



Violations of Civil and Political Rights in the United States Stemming from Hunger, Malnutrition, and Violations of the Right to Food¹

Shadow Report Submission to the Human Rights Committee For the United States Review

Submitted² on September 12, 2023, and coordinated by:

University of Miami School of Law Human Rights Clinic

Denisse Córdova Montes, *Acting Associate Director*

Photini Kamvisseli Suarez, *Student Fellow*

Lily Arslanian, *Student Intern*

Kristina Bergman, *Student Intern*

Zoe Henderson, *Student Intern*

1311 Miller Drive, Coral Gables, FL 33146

www.law.miami.edu/hrc | 305-284-2939 | dcordova@law.miami.edu

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I. Executive Summary

1. Violations of the right to food should be construed as violations of the right to life under the International Covenant on Civil and Political Rights (“ICCPR”). This Committee’s General Comment No. 36 on the Right to Life explains that positive measures “to address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions.” Widespread and ongoing human right to food violations in the United States (“U.S.”) lead to violations of the right to life as well as multiple other rights enshrined in the ICCPR.
2. The U.S. has failed to protect children, particularly children who are racial minorities, from violations of the rights to life, non-discrimination, and protection by their status as a minor stemming from violations of their right to food. Children are especially vulnerable to harms associated with hunger and malnutrition. Many children in the U.S. depend on school resources to access meals. When these programs fail them, these children are left hungry with severe repercussions on their health and long-term wellbeing. Hunger in children has been linked to bad behavior in school, which fuel the school-to-prison pipeline for children from communities that have been historically discriminated. The U.S. has the opportunity to provide universal free school lunches. However, they have failed to take this essential step in providing school children with the food they need to perform their role as students. These failures constitute violations of articles 2, 6, and 24 of the ICCPR.
3. Our food labor systems depend on the essential work of Black, Indigenous, and immigrant communities, yet these groups also suffer the highest rates of food insecurity in the U.S. They are also often excluded from worker protections, including the right to form trade unions, available to employees in other labor fields. Agricultural workers, particularly those who are immigrant and undocumented, face egregious labor law violations due to their undocumented status and the lack of protection available to them. These abuses are exacerbated by gender discrimination. Female laborers in the food system face harassment that often goes unprevented and unaddressed. Additionally, female farmworkers are more likely to be placed in lower paying and dangerous jobs that lead to higher levels of pesticide exposure, which is particularly harmful to pregnant women. These acts violate articles 2, 3, 6, 21, 22, and 26 of the ICCPR.
4. The U.S. food system relies heavily on the extremely cheap labor of incarcerated people. Both state and private entities, including major corporate food chains, profit off of this labor. In the U.S., mass incarceration disproportionately affects Black Americans and other people of color, who are therefore more likely to be exploited by prison labor

systems and made essential in a food system whose benefits they are later excluded from. This system violates articles 6, 7, 10, and 21 of the ICCPR.

5. Infant mortality rates for children with incarcerated mothers are twice the rate of children whose mothers are not incarcerated. This is because the U.S. has failed to address the widespread issue of inadequate postpartum care for women in prisons. When infants are deprived of their mothers' breastmilk, they lose the vital nutritional and immune benefits that come with it, putting their health at risk. The U.S.'s inaction in addressing this issue violates articles 2, 3, 6, 7, 10, 24, and 26 of the ICCPR.
6. Government assistance and charitable programs are failing to address hunger in the U.S. Their regulations, requirements, and the arduous application process often create barriers for families who need food assistance. Additionally, the food available through these programs often fails to meet nutritional needs because benefit calculations are made on the basis of the cheapest food available. Because Black, Indigenous, and People of Color ("BIPOC") communities make up the majority of these recipients, they are disproportionately impacted by the failure of these systems to accurately address hunger. These failures violate articles 2, 3, 6, and 26 of the ICCPR.
7. The U.S. is failing to address the widespread criminalization of homelessness, including through the weaponization of food. In 2020, the City of Miami passed a large group feeding ordinance banning food providers from feeding groups of 25 people or more without a permit and limiting these feedings to take place in five inconveniently designated locations. Anti-camping bans and other criminalization policies that target people experiencing homelessness only exacerbate the problem and violate articles 6, 7, 21, and 22 of the ICCPR.
8. Food is life sustaining, and fulfillment of the right to food is necessary for a dignified life. By failing to address food insecurity and allowing for repeated right to food violations, the U.S. is allowing for other human rights violations and failing in its obligations to protect, respect, and fulfill the rights enshrined in the ICCPR.
9. These violations are disproportionately harming protected and vulnerable groups in the U.S., including racial and ethnic minorities, women and children, people experiencing homelessness, and lower income communities. As of 2022, the U.S. has received recommendations from the Committee on the Elimination of Racial Discrimination (CERD) to take positive action aimed at fulfilling the human right to adequate food and combatting food insecurity, with a particular focus on racial and ethnic minorities and women and children who bear the most impacts from the U.S.'s inaction.
10. To avoid continued human rights violations and address food insecurity and hunger, the U.S. should allow for its food systems to be controlled by the people, avoiding the exploitative nature of the current food systems, which disproportionately affects

vulnerable groups and communities. The U.S. should also ensure that all people have economic and physical access to food that is adequate and nutritious, by improving labor and wage protections for all workers and making healthy food more accessible to all people. The U.S. should also ensure that it is prioritizing environment sustainability in the food system and should hold accountable the corporate food system entities that have caused permanent harm to the environment. Finally, the U.S. should ratify the ICESCR, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC), and should fulfill its duty to uphold the ICCPR and the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD.)

II. Introduction

11. This Shadow Report is submitted for the fifth periodic review of the United States (“U.S.”) by the Human Rights Committee (“Committee”). The report provides data, research, and analysis on U.S. laws and practices and their impact on hunger and food insecurity of historically marginalized groups in the U.S., including poor Black, Indigenous, and Latinx communities, in violation of the International Covenant on Civil and Political Rights (“ICCPR”).
12. The right to be free from hunger is absolute and is the only right qualified as “fundamental” in both the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”).³ This Committee’s General Comment No. 36 on the Right to Life explains that “[t]he duty to protect life also implies that States Parties should take appropriate measures to address the general conditions in society that may eventually give rise to direct threats to life or prevent individuals from enjoying their life with dignity.”⁴ This Committee further clarified that “widespread hunger and malnutrition” are conditions that may give rise to direct threats to life and thus should be construed as violations of the right to life under the ICCPR.⁵ In addition, General Comment No. 36 of the Human Rights Committee also states that positive measures “to

³ International Covenant on Economic, Social, and Cultural Rights art. 11, §2, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]. The ICCPR implies a right to food as part of the fundamental right to life found in Article 6. *See* U.N. FAO, *Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, Implications of the Voluntary Guidelines for Parties and Non-Parties to the International Covenant on Economic, Social and Cultural Rights*, available at <http://www.fao.org/docrep/meeting/007/j1632e.htm> (last visited Sept. 1, 2023); *see also* Hum. Rts. Comm., *General Comment 6*, at 6, U.N. Doc. HRI/GEN/1/Rev.1 (July 29, 1984) [hereinafter HRC General Comment No. 6] (“The protection of [the right to life] requires that States adopt positive measures ... [T]he Committee considers that it would be desirable for States Parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”).

⁴ Hum. Rts. Comm., *General Comment No. 36: Article 6 (Right to Life)*, ¶30, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018) [hereinafter HRC General Comment No. 36].

⁵ *Id.*

address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions.”⁶ It should be further noted that in its prior reviews of the U.S., the Human Rights Committee expressed concern for the criminalization of people experiencing homelessness for partaking in life sustaining activities such as eating, and “note[d] that such criminalization raises concern of discrimination and cruel, inhuman or degrading treatment.”⁷

13. The right to food remains overlooked in many aspects, given the fact that it is not enshrined in U.S. law.⁸ While the U.S. has taken some commendable steps to address the concerns of the Committee, as outlined in their state report to this Committee, there is no mention of food insecurity and actions taken to combat it in the state report.⁹ In fact, in its state report, the U.S. explicitly rejects the notion that its obligations to protect the right to life extend to addressing conditions in society that might threaten life.¹⁰ However, the U.S. Department of Agriculture (“USDA”) Secretary Tom Vilsack recently stated that “[t]he COVID-19 pandemic brought food insecurity to the forefront of the national conversation and shined a new light on the devastating toll of chronic disease, with an estimated two-thirds of COVID hospitalizations in the U.S. related to diet-related diseases,” said the USDA Secretary, Tom Vilsack.¹¹ “Across the [D]epartment we recognize that food and health are inherently intertwined, and we’re leaning into our powerful tools to help reduce chronic disease, advance equity and promote overall well-being. We look forward to working with our stakeholders to achieve this vision.”¹² Yet, in the U.S. today, over 38 million people continue to experience food insecurity, or lack of access to an affordable, nutritious diet.¹³ In anticipation of the 2022 White House conference on Hunger, Nutrition, and Health, the Biden-Harris administration stated:

Millions of Americans are affected by food insecurity and diet-related diseases — including heart disease, obesity, and type 2 diabetes — which are some of the

⁶ *Id.* at ¶. 26.

⁷ Hum. Rts. Comm., *Concluding observations on the fourth periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/CO/4, (Apr. 23, 2014) [hereinafter HRC Concluding Observations: United States].

⁸ See Alison Cohen and Denisse Cordova Montes, *Freedom From Want: Advocating for the Right to Food in the United States*, WHY HUNGER: BLOG (Jan. 26, 2021), <https://whyhunger.org/freedom-from-want-advocating-for-the-right-to-food-in-the-united-states/blog/>.

⁹ Hum. Rts. Comm., *Fifth periodic report submitted by the United States of America under article 40 of the Convention pursuant to the optional reporting procedure, due in 2020*, U.N. Doc. CCPR/C/USA/5, (Nov. 11, 2021), [hereinafter HRC USA State Report] (“The United States does not believe that a State’s obligation under Article 6 of the Covenant to protect the right to life by law would extend to addressing general conditions in society or nature that may or may not eventually threaten life or prevent individuals from enjoying an adequate standard of living.”).

¹⁰ *Id.*

¹¹ Press Release, U.S. Department of Agriculture, *USDA Announces Actions on Nutritional Security*, (Mar. 17, 2022), <https://www.fns.usda.gov/news-item/usda-0062.22>.

¹² *Id.*

¹³ Food Rsch. & Action Ctr., *Hunger and Poverty in America*, <https://frac.org/hunger-poverty-america> (last visited Apr. 17, 2022).

*leading causes of death and disability in the U.S. The toll of hunger and these diseases is not distributed equally, disproportionately impacting underserved communities, including communities of color, people living in rural areas, people with disabilities, older adults, LGBTQI+ people, military families, and military veterans. Lack of access to healthy, safe, and affordable food, and to safe outdoor spaces, contributes to hunger, diet-related diseases, and health disparities. The COVID-19 pandemic has exacerbated these challenges further. We cannot wait to act. And we aren't.*¹⁴

14. In 2022, in light of persistent and widespread hunger and food insecurity in the U.S., especially amongst groups that have historically faced discrimination, the Committee on the Elimination of Racial Discrimination (CERD) recommended that the U.S. “take all measures necessary to guarantee the right to adequate food and to strengthen its efforts to combat hunger and food insecurity, which disproportionately affects racial and ethnic minorities, and especially women and children, including by strengthening the institutional framework and adopting a comprehensive and rights-based national plan to end hunger.”¹⁵
15. Similarly, the Report of the Working Group of Experts of People of African Descent (“Working Group”) on its mission to the U.S. also noted that Black Americans had limited access to food variety, including to healthy food, as they were concentrated in poor neighborhoods with food outlets selling unhealthy and expired food.¹⁶ The Working Group further noted a series of maps showing high concentrations of Black American families in low-income neighborhoods and districts.¹⁷ This reflected the correlation between racial segregation and socioeconomic disparities in access to adequate food between the Black American population and the White population.¹⁸
16. This submission provides data, research, and analysis on hunger and food insecurity as a violation of the right to life and related rights, including the right to non-discrimination, the right to liberty and security of person, the prohibition of torture and cruel, inhumane or degrading treatment or punishment, the treatment of persons deprived of their liberty, excessive use of force by law enforcement agents, the right to an effective remedy, the right to freedom of assembly and association, and the right to self-determination. We thank the Committee for the opportunity to share this information and its consideration of our recommendations to address these serious violations.

¹⁴ *White House Conference on Hunger, Nutrition, and Health: Ending Hunger and Reducing Diet-related Diseases and Disparities*, U.S. DEP'T. OF HEALTH HUM. SERV. (July 24, 2023),

<https://health.gov/our-work/nutrition-physical-activity/white-house-conference-hunger-nutrition-and-health>.

¹⁵ Comm. on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/10-12, (Sept. 21, 2022) [hereinafter “CERD Concluding Observations”].

¹⁶ Hum. Rts. Council, *Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*, ¶ 14, U.N. Doc. A/HRC/33/61/Add.2, (2016) [hereinafter “Working Group on People of African Descent”].

¹⁷ *Id.* at ¶ 50.

¹⁸ *Id.*

III. The U.S. Has Obligations to Realize the Human Right to Food Under International Law

17. The human right to food is firmly established in international law.¹⁹ Article 25 of the 1948 Universal Declaration of Human Rights (“UDHR”) considers the right to food in the context of the right to an adequate standard of living.²⁰ As a stand-alone right, the right to food is most prominently recognized in Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR),²¹ which the U.S. has signed but not ratified. Through this commitment, the U.S. must “refrain . . . from acts that would defeat the object and purpose of the treaty.”²² In 1999, the UN Committee on Economic, Social and Cultural Rights (CESCR) further defined this right in General Comment 12 (GC 12): The Right to Adequate Food. Per GC 12, paragraph 6, “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”²³ The former Special Rapporteur on the Right to Food, Jean Ziegler, stated that “the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.”²⁴ There are four main components of the right to food provided by GC 12: accessibility (food must be both economically and physically accessible), availability (food must be available through either one’s land or natural resources, or through an efficient distribution system), adequacy (food must satisfy dietary needs, be culturally acceptable, and be safe of harmful substances), and sustainability (food must be accessible, available, and adequate for present and future generations).²⁵

18. The U.S. has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)²⁶ and the Convention Against Torture,²⁷ both of which prominently contain economic, social, and cultural rights, including the right to food. The U.S. also took part in the development of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food

¹⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 11, (Dec. 10, 1948) [hereinafter UDHR].

²⁰ *Id.* at art. 25.

²¹ ICESCR at art. 12(1).

²² Dag Hammarskjöld Libr., *What is the difference between signing, ratification and accession of UN treaties?*, ask.un.org/faq/14594 (last visited Jul. 20, 2022).

²³ Comm. On Econ., Soc., and Cultural Rts., *General Comment No. 12: The Right to Adequate Food (Art. 11)*, ¶ 6, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter CESCR General Comment No. 12].

²⁴ Hum. Rts. Council, *Report of the Special Rapporteur on the Right to Food*, ¶ 17, A/HRC/7/5 (2008) [hereinafter *Special Rapporteur on the Right to Food*].

²⁵ See generally, CESCR General Comment No. 12, *supra* note 23, ¶ 6.

²⁶ International Convention on the Elimination of All Form of Racial Discrimination, *ratified* Oct. 21, 1994, 660 UNTS 195, 212 [hereinafter ICERD].

²⁷ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *ratified* Oct. 21, 1994, 1465 UNTS 85, 113 [hereinafter CAT].

Security and Agriculture Organization of the United Nations (FAO) in 2004.²⁸ The FAO supports a seven-step framework to implement the right to food. States should (1) identify people experiencing hunger, whose right to food is not realized; (2) assess existing policies and programs; (3) develop strategies for an enabling environment and assistance measures; (4) improve institutional coordination and functioning; (5) review and strengthen legal framework; (6) monitor progress over time with a human rights focus; and (7) ensure effective recourse for violations of the right to food.²⁹

19. The right to be free from hunger is absolute and is the only right to be qualified as “fundamental” in both the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”).³⁰ This Committee’s General Comment No. 36 on the Right to Life explains that “[t]he duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may eventually give rise to direct threats to life or prevent individuals from enjoying their life with dignity.”³¹ This Committee further clarified that “widespread hunger and malnutrition” are conditions that may give rise to direct threats to life and thus should be construed as violations of the right to life under the ICCPR.³² It should be further noted that in its prior reviews of the U.S., the Human Rights Committee expressed concern for the criminalization of people living on the street for everyday activities such as eating, and “note[d] that such criminalization raises concern of discrimination and cruel, inhuman or degrading treatment.”³³

IV. Persistent Hunger and Food Insecurity in Children (arts. 2, 6, 24)

20. In the Committee’s General Comment 17, “[t]he Committee notes . . . that such measures, although intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural. For example, every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition among children . . .”³⁴

21. The U.S. is failing to ensure children of marginalized groups have access to adequate, nutritious food. A recent study by the Urban Institute found that approximately four in ten families with parents who are Hispanic/Latinx (39.1%) and parents who are Black (40.8%) reported food insecurity in the prior 30 days, almost triple the rate of families with White parents (15.1%).³⁵ Further, coinciding with high rates of food insecurity, more

²⁸ *Right to Food*, FOOD & AGRIC. ORG. OF THE U.N., Policy Support and Governance Gateway, <http://www.fao.org/policy-support/policy-themes/right-to-food/en/> (last visited Sept. 1, 2023).

²⁹ Arsalan Ahmad, *United Nations to Follow Seven Steps on Better Food System*, TECHNOLOGY TIMES (Aug. 31, 2021) <https://technologytimes.pk/2021/08/31/united-nations-to-follow-seven-steps-on-better-food-system/>.

³⁰ ICESCR, *supra* note 3, art. 11(2). *See* U.N. FAO, *supra* note 3; *see also* HRC General Comment No. 6, *supra* note 3.

³¹ HRC General Comment No. 36, *supra* note 4, ¶ 30.

³² *Id.*

³³ HRC Concluding Observations: United States, *supra* note 7, ¶ 19.

³⁴ Hum. Rts. Comm., General Comment No. 17: Article 24 (Rights of the child), ¶ 3, U.N. Doc. HRI/GEN/1/Rev.1 at 23 (Apr. 7, 1989) [hereinafter HRC General Comment 17].

³⁵ Poonam Gupta, Dulce Gonzalez, & Elaine Waxman, *Forty Percent of Black and Hispanic Parents of School-Age Children Are Food Insecure* (Dec. 8, 2020)

than three times as many Hispanic/Latinx parents (36.9%) and about three times as many Black parents (29.6%) reported being worried about having enough to eat in the next month as did White parents (9.6%).³⁶

22. Children are especially vulnerable to lack of adequate food, as they need nutritious and safe food to grow physically and mentally. Hunger and malnutrition impair children’s learning abilities and may force them to drop out of school and work instead, thus undermining their enjoyment of the right to education.³⁷ Food insecurity has been linked to delayed development in young children; risk of chronic illnesses; and behavioral problems.³⁸ In fact, attending a school that has a “Breakfast After the Bell” (free breakfast through the National School Lunch Program, but offered later in the morning to accommodate students who cannot arrive to school early) reduces the number of all types of infractions in school,³⁹ while attending after-school programs that include access to food has been linked to a reduction of juvenile arrests.⁴⁰
23. Thirty million children in the U.S. depend on schools for free or reduced-priced meals, something that was disrupted during the pandemic. Because of the pandemic, roughly only 15% of students who qualified for free or reduced-price lunches were receiving them.⁴¹ While school districts attempted to ensure students had access to lunches through drive-by lunch pick up, children living with parents who are essential workers were largely unable to access these pick-ups. For example, “[a] child without access to transportation by car in the Four Corners neighborhood in St. Mary Parish would have had to walk four hours each way to get to the nearest ‘Grab n Go’ site, each of which was open for a mere hour and a half[,]” a letter to the governors of Louisiana and Alabama said.⁴² Because parents from historically marginalized groups are more likely to be essential workers, Black, Indigenous, and children of immigrant workers are disproportionately affected by inaccessibility of school lunches,⁴³ leading to hunger and malnutrition.
24. The U.S., through the USDA National School Lunch Program (“NSLP”), has attempted to battle hunger in the nation. The NSLP is one of the largest anti-hunger programs, second to SNAP. Data from 2020 shows that roughly 76.9% of students rely on the

<https://www.urban.org/research/publication/forty-percent-black-and-hispanic-parents-school-age-children-are-food-insecure>.

³⁶ *Id.*

³⁷ *Compromises and coping strategies*, FEEDING AMERICA,

<https://www.feedingamerica.org/hunger-in-america/impact-of-hunger> (last visited May 7, 2022).

³⁸ *Id.*

³⁹ Andres Cuadros-Meñaca et al., *School breakfast and student behavior*, 105, AM. J. AGRIC. ECON., 99, 100 (2022).

⁴⁰ *Can Afterschool Play a Role in Disrupting the School-to-Prison Pipeline?*, AM. YOUTH POL’Y F: F. FOR THOUGHT BLOG (Oct. 24, 2017), <https://www.aypf.org/blog/disrupting-the-school-to-prison-pipeline/>.

⁴¹ Cory Turner, *Children are Going Hungry: Why Schools are Struggling to Feed Students*, NATIONAL PUBLIC RADIO (Sep. 8, 2020) <https://www.npr.org/2020/09/08/908442609/children-are-going-hungry-why-schools-are-struggling-to-feed-students>.

⁴² Lisa Held, *The Pandemic Reveals Racial Gaps in School Meal Access*, CIVIL EATS (Jan. 26, 2021)

<https://civileats.com/2021/01/26/did-pandemic-disruptions-to-school-meal-programs-leave-out-students-of-color/>.

⁴³ *Black, Hispanic Americans are Overrepresented in Essential Jobs*, UNIV. ILL. CHI. (Feb. 2, 2021)

<https://publichealth.uic.edu/news-stories/black-hispanic-americans-are-overrepresented-in-essential-jobs/>.

NSLP.⁴⁴ The NSLP granted waivers amidst the COVID-19 pandemic to ensure that children are continuing to be fed, allowing all public school students to receive free school lunches.⁴⁵ In March 2022, the U.S. government rejected calls to keep these waivers in place, despite advocates arguing for these waivers to become permanent, which would allow for universal school lunches.⁴⁶ Today, only nine states have codified universal school meals.⁴⁷ Students and parents from the remaining 41 states are forced back into tiered systems, many now having to pay to eat during the school day,⁴⁸ resulting in hunger and malnutrition and a direct risk to life.

V. Systemic Racism and Hunger in Laborers in the Food System (arts. 2, 3, 6, 21, 22, 26)

25. The ability to support and feed oneself is undermined by the pervasiveness of systemic racism that defines labor in our food system. Black Americans are almost twice as likely to be unemployed than White Americans and the wage gap between both demographics is larger now than it was forty years ago.⁴⁹ Additionally, Black Americans earn 30% less than White Americans.⁵⁰ Per census data from 2020, 19.5% of Black Americans lived below the poverty line, compared to 8.2% of White Americans.⁵¹ As a result, Black households are twice as likely to face food insecurity than White households.⁵² Repeatedly, the U.S. has implemented legislation that discriminates against Black people, hindering the Black community's ability to participate in the land market and build generational wealth.⁵³ The ongoing discrimination against Black people together with the

⁴⁴ *National School Lunch Program*, U.S. DEP'T. AGRIC. ECON. RSCH. SERV. (Aug. 3, 2022)

<https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/national-school-lunch-program/>.

⁴⁵ Marlene Schwartz, *Schools will stop serving free lunch to all students- a pandemic solution left out of a new federal spending package*, THE CONVERSATION (Mar. 14, 2022)

<https://theconversation.com/schools-will-stop-serving-free-lunch-to-all-students-a-pandemic-solution-left-out-of-a-new-federal-spending-package-179058>.

⁴⁶ *Id.*

⁴⁷ Leah Butz, *States that Have Passed Universal Free School Meals (So Far)*, HUNTER COLL. N.Y.C. FOOD POL'Y CTR. (Aug. 29, 2023) <https://www.nycfoodpolicy.org/states-that-have-passed-universal-free-school-meals/>.

⁴⁸ *Id.*

⁴⁹ Valerie Wilson, *Racism and the Economy: Focus on Employment*, ECON. POL'Y. INST. (Nov. 21, 2020),

<https://www.epi.org/blog/racism-and-the-economy-fed/>.

⁵⁰ Palash Ghosh, *Black Americans Earn 30% Less Than White Americans, While Black Households Have Just One-Eighth Wealth Of White Households*, FORBES (June 18, 2021),

<https://www.forbes.com/sites/palashghosh/2021/06/18/blacks-earn-30-less-than-whites-while-black-households-have-just-one-eighth-of-wealth-of-white-households/?sh=76625bc2550c>.

⁵¹ Emily A. Shrider et al., *Income and Poverty in the United States: 2020*, U.S. CENSUS BUREAU (September 14, 2021),

<https://www.census.gov/library/publications/2021/demo/p60-273.html#:~:text=Among%20non%2DHispanic%20Whites%2C%208.2,a%20significant%20change%20from%202019.>

⁵² Diane Whitmore Schanzenbach & Abigail Pitts, *Racial Disparities in Food Insecurity Persist*, NW. INST. POL'Y. RSCH. (July 9, 2020), <https://www.ipr.northwestern.edu/news/2020/food-insecurity-by-race-ethnicity.html>.

⁵³ Daniel Aminetzah et al., *Black farmers in the US: The opportunity for addressing racial disparities in farming*, MCKINSEY & CO. (Nov. 10, 2021)

<https://www.mckinsey.com/industries/agriculture/our-insights/black-farmers-in-the-us-the-opportunity-for-addressing-racial-disparities-in-farming#>.

lack of adequate working conditions contribute to poverty, which compromises the human right to food as well as the human rights to life and non-discrimination.

26. Our food system is primarily supported by Black, Indigenous, and people of color (“BIPOC”) communities, yet many are excluded from worker protections. Per 2019 census data, people of color make up 66.1% of the food processing industry.⁵⁴ People of color also make up a majority of the agricultural industry’s workforce—69% of farm laborers are people of color, 57% of which are of Mexican heritage.⁵⁵ Also, a presumed 50% of farm laborers are undocumented.⁵⁶ Undocumented workers are entitled to the same rights and protections under U.S. labor laws as citizens, including the right to unionize, as detailed in the National Labor Relations Act.⁵⁷ Yet opportunities for farm laborers to work legally in the U.S., such as through the H-2A Temporary Agriculture Program (a visa program) are unsustainable and are also plagued with violations.⁵⁸
27. Agricultural workers are often excluded from worker protections guaranteed in other industries. In several states, agricultural workers as a whole are not covered under minimum wage laws, nor are they considered “employees” under several state codes.⁵⁹ Agricultural workers are also not guaranteed workers’ compensation—only 14 states require employers to cover agricultural workers; the remaining states mandate either limited coverage or optional coverage.⁶⁰ Federal laws regarding worker protections, such as the Migrant & Seasonal Agricultural Worker Protection Act, give deference to farm labor contractors to establish wage schemes, as opposed to establishing specific protections for farm laborers.⁶¹
28. For women, and particularly BIPOC women, these abuses are more egregious than those experienced by their male and/or White counterparts.⁶² “Women farmworkers are concentrated in the lowest-paying farm jobs and are neglected for promotion, and are frequently subject to gendered harassment at work and denied benefits offered to men.”⁶³

⁵⁴ *Food processing workers, all other*, DATA USA,

[https://datausa.io/profile/soc/food-processing-workers-all-other#:~:text=Demographic%20information%20on%20Food%20processing,White%20\(Non%2DHispanic\)](https://datausa.io/profile/soc/food-processing-workers-all-other#:~:text=Demographic%20information%20on%20Food%20processing,White%20(Non%2DHispanic)) (last visited May 2022).

⁵⁵ *Farm Labor*, U.S. DEP’T. AGRIC. ECON. RSCH. SERV.,

<https://www.ers.usda.gov/topics/farm-economy/farm-labor/#demographic> (last visited May 2022).

⁵⁶ *Immigrant Farmworkers and America’s Food Production: 5 Things to Know*, FWD.US (Sept. 14, 2022),

<https://www.fwd.us/news/immigrant-farmworkers-and-americas-food-production-5-things-to-know/#posts>,

⁵⁷ 29 U.S.C. §§ 151-169; *see also Employment Rights of Undocumented Workers*, LEGAL AID AT WORK,

<https://legalaidatwork.org/factsheet/employment-rights-of-undocumented-workers/> (last visited May 2022).

⁵⁸ Curt Covington, *Immigration reform can ease farm labor shortages*, THE HILL (Apr. 24, 2022),

<https://thehill.com/opinion/immigration/3467527-immigration-reform-can-ease-farm-labor-shortages/>.

⁵⁹ *Wages Map*, FARMWORKER JUST., <https://www.farmworkerjustice.org/wages-map/> (last visited May 2022).

⁶⁰ *Worker’s Compensation Map*, FARMWORKER JUST., <https://www.farmworkerjustice.org/workers-compensation-map/> (last visited May 2022).

⁶¹ *See* Migrant and Seasonal Agricultural Worker Protection Act §202(1), 29 U.S.C. §1822(a).

⁶² *Fair Food Program 2021 SOTP Report*, FAIR FOOD PROGRAM (2021),

<https://indd.adobe.com/view/2e8c5302-3772-4122-a6a7-f345d4801a16>; *see also* Madison Barbour & Julie Guthman, *(En)gendering exposure: Pregnant farmworkers and the inadequacy of pesticide notification*, 25(1), J. POL. ECOLOGY, 332, (2018).

⁶³ *See* Barbour, *supra* note 62.

These issues exist in “all four sectors of the food system: production, processing, distribution, and service.”⁶⁴

VI. Gender Disparities, Hunger, and Pesticide Exposure in Laborers in the Food System (arts. 2, 3, 6)

29. Gender disparities in agricultural work can implicate the human right to health, particularly in regard to pesticide exposure.⁶⁵ “[W]omen’s concentration in low paying field work jobs, including weeding and picking, puts them at the greater risk for frequent, low-dose exposure from contact with plant residues.”⁶⁶ Pregnant women who work in agricultural fields are particularly vulnerable to pesticide exposure.⁶⁷ Acute side effects of pesticide exposure and pesticide poisoning are “cancer, Parkinson’s Disease, asthma, birth defects, and neurological harms, including developmental delays and learning disabilities.”⁶⁸ Per the U.S. Department of Labor, “farmworkers suffer from higher rates of toxic chemical injuries and skin disorders than any other workers in the country.”⁶⁹

VII. Freedom of Association, Discrimination, Labor Rights, and Hunger in the Food System (arts. 2, 6, 21, and 22)

30. Efforts to curb discriminatory labor practices are sometimes met with resistance, both in the public and private sectors. One such example regarding the public sector is seen in state-level preemption laws. The Supremacy Clause found in Article VI, Clause 2 of the U.S. Constitution gives way to the preemption doctrine—the principle that federal law trumps state law wherever the two may be in discordance with each other.⁷⁰ This principle extends to the state and municipal levels of law as well. In the state of Florida, for example, there existed a preemption bill that would have barred municipalities from enacting a minimum wage higher than the state minimum.⁷¹ Relatedly, currently, in Florida, there exists a preemption bill regarding the regulation of cottage foods.⁷² Known as the “Home Sweet Home Act,” this preemption measure removes the autonomy of local governments from their food systems. In essence, such preemption laws undermine food sovereignty and the effort to shift the power dynamics of a food system that marginalizes

⁶⁴ Hossain Ayazi & Elsadig, Elsheikh, 2015. The Farm Bill Report: Corporate Power and Structural Racialization in the United States Food System. HAAS INST. (2015), <https://belonging.berkeley.edu/farm-bill-report-corporate-power-and-structural-racialization-us-food-system>.

⁶⁵ LLang LLang Quijano, *Gender: at the forefront of exposure*, HEINRICH BÖLL STIFTUNG (Oct. 18, 2022), <https://eu.boell.org/en/PesticideAtlas-gender>.

⁶⁶ Barbour, *supra* note 62.

⁶⁷ *Id.*

⁶⁸ Testimony of Virginia Ruiz, Farmworker Justice, *Pesticide Registration under FIFRA: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act* (May 11, 2017), available at https://www.agriculture.senate.gov/imo/media/doc/Testimony_Ruiz.pdf (last accessed: Sept. 11, 2023); *see also* Mary Bauer & Mónica Ramírez, *Injustice on our plates: Immigrant women in the U.S. food industry*, S. POVERTY L. CTR. (Nov. 8, 2010), <http://www.splcenter.org/20101107/injustice-our-plates>.

⁶⁹ Bauer, *supra* note 68.

⁷⁰ U.S. CONST. art. VI, cl. 2.

⁷¹ H.R. 943, Reg. Sess. 2022, (Fla. 2022).

⁷² S., 1294, Sess. 2021, (Fla. 2021).

under-privileged and under-served communities, resulting in hunger and food insecurity.⁷³

31. The U.S. undermines labor rights through the implementation of policies that destabilize trade unions. The right to form trade unions is one that is recognized internationally in various instruments, including the ICCPR, the ICESCR, and by international bodies, such as the International Labor Organization. “Right-to-Work” laws in the U.S., however, destabilize trade unions by hindering their bargaining power.⁷⁴ As recently as 2020, unionized workers earned an average of 11.2% more in wages than their non-unionized peers.⁷⁵ Moreover, Black workers in “Right-to-Work” states tend to have lower wages than in non “Right-to-Work” states.⁷⁶ By a slight majority, American trade unions are primarily comprised of Black workers.⁷⁷
32. Unions have been a reliable source of worker protection where public and private practices have engaged in discrimination and have done little to protect the working class. Union members earning higher wages have greater access to paid sick days than their non-union colleagues, and are more likely to be covered by employer provided programs than their non-union peers.⁷⁸ In the U.S. agricultural system, which is largely supported by migrant labor, workers’ collectives have come together to address racial discrimination, wage theft, unsafe working conditions, sexual assault, and other abuses prevalent in agricultural fields.⁷⁹ One such example is the work of the Coalition of Immokalee Workers (CIW), a worker-based human rights organization in Florida. Over a decade ago, the CIW created the Fair Food Program, an initiative to protect farmworkers from labor and other abuses. The Fair Food Program is considered “the best workplace

⁷³ G.A. Res. 39/12, art. 15(4), (Oct. 8, 2018). Per Article 15(4) of United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), the right to food sovereignty is the access to the “decision-making processes on food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods that respect...cultures,”
<https://digitallibrary.un.org/record/1650694?ln=en>.

⁷⁴ Paul Constant, *'Right-to-work' legislation may sound nice, but it's actually terrible for workers and has a deeply racist history*, INSIDER (Sept. 25, 2021)

<https://www.businessinsider.com/pitchfork-economics-right-to-work-legislation-terrible-for-workers-2021-9>; David Cooper & Julia Wolf, *So-called right-to-work is wrong for Montana*, ECON. POL'Y INST. (Feb. 25, 2021),
<https://www.epi.org/publication/so-called-right-to-work-is-wrong-for-montana/>.

⁷⁵ Press Release, Econ. Pol'y. Inst., *Union workers are paid 11.2% more and have greater access to health insurance and paid sick days than their nonunion counterparts*, (Aug. 25, 2020),
<https://www.epi.org/press/union-workers-are-paid-11-2-more-and-have-greater-access-to-health-insurance-and-paid-sick-days-than-their-nonunion-counterparts-policymakers-must-strengthen-workers-ability-to-form-unions/>.

⁷⁶ Valerie Wilson & Julia Wolf, *Black workers in right-to-work (RTW) states tend to have lower wages than in Missouri and other non-RTW states*, ECON. POL'Y INST. (May 15, 2018),
<https://www.epi.org/publication/black-workers-in-right-to-work-rtw-states-tend-to-have-lower-wages-than-in-missouri-and-other-non-rtw-states/>.

⁷⁷ Cooper, *supra* note 74; Press release, Bureau Lab. Stat. *Union Members – 2022*, (Jan. 19, 2023),
<https://www.bls.gov/news.release/pdf/union2.pdf>.

⁷⁸ Celine McNicholas & Margaret Poydock, *Who are essential workers?*, ECON. POL'Y INST. (May 19, 2020),
<https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/>.

⁷⁹ *About*, FAIR FOOD PROGRAM, <https://fairfoodprogram.org/about/> (last visited May 2022).

monitoring system in the U.S.”⁸⁰ Several large-scale food industry companies, including McDonald’s and Walmart, have signed onto the program, but others refuse to comply.⁸¹

VIII. Carceral Labor in the Food System (arts. 6, 7, 10, 21)

33. Race, labor, and the right to food in the U.S. are interconnected and starkly defined by a legacy of slavery. The interconnection of race and labor in the U.S. starts with the institution of slavery in approximately 1619 and continues past its abolition in 1865, when Congress passed the Thirteenth Amendment to the U.S. Constitution.⁸² While the Thirteenth Amendment outlawed slavery, it did so with a condition: “Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction (emphasis added).”⁸³ Following the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments (collectively known as the “Reconstruction Amendments”), Black Codes, Jim Crow-Era laws, and a criminal justice system incentivized by the prospect of cheap labor continued to undermine efforts towards racial equality.⁸⁴

34. Our current carceral system, which disproportionately affects Black Americans and other communities of color, is a relied-upon source of cheap labor. Convict leasing, the process through which companies or individuals pay leasing fees to state and local governments in exchange for the labor of prisoners, was largely outlawed in 20th century, though still exists, to some extent, today.⁸⁵ The COVID-19 pandemic and restrictive immigration policies under the Trump administration affected the agriculture industry’s reliance on migrant labor. As a response, some states allowed for the use of prison labor to meet demands in farms. As recently as 2019, over 30,000 incarcerated men and women worked in farms or in other food-related jobs.⁸⁶ Idaho, as recently as 2020, relied on prison labor to meet the demand of fieldhands needed on its potato farms.⁸⁷ Furthermore, the U.S. carceral system provides food to state hospitals and long-term care facilities, and

⁸⁰ *Fair Food Program: The leading edge of human rights in agriculture*, COAL. OF IMMOKALEE WORKERS, <https://ciw-online.org/fair-food-program/> (last visited May 2022).

⁸¹ *Partners*, FAIR FOOD PROGRAM, <https://fairfoodprogram.org/partners/> (last visited May 2022); *Wendy’s: The Final Fast Food Hold-out*, COAL. OF IMMOKALEE WORKERS, <https://ciw-online.org/wendys/> (last visited May 2022).

⁸² History.com Editors, *Slavery in America*, HISTORY (Aug. 11, 2023), <https://www.history.com/topics/black-history/slavery>.

⁸³ U.S. Const. amend XIII, §1.

⁸⁴ *Convict Leasing*, EQUAL JUST. INITIATIVE (Nov. 1, 2013), <https://eji.org/news/history-racial-injustice-convict-leasing/>.

⁸⁵ Ellen Terrell, *The Convict Leasing System: Slavery in its Worst Aspects*, LIBR. CONG.: BLOGS (June 17, 2021), https://blogs.loc.gov/inside_adams/2021/06/convict-leasing-system/; Leah Butz, *Prison Labor is Remarkably Common Within the Food System*, HUNTER COLL. N.Y.C. FOOD POL’Y CTR. (Sept. 15, 2021), <https://www.nycfoodpolicy.org/prison-labor-is-remarkably-common-within-the-food-system/>.

⁸⁶ Stian Rice, *Convicts are returning to farming – anti-immigrant policies are the reason*, THE CONVERSATION (June 7, 2019), <https://theconversation.com/convicts-are-returning-to-farming-anti-immigrant-policies-are-the-reason-117152>.

⁸⁷ André Souza, *Prison Potatoes: Idaho’s Famous Food*, BOISE HIGHLIGHTS (Jan. 22, 2022), <https://boisehighlights.com/2135/front-page-stories/prison-potatoes-idahos-famous-food/>.

public schools.⁸⁸ Incarcerated persons in Kentucky prisons raise cattle, those in Louisiana prisons raise livestock, and those in Colorado prisons produce milk.⁸⁹ On average, incarcerated persons earn about USD 0.63 per hour, though wages can range from USD 0.14 to USD 2.00.⁹⁰ Eight states—Alabama, Arkansas, Florida, Georgia, Mississippi, Oklahoma, South Carolina, and Texas—do not pay incarcerated persons for their labor.⁹¹ Moreover, formerly incarcerated persons with drug convictions face restrictions to obtaining SNAP benefits,⁹² which further denies them food security.

35. The State is not the only supporter of prison labor; corporations also rely on prison labor and the exploitation of grossly low or entirely unpaid prison labor to maximize their own profits, reinforcing and thus knowingly sponsoring cycles of abuse in the U.S. carceral system. Leprino Foods, a USD 3 billion global dairy ingredients supplier and the sole supplier of mozzarella cheese to Pizza Hut, Papa John's, and Domino's pizza, was the only buyer of Colorado Correctional Industries' buffalo milk between 2017 and 2020.⁹³ The conglomerate Dairy Farmers of America, which produces food under the brands Borden and Breakstone's (among others), purchased more than USD 10.5 million worth of milk from Colorado and South Carolina prisons from 2017 to 2020.⁹⁴ Typically, the Ashurst-Sumners Act of 1935, prohibits the interstate sale of goods made by prison labor, but an exemption for agricultural goods remains.⁹⁵

IX. Incarcerated Women and the Lack of Breastfeeding Support (arts. 2, 3, 6, 7, 10, 24 and 26)

36. Violations of the right to food of women and children are interconnected and begin with breastfeeding, the “first food”⁹⁶ or the most local of food systems. It is well established

⁸⁸ H. Claire Brown, *This under-the-radar supply chain routes food from prisons to hospitals, food banks, and even schools*, THE COUNTER (May 25, 2021), <https://thecounter.org/this-under-the-radar-supply-chain-routes-food-from-prisons-to-hospitals-food-banks-and-even-schools/>.

⁸⁹ *Western Kentucky Correctional Complex*, PRISON PRO, <https://www.prisonpro.com/content/western-kentucky-correctional-complex>; H. Claire Brown, *How corporations buy—and sell—food made with prison labor*, THE COUNTER (May 18, 2021), <https://thecounter.org/how-corporations-buy-and-sell-food-made-with-prison-labor/>.

⁹⁰ *How Much do Prisoners Make in Each State?*, KENT STATE UNIV. (Aug. 27, 2021), <https://onlinedegrees.kent.edu/sociology/criminal-justice/community/how-much-do-prisoners-make-in-each-state>.

⁹¹ *Id.*

⁹² See e.g., Reese & Sbicca 2022 Food and Carcerality, *Food and Foodways*; *No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions*, CLASP (Apr. 2022), <https://www.clasp.org/publications/report/brief/no-more-double-punishments/>.

See e.g., Ashley Burnside, *No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions*, CTR. L. SOC. POL'Y (Apr. 2022), <https://www.clasp.org/publications/report/brief/no-more-double-punishments/>.

⁹³ H. Claire Brown, *How corporations buy—and sell—food made with prison labor*, THE COUNTER (May 18, 2021), <https://thecounter.org/how-corporations-buy-and-sell-food-made-with-prison-labor/>.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Andrea Freeman, “First Food” Justice: Racial Disparities in Infant Feeding As Food Oppression, 83 FORDHAM L. REV. 3053 (2015).

that breastfeeding is beneficial for the mother, baby, and society.⁹⁷ However, low rates of breastfeeding are prevalent in BIPOC communities.⁹⁸ This is particularly an issue for Black women, who have the lowest breastfeeding rates out of all racial groups.⁹⁹ One reason for this is that hospital maternity wards serving larger Black populations are less likely to help Black women initiate breastfeeding after giving birth or offer lactation support following delivery.¹⁰⁰ Furthermore, studies show that Black mothers lack the necessary workplace protections that support breastfeeding. Black mothers need to return to work shortly after giving birth and are often confronted with inflexible work hours and a lack of privacy to lactate.¹⁰¹

37. The WHO recommends breastfeeding for at least six months as it provides both the mother and the baby “immunological, developmental, and psychological benefits.”¹⁰² “Human milk contains important antimicrobial and anti-inflammatory substances that promote immune system development in the infant. Meta-analyses have confirmed that, compared to infants fed commercial formula, breastfed infants have fewer incidents of lower respiratory tract infections, ear infections, asthma, severe diarrhea, necrotizing enterocolitis, sudden infant death syndrome, infant mortality, allergic disease, celiac disease, obesity, diabetes, childhood leukemia, and lymphoma.”¹⁰³
38. However, incarcerated people often have inadequate postpartum care, including care and resources for breastfeeding and lactation. More than 100,000 babies are born inside the prison system every year, yet only few states have enacted public policy to address postpartum lactation support.¹⁰⁴ However, even in states with existing laws on lactation support, rates of lactation in U.S. prisons and jails remain extremely low.¹⁰⁵ Only six out of 50 U.S. states have policies that address breastfeeding and lactation support for incarcerated mothers. One of the primary reasons for this being that this area of public policy is wholly under-researched. “For most incarcerated people, birth is followed by near immediate separation from their newborn: biological mothers return to prison and infants are placed with alternative caregivers in the community. Rarely are postpartum people in custody given the resources they need to successfully breastfeed or sustain their milk supply through pumping and milk storage.”¹⁰⁶ In fact, “the infant mortality rate for

⁹⁷ Katherine Jones et. al., *Racial and Ethnic Disparities in Breastfeeding*, 10 NAT'L. LIBR. OF MED. 186 (2015).

⁹⁸ Amani Echols, *The Challenges of Breastfeeding as a Black Person*, AM. CIV. LIBERTIES UNION (Aug. 15, 2019) <https://www.aclu.org/blog/womens-rights/pregnancy-and-parenting-discrimination/challenges-breastfeeding-black-person>.

⁹⁹ *Id.*

¹⁰⁰ Laura Santhanam, *Racial disparities persist for breastfeeding moms. Here's why*, PUBLIC BROADCASTING SERVICE (Aug. 29, 2019) <https://www.pbs.org/newshour/health/racial-disparities-persist-for-breastfeeding-moms-heres-why>.

¹⁰¹ *Id.*

¹⁰² R. Laine et al., *Breastfeeding and Lactation Support for Incarcerated People in the U.S.*, CTR. FOR LEADERSHIP EDU. IN MATERNAL & CHILD PUB. HEALTH (Apr. 2023), <https://mch.umn.edu/breastfeeding/>.

¹⁰³ *Position Statement: Breastfeeding in Correctional Settings*, NAT'L. COMM'N. CORR. HEALTH (*adopted* 2017; *updated* 2023), <https://www.ncchc.org/wp-content/uploads/Breastfeeding-Position-Statement-2023-rev.pdf>.

¹⁰⁴ *Working to Overcome Roadblocks Kits: Guide to Breastfeeding and Incarceration*, MICH. BREASTFEEDING NETWORK (2018), <https://mibreastfeeding.org/wp-content/uploads/2018/05/Guide-to-Breastfeeding-and-Incarceration.pdf>.

¹⁰⁵ Laine, *supra* note 102.

¹⁰⁶ *Id.*

children whose mothers are incarcerated is over twice the rate of children outside the prison system.”¹⁰⁷

X. Structural Racism in Domestic Nutrition Assistance Programs and Charitable Programs (arts. 2, 3, 6, and 26)

39. U.S. policies implemented to try and combat the food security crisis—namely government food entitlement programs and charitable food programs—are inadequate and fail to recognize individuals’ right to food. One in six Americans lives in a household that cannot afford adequate food. 17 million of these households have children.¹⁰⁸ Under the Farm Bill, the Supplemental Nutrition Assistance Program (SNAP) (formerly, Food Stamp Program) is a program that provides electronic benefits which are redeemable for SNAP-eligible foods at SNAP-eligible retailers. The Emergency Food Assistance Program (TEFAP) Provides food commodities through states to reach local emergency feeding organizations (i.e., food banks). The program receives \$623 million dollars in funding per fiscal year. The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a specialized program only for women and children.
40. The Supplemental Nutrition Assistance Program (SNAP) is the U.S.’s largest anti-hunger government program. There are currently 40.3 million Americans enrolled in SNAP.¹⁰⁹ SNAP became even more important as the COVID-19 pandemic took off; but by 2021 over 20 million households reported they still did not have enough food to consume even with SNAP, and thus had to rely on charitable food assistance programs such as food banks.¹¹⁰
41. While SNAP has been one of the first lines of defense for many households in the U.S., the program is steeped in racial histories of racialized labor control.¹¹¹ Structural racism in SNAP is evident in the amount provided, which affects the adequacy of food obtained, and the requirements that must be met to qualify for the program, with a disproportionate

¹⁰⁷ *Working to Overcome Roadblocks Kits: Guide to Breastfeeding and Incarceration*, Mich. Breastfeeding Network (2018), <https://mibreastfeeding.org/wp-content/uploads/2018/05/Guide-to-Breastfeeding-and-Incarceration.pdf>.

¹⁰⁸ *Child Hunger in America*, SAVE THE CHILD.

<https://www.savethechildren.org/us/charity-stories/child-hunger-in-america/> (last visited May 2022); *The State of America’s Children 2021*, CHILD. DEF. FUND (2021),

<https://www.childrensdefense.org/wp-content/uploads/2021/04/The-State-of-Americas-Children-2021.pdf>.

¹⁰⁹ *2018 Farm Bill Primer: Snap and Nutrition Title Programs*, CONG. RSCH. SERV. (Jan. 30, 2019),

<https://sgp.fas.org/crs/misc/IF11087.pdf> (Except as noted, participation and funding data from USDA-FNS Key Data Report, dated November 2018, based on data through September 2018. SFMNP funding and data displayed for FY2017 from USDA-FNS program website).

¹¹⁰ *Tracking the COVID-19 Economy’s Effects on Food, Housing, and Employment Hardships*, CTR. BUDGET POL’Y PRIORITIES,

<https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and> (last visited May 7, 2022).

¹¹¹ Pine, A & de Souza, R (forthcoming). *Hunger, Survivance, and Imaginative Futures: A Racial Analysis of the “Right to Food”* in Dempsey, S.E. (ed.), *Organizing Food Justice: Critical Organizational Communication Theory Meets the Food Movement*. Routledge.

impact on BIPOC families who make up the majority of recipients.¹¹² The monetary SNAP benefit units vary by the size of the household and the benefit calculation rules and have historically been calculated based on the “Thrifty Food Plan”,¹¹³ which determines the amount given to families on the basis of the cheapest food available, limiting the nutritional quality, the quantity, and the cultural adequacy of the food purchased.

42. In addition, the work requirements threaten access to SNAP public assistance from families that fail to show they have worked a certain number of hours per week. These requirements deny families much-needed assistance and “discount much of their labor, ignoring the caregiving work that people provide for their loved ones, and pushing them into low-paid, insecure jobs that make it impossible to make ends meet.”¹¹⁴ These work requirements continue to promote policies that and question their work ethics. The work requirements continue to disproportionately impact BIPOC communities, questioning their work ethics, and forcing them into lower wage jobs and volunteer-based work in order to continue to access SNAP.
43. Aside from the burden of having to meet specific work requirements, there are additional structural barriers to enrollment, including the complexity of the process and the stigma and shame associated with it, with significant ramifications for BIPOC individuals and their families. It is extremely difficult to enroll in SNAP since the enrollment process “is generally frustrating and time-consuming-requiring, on average, a 20-page application or 90-minute phone call, plus submitting as many as 10 documents.”¹¹⁵ Furthermore, recipients of SNAP are subjected to heightened scrutiny and surveillance by the state, as well as to stigma.¹¹⁶ SNAP participants are often portrayed as taking advantage of social programs and engaging in fraud and abuse, and this stigma often takes on a racial tone as it perpetuates the “Black Welfare Queen” myth created and promoted by past administrations.¹¹⁷ SNAP Requirements also leave out immigrants who are ineligible because they do not meet certain residency requirements or because they are undocumented, which is also the population that makes up the food industry’s essential labor force.¹¹⁸ Even when immigrants qualify for government assistance, fear of

¹¹² Heather Hartline-Grafton & Ellen Vollinger, *New USDA Report Provides Picture of Who Participates in SNAP*, FOOD RSCH. ACTION. CTR. <https://frac.org/blog/new-usda-report-provides-picture-of-who-participates-in-snap> (last visited Sept. 11, 2023).

¹¹³ *SNAP and the Thrifty Food Plan*, USDA FOOD NUTRITION SERV. (Nov. 21, 2022), <https://www.fns.usda.gov/snap/thriftyfoodplan>.

¹¹⁴ *Tracking the COVID-19 Economy’s Effects on Food, Housing, and Employment Hardship*, CTR. BUDGET POL’Y. PRIORITIES (Feb. 10, 2022),

<https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and->

¹¹⁵ Carolyn L. Todd, *Applying for SNAP Can Be Way Too Hard. This Nonprofit Wants to Change That*, SELF (Oct. 29, 2020), <https://www.self.com/story/nonprofit-mrelief-improving-snap>.

¹¹⁶ Pine, *supra* note 111.

¹¹⁷ *Id.*

¹¹⁸ *SNAP Eligibility*, FLA. DEP’T. CHILD. FAM.,

<https://www.myflfamilies.com/services/public-assistance/supplemental-nutrition-assistance-program-snap/snap-eligibility> (last visited Sept. 12, 2023).

discrimination, stigma, or retaliation may *still* stop them from applying for those benefits.¹¹⁹

44. Research also shows that Indigenous communities are less likely than non-Indigenous communities to use SNAP, largely due to lack of access to places that accept SNAP in their communities.¹²⁰ A benefits card is useless if there's no food store in your community.¹²¹ Furthermore, the Food Distribution Program on Indian Reservations (FDPIR) provides USDA Foods to income-eligible households living on Indian reservations and to Native American households residing in designated areas near reservations.¹²² Although the U.S. Department of Agriculture (USDA) has received \$50 million in appropriations to support additional food purchases for FDPIR as part of COVID-19 response, USDA declined to issue additional food products to FDPIR in the ways Indigenous communities initially requested.¹²³ Instead, the USDA created a lengthy process to delay access to the food products.¹²⁴
45. The Biden-Harris Administration has recently made some promising adjustments to food entitlement programs. For example, the USDA recently announced that it has updated the Thrifty Food Plan (TFP), which is used to set amount of food assistance people participating in SNAP receive, to reflect the cost of a healthy diet more accurately.¹²⁵

XI. Bans on Large Food Distributions to People Experiencing Hunger and Homelessness (arts. 6, 7, 21 and 22)

46. In the U.S, rather than aiming to solve the problem of homelessness, our municipalities have sought to make it invisible by criminalizing activities people experiencing homelessness must engage in to stay alive. Miami-Dade County is a case in point. In 2017, the City of Miami Beach hired a special prosecutor for “nuisance” crimes, such as loitering, jaywalking, or consuming alcohol in public,¹²⁶ which have been overwhelmingly enforced against people experiencing homelessness.¹²⁷ In 2020 with the

¹¹⁹ Xi Huang & Christian King, *Food insecurity transitions and housing hardships: Are immigrant families more vulnerable?*, 40 J. URB. AFF. 1146, 1147 (2018).

¹²⁰ Meghan O'Connell et al., *Food Access and Cost in American Indian Communities in Washington State*, 111 J. ACAD. NUTRITION & DIETETICS 1375, (2011).

¹²¹ Brian Oaster, *The first answer for food security: data sovereignty*, HIGH COUNTRY NEWS (Feb. 11, 2022) <https://www.hcn.org/articles/indigenous-affairs-food-the-first-answer-for-food-insecurity-data-sovereignty>.

¹²² *Increasing Access to Healthy Foods in Indian Country*, FOOD & NUTRITION SERV., <https://www.fns.usda.gov/fdpir/food-distribution-program-indian-reservations> (last visited May 8, 2022).

¹²³ Toni Stanger-McLaughlin et. al., *Reimagining Hunger Responses in Times of Crisis*, NATIVE AM. AGRI. FUND (Jan. 2022), <https://nativeamericanagriculturefund.org/wp-content/uploads/2018/04/Reimagining-Hunger-Responses-in-Times-of-Crisis.pdf>.

¹²⁴ *Id.*

¹²⁵ Joseph Llobrera et al., *USDA Announces Important SNAP Benefit Modernization*, CTR. BUDGET & POL'Y. PRIORITIES (Aug. 26, 2021), <https://www.cbpp.org/research/food-assistance/usda-announces-important-snap-benefit-modernization>.

¹²⁶ Joey Flechas, *Tired of Nuisance Crimes Going Unpunished? Miami Beach Is About to Crack Down*, MIA. HERALD, (Jan. 3, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article192826269.html>.

¹²⁷ Joey Flechas, *Tourists Are Rarely Jailed for Breaking Miami Beach Laws. Not So for the Homeless*, MIA. HERALD (Jan. 5, 2019), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article224019710.html> (noting that 2/3 of the defendants in cases brought by this prosecutor identified as experiencing homelessness).

onset of COVID, the City of Miami passed an ordinance criminalizing food sharing, or the feeding of people experiencing homelessness in groups of twenty-five or more without a permit and at non-designated feeding locations (with only five inconvenient locations designated).¹²⁸ At a recent People’s Tribunal, community members and food providers testified on this law’s senseless cruelty.¹²⁹ By passing this ordinance, the City of Miami is “using hunger as a weapon against the poor.”¹³⁰ Then, in 2021, the City of Miami passed an anti-camping ordinance, which criminalizes any encampments on public property.¹³¹ Moreover, in “sweeping” homeless encampments, law enforcement routinely destroy the few belongings people have.¹³² One woman had her mother’s ashes thrown out; others lost their medication and identity documents.¹³³ A recent study found a 12% rise in hospital admissions after a sweep.¹³⁴ Most recently, Miami Beach officials are seeking to pass legislation authorizing police to arrest people for sleeping or lying in public if they do not move to a homeless shelter.¹³⁵ However, shelters only let people stay temporarily and often do not allow them to bring their personal belongings. Moreover, there are currently no shelters in Miami Beach, which would require people experiencing homelessness to choose between jail or exile.¹³⁶

XII. Recommended Questions

- A. Given the Biden Administration’s September 2022 White House Conference on Hunger, Nutrition, and Health, what steps does the administration plan to take to ensure that the recommendations that came out of the conference incorporate a rights-based framework, center the voices of people with lived experiences of hunger, and address racial discrimination in the food system as central to tackling hunger in the U.S.?
- B. What additional steps does the U.S. plan to take to help remedy past racial discrimination and increase access to the human right to food? How will the U.S. strengthen resiliency

¹²⁸ CITY OF MIAMI, FLA. CODE 2020 § 25-25; Maya Lora, *Miami passes ordinance requiring permits to feed large groups of homeless people*, SUN SENTINEL (Jun. 26, 2020), <https://www.sun-sentinel.com/local/miami-dade/fl-ne-miami-homeless-permits-20200626-qptfs42vsfdr5kr64zpfsgdl4m-story.html>.

¹²⁹ For a video of the People’s Tribunal on Violations of the Rights to Food and Housing in Miami, please see <https://miami.app.box.com/s/81z3iimmkbvix5vmq31o7s0f1gm7400i>.

¹³⁰ Interview with David Peery, Exec. Dir., Miami Coalition to Advance Racial Equity (Feb. 25, 2022) (Peery continues by saying there is no difference between the food sharing ordinance and what the United Nations condemns as a war crime in cutting off the flow of food to people.).

¹³¹ Miami Times Staff Report, *Commission passes anti-camping ordinance*, MIA. TIMES (Nov. 3, 2021), https://www.miamitimesonline.com/news/local/commission-passes-anti-camping-ordinance/article_c5bc6238-3c2c-11ec-9085-4f36d2f85a84.html.

¹³² Jeff Weinberger, Opinion, *When It’s All You Own, It’s Not Trash. Miami, Stop Destroying Homeless People’s Possessions*, MIA. HERALD (Oct. 12, 2021), <https://www.miamiherald.com/opinion/op-ed/article254950322.html>.

¹³³ *Id.*

¹³⁴ Benjamin Linas & Joshua Barocas, *What Our Simulation Models Project Will Happen After Boston Dismantles Mass. And Cass Encampments*, BOS. GLOBE (Nov. 8, 2021), <https://www.bostonglobe.com/2021/11/08/opinion/what-our-simulation-models-show-will-probably-happen-after-boston-dismantles-mass-cass-encampments/>.

¹³⁵ Aaron Leibowitz, *We Can’t Coexist Anymore’: Miami Beach Weighs Outdoor Sleeping Crackdown for Homeless*, MIA. HERALD (July 2023), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article277428983.html>.

¹³⁶ *Id.*

strategies of historically discriminated communities seeking to address hunger and food insecurity?

XIII. Suggested Recommendations for the U.S. Government

- Uphold the ICCPR and ICERD and ratify the ICESCR, CEDAW, and CRC.

Food Systems Should Be Controlled by the People

- Adopt a rights-based national plan to end hunger that incorporates strong civic participation from those most affected, and that addresses the history of enslaved, demeaned, and incarcerated food system labor in the U.S. by the corporate scale agro-food industry and private public prisons.
- Break up concentrated land ownership (land reform), monopolistic food production, processing, and marketing, and industrially organized political lobbying.
- Support local, regional, and national scale food policy initiatives that foreground in policy development, monitoring, and revision, the voices of persons, including those with penal experience, who have direct experience with enslaved, demeaned, or incarcerated food system labor.
- Recommendations from the September 2022 White House Conference on Hunger should adopt a rights-based framework and center the voices of people with lived experiences of hunger.
- Reverse the Supreme Court's ruling in *Citizens United v. Federal Elections Commission*.
- Strengthen anti-trust laws to de-monopolize the food and agriculture industry.
- Protect the fishing, hunting, water, and land rights of Indigenous Peoples.
- Promote land ownership among women and BIPOC small-scale food producers.
- Empower existing community outreach frameworks to address the right to food.
- Regulate corporate influence over research and lobbying on food.
- Require increased transparency of corporate campaign donations and political lobbying.

Food Should Be Adequate and Nutritious

- Increase and protect supplemental food and nutrition programs.
- Regulate the marketing and labeling of unhealthy food.
- Require all public school districts, charter schools, and non-public schools that participate in the national school lunch program or school breakfast program as provided in the national child nutrition act to serve breakfast and lunch at no cost to the student.
- Implement universal school food programs focusing on nutrition and addressing the existing stigma surrounding free and reduced meals, such as Breakfast After the Bell.
- End proliferation of fast-food restaurants in low-income neighborhoods and ensure that fresh and affordable food is accessible in all neighborhoods.
- Meaningfully incorporate nutrition into right to food laws, policies, and programs.
- As part of maternal-infant health policy, prioritize breastfeeding support including pre-birth education, post-partum medical and psychological support, and resources for extra food and pumping materials in line with the principles of the 1981 International Code on the Marketing of Breast-Milk Substitutes, the 1990 and 2005 Innocenti

Declarations, and the 1991 Baby-Friendly Hospital Initiative, especially among communities where breastfeeding rates are low.

- Allow incarcerated postpartum women to live with infants in a prison nursery setting in order to breastfeed.
- Allow incarcerated postpartum women to pump and store their breastmilk, and promote alternatives to incarceration or sentencing for pregnant/postpartum women.
- Monitor, regulate, and stop predatory practices by breastmilk substitute companies taking advantage of current maternal-infant policies in prison, as well as the lack of appropriate support outside prisons.

Food Should Be Accessible

- Ensure adequate working conditions, living wages, and gender and racial equity.
- Require all employers to pay a living wage.
- Fund economic security programs, including direct unrestricted cash assistance programs, and create paid and protected leave for GBV survivors.
- Secure and protect land access for independent producers, BIPOC communities.
- Pay reparations to communities whose labor has been systematically exploited and have been dispossessed of their land since the founding of the U.S. and address the unequitable redistribution of land.
- Address access, adequacy and quality of affordable housing, healthcare, and employment.
- Pass comprehensive immigration reform that includes a pathway to citizenship for agriculture and food industry workers.
- Promote and fund cooperative ownership of land and community food stores.
- End the exemption for agriculture in the Ashurst-Sumners Act.
- Make federal law that post-incarcerated individuals have equal access to public (e.g. SNAP, WIC) and private (e.g. pantries, soup kitchens) food assistance programs. Not only is access a basic right, but denied access compounds the economic insecurity, social stigma, and recidivism experienced by many upon prison release.

Food Should Be Environmentally Sustainable

- Support, subsidize and incentivize independent and small-scale food producers.
- Incentivize food producers that implement sustainable practices and strengthen labor protections against pesticide exposure.
- Hold agricultural companies and extractive industries liable for their impacts on life-sustaining environmental resources such as clean water and food supplies.