



October 31, 2017

Professor Philip Alston  
United Nations Special Rapporteur on  
Extreme Poverty and Human Rights  
Palais des Nations  
CH-1211 Geneva 10  
Switzerland

**Re: Examining the Intersection of Extreme Poverty and Human Rights in South Florida and Beyond**

Dear Professor Alston,

I write on behalf of several community-based organizations in South Florida and the students in my *International Human Rights Law and Advocacy* class at the University of Miami School of Law to present you with several reports on the intersection of extreme poverty and human rights in South Florida and beyond, in anticipation of your official visit to the United States in December. These reports reflect partnerships between my students, working in collaboration with the Miami Law Human Rights Clinic, and leading regional public interest/social justice organizations, to address pressing matters of poverty in our community.

The Miami Law Human Rights Clinic (HRC) works for the promotion of social and economic justice globally and in the U.S. The Clinic uses international human rights laws and norms, domestic law and policy, and multidimensional strategies, such as community organizing, political activism, and global networking, to draw attention to human rights violations, develop practical solutions to those problems, and promote accountability on the part of state and non-state actors.

Below and in the detailed reports that follow, we have highlighted the key takeaways from our collaborative efforts with and/or representation of the following organizations:

**1. The Women’s Fund of Miami-Dade County**

The Women’s Fund of Miami-Dade is a nonprofit organization dedicated to improving the lives of women and girls in Miami-Dade County. The organization’s core belief is that “all women and girls have the right to economic security, freedom from violence, equal access to leadership and education, and the right to choose regarding their healthcare.” This report specifically highlights systemic issues in Miami-Dade County that prevent impoverished women from gaining economic security and offers recommendations on how to fix these problems. Some issues addressed include: childcare, domestic violence, human trafficking, pay equity, education, housing, transportation, right to abortion, and sex education.

## **2. The Coalition of Immokalee Workers**

The Coalition of Immokalee Workers (“CIW”) is a non-profit community-based organization located in Immokalee, Florida that champions the human rights of migrant farmworkers and other low wage workers. CIW focuses on social responsibility, human trafficking, and workplace violence. Founded with the intention of organizing the farmworker community, CIW enlists a national consumer network to further the rights of farmworkers across the country. This report highlights CIW’s Fair Food Program and Fair Food Standards Council, examines what keeps migrant farmworkers in poverty, and discusses issues such as wage theft, sexual violence, and modern day slavery in the fields.

## **3. The American Civil Liberties Union of Florida**

The American Civil Liberties Union (“ACLU”) is a non-profit, non-partisan organization that defends and protects individual rights and liberties that are guaranteed to all citizens by the United States Constitution and its laws. The ACLU of Florida seeks to end policies that cause widespread constitutional and human rights violations. This report addresses the following issues recognized by the ACLU of Florida that have contributed to unprecedented levels of discrimination, incarceration, and other harms to low-income members of the community: homeless rights, bail reform, indigent defendants’ right to counsel, and voting rights. This report will demonstrate how these issues contribute to and exacerbate the struggles of impoverished citizens in the state of Florida, and specifically in South Florida.

## **4. Catholic Charities Legal Services**

Catholic Legal Services, Archdiocese of Miami, Inc. (“CLS”) provides professional immigration services to the South Florida’s refugee and immigrant community. CLS helps poor immigrants obtain asylum, establish legal residency, become citizens, and reunite with their families. This report examines specific immigration topics in Miami, such as “Temporary Protected Status” for Haitian migrants, unaccompanied minors, contemporary issues related to sanctuary cities, and Deferred Action for Childhood Arrivals (“DACA”). These issues are especially pressing in the current political environment, which immigration advocates characterize as perhaps the most hostile toward immigrants in recent memory.

## **5. Catalyst Miami**

Catalyst Miami is an anti-poverty nonprofit organization with a mission to develop and support individual leadership in Miami communities. Utilizing a comprehensive approach to fight systemic poverty, Catalyst builds and activates collaborative community-based networks aimed at eliminating poverty in every aspect of community life. The organization envisions a thriving Miami where residents, community leaders, and organizations work collaboratively toward the goals of improved health, education, and economic opportunity. This report addresses issues in Miami related to transportation accessibility, inadequacies regarding disaster relief, protection of the elderly, and access to healthcare coverage.

## 6. Legal Services of Greater Miami and Community Justice Project

Legal Services of Greater Miami, Inc. (“Legal Services”) provides civil legal services for the poor in Miami-Dade and Monroe County. Legal Services offers advice and representation in individual cases, addresses systemic issues, and empowers clients through community education and self-help clinics. The organization also helps clients with legal issues such as evictions, foreclosure, the loss of government benefits, and affordable housing. The Community Justice Project (“CJP”) is a nonprofit organization comprised of community lawyers who collaborate with community organizers and low-income communities of color. CJP provides legal support to grassroots community organizers and low-income communities of color on a range of racial justice and human rights issues, from housing, worker’s rights, immigrant rights, and community economic development. This report addresses the lack of affordable housing options in Miami for low-income communities, particularly those of color, highlights the substandard housing that is available, and explores the negative consequences of Florida’s rent deposit statute on tenants in these communities.

Collectively, our submissions describe numerous instances of human rights violations that are both causes and consequences of extreme poverty in South Florida and beyond. It is incumbent upon our local, state, and federal governments to take proactive steps toward alleviating poverty in impoverished and underserved communities. International human rights laws and principles can inspire solutions in our region.

We invite you to visit Miami during your official visit to the United States in December, to take a closer look at the manifestation of extreme poverty in our community and to meet with local leaders who are combatting these issues.

Please feel free to contact me at (305) 281-9856 (cell) or [clopez@law.miami.edu](mailto:clopez@law.miami.edu) with any questions or for additional information.

Sincerely,



Caroline Bettinger-López  
Professor of Clinical Legal Education  
Director, Human Rights Clinic  
University of Miami School of Law  
1311 Miller Drive | Coral Gables, FL 33146  
[clopez@law.miami.edu](mailto:clopez@law.miami.edu)  
305-284-5923 phone | 305-281-9856 cell | 305-284-6093 fax



**THE WOMEN'S FUND**  
MIAMI-DADE

**MIAMILAW**  
UNIVERSITY OF MIAMI SCHOOL OF LAW  
**Human Rights  
Clinic**

**Examining the Systemic Issues that Prevent Impoverished Women  
from Gaining Economic Security in Miami-Dade County**

**Submission to the United Nations Special Rapporteur on Extreme Poverty and Human  
Rights in Preparation for his Official 2017 Visit to the United States<sup>1</sup>**

**October 31, 2017**

*The University of Miami School of Law Human Rights Clinic and The Women's Fund of Miami-Dade thank you for this opportunity to highlight the systemic issues in Miami-Dade County that prevent impoverished women from gaining economic security, and we hope you will consider visiting us in December.*

**I. Introduction**

The Women's Fund of Miami-Dade is a nonprofit organization dedicated to improving the lives of women and girls in Miami-Dade County. The organization's core belief is that "all women and girls have the right to economic security, freedom from violence, equal access to leadership and education, and the right to choose regarding their healthcare."<sup>2</sup> Since its founding in 1993, The Women's Fund has "awarded over \$3.6 million to more than 470 gender specific programs serving thousands of women and girls" while also educating the community and advocating for legislation that protects the security of women and girls.<sup>3</sup> The following information highlights systemic issues in Miami-Dade County that prevent impoverished women from gaining economic security and offers recommendations on how to fix these problems.

The Human Rights Clinic (HRC) works for the promotion of social and economic justice globally and in the United States. The Clinic uses international human rights laws and norms, domestic law and policy, and multidimensional strategies, such as community organizing, political activism, and global networking, to draw attention to human rights violations, develop practical solutions to those problems, and promote accountability on the part of state and non-state actors.

---

<sup>1</sup> The following University of Miami School of Law students principally drafted this report under the supervision of Professor Caroline Bettinger-López and in collaboration with The Women's Fund of Miami-Dade: Angela Audie, Cecilia Criddle, Courtney Burroughs, and Joshua Gutter.

<sup>2</sup> *Who We Are*, WOMEN'S FUND OF MIAMI-DADE, <https://womensfundmiami.org/who-we-are/>.

<sup>3</sup> *Id.*

## II. Issues

**Childcare:** One of the most difficult economic tradeoffs facing women in poverty is when a woman must choose between staying home to take care of her children and going to work to earn a living. Foregoing work to earn income is unrealistic for many low-income families, which means that the children are then watched by other family members, childcare services, or some other alternative. Currently, Miami-Dade has the Early Head Start / Head Start Program, which provides comprehensive child development services for low income children and families in Miami-Dade County.<sup>4</sup> The program is open to children ages newborn through age 5, and provides care and instruction for children in a classroom setting.<sup>5</sup> In order to qualify for this service, applicants must meet the income and poverty guidelines as established by the U.S. Department of Health and Human Services.<sup>6</sup> However, when women begin making more income to support their families, this means that they may no longer qualify for childcare assistance. This catch-22 is echoed in a 2009 report, entitled *Portrait of Women's Economic Security in Miami*, which states, "Ironically, many women who are living below the self-sufficiency standard make too much to qualify for safety net supports, such as subsidized child care, food stamps, housing aid or other services."<sup>7</sup>

**Domestic Violence:** One in four women in the United States have been victims of sexual assault, physical assault, and/or stalking by an intimate partner, oftentimes with devastating consequences.<sup>8</sup> Domestic violence is a "grave phenomenon" in Miami-Dade County, as it has the highest number of reported cases in Florida.<sup>9</sup> Domestic violence is even more prevalent than the statistics indicate because it is dramatically underreported.<sup>10</sup> Poverty exacerbates the obstacles women face when trying to leave an abusive partner because there are economic hurdles to overcome, and "economic insecurity...could mean the difference between life or death."<sup>11</sup> Impoverished immigrant women are especially vulnerable,<sup>12</sup> and many times, an abuser may possess her documentation, preventing her from reporting the abuse due to fear of immigration

---

<sup>4</sup> *Early Head Start and Head Start Program*, MIAMI-DADE COUNTY, <http://www.miamidade.gov/socialservices/head-start.asp>.

<sup>5</sup> *Id.*

<sup>6</sup> *How to Apply*, MIAMI-DADE COUNTY, <http://www.miamidade.gov/socialservices/head-start-application.asp>.

<sup>7</sup> *The Portrait of Women and Girls Project: Portrait of Women's Economic Security in Greater Miami*, WOMEN'S FUND OF MIAMI-DADE, (2009), [https://rise.p.fiu.edu/research-publications/workers-rights-econ-justice/women-minority-workers/2009/portrait-of-womens-economic-security-in-greater-miami/portrait\\_wes\\_2.pdf](https://rise.p.fiu.edu/research-publications/workers-rights-econ-justice/women-minority-workers/2009/portrait-of-womens-economic-security-in-greater-miami/portrait_wes_2.pdf).

<sup>8</sup> *What is Domestic Violence?*, THE FLORIDA COALITION AGAINST DOMESTIC VIOLENCE, <http://www.fcadv.org/about/what-domestic-violence>; See, e.g., *Facts Everyone Should Know About Intimate Partner Violence, Sexual Violence, & Stalking*, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY, (2010-2012), <https://www.cdc.gov/violenceprevention/nisvs/infographic.html> (52% of survivors reported symptoms of PTSD).

<sup>9</sup> Enrique Flor and Brenda Medina, *Domestic Violence: Face of a South Florida epidemic*, MIAMI HERALD, September 20, 2015, <http://www.miamiherald.com/news/local/community/miami-dade/article35715309.html> (9,811 cases in 2014).

<sup>10</sup> WOMEN'S FUND OF MIAMI-DADE, *supra* note 6; See Flor and Medina *supra* note 8 ("[M]any victims refuse to report the abuse to authorities [because] [t]hey depend financially on their partners.").

<sup>11</sup> WOMEN'S FUND OF MIAMI-DADE, *supra* note 6.

<sup>12</sup> *Domestic Violence & Human Trafficking – Lucha*, AMERICANS FOR IMMIGRANT JUSTICE, [http://www.aijustice.org/domestic\\_violence](http://www.aijustice.org/domestic_violence) ("Immigration status has profound consequences on a survivor's ability to support their family and build a life. Without status, a survivor cannot work, open a bank account, or get a Florida driver's license.").

consequences. The data regarding the connection between homelessness and domestic violence is limited, but statistics from 2016 indicated 12% of the homeless population experienced domestic violence.<sup>13</sup>

Under a Municipal Ordinance, survivors are entitled to 30 days of unpaid domestic leave.<sup>14</sup> The purpose is to give survivors time to receive medical or dental care for themselves or their children, legal assistance, counseling, and to make other arrangements needed.<sup>15</sup> If a woman lacks economic security, she will not be inclined to forego 30 needed days of paid work, and therefore, the policy may be rendered useless for impoverished victims. “Unpaid leave is not enough to ensure that [women] will survive the violence and be able to keep a roof over their heads and feed their children.”<sup>16</sup>

**Human Trafficking:** Florida, the second-largest hub of human trafficking in the US, is one of the top three states receiving trafficked women and children into the US.<sup>17</sup> Home to Florida’s largest city and busiest port, Miami-Dade suffers from pervasive labor and sexual trafficking rings that target women and children. In Miami-Dade, 96% of our minor victims and 92% of our adult victims are female, with young women sold into sex trafficking as early as age 13.<sup>18</sup> Throughout Miami-Dade, victims of human trafficking are forced to work in prostitution, sexual entertainment industries, domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.<sup>19</sup> Young girls have reported being sold for sex as much as 40 times a day.<sup>20</sup>

Poverty and economic insecurity enable traffickers to entrap and seduce women and children into the complex underground sectors of the economy.<sup>21</sup> Recent migration, unstable housing, and homeless and runaway youth are some of the top risk factors that contribute to entrapment in trafficking rings.<sup>22</sup> Youth in foster care, especially young women aging out of the foster care system or other welfare settings, are highly vulnerable to traffickers who use force, fraud and coercion to entrap economically insecure youth.<sup>23</sup> Victims are absorbed into labor and sexual

---

<sup>13</sup> See, *Domestic Violence*, NATIONAL ALLIANCE TO END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/domestic-violence/> (In New York City, 1 in 5 homeless families experienced D.V., and 88% reported that domestic violence contributed to their homelessness “a lot.” This data is a reflection of the national crisis and is at least related to the prevalence of D.V. in Miami.); See, *Why we need M.U.J.E.R.*, MEN AND WOMEN UNITED IN JUSTICE, EDUCATION, AND REFORM (“[D.V.] is the third leading cause of homelessness among families.”).

<sup>14</sup> Miami-Dade, Florida, Municipal Code § 11A-61.

<sup>15</sup> WOMEN’S FUND OF MIAMI-DADE, *supra* note 6.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 11.

<sup>18</sup> MIAMI-DADE STATE ATTORNEY HUMAN TRAFFICKING UNIT, <http://www.miamisao.com/services/human-trafficking/> (last visited Oct. 17, 2017).

<sup>19</sup> *Id.*

<sup>20</sup> THE WOMEN’S FUND MIAMI-DADE STOP SEX TRAFFICKING MIAMI, <https://womensfundmiami.org/what-we-do/stop-sex-trafficking-miami/> (last visited Oct. 17, 2017).

<sup>21</sup> See *More Assistance. More Action. 2016 Statistics from the National Human Trafficking Hotline and Be Free Textline*, POLARIS, (2017), <http://polarisproject.org/sites/default/files/2016-Statistics.pdf>.

<sup>22</sup> *Id.*

<sup>23</sup> See *State and Local Agencies Are in Initial Stages of Addressing Needs of Child Victims of Commercial Sexual Exploitation*. THE FLORIDA LEGISLATURE OFFICE OF PROGRAM POLICY ANALYSIS AND

trafficking rings where wage, labor, health and safety law violations routinely occur. Creating policies that promote economic security for women is imperative to not only reduce the trafficked victims in Miami-Dade, but also to ensure that survivors can establish and support themselves and have a rehabilitated life once they escape the trafficking rings.

**Pay Equity:** Women in Miami Dade County make 89 cents for every dollar that men make. This disparity becomes even more extreme when race is considered,<sup>24</sup> as Hispanic and black women make just 63 cents for every dollar earned by white women in Miami Dade County.<sup>25</sup> Significant differences in pay between men and women, and especially between white men and women of color, exacerbate issues of poverty and economic insecurity felt by women and their families in Miami-Dade County.

**Education:** In addition to fixing equal pay disparities, providing affordable and accessible STEM (science, technology, engineering, and math) education to impoverished women can help increase their earnings power and promote economic security. In Miami, the Knight Foundation has funded initiatives focused on improving the accessibility of STEM education to women, minorities, and low-income individuals.<sup>26</sup> This past summer, the Foundation teamed with Citrix Systems to facilitate a seven-week summer immersion program with the nonprofit, Girls Who Code.<sup>27</sup> The program taught “girls in the 10th and 11th grades the fundamentals of computer science, from robotics to how to build a webpage, while providing exposure to the tech industry and mentorship from women who work in tech.”<sup>28</sup>

**Affordable Housing and Transportation:** The lack of affordable housing is a major driver of poverty in Miami-Dade County. (Please see our colleagues’ report, *Miami’s Housing Crisis and its Perpetuation of Poverty*, for more specific information on affordable housing issues in the county.) Low income women, specifically, are sharply impacted by housing prices because they are more likely to work in areas of the city in which they cannot afford to live and to undertake hours-long commutes on the county’s substandard public transportation.<sup>29</sup> The combined burden of work-days artificially lengthened by commutes and domestic labor responsibilities still

---

GOVERNMENT ACCOUNTABILITY (2015).

<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1506rpt.pdf>.

<sup>24</sup> *The Status of Women in Miami-Dade County*, Florida International University Metropolitan Center (2016) at 9.

<sup>25</sup> *Id.* at 10.

<sup>26</sup> See, e.g., Chabeli Herrera, *Free tech boot camp launches in low-income Miami communities*, MIAMI HERALD, May 24, 2016, <http://www.miamiherald.com/news/business/technology/article79543847.html> (“Funded in part by the John S. and James L. Knight Foundation, Digital Citizen’s main objective is to widen the opportunities available to low-income communities as well as introduce locals to technology career paths.”).

<sup>27</sup> Debora Lima, *Nonprofit partners with Citrix, Knight Foundation to close tech gender gap*, SOUTH FLORIDA BUSINESS JOURNAL, June 19, 2017, <https://www.bizjournals.com/southflorida/news/2017/06/19/nonprofit-partners-with-citrix-knight-foundation.html>.

<sup>28</sup> *Id.* (The founder of Girls Who Code, Reshma Saujauni, stated, “Computing jobs are some of the fastest-growing and highest paying in our country, yet girls continue to get left behind. Access to a computer science education can bring women into a thriving innovation economy and give families a real shot at the middle class.”).

<sup>29</sup> Ana Veciana-Suarez, *Long Journey: How commuters cope in going the extra mile*, MIAMI HERALD (May 16, 2015) <http://www.miamiherald.com/news/traffic/article21226311.html>; See also, Douglas Hanks, *In battle for more Metrorail funding, a ‘transit march’ comes to South Dade rush hour*, MIAMI HERALD (October 17, 2017) <http://www.miamiherald.com/news/local/community/miami-dade/article179223151.html>.

required at home, impacts low-wage earning women disproportionately to low-wage earning men.

**Right to Abortion:** Although the 1973 Supreme Court case *Roe v. Wade* guaranteed a woman’s right to abortion in the United States, the regulations that govern abortion clinics are decided on a state-by-state basis and vary widely. Many states, including Florida, have enacted harsh restrictions on abortion access.

Pro-choice activist group NARAL Pro-Choice America classifies abortion access in Florida as “severely restricted” based on a number of factors, including legal restrictions or protections of abortion in the state, attitudes and proposals of state political leaders, and practical access to abortion based on the cost and location of abortion services.<sup>30</sup> Rollbacks on abortion access make services more expensive and time consuming, disproportionately affecting poor women.

**Sex Education:** Many Florida schools practice “abstinence-only” sex education, meaning that children are given very limited information on birth control and disease prevention in favor of a curriculum which emphasizes abstinence as the only sure method of avoiding pregnancy and sexually transmitted infections (“STIs”). Abstinence-only programs are widely condemned as ineffective and unethical by the academic community because they play a role in increasing rates of STI infection and adolescent pregnancy by denying students information about preventative measures and by promoting an unrealistic model of adolescent sexual behavior.<sup>30</sup> In Miami-Dade County, STI rates among 20-25 year olds have risen consistently since 2010<sup>31</sup> and South Florida led the United States in new HIV diagnoses in both 2015 and 2016.<sup>32</sup> The spread of STIs, especially HIV, has a devastating impact on low-income communities where the cost of treatment can be prohibitive.

Furthermore, lack of adequate sexual education has been proven to lead to an uptick in adolescent “teen” pregnancy and in unplanned pregnancies in general. Unplanned pregnancies can be devastating for women experiencing economic insecurity. The lack of protected maternity leave in the United States means that low-income women in at-will jobs can be fired for taking time off for delivery. Only about fifty percent of teen mothers obtain a high school diploma by 22 years of age, increasing those women’s likelihood of holding low-income occupations and continuing a cycle of poverty.<sup>33</sup>

---

<sup>30</sup> *State Government: Florida*, NARAL PRO-CHOICE AMERICA, <https://www.prochoiceamerica.org/state/florida/> (last visited October 22, 2017).

<sup>30</sup> *Abstinence-Only Education is Ineffective and Unethical, Report Argues*, NATIONAL PUBLIC RADIO <http://www.npr.org/sections/health-shots/2017/08/23/545289168/abstinence-education-is-ineffective-and-unethical-report-argues> (last visited October 22, 2017).

<sup>31</sup> Emily Moore, *Responding to High Rates of Sexually Transmitted Diseases in Miami-Dade County*, 17 EPI MONTHLY 4 (2016).

<sup>32</sup> Daniel Chang, *South Florida Leads the Nation in New HIV Diagnoses, CDC Says*, MIAMI HERALD (December 6, 2016) <http://www.miamiherald.com/news/health-care/article119274813.html>.

<sup>33</sup> *Reproductive Health: Teen Pregnancy*, CENTER FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/teenpregnancy/about/index.htm>.

### III. Legal Analysis

The following UN declarations and treaties highlight mandates related to women's rights: (1) the Universal Declaration of Human Rights (UDHR), (2) the International Covenant on Civil and Political Rights (ICCPR), (3) the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and (4) the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These documents advocate:

- “the right to equal pay for equal work,”<sup>34</sup>
- “the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant,”<sup>35</sup> and,
- “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”<sup>36</sup>

Although the United States has not ratified all of these covenants and conventions, it is a signatory to all and is therefore responsible for enacting laws and policies that align with the fundamental purpose of these international documents.

### IV. Key Recommendations

**Childcare:** Legislation at all levels of government should be enacted to provide sliding scale childcare based on parents' income along with facilities that are open and available beyond the traditional “business” schedule. This includes pay for training and providing a living salary for all child care facility workers. The cost of training and paying childcare workers would be offset by the decreased cost of funding programs/services for children who are negatively impacted by not receiving appropriate childcare services.

**Domestic Violence:** The government should:

- Support more domestic violence awareness programs, including teen dating violence to educate young people on healthy relationships;
- Limit the ability of those individuals who have a history of domestic abuse to purchase guns;
- Provide more safe, affordable housing (both short- and long-term) for victims of domestic violence; and
- Determine and put in place alternative deterrents for domestic abusers other than incarceration.

**Human Trafficking:** The Miami-Dade Police Department should develop a classification system that distinguishes human trafficking dispatch calls from general sex offense dispatch calls

---

<sup>34</sup> Universal Declaration of Human Rights, Article 23.

<sup>35</sup> International Covenant on Civil and Political Rights, Article 3.

<sup>36</sup> International Covenant on Economic, Social, and Cultural Rights, Article 7.

in order to more accurately allocate funds for victims.<sup>37</sup> The foster care and juvenile systems need to teach self-worth, instill value in girls, and supply temporary financial support for young women aging out. Lastly, there should be increased penalties for traffickers and increased education and training for law enforcement.

**Pay Equity:** There needs to be increased awareness of pay inequity in our community. While the overall pay gap for women is approximately \$.89 vs. \$1.00 for their male counterparts, the numbers are even more staggering for minority women. Closing this gap will not only reduce the number of women living in poverty by 50%, it increases their buying power thus increasing overall economic development in Miami-Dade County.

**Education:** Education, whether college-bound, technical or vocational, needs to be strong, stimulating, excellent and accessible from the early ages. Building on the child care issue, all children need to be educated to achieve their maximum potential starting at Birth. Girls need to be afforded all opportunities to learn and receive training without being classified by gender. They need to be directed to careers in all fields, including fields that have been traditionally identified as “male” careers.

**Affordable Housing & Transportation:** Miami-Dade County must recognize its role in creating and perpetuating a lack of affordable housing and transportation, which is driving poverty. Housing and transportation authorities must prioritize these issues, putting solutions into place.

**Right to Abortion:** *Roe v. Wade* is still the law of the land, guaranteeing a woman’s right to an abortion. Nonetheless, long-standing roll-backs on abortion access disproportionately restrict poor women from claiming this right. Increased awareness of this hardship must continue and all efforts must be to protect these rights. Vigorous efforts must be made to provide these services outside these current barriers.

**Sex Education:** Comprehensive sex education needs to be provided to everyone regardless of gender. It needs to be age appropriate, medically accurate, presented in a safe learning environment by trained specialists, and inclusive of all gender identifications and expressions. Topics need to include human development, relationships, decision-making, contraception, and disease prevention. While abstinence-only programs have been proven not to be effective, programs that demonstrate to young girls that delayed child-bearing does permit them to attain a higher academic level, and ultimately increase their potential for financial success in life, have been proven effective.

---

<sup>37</sup> CEDAW AND THE STATUS OF WOMEN IN MIAMI DADE COUNTY, MIAMI-DADE COUNTY COMMISSION FOR WOMEN, December 6, 2016, <http://www.miamidade.gov/advocacy/library/2016-status-of-women-recommendations.pdf>.



## **Farmworker Poverty and Human Rights**

### **Submission to the United Nations Special Rapporteur on Extreme Poverty and Human Rights in Preparation for his Official 2017 Visit to the United States<sup>1</sup>**

**October 31, 2017**

#### **I. Introduction**

The University of Miami Human Rights Clinic (HRC) works for the promotion of social and economic justice globally and in the U.S. The Clinic uses international human rights laws and norms, domestic law and policy, and multidimensional strategies, such as community organizing, political activism, and global networking, to draw attention to human rights violations, develop practical solutions to those problems, promote accountability on the part of state and non-state actors.

The Human Rights Clinic respectfully submits this report about farmworker poverty to the United Nations Special Rapporteur on Extreme Poverty and Human Rights. The report focuses on the Coalition of Immokalee Workers as an example of an anti-poverty and human rights campaign program that has made concrete positive changes in the lives of thousands of farmworkers in the United States.

#### **II. Who are CIW and FFSC?**

Founded in 1993, the Coalition of Immokalee Workers (“CIW”) is a non-profit community-based organization based in Immokalee, Florida that champions the human rights of migrant farmworkers and other low-wage workers. CIW focuses on social responsibility, human trafficking, and workplace violence.<sup>2</sup> Founded with the intention of organizing the farmworker community, CIW enlists a national consumer network to further the rights of farmworkers across the country.<sup>3</sup>

The Fair Food Standards Council (“FFSC”) is an initiative that implements CIW’s Fair Food Program (“FFP”) and ensures compliance with the Program.<sup>4</sup> In 2011, CIW created FFP

---

<sup>1</sup> The following University of Miami School of Law students principally drafted this report under the supervision of Professor Caroline Bettinger-López and in consultation with the Coalition of Immokalee Workers: Danielle Befeler, Maria Camila Rodriguez, and Candelario Saldana.

<sup>2</sup> *About CIW*, Coalition of Immokalee Workers, 2012, <http://www.ciw-online.org/about/>.

<sup>3</sup> *Id.*

<sup>4</sup> *About*, Fair Food Standards, <http://www.fairfoodstandards.org/about/> (last visited Oct. 31, 2017).

based on a Worker-driven Social Responsibility (“WSR”) model uniting farmworkers, Florida tomato growers, and retail buyers.<sup>5</sup> FFSC oversees the human-rights-based Fair Food Code of Conduct (“Code of Conduct”), premised on risk prevention, supply chain transparency, and market-enforced protection of workers’ rights.<sup>6</sup>

Through negotiations of binding Fair Food Agreements, the FFP operates as a private legal system that corrects the imbalance of power that pervades its public counterpart.<sup>7</sup> Participating buyers commit to solely buying tomatoes from growers who comply with FFP requirements, ensuring workers receive increased wages and human right protections.<sup>8</sup> FFSC investigates and resolves complaints in collaboration with growers, resulting in the resolution of abuses ranging from sexual harassment to systemic wage violations.<sup>9</sup> Additionally, the FFP calls for health and safety committees and ongoing FFSC auditing of each farm for compliance with the program.<sup>10</sup>

The FFP’s innovative “Penny-Per-Pound” premium effectively increased worker wages. Retailers pay a small premium directly to their suppliers, which is then added to each worker’s regular pay in the form of a bonus.<sup>11</sup> The WSR model embodied by the FFP relies on workers taking a leading role in designing the program’s structure, function, and enforcement.<sup>12</sup> Today, in six short years, the program has expanded to include participating tomato growers in North Carolina, New Jersey, Georgia, South Carolina, Virginia, and Maryland.<sup>13</sup> The program now includes bell pepper and strawberry growers in Florida, and will soon cover melons and other crops in Texas.<sup>14</sup>

---

<sup>5</sup> *Fair Food Program: 2015 Annual Report*, Fair Food Standard Council, at V, <http://fairfoodstandards.org/15SOTP-Web.pdf> (last visited Oct. 14, 2017) (Participating buyers: Ahold USA; Aramark; Bon Appétit Management Co.; Burger King; Chipotle Mexican Grill; Compass Group; The Fresh Market; McDonald’s; Sodexo; Subway; Trader Joe’s; Wal-Mart; Whole Foods Market; Yum Brands).

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *About CIW*, *supra* note 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Fair Food Program: 2015 Annual Report*, *supra* note 5, at 13.

<sup>10</sup> *About*, *supra* note 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Worker-driven Social Responsibility (WSR): A new idea for a new century*, Coalition of Immokalee Workers (June 16, 2014), <http://www.ciw-online.org/blog/2014/06/wsr/>.

<sup>13</sup> Fair Food Program, <http://www.fairfoodprogram.org/partners/> (last visited Oct. 14, 2017).

<sup>14</sup> *Id.*; see also *Participating Growers*, Fair Food Standards Council, <http://www.fairfoodstandards.org/resources/participating-growers/> (last visited Oct. 15, 2017) (Tomato growers in Florida: Ag-Mart Produce d/b/a Santa Sweets; Classic Growers/Falkner Farms; Del Monte Fresh Production; DiMare Homestead-Triple D; DiMare Ruskin-HarDee/Diamond D; Farmhouse Tomatoes; Gargiulo; Harlee Packing- Palmetto Vegetable Company, South Florida Tomato Growers; Kern Carpenter Farms; Lipman Family Farms; Pacific Tomato Growers d/b/a Sunripe Certified Brands; Taylor and Fulton Packing-Utopia Farms; Tomatoes of Ruskin-Artesian Farms, Diehl and Lee Farms, Frank Diehl Farms, TOR Farms; West Coast Tomato/McClure Farms; Tomato growers in other States: Ag-Mart Produce d/b/a Santa Sweets (NC, NJ); Gargiulo (GA); Lipman Family Farms (SC, VA, MD); Pacific Tomato Growers d/b/a Sunripe Certified Brands (GA, VA); Strawberry Growers: Pacific Tomato Growers d/b/a Sunripe Certified Brands (FL); Green Bell Peppers: Lipman Family Farms (FL)).

### **III. What Keeps Migrant Farmworkers Living in Poverty?**

Farmworkers are essential to the American economy, yet are among the lowest paid in American labor, thus making them particularly vulnerable to human rights violations. Agricultural workers, like other poor workers in the U.S., effectively have no ongoing voice in the legislative process, and therefore have few rights under the law to assert, particularly because they are excluded from New Deal labor reform laws. Because of their poverty, they generally cannot afford to pursue even the meager rights they do have; nor can they afford the interim consequences of doing so, which include not only the costs of pursuing cases in court, but the very real threat of retaliatory job loss or deportation. This reality of low-wage workers is precisely why the CIW envisioned and built the FFP, which has proven successful in materially improving poor people's lives, in large part because its operational protocols address the imbalances of power that hamstring poor people in the established legal system, thus making just outcomes achievable.

As of November 2011, over 90% of Florida's tomato growers implemented the Fair Food Code of Conduct, marking the inception of the FFP.<sup>15</sup> Since then, while poverty is still a constant reality for many farmworkers, the efforts of the CIW and its consumer allies have brought numerous life-changing improvements to farmworkers in Florida and other states who harvest tomatoes, strawberries, and green bell peppers for the U.S. retail food industry.<sup>16</sup>

Below we offer a snapshot of how poverty manifests in the lives of farmworkers across the nation. As Oxfam America has described, the poor conditions for farmworkers in the U.S. exist in large part "because of the fundamental lack of enforcement of basic labor standards."<sup>17</sup>

#### **A. Snapshot of Farmworker Poverty and Exploitation**

The family income of tomato harvesters often falls below the poverty line. In January 2001, the U.S. Department of Labor (DOL) sent a letter to Congress reporting on the stark realities facing agricultural workers. The DOL defined farmworkers as "a labor force in significant economic distress," and described farmworkers' low wages, sub-poverty annual earning, and significant periods of un- and under-employment.<sup>18</sup> In a subsequent report released in December 2016, the DOL found that "[w]orkers' mean and median total family incomes from the previous year were in the range of \$20,000 to \$24,999. Thirty-three percent of farmworkers reported total income of less than \$20,000, 27% said their family income was \$20,000 to

---

<sup>15</sup> *Facts and Figures on Florida Farmworkers*, CIW, <http://www.ciw-online.org/Resources/tools/general/12Facts&Figures.pdf>, (last visited Oct. 15, 2017).

<sup>16</sup> Lois K. Solomon, *Tomato Pickers persuade big food companies to sign on to human-rights movement*, Sun Sentinel (Dec. 31, 2015, 11:17 AM), <http://www.sun-sentinel.com/news/florida/fl-tomato-pickers-20151231-story.html>.

<sup>17</sup> *Wedding out abuses: Recommendations for a law-abiding labor system*, Oxfam America, <https://www.oxfamamerica.org/static/media/files/weeding-out-abuses.pdf> (last visited Oct. 25, 2017).

<sup>18</sup> *Id.* (quoting *The Agricultural Labor Market-Status and Recommendations*, U.S. Department of Labor (2000)).

\$29,000, and 30% had a family gross income of \$30,000 or more. Thirty percent of farmworkers had family incomes below poverty.”<sup>19</sup>

Undocumented and migrant farmworkers in particular experience especially high levels of poverty.<sup>20</sup> Even for those who arrive legally through H-2A visas, the arrangement places a tremendous amount of power in the hands of the employer, leaving the workers largely powerless and frequently exploited.<sup>21</sup> H-2A visas require employers to find workers themselves, which often leads to hiring outsourced foreign private contractors. These middlemen “entice workers by dangling access to the land of opportunity, charging thousands to handle paperwork and transport, and offering to finance fees through high-interest loans.”<sup>22</sup> When workers arrive, they are bound to a single employer and are “often heavily indebted to a contractor in their home country leading to a system of predetermined abuse.”<sup>23</sup> If the employer falls short of the promised work or wages, the visa recipient cannot look for work elsewhere. If the farmworker leaves, the contract is voided, and the worker may have to leave the country.<sup>24</sup> For those who are undocumented, the fear of being deported to their home countries keeps them from complaining and makes them vulnerable to exploitation.<sup>25</sup>

## **B. Piece-Rate Pay, Legal Exclusions, and Wage Theft**

Instead of an hourly wage, the majority of tomato harvesters are paid by the piece. Tomato-harvesting piece rates remained static for the thirty years prior to the advent of the FFP. As a result, real wages for farmworkers have declined sharply since 1980. At the beginning of FFP, the average piece rate was 45 cents per 32-lb. bucket of tomatoes. Not only does piece-rate affect farmworker pay, but this form of payment creates a “disincentive to take breaks for water or shade, as taking breaks would cut into their productivity and cut into their pay.”<sup>26</sup>

Farmworker wage theft dates back to exclusions from the New Deal labor reform laws, including the National Labor Relations Act and the Fair Labor Standards Act. Under these federal laws, “farmworkers have no right to overtime pay or the right to organize and collectively bargain with their employers.”<sup>27</sup> Due to the seasonal and unpredictable nature of their work, farmworkers must often work long hours with no overtime pay, but on average experience rates of unemployment double those of wage and salary workers.<sup>28</sup> As of 1966, federal law requires employers on large farms to pay minimum wage if a worker does not earn it based on the piece

---

<sup>19</sup> *Findings from the National Agricultural Workers Survey (NAWS) 2013-2014*, U.S. Department of Labor (Dec. 2016), [https://www.doleta.gov/naaws/pages/research/docs/NAWS\\_Research\\_Report\\_12.pdf](https://www.doleta.gov/naaws/pages/research/docs/NAWS_Research_Report_12.pdf) (last visited Oct. 14, 2017).

<sup>20</sup> Brian Barth, *The High Cost of Cheap Labor*, Rosenberg Foundation (Feb. 21, 2017), <https://rosenbergfound.org/the-high-cost-of-cheap-labor/>.

<sup>21</sup> *Recipe for Slavery: Take the US farm labor relations, add “guestworker” visas, and voila... Forced labor!*, CIW (Sept. 3, 2010), [http://www.ciw-online.org/blog/2010/09/global\\_horizons\\_prosecution/](http://www.ciw-online.org/blog/2010/09/global_horizons_prosecution/) (quoting FBI agent Tom Simon on a KITV News in Hawaii) (internal quotations omitted).

<sup>22</sup> Barth, *supra* note 20.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *A Side Order of Human Rights*, CIW (April 6, 2005), <http://www.ciw-online.org/blog/2005/04/schlossernyt/>.

<sup>26</sup> *Farm Worker Issues: Low Wages*, YAYA: Justice for Farm Workers, [http://nfwm-yaya.org/wp-content/uploads/2011/11/pdf\\_Low-Wages.pdf](http://nfwm-yaya.org/wp-content/uploads/2011/11/pdf_Low-Wages.pdf) (last visited Oct. 30, 2017).

<sup>27</sup> *Facts and Figures on Florida Farmworkers*, *supra* note 15.

<sup>28</sup> *Id.*

rate; yet there are loopholes in the system.<sup>29</sup> About one third of U.S. farmworkers work on small farms, which are not subject to federal laws regarding minimum wage.

Even on large farms, farmworkers face endemic wage theft from violations of minimum wage laws.<sup>30</sup> One abuse of minimum wage in U.S. agriculture is manual timekeeping, which can be manipulated. As of 2013, all FFP participating growers had begun using timekeeping systems as required by the Code.<sup>31</sup> While implementation of standard timekeeping systems (workers clocking in and out using machines) generates verifiable records, such systems are rare outside of the FFP.<sup>32</sup> FFP's requirement of specific timekeeping based on arrival and departure from the grower's property ensures all workers' compensable hours are recorded. According to the CIW's 2015 Annual Report, "Enforcement of the provision against uncompensated wait time has had a dramatic impact on workers' quality of life."<sup>33</sup>

The story of Angelina Velasquez is an example of how working conditions can change in American's agricultural fields. Before her employing farm joined the FFP, she would have to wait at a parking lot at 5am to be dropped off at the tomato fields by 6am. She often waited without pay until the dew dried. During that time period, crew leaders often "hector and screamed at the workers, pushing them to fill their 32-pound buckets even faster. They often picked without rest breaks, even in 95 degree heat."<sup>1</sup> On FFP farms, these abusive practices have ended because of active enforcement of the Code.

Management on farms (including crew leaders and dumpers) enforce systematic wage theft through unwritten rules like the "*copete*."<sup>34</sup> For a bucket to be considered sufficiently filled, it must be "cupped," i.e., overfilled with tomatoes piled well over the rim.<sup>35</sup> For every ten buckets a worker fills, they would have in fact filled the equivalent of eleven buckets, because the ten *copetes* added up to roughly one full — unpaid — bucket.<sup>36</sup> Today, farms participating in FFP have eliminated cupping and use a visual standard (below) to show farmers and their field supervisors what a full bucket should be.<sup>37</sup> Elimination of the *copete* has resulted in a *de facto* wage increase of approximately 10% and prevention of recurring conflict between workers and supervisors that historically provided an opportunity for the exercise of arbitrary authority.

---

<sup>29</sup> *Id.*

<sup>30</sup> *Fair Food Program: 2015 Annual Report*, Fair Food Standard Council, at 4, <http://fairfoodstandards.org/15SOTP-Web.pdf> (last visited Oct. 14, 2017).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 30.

<sup>33</sup> *Id.*

<sup>34</sup> *On the Elimination of the Require Overfilling of Buckets through the CIW's Fair Food Code of Conduct*, CIW (April 30, 2011), [http://www.ciw-online.org/blog/2011/04/bucket\\_overfilling/](http://www.ciw-online.org/blog/2011/04/bucket_overfilling/).

<sup>35</sup> *Id.*

<sup>36</sup> *On the Elimination of the Required Overfilling of Buckets through the CIW's Fair Food Code of Conduct*, CIW (April 30, 2011), [www.ciw-online.org/blog/2011/04/bucket\\_overfilling/](http://www.ciw-online.org/blog/2011/04/bucket_overfilling/).

<sup>37</sup> *Id.*



Image showing the new standards eliminating *copete* requirements implemented in farms participating in the FFP.<sup>38</sup>

### C. Sexual Violence

For decades, the women who harvest fruits and vegetables in the U.S. have endured sexual violence in the fields. A 2012 study conducted by Human Rights Watch indicates “80% of female farmworkers report facing sexual harassment on the job.”<sup>39</sup> Women are often fired for speaking up against sexual violence in the workplace while the abuser remains on the job. In 2015, the Equal Employment Opportunity Commission announced a \$17 million judgment against Moreno Farm Florida and in favor of farmworkers who were regularly groped, prostituted, and raped by the farm owners’ two sons and a third supervisor.<sup>40</sup> The lack of incentives and aid provided by the government to victims of sexual violence in the field perpetuates their inability to seek redress and allows these abuses to remain in the dark, while offenders escape liability for malicious crimes.

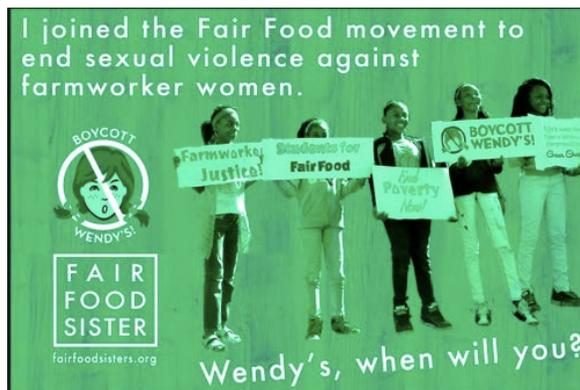


Image of the Fair Food Sisters Twitter movement to end sexual assault against farmworker women.<sup>41</sup>

While implementation of the FFP’s zero tolerance provisions has virtually eliminated sexual violence on FFP farms,<sup>42</sup> CIW has recently created the Fair Food Sisters campaign to

<sup>38</sup> *Worker-driven Social Responsibility (WSR): A new idea for a new century*, supra note 12.

<sup>39</sup> *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, Human Rights Watch (May 15, 2012), <https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and-sexual>.

<sup>40</sup> *Building a future without violence in the fields...*, CIW (Dec. 11, 2017), <http://www.ciw-online.org/blog/2015/12/fwv-training/>.

<sup>41</sup> *About, Fair Food Sisters*, <https://www.fairfoodsisters.org/> (last visited Oc.15, 2017).

answer the call for solidarity and support for ending sexual assault and violence in U.S. fields. Torn between protecting their dignity and providing for their own families, women farmworkers outside of FFP continue to endure vulgar and harassing comments, sexual assault, demands of sexual favors from supervisors, and in extreme cases—rape, to make ends meet.<sup>43</sup> The campaign aims to give women outside of FFP an avenue of redress where they can report sexual assault and abuse without fear of retaliation.

#### **D. Modern Day Slavery and Other Workplace Abuses of Farmworkers**

Although 19<sup>th</sup> century chattel slavery has been abolished, many farmworkers continue to experience modern-day slavery. Shocking examples of employers holding men and women against their will using violence—including beatings, shootings, and pistol whippings, threats of violence, and coercion<sup>44</sup>—have made news headlines in recent years. CIW first started helping to prosecute the perpetrators, and now has grown to establish an enforceable zero tolerance policy through the FFP that has resulted in zero cases of forced labor in a five-year period.<sup>45</sup>

One Immokalee supervisor operation was prosecuted for forcing more than a dozen people sleep in box trucks and shacks, charging them for food and showers, not paying them for picking produce, and beating them if they tried to leave.<sup>46</sup> Laura Germino from CIW observed: “Sadly, this is the worst of what happens when you have across-the-board degradation of labor and conditions that allow slavery to take root and flourish.”<sup>47</sup> In a similar situation, farmworker escapees brought authorities to a farm where “[a]nyone who attempted to leave...[was] hunted down, beaten, brought back to the slave house.”<sup>48</sup> Investigators recorded stories where one farmworker tried to take a day off “and was beaten until he bled.”<sup>49</sup>

Additionally, agricultural work is consistently ranked as one of the three most dangerous occupations in the U.S.<sup>50</sup> Although some health and safety hazards are similar to those found in other industrial workplaces—such as working with heavy machinery—farmworkers must also deal with pesticide exposure, sun exposure, inadequate sanitary facilities, crowded and/or substandard housing,<sup>51</sup> and being forced to pick without rest breaks and in extreme heat. As a result, they suffer from heat stress, dermatitis, urinary tract infections, parasitic infections, and

---

<sup>42</sup> *CNN on Fair Food Program: “How America’s ‘ground-zero’ for modern slavery was cleaned up by workers’ group,”* Coalition of Immokalee Workers, <http://www.ciw-online.org/blog/2017/06/cnn-ffp/> (June 2, 2017). See video.

<sup>43</sup> *About, Fair Food Sisters,* <https://www.fairfoodsisters.org/> (last visited Oct. 15, 2017).

<sup>44</sup> *Anti-Slavery Program,* CIW, [www.ciw-online.org/slavery/](http://www.ciw-online.org/slavery/) (last visited Oct. 15, 2017).

<sup>45</sup> *Id.*

<sup>46</sup> *Press Release: Sixth Immokalee slavery case suspect arrested Group accused of keeping beating, stealing from Immokalee laborers,* Coalition of Immokalee Workers, January 18, 2008, [http://www.ciw-online.org/blog/2008/01/slavery\\_plain\\_and\\_simple/](http://www.ciw-online.org/blog/2008/01/slavery_plain_and_simple/).

<sup>47</sup> *Id.*

<sup>48</sup> *How about a side order of human rights?,* Coalition of Immokalee Workers, December 19, 2007, [http://www.ciw-online.org/blog/2007/12/fred\\_grimm\\_side\\_order\\_rigts/](http://www.ciw-online.org/blog/2007/12/fred_grimm_side_order_rigts/).

<sup>49</sup> *Id.*

<sup>50</sup> *United States Farmworker Factsheet,* Student Action with Farmworkers, <https://www.saf-unite.org/content/united-states-farmworker-factsheet>. (last visited Oct. 15, 2017).

<sup>51</sup> *Facts and Figures on Florida Farmworkers,* Coalition of Immokalee Workers, <http://www.ciw-online.org/Resources/tools/general/12Facts&Figures.pdf>, (last visited Oct. 15, 2017).

tuberculosis. Housing conditions are frequently hazards unto themselves and often lead to “lead poisoning, respiratory illnesses, ear infections and diarrhea.”<sup>52</sup> Toxic pesticides and other chemicals also cause injuries and skin disorders, as well as eye injuries and birth defects.

#### **IV. CIW’s Organizing Philosophy and Development of the FFP**

The Fair Food Program ensures lasting change by bringing together workers, consumers, growers, and retail food companies in support of fair wages and humane labor standards in the agricultural industry. FFP forms the foundation for a new model of social accountability by (1) guaranteeing fair wages to farmworkers through Fair Food Agreements, and (2) implementing a Human-rights-based Code to eliminate worker abuse.<sup>53</sup>

The secret to the success of the program is the WSR model that empowers workers, whose rights are at stake, to play a leading role in the definition, monitoring, and protection of those rights. The results stand in stark contrast to the traditional corporate-led approach (CSR) of social responsibility.<sup>54</sup> CSR codes of conduct, often called “Vendor Standards”, merely require suppliers’ compliance with all applicable labor standard laws.<sup>55</sup> But as shown above, those labor standards are either inapplicable or grossly inadequate as relates to low-wage workers. In WSR, workers themselves craft industry-specific codes of conduct that reflect the particular rights and reforms necessary to transform a brutal job into a more humane workplace.

FFP combines four essential tools of social responsibility necessary for ensuring the transparency of labor conditions in the fields and compliance with the Code.<sup>56</sup> It enlists the industry’s 30,000 workers as active, frontline human rights defenders through education and complaint processes. CIW conducts worker-to-worker education on the farm and on the clock, as well as provides every worker with “Know Your Rights and Responsibilities” materials in Spanish, English, and Haitian Creole.<sup>57</sup> Worker education aims to inform workers of their rights and responsibilities under the Code, in addition to mechanisms for redress should a potential Code violation occur. FFP provides a toll-free complaint line answered by a bilingual FFSC investigator, 24 hours a day, 7 days a week.<sup>58</sup> FFSC investigates and resolves complaints in conjunction with participating growers. Due to FFP’s ground-breaking accountability arrangement, farmworkers have brought forth over 1,800 complaints under the Code, which demonstrates workers trust the reported problems will be investigated and corrected.<sup>59</sup>

Furthermore, unlike corporations’ quick-hitting audits that are either self-audits by an in-house team or third-party audits by professional auditing agencies serving the needs of corporations, FFSC reviews monthly supply chain records to ensure that participating buyers only source Florida tomatoes from participating growers in good standing of the Code, thereby

---

<sup>52</sup> *Id.*

<sup>53</sup> *About*, Fair Food Standards Council, <http://www.fairfoodstandards.org/about/> (last visited Oct. 15, 2017).

<sup>54</sup> *Worker-driven Social Responsibility (WSR): A new idea for a new century* [hereinafter *WSR: A new idea for a new century*], CIW (June 16, 2014), <http://www.ciw-online.org/blog/2014/06/wsr/>.

<sup>55</sup> *Id.*

<sup>56</sup> *Fair Food Program: 2015 Annual Report*, *supra* note 30, at 8.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 9.

<sup>59</sup> *Id.* at 2.

upholding the market incentives driving grower compliance. Prior to FFP, no governmental or non-governmental entity had sufficient resources to undertake anything but sporadic labor enforcement efforts in agriculture.<sup>60</sup> Although the market consequences built into FFP allow participating buyers to contribute to the alleviation of the extreme poverty of farmworkers by paying nearly \$20 million in Fair Food Premiums, FFP's enforcement mechanisms are sharply focused on the advancement of worker conditions and dignity.<sup>61</sup>

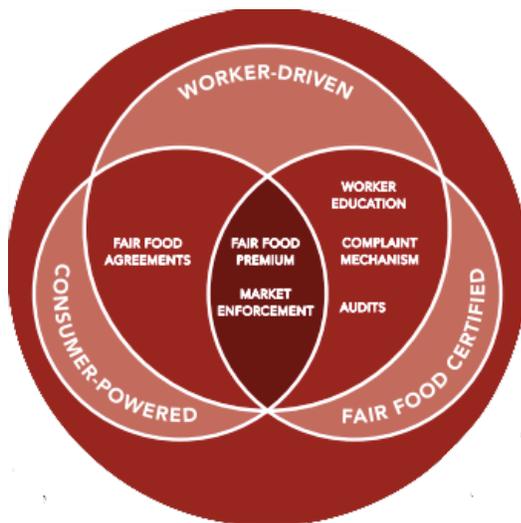


Image demonstrating how FFP's WSR model works.

## V. Recommended Questions

We respectfully suggest the following questions be raised during the Rapporteur's meeting with U.S. government officials:

1. Why are there still exclusions (which are race-based in origin) from many legal labor protections for some sectors of the workforce in the U.S., specifically agricultural workers and domestic workers?
2. Are there effective mechanisms for redress available in the United States to undocumented women-workers who suffer widespread sexual harassment and sexual violence in the workplace?

## VI. Suggested Recommendations

We respectfully suggest the following recommendations be raised during the Rapporteur's meeting with government officials:

1. As the largest purchaser of goods and services in the world, the U.S. should prioritize doing business with companies that implement the Worker-driven Social

<sup>60</sup> *Id.* at 8.

<sup>61</sup> *WSR: A new idea for a new century*, *supra* note 53.

- Responsibility (WSR) model to ensure protection of workers' fundamental human rights in global supply-chains.
2. The U.S. should ratify the International Covenant on Economic, Social, and Cultural Rights, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, along with their respective Optional Protocols.
  3. The U.S. should encourage, and if necessary incentivize, all food retailers to join the Fair Food Program so that all U.S. growers implement CIW's protocols to eliminate wage theft and ensure that farmworkers are no longer victims of human rights abuses on their farms.



**The Intersection Between Poverty and Florida’s Criminal Justice System:  
Homeless Rights, Bail Reform, Indigent Defendants’ Right to Counsel, and Restoration of  
Past Offenders’ Right to Vote<sup>1</sup>**

**Submission to the United Nations Special Rapporteur on Extreme Poverty and Human  
Rights in Preparation for his Official 2017 Visit to the United States**

**October 31, 2017**

**I. Introduction**

The American Civil Liberties Union (“ACLU”) is a non-profit, non-partisan organization that defends and protects individual rights and liberties that are guaranteed to all individuals by the United States Constitution and its laws. The ACLU of Florida seeks to end policies that cause widespread constitutional and human rights violations. The Miami Law Human Rights Clinic works for the promotion of social and economic justice globally and in the U.S. The Clinic uses international human rights laws and norms, domestic law and policy, and multidimensional strategies, such as community organizing, political activism, and global networking, to draw attention to human rights violations, develop practical solutions to those problems, and promote accountability on the part of state and non-state actors.

**II. How Florida’s Criminal Justice System Contributes to and Exacerbates Poverty,  
Resulting in Human Rights Violations**

This report will address the issues of homeless rights, bail reform, indigent defendants’ right to counsel, and voting rights—all of which the ACLU of Florida believes are related to unprecedented levels of discrimination, incarceration, and other harms to low-income Floridians. Our goal is to demonstrate how each of these issues contributes to and exacerbates the struggles of impoverished citizens in the state of Florida, with a specific focus on South Florida.

**A. Criminalization of Homelessness and Homeless Rights**

Nationwide, local governments increasingly face shortages in resources to combat homelessness. Instead of attempting to resolve the root causes of homelessness, many of these governments have enacted laws that penalize homeless people for their survival activities, such

---

<sup>1</sup> The following University of Miami School of Law students principally drafted this report under the supervision of Professor Caroline Bettinger-López and in collaboration with the ACLU of Florida: Andrea Ezell, Luis Inclan, Nicole Masri and Sandra Cordoba.

as sleeping in public places.<sup>2</sup> The National Law Center on Homelessness and Poverty currently estimates that each year at least 2.5 to 3.5 million Americans sleep in shelters, transitional housing, and public places not meant for human habitation.<sup>3</sup> The U.S. Department of Housing and Urban development (“HUD”) uses a narrow definition of “homeless”<sup>4</sup> that is limited to people living in shelters, in transitional housing, and in public places. Many people experiencing homelessness have no other option but to live outside and in public places; yet social stigma, laws, and law enforcement practices continue punishing these individuals.

i. Homelessness in Florida – the Numbers

The *State of Florida 2016 Homeless Census Estimates and Funding Need to End Chronic Homelessness Report* estimates that there are currently around 33,000 homeless people living in the state; roughly 18,000 live in shelters, while 15,000 are completely unsheltered.<sup>5</sup> According to the Report, 4,235 homeless people lived in Miami-Dade County in 2016— the highest number in the state, while the second highest, St. Petersburg/Clearwater, had about 2,777 total homeless. Further, the Report found that in Miami-Dade County there are: 447 people chronically homeless; 1,963 in emergency shelter facilities; 982 people that are unsheltered homeless; 337 that are chronically unsheltered homeless; and over 28,000 people on the waiting list for public housing alone.<sup>6</sup>

ii. Penalization of Homelessness

A leading cause of homelessness is a lack of affordable housing.<sup>7</sup> Despite the undisputed lack of affordable housing and shelter space, many municipalities in Florida criminally or civilly punish people living on the street instead of creating initiatives to provide affordable housing options. For example, Broward County criminalizes sleeping in public spaces<sup>8</sup> with penalties that

---

<sup>2</sup> *Criminalization of Homelessness Increases in U.S. Cities*, National Low Income Housing Coalition, November 2016. <http://nlihc.org/article/criminalization-homelessness-increases-us-cities>.

<sup>3</sup> The National Law Center on Homelessness & Poverty, *Homelessness in America: Overview of Data and Causes* (2015) [https://www.nlchp.org/documents/Homeless\\_Stats\\_Fact\\_Sheet](https://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet).

<sup>4</sup> The McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11302(a)-(b) (2012). The HUD definition of “homeless” is an individual who is exiting an institution where he or she temporarily resided; an individual or family who is at the imminent risk of losing their housing and has no resources to secure new permanent housing; unaccompanied youth and homeless families with children and youth who are defined as homeless under other federal statutes; and an individual or family who is experiencing domestic violence and other dangerous or life-threatening conditions such as dating violence, sexual assault, and stalking, etc.

<sup>5</sup> *The State of Florida 2016 Homeless Census Estimates and Funding Need to End Chronic Homelessness Report*, National Homeless Information Project, October 2016. [http://www.nhipdata.org/local/upload/file/Florida%20Homeless%20Report%202016%20%2009\\_30\\_16%20-%20final%20report.pdf](http://www.nhipdata.org/local/upload/file/Florida%20Homeless%20Report%202016%20%2009_30_16%20-%20final%20report.pdf).

<sup>6</sup> Miami Dade, Public Housing & Community Dev., Waiting List Ranking/Position List Number, (2014), <http://www.miamidade.gov/housing/waiting-list-rankings.asp>.

<sup>7</sup> Florida Coalition for The Homeless: The Issue, Florida Coalition For the Homeless, (2015). <http://fchonline.org/the-issue/>, *Out of Reach*, National Low Income Housing Coalition (2017). [http://nlihc.org/sites/default/files/oor/OOR\\_2017.pdf](http://nlihc.org/sites/default/files/oor/OOR_2017.pdf).

<sup>8</sup> Broward County, Florida Code of Ordinances Sec. 21-143. - Disorderly conduct. No person shall commit any act of disorderly conduct at the facility. An act of disorderly conduct shall be any of the following acts:  
(a) Littering, dumping of garbage or liquids or any other matter, or creating a nuisance or hazard or unsanitary condition by doing any act including but not limited to spitting or urinating (except in facilities provided). (b)

include a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail not to exceed sixty days.<sup>9</sup>

The National Law Center on Homelessness and Poverty reported that laws criminalizing homelessness have dramatically increased over the past ten years. Legislation specifically targeting homeless individuals (i.e. restrictions on where and how charitable groups can feed the homeless in the city<sup>10</sup>) has transformed entire communities into “no homeless zones,” causing homeless people to be left with no choice but to break the law or to leave town. These laws are unjust because they target and punish homeless people for conduct inextricably linked to their homeless status. Further, these policies are ineffective and actually make escaping homelessness harder due to the consequences of being criminally penalized. In other words, the time and cost of interacting with the criminal justice system set people further back from having the resources to escape homelessness.

In addition, criminal records make it even harder for people experiencing homelessness to find jobs or housing.<sup>11</sup> As stated by the U.S. Department of Justice in its statement of interest brief in *Bell v. Boise*, “[i]f a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless,” in violation of the Eighth Amendment’s prohibition against cruel and unusual punishment.<sup>12</sup>

Furthermore, homelessness impacts minority and marginalized groups at a disproportionate rate. African-Americans, while only making up 12 percent of the nation’s population, are an estimated 45 percent of the homeless population, while 40 percent of homeless youth are members of the LGBTQ+ community.<sup>13</sup> Moreover, over fifty percent of women report being homeless due to domestic violence.<sup>14</sup>

### iii. Recommendations

Laws, policies, and practices that prohibit or limit the use of public space by homeless people for life-sustaining activities should be repealed and defunded. Instead, policies should be created to increase access to and availability of affordable housing. Moreover, homeless people should not be subjected to, or threatened with, civil or criminal sanctions or harassment by law enforcement, other state actors, and/or private security personnel for conducting life-sustaining

---

Sleeping or dozing in any place where this may be hazardous to oneself or to others or may interfere with the operation of the transit system or the comfort or convenience of transit passengers.

<sup>9</sup> Broward County, Florida Code of Ordinances Sec. 21-144. (“Penalty. Violations of this article shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof, and upon conviction shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.”).

<sup>10</sup> *Fort Lauderdale commissioners pull all-nighter and approve homeless feeding restrictions*, Sun-Sentinel, (2014). <http://www.sun-sentinel.com/local/broward/fort-lauderdale/fl-lauderdale-homeless-feeding-sites-20141021-story.html>.

<sup>11</sup> National Law Center on Homelessness and Poverty, *Housing Not Handcuffs: The Criminalization of Homelessness in U.S. Cities* 10-11, (2016), <https://www.nlchp.org/documents/Housing-Not-Handcuffs>.

<sup>12</sup> U.S. Dep’t of Just. Statement of Interest brief in *Bell v. Boise* (2015), <https://www.justice.gov/crt/file/761211/download>.

<sup>13</sup> U.S. Interagency Council on the Homeless, *Homelessness: Programs and the People They Serve*, Findings of the National Survey of Homeless Assistance Providers and Clients (1999).

True Colors Fund, *Our Issue*, <https://truecolorsfund.org/our-issue/>.

<sup>14</sup> *Pressing Issues Facing Families Who Are Homeless*, The National Center on Family Homelessness, (2013). <http://fliphtml5.com/xsgw/ijjt/basic>.

activities in public places. Federal, state, and local governments should dedicate funding streams to housing and services for homeless people. Specifically, local governments should adopt constructive policing protocols, supported by police training designed to improve interactions with homeless and mentally ill people.

## B. Bail Reform

Pretrial detention and the bail system are meant to ensure that defendants make their court appearances. Unsecured appearance bonds (personal recognizance bonds with a monetary amount set if the defendant does not appear in court) are as effective at achieving court appearances as secured bonds (surety and cash bonds).<sup>15</sup> Alarming, however, judges generally only set secured bonds, causing Florida jails to overflow with people who simply cannot afford to make bail—rather than convicted defendants. High money bails allow dangerous criminals to go free back into the community, while less dangerous defendants sit in jail.<sup>16</sup> It is more often those who do not pose any additional risk to the general public that are held in pretrial detention because they cannot pay their bail.<sup>17</sup> The cash bail system disproportionately affects low-income and indigent defendants, creating two systems of criminal justice where the rich are favored.<sup>18</sup>

Thousands of people in Florida are detained because they cannot afford bail.<sup>19</sup> For example, in a Miami-Dade County jail, which averages more than 2,000 inmates daily, more than 80 percent of those detained were pretrial inmates.<sup>20</sup> As a result, even if pretrial detainees are ultimately not convicted, even a short stay in jail exacerbates problems that low-income citizens already face, such as possible loss of employment and an inability to pay fees associated with their detention.<sup>21</sup>

### i. Due Process Concerns

Florida law has a presumption in favor of release on nonmonetary conditions for any person granted pretrial release.<sup>22</sup> In practice, however, release often requires bail. Releases on a person's own recognizance ("R.O.R.s") are exceptions, despite the actual law.<sup>23</sup> This practice

---

<sup>15</sup> *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, Pretrial Justice Institute, October 2013.

<http://www.pretrial.org/download/research/Unsecured+Bonds,+The+As+Effective+and+Most+Efficient+Pretrial+Release+Option++Jones+2013.pdf>.

<sup>16</sup> *Smart Jail for Escambia, Factsheet and Recommendations*, ACLU-FL, August 2017 page 5.

[https://www.aclufl.org/sites/default/files/field\\_documents/smart\\_jail\\_for\\_escambia\\_factsheet\\_and\\_recommended\\_solutions.pdf](https://www.aclufl.org/sites/default/files/field_documents/smart_jail_for_escambia_factsheet_and_recommended_solutions.pdf).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Florida County Detention Facilities July 2017*, Florida Department of Corrections, *Table 2 County Detention Facilities Pretrial Inmate Report for July 2017*. <http://www.dc.state.fl.us/pub/jails/2017/jails-2017-07.pdf>.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *ACLU Recommends 14 Ways Escambia County Can Fix Jail Overcrowding*, Press Release, August 2017.

<https://www.aclufl.org/en/press-releases/aclu-recommends-14-ways-escambia-county-can-fix-jail-overcrowding>.

<sup>22</sup> §907.041(3), Fla. Stat.

<sup>23</sup> *John Oliver says Florida is a model for pretrial services*, Politifact, June 2015.

<http://www.politifact.com/punditfact/statements/2015/jun/12/john-oliver/john-oliver-hails-pretrial-services-florida-progre/>.

infringes upon arrestees' due process rights because instead of being presumed innocent, they are incarcerated and treated as if they are guilty even before their criminal case is resolved.

ii. Poverty and Excessive Bail

The monthly reports of incarceration rates published by the Florida Department of Corrections reveal striking percentages of pretrial detention throughout the state.<sup>24</sup> For example, a close look at Broward County exemplifies the disproportionate impact of pretrial detention on low-income and indigent criminal defendants.<sup>25</sup> See appendix 1. In July 2017, about 170 pretrial inmates were being detained on misdemeanor offenses, with an average bond of \$2,500.<sup>26</sup> On average, these 170 pretrial detainees cost taxpayers \$23,800 per day to house in detention.<sup>27</sup> Broward County also has a high pretrial detention rate overall, at 86% of their inmate population.<sup>28</sup> The majority of these detainees remain incarcerated because of their inability to post a monetary bond.<sup>29</sup> Even a short stay in jail can result in serious consequences for low-income and indigent pretrial inmates, such as losing their jobs and losing their children to state custody.<sup>30</sup> Moreover, the longer they stay in jail, the more likely the pretrial defendant will commit a future crime.<sup>31</sup>

iii. Recommendations

An ACLU of Florida report on pretrial detention in Escambia County, Florida—where roughly half of the people detained by the county were not convicted—offers several alternatives to the cash bail system, which could serve similar purposes and would be more aligned with the intent of Florida law.<sup>32</sup> The report suggests that major improvements can be attained through three categories: improving pretrial services, tailoring monetary bail to serve its actual purpose, and streamlining the arrest process.<sup>33</sup>

1. Pretrial Services

Pretrial services, such as pretrial release programs where court staff notifies defendants and their families of court dates, work to ensure defendants appear in court.<sup>34</sup> Revising and expanding pretrial services could reduce the overflow of pretrial detainees. For example, revising how danger to society is assessed (“Risk Assessment”) to include a more evidence-based, strategic system could help judges make better determinations on who should actually remain

---

<sup>24</sup>*Florida County Detention Facilities Average Inmate Population*, Florida Department of Corrections. <http://www.dc.state.fl.us/pub/jails/>.

<sup>25</sup> *Letter from Public Defender Howard Finkelstein to Mayor Sharief: Pretrial Detention in Broward County*, Law Office of the Public Defender, July 2017. Appendix 1.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 3.

<sup>31</sup> *Id.*

<sup>32</sup> See *Escambia Report*.

<sup>33</sup> *ACLU Recommends 14 Ways Escambia County Can Fix Jail Overcrowding*, Press Release, August 2017.

<sup>34</sup> *Smart Jail* at 11.

detained.<sup>35</sup> Implementing a system of court-notifications through email or texting in order to minimize the chance of defendants forgetting court dates could also reduce the overflow of incarcerated people.<sup>36</sup> GPS tracking and drug testing conditions of pretrial release should be eliminated or limited to high-risk defendants and only used as an alternative to pretrial detention.

## 2. Tailoring Monetary Bail

Instead of using monetary bail to keep defendants detained, the system should be more narrowly tailored to ensure defendants will appear in court.<sup>37</sup> There are several ways to achieve this goal. For example, judges may permit the use of unsecured appearance bonds instead of cash or professional bonds.<sup>38</sup> These types of bonds are just as effective, provide similar incentives for criminal defendants to appear in court, and are financially more accessible for low-income and indigent defendants.<sup>39</sup>

Additionally, where defendants are facing multiple charges, judges should only impose monetary bail on the most serious charges.<sup>40</sup> Florida law requires judges to set separate monetary bail amounts for each charge against the defendant.<sup>41</sup> This often results in duplicative monetary bail amounts.<sup>42</sup> However, the same goal applies to each separate bail amount (ensuring the defendant appears in court); a single monetary bail achieves the desired goal without imposing additional monetary restraints on low-income and indigent defendants.<sup>43</sup>

Challenges to excessive bail amounts should be heard before the court as soon as possible.<sup>44</sup> When a criminal defendant believes the pretrial judge set a bail bond amount that is excessive, he or she may file a motion in the trial court to make a redetermination.<sup>45</sup> This process, however, can take two to three months, because of the time it takes to assign the case to a public defender, meet with the defendant about the case, and set a hearing date.<sup>46</sup> To expedite this process, the public defender's office can flag excessive bails immediately during the first appearance and file a motion to reduce bail.<sup>47</sup> Judges can also modify their hearing schedules to include bond motions with higher frequency.<sup>48</sup>

---

<sup>35</sup> *Id.* at 10.

<sup>36</sup> *Id.* at 9, 10. (“In Escambia, 31% of no bond inmates are held without bond because they violated the terms of release and their bond was revoked. Often, they simply forgot and missed a court date.”)

<sup>37</sup> *ACLU Recommends 14 Ways Escambia County Can Fix Jail Overcrowding, Press Release, August 2017.*

<sup>38</sup> *Escambia* at 12.

<sup>39</sup> *Id.* at 13; *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, Pretrial Justice Institute, October 2013.

<http://www.pretrial.org/download/research/Unsecured+Bonds,+The+As+Effective+and+Most+Efficient+Pretrial+Release+Option++Jones+2013.pdf>.

<sup>40</sup> *Escambia* at 13.

<sup>41</sup> § 903.02(4), Fla. Stat.

<sup>42</sup> *Escambia* at 13.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 16, 17.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

### 3. Streamline the Arrest Process

Finally, expediting the criminal justice process through other meaningful reforms could result in the reduction of pretrial detention.<sup>49</sup> For example, when a police officer observes a misdemeanor crime in progress, the officer can either arrest the defendant or issue a notice to appear.<sup>50</sup> The notice to appear binds the accused to appear in court, so long as they have identified themselves, do not pose an unreasonable danger to society, and are not a flight risk.<sup>51</sup>

Criminal defendants who violate the conditions of their pretrial release or probation risk re-arrest with “no bond.”<sup>52</sup> Judges tend to issue “no bond” arrest warrants instead of issuing summonses for violation of probation and failure to appear.<sup>53</sup> Rather than automatically issuing arrest warrants for violators of pretrial release and probation, an additional court hearing could be used to make a determination as to the extent of the violation (e.g. did the defendant have a good cause to violate, such as being in the hospital?) and make appropriate recommendations that do not include detention—such as extending probation.<sup>54</sup>

#### **C. Right to Counsel**

Another prevalent issue in Florida is the denial of indigent defendants’ right to counsel for misdemeanor offenses. Florida Rule of Criminal Procedure 3.111 authorizes courts to remove defendants’ appointed counsel when a written Order of No Incarceration (“ONI”) is entered at least fifteen days prior to trial.<sup>55</sup> Courts certify ONIs after prosecutors decline to seek incarceration of the defendant.

On their face, the rules allow courts to remove appointed counsel *only if* the judge determines that the defendant would not be substantially disadvantaged by the removal. However, in practice, judges often misuse their discretion by removing defendants’ appointed counsel without evaluating the defendant’s case individually or the potential prejudice that the defendant might face. Consequently, hundreds of indigent defendants have been stripped of their right to counsel after their appointed counsels have spent weeks, even months, preparing their case.<sup>56</sup>

The Supreme Court recognized more than half a century ago that every defendant in a felony case has the right to an attorney. Moreover, the Supreme Court recognized that indigent defendants charged with misdemeanor offenses should not be afforded less constitutional protection than any other defendant.<sup>57</sup> Judges violate indigent defendants’ Sixth Amendment right to counsel by removing counsel simply because the prosecutors decide not to seek jail time.

---

<sup>49</sup> *Id.* at 15.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Fed. R. Crim. P. 3.111. <https://floridacriminalprocedure.com/3-111-providing-counsel-to-indigents/>.

<sup>56</sup> *Rodriguez v. Hague*, No. CV-23563 (S.D. Fla. Sept. 28, 2017). <https://www.acluf.org/en/cases/rodriguez-v-hague>.

<sup>57</sup> In *Argersinger v. Hamlin*, the Supreme Court held that that the Sixth Amendment right to counsel constituted a fundamental right that extended to indigent defendants in state criminal proceedings. *Argersinger v. Hamlin*, 407 U.S. 25 (1972). “Absent a knowing and intelligent waiver, no defendant may be imprisoned for any offense, whether petty, misdemeanor, or felony, without representation by counsel at trial”. *Id.*

This practice gives prosecutors unwarranted authority to determine whether defendants charged with misdemeanors will have representation.<sup>58</sup>

As a result, indigent defendants are forced to represent themselves in trial, and are vastly overmatched by prosecutors. The defendants do not know how to effectively investigate, defend themselves, or ask proper cross-examination questions. Additionally, defendants inadvertently waive their rights to jury trials and accept plea offers that waive their rights to appeal. Such practice is unethical and unacceptable because it discriminates against indigent defendants and strips them of their constitutional rights to counsel, due process, and equal treatment under the law.

Only indigent defendants—the majority of whom are racial minorities—are affected by this unjust rule.<sup>59</sup> Wealthier defendants have the means to hire private counsel and enjoy their assistance until the conclusion of their case. Unrepresented indigent defendants, however, are deprived of their fundamental right to counsel and a meaningful opportunity to defend themselves.

Moreover, the collateral consequences of a defendant's conviction are a significant concern because they can be more debilitating than a modest jail sentence. The collateral consequences include immigration detention and/or removal, the loss of employment, housing, custody of their children, public benefits, professional licenses, drivers' licenses, and more. Furthermore, some defendants are forced to serve jail time for failing to pay fines because of their financial circumstances.

### Recommendations

A criminal justice system that does not respect the rights of indigent citizens is a flawed system. As the ACLU of Florida addresses in *Rodriguez v. Hague*, courts should recognize that *all* criminal defendants have a right to counsel even when they do not face jail time.<sup>60</sup> Florida Rule of Criminal Procedure 3.111 does not adequately protect indigent defendants' Sixth and Fourteenth Amendment rights because judges fail to consider the undue prejudice and the collateral consequences that result from removing defendants' counsel as required. At a minimum, a policy that ensures that judges accurately consider the defendants' individual circumstances needs to be implemented so that judges cannot remove counsel merely because the prosecutor does not seek jail time. Moreover, this would help prevent judges from considering improper factors, such as race, when making decisions.

### **D. Voting Rights**

---

<sup>58</sup> *Rodriguez v. Hague*, No. CV-23563 (S.D. Fla. Sept. 28, 2017). <https://www.acluf.org/en/cases/rodriguez-v-hague>.

<sup>59</sup> “The poverty rate is roughly 25% for both black and Hispanic Americans, compared to 9% for white Americans. In the criminal justice context, such statistics mean that black and Hispanic defendants are often more likely than white defendants to rely on an indigent defense system of overworked, underpaid attorneys—therefore increasing their chances of being convicted.” See <http://www.sentencingproject.org/publications/shadow-report-to-the-united-nations-human-rights-committee-regarding-racial-disparities-in-the-united-states-criminal-justice-system/>

<sup>60</sup> *Rodriguez v. Hague*, No. CV-23563 (S.D. Fla. Sept. 28, 2017). <https://www.acluf.org/en/cases/rodriguez-v-hague>.

Felon disenfranchisement is the loss of one of the most essential and fundamental rights in a democracy, the right to vote. In Florida, a person convicted of a felony loses the right to vote, as well as the right to sit on a jury, hold public office, possess a firearm, and eligibility for more than 100 state occupational licenses.<sup>61</sup> More than 6 million people are denied the right to vote in the U.S. because of a prior felony conviction.<sup>62</sup> Florida has the highest disenfranchisement rate in the country, as there are now more than 1.6 million Floridians who are barred from exercising their right to vote.<sup>63</sup>

i. The Scope of Impact

The racialized effects of felon disenfranchisement are significant in the state of Florida. Over 7.4 percent of the adult African-American population in the U.S. is disenfranchised compared to 1.8 percent of the non-African-American population.<sup>64</sup> In Florida, African-Americans account for nearly one-third of those who have lost the right to vote despite making up just 16 percent of the state's population.<sup>65</sup> This figure amounts to an alarming 21% percent of the total African-American voting-age population in Florida.<sup>66</sup>

The Latino community constitutes a significant portion of the U.S. prison population, and it is also severely affected by felon disenfranchisement.<sup>67</sup> It is estimated that Florida's total disenfranchised population is 12.4 percent Latino.<sup>68</sup> It is projected that at least 119,100 members of the Latino community cannot vote in Florida.<sup>69</sup>

While the above figures indicate that felon disenfranchisement affects the state in a racially disproportionate manner, the effects are widespread across Florida. Data gathered by the Sentencing Project demonstrates that three out of four Floridians who have lost their right to vote as a result of a felony conviction are white.<sup>70</sup>

ii. The Inadequacy of the Clemency Process

Clemency is the constitutionally authorized process through which convicted felons may seek restoration of their civil rights, including the right to vote.<sup>71</sup> In theory, clemency provides a remedy for the restoration of rights, but, in practice, clemency fails to adequately rectify the

---

<sup>61</sup> *Clemency Overview*, Florida Commission on Offender Review, (2014).

<https://www.fcor.state.fl.us/clemencyOverview.shtml>.

<sup>62</sup> *Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice, (2016).

[https://www.brennancenter.org/sites/default/files/publications/Florida\\_Voting\\_Rights\\_Outlier.pdf](https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf).

<sup>63</sup> *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement*, The Sentencing Project, (2016).

<http://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>.

<sup>64</sup> *Id.*

<sup>65</sup> *Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice, (2016).

[https://www.brennancenter.org/sites/default/files/publications/Florida\\_Voting\\_Rights\\_Outlier.pdf](https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf).

<sup>66</sup> *Id.*

<sup>67</sup> *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement*, The Sentencing Project, (2016).

<http://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>.

<sup>68</sup> *Diminished Voting Power in the Latino Community: The Impact of Felony Disenfranchisement Laws in Ten Targeted States*, MALDEF, (2003). <https://maldef.org/assets/pdf/feb18-latinovotingrightsreport.pdf>.

<sup>69</sup> *Id.*

<sup>70</sup> *Florida leads nation in disenfranchising former felons*, Miami Herald, (2016). (2016).

<http://www.miamiherald.com/news/politics-government/election/article95076927.html>.

<sup>71</sup> *Executive Clemency Timeline: 1991-2015*, Florida Commission on Offender Review, (2015).

<https://www.fcor.state.fl.us/docs/clemency/ClemencyTimeline.pdf>.

disenfranchisement that countless Florida residents face. Florida Governor Rick Scott has imposed a five, and, in some cases, a seven year waiting period after the completion of the sentence before anyone is allowed to petition for clemency.<sup>72</sup> If an individual is arrested for even a misdemeanor during the waiting period, even if no charges are filed, he or she will be forced to begin a new waiting period for another five or seven years.<sup>73</sup> Under Governor Scott's administration, the requirements for clemency have become more burdensome than in prior administrations. For example, under former Governor Charlie Crist's administration, the formal application process was eliminated for some categories of individuals who wished to have their rights restored.<sup>74</sup> This administrative change served to streamline the restoration of voting rights and greatly increased the number of individuals who could once again participate in the democratic election process. Under the Florida Constitution, the clemency board has total discretion over its decisions.<sup>75</sup> However, under Governor Scott, the clemency board has done away with the advances of Crist's administration.<sup>76</sup> Now an individual may be denied the restoration of their voting rights and the board need not provide any justification.<sup>77</sup> As a result, the number of individuals who are granted clemency each year has been greatly reduced. In 2015, only 427 citizens had their voting rights restored.<sup>78</sup>

### iii. Effects on Low-Income Communities

The effects of felon disenfranchisement are particularly damaging on low-income communities across the state of Florida. The state requires all individuals with felony convictions to pay all fines, fees, and restitution before they are eligible to seek restoration of voting rights.<sup>79</sup> The average restitution debt in Florida is estimated to be around \$8,000.<sup>80</sup> Florida permits courts to enter liens against the real and personal property of individuals who owe a debt associated with a criminal conviction and, consequently, the amount owed by these individuals can multiply significantly over the years.<sup>81</sup> As a result of these unfair policies, wealthy individuals who can afford these high fees can have their voting rights restored much faster than low-income individuals who must spend years struggling to pay these exorbitant fees in order to become eligible for the restoration of their rights.<sup>82</sup> Most importantly, the burden of having the restoration of voting rights contingent on the payment of these high fees can exacerbate the effects of poverty and alienate vulnerable communities from the democratic process.

### iv. Recommendations

---

<sup>72</sup>*Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice, (2016).

[https://www.brennancenter.org/sites/default/files/publications/Florida\\_Voting\\_Rights\\_Outlier.pdf](https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> FL Const. Art. IV, Section 8a.

<sup>76</sup> *Voting Rights Restoration Efforts in Florida*, Brenna Center for Justice, (2017).

<https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-florida>.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

We are now at a crucial turning point for the millions of disenfranchised Floridians who have been excluded from the democratic process. The ACLU is a coalition member of Floridians for a Fair Democracy, which is gathering signatures for a ballot initiative to amend Florida's constitution and restore voting rights to those individuals who have completed their sentence.<sup>83</sup> We ask that this initiative receive the attention of the Special Rapporteur in order to bolster the efforts of the Florida community. The right to vote is vital to the state and the nation's democratic process, and it a fundamental right of every individual.

### III. Legal Relation to International Treaties

Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) ensure that all individuals, regardless of race or status, are treated equally under the law.<sup>84</sup> Article 7 of the same treaty seeks to prevent the type of inhumane and degrading treatment currently faced by the homeless population of Florida.<sup>85</sup> Similarly, Article 9 speaks against the detention of persons awaiting trial (who, in Florida, often must post high bail).<sup>86</sup> The state of Florida violates its obligations under Articles 2, 7, 9, and 26 of the ICCPR by creating and perpetrating policies that allow the aforementioned disparities in its criminal justice system. Moreover, numerous U.N. Special Rapporteurs,<sup>87</sup> as well as the U.N. Human Rights Council,<sup>88</sup> have denounced the criminalization of homelessness as cruel, inhumane, and degrading treatment in violation of the United States' treaty obligations.

### IV. Conclusion

In conclusion, we urge you to highlight the importance of reforming practices in the state of Florida regarding the criminalization of homelessness, excessive bail, right to counsel, and

---

<sup>83</sup> *Id.*; Say Yes To Second Chances, ACLU of Florida, (2017). <https://www.aclufl.org/en/campaigns/say-yes-second-chances/>.

<sup>84</sup> Article 2(1) of the ICCPR states that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, . . . or other status." Article 26 states that "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, . . . or other status." <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

<sup>85</sup> Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. . . ." *Id.*

<sup>86</sup> Article 9(3) states that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment." *Id.*

<sup>87</sup> UN Human Rights Council, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, ¶9 A/HRC/33/49 (2016), <http://bit.ly/2drD7GJ>.

<sup>88</sup> Human Rights Council, Draft report of the Working Group on the Universal Periodic Review, United States of America, 30, A/HRC/WG.6/22/L.10 (May 21, 2015) (recommendation 176.310: "[a]mend laws that criminalize homelessness and which are not in conformity with international human rights instruments").

felon disenfranchisement. These practices violate the human rights of some of the most vulnerable citizens of Florida and perpetuate poverty across the state.

**Appendix A**

***Letter from Public Defender Howard Finkelstein to Mayor Sharief: Pretrial Detention in Broward County, Law Office of the Public Defender, July 2017***



Law Office of the  
**PUBLIC DEFENDER**  
Seventeenth Judicial Circuit

Howard Finkelstein • Public Defender

Broward County Courthouse • 201 S.E. 6th Street • Suite 3872 • Fort Lauderdale, Florida 33301  
Telephone: (954) 831-8650 • Fax: (954) 831-8853 • Internet Address: <http://www.browarddefender.org>

Public Defender  
Howard Finkelstein  
954.831.8644

Executive  
Chief Assistants:

Diane M. Cuddihy  
954.831.8814

Catherine A. Keuthan  
954.831.8665

Chief Assistants:

Renee T. Dadowski  
954.831.8817

Meritxell Ros  
954.831.8810

Frank de la Torre  
954.831.6779

Nadine Girault Levy  
954.831.8559

Owen F. McNamee  
954.831.8658

Susan L. Porter  
954.831.6752

Gordon H. Weekes, Jr.  
954.831.8636

Robert R. Wills  
954.831.8677

Chief Investigator:  
Allen E. Smith  
954.831.6714

July 27, 2017

Mayor Barbara Sharief  
Broward County Commission  
115 South Andrews Avenue  
Room 421  
Fort Lauderdale, Florida 33301

Re: Pretrial Incarceration in Broward County

Dear Mayor Sharief:

The current pretrial release practices in the Broward County criminal justice system result in lengthy incarcerations that not only cost taxpayers millions of dollars, but more importantly establish two systems of justice in this county. Most of my incarcerated clients remain so because they are too poor to post bond and not because they pose a threat to the community or are a flight risk. Their continued pretrial incarceration affects both their families, who exist on the brink of homelessness, and their ability to assist in their defense. Defendants who post bond can better assist their attorneys and are not pressured to enter guilty pleas. Indigent defendants plead guilty, even though innocent, because it is the only way to secure their release from jail. Indigent defendants who remain incarcerated due to poverty start down a much different and more unjust path. Pretrial incarceration practices based on monetary bond lock in two unequal systems of justice in Broward County.

Data shows that the double standard of justice starts well before defendants arrive at the jail. This office uncovered institutional racism in the police practices of arrests for walking, biking and driving while black. A recent study by the St. Pete Herald Tribune proved that minorities are sentenced more harshly across the state. These police and judicial practices are compounded by pretrial incarceration unrelated to dangerousness or ties to the community. Together, this is the definition of institutional racism.

Broward has used a "convenience" bond schedule for decades. Bonds are set according to the offense charged and without any regard for a defendant's ties to the community or criminal history. A defendant with money charged with a felony who has an extensive violent criminal record and no ties to Broward County can simply walk out of the jail after posting bond without first seeing a judge. An indigent defendant charged with a misdemeanor who is a lifelong Broward resident and has no criminal history remains incarcerated waiting for a magistrate hearing. At that hearing, the judges routinely apply the convenience bond schedule, which perpetuates the unfair treatment of poor defendants. The use of monetary bonds and the convenience bond schedule ignore the

legal “presumption in favor of release on nonmonetary conditions.” *Fla R. Crim P. 3.131(b) (1)*. Nonmonetary pretrial release options include the release of an individual on her own recognizance; execution of an unsecured appearance bond (whereby the accused is released and agrees to pay a specified sum of money for any subsequent failure to appear in court); imposition of residential, association, and/or travel restrictions; and pretrial supervision by the Broward Sheriff’s Office.

Monetary bonds are especially indefensible in misdemeanor and non-violent felony cases. Connecticut Governor Dannel Malloy recently signed legislation prohibiting money bail for misdemeanor charges except in limited circumstances, stating:

The system of pretrial justice that we have been operating under for many decades has resulted in many unintended consequences that often have adverse effects on public safety... The effect of a few days of detention for people who have been accused of misdemeanors and not released simply because they do not have the ability to pay can be devastating and far reaching – possibly leading to the loss of employment and housing, which only exacerbates the kind of instability that can lead to a life of crime. If we want to continue the progress we’ve made in lowering crime, reducing recidivism, and making our communities safer, then we must focus on what happens at the front-end of the justice system.<sup>[1]</sup>

According to the Broward Sheriff’s Office, as of July 18, 2017, there were 170 individuals held on only misdemeanor offenses, with an average bond of roughly \$2,500. This includes municipal ordinance violations, where Broward County is paying to house municipal offenders without reimbursement from cities contrary to the law, which is an illegal burden on taxpayers. This figure represents more than 4% of the total current jail population. An additional nearly 82% of current inmates are detained pending resolution of felony charges. Our total of 86% of all inmates detained pretrial is dramatically higher than the statewide amount (58%) and higher than our neighboring counties (Miami-Dade 73%, Palm Beach 64%).<sup>[2]</sup> While the specific data is yet unavailable from B.S.O., experience dictates that a large percentage of pretrial felony detainees are charged with third or second degree offenses and are not a danger to the community or a flight risk. They remain incarcerated as a result of their inability to post a monetary bond. Per B.S.O., the cost to house an inmate in our jails on average is \$140 per day. That means for the current population of 170 detainees, taxpayers are paying roughly \$23,800 per day to house those facing only misdemeanor charges, and significantly more to house those accused of non-violent felonies. This is untenable, fiscally irresponsible, and unnecessary.

This sum is compounded greatly by the average length of stay per inmate.<sup>[3]</sup> In 2016, the average length of stay in the Broward County Jail was 39.6 days, compared with a

---

<sup>[1]</sup> <http://portal.ct.gov/Office-of-the-Governor/Press-Room/Press-Releases/2017/06-2017/Gov-Malloy-Signs-Legislation-Reforming-the-States-Pretrial-Justice-System>

<sup>[2]</sup> [Evaluation of Broward County Jail Population Current Trends and Recommended Options Updated Report, Dr. James Austin, October 2016.](#)

<sup>[3]</sup> All length of stay numbers in this paragraph were taken from Dr. Austin’s report.

national average of 23 days. If not released within the first week after arrest, the average length of stay skyrockets to 96 days. Of the 170 individuals in jail on only misdemeanor charges, roughly 98 have been incarcerated for longer than a week. Extrapolating the daily cost to house a person charged with a misdemeanor, a conservative estimate of the cost of housing 100 people charged with misdemeanors is \$5,110,000 per year. These figures do not include persons charged with non-violent third and second degree felonies, which would increase costs by millions of dollars, all to further institutionalize racism. Eliminating monetary bonds for non-violent offenses will reduce our inmate population, reducing the number of injuries, medical costs, and civil lawsuits. A reduced inmate population will require fewer detention officers and maybe allow for fewer jails at taxpayer expense.

While the monetary cost of pretrial incarceration is outrageous, the human cost to indigent defendants on the edge of homelessness and hopelessness is incalculable. It does not have to be this way. Other states and jurisdictions have taken steps to reform their pretrial incarceration practices. As mentioned earlier, Connecticut has barred courts from setting monetary bail for misdemeanor charges except in limited circumstances. New Jersey has virtually eliminated money as a consideration in determining pretrial release.<sup>[4]</sup> In January 2017, the New Orleans City Council unanimously approved an ordinance that eliminated bail for most nonviolent municipal offenses.<sup>[5]</sup> Over 70% of defendants in New York City are released without any monetary conditions after their first appearance before a judge.<sup>[6]</sup> In Washington, D.C., where money is not considered in determining conditions of release, that figure is around 90%.<sup>[7]</sup> Maryland recently adopted court rules that severely limited the use of financial release conditions.<sup>[8]</sup> Furthermore, the National Association of Counties adopted a policy resolution urging the Department of Justice to “continue efforts to advise state, county and municipal courts to acknowledge that the principles of due process and equal protection require that courts not employ bail and bond practices that cause indigent defendants to remain incarcerated even for a few days solely because they cannot afford to pay for their release.”<sup>[9]</sup> And just last week, the bipartisan “Pretrial Integrity and Safety Act of 2017” bill was introduced that would incentivize and encourage states to end the practice of money bail.<sup>[10]</sup>

The consequences of pretrial incarceration are greater for the poor. In her State of Judiciary address, Missouri Chief Justice Patricia Breckenridge recently stated:

---

<sup>[4]</sup> <https://www.nytimes.com/2017/02/06/nyregion/new-jersey-bail-system.html>

<sup>[5]</sup> [http://www.theadvocate.com/new-orleans/news/courts/article\\_eb41d288-d90b-11e6-b99c-4bb3e5442d1b.html](http://www.theadvocate.com/new-orleans/news/courts/article_eb41d288-d90b-11e6-b99c-4bb3e5442d1b.html)

<sup>[6]</sup> <http://www1.nyc.gov/office-of-the-mayor/news/171-17/mayor-de-blasio-18-drop-city-jail-population-since-taking-office>

<sup>[7]</sup> <https://www.marketplace.org/2016/10/21/walth-poverty/washington-dc-has-figured-out-way-around-money-bail>

<sup>[8]</sup> [https://www.washingtonpost.com/local/md-politics/jury-still-out-on-marylands-new-bail-rules/2017/07/03/db57a084-5a8c-11e7-9b7d-14576dc0f39d\\_story.html?utm\\_term=.f7f7e1fad40b](https://www.washingtonpost.com/local/md-politics/jury-still-out-on-marylands-new-bail-rules/2017/07/03/db57a084-5a8c-11e7-9b7d-14576dc0f39d_story.html?utm_term=.f7f7e1fad40b)

<sup>[9]</sup> <http://www.naco.org/blog/naco-board-directors-approves-2017-interim-policy-resolutions>

<sup>[10]</sup> <http://www.cnn.com/2017/01/20/politics/criminal-justice-reform-bills-kamala-harris/index.html>

Our cities and counties incur costs for pretrial incarcerations of people who simply are poor. There are individual and societal consequences from these unwarranted pretrial incarcerations. The consequences impact the defendants, their families and, ultimately, the state. Defendants lose not only their freedom but also their ability to earn a living and to provide for loved ones. Children may even come into state custody, because incarcerated parents are not home to care for them. And – after only three days in jail – the likelihood that an individual will commit future crimes also increases.<sup>[11]</sup>

In determining whether a person should be released pending trial, we should only consider the possibility that they will return to court or harm the community. Nonviolent, low-risk people should not remain incarcerated simply because they cannot pay a minimal bail amount. If a judge has already decided that an individual is bond-eligible, then he has already determined that they are not a flight risk or a threat to public safety. By ending the practice of setting monetary bonds for non-violent offenses, we can save the county millions in unnecessary incarceration costs, allow accused individuals to return to their families, jobs and communities, and foster a healthier, more equitable, more just judicial system.

Thank you for your immediate attention to this matter.

Sincerely,



Howard Finkelstein  
Public Defender

cc:

Broward County Commissioners  
Michael Satz, State Attorney  
Scott Israel, Sheriff  
Hon. Jack Tuter, Chief Judge

---

<sup>[11]</sup> <http://www.courts.mo.gov/page.jsp?id=109213>



## **Immigrants and Extreme Poverty in South Florida<sup>1</sup>**

### **Submission to the United Nations Special Rapporteur on Extreme Poverty and Human Rights in Preparation for his Official 2017 Visit to the United States**

**October 31, 2017**

#### **I. Introduction**

Founded in 1998, Catholic Legal Services, Archdiocese of Miami, Inc. (“CLS”) provides free or low-cost immigration lawyer services to South Florida’s indigent refugee and immigrant community. CLS focuses exclusively on helping poor immigrants obtain asylum, establish legal residency, become citizens, and reunite families. Services include filing documents as well as providing attorney representation before immigration authorities.

Throughout the years, CLS has served thousands of clients, of all races, religions, genders, ethnic groups, or other distinguishing characteristics, that neither have the means to get representation nor the resources and knowledge to access the system and represent themselves. Most services are provided free of charge for the most vulnerable immigrants in our community.

The Miami Law Human Rights Clinic works for the promotion of social and economic justice globally and in the U.S. The Clinic uses international human rights laws and norms, domestic law and policy, and multidimensional strategies such as community organizing, political activism, and global networking to draw attention to human rights violations, develop practical solutions to those problems, and promote accountability on state and non-state actors.

This report examines specific immigration topics in Miami, such as “Temporary Protected Status” for Haitian migrants, unaccompanied minors, contemporary issues related to sanctuary cities, and Deferred Action for Childhood Arrivals (“DACA”). These issues are especially pressing in the current political environment, which immigration advocates characterize as perhaps the most hostile toward immigrants in recent memory.

#### **II. Background Information**

Miami-Dade has a diverse population of approximately 2.6 million, comprised of 14% White

---

<sup>1</sup> The following University of Miami School of Law students principally drafted this report under the supervision of Professor Caroline Bettinger-López and in collaboration with Catholic Legal Services of the Catholic Charities of the Archdiocese of Miami, Inc.: David A. Calles Smith, Alejandra T. China Vicente, and Olga Romero Muñoz.

non-Hispanic, 66.8% Hispanic or Latino, and 17% Black or African American.<sup>2</sup> About 52% of the population, 1.4 million, are foreign-born.<sup>3</sup> On the economic spectrum, Florida is the fifth highest state in income inequality.<sup>4</sup>

### III. Haitian Temporary Protected Status (TPS)

Temporary Protected Status (“TPS”) is a Homeland Security program that grants short-term work permits and stays of deportation to immigrants from nations affected by disaster, epidemics, or war. In 2010, in the wake of the devastating earthquake that killed hundreds of thousands of people, the Department of Homeland Security (DHS) allowed Haitians residing in the U.S. before January 13, 2011, the first anniversary of the earthquake, to apply for TPS. TPS was granted to Haitians for seven years, and has afforded over 50,000 Haitians important federal protections, including remaining in the U.S. and obtaining work authorization documents.<sup>5</sup>

On May 24, 2017, the United States Citizenship and Immigration Services (USCIS) announced the extension of the designation of Haiti for TPS for six months. This extension allows eligible Haitians (and people without nationality who last habitually resided in Haiti) to re-register for TPS. During this six month extension, USCIS encouraged beneficiaries “to prepare for their return to Haiti in the event Haiti’s designation is not extended again ....”<sup>6</sup> At least 60 days before January 22, 2018, the Secretary of Homeland Security “will re-evaluate the designation for Haiti and will determine whether another extension, a re-designation, or a termination is warranted, in full compliance of the Immigration and Nationality Act.”<sup>7</sup>

A decision to cancel Haitian TPS will have dire consequences because post-earthquake Haiti continues to experience a humanitarian crisis. Only a small percent of the population in Haiti has access to a protected water source; the sanitation infrastructure is very weak; and the country does not have sewage networks. Public education is of poor quality and a significant number of people are unemployed and do not have access to healthcare. Many Haitians in Miami are nervous about the potential end of the TPS program.<sup>8</sup> While Haitians are the poorest ethnic group in Miami-Dade County, they have even more to lose if they are sent back to Haiti.

---

<sup>2</sup> *Miami-Dade County Summary Profiles*, Department of Regulatory & Economic Resources Planning Research & Economic Analysis Section 9 (September 2016), <http://www.miamidade.gov/business/library/reports/2011-2015-acs-multi-year-profile.pdf>.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> Jeff Harrington, *Study: Florida Has the Fifth-Highest Income Inequality in the Country*, Tampa Bay (June 20, 2016), <http://www.tampabay.com/news/business/study-florida-has-the-fifth-highest-income-inequality-in-the-country/2282395>.

<sup>5</sup> Jacqueline Charles, “Miami immigrant advocates urge Trump not to separate TPS families” *The Miami Herald* (October 27, 2017), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article181330896.html>.

<sup>6</sup> Temporary Protected Status Designated Country: Haiti, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti>.

<sup>7</sup> *Id.*

<sup>8</sup> Jacqueline Charles, “Haitians worried about deportation should start planning now, lawyers say,” *The Miami Herald* (May 19, 2017), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article151613992.html>.

#### IV. Unaccompanied minors

Over the past several years, Unaccompanied Children (UACs) have arrived in the U.S. in record numbers. In 2014, almost 70,000 minors, primarily from the Northern Triangle of Central America (Honduras, El Salvador, and Guatemala), presented themselves or attempted to cross the United States' southern border.<sup>9</sup> Most are apprehended by DHS immediately. Under 6 U.S.C. § 279(g)(2), a child is designated an unaccompanied alien child (UAC) who (1) has no lawful immigration status in the U.S.; (2) has not attained eighteen years of age; and (3) has no parent or legal guardian physically present in the U.S., or no parent or legal guardian in the U.S. available to provide care and physical custody.<sup>10</sup>

UACs leave their home countries for many reasons: to escape abuse, persecution, or exploitation in the home country; to escape extreme poverty; to reunite with their families; to seek employment or educational opportunities in the U.S.; and/or to escape discrimination, gender-based violence, poverty, trafficking, or other desperate situations.<sup>11</sup> Additionally, many children are trying to escape forcible gang recruitment and gang violence.<sup>12</sup> For example, Honduras was deemed the “murder capital of the world” in 2014 and 2015, with El Salvador a close second place.<sup>13</sup>

Once they are released in the U.S. and await adjudication of their immigration cases, UACs are often denied access to education, health services, housing services, until, or many times after, they achieve lawful status.

##### Lack of access to education

Despite the Supreme Court's decision in *Plyler v. Doe*,<sup>14</sup> many immigrant children are denied a free public education or are faced with additional barriers to enrollment in U.S. schools. *The Associated Press* has found that in at least fourteen states, UACs have been discouraged from enrolling in schools or pressured into unequal alternative programs.<sup>15</sup> Around the country, high schools are intentionally delaying enrollment by requiring families to submit burdensome proof of residency.<sup>16</sup> Additionally, schools will annex undocumented minors to a high school apart from the main school.<sup>17</sup> Some kids said they are told to just sign in and then go home, while others are told the district does not have the space or resources to accommodate them.<sup>18</sup> High

---

<sup>9</sup> *About Unaccompanied Children*, Unaccompanied Children Resource Center, [https://www.uacresources.org/unaccompanied\\_children/](https://www.uacresources.org/unaccompanied_children/).

<sup>10</sup> 6 U.S.C. § 279(g)(2) (2017).

<sup>11</sup> P.J. Tobia, *No Country for Lost Kids*, PBS News (June 20, 2014), <https://www.pbs.org/newshour/nation/country-lost-kids>.

<sup>12</sup> Jay Root, *Central Americans Fleeing Poverty Gang Wars Driven to U.S. Border*, The Texas Tribune (Oct. 10, 2016), <https://www.texastribune.org/2016/10/10/central-america-passes-mexico-migration-us/>.

<sup>13</sup> *Id.*

<sup>14</sup> *Plyler v. Doe*, 457 U.S. 202 (1982) (holding that states cannot constitutionally deny students a free public education on account of their immigration status).

<sup>15</sup> Garance Burke and Adrian Sainz, *Migrant Children Kept from Enrolling in U.S. Schools*, Associate Press (May 2, 2016).

<sup>16</sup> Emily Deruy, *Across the Border and Into School*, The Atlantic (Aug. 20, 2016), <https://www.theatlantic.com/education/archive/2016/08/across-the-border-and-into-school/496652/>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

schools are also denying undocumented minors' enrollment, arguing that the teens lack transcripts or are too old to graduate on time.<sup>19</sup>

This national trend is reflected in Florida. Recently, the Southern Poverty Law Center filed a lawsuit against a high school in Collier County for effectively barring immigrant children from enrolling in high school and pushing them into an adult English program that offered no opportunity to earn credit toward a high school diploma.<sup>20</sup> The County School Board adopted a policy that lowered the maximum age at which a student could enroll if the student was not on track to graduate within two years.<sup>21</sup>

We have observed a similar system in place in Miami-Dade County, where UACs 16 or older are placed in "special" adult-education programs focusing on English and the GED exam. In our experience, many are segregated from the normal population and do not participate in state-wide testing. These programs are reported by our clients as largely ineffective, as they do not learn English well with only other Spanish-speaking students. Without a chance to get a high school diploma, they are less likely to be able to seek employment opportunities, even if and when their immigration status is normalized.

Moreover, most of our clients at CLS would love to go to school instead of working, but many are stuck working cleaning houses, or at restaurants, or as farm hands six days a week to send money to their families back home. These children often do not have sponsors that support them, and many of them have to pay rent to live with the sponsors.

Additionally, many children, especially from rural areas in Guatemala, speak indigenous languages, and some are illiterate, so they need extra attention and help learning Spanish and English. Their access to services is further limited by the places they settle in South Florida, such as Homestead and Immokalee, which are rural farming areas with less access to education. Often they are placed with relatives or sponsors that are similarly uneducated and do not have access to services or know how to navigate the educational system.

Poverty and education are inextricably linked. UACs who are refused an education are left without the literacy and numeracy skills necessary to further their careers. The effects of poverty on children are wide-reaching and can lead to lifelong struggles.

#### Lack of access to health services

UACs suffer profound mental and physical stress from their dangerous journey to the U.S.<sup>22</sup> Additionally, the time they spend in a detention facility or a shelter can negatively affect their mental and physical health, causing profound trauma and stress.<sup>23</sup> Given these experiences, many UACs suffer from post-traumatic stress disorder (PTSD), depression, and other

---

<sup>19</sup> Burke, *supra*.

<sup>20</sup> *Lesly Methelus, et al. v. The District School Board of Collier Country Florida, et al.*, Southern Poverty Law Center, <https://www.splcenter.org/seeking-justice/case-docket/lesly-methelus-et-al-v-district-school-board-collier-county-florida-et>.

<sup>21</sup> *Id.*

<sup>22</sup> *Unaccompanied Children and Health Care*, National Immigration Law Center (Aug. 18, 2014), <https://www.nilc.org/issues/health-care/unaccompanied-children-health-care/>.

<sup>23</sup> *Id.*

psychological and psychosocial issues.<sup>24</sup> However, many encounter hurdles when attempting to receive health and mental health services. UACs are ineligible to access health care coverage such as Refugee Medical Assistance or the Children’s Health Insurance Program.<sup>25</sup> They also are ineligible to purchase health care coverage under the Affordable Care Act unless they are granted immigration status, such as asylum or special immigrant juvenile status.<sup>26</sup> Access to health care services depends on each child’s particular immigration circumstance and the health care eligibility rules for programs that are available where the child is released.<sup>27</sup>

Even in states where health coverage is expansive, many UACs may still not qualify because the federal government is contemplating removing them from the country.<sup>28</sup> For example, a UAC that worked with CLS was able to get life-saving heart surgery, but is not able to get follow-up services easily. He has no legal status because his immigration case was administratively closed due to prosecutorial discretion. He suffers from seizures that make it impossible for him to work or maintain a normal lifestyle, and he often falls and gets hurt as a result. This affects his possibility to further his education and live a healthy life.

Poverty and health are undistinguishably linked. The causes of poor health are rooted in political, social and economic injustices.<sup>29</sup> Poverty is both a cause and a consequence of poor health. Poverty increases the chances of poor health, which in turn traps communities in poverty.<sup>30</sup>

## **V. Legal solutions to undocumented migrant “problem” in the United States**

In recent years, local governments in the U.S. have sought to take independent action regarding undocumented migrants in response to federal legislation or action. Some localities have decided local law enforcement will not enforce immigration law and will leave immigration enforcement to federal agents; others have decided that local law enforcement will confirm an arrestee’s immigration status to ensure that dangerous immigrants get returned to their home country. This is colloquially known as the “sanctuary city” debate.

Conversely, the President can choose the best enforcement of federal legislation and prioritize removal enforcement for specific classes of immigrants. Deferred Action for Childhood Arrivals—DACA—was one such policy. President Obama, instead of granting legal status, allowed eligible childhood arrivals to get employment authorization and deferred action (indicating that they would not be targeted for removal) because the government prioritized pursuing individuals with criminal backgrounds.

Both responses to the same “problem” highlight the issues facing undocumented migrants within the United States. Sanctuary city policies create incentives for immigrants to cooperate with or to distrust police depending on the policies in effect. Similarly, DACA incorporates certain undocumented migrants into the community on the promise that they will not be deported.

---

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *The Cycle of Poverty and Poor Health*, Health Poverty Action, <https://www.healthpovertyaction.org/info-and-resources/the-cycle-of-poverty-and-poor-health/>.

<sup>30</sup> *Id.*

## Sanctuary cities and counties

“Sanctuary city” or “sanctuary county” is not a legal term indicating that the locality is a haven for immigrants; rather it is a political term showing that local politicians welcome immigrants.<sup>31</sup> Nevertheless, there is no requirement that local and state governments must enforce immigration law.<sup>32</sup> U.S. statute 8 U.S.C. § 1373 prohibits localities from preventing federal agents from obtaining information about individuals’ citizenship or immigration status, but it does not require localities to actively provide information to federal agents or take steps to gather immigration information from their residents.<sup>33</sup>

The “sanctuary” debate centered around cities’ willingness to enforce federal detainer requests. Detainer requests are federal requests to local jails to hold an individual for 48 hours after the criminal sentence ended to give federal agents time to decide whether to deport the person and obtain federal custody. No removal order, warrant or even immigration case need be pending against the individual for a detainer to be filed. The constitutionality of Immigration and Customs Enforcement detainer requests continues to be challenged throughout the U.S. Honoring such detainer requests, without a judicial warrant authorizing the extended detention of an individual, is unconstitutional because there is no judicial check on the use of executive power to extend an individual’s criminal sentence.<sup>34</sup> However, that has not stopped some localities from announcing that they will fully cooperate with immigration officials to remove dangerous criminals from their midst. Such policies are fueled by the belief that illegal immigration is necessarily tied to an increase in crime and threatens the right to a peaceful life for native citizens.<sup>35</sup>

Such rhetoric is not supported by the data.<sup>36</sup> However, that did not stop Miami-Dade County from choosing to give up its sanctuary county policy in order to avoid losing federal funding.<sup>37</sup> As Miami-Dade Mayor Gimenez’s stated, the county “could not risk losing any of the \$355 million dollars that the county received in 2017.”<sup>38</sup> As of Fiscal Year 2017, Miami-Dade was allocated \$455,880<sup>39</sup> specifically in law enforcement grants after ending its sanctuary county policy.<sup>40</sup>

---

<sup>31</sup> *The Current State of Sanctuary Law*, Southern Poverty Law Center (May 15, 2017), <https://www.splcenter.org/20170515/current-state-sanctuary-law>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *The Current State of Sanctuary Law*, *supra*.

<sup>35</sup> Rubén G. Rumbaut, *Undocumented Immigration and Rates of Crime and Imprisonment: Popular Myths and Empirical Realities*, Appendix D, 120. The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties. [https://www.policefoundation.org/wp-content/uploads/2015/06/Appending-D\\_0.pdf](https://www.policefoundation.org/wp-content/uploads/2015/06/Appending-D_0.pdf).

<sup>36</sup> *The Current State of Sanctuary Law*, *supra*.

<sup>37</sup> Alan Gomez, *Attorney General Jeff Sessions finds ally in Miami in fight against sanctuary cities*, USA Today (Aug. 16, 2017), <https://www.usatoday.com/story/news/politics/2017/08/16/attorney-general-jeff-sessions-finds-ally-miami-fight-against-sanctuary-cities/573333001/>.

<sup>38</sup> *Id.*

<sup>39</sup> BGA’s Edward Byrne Memorial Justice Assistance Grant (JAG) Program, *2017 Florida Local JAG Allocations*. <https://www.bja.gov/Programs/JAG/jag17/17FL.pdf>.

<sup>40</sup> Douglas Hanks, *Miami-Dade complied with Trump to change its ‘sanctuary’ status. It worked*. Miami Herald (August 07, 2017). <http://www.miamiherald.com/news/local/community/miami-dade/article165837497.html>.

Therein lies the next complicated issue: Can the federal government strong-arm compliance from local authorities by threatening to defund them? According to the U.S. Supreme Court: no. In a binding decision in *South Dakota v. Dole*, the Supreme Court wrote that conditions can be attached to funds so long as they are not coercive.<sup>41</sup> As the Supreme Court noted, an unconstitutional use of federal authority is the point where pressure turns into compulsion.<sup>42</sup> Miami-Dade County gave in to the coercion and changed county policy because President Trump threatened to withhold hundreds of millions of dollars.<sup>43</sup> In a county where 1.4 million residents are foreign-born,<sup>44</sup> deputizing local law enforcement to enforce immigration law creates wide latitude for abuse and racial profiling under the guise of fulfilling a legally-mandated role. It has reached a point where racial profiling has led to U.S. citizens being detained and scheduled for deportation because of nationality and ethnic background.<sup>45</sup>

## **DACA**

The Deferred Action for Childhood Arrivals (“DACA”) program was terminated by President Trump in early September 2017, with an effective date of March 5, 2018. The repeal of DACA affects 800,000 individuals nationwide, 23,000 of whom are located within Miami-Dade County alone.<sup>46</sup> Florida has the fourth largest DACA population in the country and Miami has the highest concentration of DACA recipients in the entire state.<sup>47</sup> In addition to ending the DACA program without a clear mandate, President Trump exacerbated the problem by announcing the end of DACA following Hurricane Harvey’s devastation in Texas and Hurricane Irma’s threat to Florida.<sup>48</sup> Not only were DACA recipients impacted by a total inability to access basic services following the hurricanes, they were also worried about seeking shelter during the hurricane as fears mounted that local officials would be performing background checks on individuals before allowing access to emergency shelters. Many DACA recipients worried that they would be taken into immigration custody if they sought to enter an emergency shelter, given Miami’s commitment to enforcing federal immigration law.<sup>49</sup>

The one-month deadline to renew DACA benefits was too short and failed to take into account the amount of individuals affected by the natural disasters in Florida and Texas, two states with the highest amount of DACA beneficiaries in the country.<sup>50</sup> Lawmakers urged President Trump to either extend the renewal deadline or provide case-by-case considerations for late applications

---

<sup>41</sup> *South Dakota v. Dole*, 483 U.S. 203 (1987).

<sup>42</sup> *Id.*

<sup>43</sup> Gomez, *supra*.

<sup>44</sup> *Id.*

<sup>45</sup> Douglas Hanks, *Miami-Dade jail wrongly held U.S. citizen for deportation, ACLU says in suit*, Miami Herald (July 05, 2017), <http://www.miamiherald.com/news/local/community/miami-dade/article159752209.html>

<sup>46</sup> Jerry Iannelli, *Trump’s DACA would harm 23,000 Miamians and 103,000 Floridians brought here as kids*, Miami New Times (Sept. 1, 2017), <http://www.miaminewtimes.com/news/trump-daca-repeal-would-harm-23000-miami-and-103000-florida-immigrants-9631804>.

<sup>47</sup> *Id.*

<sup>48</sup> Edwidge Danticat, *DACA, Hurricane Irma, and Young Americans’ Dream Deferred*, The New Yorker (Sept. 6, 2017), <https://www.newyorker.com/culture/cultural-comment/daca-hurricane-irma-and-young-americans-dreams-deferred>.

<sup>49</sup> *Id.*

<sup>50</sup> Iannelli, *supra*.

on account of the hurricanes.<sup>51</sup> Two reasons for the request was the massive disturbance that the hurricanes caused on the day-to-day lives of millions of individuals and the fact that DACA renewals required a \$495 fee.<sup>52</sup> For individuals that lost all their possessions and/or had to evacuate suddenly because of the hurricanes, being able to take the time to fill out a DACA renewal application and spare \$495 as they were rebuilding their lives placed an undue burden on their situation.

Unfortunately, President Trump provided no leniency and on the DACA renewal deadline date, 23% of the eligible recipients had not filed any sort of application to extend their DACA benefits.<sup>53</sup> As a result, at least 36,000 DACA recipients in the entire country lost benefits because of their inability to submit the required documentation or pay the required fee. In Florida, however, the number is much more extraordinary; 2,000 individuals, or 35% of eligible individuals did not submit their applications by President Trump's deadline.<sup>54</sup> They are now at risk of deportation to a country that many of them do not know.<sup>55</sup>

Additionally, participation in DACA is a double-edged sword, as undocumented immigrants had to provide the federal government their full names, addresses, photographs, and employers, information which could be used to effect mass deportation when the program ends. As of October 2017, proposals made by the White House indicated that a long-term solution for DACA recipients would only come with legal provisions for building a border wall and restrictions on the definition of Unaccompanied Children.

## **VI. International Human Rights Law Analysis**

The following United Nations treaties define basic human rights that are of significance to immigrants: (1) Convention on the Rights of the Child (CRC), (2) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (3) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (4) International Covenant on Civil and Political Rights, and (6) the Universal Declaration of Human Rights (UDHR). These conventions specify, *inter alia*, the following rights:

- Protection from being expelled, returned or extradited to another State where there are substantial grounds for believing that a person would be in danger of being subjected to torture.
- Right to liberty and security of person, and protection from arbitrary arrest or detention.
- Right to a free primary education
- Right to be free from arbitrary or unlawful interference with one's privacy

Although the United States has not signed or ratified all of these conventions, these treaties

---

<sup>51</sup> Emilee Speck, *Lawmakers seek DACA renewal extension due to Hurricanes*, Clickorlando.com (Sept. 25, 2017), <https://www.clickorlando.com/news/nelson-lawmakers-see-dreamer-renewal-extension-due-to-hurricanes>.

<sup>52</sup> *Id.*

<sup>53</sup> Esther Yu Hsi Lee, *On DACA Renewal deadline day, tens of thousands of DREAMers lost deportation relief*, Think Progress (Oct. 5, 2017), <https://thinkprogress.org/42000-daca-recipients-miss-deadline-7b203d4772cf/>.

<sup>54</sup> Tal Kopan, *One-quarter of DACA renewals not in by deadline, 23% of 154,000 people eligible fail to submit*, CNN (October 5, 2017), <http://www.cnn.com/2017/10/05/politics/daca-renewal-deadline-immigration/index.html>.

<sup>55</sup> *Id.*

provide critical guidance that we should be following.

## **VII. Recommendations**

### **Temporary Protected Status (TPS) for Haitians**

- Continue to extend TPS for the foreseeable future, while Haiti continues to experience a humanitarian crisis.
- Create a path to family reunification and/or Legal Permanent Residency for TPS beneficiaries from Haiti as well as El Salvador and Honduras.

### **UACs**

- Enforce and expand *Plyler v. Doe* to prevent states from circumventing their duties by providing unequal alternatives to education.
- Appoint an unaccompanied minor support services specialist at schools to help connect the children to appropriate services.
- Provide certain basic public benefits and services, such as medical examinations, to UACs living with sponsors.

### **DACA/Sanctuary Cities**

- Stop the use of detainer requests without a judicial warrant authorizing the detention.
- Follow *South Dakota v. Dole* and stop coercing municipalities into enforcing immigration law by threatening to withhold unrelated funds.

## **VIII. Questions**

1. How does the principle of non-refoulement apply to DACA and TPS recipients that may face persecution upon return to their home country because perceived status or wealth for having lived in the United States?
2. Why is the federal government relying so much on municipalities to enforce immigration laws instead of promoting cooperation with law enforcement among all communities?



**Access to Transportation, Health Care, and Disaster Preparations and Relief  
in South Florida**

**Submission to the United Nations Special Rapporteur on Extreme Poverty and Human  
Rights in Preparation for his Official 2017 Visit to the United States**

**October 31, 2017<sup>1</sup>**

Catalyst Miami is an organization whose mission is to develop and support individual leadership and strong organizations that work together to improve health, education, and economic opportunity in our community. Catalyst Miami envisions a thriving Miami in which residents, organizations and communities work together toward common goals. Collaboration, partnership and networks drive our work and are central to all of our programs.<sup>2</sup>

The Miami Law Human Rights Clinic (HRC) works for the promotion of social and economic justice globally and in the U.S. The Clinic uses international human rights laws and norms, domestic law and policy, and multidimensional strategies, such as community organizing, political activism, and global networking, to draw attention to human rights violations, develop practical solutions to those problems, and promote accountability on the part of state and non-state actors.

**Introduction**

According to the United States Census Bureau, about 20% of Miami-Dade County residents are living in poverty, a significantly higher proportion than the national average of 15.5%.<sup>3</sup> We identify three major areas of concern wherein marginalized communities experience disproportionate levels of disenfranchisement in Miami: access to transportation, healthcare, and disaster preparations and relief. After comprehensive consideration of these issues, we offer solutions which aim to provide equitable relief for the undue burdens confronting these communities.

---

<sup>1</sup> The following University of Miami School of Law students principally drafted this report under the supervision of Professor Caroline Bettinger-López and in collaboration with Catalyst Miami: Danielle Ellis, Yadirys Collado Garcia, Claudia Ruiz, and Devon Silverang.

<sup>2</sup> *What We Do*, Catalyst Miami (October 26, 2017 6:46 PM), <https://catalystmiami.org/our-work/what-we-do/>.

<sup>3</sup> United States Census Bureau, *QuickFacts: Miami-Dade County, Florida*, United States Census Bureau (July 1, 2016), <https://www.census.gov/quickfacts/fact/table/miamidadecountyflorida#viewtop>; Douglas Hanks, *How Poor is Miami? The Rich Earn \$40 For Every \$1 Earned by the Poor*, Miami Herald (May 24, 2016), <http://www.miamiherald.com/news/local/community/miami-dade/article79670752.html>.

## **Issue I: Transportation**

### **A. Transportation Facts & Spotlights**

For people living in poverty in Miami, public transportation is often the only transit option available. Miami-Dade County's public transportation system consists of the MetroRail, a train system consisting of only two lines and 23 stops. The Metrorail exclusively runs North to South, leaving many neighborhoods without accessible stations. In addition to the Metrorail, there is the Metrobus, a bus system with unreliable schedules and limited routes, and the Metromover, a free, elevated people mover, which circulates mostly in affluent areas and has poor ridership rates.<sup>4</sup> A comparative look at the public transportation system in Medellin, Colombia presents a stark contrast to Miami's system. Medellin relies on an integrated transit system using buses, trams, cable cars, trains, and a bus rapid transit system known as the Medellin Metro. Medellin's public transportation system, by and large, successfully supports its population of 2.45 million people.<sup>5</sup> In fact, Medellin's significant achievements in terms of poverty and crime reduction and improved health outcomes are in part attributed to the City's investment in its public transportation system.

However, for a county with a population of 2.7 million and high levels of poverty, Miami-Dade County's ridership rates for all public transit are extremely low.<sup>6</sup> One significant factor contributing to these low rates of ridership is the very limited access many communities have to public transportation. A look at the Miami-Dade Transportation Planning Organization website further suggests that the city has inadequate plans for improvement.<sup>7</sup> So while Miami residents wait for a solution, the government of Miami is stagnant in this area.

The Miami-Dade County neighborhood of Shorecrest is noteworthy for the diverse socio-economic status of its residents, all of whom are extremely vulnerable to the effects of climate change.<sup>8</sup> Each year, the neighborhood experiences massive flooding events due to what is known as "King Tide."<sup>9</sup> The safety tips created and distributed by the government of the City of Miami repeatedly emphasize the dangers associated with commuting through these flood waters. However, it is difficult for residents in affected areas in Shorecrest to heed this advice as King Tide flooding persists for several days. What is more, public transportation access points are minimal, if not non-existent, in this area of Miami.

---

<sup>4</sup> *Ridership Technical Reports*, Miami-DadeCounty (October 22, 2017 11:00PM) <https://www.miamidade.gov/transit/ridership-technical-reports.asp>.

<sup>5</sup> *Metro de Medellin*, Metro de Medellin (October 29, 2017 10:15PM), <https://www.metrodemedellin.gov.co/viajeconnosotros/mapas>.

<sup>6</sup> *Ridership Technical Reports*, Miami-Dade County (October 22, 2017 11:00PM), <https://www.miamidade.gov/transit/ridership-technical-reports.asp>.

<sup>7</sup> *Long Range Transportation Plan*, Miami-Dade Transportation Planning Organization (October 22, 2017 10:33PM), <http://www.miamidadetpo.org/long-range-transportation-plan.asp>.

<sup>8</sup> David Smiley, *Mainland Miami Ponders Returning Neighborhoods to Nature in Order to Survive Rising Seas*, Miami Herald, (October 29, 2017 10:00PM), <http://www.miamiherald.com/news/local/community/miami-dade/article155213369.html>.

<sup>9</sup> *South Florida King Tides*, The City of Miami [http://www.miamigov.com/home/docs/Headlines/2017/10-27%20king%20tide%20flyer%2017%20NOV%20SHORECREST%20v1\\_.pdf](http://www.miamigov.com/home/docs/Headlines/2017/10-27%20king%20tide%20flyer%2017%20NOV%20SHORECREST%20v1_.pdf).

## B. Transportation & Other Poverty Determinants

Miami-Dade County is defined by urban sprawl. This results in heavy dependence on private vehicle ownership with a severe lack of transportation alternatives. However, approximately “one in ten [Miami] families do not have access to a vehicle.”<sup>10</sup> Further, according to the Pew Research Center, about 18% of Miami’s significant immigrant population is undocumented, barring tens of thousands of people from obtaining driver licenses.<sup>11</sup> As such, many of Miami’s marginalized communities live in “transportation deserts.” Deeper examination of these deserts reveals a web of interlocking issues contributing to systemic poverty in Miami’s marginalized communities.

As one Miami-Dade community member relayed during a County budget meeting, “ the best way to judge a community [is] by its public transportation system.”<sup>12</sup> Miami is widely known for its “car culture” and notorious traffic. As such, focus on transportation is chiefly couched in terms of reducing vehicle congestion and improving road conditions and infrastructure.<sup>13</sup> For example, the Miami-Dade County Department of Transportation and Public Works cites technological advancements and integration as the optimal ways to overhaul Miami’s transportation networks.<sup>14</sup> The ultimate goal, asserts the Department’s Assistant Director, is “true multi-modal mobility,” which includes a consolidation of ride-sharing applications, private car ownership, and public transit systems.<sup>15</sup> However, such plans for improvement reflect a fundamental disregard for the role Miami’s public transportation system plays in perpetuating poverty and widening income gaps.

As of 2014, only 16% of jobs in Miami are accessible by public transportation within 90 minutes<sup>16</sup> and the majority of Miami’s 11,000+ public housing units are located well outside

---

<sup>10</sup> Megan Lawson, Ph.D., *Disasters and Populations at Risk: Lack of Vehicles Makes Evacuation Difficult*, Headwaters Economics, <https://headwaterseconomics.org/economic-development/climate-change/evacuation-difficult/> (last visited Oct. 28, 2017).

<sup>11</sup> Jeffrey S. Passel and D’Vera Cohn, *20 Metro Areas are Home to Six-in-Ten Unauthorized Immigrants*, Pew Research Center FactTank, (Feb. 9, 2017), [http://www.pewresearch.org/fact-tank/2017/02/09/us-metro-areas-unauthorized-](http://www.pewresearch.org/fact-tank/2017/02/09/us-metro-areas-unauthorized-immigrants/?utm_content=buffer9b00b&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

[immigrants/?utm\\_content=buffer9b00b&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://www.pewresearch.org/fact-tank/2017/02/09/us-metro-areas-unauthorized-immigrants/?utm_content=buffer9b00b&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).  
<sup>12</sup> Douglas Hanks, *Metrorail Cuts Reversed, PAMM Takes Funding Hit for Cuban Museum in Miami-Dade Budget*, Miami Herald (Sep. 29, 2017), <http://www.miamiherald.com/news/local/community/miami-dade/article176069821.html>.

<sup>13</sup> Isabella Vi Gomes, *As County Prepares to Gut Public Buses and Trains, Angry Commuters Plan to Protest*, Miami New Times (Aug. 18, 2017), <http://www.miaminewtimes.com/news/transit-alliance-fights-miami-dade-county-budget-cuts-to-buses-trains-9594060>.

<sup>14</sup> Ryan McCauley, *Miami-Dade County Demonstrates How to Overhaul Urban Mobility Through Integration*, Future Structure (June 1, 2017), <http://www.govtech.com/fs/Miami-Dade-County-Demonstrates-How-to-Overhaul-Urban-Mobility-through-Integration.html>.

<sup>15</sup> *Id.*

<sup>16</sup> Lecia Imbery, *Bridges to Economic Opportunity: Why We Need Transportation Equity*, Coalition on Human Needs (Aug. 8, 2014), <https://www.chn.org/2014/08/08/bridges-economic-opportunity-need-transportation-equity/#.We9APBNSx0t>.

walking distance of the Metrorail and Metromover.<sup>17</sup> Further, most of the housing options located around the southern half of the Metrorail corridor are prohibitively expensive for low-income families.<sup>18</sup> Finally, the walking distance between transit stops is frequently more than one-half of a mile, with roundtrip fares costing as much as more than \$5.<sup>19</sup> Beyond the disparate geographic distribution between employment opportunities, affordable housing options, and public transit access points, another symptom of perpetuated poverty surfaces: lack of access to healthcare.

For many Miami citizens living in poverty, affordable healthcare coverage is only half the battle. The spatial mismatch of employment opportunities, affordable housing, and accessible public transit is another obstacle to accessing healthcare facilities and services. While the Metrorail and Metrobuses do have major hospital-adjacent stations, walking up to half a mile in scorching tropical heat or inclement weather to access public transportation is not practical, or in some cases even feasible, for many people with medical needs—especially seniors and people with disabilities.

Additionally, emergency care is extremely expensive for patients and hospitals alike, and many medical facilities and providers in Miami are not located inside or near hospitals. For patients living in impoverished communities, expensive ride-share applications or private cars are already an unfeasible option. This is yet another financial burden unaccounted for in discussions regarding public health and transportation programs. Further, other transit alternatives such as bicycles, are inadequate due to health or physical limitations. For those with serious and/or chronic conditions or physical disabilities, just the trip to a healthcare provider may prove to be a potentially deadly medical excursion. Indeed, in some situations, patients without a viable means of transportation may be forced to wait for a medical emergency before seeing a provider, making emergency rooms the main source of care for many impoverished patients.<sup>20</sup> As studies have proven, “ultimately, transportation barriers may mean the difference between worse clinical outcomes that could trigger more emergency department visits and timely care that can lead to improved outcomes.”<sup>21</sup> Therefore, the lack of public transit to seek preventative care thus leads to untimely treatment for curable conditions, possible uninformed self-care, and in extreme cases, preventable deaths.<sup>22</sup>

---

<sup>17</sup> Federal Transit Administration, *Transportation Needs of Disadvantaged Populations: Where, When, and How?*, FTA Report No. 0030, 32 (Feb. 2013), [https://www.transit.dot.gov/sites/fta.dot.gov/files/FTA\\_Report\\_No.\\_0030.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/FTA_Report_No._0030.pdf).

<sup>18</sup> *Id.* at 33.

<sup>19</sup> *Id.* at 66.

<sup>20</sup> Imran Cronk, *The Transportation Barrier*, *The Atlantic* (Aug. 9, 2015), <https://www.theatlantic.com/health/archive/2015/08/the-transportation-barrier/399728/>.

<sup>21</sup> Samina T. Syed, Ben S. Gerber, Lisa K. Sharp, *Traveling Towards Disease: Transportation Barriers to Health Care Access*, 38 *Journal of Community Health* 976, 976 (Oct. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4265215/#R22>.

<sup>22</sup> Robert Wood Johnson Foundation, *Low Income Patients Say ER is Better Than Primary Care*, Robert Wood Johnson Foundation (July 9, 2013), <https://www.rwjf.org/en/library/articles-and-news/2013/07/low-income-patients-say-er-is-better-than-primary-care.html>.

### C. Transportation Accessibility & Disaster Relief

Miami's tropical climate and weather patterns present unique problems for every method of transportation. Tropical storms with heavy rains and dangerous wind gusts, along with rising sea levels, frequently result in flooding and often render train and bus systems inoperable.<sup>23</sup> As such, natural disasters, such as Hurricane Irma, "are disproportionately debilitating for marginalized social groups."<sup>24</sup> In fact, a 2013 study by the Federal Transit Administration reveals that just over 14% of Miami-Dade County's population would "require transportation assistance in the event of a major evacuation."<sup>25</sup>

Indeed, just days before Hurricane Irma made landfall in September 2017, when Miami-Dade County Mayor Carlos Gimenez released statements identifying shelters that would be open to Miami residents,<sup>26</sup> he advised that shelters were to be considered only a "refuge of last resort for people who truly have no place to go."<sup>27</sup> This does not account for the many people who are not in an evacuation zone, but who cannot afford to properly secure their homes in order to protect their families from strong winds, flooding, or other life-threatening damages. Further, the Red Cross instructed Miami residents that staying in a shelter also required bringing enough survival supplies to last at least three days.<sup>28</sup> However, many of these community residents live on a fixed or limited income, which makes buying pre-and-post-disaster supplies nearly impossible.<sup>29</sup> Further, these disaster preparation instructions were compounded by warnings that public transportation systems would stop running once winds approached 35 mph, eliminating public transit as an option for completing hurricane preparations.<sup>30</sup> Additionally, the severe lack of public transportation northbound and inland away from Miami made evacuation very difficult without a car. Indeed, a 2017 study by the research group Headwaters Economics shows the most vulnerable neighborhoods in Miami and Miami Beach, where "one-in-ten families is living in poverty and one-in-ten families does not have access to a vehicle."<sup>31</sup> As a result, staying in a shelter is often the only viable evacuation option for many. However, there is also insufficient space in shelters to house all of those who are evacuated. Consequently, a large number of residents (at least 10%) in Miami's impoverished communities are forced to remain in their home during the hurricane.<sup>32</sup> In many of these neighborhoods, homes are also ill-equipped to

---

<sup>23</sup> Angel Streeter, *South Florida Assessing Climate Change on Roads, Bridges, Railroads, Airports*, HuffPost (June 18, 2013), [https://www.huffingtonpost.com/2013/04/19/south-florida-climate-change-impact\\_n\\_3113985.html](https://www.huffingtonpost.com/2013/04/19/south-florida-climate-change-impact_n_3113985.html).

<sup>24</sup> Alejandra Maldonado, Timothy W. Collins, and Sara E. Grineski, *Hispanic Immigrant's Vulnerabilities to Flood and Hurricane Hazards in Two United States Metropolitan Areas*, 106 *Geographical Review* 109, 109-10 (Jan. 2016).

<sup>25</sup> Federal Transit Administration, *Transportation Needs of Disadvantaged Populations: Where, When, and How?*, FTA Report No. 0030, 53 (Feb. 2013), [https://www.transit.dot.gov/sites/fta.dot.gov/files/FTA\\_Report\\_No.\\_0030.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/FTA_Report_No._0030.pdf).

<sup>26</sup> CBS Miami, *700k Residents Under Evacuation Orders in Miami-Dade County*, CBS Miami (Sep. 7, 2017), <http://miami.cbslocal.com/2017/09/07/miami-dade-hurricane-irma-preps-carlos-gimenez>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Nadege Green, *Hurricane Irma Brings Issues of Poverty in Miami into Stark Relief*, MarketPlace Weather Economy (Sep. 28, 2017), <https://www.marketplace.org/2017/09/28/economy/hurricane-irma-brings-issues-poverty-miami-stark-relief>.

<sup>30</sup> CBS Miami, *supra*.

<sup>31</sup> Lawson, Ph. D., *supra*.

<sup>32</sup> *Id.*

withstand hurricane conditions, further highlighting the disproportionate impact natural disasters have on marginalized communities.<sup>33</sup>

While access to transportation is an everyday struggle for many Miami residents, the stakes become much higher when faced with natural disasters and evacuation orders. As one Miamian who was unable to evacuate his home put it, “the main thing I’m worrying about is surviving.”<sup>34</sup>

## **Issue II: Health Care Coverage**

### **A. Facts about Healthcare Coverage in Southern Florida**

The Affordable Care Act has significantly lowered the uninsurance rate in the United States.<sup>35</sup> However, there are still millions of individuals in the United States and hundreds of thousands in Florida who remain uninsured due to policy decisions made by federal and some state elected officials. Despite Miami-Dade County being awarded a Robert Wood Johnson Foundation Culture of Health Prize in 2016,<sup>36</sup> there are still dire health care issues that must be addressed. One out of five Miami-Dade residents say that their health status is “fair” or “poor”.<sup>37</sup> It is also important to note that 26% of individuals in Miami-Dade are uninsured, compared to 20% of uninsured individuals in the state of Florida overall. This number rises to about 30% for minorities.<sup>38</sup> A lack of healthcare coverage leads to poor health outcomes, which is both a cause and consequence of poverty. Individuals living in poverty who are not eligible for Medicaid because their income is above the income eligibility requirement are not able to afford private insurance, nor are they able to pay for medication and medical visits out of pocket. In addition, there are not sufficient public health facilities which provide low-to-no-cost services to these individual. All of these barriers to healthcare exacerbate conditions of individuals living in poverty.

A significant factor contributing to the high rates of uninsured individuals in Florida and Miami-Dade County is the State’s refusal to expand the Medicaid program under the Affordable Care Act (ACA). The ACA is a health care reform law that was enacted in March 2010 with the goal of increasing insurance coverage and access to healthcare. The law has three primary goals and many provisions that aim to achieve these:

---

<sup>33</sup> Rebekah Entralgo, *Irma is ‘Not a Storm You Can Sit and Wait Through.’ What If That’s Your Only Option?*, Think Progress (Sep. 8, 2017), <https://thinkprogress.org/unable-to-evacuate-irma-d240985fda5e/>.

<sup>34</sup> Nadege Green, *Poor In Miami: Hoping to Ride Out Irma on Bread and Cans of Tuna*, NPR Around the Nation Blog (Sep. 8, 2017), <http://www.npr.org/2017/09/08/549295524/poor-in-miami-hoping-to-ride-out-irma-on-bread-and-cans-of-tuna>.

<sup>35</sup> Nicholas Bakalar, *Nearly 20 Million Have Gained Health Insurance Since 2010*, The New York Times (May 22, 2017), <https://www.nytimes.com/2017/05/22/health/obamacare-health-insurance-numbers-nchs.html>.

<sup>36</sup> *Home Page*, Florida Health Miami Dade (October 26, 2017 6:48 PM), <http://miamidade.floridahealth.gov/>.

<sup>37</sup> *Health*, Florida Health Miami Dade (October 26, 2017 6:56PM), [http://www.miamidade.gov/greenprint/planning/library/milestone\\_one/health.pdf](http://www.miamidade.gov/greenprint/planning/library/milestone_one/health.pdf).

<sup>38</sup> *Florida Miami Dade*, County Health Rankings (October 26, 2017 7:05 PM), <http://www.countyhealthrankings.org/app/florida/2017/rankings/miami-dade/county/factors/overall/snapshot>.

“[1] Make affordable health insurance available to more people. The law provides consumers with subsidies (“premium tax credits”) that lower costs for households with incomes between 100% and 400% of the federal poverty level.

[2] Expand the Medicaid program to cover all adults with income below 138% of the federal poverty level. (Not all states have expanded their Medicaid programs.)

[3] Support innovative medical care delivery methods designed to lower the costs of health care generally.”<sup>39</sup>

In June 2012, a Supreme Court ruling made it optional for states to expand Medicaid<sup>40</sup> eligibility to nearly all low-income individuals with incomes at or below 138% of the federal poverty rate.<sup>41</sup> Florida is one of the states that opted to not expand Medicaid coverage, becoming the second largest state with a coverage gap comprised of poor uninsured adults whose “income is above current Medicaid eligibility but below the lower limit for Marketplace premium tax credits”<sup>42</sup> (only behind Texas<sup>43</sup>). This decision has made Florida one of the ten most difficult states for working parents to get Medicaid.<sup>44</sup> Additionally, this decision makes it impossible for childless adults who do not have a disability to be eligible for Medicaid. Florida makes up about 20% of the population of individuals who fall within this gap, leaving 567,000 individuals who would otherwise be eligible for Medicaid, uninsured.<sup>45</sup> Moreover, 54% of those affected are people of color.

More recently, Congress has allowed the Children’s Insurance program (CHIP) to expire.<sup>46</sup> CHIP is a program that “provides low-cost health coverage to children in families that earn too much money to qualify for Medicaid.”<sup>47</sup> There are 5.7 million children in the United States who have insurance through this program. Specifically, in Florida there were 374,884 children enrolled in CHIP in 2016.<sup>48</sup> Now that this program has expired, it is unclear what will

---

<sup>39</sup> *Affordable Care Act*, Health Care (October 26, 2017 7:16 PM), <https://www.healthcare.gov/glossary/affordable-care-act/>.

<sup>40</sup> *A Guide to the Supreme Court’s Decision on the ACA’s Medicaid Expansion*, The Henry J. Kaiser Family Foundation (August 01, 2012), <https://www.kff.org/health-reform/issue-brief/a-guide-to-the-supreme-courts-decision/>.

<sup>41</sup> Rachel Garfield and Anthony Damico, *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid*, The Henry J. Kaiser Family Foundation (October 19, 2016), <https://www.kff.org/uninsured/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid/>.

<sup>42</sup> *Id.*

<sup>43</sup> *A Guide to the Supreme Court’s Decision on the ACA’s Medicaid Expansion*, The Henry J. Kaiser Family Foundation (August 01, 2012).

<sup>44</sup> Garfield and Damico, *supra* note 40.

<sup>45</sup> *Id.*; Daniel Chang, *With High Uninsured Rate, Miami-Dade Faces Health Crisis, Report Says*, Miami Herald (April 13, 2016), <http://www.miamiherald.com/news/health-care/article71640637.html>.

<sup>46</sup> Valerie Strauss, *9 Million Kids Get Health Insurance Under CHIP. Congress Just Let It Expire.*, The Washington Post (Oct. 1, 2017), [https://www.washingtonpost.com/news/answer-sheet/wp/2017/10/01/9-million-kids-get-health-insurance-under-chip-congress-just-let-it-expire/?utm\\_term=.09b84614e274](https://www.washingtonpost.com/news/answer-sheet/wp/2017/10/01/9-million-kids-get-health-insurance-under-chip-congress-just-let-it-expire/?utm_term=.09b84614e274).

<sup>47</sup> *The Children’s Health Insurance Program*, Health Care (October 26, 2012 9:43 PM), <https://www.healthcare.gov/medicaid-chip/childrens-health-insurance-program/>.

<sup>48</sup> *Unduplicated Number of Children Ever Enrolled*, Medicaid (October 26, 2017 9:48 PM), <https://www.medicaid.gov/chip/downloads/fy-2016-childrens-enrollment-report.pdf>.

happen to the insurance coverage of these children. The state of Florida has projected that they will run out of funding for CHIP by January 2018. This is very alarming, as Florida is one of the five states with the highest enrollment, meaning that about 374,884 children will not have coverage beginning in January 2018.<sup>49</sup>

## **B. Inadequacy of Disaster Relief Measures**

When the food stamp program was created in 1939, it served as a tool through which the Department of Agriculture could reduce massive surpluses on farms by subsidizing the costs that citizens had to pay to receive those overproduced goods.<sup>50</sup> The program has since been reimagined multiple times and now exists as SNAP – The Supplemental Nutrition Assistance Program.<sup>51</sup> Its primary purpose is no longer assisting farms in selling off their goods; instead, it is the means through which qualifying low-income citizens may receive financial assistance from the Departments of Social Services or Children and Families to purchase necessary food, while also stimulating the economy through their patronage of their favored market.<sup>52</sup> Eligibility for the basic SNAP program depends on financial status; to qualify, applicants must have a “gross monthly income at or below 130% of the poverty line (about \$26,600 a year).”<sup>53</sup> The Disaster Supplemental Nutrition Assistance Program – or DSNAP – has existed since 1988. DSNAP allows SNAP benefits to be repurposed during any national emergencies which are formally recognized by the President of the United States of America. However, provision of these disaster-time benefits relies on far more relaxed standards than the basic program. Each state chooses how DSNAP will be distributed, with the Department of Children and Families (DCF) being responsible for the implementation of the program in Florida.<sup>54</sup>

In the wake of Hurricane Irma, implementation of the DSNAP program in Miami-Dade fell far short of expectations, with thousands of individuals being turned away without receiving the aid they had been waiting for.<sup>55</sup> While evidence of the crowd growing steadily following the program’s start earlier in the week should have placed the DCF on notice, the officials in charge of organizing the assistance centers failed to adequately prepare for the massive crowds by the weekend.<sup>56</sup> This eventually led to the DCF shutting down operations in the interest of public

---

<sup>49</sup> Tricie Brooks, Joan Alker and Karina Wagnerman, *What are the Consequences of Congressional Delay on CHIP?*, Georgetown University Health Policy Institute Center for Children and Families (October 2017), <https://ccf.georgetown.edu/wp-content/uploads/2017/10/CHIP-delay-10-25.pdf>.

<sup>50</sup> *A Short History of SNAP*, United States Dep’t of Agric. Food and Nutrition Serv., <https://www.fns.usda.gov/snap/short-history-snap>. (Last visited October 29, 2017).

<sup>51</sup> *Id.*

<sup>52</sup> *Introduction to the Supplemental Nutrition Assistance Program*, Ctr. on Budget and Policy Priorities, <https://www.cbpp.org/research/policy-basics-introduction-to-the-supplemental-nutrition-assistance-program-snap?fa=view&id=2226> (Last visited October 29, 2017).

<sup>53</sup> *Id.*

<sup>54</sup> *Food Assistance in Disaster Situations*, United States Dep’t of Agric. Food and Nutrition Serv., <https://www.fns.usda.gov/disaster/food-assistance-disaster-situations>. (Last visited October 29, 2017).

<sup>55</sup> Monique Madan, *Why did thousands wait hours in hot sun for post-Irma food stamps?*, Miami Herald, <http://www.miamiherald.com/news/weather/hurricane/article179220496.html> (Last visited October 29, 2017).

<sup>56</sup> Monique Madan, *Food assistance centers close after people suffer heat exhaustion in line*, Miami Herald, <http://www.miamiherald.com/news/local/community/broward/article178932506.html> (Last visited October 29, 2017).

safety.<sup>57</sup> Despite the existence of multiple distribution centers, the numbers in attendance at the Tropical Park location rose as high as 50,000, with many reportedly camping overnight to ensure that they were not turned away.<sup>58</sup> The DCF has since offered assurances that those vulnerable groups which rely on their aid will not be ignored, but their continued failure to provide the necessary accommodations for the elderly and disabled citizens who are most likely to require that aid renders their gesture meaningless. Until the DCF can provide transportation both to and from the distribution centers, conduct in-home visits, or outright waive the in-person requirement for those who are unable to travel to the centers, they will be unable to reach those populations which are most in need of aid.

### C. Lack of Protection for the Elderly

Florida has the second-largest population of senior citizens in the United States, with almost a quarter of the state's 20 million residents being aged 65 or over.<sup>59</sup> The costs of caring for these individuals vary greatly, depending on whether they remain in their home or are moved to a nursing facility due to the need for more involved care. On average, the cost of staying in a nursing home is in the vicinity of \$60,000 per year. While much of that is billed back to the government, citizens who require round-the-clock treatment for themselves or their loved ones must contend with the remaining costs.<sup>60</sup> Despite the high cost for residency in a nursing home, poor regulatory practices have allowed the quality of care to vary greatly between facilities, with the practices of one nursing home in South Florida causing fourteen residents to die due to complications in the aftermath of Hurricane Irma.<sup>61</sup> That nursing home, named "The Rehabilitation Center at Hollywood Hills," has since been shut down, and is the subject of a criminal investigation for the deaths of its residents, with the actions of its staff being placed under close scrutiny after it came to light that some residents had been reported as being healthy even hours after their deaths.<sup>62</sup>

Hollywood Hills was not the only nursing home that lost power during the aftermath of Hurricane Irma. Many others also lacked the generators necessary to restore air conditioning and other amenities.<sup>63</sup> As a response to the failure of those facilities to maintain proper health and

---

<sup>57</sup> *Id.*

<sup>58</sup> Glenn Garvin, *50,000 line up outside Tropical Park seeking post-hurricane food assistance*, Miami Herald, <http://www.miamiherald.com/news/local/community/miami-dade/article178996361.html> (Last visited October 29, 2017).

<sup>59</sup> Laura Green, *Florida can't care for all of its frailest seniors*, Palm Beach Post, <http://www.mypalmbeachpost.com/news/national-govt--politics/florida-can-care-for-all-its-frailest-seniors/pPAysE0LVXWcx6Vo4pIVVK/> (Last visited October 29, 2017).

<sup>60</sup> *Florida's Aging Population*, Palm Beach Post, <http://www.mypalmbeachpost.com/interactive/aging-population/> (Last visited October 29, 2017).

<sup>61</sup> Erika Pesantes, *14<sup>th</sup> person from Hollywood nursing home dies, police say*, Sun Sentinel, <http://www.sun-sentinel.com/news/hollywood-nursing-home-hurricane-deaths/fl-reg-13-nursing-home-death-20171009-story.html> (Last visited October 29, 2017).

<sup>62</sup> Travis Andrews, *Officials shutter Fla. nursing home where 10 have died since Irma, citing 'egregious' misrepresentations*, Washington Post, <https://www.washingtonpost.com/news/morning-mix/wp/2017/09/21/officials-shutter-fla-nursing-home-where-8-died-after-irma-citing-egregious-misrepresentations/> (Last visited October 29, 2017).

<sup>63</sup> Ellen Gabler, *At Florida nursing home, many calls for help, but none that made a difference*, The New York Times, <https://www.nytimes.com/2017/09/23/us/nursing-home-deaths.html> (Last visited October 29, 2017).

safety standards for the elderly, Florida's Governor has made generators a mandatory requirement for all nursing homes.<sup>64</sup> However, this is a purely reactionary measure, which does nothing to address the weak regulatory scheme which allows these violations to occur; requiring stricter and more frequent inspections which occur year-round and immediately after disasters would do more to ensure that these tragedies are avoided.

### **Human Rights Implications**

Under Article 25(1) of the Universal Declaration of Human Rights, “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services . . .”<sup>65</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>66</sup> It further lists various steps to achieve this, including “The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”<sup>67</sup> Additionally, the constitution of the World Health Organization, the first to state health as a right, asserts that the “enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being.”<sup>68</sup> It also places the responsibility on governments to make this right attainable by stating that “Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.”<sup>69</sup> Florida is in violation of this human right to health by not expanding Medicaid and permitting there to be a coverage gap of individuals who are not able to receive affordable insurance so that they may be able to see a doctor and they may buy the medication they need. Being unable to access medication is barring these individuals from being able to access an entitlement that is given to them through their right of an attainable standard of care.<sup>70</sup> Additionally, another key aspect to the right to health is that it must be physically accessible to vulnerable population.<sup>71</sup> Inadequate transportation options prevent vulnerable populations from attaining health care that is physically accessible to them.

### **Transportation Recommendations**

1. We ask that the Special Rapporteur encourage the Miami-Dade Board of County Commissioners to allocate more funding to allow the Department of Transportation and

---

<sup>64</sup> Sheri Fink, *Nursing Home Deaths Prompt New Rules by Florida Governor*, The New York Times, <https://www.nytimes.com/2017/09/16/us/nursing-homes-florida-scott.html> (Last visited October 29, 2017).

<sup>65</sup> *Universal Declaration of Human Rights*, Office of the United Nations High Commissioner for Human Rights (October 26, 2017 10:03 PM), [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).

<sup>66</sup> *International Covenant on Economic, Social and Cultural Rights*, United Nations Human Rights Office of the High Commissioner (October 26, 2017 10:12 PM), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

<sup>67</sup> *Id.*

<sup>68</sup> *Constitution of the World Health Organization*, The World Health Organization (October 26, 2017 10:23 PM), <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>.

<sup>69</sup> *Id.*

<sup>70</sup> *The Right to Health*, Office of the United Nations High Commissioner for Human Rights (October 26, 2017 10:25 PM), <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

<sup>71</sup> *Id.* at 4.

Public Works to increase funding for the expansion and improvement of existing public transportation programs.

2. We ask that the Special Rapporteur encourage the Miami-Dade County Department of Transportation and Public Works to introduce long-term transit plans which emphasize equitable access to affordable transportation options and better align with identified transportation deserts and areas of need.
3. We ask that the Special Rapporteur encourage the Miami-Dade County Department of Transportation and Public Works and the Florida Department of Transportation to add transit corridors for MetroRail and TriRail lines in order to better facilitate evacuation during natural disasters.

### **Healthcare Recommendations**

1. We ask that the Special Rapporteur encourage the Florida Legislature to expand Medicaid in Florida to all low-income individuals with incomes at or below 138% of the federal poverty rate.
2. We ask that the Special Rapporteur encourage the United States Congress extend the Children's Insurance program (CHIP), so that children under this coverage do not fall into the uninsured population.
3. We ask that the Special Rapporteur encourage the government to require frequent inspections of nursing homes and mandatory inspections following disasters.
4. We ask that the Special Rapporteur encourage DCF to no longer require that DSNAP applicants make an appearance at distribution centers; if this cannot be done then the DCF should establish some means of transporting DSNAP applicants both to and from distribution centers, and to conduct home visits to those who are unable to travel.
5. We ask that the Special Rapporteur encourage the DCF to operate additional DSNAP distribution centers for longer periods of time following any future disasters.



## **Human Rights at Home: Miami's Housing Crisis and its Perpetuation of Poverty<sup>1</sup>**

### **Submission to the United Nations Special Rapporteur on Extreme Poverty and Human Rights in Preparation for his Official 2017 Visit to the United States**

**October 31, 2017**

#### **I. Introduction**

Legal Services of Greater Miami, Inc. (Legal Services), the Community Justice Project (CJP), and the Miami Law Human Rights Clinic respectfully submit this report to the United Nations Special Rapporteur on Extreme Poverty and Human Rights in advance of his official visit to the United States. Legal Services provides civil legal services for the poor in Miami-Dade County and Monroe County. Legal Services offers advice and representation in individual cases, addresses systemic issues and empowers clients through community education and self-help clinics. We represent clients with legal issues such as evictions, foreclosure, the loss of government benefits, and affordable housing.<sup>2</sup> CJP provides legal support to grassroots community organizers and low-income communities of color on a range of racial justice and human rights issues, including housing, workers' rights, immigrants' rights, and community economic development.<sup>3</sup> The Miami Law Human Rights Clinic works for the promotion of social and economic justice globally and in the U.S. The Clinic uses international human rights laws and norms, domestic law and policy, and multidimensional strategies, such as community organizing, political activism, and global networking, to draw attention to human rights violations, develop practical solutions to those problems, and promote accountability on the part of state and non-state actors.

#### **II. Background**

In South Florida, a lack of affordable housing options limits where many families can live. Families are forced to rent at exorbitant rates, preventing them from being able to save funds and escape poverty's grasp.

Florida law on tenants' rights is unsympathetic to the plight of these families. When facing an eviction for any reason, even if the failure is motivated by the landlord refusing to improve uninhabitable conditions, Florida law requires tenants to deposit the disputed rent into the court registry. If the tenant fails to deposit the rent within 5 days, he/she waives all defenses and loses the case automatically.

---

<sup>1</sup> The following University of Miami School of Law students principally drafted this report under the supervision of Professor Caroline Bettinger-López and in collaboration with Community Justice Project and Legal Services of Greater Miami, Inc.: Asdrubal Alvarenga, Kiana Courtney, and Philip Papiasvili.

<sup>2</sup> Legal Services of Greater Miami, Inc. <http://legalservicesmiami.org>.

<sup>3</sup> Community Justice Project, <http://communityjusticeproject.com/>.

Evictions trap families into poverty. Access to safe, adequate and affordable housing is a basic human need, and a determinative factor in one's ability to exit the cycle of poverty. While this is a widespread problem, communities of color, located in historic neighborhoods like Liberty City, Little Haiti, and West Coconut Grove, are particularly hard-hit by the eviction crisis.

State and local law and governmental policies fail to treat adequate housing as a human right. Although the right to housing is not guaranteed under United States law, it is an internationally-recognized human right. This report focuses on some of the benchmarks of that right, including affordability, habitability, and availability.

### III. Tenants lack affordable housing options

#### A. *Housing is Disproportionately Unaffordable in Miami*

Florida ranks as one of the bottom five states in the country for affordable housing. The National Low Income Housing Coalition found that the average U.S. household must earn at least \$15.46 per hour nationally and \$20.46 in Florida to afford an adequate two-bedroom rental while still meeting basic subsistence needs.<sup>4</sup> However, the current Florida minimum wage is barely half of that rate—\$8.10.<sup>5</sup>

The housing situation in Miami is even more dire. Not only does Miami have the second-worst income and poverty level in America, but its residents also spend the nation's highest share of their income on rent.<sup>6</sup> This income disparity especially affects women, who make up the majority of minimum wage workers and tend to be the sole wage earner in single-parent families.<sup>7</sup> The average monthly cost for a single adult in Miami-Dade County to obtain the most basic amenities for living (housing, food, transportation, health care, and taxes, with a small amount allocated for miscellaneous expenses) is \$1,874.<sup>8</sup> Similar expenses for a family of four in Miami-Dade County average \$4,730 a month. This leaves 21% of the households in Miami-Dade County below the poverty line and 55% to 61% of households below the basic household survival line.<sup>9</sup>

This is especially true for populations of color, who make up a disproportionately larger share of households (17% below the poverty level and 41% below the household survival level).

---

<sup>4</sup> National Low Income Housing Coalition, "Out of Reach 2017: Florida," <http://nlihc.org/oor/florida>.

<sup>5</sup> Department of Labor, Wage and Hour Division, "Minimum Wage Laws in the States – September 30, 2017: Florida Minimum Wage Rates," <https://www.dol.gov/whd/minwage/america.htm> - Florida.

<sup>6</sup> Jerry Iannelli, "Five Stories That Show Wages in Miami Are Far Too Low," *Miami New Times* (Sept. 24, 2017), <http://www.miaminewtimes.com/news/five-stories-that-show-miami-wages-are-too-low-9692642>.

<sup>7</sup> Mayra Gomez & Bret Thiele, "Housing Rights Are Human Rights," *American Bar Association Human Rights Magazine* Vol. 32, No. 2 (Summer 2005), [https://www.americanbar.org/publications/human\\_rights\\_magazine\\_home/human\\_rights\\_vol32\\_2005/summer2005/hr\\_summer05\\_housing.html](https://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol32_2005/summer2005/hr_summer05_housing.html).

<sup>8</sup> This data is based on the ALICE Threshold. The ALICE Threshold is the average income that a household needs to afford the basic necessities in Florida, adjusted for different counties and household types. This figure highlights the people who, while not poor per the federal Poverty Level Index, nonetheless are consistently on the precipice of falling into poverty.

<sup>9</sup> *Id.*

Moreover, the economic trends in Florida do not bode well for those who fall into this category, as low-wage jobs (which are primarily filled by people of color) are expected to grow faster than high-wage jobs.<sup>10</sup> According to Zillow, Black residents in Miami spend about 58.2% of their income on rent, compared to the national average of 43.7%; Hispanic residents spend 55.1% of their income on rent, in comparison to 48.1% nationally; and white residents in Miami spend about 41.7% of their income on rent.<sup>11</sup> Almost 75% of the Black and Latino populations in Miami do not have enough savings to cover basic expenses for three months.<sup>12</sup>

In addition, the number of people on waitlists for subsidized housing in Miami illustrates the magnitude of unmet need. These residents who qualify for subsidized housing but who cannot access it are forced to live in unsubsidized private housing, often in substandard conditions, because that is the only kind of housing that is affordable to them. As described in Section IV below, landlord-tenant laws in Florida make these tenants even more vulnerable.<sup>13</sup>

#### *B. Florida's Rent Deposit Statute Perpetuates Poverty by Placing Barriers to Tenants' Ability to Defend Against Evictions*

Florida laws make it difficult for tenants to defend themselves in eviction cases, and do not hold landlords accountable for failing to maintain safe and habitable conditions in their rental units. One particularly egregious example is Florida's rent deposit statute, § 83.60, which often allows landlords to evict their tenants without having to go to court.

Florida Statute § 83.60 states that when a landlord files a complaint seeking to evict a tenant, the tenant will be evicted by default if the tenant fails to do one of three things within five days after service of the complaint: (1) file an answer alleging payment as a defense, (2) deposit with the court all of the past due rent the landlord demanded in the complaint and any rent that comes due during the case, or (3) if the tenant disagrees with the amount of rent demanded by the landlord, file a motion asking the court to determine the amount of rent to deposit. If the tenant does not take one of these steps, the landlord wins automatically and the tenant waives all defenses. Trial courts have been unforgiving if tenants do not follow the statute to the letter.<sup>14</sup> Even if the conditions of the dwelling are uninhabitable (an independent violation of Florida law),<sup>15</sup> the tenant must give the landlord written notice that he/she will be withholding rent to later raise it as a defense in an eviction.

---

<sup>10</sup> Bustamante, Ali R. *State of Working Florida 2017*. Miami: Florida International University Center for Labor Research and Studies, 2017, <https://rise.fiu.edu/state-of-working-florida/state-or-working-florida-2017.pdf>.

<sup>11</sup> Katherine Kallergis, Miamians spend up to 58% of income on rent in minority neighborhoods: report, *The Real Deal*, <https://therealdeal.com/miami/2017/03/31/miamians-spend-more-of-their-incomes-on-rent-in-minority-neighborhoods-report/>.

<sup>12</sup> Jerry Iannelli, "Five Stories That Show Wages in Miami Are Far Too Low," *Miami Herald* (Sept. 24, 2017) <http://www.miaminewtimes.com/news/five-stories-that-show-miami-wages-are-too-low-9692642> (Based on a study by the Corporation for Enterprise Development).

<sup>13</sup> Miami Dade County: Public Housing and Community Development, "2014 Public Housing Waiting List," <http://www.miamidade.gov/housing/library/reports/waiting-list-2014-public-housing.pdf>.

<sup>14</sup> *Stephens-Williams v. Johnson*, 181 So.3d 577 (Fla. 4th DCA 2016).

<sup>15</sup> Fla. Stat. § 83.51 (2017).

While reviewing eviction data from June 2017 (reflected in Appendices C(1) and C(2)), Legal Services came across an instance where a tenant, owing three months of rent totaling \$4,200, filed a motion to determine rent. The tenant complained that there was bacteria from water leaks, mold, no hot water and problems with the toilet—all issues that the landlord failed to fix after promising to do so. The landlord’s attorney stated that the tenant did not deposit the requested amount into the registry and did not properly notify the landlord of the decision to withhold rent based on unsuitable conditions. The court ignored the allegations of the uninhabitable living conditions, and entered a default eviction judgment against the tenant simply because the tenant failed to deposit the amount into the registry. This case is one example of how Florida’s rent deposit statute negatively impacts low-income people’s ability to defend themselves: even if a tenant has a sudden financial hardship to overcome or alleges legitimate concerns about housing conditions, that tenant must deposit all of the unpaid rent into the court to even have the dispute heard. If tenants are too poor to deposit the rent, they may not get their day in court.

Even when a tenant deposits their rent to the court in a timely fashion, default judgment may still be entered against them. An example of this is the case of *De’Andre Deal*.<sup>16</sup> In Mr. Deal’s case, he deposited his rent late, but in full. The court evicted him by default because he did not deposit his rent with the court on the first day of each month.<sup>17</sup>

The Florida Legislature enacted this rent deposit statute to prevent tenants from raising frivolous defenses to an eviction, and to protect landlords from the possibility of losing rent during a protracted legal process.<sup>18</sup> Yet, Mr. Deal was not trying to live rent free. When his landlord filed the Motion for Default, he immediately deposited all missing rent into the court registry. Despite all rent being in the court registry, the trial court still entered a default judgment in favor of his landlord.

Some courts have said the statute gives little to no discretion regarding default judgment, regardless of how reasonable the tenant’s reason for nonpayment may be, or how much an effort to comply was made.<sup>19</sup> Yet, some courts have said trial courts have gone too far when entering default judgments against tenants. The “rubber stamp” of default judgments by trial courts has often led to appellate courts reversing trial courts that enter final judgment while a motion to determine rent is pending,<sup>20</sup> as well as reversing the decisions of trial courts that are too hasty or careless in their denial of a hearing.<sup>21</sup>

Florida’s rent deposit statute prevents most tenants from presenting their defenses in eviction proceedings. This creates an uneven playing field in courts, as there seems to be little scrutiny of

---

<sup>16</sup> *Brief of Appellant, Deal v. Miami Property Group, LTD.*, No. 15-113-AP (Fla. 11th DCA Oct. 26, 2015)

<sup>17</sup> *Id.*

<sup>18</sup> Florida Law Revision Council, Report and Recommendation on Florida Landlord Tenant Law, March 1973, pg. 25.

<sup>19</sup> *Stephens-Williams v. Johnson*, 181 So.3d 577 (Fla. 4th DCA 2016).

<sup>20</sup> *Lonergan v. Brannon*, 17 Fla. L. Weekly Supp. 171c (Fla. 9th Cir. App. Ct., Orange Cty. 2010); *Kendrick v. Corser*, 19 Fla. L. Weekly Supp. 72a (Fla. 11th Cir. App. Ct., Miami-Dade Cty., 2011); *Lawren v. Hialeah Housing Authority*, 20 Fla. L. Weekly Supp. 863a (Fla. 11th Cir. App. Ct. Miami-Dade Cty. 2013); *Fagan v. New Hope Dream Team Charity*, 24 Fla. L. Weekly Supp. 925a (Fla. 11th Cir. App. Ct., Miami-Dade Cty. 2017).

<sup>21</sup> *Gillespie v. Figueredo*, 22 Fla. L. Weekly Supp. 690a (Fla. 13th Cir. App. Ct., Hillsborough Cty., 2014).

the merits of landlords' evictions claims. Based on data gathered by Legal Services and CJP covering a week in the month of June 2017 (reflected in Appendices C(1) and C(2)), of 415 people facing eviction orders, only 20 were able to deposit rent into the court registry. In other words, 95% of the tenants were legally unable to raise any defenses in court. To make matters worse, only three of those 20 tenants had a lawyer, leaving many without defenses or an attorney.

The added financial obligation to post rent can be particularly harmful for people whose finances are already strained, thus worsening their prospects for escaping the cycle of poverty. Based on the eviction data in Table 1, many of the cases involve housing in low-income communities of color, like Little Haiti, Liberty City, and Opa-Locka.<sup>22</sup> The negative impacts of the rent deposit statute thus fall more heavily on individuals of color.

#### **IV. Tenants face substandard housing conditions in Miami**

##### *A. Low-income households tend to be pushed into less habitable conditions*

The decrepit and substandard conditions of Miami's low-income housing stock add another dimension to Miami's housing crisis, causing potentially detrimental impacts to residents' health and personal security. A virtual failure to enforce habitability standards has left tenants seeking lower rents with no other options but to rent from slumlords who systematically fail to maintain premises in safe, adequate conditions.

Adequate housing must be habitable, according to the UN Office of the High Commissioner for Human Rights (OHCHR) and UN Habitat.<sup>23</sup> Under their definition of "adequate housing," inhabitants must have adequate space and protection from "cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors."<sup>24</sup> The physical safety of occupants must also be guaranteed.<sup>25</sup>

Under Florida Statute § 83.51 (*see* Appendix B for applicable laws), landlords must maintain habitable premises. This includes: (1) maintaining the roof, windows, doors, floors, steps, porches, exterior walls, foundations, and ensuring that all other structural components are in good repair and capable of resisting normal forces and loads, (2) maintaining the plumbing in reasonable working condition, (3) ensuring that the screens are installed in a reasonable condition and repairing damage, and (4) making reasonable provisions for the extermination of rodents, ants, roaches, wood-destroying organisms, and bedbugs, and abating rent for the period the tenant needs to vacate from uninhabitable premises. The landlord must also provide a lock

---

<sup>22</sup> Sean McCaughan, "Check Out These Fascinating Maps of Miami's Racial Mixup," *Curbed Miami* (September 3, 2013) <https://miami.curbed.com/2013/9/3/10202260/check-out-these-fascinating-maps-of-miamis-racial-mixup> (Based on a comparison to a 2013 map from the Weldon Cooper Center for Public Service at the University of Virginia).

<sup>23</sup> UN Habitat, Right to Adequate Housing: Fact Sheet 21, Rev. 1, [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf).

<sup>24</sup> UN Habitat, Right to Adequate Housing: Fact Sheet 21, Rev. 1, [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf).

<sup>25</sup> UN Habitat, Right to Adequate Housing: Fact Sheet 21, Rev. 1, [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf).

and keys, clean and safe conditions in the common areas, outside garbage receptacles and removal, smoke detection devices, and functioning facilities for heat, running water, and hot water (however, landlords renting single family homes to tenants are legally entitled to remove some of these obligations in the lease agreement). In addition to these provisions, the landlord must follow all health and building codes. When landlords and other property owners violate local laws, state and local code enforcement can cite the property owner. Court action can be initiated against the landlords. In practice, however, this rarely happens.

The primary remedy available to tenants challenging the habitability of their units is to withhold rent. However, as mentioned above, the burden is placed on the tenant to tell their landlord of their plans to withhold rent with 7 days' written notice, to give landlords opportunity to make repairs. The landlord, instead of remedying the issues that make the housing uninhabitable, can choose to file an eviction for non-payment of rent, which then triggers the rent deposit statute described above, and place an additional burden on the tenant to pay what the landlord claims is due into the court registry before being able to challenge the eviction. Having an eviction filed against a tenant can make it difficult for the tenant to find housing in the future, even if the eviction is eventually dismissed or the court rules for the tenant. If the landlord successfully evicts the tenant, they can continue to rent the property without making adequate repairs, thus subjecting the next tenant to ongoing habitability issues.

In one case, CJP and Legal Services represented the low-income tenants of a complex in Liberty City.<sup>26</sup> Residents told state inspectors they paid \$500 to \$650 a month for rent in these buildings.<sup>27</sup> The court ordered the owners—slumlords, who effectively left the building in disrepair for years, to make repairs to the building. Some tenants reported to the *Miami Herald* that the repairs made were only cosmetic, despite the demand for adequate repairs based on the shoddy plumbing, leaking sewage, pest infestations, and illegally-wired rooms. Other properties owned by the same landlords were found to have mold and mildew. However, because the overall repairs were significant and would take a substantial amount of time and money to remedy, tenants continued to live in the building despite the inadequate repairs.

### *B. Hurricane Irma has exacerbated the existing housing crisis*

Trends concerning access to housing have disfavored tenants in recent years. For example, in the Wynwood neighborhood near downtown Miami, the number of single-family homes rented by low- to middle-income households dropped from 38 percent to 20 percent

---

<sup>26</sup> David Smiley, "Politicians say Miami 'slums' prove need for new laws," *Miami Herald*, (Jan. 23, 2016), <http://www.miamiherald.com/news/local/community/miami-dade/article56201600.html>; see also, Laura Rodriguez, "Deplorable conditions in Coconut Grove Apartments," NBC Miami 6, <https://www.nbcmiami.com/news/local/Residents-of-Derelict-Coconut-Grove-Building-Facing-Homelessness-391366311.html> (Video depicting housing conditions in West Coconut Grove).

<sup>27</sup>David Smiley, "Politicians say Miami 'slums' prove need for new laws," *Miami Herald*, (Jan. 23, 2016), <http://www.miamiherald.com/news/local/community/miami-dade/article56201600.html>.

between 2000 and 2015.<sup>28</sup> Less than 4% of two-bedroom units in Miami are listed below \$1,295,<sup>29</sup> the fair market rent for Miami-Dade County in 2017 as determined by HUD.<sup>30</sup>

Additionally, because South Florida's climate renders it particularly susceptible to hurricanes and tropical storms, housing that can withstand these conditions must also factor into habitability determinations. In 1992, Hurricane Andrew destroyed about 90% of the mobile homes in Dade County, according to the National Centers for Environmental Protection.<sup>31</sup> As a result, the U.S. Department of Housing and Urban Development introduced laws requiring trailers in Florida to withstand hurricane force (at least 100 mile-per-hour) winds. However, because the new guidelines did not apply to existing trailers, the vast majority of Florida's mobile homes do not meet this new standard. According to the Manufactured Housing Institute, Florida has approximately 828,000 mobile homes—more than any other state—and about 600,000 of these were not constructed to withstand hurricane-force winds. At the same time, about half of Florida's mobile homes are uninsured, according to the Florida Manufactured Housing Association. This places a significant population, a substantial portion of whom are low-income residents, at an increased risk during hurricane season.

Hurricane Irma made landfall in South Florida on September 10, 2017, making the already-dire situation even worse. Florida has no policy governing late rental payments or evictions in the aftermath of a storm. During Hurricane Irma, many tenants used money that would normally go towards rent to prepare for the hurricane or evacuate. In addition to this, many people lost wages from not working, making it difficult to pay October's rent. A lack of a policy addressing particularly exigent circumstances leaves Florida's Rent Deposit Statute controlling, even during times of emergency.

On top of the possibility of landlords abusing the lack of protection provided tenants by the state, landlords have been slow to fix housing that has been rendered uninhabitable. Liliana Caminero, a 54-year-old nurse who lived in a second-floor apartment in Miami that suffered extensive roof damage in the storm, was forced to find another rental due to the damage to her roof, and the black mildew that covered the inside of the apartment. The landlord, she said, hadn't done anything to remedy the situation.<sup>32</sup> This is a common situation in post-Irma Miami, where many tenants have been forced to either attempt to live in uninhabitable conditions, or attempt to look for new rentals elsewhere – with no aid.

---

<sup>28</sup> Katherine Kallergis, "Miamians spend up to 58% of income on rent in minority neighborhoods: report," *The Real Deal*, <https://therealdeal.com/miami/2017/03/31/miamians-spend-more-of-their-incomes-on-rent-in-minority-neighborhoods-report/>.

<sup>29</sup> Katherine Kallergis, "Federal housing vouchers fail to keep up with the rising rents: report" *The Real Deal* (Oct. 16, 2017), <https://therealdeal.com/miami/2017/10/16/federal-housing-vouchers-fail-to-keep-up-with-rising-rents-report/>.

<sup>30</sup> Housing and Urban Development, "FY 2017 Fair Market Rent Documentation System" [https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2017\\_code/2017summary.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2017_code/2017summary.odn)

<sup>31</sup> Danielle Paquette, "Florida Has 828,000 Homes. Less Than a Third Were Built to Survive a Hurricane," *The Washington Post* (Sept. 12, 2017) [https://www.washingtonpost.com/news/wonk/wp/2017/09/12/florida-has-828000-mobile-homes-only-half-are-insured/?utm\\_term=.72cd7df2dc2d](https://www.washingtonpost.com/news/wonk/wp/2017/09/12/florida-has-828000-mobile-homes-only-half-are-insured/?utm_term=.72cd7df2dc2d).

<sup>32</sup> "Renters Find Extra Hurdles to Recovery After Hurricanes," (Oct. 13, 2017) <http://www.miamiherald.com/news/business/article178627841.html>.

## **V. International Perspective**

Several internationally-recognized human rights are implicated by Miami's housing crisis, including: Article 11(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (right to housing), and Article 25(1) of the Universal Declaration of Human Rights (UDHR) (right to an adequate standard of living, including housing).

## **VI. Recommended Questions**

1. How do the laws of Florida, and especially Florida's Rent Deposit Statute (§ 83.60), prevent tenants from raising habitability claims in their evictions, thereby denying tenants the right to adequate housing?
2. How can we use data models in policy-making to track landlords and municipalities that fail to address issues of unaffordable and uninhabitable housing?

## **VII. Appendices**

- A. Suggested Recommendations
- B. Relevant Florida Statutes
- C. Data
  1. Tabulations of Evictions Data Collected by Legal Services and CJP in June 2017
  2. Mapping of Data Described in Appendix C(1)

## Appendix A

### Suggested Recommendations

The following recommendations are submitted on behalf of CJP and the Miami Law Human Rights Clinic.<sup>33</sup>

1. To keep rents affordable while addressing habitability issues in the current housing stock, the Affordable Housing Trust Funds in City of Miami and Miami-Dade County should be better funded, include community input on allocation decisions, and contribute funds that could be used to rehabilitate decrepit housing subject to a covenant to keep rents affordable to extremely low and very low-income families.
2. The Florida Statute § 83.60 should be revised in accordance with a proposal by State Senator Jose Javier Rodriguez and State Representative Cynthia Stafford during last year's legislative session. This proposal creates a 30-day window of time for a trial to be held and only triggers the rent deposit requirement if the tenant requests a continuance beyond the 30-day period.
3. There should be other ways to hold landlords accountable for uninhabitable conditions.
  - a. Landlords should all register into a database. This would create a track record of the landlord's properties and actions to show if there is a pattern of unlawful or egregious behavior by landlords. Furthermore, local governments could use this data to create tools and technology that map this with census tract maps to monitor when there are other federal housing violations.
  - b. Miami should look to New York on creating equity in eviction cases. New York City recently became the first city in the nation to sign a law that guarantees the right to counsel in housing cases. The law guarantees legal representation to any resident facing eviction whose income is 200 percent of the poverty level or less.<sup>34</sup>

---

<sup>33</sup> Legal Services of Greater Miami, Inc., as a recipient of funds from the Legal Services Corporation, does not join in the policy recommendations.

<sup>34</sup> Kriston Capps, "New York Guarantees a Lawyer to Every Resident Facing Eviction" *The City Lab*, (Aug. 14, 2017) <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.

## Appendix B

### Relevant Statutes

#### **Florida Statute § 83.51 Landlord's obligation to maintain premises.**

(1) The landlord at all times during the tenancy shall:

- (a) Comply with the requirements of applicable building, housing, and health codes; or
- (b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. The landlord, at commencement of the tenancy, must ensure that screens are installed in a reasonable condition. Thereafter, the landlord must repair damage to screens once annually, when necessary, until termination of the rental agreement.

The landlord is not required to maintain a mobile home or other structure owned by the tenant. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

- 1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord is not liable for damages but shall abate the rent. The tenant must temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.
- 2. Locks and keys.
- 3. The clean and safe condition of common areas.
- 4. Garbage removal and outside receptacles therefor.
- 5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

**Florida Statute § 83.60 Defenses to action for rent or possession; procedure.**

(1)(a) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1), or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accordance with s. 83.64. The landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.

(b) The defense of a material noncompliance with s. 83.51(1) may be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. Such notice by the tenant may be given to the landlord, the landlord's representative as designated pursuant to s. 83.50, a resident manager, or the person or entity who collects the rent on behalf of the landlord. A material noncompliance with s. 83.51(1) by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with s.83.51(1). After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, including, but not limited to, the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. If a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies are required to deposit only that portion of the full rent for which they are responsible pursuant to the federal, state, or local program in which they are participating.

**Appendix C(1)**

**Tabulations of Evictions Data Collected by Legal Services and CJP in June 2017**

**Evictions in Miami-Dade – June 19-23, 2017**

Was an answer filed?	Freq.	Percent	Cum.
No	295	71.08	71.08
Yes	120	28.92	100.00
<b>Total</b>	<b>415</b>	<b>100.00</b>	

Was a motion to determine rent filed?	Freq.	Percent	Cum.
No	385	92.77	92.77
Yes	30	7.23	100.00
<b>Total</b>	<b>415</b>	<b>100.00</b>	

Was rent deposited?	Freq.	Percent	Cum.
No	395	95.18	95.18
Yes	20	4.82	100.00
<b>Total</b>	<b>415</b>	<b>100.00</b>	

Is the T   rep'd by an   attorney?	Freq.	Percent	Cum.
No	401	97.57	97.57
Yes	10	2.43	100.00
Total	411	100.00	

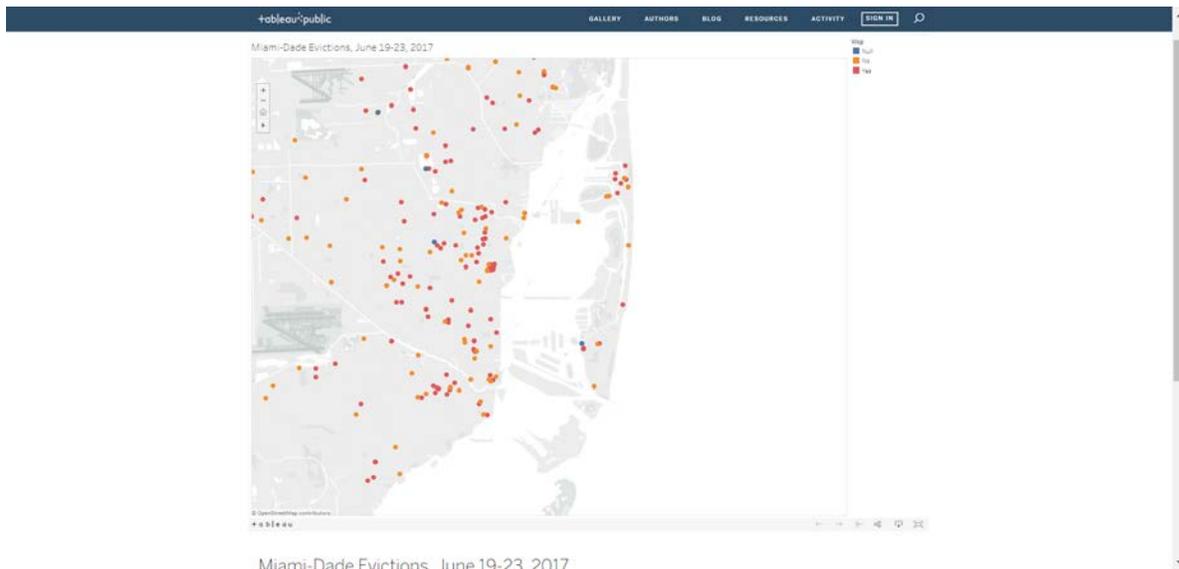
Has a writ   of   possession   been   issued?	Freq.	Percent	Cum.
No	187	45.95	45.95
Yes	220	54.05	100.00
Total	407	100.00	

Was Final   Judgment   Entered?	Freq.	Percent	Cum.
No	152	37.35	37.35
Yes	255	62.65	100.00
Total	407	100.00	

**Appendix C(2)**

**Mapping of Data Described in Appendix C(1)**

## Mapping of Data Described in Appendix C(1)



<https://public.tableau.com/profile/ellen.degnan#!/vizhome/Miami-DadeEvictionsJune19-232017/Sheet1>

The above map depicts the eviction data. The link is to the interactive version of the map that depicts what homes. As mentioned in Footnote 22 (referencing maps of Miami's racial composition), the data clusters are in communities of color.