not occur in participating diplomats' households by checking in with their domestic workers by phone. Despite these efforts, criminal prosecution of diplomats who have trafficked domestic workers remains low,⁵ an indicator that such programmatic changes are not far reaching enough to protect workers.
- 28.) Furthermore, Damayan's recommendation, which the State Department has not yet heeded, despite our insistence, is to provide diplomatic domestic workers with a list of local, grassroots domestic rights organizations that can respond to specific A3-G5 domestic workers' on-the-job complaints in a culturally-sensitive manner.
- 29.) Beyond this, Damayan recommends several policy reforms to improve the conditions of domestic workers, including but not limited to A3-G5 workers, in the United States.
- 30.) First, the U.S. government should dissolve the diplomatic immunity provision of the A3-G5 program. The U.S. government cannot rely on the goodness of employers' hearts to ensure that they abide by labor laws. Labor trafficking and abuse are crimes. The U.S. government must hold diplomats accountable with clear standards for worker treatment and clear consequences for those diplomats who traffic or inflict other labor abuses on their domestic workers.
- 31.) Second, the U.S. government should ban countries, and the diplomats who represent them, from qualifying for A3-G5 visas if those diplomats have histories of labor abuse. This need not be a permanent ban – a temporary one is sufficient to send the message that abusive labor practices are not entertained at the domestic or international level. This will hopefully work to further stigmatize domestic worker trafficking and abuse across countries, which will, in turn, work against further cycles of mistreatment.
- 32.) Third, the State Department should adopt Damayan and other advocates' recommendation to distribute the information of local, culturally-competent worker organizations to domestic workers as part of the in-person registration program. Additionally, the State Department should release the registry of A3-G5 workers across the country to advocate organizations like Damayan, so that organizations such as ours can reach out to these workers and educate them on how to recognize and report labor abuses and assist them access legal assistance and social services if they are trafficked. This list would be confidential and distributed to relevant advocacy organizations with a

⁵ Martina E. Vandenberg & Sarah Bessell, *Diplomatic Immunity and the Abuse of Domestic Workers: Criminal and Civil Remedies in the United States*, 26 Duke J. Comp. & Int'l L. 595 (2016).

demonstrated track record of assisting trafficked and abused workers, only upon the agreement of the A3-G5 worker. As it stands, so much of our work – Damayan’s and other worker advocate organizations’ – is reactive. That is, we respond to the needs of already-trafficked and already-abused workers. It is difficult to stop abuse before it happens, because the household – the working venue for domestic workers – is effectively a black box. Such a list would work to help us support domestic workers before they face labor abuses to avoid these experiences.

33.) Above all, domestic workers should be treated like any other worker. This looks like treating domestic workers with dignity and respect, which translates materially to paying these workers at least, or above, the minimum wage, and providing them with overtime, sick leave, and healthcare. As COVID-19 has underscored, domestic workers are treated as disposable. Our members have been forced to stay in their employers’ houses, even during their time off, for their employers’ fear of COVID-19. Many others have lost their jobs or had their pay reduced with no explanation. So often, exploitative working relationships between abused domestic workers and their employers indicate the employers’ explicit or implicit belief systems about migrants, about Brown and Black women, about non-English speakers. We must all double down to regulate and monitor domestic work to prevent destructive ideologies – xenophobia, white supremacy, ableism, sexism, and other exclusionary frameworks – and those who believe in them, from abusing and trafficking domestic workers, but especially the U.S. government, who admits these workers to the country and is, more than anyone else, responsible for their wellbeing.

I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.



Name: Sierra Ortiz
Lead Organizer and Case Manager
Damayan Migrant Workers Association
410 W 40th St, New York, NY 10018

Date: March 8, 2021

City, State: New York, New York

EXHIBIT 3F

NATIONAL DOMESTIC WORKERS ALLIANCE

Declaration of Ai-jen Poo on Behalf of the National Domestic Workers Alliance

I, Ai-jen Poo, swear and affirm that the following is true and correct to the best of my information, knowledge, and belief:

1. I am a co-founder of the National Domestic Workers Alliance (NDWA) and have been the Executive Director since 2010. Before that time, I was a co-founder of Domestic Workers United in New York City, one of the founding organizational members of NDWA.
2. The National Domestic Workers Alliance is the nation's leading voice for dignity and fairness for the millions of nannies, housecleaners, and homecare workers in the United States. Founded in 2007, NDWA works for respect, recognition, and labor protections for domestic workers.
3. The Alliance is powered by over 70 affiliate organizations and local chapters and by thousands of domestic worker members in all 50 states. NDWA works to improve working conditions for domestic workers—leading policy advocacy, research, and the development of innovative solutions to address the unique challenges of this sector—while building a powerful movement rooted in the rights and dignity of domestic workers, immigrants, women, and their families.

Domestic Workers in The U.S.

4. There are over 2.5 million domestic workers in the United States, who work in individual homes as caretakers for seniors, people with disabilities, children, and homes. Unfortunately, being a domestic worker too often means living in poverty and tolerating abuse. Domestic work is often hidden, and workplaces are unregistered and unregulated.
5. With deep roots in the enslavement of African peoples, the domestic work industry was built on the centuries-long economic exploitation and subjugation of Black women.
6. Today, domestic work carries the legacy of racist exclusions from many of the basic labor protections afforded to other workers, including certain key protections under the Fair Labor Standards Act, Occupational Safety and Health Act, and Title VII protections against harassment and discrimination.
7. Domestic work continues to be done overwhelmingly by women, mostly Black and other women of color, and a large percentage are immigrants. Fighting the perception that care work is not “real” work, domestic workers have faced major obstacles to exercising their rights as workers and winning fair treatment.
8. These long-standing exclusions have contributed to domestic workers' vulnerability to exploitation by their employers—both day-to-day undervaluing and indignities and more extreme forms of abuse like trafficking—and to significant barriers to accessing the remedies available to other workers.

9. A survey of over 2,000 domestic workers in 14 cities in the United States conducted by NDWA and the University of Illinois Chicago's Center for Urban and Economic Development published in 2012 found that 23% of domestic workers overall—and 67% of live-in domestic workers—were paid below state minimum wages, and 30% reported having their employer disregard at least one provision of their employment contracts.¹
10. In addition, 70% of all respondents were paid less than \$13 an hour, 65% reported having no health insurance, 82% did not receive paid sick leave, 29% reported having medical problems resulting from their work, and 25% of live-in workers reported getting less than 5 hours of sleep at night in the previous week. Twenty percent of respondents reported having trouble paying for food in the previous month because of their low wages.²
11. Black domestic workers in particular report widespread discrimination and harassment, in addition to low wages. According to a 2020 study published by the Economic Policy Institute, the median hourly wage for Black domestic workers in 2019 was \$12; the median annual salary in 2018 was \$20,362.³ Thus, the median annual salary for Black domestic workers was less than the poverty line for a family of three in 2018.⁴ In practice, wages are often even lower due to the high incidence of wage theft and other wage and hour violations.
12. Black domestic workers are represented across all domestic work occupations, but there are especially high concentrations of Black women in homecare. More than a quarter of agency-based homecare workers are Black.⁵ While homecare is one of the fastest-growing industries in the country, Black direct care workers have yet to see wages and benefits rise to meet the demands for qualified professional caregivers. Black women earn less for their work in homecare than any other group.⁶

Domestic Worker Stories

13. The following are personal stories submitted by domestic workers who are members of the National Domestic Workers Alliance as part of advocacy work to illustrate the need for policy changes that would strengthen protections for domestic workers in the United States and ensure that domestic work jobs provide fair treatment and fair wages.
14. Lara was a live-in nanny. Sometimes her employers required her to work up to 20 hours a day, but they never paid her for the extra hours. Her stolen wages for unpaid overtime totaled \$350 a week. One night, Lara returned from a trip with her employers. After she put the children to bed, her employers fired her without notice. It was 9 pm on a Wednesday night. If not for a friend who offered a place to stay that night, she would have been homeless.

¹ Linda Burnham & Nik Theodore, *Home Economics: The Invisible and Unregulated World of Domestic Work* xi (Na'l Domestic Workers All., 2012),

<http://www.domesticworkers.org/sites/default/files/HomeEconomicsEnglish.pdf>.

² *Id.* at 18, 24, 28, 30, 33.

³ Julia Wolfe, Jori Kandra, Lora Engdahl & Heidi Shierholz, *Domestic Workers Chartbook* 48, 52 (Econ. Pol'y Inst., 2020), <https://files.epi.org/pdf/194214.pdf>.

⁴ *See* Annual Update of the HHS Poverty Guidelines, 83 Fed. Reg. 2642, 2643 (Jan. 18, 2018).

⁵ Wolfe et al., *Domestic Workers Chartbook*, at 42.

⁶ Wolfe et al., *Domestic Workers Chartbook*, at 48.

15. Beatriz came to the U.S. as an au pair with a J-1 visa. She earned a flat salary of \$195.75 per week. After working excessive, unpaid overtime hours, Beatriz fell ill. Unable to take breaks even to visit the restroom, Beatriz eventually had to seek treatment for a bladder infection. The doctor also diagnosed her with chronic stress headaches as a result of being overworked. After Beatriz fainted during another visit to the doctor, her host family called her at the hospital to reprimand her for being late to pick up the children. Beatriz later worked for a different host family that constantly monitored her whereabouts outside of work, going so far as to surveil her internet usage and plant a GPS on the car she was required to drive as part of her work responsibilities.
16. Danuta worked 84 hours per week and earned just \$500 a week caring for a patient with Parkinson's and dementia. After eleven months of work, with the help of a community organization, Danuta realized she was owed over \$11,000 in stolen wages.
17. Ruth worked 12-hour shifts, seven days a week, as a live-in homecare worker, taking care of a husband and wife. She earned \$10 an hour and never any overtime. After two years, she left her job because the agency that employed her asked her to sign a contract saying they would not be responsible if there was an accident on the job. They wanted her to fill out a 1099 as an independent contractor. When she refused to sign, they fired her. Since she was a live-in worker, she had to scramble to find a place to stay.
18. June worked as a live-in homecare worker caring for a male employer. On her very first night on the job, he asked her to get into bed with him. Over the course of the next several months, he groped her repeatedly. June felt she could not tell the agency she worked for about the harassment because she knew they would take her off the job, and she needed the income to pay for her medication and rent. She felt isolated and alone and did not know where to turn for help. She left as soon as she could find another job, and it wasn't until months later that she learned her employer had harassed other women who worked for him previously as well.

Impact of COVID-19 on Domestic Workers

19. The COVID-19 pandemic has exacerbated already precarious employment and unsafe working conditions for domestic workers. To obtain data on the impact of COVID on domestic workers, NDWA Labs conducted weekly surveys between March and September, 2020 with responses from more than 20,000 cleaners, nannies, and homecare workers. The results were published in an October 2020 report.⁷
20. The research found that by late March, more than 90% of survey respondents lost jobs due to COVID-19.⁸ The percentage of workers without any jobs in September was nearly four times the percentage before COVID-19. For six consecutive months, more than half of the workers surveyed were unable to pay their rent or mortgage.⁹
21. The vast majority of domestic workers did not apply for unemployment insurance or the CARES Act's \$1200 stimulus check from the federal government, mainly because they did not believe they qualified due to immigration status, payments in cash from their employers, or because the worker was employed part-time by multiple employers.¹⁰

⁷ Paulina López González & Tracy Anderson, *6 Months in Crisis: The Impact of COVID-19 on Domestic Workers*, NDWA Labs (2020), <https://domesticworkers.org/6-months-crisis-impact-covid-19-domestic-workers>.

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.* at 23.

22. A second survey conducted by NDWA’s We Dream in Black program in partnership with the Institute for Policy Studies’ (IPS) Black Worker Initiative, between May 19 and June 6, 2020, looked at the impact of COVID-19 on Black immigrant domestic workers. More than 800 Black immigrant domestic workers in Massachusetts, Florida, and New York participated in the survey.¹¹
23. Seventy percent of the survey respondents reported either losing their jobs (45%) or receiving reduced hours and pay (25%) due to COVID-19.¹² Undocumented workers were nearly twice as likely as documented workers to be terminated.¹³ Fifty-two percent of workers reported that their immigration status has a negative impact on their ability to find new work.¹⁴
24. Sixty-five percent of respondents said they are fearful or at risk of eviction or utility shut off in the next three months.¹⁵ Forty-nine percent reported being fearful of seeking assistance or resources from the federal, state, or local government due to their immigration status.¹⁶ Seventy-three percent of respondents who continue to work during the pandemic have not received personal protective equipment (PPE) from their employers.¹⁷
25. The lack of workplace protections, access to medical care, and paid time off has forced these live-out domestic workers—essential but undervalued throughout the pandemic—to put their own health and that of their families at risk in order to do their jobs. At the same time, for the extremely high number of domestic workers who have lost jobs due to COVID, the lack of a social safety net, and exclusion from government relief and benefits, has left them even more vulnerable than they were before COVID-19.

Domestic Worker Trafficking in the U.S.

26. Due to the characteristics of the workforce and nature of the workplace, domestic workers are particularly vulnerable to human trafficking: being overwhelmingly women, many of them immigrants unfamiliar with U.S. laws, working in the homes of their employers, dependent on their employers not only for salaries but in many cases for shelter, food and immigration status.
27. Recruitment by international labor recruiters, who commonly charge fees for obtaining jobs and visas, is a common method of job placement and can result in indebtedness and indentured servitude.
28. Because their stay in the U.S. is contingent on their employment, domestic workers on employment-based visas are often reluctant to denounce abuse or seek help, as are those who come to work outside of legal channels.

¹¹ Nat’l Domestic Workers All., We Dream in Black & Inst. for Policy Studies, *Notes from the Storm: Black Immigrant Domestic Workers in the Time of COVID-19* (2020), <https://domesticworkers.org/notes-storm-black-immigrant-domestic-workers-time-covid-19>.

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 3.

Findings of the Beyond Survival Campaign

29. NDWA launched the Beyond Survival campaign in 2013. The mission of the campaign is to end the human trafficking of domestic workers in the U.S. Beyond Survival focuses on lifting up the experience and expertise of trafficked domestic workers and developing the leadership of survivors to organize to win federal policy changes that expand resources and protections for domestic workers and hold traffickers accountable.
30. The campaign is led by local grassroots organizations affiliated with NDWA: Damayan Migrant Workers Association, Adhikaar, Matahari Women Workers Center, Miami Worker Center, Pilipino Worker Center, Fe y Justicia Worker Center, and Border Workers United.
31. In 2017 the campaign released a report, “The Human Trafficking Of Domestic Workers In The United States: Findings from the Beyond Survival Campaign,” based on data from 110 domesticworker trafficking cases where organizations from the campaign provided various forms of support to survivors.¹⁸
32. While the specific conditions and forms of abuse varied among the cases, certain indicators were present in a majority of cases in the report. Eighty-five percent of the survivors had at least part of their pay withheld, 80% had been tricked with false or deceptive employment contracts, 78% had employers threaten to report them for deportation if they complained about their working conditions, 75% had their movements and communication restricted or monitored by their employers, 62% had their passports or other identification confiscated, 74% reported emotional or verbal abuse by their employer, 66% reported physical or sexual abuse, either by their employer or a family member of their employer, and 45% reported fearing physical harm if they were to try to leave.¹⁹
33. Among the organizations in the campaign, a majority of the survivors they work with, around 75%, came to the U.S. with employment-related visas.²⁰ These survivors came primarily on A-3, G-5, and B-1 visas, but others had come on J-1 visas, as students (F-1) or on low-skilled seasonal visas (H-2B).
34. In order to address the problem of labor trafficking of domestic workers and to ensure that all domestic workers in the U.S. are treated with dignity and respect, several policy changes are needed at the federal level.

Recommendation: Eliminating Vulnerability for Migrant Workers

35. Domestic worker survivors of trafficking whose status in the U.S. is tied to an employment-based visa, and those who lack immigration status or employment authorization, face tremendous hurdles to accessing justice and holding their employers accountable.

¹⁸ Sameera Hafiz & Michael Paarlberg, *The Human Trafficking Of Domestic Workers In The United States: Findings from the Beyond Survival Campaign*, Nat’l Domestic Workers All. & Inst. for Pol’y Stud. (2017), https://www.domesticworkers.org/sites/default/files/bs_report2017.pdf.

¹⁹ *Id.* at 6.

²⁰ *Id.*

36. Fear of losing their visa if they speak out against an abusive employer or leave a job, and for undocumented workers, the fear of being reported to ICE and deported keep many workers from filing complaints or leaving jobs, even when their rights are being violated.
37. Many immigrant workers do not have adequate access to information about their workplace rights, minimum wage, and other protections in order to make sure they are being treated fairly. They also are unlikely to know where to get help or report abuse.
38. A comprehensive overhaul is needed to reduce vulnerabilities to exploitation inherent in these and other work visa programs, including regulation of labor recruiters, access to rights information and legal help, and the ability of workers to change employers while working in the U.S. without losing their immigration status.

Recommendation: Promoting Accountability

39. Most of the organizations in Beyond Survival have supported survivors to pursue civil litigation against their employers, and some have been successful in winning back stolen wages. However, accountability continues to be a major problem, particularly for workers in the U.S. on A3-G5 visas in cases involving traffickers who are diplomats and who can take advantage of legal protections such as diplomatic immunity to circumvent legal protections for domestic workers.
40. Employers are often able to avoid paying wages after judgments are entered against them by moving outside of the U.S. Further advocacy efforts are needed to change policies and practices to ensure that domestic workers across the range of employment visa categories are afforded the same rights and protections as other workers and that there are effective systems in place for workers to access justice and ensure accountability for employers who commit trafficking and other forms of abuse.

Recommendation: Partnerships with Community-Based Organizations

41. The Department of State registration and monitoring program for domestic workers employed by diplomats, and other programs designed to protect domestic workers with A3 or G5 visas, represent a much-needed step towards preventing trafficking and other abuses. This program has been responsible for identifying some cases of trafficking and providing support and resources to survivors. However, periodic monitoring by a government agency that domestic workers on A3-G5 visas do not know or trust, and with limitations due to language barriers and lack of cultural familiarity, is not enough.
42. In addition to expanding this program to other cities with a high number of A3-G5 visa holders, the State Department should work with culturally and linguistically appropriate community-based organizations that can help provide workers with information on human trafficking and rights education and ensure that workers have access to support and referrals to legal or other resources in cases of trafficking or abuse. This is an important strategy for the prevention and early identification of trafficking.

Recommendation: Strengthening Protections for Immigrant Survivors

43. Beyond strengthening prevention and identification of trafficking cases, existing protections for survivors must be enforced and enhanced. In recent years, legal protections for survivors of trafficking were rolled back or weakened.
44. One of the critical protections that has enabled many immigrant survivors to escape trafficking and address their longer-term needs and safety is the T visa, which allows certain immigrant survivors of trafficking to obtain a visa to remain in the U.S.
45. These protections have come under threat due to narrower interpretations of eligibility, increasing difficulties in getting law enforcement or labor agencies to certify T-visa applications, and lower USCIS approval rates.²¹ Potential applicants have also been deterred by a rule change that denied visa applicants will automatically be issued a Notice to Appear by USCIS,²² and by the Department of Justice's elimination of immigration judges' ability to administratively close cases, a recourse that has been used by survivors of violence who are eligible for immigration relief but are currently in deportation proceedings and face lengthy wait times for their visas.²³
46. Several law enforcement agencies share responsibilities for investigating claims of labor trafficking, but the Department of Homeland Security's Immigration and Customs Enforcement (ICE) is often the primary federal investigating agency responsible for addressing cases of domestic worker trafficking involving immigrants (both those working with or without legal authorization). Given ICE's role in deporting unauthorized immigrants, trafficked domestic workers are reluctant to report crimes committed against them to that agency.
47. Increasingly harsh and indiscriminate immigration enforcement measures, coupled with a rise in anti-immigrant hate crimes, have created a climate of fear and added barriers for immigrant survivors of trafficking to access safety. This fear has been exacerbated by the entanglement of ICE with state and local law enforcement agencies, which create the impression of local law enforcement as a federally deputized deportation force.
48. To ensure immigrant survivors can access safety and help, immigration enforcement practices must be changed to meet the needs of trafficking survivors and improve access to benefits and remedies. Such changes should include: ending the involvement of state and local police in immigration enforcement, ensuring immigrant workers can assert their labor rights without fear of deportation, and restoring prosecutorial discretion that prioritizes family reunification and human rights.

Recommendation: Ensuring domestic workers have full federal workplace protections

49. The historical exclusion of domestic workers from basic workplace protections that cover other workers in the U.S. under federal law, combined with unique conditions faced by workers who are often the only employee in a private home, continue to foster widespread workplace abuse in

²¹ M.G. Grant, *It Is Now Even Harder for Trafficking Survivors to Get Visas*, The Appeal (Aug. 22, 2018), <https://theappeal.org/it-is-now-even-harder-for-trafficking-survivors-to-get-visas/>.

²² U.S. Citizenship & Immigr. Serv, Notice to Appear Policy Memorandum (June 28, 2018), <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum>.

²³ *The End of Administrative Closure: Sessions Moves to Further Strip Immigration Judges of Independence*, Catholic Legal Immigr. Network, Inc. (Apr. 4, 2018), <https://cliniclegal.org/resources/end-administrative-closure-sessions-moves-further-strip-immigration-judges-independence>.

EXHIBIT 3G

Declaration of Narbada Chhetri on Behalf of Adhikaar

Final Observations on the Merits Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

1. My name is Narbada Chhetri, and I am the Director of Organizing and Programs of Adhikaar in Woodside, Queens, in New York City. Adhikaar, which means “rights” in Nepali, is a women-led workers’ and community center that provides direct services to and organizes the Nepali-speaking community to promote social justice and human rights for all. Our unique position as a worker-and community-center allows us to provide essential services to newer members of our immigrant community who work in marginalized industries, such as domestic work. We have 5,000 members and we serve an estimated 10,000 individuals per year.
2. We have four general program areas: workers’ rights, immigration rights, healthcare access, and language justice. Through our direct services work, we provide case management, legal referrals, and workforce development training to our members in each of these areas. We also use these programs to engage our community members in organizing and advocacy to create change at the local, state, national, and global levels.
3. I have worked with Adhikaar since 2007. In my current role, I direct the organization’s programs, services, and advocacy in support of domestic workers. This work includes direct empowerment of community members through know-your-rights and workforce development training for nannies and other domestic workers; case support for domestic workers who have been trafficked, assaulted or harassed, underpaid or otherwise had their rights violated; and, coordinating and overseeing our advocacy campaigns, policy implementation efforts, and organizing.
4. Adhikaar became involved in supporting and advocating for domestic workers because many members of our community work in people’s homes as part-time and full-time housekeepers, nannies, and home health attendants, for example. Some are live-in and others commute to work. Almost all of our members who work in these positions are women between 20 and 60 years of age. The vast majority are immigrants with different types of visas and immigration statuses who have come to the U.S. from Nepal, Tibet, and India, and whose primary language is Nepali. Some of these workers are survivors of trafficking who were brought to the U.S. on A-3-G-5 visas as employees of diplomatic or consular officials, or on B-1 and B-2 visas, which are non-tourist business and tourist visas, respectively.
5. The experiences of our members employed as domestic workers have shown us how vulnerable they are to abuse and exploitation by their employers. A major problem for our domestic worker members is that they are verbally promised – not in writing – certain work conditions by their employers, but the employers later deviate from these

agreements or abandon them altogether. These false promises and broken contracts frequently relate to things like exceeding the described or agreed-to work hours/schedule, denying vacation days or personal time, adding job responsibilities beyond what was discussed, and failure to pay for hours worked, whether regularly scheduled or overtime.

6. For example, an employee promised a two-week paid vacation may receive the time off, but only at the family's behest and convenience. Another common problem reported by our members who have been live-in domestic workers has been about the poor quality of their living quarters. We have had multiple members tell us that they were promised a room as part of their employment arrangement, but then have ended up sleeping in their employers' child's room, forced to care for the child throughout the night, resulting in a 24-hour workday.
7. Members also have described facing physical and verbal abuse, harassment, and discrimination, with their employers insulting or degrading them or their work based on their gender or nationality/ethnicity. Others have described being injured at work, either through accidents or as a result of the ordinary physical demands of domestic work, combined with long hours and use of cleaning supplies or tools with inadequate gloves, masks, or other protective measures. In both such categories, employers have refused to compensate the workers, regardless of the employers' responsibility or role in the injuries caused.
8. In situations where employers have violated a domestic worker's rights or the worker has fallen ill or been injured, employers have been known to fire the worker without any notice, especially those who assert their rights by asking their employer to abide by law or contract, and then refuse to provide compensation they owe the domestic worker.
9. As a result, Adhikaar has worked in coalitions to obtain better protections for domestic workers and policies governing their employment conditions. For example, we worked with other workers' rights and immigrants' rights groups in New York State to help pass a state-level Domestic Workers' Bill of Rights in 2010 and worked with other groups in the U.S. and abroad in support of the International Domestic Workers Convention. Right now, because the U.S. does not have national legal protections to cover domestic workers, we are working with grassroots groups to help pass a Domestic Workers' Bill of Rights in New Jersey to protect domestic workers, including some of our members, who are employed there.
10. Since New York state's adoption of the Domestic Workers' Bill of Rights in 2010, domestic work standards have improved locally in some respects – but there are still loopholes that allow employers to ignore the law. For example, the Bill of Rights specifies a minimum wage, mandates overtime pay, and requires annual time off and weekly time off for full-time domestic workers. Even though the Bill of Rights' overtime provision states that a live-in domestic worker must be paid one-and-a-half times their

regular hourly rate for every hour they work over 44 hours, most employers pay such workers a flat rate instead of by-the-hour and thus avoid this requirement.

11. Whether a worker receives the guarantees of the Bill of Rights partly depends on a worker's familiarity with its provisions. But knowledge of their rights is not always enough since, as many of our members have experienced, domestic workers can and are often fired by their employers for requesting that they be paid wages or otherwise work under conditions that are required by this law.
12. Domestic workers continue to be imperiled by the conditions of their work, even in states like New York, where the Domestic Workers' Bill of Rights is active for other reasons as well. Even though New York's Bill of Rights has existed in the state for eleven years, there are limitations to its provisions. It does not mandate health coverage, nor does it address retirement planning assistance for tax-paying domestic workers who frequently end up with no retirement funds when they stop working in older age.
13. A particularly cruel irony that the 2010 Bill does not consider is the need for childcare support for domestic workers who also are parents and who leave their own children to take care of their employers' children. This issue has worsened in wake of the COVID-19-induced school closures across New York state. Adhikaar's current CARE Platform campaign – a Domestic Workers' Bill of Rights 2.0 for New York – will address and promote basic health coverage for all domestic workers, establishing domestic worker retirement and childcare assistance programs.
14. Beyond the limitations of New York's Domestic Workers' Bill of Rights, domestic workers continue to face numerous threats to their safety because of the nature of their work, which takes place in homes and behind closed doors. Once working in a household, domestic workers are subject to the will of their employees who may or may not abide by the Bill's provisions or follow equitable labor practices.
15. Notably, before domestic work even begins, employment agencies are a complicating factor for workers. These agencies infrequently vet employers looking to hire domestic workers, and they do not often provide recourse for workers when there are workplace issues. This can, and often does, result in workers being subjected to discriminatory and unlawful treatment in the workplace. Domestic workers are often charged steep fees to find employment through these agencies, a harsh reality for workers who often live paycheck to paycheck.
16. Domestic workers' bodies and time are highly regulated by their employers. Employers determine when and what their domestic worker eats, where and when the worker can leave the home, and when and what kind of time-off the worker is allowed. The situation for live-in domestic workers, who rely on their employer for both wages and housing, is especially difficult. These workers generally do not receive adequate living quarters,

either sleeping in the basement, often where there is no phone reception, or in the children's room, where they must take care of them 24/7. And when a domestic worker is someone whose visa status is tied to their employment, the employer's ability to control the domestic worker's life and movement is even stronger.

17. Adhikaar regularly works with domestic workers who are survivors of, or still living under, such trafficking. We have a support group for members who were trafficked to the U.S. – that is, those who were brought by or for their employer on a temporary or work visas and then found themselves in situations much different, and much worse, than what they were promised or described when they had agreed to the position, whether in the U.S. or before arriving here. Today, the majority of the trafficking survivors we work with were brought to the U.S. on A-3/G-5 or B-1/B-2 visas.
18. Although the U.S. has made changes to the A-3/G-5 visa program in recent years, our organization has not witnessed significant improvements for workers brought to the U.S. on these visas. Employers of trafficked domestic workers regularly use tactics of isolation to control their workers, and the current A-3/G-5 visa program has not done anything to prevent or provide greater assistance to domestic workers facing such isolation and control.
19. For example, employers of A-3/G-5 workers can and do prohibit live-in domestic workers from leaving the home through commands, threats, or even physical measures (e.g., making a domestic worker sleep in the basement instead of a proper bedroom, where they have no cell reception). They may prevent or forbid the domestic worker from communicating with family members, friends, or other domestic workers in or outside the house. And, as a result of changes in technology recently, employers use surveillance measures in invasive and intimidating ways. Workers are frequently monitored with video cameras and recorders, sometimes hidden and sometimes not, to ensure that they are abiding by the mobility or communication restrictions the employer has set forth.
20. Employers also use scare tactics to frighten members who are new to the U.S., who are less comfortable or less conversant in English, and who know virtually nothing about the place in which their employer lives, to keep domestic workers from leaving even if they had the chance. We have heard accounts from workers whose employers have warned them that the police will arrest and deport them if they leave the house to ensure the worker does not leave the premises even if she has the opportunity. One member was too afraid to leave her employers' home because she was new to the U.S. and her employers told her that the U.S. was a dangerous place where police officers would rape and deport her.
21. In addition to failing to prevent domestic workers from being lured on false promises and then being abused, underpaid, isolated, or worse, the U.S.' policies and laws do not allow former A-3/G-5 domestic workers to receive relief after being abused by their employers.

Even in states that have Domestic Workers' Bill of Rights, like New York, the pay and working condition requirements have little meaning since the program's diplomatic immunity provision means that U.S. courts are effectively not available to prosecute the abusive employers of A-3/G-5 workers whose rights have been violated.

22. The changes that the U.S. State Department has made to the A-3/G-5 program in the past few years have not eliminated the barrier that diplomatic immunity creates for domestic workers seeking relief in U.S. courts after being trafficked. The changes also have not prevented former employers from retaliating against the domestic worker directly or indirectly by harming their family back in their home countries. We recently had one Adhikaar member who did not want to file a lawsuit or otherwise accuse their employer, let alone try to get compensation from them, because his employer knew who his family members were and where they lived in their home country. He was scared to speak out because he feared for his family's safety and wellbeing. Even though the U.S. government knows that this is a regular concern for A-3/G-5 workers, it has not done anything to protect against this.
23. Sometimes, even if an A-3/G-5 domestic worker cannot get justice through the U.S. court system, they have been able to reach an out-of-court settlement with the former employer. But, again, because of the diplomatic immunity provision and because of a lack of worker safeguards in the A-3/G-5 visa system, many Adhikaar members have not been able to collect unpaid wages, and diplomats have not been held accountable for their actions, often continuing to work as diplomats or other positions of worker, even after their abusive behavior comes to light.
24. Another particularly harmful feature of the A-3/G-5 program is that workers are infrequently able to publicize the out-of-court settlements they reach with their abusers because these settlements often come with nondisclosure agreements. This presents a problem to workers and advocates: the ability to publicize the stories of workers harmed by their employers is crucial for empowering other trafficked domestic workers and discouraging employers from taking advantage of their workers. These stories show that domestic workers can demand justice when their rights are violated and some remedies are achievable. These stories also alert other advocates and lawmakers that this area of work is rife with abuse and under-regulation. Eliminating secrecy from the justice-seeking process for A-3/G-5 domestic workers is of the utmost importance. Workers should be able to speak about their cases before, during, and after they have concluded. The U.S. could prohibit such nondisclosure agreements to employers as a condition of employing A-3/G-5 workers because it is aware of this practice, but it has not done so.
25. The risks that domestic workers face on the job are always relevant, but these circumstances are even more dire almost a year into the COVID-19 pandemic. Our members, mostly Nepali-speaking, immigrant women, often live paycheck to paycheck. The COVID-19 crisis has seriously impacted our members' lives. With many people

working from home and now less in need of cleaning and caretaking duties from an outside person, the overall demand for domestic work has decreased. Adhikaar's domestic worker members have had their hours and days cut. In other cases, they have been fired for catching COVID-19, often as a result of commuting to their jobs on public transportation. Many lost their jobs in March 2020 and have not been rehired since. We estimate that more than 50% of our members are unemployed right now.

26. Domestic workers are essential workers. They were essential before the pandemic and they are essential now. Even still, there has been no attempt by local or federal authorities to provide domestic workers with the personal protective equipment that we provide medical workers. Non-citizens also have not received any stimulus relief this year, which Adhikaar has tried to remedy through the establishment of an emergency relief fund. In 11 months, we have distributed \$219,000 to 438 of our members through a fund established by the National Domestic Workers Alliance. This month, we will distribute another \$94,000. This is our effort to support our members, but it cannot stop there.
27. Various measures would be helpful in improving conditions for domestic workers. To improve oversight of the A-3/G-5 worker program specifically, federal and state government agencies should directly collaborate with community-based organizations to ensure the safety and dignity of domestic workers before, during, and after their employment by diplomatic officials. The U.S. government should vet diplomats entering the country even more thoroughly than they are currently vetted and should take more assertive measures to ensure that domestic workers are educated on their rights before they enter their new workplaces.
28. Other measures should be implemented to improve the lives of domestic workers more broadly. Mandating that employers provide domestic workers with written contracts outlining the particulars of their working terms – wage information, working hours, sick pay leave, vacation time, and other relevant information – would concretize what is now mostly verbally established. Creating a state-specific domestic workers standards board to regulate and monitor working conditions for these workers would also be extremely helpful. Such a board would establish guidelines particular to each state of operation. This oversight is crucial to establishing best practices for domestic work and assuring the compliance of individual households across the country to these standards.
29. Beyond a standards board, domestic workers need to be educated on their rights in the workplace. We recommend that state governments educate workers on their rights before they enter the household, so that they are equipped to navigate – and alert authorities – for instances where their rights may be compromised.
30. Language barriers are a large obstacle for domestic workers in accessing and understanding the government services available to them. To ameliorate this issue, a government-sponsored know-your-rights education program should be made accessible

to domestic workers in all languages, so that this information is not lost in translation. In addition to this, all court-related services concerning domestic worker rights violations should be appropriately translated and interpreted by government-provided translators and interpreters. Government agencies should outlaw employment agencies and establish state-funded programs in their place that find and vet households for these workers, eliminating the need for employment agencies.

31. To ensure that domestic workers are treated with equality, fairness, and dignity, it is important that we change the societal conception of domestic work. Domestic workers do professional work, the only difference between their work and others' is that their workplace is in the home. It is crucial that we begin to shift the cultural narrative around domestic work, its importance, and the workers who make it possible. As the COVID-19 crisis has underscored, domestic workers – the people who take care of our elderly, our children, our families, and our homes – are essential workers. We must remember that as we move forward, through the pandemic, and beyond.

I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Name: /s/ Narbada Chhetri
Director of Organizing and Programs
71-07 Woodside Avenue, 1st Floor
Woodside, NY 11377

Date: March 9, 2021

City, State: Jackson Heights, New York

EXHIBIT 3H

Declaration of Daniana Trigos-Kukulski on Behalf of Fe y Justicia Worker Center

Final Observations on the Merits Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

1. My name is Daniana Trigos-Kukulski. I am the executive director of Fe y Justicia Worker Center (FJWC), a worker rights community organization in Houston. We have existed for more than fourteen years. We are dedicated to creating positive change with and for low-wage workers by providing services, building peer support networks, and mobilizing campaigns. All our efforts, from public education to case resolution services to advocacy campaigns, are driven by members: low-wage workers who become leaders in realizing the mission and exercising governance of the FJWC. Our organization exists because we believe everyone should have a safe and healthy workplace, and we believe in working-class people's collective power to create change.
2. We at FJWC have observed different patterns of domestic workers abuse in the Houston metropolitan area.
3. Sexual harassment is a huge problem for domestic workers, the majority of whom are women. The sexual harassment workers face often comes from their male employers or their employers' male family members. Sexual harassment and assault in the domestic work context often occurs subtly: a male family member will touch the domestic worker as she walks by and chalk it up to an accident. Over time, this repeated behavior becomes normalized, almost acceptable. Typically, when the worker raises the issue, the family member denies the abuse.
4. The abuse can extend to the domestic worker's family members. I remember in one case a FJWC domestic worker client reported that her seven-year-old daughter had been assaulted by the 17-year-old son of her employer. She had brought her daughter to work that day because she did not have childcare. When the worker brought this up to the son, he denied ever touching the daughter. Such denial is routine.
5. Beyond sexual assault, a common concern for our domestic worker members is deviation from the terms of employment that the employer and the domestic worker first agree to, either verbally or in writing. Specifically, we have observed that the hours, pay, work schedule, and promised time off frequently vary from what was initially agreed upon. Workers report that their wages and hours can often suddenly decrease, without explanation. Another common problem that we see is workers not being given time off for routine health procedures, such as mammograms or pap smears. Others, mostly live-out domestic workers, who commute to their jobs, are frequently forced to buy cleaning supplies to do their jobs, even though the employer had promised to furnish them. Workers are very infrequently reimbursed for these cleaning supplies, diminishing their already limited income.
6. Live-in domestic workers face additional hurdles because of the isolated nature of their employment and the conditions created by their employers. In the Houston area, such workers are often brought into the U.S. by oil executives and those involved in the

region's expansive energy industry, and routinely do not have access to their personal documents, like passports and visa documents, on the job. We have heard numerous live-in domestic workers say that their employer gave them strict instructions not to speak with anyone outside, and sometimes even inside, the home. One of our members who worked as a live-in domestic worker actually worked along with another domestic worker, but the employer forbade our member from speaking with her. We also have heard from domestic workers who had preexisting social connections to each other and ended up worked in different homes within the same suburban neighborhood or gated community, but their employers forbade them from socializing with or even speak to one another.

7. In addition to the work conditions and arrangements that make domestic workers susceptible to abuse, the failure of federal, state, and local government to take preventative measures or meaningful remedial measures exacerbates their vulnerability. Domestic workers are left out of many federal law-based labor and employment protections. On top of that, Texas does not have any policies or provisions that specifically protect domestic workers. To the extent the state follows federal labor protections, domestic workers in our community are left largely unprotected.
8. Furthermore, the vast majority of domestic workers do not have written contracts with their employers since the law does not require them to. So when a dispute does arise about changed terms or conditions, workers do not have any document they can point to when their employers suddenly change the terms of their employment. The absence of a written contract also makes it difficult to prove their employer is in the wrong, if the worker wishes to go to court or file a claim with some type of government agency.
9. An added complication is that domestic workers in the area are infrequently aware of their rights, such as whether they qualify for the local minimum wage, if they are allowed restroom breaks, and if they qualify for paid time off for sick leave. Local, state, and federal governments should be responsible for this education.
10. Another factor that makes our community of domestic workers particularly vulnerable is that about 95% are primarily Spanish-speakers and many are undocumented immigrants who fear interacting with law enforcement. Many of our workers do not – and feel they *cannot* – trust the legal system or government actors. This frequently forces domestic workers into accepting poor labor conditions.
11. FJWC has different projects and campaigns to support domestic workers whose rights have been violated or who are seeking social services. La Colmena is one such effort. Founded fourteen years ago, La Colmena ("The Beehive") is a network of members working towards building the collective power of domestic workers in Houston. They are trainers, promoters, and advisors who reach out to raise awareness about workers' rights and improve working conditions for domestic workers. To achieve this, the trainers, promoters, and advisors are assigned to different locations in the Houston area, establishing a wide geographic range to serve diverse communities.

12. Domestic worker labor trafficking accounts for the majority of human trafficking in the state of Texas. FJWC is the only Houston-based organization dedicated to preventing and responding to labor trafficking. FJWC conducts outreach to document labor abuse in Houston, screen workers for labor trafficking, and provide rapid response when we find labor trafficking red flags. FJWC also convenes a peer support and advocacy group for labor trafficking survivors. Recently, we have begun the process of establishing a shelter for trafficking survivors in the Houston area. This project is a response to the high rate of worker trafficking in Houston and the lack of federal-or state-provided safeguards – from domestic worker-specific state labor laws to social services for trafficking victims – in place here in Texas to support survivors.
13. Established in 2011, FJWC’s Occupational Safety and Health Education program, which operates in English and Spanish, focuses on educating hard-to-reach workers, including domestic workers, and small employers on occupational safety. Through this program, FJWC has recruited and trained more than 1,700 people in the Houston area, on diverse health and safety topics.
14. FJWC served 3,000 clients last year, supporting domestic and other low-wage workers file litigation regarding labor violations, locate and receive social support, and learn about their labor rights. Apart from that, FJWC has 240 working members who are involved in domestic worker leadership training, know-your-rights peer education efforts, and worker-led campaigns across the Houston metropolitan area. A majority of these workers come from Mexico, another portion come from Central American countries (e.g. Guatemala, El Salvador, etc.). Recently, the percentage of domestic workers hailing from Colombia and Venezuela has increased by a large margin. Of our members – composed of domestic and other low-wage workers – 239 are women. We have one male member. Our workers range from 19 to 60 years of age.
15. While domestic workers have begun to be recognized as important members of the workforce during the COVID-19 pandemic, as people have begun to recognize the essential role that domestic workers play in enabling people to manage full-time employment with family and personal obligations, the U.S. government must do more to protect these workers.
16. FJWC sees various pathways to improving conditions for domestic workers.
17. First, the U.S. government must establish a federal Domestic Workers’ Bill of Rights to ensure that domestic workers are entitled to a minimum wage, written employment contracts, and other expansive and domestic work-specific labor protections (e.g., retaining possession of personal identification documents, guaranteed meal breaks, non-work personal time, etc.).
18. Second, the U.S. government must create systems to meaningfully monitor and enforce established contracts between employers and their domestic workers.
19. Third, the U.S. government should provide expansive and effective medical coverage to all domestic workers in the country, regardless of visa or immigration status.

20. While just a start, these recommendations would begin to change the conditions for domestic workers – from dangerous and unpredictable – to something resembling dignified work. We strongly believe that the seeds of change must start with the U.S. government.

I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Name: Daniana Trigos-Kukulski
Executive Director
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Date: March 5, 2021

City, State: Houston, Texas

EXHIBIT 3I

Declaration of Sulma Guzmán on Behalf of Centro de los Derechos del Migrante

Final Observations on the Merits Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats

1. My name is Sulma Guzmán, I am the Policy Director and Legislative Counsel at Centro de los Derechos del Migrante (CDM). I have been in this position for over two years. I direct CDM's policy and legislative work. CDM is a Mexico City and Baltimore-based nonprofit that supports largely Mexico-based migrant workers to defend and protect their rights as they move between their home communities in Mexico and their workplaces in the United States. We advocate for migrant workers who come to the U.S. in a number of temporary work visa programs by community-based client education, delivery of legal services, and campaign advocacy here and abroad. With our binational, multilingual staff and geographic reach, we have grown in response to increasing needs for our advocacy and services and seek to overcome the border as a barrier to justice.
2. CDM works most frequently with domestic workers who have experienced labor abuses in the J-1 visa program, more formally known as the J-1 Exchange Visitor Visa Program. In 1986, Congress created the J-1 visa *au pair* program as an implementation of the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, 22 U.S.C. § 2451, et seq. (1988). The program was designed to partner American host families with young foreign nationals who would provide childcare in exchange for immersion in American culture and access to the American higher education system. The J-1 program is one of fourteen temporary migration programs run by the U.S. State Department. Today it is advertised as a cultural exchange program in which foreign nationals live and participate in the home life of a host family, providing childcare for the family while attending a post-secondary educational institute.
3. Participants in the J-1 program comprise women between 18 and 26 years old,¹ with a large portion coming from across Latin America. Many of these participants choose to be in the J-1 visa program so they can learn or improve their English, earn money, and continue with their professional careers, which they started in their home countries.
4. The program regulations pertaining to the number of hours an *au pair* can work in the household indicate that the *au pair* is not meant to be the sole caretaker for the household. The program forbids *au pairs* from working more than ten hours a day or 45 hours a week on childcare for the host family.² J-1 *au pairs* are mandated to enroll in a minimum of six academic credits at a post-secondary institution during their year in the program.³ The host families are required to provide the *au pair* with transportation to and from their educational facility and provide between \$500 and \$1,000 to assist with enrollment costs.⁴ *Au pairs* are legally entitled to wages that comply with federal

¹ 22 C.F.R. § 62.31(d) (2018).

² 22 C.F.R. § 62.31 (a),(c)(2),(e)(5) (2018).

³ 22 C.F.R. §§ 62.31(a),(j)(2) (2018).

⁴ 22 C.F.R. § 62.31(k)(1)(2018).

standards. However, sponsor agencies limit *au pair* wages to \$4.35 per hour; their legal justifications for doing so are currently the subject of litigation.⁵

5. Rather than being treated with dignity and respect as valuable participants in a “mutually rewarding”⁶ cultural exchange program, many *au pairs* are treated as underpaid domestic workers, or worse.
6. Because J-1 *au pairs* work within the home, they are a captive labor force, subject to the whims and abuse of their host families. While not all J-1 *au pairs* have bad experiences, the conditions of their work – specifically, the lack of effective oversight within the home – make it very easy for this population to be abused. Lack of strong government oversight allows bad actor families and bad actor sponsor agencies who connect these families to J-1 *au pairs* to ignore these workers’ labor rights.
7. Unscrupulous host families violate the rights of *au pairs* in different ways. They can, and often do, change the terms of the *au pair*’s working conditions after the *au pair* has arrived in the United States. Host families often change the *au pair*’s hours, required tasks, and also set strict house rules that limit the *au pair*’s access to food, healthcare, and freedom of movement. In particularly bad situations, host families control their *au pair*’s access to the outside world by preventing them from going out to see friends. We have heard of situations in which the host families have taken their *au pair*’s cellphone away.
8. Host families will threaten their *au pair* by saying they will call Immigration and Customs Enforcement (ICE) if they disobey their orders. Many *au pairs* have shared how their host family took their passports away under the guise of “safekeeping.” Because *au pairs* come to the U.S. through the J-1 Exchange Visitor Visa Program, their legal status – and ability to stay in the U.S. – is dependent on their employment with the host family. This has a chilling effect on *au pairs* coming forward with worksite abuse or labor and employment rights violations.
9. Once in the United States, *au pairs* may find themselves unable to achieve the educational component of the J-1 visa program. Either the *au pair* is required by the family to work around the clock and therefore does not have time to attend their classes or the host family does not provide the necessary transportation, educational stipend, or logistical assistance for the *au pair* to be able to enroll in their classes. In this situation, the host family is violating the terms of the J-1 program agreement by not ensuring that the *au pair* has a meaningful opportunity to complete the educational component.
10. *Au pairs* who are injured on the job often have difficulty accessing proper medical treatment because host families do not get them prompt medical attention. There are

⁵ *Beltran v. InterExchange, Inc.*, No. 14-cv03074-CMA-KMT, 2016 U.S. Dist. LEXIS 21065 (D. Colo. Feb. 22, 2016) (challenging sponsor agencies’ practice of setting wages at \$195.75 per week), *adopted in part, rejected in part*, 176 F. Supp. 3d 1066 (D. Colo. Mar. 31, 2016), *appeal docketed*, No. 17-1359 (10th Cir. Oct. 12, 2017); *see discussion infra*.

⁶ *Au Pair Program*, U.S. Dep’t of State, <https://j1visa.state.gov/programs/au-pair> (last visited Feb. 23, 2021).

many stories of *au pairs* that were injured in the host family's house, only be told that the pain would eventually go away.

11. Another major obstacle to ensuring the health, safety, and dignity of *au pairs* in their workplace is the weak oversight of U.S.-based *au pair* agencies responsible for connecting *au pairs* with host families. There is little transparency in the placement, family vetting, and contract negotiation process. *Au pair* agencies have strong lobbying power in D.C. and frequently advocate for policies that disadvantage *au pairs*. The majority of *au pairs* do not know about their labor and employment rights in the United States because they are not informed by the sponsor agencies, their host families, or by the U.S. government. This lack of knowledge causes many *au pairs* not to raise worksite complaints because they do not know what their rights are.
12. CDM currently represents two former female *au pairs* in a wage and hour and labor trafficking case, filed in June 2020.⁷ Both survivor plaintiffs, Tatiana Cuenca-Vidarte and Sandra Peters, worked in the home of defendants Michael C. Samuel and Adam Ishaeik in Maryland (“the Samuel family”). Each woman incurred significant expenses in order to participate in the J-1 visa program on the promises of being able to learn English and experience American life and culture while being an integral part of an American family. Instead, plaintiffs were subjected to routine cruelty and threats of serious harm. While working for the host family, the plaintiffs were not treated as members of any family; rather, they were overworked, underpaid, and severely abused.
13. The Samuel family abused both plaintiffs verbally and emotionally throughout their respective periods of employment, routinely threatening deportation and malicious abuse of the J-1 program if plaintiffs failed to continue working excessively long hours as demanded by defendants. Both women were not allowed to eat certain foods, occupy certain spaces in the house, travel outside the home, or interact with certain people. The Samuel family routinely screamed at the plaintiffs that they were “dirty.” The family made near-constant threats of deportation in order to force plaintiffs to work longer and harder. Defendants also made explicit threats that they would make false allegations of sexual abuse against the women in order to ensure the plaintiffs’ continued labor.
14. Both women routinely worked in excess of the 45 hours per week they were promised by their *au pair* agencies and were directed to perform work that was far beyond childcare and child-related tasks.
15. Additionally, both women were cheated out of their hard-earned and legally mandated wages through manipulated contracts purporting to entitle plaintiffs to only \$195.75 for 45 hours of work, in violation of federal and state minimum wage and overtime laws.
16. The first plaintiff, Sandra Peters (née Guzman-Reyes), participated in the *au pair* program to work on her English to one day return to Mexico. She was placed with the Samuel family through an *au pair* agency. Her contract was not honored. She worked

⁷ *Cuenca-Vidarte et al. vs. Samuel et al.*, No. 8:20-cv-01885 (D. Md. July 7, 2020)

around the clock, which took a toll on her physical health. She had limited freedom of movement, and the Samuels heavily controlled her actions.

17. The second plaintiff, Tatianna Cuenca-Vidarte, a Colombian national, paid 5,200,000 Colombian pesos, approximately \$1,400 U.S. dollars, to participate in the J-1 program. The Samuel's AuPairCare agent described the program as a wonderful opportunity to live and work in the United States while taking classes and improving her English-speaking skills. Tatiana was assigned to help with childcare and child-related tasks for the Samuel family; those tasks were to include general supervision, meal preparation, and light housekeeping as it related to the children. Pursuant to federal law, Tatiana was required not to work more than 45 hours per week or ten hours per day. She also was required a minimum of one-and-one-half days off every week and one full weekend off.
18. Tatiana's experience, from November 2017 to September 2018, was vastly different from what had been advertised to her. The Samuel family routinely flouted their statutory and contractual obligations as employers by requiring Tatiana to do heavy housework and to work far in excess of the maximum hours set by law. The family had agreed to reimburse Tatiana for her transportation costs to and from her English language classes, which they did not.
19. The family exerted extreme control over Tatiana by monitoring her every move through a network of surveillance cameras placed throughout the house and front and back yards. The Samuel family would reprimand and berate her if she did not comply with a highly regimented daily schedule of childcare and house cleaning.
20. The family required Tatiana to perform heavy non-childcare-related work that included mopping and cleaning windows, doors, and light switches. The Samuel family compelled her to deep clean the kitchen, including cleaning the oven, microwave, tables, cabinets, refrigerator, and stove. They pushed her to use harsh cleaning supplies and bleach, sometimes without providing her with gloves. As a result, Tatiana's hands became dry and cracked from the harsh chemicals, and she developed a chemical sensitivity to cleaning supplies that persists to this day.
21. When she objected to these additional cleaning tasks, the Samuels retaliated by restricting her access to certain parts of the house. One such instance occurred when the Samuel family told her she was no longer allowed to use the guest bathroom after Tatiana objected to cleaning it more than twice a month.
22. The Samuel family also restricted Tatiana's access to food in multiple ways. First, they only provided her with a limited variety of cheap, mostly processed food items, such as chicken nuggets, meatballs, milk, beans, rice, and bread. Although the Samuel family had fresh fruits and vegetables, they told her she was only allowed to eat the cheaper, less nutritious food that the family had purchased and set aside for her. The family's filtered water also was off-limits to her.

23. The Samuels went to great lengths to control Tatiana. They even set a 15-minute shower time limit and required her to clean the bathtub immediately after she showered. This had a psychological impact on her.
24. The Samuels regularly belittled and berated Tatiana by calling her stupid, dirty, useless, and slow and told her that there was something wrong with her. As a result of this verbal abuse, she developed anxiety and low self-esteem.
25. The Samuel family also exerted intense control over Tatiana's movement in several ways. For example, they often forbade her from using their car, despite requiring her to get a drivers' license. Additionally, every time Tatiana left the Samuel family's home, she had to notify the Samuels and inform them of who she was meeting with and what she was going to do.
26. The Samuel family often met Tatiana's protests and complaints with the veiled threat of deportation. Although her contract with AuPairCare gave Tatiana the right to seek a placement with another family, the process required a positive recommendation from her current host family, in this case, the Samuels. Without a positive recommendation from the current host family, a rematch would fail and thus force Tatiana to return to her home country.
27. Knowing this, the Samuels often threatened to give Tatiana a terrible reference if she failed to comply with their every demand, including their demands that she work in excess of the weekly 45-hours set by the contract. As evidence of the strength of this threat, Dr. Samuel informed Tatiana about a prior *au pair* who had worked for the family who was unable to rematch and was forced to return to Colombia. Hearing this scared her and she felt compelled to continue working for the family.
28. As a result of the Samuel's unrelenting work schedule, constant surveillance, verbal abuse, movement restriction, and not giving her healthy food, Tatiana experienced a high level of stress and overall lack of nutrition that caused her to lose hair and gain weight.
29. Tatiana and Sandra's experiences – specifically, the abuse they endured in the workplace – are not uncommon in the J-1 program. Abuse endured by *au pairs* in the worksite tends to cause both mental and physical harm, as we have observed in our worker outreach efforts.
30. There have been various efforts at the state and federal level to improve the conditions of J-1 *au pairs*, though this has been a halting effort. In December 2019, the First Circuit ordered that J-1 *au pairs* must be paid *at least* the state minimum wage in states that fall under its jurisdiction, a major victory for J-1 workers previously mandated to receive only \$4.35 an hour. This decision was met with resistance from the U.S. Department of State, which shortly thereafter released a proposed federal rule to preempt J-1 *au pairs* from being paid the state's minimum wage, a move designed to ensure that *au pairs* could not earn more than the federally-mandated stipend.

31. Necessary to improving the J-1 Exchange Visitor Visa Program are increased transparency and oversight of the sponsor agencies that recruit and place J-1 participants in any of the 14 programs throughout the country. In December 2020, CDM along with 36 other workers' rights organizations, briefed the Biden Administration on recommendations for the J-1 worker program. While our recommendations are directly addressed to the Biden Administration, these hold for the U.S. government more broadly, during this Administration and beyond. The U.S. government has historically and contemporarily failed to protect J-1 *au pairs*. Our recommendations are as follows:
32. First, the Biden Administration should appoint an experienced worker advocate to head the Bureau of Education and Cultural Affairs at the Department of State to expand their oversight to the J-1 program, in partnership with the U.S. Department of Labor (DOL). Such an appointment would extend DOL's labor expertise to the J-1 program, in desperate need of increased regulation, transparency, and oversight in order to assure its compliance with U.S. labor laws.
33. Second, with this partnership established, the State Department and DOL should expand the J-1 worker protections to guarantee that J-1 workers have robust labor and employment protections and that the program does not adversely affect the wages and working conditions of U.S. workers. This includes clarifying and reaffirming the federal, state, and local laws that protect J-1 workers and requiring J-1 employers abide by the program's regulations and appropriate laws.
34. Third, the Biden Administration should do all in its power to regulate the J-1 recruitment process to protect these workers from fraud, discrimination, and human trafficking.
35. Fourth, it is essential that the Biden Administration do all in its power to provide and expand effective pathways for legal recourse for J-1 workers whose rights have been violated. This commitment could be achieved by extending J-1 visa status for qualifying workers, certifying requests for U and T visas for J-1 workers abused or trafficked on the job, and forbidding employers and J-1 sponsor retaliation against workers who assert their rights under any local, state, or federal law, among other recommendations.
36. Fifth, the Administration should publicize detailed information about the J-1 program and the demographics of those involved in the program, including contractual and payment obligations from recruiters and sponsors, occupations, wages, employers, job sites, and demographic data needed to prevent discrimination based on country of origin, age, and gender, on a publicly available website.
37. Sixth, and finally, the Administration must require that the program reaffirm its commitment to cultural exchange opportunities for participants of the J-1 program. The J-1 program must establish and mandate that J-1 participants have access to meaningful cultural activities away from work while preventing their overwork.
38. As mentioned above, there are many changes needed to improve the J-1 program and work towards ensuring that domestic workers are treated with equality, fairness, and dignity. Perhaps the most urgent of these recommendations, however, is the need for the J-1 program to be reconceived of as a work program in addition to a cultural exchange

one. Such categorization as solely a cultural exchange program obscures the abuse that can, and often does, take place within the program.

39. While other temporary work visas, like the H-2A and H-2B programs, for agricultural and non-agricultural work, are overseen and regulated by DOL, the main federal agency charged with labor standards enforcement, the U.S. State Department oversees the health and safety concerns of J-1 *au pairs*. The U.S. State Department should not be solely tasked with regulating the J-1 visa program, as its expertise is not in the regulation and protection of workers – which J-1 *au pairs* are. Rather, the U.S. State Department should join forces with DOL to ensure the safety and dignity of J-1 workers.

I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Name: /s/ Sulma Guzmán

Policy Director and Legislative Counsel
Centro de los Derechos del Migrante, Inc.
822 Guilford Avenue, #970
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Date: March 4, 2021

City, State: Baltimore, Maryland

EXHIBIT 3J

**Declaration of Sarah L. Bessell
On Behalf of The Human Trafficking Legal Center**

*Final Observations on the Merits Alleging Violations by the United States of America of the
Human Rights of Domestic Workers Employed by Diplomats*

1. My name is Sarah L. Bessell. I am the Deputy Director of the Human Trafficking Legal Center, a non-profit organization dedicated to helping survivors obtain justice. Since its inception in 2012, the Human Trafficking Legal Center has trained more than 4,000 attorneys at top law firms across the country to handle civil trafficking cases pro bono, connected more than 300 individuals with pro bono representation, and educated more than 25,000 community leaders on victims' rights. The organization advocates for justice for all victims of human trafficking.
2. The Human Trafficking Legal Center maintains comprehensive databases of federal civil and criminal trafficking cases filed in U.S. federal courts. These databases contain many cases involving the trafficking of domestic workers for forced labor. In domestic servitude¹ cases, traffickers hold their victims in involuntary servitude in the home, requiring them to cook, clean, and, in some cases, care for children or elderly members of the household. Victims alleging domestic servitude often describe being subjected to inhumane living conditions and forced to work around the clock for little or no pay.²
3. Domestic servitude cases account for just 14% of federal criminal labor trafficking cases charged since 2009.³ Domestic servitude cases make up 23.5% of all federal civil trafficking cases filed in the U.S. courts.⁴ These figures do not capture the full extent of domestic servitude cases in the United States. These numbers underestimate the extent of this abuse due to the paucity of federal forced labor prosecutions⁵ and the difficulty survivors face in filing civil lawsuits. Nevertheless, civil and criminal court dockets do provide insight into domestic servitude in the United States.
4. Domestic servitude is a problem that overwhelmingly impacts female migrant workers. In all U.S. federal criminal prosecutions involving the trafficking of domestic workers brought since 2009, the victims were female. On the civil side, 93% of federal civil cases alleging domestic servitude (99 total) were filed by women. The majority of domestic worker victims are foreign-born nationals who have been recruited to work in the United States.⁶ In a large number of federal criminal and civil trafficking cases, victims have legal visas to work as domestic workers.⁷ A large number of federal civil trafficking cases have been filed by A-3 and G-5 visa holders who were trafficked by diplomats or international officials.⁸ Criminal prosecutions of employers of A-3 and G-5 domestic workers – indeed, prosecutions of any employers of domestic workers – are rare in the United States. And prosecution of cases involving officials with diplomatic immunity are practically non-existent.⁹
5. Regardless of visa type, immigration status renders domestic workers vulnerable to traffickers. Unscrupulous employers threaten foreign workers with revocation of their employment sponsorship, blacklisting, or even deportation to coerce the workers into domestic servitude. Threats of deportation are a common means of coercion in trafficking cases. In more than two-thirds of federal civil cases involving domestic workers (69 total), defendants allegedly threatened victims with deportation in order to compel their labor.¹⁰ Threats of deportation were alleged in about half of all federal criminal domestic servitude prosecutions (16 total).¹¹

6. Physical and sexual violence are common features in domestic servitude cases. More than 40% of federal civil domestic servitude cases (45 total) involved actual physical violence (27% or 29 cases)¹² or threats of violence (15% or 16 cases).¹³ In federal criminal domestic servitude cases, the rate of violence or threats of violence was even higher. More than 60% of cases (22 total) involved actual violence (60% or 21 cases)¹⁴ or threats of violence (3% or 1 case).¹⁵ In Minnesota, an employer was sentenced to one year in prison after she pled guilty to holding a domestic worker in forced labor. In addition to forcing the domestic worker to work 18-hour days, the defendant subjected her to constant physical abuse, including punching, kicking, and tearing out the victim's hair.¹⁶ In California, a couple was sentenced to over 15 years in prison for recruiting domestic workers from India and forcing them into domestic servitude. The couple physically abused their victims, in one incident slamming a victim's hands on a gas stove, causing her to suffer first and second-degree burns.¹⁷
7. Sexual violence against domestic workers occurred in 16% of federal civil domestic servitude cases (18 total).¹⁸ Again, the figure was higher in federal criminal cases, with 40% of prosecutions (14 total) alleging sexual violence.¹⁹ Case dockets indicate that domestic workers are subjected to sexual harassment²⁰ or forced to give sexual massages to male employers.²¹ In more extreme cases, domestic workers were sexually assaulted or raped by their employers or male members of the household.
8. Many domestic workers are denied access to adequate medical care by their employer-traffickers. This abuse was alleged in roughly half of federal civil domestic servitude cases²² (52 cases) and in about a third of federal criminal prosecutions (12 cases).²³ Some medical conditions may begin as minor issues but become serious when left untreated. In a civil trafficking case brought in Washington, D.C., *Mazengo v. Mzengi*, a Tanzanian diplomat and his wife held a young woman in domestic servitude for four years, paying her nothing.²⁴ During this time, the victim suffered severe ingrown toenails that went untreated for years. She was unable to wear shoes or walk without pain. Traffickers finally allowed her to see a doctor; her condition required surgery to remove the ingrown toenails.²⁵ The doctor told the victim that if she had waited any longer to seek medical treatment, she might have lost her toes.²⁶
9. Severe medical conditions, left untreated, are sometimes a factor motivating an escape attempt. In *United States v. Al Homoud*, a case prosecuted in Texas, a Qatari military official and his spouse held two women in domestic servitude for eight months. One victim suffered excruciating pain but was denied medical treatment. Eventually, she told the court, she felt that she had no choice but to run away and "beg for money for food and medicine." This victim was later diagnosed with cancer.²⁷ Domestic workers are also denied access to dental care. In *Lagasan v. Al-Ghasel*, a domestic worker experienced severe tooth pain but was not allowed to go to the dentist. Following her escape, the victim was required to have seven teeth pulled.²⁸
10. In some cases, employers recruit domestic workers with promises of educational opportunities in the United States. The trafficker-employers then deny domestic workers' access to education. Approximately one in ten survivors in federal civil domestic servitude cases experienced limited access to education.²⁹ A quarter of victims in criminal prosecutions of the perpetrators experienced denial of education.³⁰ Victims have been promised and denied access to English classes,³¹ nursing school,³² and continuing or general education.³³

11. Employers frequently create a climate of fear, causing domestic workers to remain in situations of forced labor or involuntary servitude due to fear of arrest or deportation. In *Cruz v. Maypa*,³⁴ for example, the court of appeals found that the defendants had held the victim as a virtual prisoner by “confiscat[ing] her passport, isolat[ing] her from other people, monitor[ing] her communications, and threaten[ing] that she would be imprisoned and deported if she tried to escape.”³⁵
12. These threats can continue even after a domestic worker escapes. More than a quarter of civil domestic servitude cases included allegations that employers used retaliatory or intimidation-based tactics to limit domestic workers’ access to courts.³⁶ Similar attempts to limit access to courts occurred in about 15% of criminal cases.³⁷ In *Kiwanuka v. Bakilana*,³⁸ a domestic worker was allegedly trafficked from Tanzania on a G-5 visa by an employee of the World Bank. The employer promised that she could finish her studies in the United States.³⁹ Kiwanuka was able to escape with the help of the FBI. Federal authorities prosecuted Bakilana for lying to the FBI, ordering her to pay restitution of \$41,626.80 to Kiwanuka in back wages.⁴⁰ Defendants allegedly began searching for the victim, making inquiries about her location with her family back in Tanzania. Kiwanuka stated that she was fearful for her safety and forced to live in hiding.⁴¹
13. Criminal and civil court documents paint a picture of common elements of the abuse and exploitation of domestic workers. The data of the Human Trafficking Legal Center also illustrate that domestic workers often must resort to federal civil cases in order to have a day in court. Domestic servitude federal prosecutions overall are low: just 39 cases since 2009. In the same period, 2009 to January 2021, domestic workers brought 108 civil cases in the federal courts alleging forced labor and/or involuntary servitude. This failure to prosecute domestic servitude cases is simply part of a larger phenomenon in the United States: a failure to prosecute labor trafficking cases generally. In FY 2020, the U.S. Government prosecuted 210 human trafficking cases; only 14 of those cases were for labor trafficking.⁴²
14. The subset of diplomatic/international organization domestic servitude cases paints an even more stark portrait of the de facto impunity that abusive employers enjoy in the United States. Since 2009, federal prosecutors have brought only 11 criminal cases against perpetrators alleged to have held A-3 or G-5 domestic worker visa-holders in forced labor. In contrast, domestic workers with A-3 and G-5 visas brought 38 civil cases against their employers in the same period.

I swear under penalty of perjury that the foregoing declaration is true and correct.



Sarah L. Bessell

March 1, 2021

Date

¹ “Domestic servitude” is a term of art synonymous with the forced labor and involuntary servitude of domestic workers. The U.S. Department of State defines domestic servitude as, “[i]nvoluntary domestic servitude is a form of human trafficking found in distinct circumstances—work in a private residence—that create unique vulnerabilities for victims.” See U.S. Dep’t of State, *What is Modern Slavery?*, <https://www.state.gov/what-is-modern-slavery/#domestic>.

² See e.g. Report and Recommendation at 8, 9, *Lagasan v. Al-Ghasel*, 1:14-cv-01035 (E.D. Va. Feb. 18, 2015) (plaintiff forced to work up to 19 hours per day, seven days per week, cleaning, cooking, laundering, and caring for defendants’ children, denied access to medical care, isolated from the outside world, and forced to sleep on a closet floor).

³ Since 2009, the U.S. government reports that it has filed 212 criminal labor trafficking cases in the federal courts. See U.S. Dep’t of State, *Trafficking in Persons Report*, 2010 - 2020. For FY 2020 data, see U.S. Dep’t of Justice, *Justice Department Recognizes the 10th Annual Human Trafficking Prevention Month* (Jan. 29, 2021), <https://www.justice.gov/opa/pr/justice-department-recognizes-10th-annual-human-trafficking-prevention-month>. Of these, the Human Trafficking Legal Center has identified 39 cases of domestic servitude filed under federal trafficking laws found at Chapter 77 of Title 18 of the U.S. Code. Data on file with the Human Trafficking Legal Center.

⁴ Since 2003, trafficking victims have filed 460 cases under the Trafficking Victims Protection Reauthorization Act’s private right of action. Of those, 108 have been filed by victims of domestic servitude. Data on file with the Human Trafficking Legal Center.

⁵ The U.S. government reports that it filed only 12 forced labor prosecutions in fiscal year 2019. See U.S. Dep’t of State, *Trafficking in Persons Report*, 2020. Only 14 forced labor prosecutions were filed in fiscal year 2020. See U.S. Dep’t of Justice, *Justice Department Recognizes the 10th Annual Human Trafficking Prevention Month* (Jan. 29, 2021), <https://www.justice.gov/opa/pr/justice-department-recognizes-10th-annual-human-trafficking-prevention-month>.

⁶ All federal civil domestic servitude lawsuits have been filed by foreign-born victims. Four criminal cases, stemming from three unique trafficking incidents, involved U.S. citizen victims. In two of those cases, the U.S. citizen victims had cognitive or developmental disabilities, see *US v. Brown (Daniel)*, 1:13-cr-00341 (N.D. Oh.); *US v. Callahan (Jordie) et al*, 1:13-cr-00339 (N.D. Oh.); *US v. Knope (Raylaine) et al*, 2:18-cr-00160 (E.D. La.), while the third victim was a minor, see *US v. Soe (Yan) et al*, 1:09-cr-00031 (W.D. N.Y.).

⁷ See Human Trafficking Legal Center, *Federal and Criminal Civil Trafficking Cases Involving Legal Visas* (2020), <https://www.htlegalcenter.org/wp-content/uploads/Federal-Trafficking-Cases-Involving-Legal-Visas.pdf>.

⁸ Thirty-eight civil trafficking lawsuits have been filed by A-3/G-5 domestic workers, equating to 35% of all domestic servitude civil cases filed in the U.S. federal courts. See *Ayapponey v. Kunikiraman*, 1:08-cv-04133 (N.D. Ill.); *Baoanan v. Baja*, 1:08-cv-05692 (S.D. N.Y.); *Barjo v. Cherian*, 8:18-cv-01587 (D. Md.); *Bhardwaj v. Dayal*, 1:11-cv-04170 (S.D. N.Y.); *Butigan v. Al-Malki*, 1:13-cv-00514 (E.D. Va.); *Carazani v. Zegarra*, 1:12-cv-00107 (D.D.C.); *Chere v. Taye*, 2:04-cv-06264 (D.N.J.); *Cruz v. Maypa*, 1:13-cv-00862 (E.D. Va.); *Doe v. Amal*, 1:12-cv-01359 (E.D. Va.); *Doe v. Khobragade*, 1:18-cv-11134 (S.D. N.Y.); *Doe v. Penzato*, 3:10-cv-05154 (N.D. Cal.); *Doe v. Siddig*, 1:10-cv-01256 (D.D.C.); *Doe v. Zinsou*, 1:19-cv-07025 (S.D. N.Y.); *Elat v. Ngoubene*, 8:11-cv-2931 (D. Md.); *Gurung v. Malhotra*, 1:10-cv-05086 (S.D. N.Y.); *Hussain v. Shaukat*, 1:16-cv-00322 (E.D. Va.); *Jeganathan v. Krishnan*, 1:16-cv-06784 (S.D. N.Y.); *Judavar v. Al Mannai*, 1:11-cv-00625 (D.D.C.); *Kiwanuka v. Bakilana*, 1:10-cv-01336 (D.D.C.); *Kunamwene v. Mwombola et al*, 1:19-cv-01957 (D.D.C.); *Laamime v. Abouzaid*, 1:13-cv-00793 (E.D. Va.); *Leo v. Al Naser*, 1:08-cv-01263 (D.D.C.); *Lipenga v. Kambalame*, 8:14-cv-03980 (D. Md.); *Maysaroh v. American Arab Communications, LLC*, 1:13-cv-01743 (D.D.C.) (later 1:14-cv-00866 (E.D. Va.)); *Mazengo v. Mzengi*, 1:07-cv-00756 (D.D.C.); *Nabong v. Paddayuman*, 1:17-cv-00400 (D.D.C.); *Oluoch v. Orina*, 11-cv-3117 (S.D. N.Y.) (later 1:14-cv-421 (S.D. N.Y.)); *Ouedraogo v. Bonkoungou*, 1:15-cv-01345 (S.D. N.Y.); *Pattaiso v. Alahmad*, 1:14-cv-00041 (M.D. Pa.); *Rana v. Islam*, 1:14-cv-1993 (S.D. N.Y.); *Rios Fun v. Pulgar*, 2:13-cv-03679 (D.N.J.); *Sabbithi v. Al Saleh*, 1:07-cv-115 (D.D.C.); *Sakala v. Milunga*, 8:16-cv-00790 (D. Md.); *Sulaiman v. Laram*, 1:16-cv-08182 (S.D. N.Y.); *Tamang v. Mehra*, 1:17-cv-00370 (E.D. Va.); *Tekle v. Al Saud*, 1:18-cv-00211 (E.D. Va.); *Villarreal v. Tenorio*, 8:11-cv-2147 (D. Md.); *Waru v. Madhvani*, 1:05-cv-00662 (D.D.C.).

⁹ The U.S. Department of State can request a waiver of immunity from a diplomat’s host country, but as of 2016, this had only occurred two times in human trafficking cases. See *United States v. Soborun*, 2:12-mj-03121 (D.N.J.); *United States v. Khobragade*, 1:14-cr-00176 (S.D. N.Y.); *Martina E. Vandenberg & Sarah Bessell*, *Diplomatic Immunity and the Abuse of Domestic Workers: Criminal and Civil Remedies in the United States*, 26 DUKE J. COMP. & INT’L L. 595, 619 n.216 (2016); *Martina E. Vandenberg*, *Opinion, Diplomats Who Commit Domestic-Worker*

Crimes Shouldn't Get a Free Pass, WASHINGTON POST (Jan. 1, 2014),

https://www.washingtonpost.com/opinions/diplomats-who-commit-domestic-worker-crimes-shouldnt-get-a-free-pass/2014/01/01/61b750b6-719d-11e3-9389-09ef9944065e_story.html.

¹⁰ See *Ayapponey v. Kunikiraman*, 1:08-cv-04133 (N.D.Ill.); *C.G.B. v. Santa Lucia*, 2:15-cv-03401 (D.N.J.); *Daniel v. Madumere*, 4:19-cv-01945 (S.D.Tex.); *Mbome v. Njie*, 4:18-cv-00597 (N.D.Tex.); *Barjo v. Cherian*, 8:18-cv-01587 (D.Md.); *Bhardwaj v. Dayal*, 1:11-cv-04170 (S.D.N.Y.); *Butigan v. Al-Malki*, 1:13-cv-00514 (E.D.Va.); *Carazani v. Zegarra*, 1:12-cv-00107 (D.D.C.); *Dumapias v. Haybyrne*, 1:20-cv-00297 (E.D.Va.); *Chere v. Taye*, 2:04-cv-06264 (D.N.J.); *Cruz v. Maypa*, 1:13-cv-00862 (E.D.Va.); *Baxla v. Chaudhri*, 1:16-cv-01218 (E.D.Va.); *Doe v. Amal*, 1:12-cv-01359 (E.D.Va.); *Doe v. Howard*, 1:11-cv-01105 (E.D.Va.); *DSouza v. Lobo*, 2:09-cv-00410 (E.D.N.Y.); *Fernandes v. Hayes*, 6:11-cv-00137 (W.D.Tex.); *Woods v. Armand*, 1:17-cv-02550 (E.D.N.Y.); *Jose v. Joshua et al*, 2:19-cv-04583 (E.D.N.Y.); *Abafita v. Aldukhan*, 1:16-cv-06072 (S.D.N.Y.); *Doe v. Penzato*, 3:10-cv-05154 (N.D.Cal.); *Lagayan v. Odeh*, 1:15-cv-01953 (D.D.C.); *Hara v. Mak*, 2:13-cv-02924 (E.D.N.Y.); *Doe v. Zinsou*, 1:19-cv-07025 (S.D.N.Y.); *Midjan v. Chan*, 3:07-cv-01977 (N.D.Cal.); *Franco v. Diaz*, 1:14-cv-1909 (E.D.N.Y.); *Garcia v. Curtright*, 6:11-cv-06407 (D.Or.); *Gurung v. Malhotra*, 1:10-cv-05086 (S.D.N.Y.); *Lagasan v. Al-Ghasel*, 1:14-cv-01035 (E.D.Va.); *Hernandez v. Attisha*, 3:09-cv-02257 (S.D.Cal.); *Jeganathan v. Krishnan*, 1:16-cv-06784 (S.D.N.Y.); *Judavar v. Al Mannai*, 1:11-cv-00625 (D.D.C.); *Kiwanuka v. Bakilana*, 1:10-cv-01336 (D.D.C.); *Kunamwene v. Mwoombola et al*, 1:19-cv-01957 (D.D.C.); *Laamime v. Abouzaid*, 1:13-cv-00793 (E.D.Va.); *Blanco v. Perdomo*, 1:13-cv-20374 (S.D.Fla.); *Lama v. Malik*, 2:13-cv-02846 (E.D.N.Y.); *Lipenga v. Kambalame*, 8:14-cv-03980 (D.Md.); *Bibi v. Shakil-v. Ur-Rahman et al.*, 1:20-cv-10478 (E.D.Va.); *Oh v. Choi*, 1:11-cv-03764 (E.D.N.Y.); *Mazengo v. Mzengi*, 1:07-cv-00756 (D.D.C.); *Paucar v. Marquez*, 13-cv-24067 (S.D.Fla.); *Ramos v. Hoyle*, 1:08-cv-21809 (S.D.Fla.); *Moulouki v. Epee*, 1:14-cv-05532 (N.D.Ill.); *Nabong v. Paddayuman*, 1:17-cv-00400 (D.D.C.); *Ndukwe v. Ndukwe*, 2:09-cv-06443 (D.N.J.); *Oluoch v. Orina*, 11-cv-3117 (S.D.N.Y.) (later: 1:14-cv-421 (S.D.N.Y.)); *Bergado v. Velonza*, 2:17-cv-09070 (C.D.Cal.); *Bolocon v. Sermoneta*, 1:16-cv-00521 (S.D.N.Y.); *Ouedraogo v. Bonkougou*, 1:15-cv-01345 (S.D.N.Y.); *Pattaiso v. Alahmad*, 1:14-cv-00041 (M.D.Pa.); *Ara v. Khan*, 1:07-cv-1251 (E.D.N.Y.); *Eusebio v. Assaf*, 1:11-cv-00811 (N.D.Ill.); *Martinez v. Calimlim*, 2:08-cv-00810 (E.D.Wis.); *Masangcay v. Kamenetskaya*, 1:18-cv-03666 (E.D.N.Y.); *Mortal v. Nolasco*, 1:10-cv-06008 (E.D.N.Y.); *Roncesvalles v. Gulec*, 0:19-cv-60495 (S.D.Fla.); *Suarez v. Scudder*, 2:18-cv-05777 (E.D.N.Y.); *Sabbithi v. Al Saleh*, 1:07-cv-115 (D.D.C.); *Sakala v. Milunga*, 8:16-cv-00790 (D.Md.); *Sulaiman v. Laram*, 1:16-cv-08182 (S.D.N.Y.); *Salgado v. Gunawardane*, 2:04-cv-7378 (C.D.Cal.); *Dlamini v. Babb*, 1:13-cv-02699 (N.D.Ga.); *Tekle v. Al Saud*, 1:18-cv-00211 (E.D.Va.); *Nassali v. Kamy*, 8:19-cv-02444 (D.Md.); *Canal v. de la Rosa Dann*, 09-cv-3366 (N.D.Cal.); *Villarreal v. Tenorio*, 8:11-cv-2147 (D.Md.); *Mendoza v. Valdavia*, 1:19-cv-08011 (N.D.Ill.); *Waru v. Madhvani*, 1:05-cv-00662 (D.D.C.); *Mugambiwa v. Chiweshe*, 1:17-cv-02541 (D.Md.).

¹¹ See *US v. Albarghuthi (Huthaifa) et al*, 3:10-cr-00339 (N.D.Tex.); *US v. Aman (Zahida) et al*, 3:19-cr-00085 (E.D.Va.); *US v. Babb (Juna) et al*, 1:09-cr-00520 (N.D.Ga.); *US v. Bello (Bidemi)*, 1:10-cr-00397 (N.D.Ga.); *US v. Ding (Fang Ping) et al*, 4:09-cr-00573 (N.D.Cal.); *US v. Edwards (Alfred) et al*, 8:11-cr-00316 (D.Md.); *US v. Homoud (Hassan) et al*, 5:15-cr-00391 (W.D.Tex.); *US v. Hunaity (Alia)*, 1:18-cr-00723 (D.N.J.); *US v. Jensen (Donald) et al*, 4:12-cr-00085 (S.D.Iowa); *US v. Kartan (Satish) et al*, 2:16-cr-00217 (E.D.Cal.); *US v. Kenit (Edk) et al*, 3:11-cr-05182 (W.D.Wash.); *US v. Mondragon (Angel) et al*, 2:15-cr-00386 (W.D.Wash.); *US v. Murra (Olga)*, 4:16-cr-00078 (N.D.Tex.); *US v. Nsobundu (Chudy) et al*, 4:16-cr-00089 (S.D.Tex.); *US v. Sihombing (Elina) et al*, 2:11-cr-02237 (D.N.M.); *US v. Tolan (Mervat) et al*, 1:11-cr-00526 (E.D.Va.).

¹² See *Edwards v. Edwards*, 8:12-cv-03761 (D.Md.); *Baoanan v. Baja*, 1:08-cv-05692 (S.D.N.Y.); *Balite v. Bishman*, 6:11-cv-6252 (D.Or.); *Mistry v. Udwardia*, 5:12-cv-00034 (W.D.Ok.); *Daniel v. Madumere*, 4:19-cv-01945 (S.D.Tex.); *Mbome v. Njie*, 4:18-cv-00597 (N.D.Tex.); *Doe v. Pletin*, 2:18-cv-06974 (E.D.N.Y.); *Guobadia v. Irowa*, 2:12-cv-4042 (E.D.N.Y.); *Brojer v. Kuriakose*, 2:11-cv-03156 (E.D.N.Y.); *Samirah v. Sabhnani*, 2:08-cv-2970 (E.D.N.Y.); *Chere v. Taye*, 2:04-cv-06264 (D.N.J.); *Meda v. Kogda*, 1:17-cv-06853 (S.D.N.Y.); *Woods v. Armand*, 1:17-cv-02550 (E.D.N.Y.); *Lagayan v. Odeh*, 1:15-cv-01953 (D.D.C.); *Doe v. Zinsou*, 1:19-cv-07025 (S.D.N.Y.); *Franco v. Diaz*, 1:14-cv-1909 (E.D.N.Y.); *Hussain v. Shaukat*, 1:16-cv-00322 (E.D.Va.); *Judavar v. Al Mannai*, 1:11-cv-00625 (D.D.C.); *Garnica v. Edwards*, 1:13-cv-3943 (S.D.N.Y.); *Leo v. Al Naser*, 1:08-cv-01263 (D.D.C.); *Oh v. Choi*, 1:11-cv-03764 (E.D.N.Y.); *Mazengo v. Mzengi*, 1:07-cv-00756 (D.D.C.); *Ara v. Khan*, 1:07-cv-1251 (E.D.N.Y.); *Rana v. Islam*, 1:14-cv-1993 (S.D.N.Y.); *Rong v. Hong Kong Entertainment, Ltd.*, 1:05-cv-48 (N.M.I.); *Roe v. Howard*, 1:16-cv-00562 (E.D.Va.); *Sabbithi v. Al Saleh*, 1:07-cv-115 (D.D.C.); *Velez v. Sanchez*, 1:04-cv-04797 (E.D.N.Y.); *Canal v. de la Rosa Dann*, 09-cv-3366 (N.D.Cal.).

¹³ See *Arma v. Prakoso*, 8:14-cv-03113 (D.Md.); *Butigan v. Al-Malki*, 1:13-cv-00514 (E.D.Va.); *Dumapias v. Haybyrne*, 1:20-cv-00297 (E.D.Va.); *Doe v. Amal*, 1:12-cv-01359 (E.D.Va.); *Abafita v. Aldukhan*, 1:16-cv-06072 (S.D.N.Y.); *Doe v. Khobragade*, 1:18-cv-11134 (S.D.N.Y.); *Doe v. Penzato*, 3:10-cv-05154 (N.D.Cal.); *Elat v.*

Ngoubene, 8:11-cv-2931 (D.Md.); Gurung v. Malhotra, 1:10-cv-05086 (S.D.N.Y.); Lagasan v. Al-Ghasel, 1:14-cv-01035 (E.D.Va.); Laamime v. Abouzaid,, 1:13-cv-00793 (E.D.Va.); Moulouki v. Epee, 1:14-cv-05532 (N.D.Ill.); Oluoch v. Orina, 1:14-cv-421 (S.D.N.Y.) (prev: 11-cv-3117 (S.D.N.Y.)); Ouedraogo v. Bonkougou, 1:15-cv-01345 (S.D.N.Y.); Pattaiso v. Alahmad, 1:14-cv-00041 (M.D.Pa.); Waru v. Madhvani, 1:05-cv-00662 (D.D.C.).

¹⁴ See US v. Ac-Salazar (Santos) et al, 1:20-cr-00700 (N.D.Ill.); US v. Albarghuthi (Huthaifa) et al, 3:10-cr-00339 (N.D.Tex.); US v. Avelenda (Jose), 2:11-cr-00949 (C.D.Cal.); US v. Bello (Bidemi), 1:10-cr-00397 (N.D.Ga.); US v. Brown (Daniel), 1:13-cr-00341 (N.D.Oh.); US v. Callahan (Jordie) et al, 1:13-cr-00339 (N.D.Oh.); US v. Cros-Toure (Denise) et al, 4:18-cr-00230 (N.D.Tex.); US v. Ding (Fang Ping) et al, 4:09-cr-00573 (N.D.Cal.); US v. Huang (Lili), 0:16-cr-00263 (D.Minn.); US v. Hunaity (Alia), 1:18-cr-00723 (D.N.J.); US v. Kartan (Satish) et al, 2:16-cr-00217 (E.D.Cal.); US v. Knope (Raylaine) et al, 2:18-cr-00160 (E.D.La.); US v. Majeed (Firas) et al, 3:16-cr-00819 (S.D.Cal.); US v. Mondragon (Angel) et al, 2:15-cr-00386 (W.D.Wash.); US v. Murra (Olga), 4:16-cr-00078 (N.D.Tex.); US v. Nsobundu (Chudy) et al, 4:16-cr-00089 (S.D.Tex.); US v. Paz-Rodriguez (Ronald) et al, 4:20-cr-00082 (N.D.Okla.); US v. Penzato (Giuseppe) et al, 3:12-cr-00089 (N.D.Cal.); US v. Sihombing (Elina) et al, 2:11-cr-02237 (D.N.M.); US v. Soe (Yan) et al, 1:09-cr-00031 (W.D.N.Y.); US v. Toviave (Jean Claude), 2:11-cr-20259 (E.D.Mich.).

¹⁵ US v. Yannai (Joseph), 1:10-cr-00594 (E.D.N.Y.).

¹⁶ See U.S. Dep't of Justice, *Woodbury Woman Sentenced To Prison In Labor Trafficking Case* (Aug. 24, 2017), <https://www.justice.gov/usao-mn/pr/woodbury-woman-sentenced-prison-labor-trafficking-case>.

¹⁷ See U.S. Dep't of Justice, *Former Stockton Couple Convicted of Human Trafficking Charges Related to Forced Labor of Foreign Nationals* (Mar. 18, 2019), <https://www.justice.gov/usao-edca/pr/former-stockton-couple-convicted-human-trafficking-charges-related-forced-labor-foreign>. See also U.S. Dep't of Justice, *Husband Sentenced to over 15 Years in Prison for Human Trafficking Convictions Related to Forced Labor of Foreign Nationals* (Oct. 22, 2020), <https://www.justice.gov/usao-edca/pr/husband-sentenced-over-15-years-prison-human-trafficking-convictions-related-forced>.

¹⁸ See Arma v. Prakoso, 8:14-cv-03113 (D.Md.); Balite v. Bishman, 6:11-cv-6252 (D.Or.); Chere v. Taye, 2:04-cv-06264 (D.N.J.); Doe v. Amal, 1:12-cv-01359 (E.D.Va.); Doe v. Howard, 1:11-cv-01105 (E.D.Va.); Doe v. Penzato, 3:10-cv-05154 (N.D.Cal.); Doe v. Pletin, 2:18-cv-06974 (E.D.N.Y.); Doe v. Zinsou, 1:19-cv-07025 (S.D.N.Y.); Josenia Ferreyra Santos v. Villalona et al., 1:20-cv-05253 (S.D.N.Y.); Judavar v. Al Mannai, 1:11-cv-00625 (D.D.C.); Leo v. Al Naser, 1:08-cv-01263 (D.D.C.); Maysaroh v. American Arab Communications, LLC, 1:13-cv-01743 (D.D.C.) (later 1:14-cv-00866 (E.D.Va.)); Mistry v. Udawadia, 5:12-cv-00034 (W.D.Ok.); Nabong v. Paddayuman, 1:17-cv-00400 (D.D.C.); Ouedraogo v. Bonkougou, 1:15-cv-01345 (S.D.N.Y.); Paucar v. Marquez, 13-cv-24067 (S.D.Fla.); Roe v. Howard, 1:16-cv-00562 (E.D.Va.); Woods v. Armand, 1:17-cv-02550 (E.D.N.Y.).

¹⁹ See US v. Albarghuthi (Huthaifa) et al, 3:10-cr-00339 (N.D.Tex.); US v. Andres (Javier) et al, 2:14-cr-01461 (D.Az.); US v. Avelenda (Jose), 2:11-cr-00949 (C.D.Cal.); US v. Brown (Daniel), 1:13-cr-00341 (N.D.Oh.); US v. Callahan (Jordie) et al, 1:13-cr-00339 (N.D.Oh.); US v. Jensen (Donald) et al, 4:12-cr-00085 (S.D.Iowa); US v. Kenit (Edk) et al, 3:11-cr-05182 (W.D.Wash.); US v. Mondragon (Angel) et al, 2:15-cr-00386 (W.D.Wash.); US v. Nnaji (Ngozi) et al, 4:09-cr-00172 (N.D.Tex.); US v. Penzato (Giuseppe) et al, 3:12-cr-00089 (N.D.Cal.); US v. Soe (Yan) et al, 1:09-cr-00031 (W.D.N.Y.); US v. Tolan (Mervat) et al, 1:11-cr-00526 (E.D.Va.); US v. Toviave (Jean Claude), 2:11-cr-20259 (E.D.Mich.); US v. Yannai (Joseph), 1:10-cr-00594 (E.D.N.Y.).

²⁰ Edwards v. Edwards, 8:12-cv-03761 (D.Md.); Maysaroh v. American Arab Communications, LLC, 1:13-cv-01743 (D.D.C.) (later 1:14-cv-00866 (E.D.Va.)); Chere v. Taye, 2:04-cv-06264 (D.N.J.).

²¹ Balite v. Bishman, 6:11-cv-6252 (D.Or.); Chere v. Taye, 2:04-cv-06264 (D.N.J.); Lama v. Malik, 2:13-cv-02846 (E.D.N.Y.).

²² See Abafita v. Aldukhan, 1:16-cv-06072 (S.D.N.Y.); Ara v. Khan, 1:07-cv-1251 (E.D.N.Y.); Avila v. Espinel, 1:19-cv-08385 (N.D.Ill.); Barjo v. Cherian, 8:18-cv-01587 (D.Md.); Bergado v. Velonza, 2:17-cv-09070 (C.D.Cal.); Bibi v. Shakil-v. Ur-Rahman et al, 1:20-cv-10478 (E.D.Va.); Blanco v. Perdomo, 1:13-cv-20374 (S.D.Fla.); Brojer v. Kuriakose, 2:11-cv-03156 (E.D.N.Y.); C.G.B. v. Santa Lucia, 2:15-cv-03401 (D.N.J.); Carazani v. Zegarra, 1:12-cv-00107 (D.D.C.); Chere v. Taye, 2:04-cv-06264 (D.N.J.); Cruz v. Maypa, 1:13-cv-00862 (E.D.Va.); Doe v. Amal, 1:12-cv-01359 (E.D.Va.); Doe v. Howard, 1:11-cv-01105 (E.D.Va.); Doe v. Khobragade, 1:18-cv-11134 (S.D.N.Y.); Doe v. Siddig, 1:10-cv-01256 (D.D.C.); Doe v. Zinsou, 1:19-cv-07025 (S.D.N.Y.); Dumapias v. Haybyrne, 1:20-cv-00297 (E.D.Va.); Elat v. Ngoubene, 8:11-cv-2931 (D.Md.); Garnica v. Edwards, 1:13-cv-3943 (S.D.N.Y.); Guobadia v. Irowa, 2:12-cv-4042 (E.D.N.Y.); Hernandez v. Attisha, 3:09-cv-02257 (S.D.Cal.); Jose v. Joshua et al, 2:19-cv-04583 (E.D.N.Y.); Josenia Ferreyra Santos v. Villalona et al., 1:20-cv-05253 (S.D.N.Y.); Kiwanuka v. Bakilana, 1:10-cv-01336 (D.D.C.); Laamime v. Abouzaid, 1:13-cv-00793 (E.D.Va.); Lagasan v. Al-Ghasel, 1:14-cv-01035 (E.D.Va.); Leo v. Al Naser, 1:08-cv-01263 (D.D.C.); Lipenga v. Kambalame, 8:14-cv-03980

(D.Md.); *Martinez v. Calimlim*, 2:08-cv-00810 (E.D.Wis.); *Masangcay v.*; *Kamenetskaya*, 1:18-cv-03666 (E.D.N.Y.); *Mathai v. George*, 1:13-cv-00997 (N.D.N.Y.); *Maysaroh v. American Arab Communications, LLC*, 1:13-cv-01743 (D.D.C.) (later 1:14-cv-00866 (E.D.Va.)); *Mazengo v. Mzengi*, 1:07-cv-00756 (D.D.C.); *Mbome v. Njie*, 4:18-cv-00597 (N.D.Tex.); *Meda v. Kogda*, 1:17-cv-06853 (S.D.N.Y.); *Mistry v. Udwardia*, 5:12-cv-00034 (W.D.Ok.); *Moulouki v. Epee*, 1:14-cv-05532 (N.D.Ill.); *Mugambiwa v. Chiweshe*, 1:17-cv-02541 (D.Md.); *Munoz v. Rossi*, 1:13-cv-00884 (D.D.C.); *Oh v. Choi*, 1:11-cv-03764 (E.D.N.Y.); *Paucar v. Marquez*, 13-cv-24067 (S.D.Fla.); *Ramos v. Hoyle*, 1:08-cv-21809 (S.D.Fla.); *Rios Fun v. Pulgar*, 2:13-cv-03679 (D.N.J.); *Roncesvalles v. Gulec*, 0:19-cv-60495 (S.D.Fla.); *Sabbithi v. Al Saleh*, 1:07-cv-115 (D.D.C.); *Salgado v. Gunawardane*, 2:04-cv-7378 (C.D.Cal.); *Samirah v. Sabhnani*, 2:08-cv-2970 (E.D.N.Y.); *Sulaiman v. Laram*, 1:16-cv-08182 (S.D.N.Y.); *Sulastri v. Halsey*, 2:12-cv-3538 (E.D.N.Y.); *Tekle v. Al Saud*, 1:18-cv-00211 (E.D.Va.); *Woods v. Armand*, 1:17-cv-02550 (E.D.N.Y.).

²³ See *US v. Ac-Salazar (Santos) et al*, 1:20-cr-00700 (N.D.Ill.); *US v. Bello (Bidemi)*, 1:10-cr-00397 (N.D.Ga.); *US v. Cros-Toure (Denise) et al*, 4:18-cr-00230 (N.D.Tex.); *US v. Hunaity (Alia)*, 1:18-cr-00723 (D.N.J.); *US v. Kenit (Edk) et al*, 3:11-cr-05182 (W.D.Wash.); *US v. Mondragon (Angel) et al*, 2:15-cr-00386 (W.D.Wash.); *US v. Paz-Rodriguez (Ronald) et al*, 4:20-cr-00082 (N.D.Okla.); *US v. Sihombing (Elina) et al*, 2:11-cr-02237 (D.N.M.); *US v. Soe (Yan) et al*, 1:09-cr-00031 (W.D.N.Y.).

²⁴ Report and Recommendation at 4, *Mazengo v. Mzengi*, No. 1:07-cv-00756 (D.D.C. Dec. 20, 2007).

²⁵ *Id.* at 5-6.

²⁶ *Id.* at 6.

²⁷ Transcript of Sentencing Hearing at 22-24, *US v. Homoud*, No. 15-cr-00391 (W.D. Tex. Feb. 9, 2016).

²⁸ *Lagasan v. Al-Ghasel*, 1:14-cv-01035 (E.D.Va.).

²⁹ See *Chigangu v. NDusha*, 5:14-cv-00062 (E.D.Ky.); *Doe v. Siddig*, 1:10-cv-01256 (D.D.C.); *Elat v. Ngoubene*, 8:11-cv-2931 (D.Md.); *Guobadia v. Irowa*, 2:12-cv-4042 (E.D.N.Y.); *Kiwanuka v. Bakilana*, 1:10-cv-01336 (D.D.C.); *Lipenga v. Kambalame*, 8:14-cv-03980 (D.Md.); *Mistry v. Udwardia*, 5:12-cv-00034 (W.D.Ok.); *Mugambiwa v. Chiweshe*, 1:17-cv-02541 (D.Md.); *Ouedraogo v. Bonkougou*, 1:15-cv-01345 (S.D.N.Y.); *Velez v. Sanchez*, 1:04-cv-04797 (E.D.N.Y.); *Woods v. Armand*, 1:17-cv-02550 (E.D.N.Y.).

³⁰ See *US v. Ac-Salazar (Santos) et al*, 1:20-cr-00700 (N.D.Ill.); *US v. Bello (Bidemi)*, 1:10-cr-00397 (N.D.Ga.); *US v. Cros-Toure (Denise) et al*, 4:18-cr-00230 (N.D.Tex.); *US v. Hunaity (Alia)*, 1:18-cr-00723 (D.N.J.); *US v. Kenit (Edk) et al*, 3:11-cr-05182 (W.D.Wash.); *US v. Mondragon (Angel) et al*, 2:15-cr-00386 (W.D.Wash.); *US v. Paz-Rodriguez (Ronald) et al*, 4:20-cr-00082 (N.D.Okla.); *US v. Sihombing (Elina) et al*, 2:11-cr-02237 (D.N.M.); *US v. Soe (Yan) et al*, 1:09-cr-00031 (W.D.N.Y.).

³¹ *Chigangu v. NDusha*, 5:14-cv-00062 (E.D.Ky.).

³² *Mugambiwa v. Chiweshe*, 1:17-cv-02541 (D.Md.).

³³ *Doe v. Siddig*, 1:10-cv-01256 (D.D.C.); *Guobadia v. Irowa*, 2:12-cv-4042 (E.D.N.Y.); *Kiwanuka v. Bakilana*, 1:10-cv-01336 (D.D.C.); *Lipenga v. Kambalame*, 8:14-cv-03980 (D.Md.); *Ouedraogo v. Bonkougou*, 1:15-cv-01345 (S.D.N.Y.); *Mistry v. Udwardia*, 5:12-cv-00034 (W.D.Ok.); *Velez v. Sanchez*, 1:04-cv-04797 (E.D.N.Y.); *Woods v. Armand*, 1:17-cv-02550 (E.D.N.Y.).

³⁴ 773 F.3d 138 (4th Cir. 2014)

³⁵ *Id.* at 145-46.

³⁶ See *Abafita v. Aldukhan*, 1:16-cv-06072 (S.D.N.Y.); *Arma v. Prakoso*, 8:14-cv-03113 (D.Md.); *Bibi v. Shakil-v. Ur-Rahman et al*, 1:20-cv-10478 (E.D.Va.); *Bonilla v. Buch*, 1:18-cv-02092 (D.Colo.); *Butigan v. Al-Malki*, 1:13-cv-00514 (E.D.Va.); *Chere v. Taye*, 2:04-cv-06264 (D.N.J.); *Chigangu v. NDusha*, 5:14-cv-00062 (E.D.Ky.); *Cruz v. Toliver*, 5:04-cv-231 (W.D.Ky.); *Doe v. Amal*, 1:12-cv-01359 (E.D.Va.); *Doe v. Howard*, 1:11-cv-01105 (E.D.Va.); *Doe v. Pletin*, 2:18-cv-06974 (E.D.N.Y.); *Doe v. Siddig*, 1:10-cv-01256 (D.D.C.); *Dumapias v. Haybyrne*, 1:20-cv-00297 (E.D.Va.); *Elat v. Ngoubene*, 8:11-cv-2931 (D.Md.); *Franco v. Diaz*, 1:14-cv-1909 (E.D.N.Y.); *Hara v. Mak*, 2:13-cv-02924 (E.D.N.Y.); *Josenia Ferreyra Santos v. Villalona et al.*, 1:20-cv-05253 (S.D.N.Y.); *Kiwanuka v. Bakilana*, 1:10-cv-01336 (D.D.C.); *Kunamwene v. Mwoombola et al*, 1:19-cv-01957 (D.D.C.); *Lagayan v. Odeh*, 1:15-cv-01953 (D.D.C.); *Lipenga v. Kambalame*, 8:14-cv-03980 (D.Md.); *Mathai v. George*, 1:13-cv-00997 (N.D.N.Y.); *Moulouki v. Epee*, 1:14-cv-05532 (N.D.Ill.); *Nassali v. Kamyia*, 8:19-cv-02444 (D.Md.); *Oluoch v. Orina*, 1:14-cv-421 (S.D.N.Y.) (prev: 11-cv-3117 (S.D.N.Y.)); *Rios Fun v. Pulgar*, 2:13-cv-03679 (D.N.J.); *Roe v. Howard*, 1:16-cv-00562 (E.D.Va.); *Sabbithi v. Al Saleh*, 1:07-cv-115 (D.D.C.); *Sulaiman v. Laram*, 1:16-cv-08182 (S.D.N.Y.); *Velez v. Sanchez*, 1:04-cv-04797 (E.D.N.Y.).

³⁷ See *US v. Edwards (Alfred) et al*, 8:11-cr-00316 (D.Md.); *US v. Kenit (Edk) et al*, 3:11-cr-05182 (W.D.Wash.); *US v. Nsobundu (Chudy) et al*, 4:16-cr-00089 (S.D.Tex.); *US v. Penzato (Giuseppe) et al*, 3:12-cr-00089 (N.D.Cal.); *US v. Sihombing (Elina) et al*, 2:11-cr-02237 (D.N.M.).

³⁸ Complaint at 17, *Kiwanuka v. Bakilana*, 1:10-cv-01336 (D.D.C. Aug. 9, 2010).

³⁹ *Id.* at 4–5.

⁴⁰ See Restitution Judgment, *US v. Bakilana*, 1:10-cr-00093 (E.D.Va. July 2, 2010). See Judgment, *US v. Bakilana*, 1:10-cr-00093 (E.D.Va. July 2, 2010).

⁴¹ Complaint at 17, *Kiwanuka v. Bakilana*, 1:10-cv-01336 (D.D.C. Aug. 9, 2010).

⁴² See U.S. Dep't of Justice, *Justice Department Recognizes the 10th Annual Human Trafficking Prevention Month* (Jan. 29, 2021), <https://www.justice.gov/opa/pr/justice-department-recognizes-10th-annual-human-trafficking-prevention-month>.