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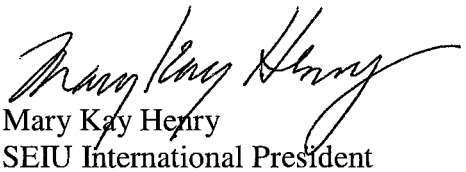
On behalf of our 2.1 million members in North America, The Service Employees International Union (SEIU) submits to you today this Public Communication concerning serious violations of the Labor Principles and Obligations in the North American Agreement on Labor Cooperation (NAALC). The state of Alabama has adopted sweeping anti-immigrant legislation (H.B. 56) that contradicts key provisions of the NAALC and has devastating consequences for migrant and immigrant workers in Alabama, as well as for all workers in the state.

Among other things, H.B. 56 contravenes the NAALC Labor Principles by creating a climate of fear and intimidation that chills immigrant workers and their co-workers who seek to form trade unions, bargain collectively or participate in other worker advocacy organizations. The legislation magnifies the already disproportionate impact of "wage theft" and occupational injuries on immigrant workers by generating more off-the-books employment and making it less likely that immigrants will step forward to complain about wage and hour or health and safety violations. Alabama's law also opens the door to massive discrimination by creating incentives for employers to use race, color, accent and other factors as proxies for immigration status, and to view Latino workers and job applicants with suspicion.

SEIU represents more immigrant workers than any other union in the United States, and we are extremely concerned about the alarming impact this legislation has on immigrant workers and their families in Alabama. We urge the NAO of Mexico to undertake an immediate review of this submission, engage an independent Mexican expert on Mexican Immigration, conduct on-site investigation of labor rights violations and conduct information sessions with workers affected by the Alabama law. We also ask that the Secretary of Labor of Mexico request consultations with the U.S. Secretary of Labor to understand the steps that U.S. Labor officials already have taken in Alabama and to develop a joint plan to further halt the violations of workers' rights under H.B. 56.

Respectfully Submitted,



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Public Communication to the National Administrative Office (NAO) of Mexico

under the North American Agreement on Labor Cooperation (NAALC) on

Labor Law Matters Arising in the Territory of the United States of America:

Violations of NAALC Labor Principles and Obligations regarding anti-immigrant legislation in Alabama

Submitted by

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April 27, 2012

I. Statement of Violations

The state of Alabama has adopted legislation (H.B. 56) that violates human rights and labor rights of migrant workers and contradicts key provisions of the North American Agreement on Labor Cooperation (NAALC). The Alabama law has had devastating consequences both for affected migrant workers in Alabama, and for all workers in the state entitled to protection of the NAALC's labor principles. Similar laws in Arizona, Utah, South Carolina, Georgia and other states have also violated human rights, labor rights, and the NAALC.

The United States is failing to effectively enforce labor and employment laws to halt or to mitigate the effects of these abusive state laws.The United States has not acted effectively to assert federal power to stop the states' anti-immigrant legislation and halt labor rights abuses. Legal ambiguity abounds and lawsuits have resulted in a hodge-podge of partial injunctions, with many abusive provisions left standing.

The anti-immigrant state laws intensify a climate of fear and intimidation in the workplace. They make migrant workers afraid to contact authorities or to file complaints when they suffer labor and employment law abuses. In this context, the United States is failing to protect migrants who come forward with labor and employment law complaints and to encourage migrants to do so in the future. This results in even more failure by the United States to effectively enforce labor and employment legislation.

More details about the United States' failure to effectively enforce its labor legislation are presented below in discussion of specific provisions of the Alabama law.

NAALC Labor Principles

The NAALC labor principles implicated in the Alabama H.B. 56 law are these:

- Freedom of association and protection of the right to organize
- The right to bargain collectively
- Minimum employment standards
- Elimination of employment discrimination
- Prevention of occupational injuries and illnesses
- Compensation in cases of occupational injuries and illnesses
- Protection of migrant workers

NAALC Obligations

By its continuing failure to effectively enforce labor laws on union organizing and collective bargaining, anti-discrimination laws, minimum wage and hour laws, workplace health and safety and workers' compensation laws, and laws protecting migrant workers, and by its continuing failure to provide adequate protections for migrant workers so that

they have confidence to file complaints when they suffer workplaces abuses, the United States has failed to meet its obligations under the NAALC to:

- ensure that its labor law and regulations provide for high labor standards;
- continue to strive to improve those standards;
- promote compliance with and effectively enforce its labor law through appropriate government action;
- ensure that its labor law proceedings are fair, equitable and transparent;
- provide that parties may seek remedies to ensure the enforcement of their labor rights.

II. Statement of Jurisdiction

A. NAO Jurisdiction

Mexico NAO jurisdiction to review this submission is authorized by Article 16(3) of the NAALC, granting each NAO the power to review public communications on labor law matters arising in the territory of another Party, in accordance with domestic procedures.

This submission involves labor law matters arising in the territory of the United States.

B. Ministerial Review Jurisdiction

Article 22 of the NAALC empowers the Secretary of Labor of Mexico to request consultation with the Secretary of Labor of the United States regarding any matters within the scope of the NAALC.

The matters raised in this submission are within the scope of the NAALC.

C. ECE Jurisdiction

Under Article 23 of the NAALC, an Evaluation Committee of Experts is authorized to analyze patterns of practice of a Party in the enforcement of minimum employment standards and occupational safety and health standards, and to make recommendations on these matters. These matters are raised in this public communication.

D. Dispute Resolution Jurisdiction

Under Article 29 of the NAALC, an Arbitral Panel is empowered to consider persistent pattern of failure to effectively enforce minimum wage standards and occupational safety and health standards and to require payment of a fine by the offending government, or

suspension of NAFTA trade benefits for companies and industries in which labor rights violations occurred. These matters are raised in this public communication.

E. Trade-Relatedness

The matters raised in the submission are related to a situation involving workplaces, firms, companies, or sectors that provide goods and services traded between the United States and Mexico. These include manufacturing, food processing, agriculture, tourism and other sectors.

The government of Mexico noted in its amicus brief to the United States District Court in legal proceedings challenging H.B. 56 under U.S. law that Mexico is Alabama's fourth-largest export market, and stated:

> Mexico is greatly concerned about the possible repercussions of HB 56 on trade and commercial relations with the U.S. and Alabama. Growth in U.S.-Latin American trade has historically outpaced all other regions. Mexico is the United States' third-largest trading partner, and the second largest buyer of U.S. exports. The interaction of labor markets, tourism, business travel and student migration is of great importance to both economies.[1]

III. Background and Discussion

Alabama enacted H.B. 56 in June 2011. The law has the following discriminatory, punitive, and abusive provisions:

Making it a crime for an undocumented worker to apply for, solicit, or perform work as an employee.It is important to note that this is not a crime under federal immigration law. The Immigration Reform and Control Act (IRCA) prohibits undocumented workers from knowingly using fraudulent documents to obtain employment, but the act of working or looking for work is not a violation of federal immigration law.[2]

Making it a crime for some individuals to welcome an undocumented worker into their home or church, or to give a ride to an undocumented worker. The crime would apply against an individual who "knows or recklessly disregards" a worker's undocumented status. This means that union organizers, workers' rights advocates, religious counselors, civil rights advocates, health care providers and others in close contact with migrant workers intending to help them would most likely become targets of the new law.

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[1] In the U.S. District Court for the Northern District of Alabama, Brief of the United Mexican States as *Amicus Curiae* in Support of Plaintiffs' Complaint, *Hispanic Coalition of Alabama v. Bentley et. al.*, Case No. 5:11-cv-02484-SLB (August 10, 2011).
[2] See 8 U.S.C. §1324(a).

Allowing U.S. citizens and documented workers to file a lawsuit against an employer who fails to hire them or dismisses them while employing an undocumented worker. This clause invites every unemployed worker in Alabama to file lawsuits against employers in industries and businesses that employ immigrant workers, blaming immigrants for their unemployment. This just feeds the argument, which has no basis in fact, that immigrant workers "steal jobs," and adds to the climate of fear among immigrants and animosity against immigrants.

Making it unlawful to stop a motor vehicle on a public road to hire anyone for work at a different location, and making it unlawful for an individual to enter a stopped motor vehicle for work, if it impedes traffic. This clause on its face discriminates against all workers, national and migrant, documented and undocumented, who do not have a car to drive to work and rely on a method common throughout the United States to go to work.

Preventing enforcement of contracts to which an undocumented worker is a party. This clause opens the door for employers to refuse to pay workers for work performed or otherwise to violate a contract of employment. One advocacy group reports that it has begun receiving "hot line" calls from workers saying that employers are not paying them for work performed because their employment contracts are now illegal.[3]

Requiring the police to check the legal status of an individual stopped if they have reasonable suspicion that the person is undocumented. While the law on its face forbids profiling based on race, color or national origin, in practice Alabama police are demanding papers from anyone who looks foreign or has a foreign accent.[4]

Making it unlawful for any undocumented worker or young person to enroll in any state college or university. This clause discriminates against "Dreamers" and others who want to advance their education so that they can make value-adding contributions to the economy and society and raise their standard of living.

Requiring all business entities or employers to use the notoriously unreliable E-Verify system maintained by the federal government.Alabama's mandatory E-Verify requirement fosters employment discrimination based on national origin. Common E-Verify database errors, such as the misspelling or misordering of names, weigh more heavily against individuals from particular national origins, especially Hispanic workers whose mother's family name follows the father's family name. A 2009 report, for instance, showed that foreign-born workers are more than twenty times as likely as US-born workers to receive a Tentative Nonconfirmation on the E-Verify system.

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[3] Southern Poverty Law Center, recounted at http://www.thisamericanlife.org/radio-archives/episode/456/transcript.

[4] This practice gave rise to incidents in which German and Japanese managers from Mercedes-Benz and Honda, both major investors in in Alabama, were detained by police after traffic stops. See "The Price of Intolerance," *New York Times*, November 28, 2011.

Forbidding employers from claiming as business tax deductions any wages paid to an undocumented worker. This clause also imposes severe financial penalties on employers – a fine of 10 times the amount of a claimed deduction. This provision discourages employers from hiring any employees who look or sound "foreign" so that employers avoid any possibility of such a punishment. The result is yet more discrimination against migrant workers.

IV. The Alabama law and the NAALC Labor Principles

Labor Principles 1 and 2

Labor Principle 1 is titled "Freedom of association and protection of the right to organize." It commits governments to promote "the right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests."

Labor Principle 2 is titled "The right to collective bargaining." It requires "the protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment."

Alabama's anti-immigrant law creates a climate of fear and intimidation in the workplace. It has a coercive impact on migrant workers and co-workers who may seek to form trade unions and bargain collectively. The overall effect is to drive migrant workers into fearful isolation, afraid to associate with co-workers in union organizing or collective bargaining efforts, or other forms of collective activity such as participation in workers' centers, day laborer associations or other advocacy groups.

The United States already caused serious damage to migrant workers' organizing rights in the 2002 *Hoffman Plastic* case decision by the U.S. Supreme Court.[5] That decision deprived undocumented workers of any effective remedy for suffering unlawful dismissal because of union activity. Responding to a request from the Government of Mexico, the Inter-American Court of Human Rights denounced the decision as a violation of workers' freedom of association, and called on the United States to take steps to come into compliance with international norms.[6]The ILO Committee on Freedom of Association reached the same conclusion in response to a complaint by the AFL-CIO and the Confederación de Trabajadores de México (CTM).[7] However, the United States has not taken steps to come into compliance with international standards on freedom of association with respect to this feature of its labor law affecting migrant workers.

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[5]Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137 (2002).

[6] Inter-American Court of Human Rights, Advisory Opinion OC-18-03

[7] ILO Committee on Freeedom of Association, Complaint Against the Government of the United States, Case No. 2227 (2003).

Moreover, by allowing some documented workers to file lawsuits against their prospective or former employer when they suspect the employer has hired an undocumented worker, the Alabama law encourages divisions between documented and undocumented workers, making it more difficult for them to exercise rights of association, organizing, and collective bargaining.

The Alabama law also affects associational rights of migrants and co-workers engaged in trade union and other forms of worker organizing. Workers often hold organizing meetings inside their homes, but they may face charges of "harboring" undocumented co-workers who attend home meetings. Union and worker advocates often give rides to workers to a union meeting or other worker event. If a rider is an undocumented worker, the union or worker representative could be charged with unlawful transportation.

Many immigrants live in households of mixed documentation, where some are citizens, some are green card holders, and some are undocumented. In these instances, even citizens and documented immigrants refrain from involvement in worker organizing and collective bargaining because they fear retaliation and possible job loss. The Alabama law exacerbates this climate of fear that destroys freedom of association and collective bargaining. The United States is failing to protect organizing and bargaining rights by failing to effectively enforce the National Labor Relations Act[8] and by failing to stop immigration enforcement from interfering with workers' organizing.

Labor Principle 6

Labor Principle 6 is titled "Minimum Employment Standards." It requires "the establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements."

Migrant workers in the United States suffer "wage theft" – failure to receive minimum wage and overtime pay – on a massive scale. Some worker advocates say that, in practice, there is a widespread "immigrant exception" to federal overtime law. Migrant workers are afraid to file complaints, to join class action complaints, or otherwise to bring attention to themselves in the workplace by challenging violations of minimum employment standards. This is especially devastating in the United States because labor law enforcement relies heavily on worker-initiated complaints, rather than government-initiated inspections, to enforce labor standards. Many studies have shown that a large number of immigrant workers are victimized by minimum wage and overtime violations.[9] The result is that the

[8] According to Human Rights Watch, a "culture of impunity" has taken shape in the United States, with widespread violation of workers' freedom of association and failure of labor law authorities to effectively enforce the National Labor Relations Act. See Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards* (2000).

[9] See Annette Bernhardt et. al., Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities (2009); Kim Bobo, *Wage Theft in America* (2009).

United States is failing to effectively enforce the Fair Labor Standards Act and other minimum employment standards.

The Alabama law magnifies the "wage theft" phenomenon. Its restrictions on employers, which go beyond federal restrictions, generate more "off-the books" employment by unscrupulous employers who seek competitive advantage by exploiting migrant workers. Its provisions exacerbate fear as well as the inequality in the power relationship between employers and unorganized workers, thereby making it more unlikely that migrant workers will come forward to complain about labor law violations. It nullifies many employment contracts involving undocumented workers, giving employers a false but powerful excuse to deny workers their expected wage and overtime pay.

Labor Principle 7

Labor Principle 7 is titled "Elimination of Employment Discrimination." It calls for "elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds."

Alabama's law opens the door to massive discrimination based on race, color, and national origin. Specifically, the law encourages "racial profiling" by police to stop and detain migrant workers. More generally, it frightens workers from making employment discrimination complaints and encourages racial profiling by employers. All the rhetoric and discourse of legislators who supported the law painted a picture of migrant workers "stealing" jobs and "stealing" public benefits, although no evidence supported this view. The Alabama law sends a signal to employers and to people in Alabama generally that Latino workers should be viewed with suspicion and resentment.

By sending a signal to undocumented workers that they should remain in the shadows, the Alabama law undermines federal protections against all forms of discrimination in employment. Federal anti-discrimination laws, like federal wage and hour laws, rely mostly on worker-initiated complaints. In fact, the agency charged with enforcing federal anti-discrimination laws, the Equal Employment Opportunity Commission (EEOC) cannot initiate an investigation without a worker's complaint. This means that immigrant workers' fear of filing complaints severely weakens federal protections against workplace discrimination, and puts the United States in a position of failing to effectively enforce anti-discrimination laws.

The Alabama law places burdens on employers that go well beyond federal law, but the Alabama law does not contain the same safeguards against employment discrimination as those contained in federal law. As a result of these increased burdens, Alabama employers are more likely to discriminate against workers who speak with an accent or who "look foreign."

Under Alabama's law, employers can lose their business licenses and contracts with the state government as well as face tax consequences for employing undocumented workers. Moreover, if an employer picks up an undocumented worker on the street and impedes

traffic, an employer can face criminal penalties. These state-generated consequences create incentives for employers to use race, color, accent, national origin and other factors as proxies for immigration status to avoid potential liability, loss of business, or negative tax consequences.

The Alabama law also encourages harassment based on race, color, accent, national origin and other factors by allowing Alabama citizens and work-authorized individuals to bring lawsuits against employers if they are not hired or are fired from a particular job and think that the employer is employing undocumented workers. These individuals do not have access to reliable information about an employee's immigration status. Their assumptions are speculative, based only on characteristics such as national origin, race, color and so on, thus feeding a pattern of discrimination against immigrant workers.[10] As a result, the United States is failing to effectively enforce anti-discrimination laws to stop the discriminatory effects of Alabama's law.

Labor Principle 9

Labor Principle 9 is titled "Prevention of occupational injuries and illnesses." It requires "prescribing and implementing standards to minimize the causes of occupational injuries and illnesses."

By driving migrant workers even deeper into the shadows of the state's underground economy, Alabama's law creates conditions for widespread health and safety violations. Even before the law, migrant workers accounted for a high proportion of workplace deaths in the United States. Hispanic workers, and among them Mexican workers, are the main victims.

In 2009, 59 percent of the fatalities (393 deaths) among Hispanic or Latino workers were among workers born outside of the United States. The fatality rate among Hispanic or Latino workers in 2009 was 16 percent higher than the fatal injury rate for all U.S. workers.Of the foreign-born workers who were injured fatally at work in 2009, 40 percent were from Mexico.[11]

As with other federal laws noted above, worker-initiated complaints are a cornerstone of effective labor law enforcement on workplace safety and health. Workers have a right to file complaints and to request inspection by federal authorities. But in Alabama, the climate of fear created by H.B. 56 means that workers are afraid to file complaints or to request inspections, putting them more at risk of illness, injury, or death on the job. As a result, the United States is failing to effectively enforce legislation on occupational safety and health.

Labor Principle 10

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[10] See Kati L. Griffith, *Discovering 'Immployment' Law: The Constitutionality of Subfederal Immigration Regulation at Work*, 29 YALE LAW & POLICY REVIEW 389 (2011).

[11] AFL-CIO, *Death on the Job: The Toll of Neglect* (April 2011).

Labor Principle 10 is titled "Compensation in cases of occupational injuries and illnesses." It requires "the establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment."

Alabama's law makes it virtually impossible for migrant workers to obtain workers' compensation for workplace injuries. Due to Alabama's law, the state workers' compensation agency must determine the immigration status of workers who file claims. Workers will not file claims under these circumstances.

Already working in the most dangerous conditions with the highest proportion of workplace deaths, migrant workers will be left without medical care and without wage compensation when they are injured or killed on the job.

Workers' compensation in the United States is a state-based system. But by agreeing to include Labor Principle 10 in the NAALC, the United States acknowledged a responsibility to provide for high labor standards and workers' access to procedures and remedies to obtain workers' compensation. The United States is failing to meet this obligation, and is failing to ensure that Alabama and other states effectively enforce workers' compensation laws.[12]

Labor Principle 11

Labor Principle 11 is titled "Protection of migrant workers." It requires "providing migrant workers in a Party's territory with the same legal protection as the Party's nationals in respect of working conditions."

Here is where Alabama's law most blatantly violates the NAALC. The law creates a subclass of super-exploitable migrant workers, sowing fear and confusion to marginalize and oppress all migrant workers regardless of their documents. This law deprives migrant workers of the same legal protection as U.S. nationals. Moreover, all workers suffer when migrant workers are too fearful to complain even when they suffer the most egregious violations of their labor and employment rights.

Half of all migrant households include family members with "mixed" documentation status.[13] Some have documents, some do not. In this context, all migrant workers lack the same legal protections as U.S. nationals, suffering discriminatory effects based on differential treatment. They have certain rights on paper, but the United States does not

[12] Petitioners recall that Mexico accepted for review in Case No. 2001-1 a public communication based on Labor Principle 10 involving the workers' compensation system in New York State. In calling for ministerial consultations in that case, the NAO of Mexico called on the United States to adopt "measures to streamline procedures for granting compensation for occupational illnesses or injuries; to assure that employers and competent state authorities are aware of and effectively enforce relevant legislation."

[13] Jeffrey S. Passel and D'Vera Cohn, "A Portrait of Unauthorized Immigrants in the United States" (Pew Hispanic Center, 2009).

effectively enforce these rights in practice. As a result, migrant workers are deterred from seeking work, forming unions and bargaining collectively, redressing violations of minimum wage and overtime laws, seeking education to improve their skills, invoking protection of health and safety laws, obtaining compensation for workplace illnesses and injuries, and otherwise defending their rights in every aspect of employment.

V. Action Requested

The anti-immigrant laws of Alabama and other states violate the Labor Principles of the NAALC. The United States is failing to effectively enforce legislation and take actions that would prevent the discriminatory and abusive results of these state laws and that would protect immigrant workers who file complaints about violations. Petitioners ask for the following actions on the part of Mexico:

NAO Action

We ask the NAO of Mexico to undertake an immediate review of this submission under Section 6 of the Regulation published in the DiarioOficial de la Federación of April 28, 1995. In connection with such a review, we ask the NAO to

Accept additional information from other interested parties;

Engage an independent Mexican expert on Mexican immigrants in the United States to assist the NAO with its review;

Arrange for such independent Mexican expert to visit Alabama for an on-site investigation of labor rights violations under the new Alabama anti-immigrant law.

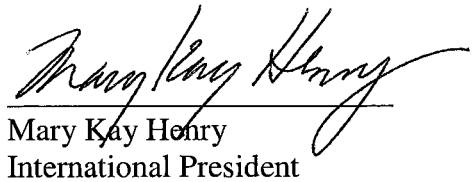
In undertaking its review, we ask the NAO of Mexico to include in its review process, under Section 7 of the Regulation, information sessions with workers affected by the new Alabama law. Such information sessions can take place in Mexico City and in Monterrey. We ask further that such information sessions be open to the public.

Ministerial Action

Under Article 22 of the NAALC, we ask the Secretary of Labor of Mexico to request consultations at the ministerial level with the Secretary of Labor of the United States on the matters raised in this submission. In connection with such consultations, we ask the Secretaries to have direct communication with the organizations that filed this submission.

We request that the ministerial consultation develop an action plan for halting the violations of workers' rights under the Alabama law and implementing effective enforcement measures to protect migrant workers' rights in the United States.

Respectfully submitted,



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