THE UNITED STATES
OVERVIEW OF RECENT RESTRICTIONS TO CIVIC FREEDOMS
INTRODUCTION

In December 2020, the USA’s civic space rating was downgraded from narrowed to obstructed by the CIVICUS Monitor, signalling significant increased restrictions on the exercise of civic freedoms. This reflected the militarised and repressive response to mass protests for racial justice throughout that year, as well as the long-term trend of civic space regression through anti-protest legislation, a hostile climate for the press and surveillance, among other factors.

On 21 January 2021, Joe Biden took office as president – only two weeks after rioters stormed the US Capitol in an attempt to overturn his election. The unrest on 6 January followed weeks of incendiary rhetoric from outgoing president Donald Trump and allies, rousing supporters to reject election results. This attack exposed the depth of the crisis in US democracy, which has impacted on the space for civil society.

While the Biden administration has sought to improve on his predecessor’s relationship with the media and stressed the importance of democratic institutions, some of these trends endure. Lawmakers, particularly those at the state level, have continued to propose and enact restrictions on protest. Recent months have also seen a slew of state-level bills limiting free speech in classrooms. Attacks on journalists are ongoing and distrust toward the press remains high. Protesters continue to face incidents of excessive force and arbitrary arrests.

This research brief covers restrictions, violations and trends affecting freedoms of association, peaceful assembly and expression in the USA between January 2021 and September 2022.

ABOUT THE CIVICUS MONITOR

The CIVICUS Monitor, an online platform that tracks threats to civil society in countries across the globe, rates civic space – the space for civil society – in The United States as “Obstructed”.

The data provides the basis for civic space ratings, which are based on up-to-date information and indicators on the state of freedom of association, peaceful assembly and expression. Countries can be rated as:
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PEACEFUL ASSEMBLY

Freedom of peaceful assembly is enshrined by the constitution’s First Amendment but in practice the exercise of this right has been continually contested in recent years. Cities and states are empowered with wide discretion to establish the rules and procedures for protests, sometimes imposing restrictions on the time and place for demonstrations, requiring permits and outlawing traditional protest actions such as traffic disruption. A well-documented surge in anti-protest legislation across the country has continued to place limits on demonstrations, expanding the scope of protest-related offences and subjecting protesters to increasingly harsh penalties.

Again and again, civil rights organisations have taken legal action against these restrictions, making courts a pivotal space where protest rights are both upheld and challenged. Between January 2021 and September 2022, the courts have struck down anti-protest legislation and recognised rights violations against protesters, but have also allowed protest organisers to be held liable for violent incidents in which they were not involved.

Despite this background, protests and civil disobedience actions are crucial tactics for movements and individuals across the USA to express grievances and urge change. In this period protests against police violence, racism and discrimination have remained prominent and frequent. Across the country, thousands of people rallied to condemn the US Supreme Court decision in May 2022 that overturned the 1973 Roe v. Wade ruling, ending federal protection for abortion rights.

Recurrent mass shootings drove students and families to the streets to urge gun control policies, while a wave of hate crimes against Asian Americans sparked vigils and demonstrations. Migrants and their communities mobilised to call for changes in US immigration policies. Environmental justice activists organised non-violent disobedience actions demanding attention to the climate crisis. Vaccination mandates and policies to control the spread of COVID-19 continued to face resistance from parts of the population, leading to constant protests and counter-protests. In the territory of Puerto Rico, frustration over power outages led thousands to march against the government and privatised energy distribution services.

This section highlights some of the key restrictions and violations faced by protesters in the USA when exercising their peaceful assembly rights.

LEGAL RESTRICTIONS

Between January 2021 and September 2022, lawmakers at state and federal level introduced 108 anti-protest bills, 14 of which were enacted. Laws restricting peaceful assembly were implemented in 10 states over this period and considered in 36 state legislatures. These initiatives contain a wide range of restrictions, from criminalising some types of protests to making it easier for people to harm protesters without consequence. In six states, for instance, bills targeted climate justice demonstrations by restricting protests near oil and gas pipelines or other ‘critical infrastructure’. Laws creating or expanding liabilities for protesters who block traffic were implemented in five states and similar bills were considered in 26 states.

While this trend of anti-protest legislation is not new in the USA, there has been a surge in such initiatives after protests against racial justice swept the country following the police murder of George Floyd in May 2020. Many of the bills considered in this period promoted the message that those who protest against racial injustice are dangerous and violent, establishing harsh penalties for protesters and limiting their access to public benefits. This narrative ignores data showing that the overwhelming majority of the nationwide Black Lives Matter protests in 2020 were peaceful.

In April 2021, Oklahoma adopted a law protecting drivers from any liability when they unintentionally injure or kill protesters, while punishing protesters who block roadways with jail time and hefty fines. In the same month, Florida adopted a law widening the definition of a riot and enabling defendants in civil lawsuits to avoid liability.
by establishing that the injury or death they caused ‘arose from’ conduct by someone ‘acting in furtherance of a riot’.

In May 2021, United Nations (UN) Special Rapporteur on the right to freedom of peaceful assembly and of association, Clément Voule, said the laws adopted in Florida and Oklahoma appeared to be part of an ongoing effort to curtail demonstrations, and that they were riddled with vaguely defined offences and draconian penalties. ‘Vague definitions of ‘riot’, ‘mob intimidation’, and ‘obstruction’ as set out in these laws provide excessive discretion to law enforcement authorities to intimidate and criminalise legitimate protest activities’, Voule commented. He also said that laws providing immunity for people who injure or kill peaceful street protesters could promote the action of violent vigilante groups.

On 9 September 2021, a federal judge ruled that a key provision of Florida’s new protest law was unconstitutional and could not be enforced. The ruling by US District Judge Mark Walker found that the law’s definition of a riot was ‘vague and overbroad’ and amounted to an assault on constitutional First Amendment rights of free speech and assembly as well as the constitution’s due process protections. On 27 October 2021, a federal judge in Oklahoma also temporarily blocked parts of the state’s legislation that increased penalties related to protest activities. In both cases, legal challenges were filed by civil rights groups such as National Association for the Advancement of Colored People and the American Civil Liberties Union (ACLU).

Laws protecting those who injure protesters are particularly concerning in the context of multiple attacks by private individuals against protest participants. The dangerous trend of vehicle-ramming incidents, which started gaining national attention after a white nationalist used his car to drive through a crowd of people protesting in Charlottesville, Virginia in 2017, continued in 2021 and 2022. An analysis by The Boston Globe newspaper showed that between George Floyd’s murder on 25 May 2020 and 30 September 2021, vehicles drove into protests at least 139 times.

On 13 June 2021, protester Deona Knajdek was killed when a car rammed into a crowd of anti-racism protesters in Minneapolis, Minnesota. At least two others were injured. They had been demonstrating against the police killing of Winston Smith Jr. The driver was charged with second-degree murder and assault with a deadly weapon. On 24 June 2022, a driver in Cedar Rapids, Iowa, rammed his truck into a group of women protesting against the Supreme Court’s decision to overturn Roe v. Wade. At least one woman had to be taken to hospital. The driver was later charged.

ARRESTS AND OTHER PROTEST RESTRICTIONS

Throughout the reporting period, protests against racism and police brutality continued to take place in several cities, following cases where Black and Latino people were killed by police. These included Daunte Wright, a 20-year-old shot by police in Minnesota, Adam Toledo, a 13-year-old killed in a police chase in Chicago and 16-year-old Ma’Khia Bryant, who was shot and killed by a police officer in Columbus, Ohio. These demonstrations were sometimes declared unlawful assemblies and resulted in multiple arrests. There were cases of protests being disrupted by police using teargas, pepper spray, flashbang grenades and other less-lethal weapons.

On 25 March 2021, police declared a protest against the clearing of a homeless encampment in Los Angeles to be an unlawful assembly and began surrounding protesters before they could leave. At least 20 journalists were arrested by police who adopted a kettling tactic, a controversial form of riot control that consists of encircling protesters so they have no way to exit. In Minnesota, hundreds of people defied a curfew on 12 April 2021 to protest at a police station and were met by police officers dressed in riot gear. The police declared the protest an unlawful assembly and used flash-bang grenades, tear gas and foam rounds to disperse the crowd. About 40 people were arrested, many of whom were cited with misdemeanor curfew violations. Protests demanding justice for Daunte Wright were also detained in New York, Portland, Seattle and other cities. Several journalists were detained or injured by police while covering further protests in Minneapolis on 16 April 2021.
There were also several cases of peaceful climate justice protests being disrupted with arrests and the use of force. In July and August 2021 in Minnesota, protests against Enbridge Energy’s Line 3 oil pipeline project were often disrupted by police. On 19 and 20 July, for instance, several people were arrested in Wadena County for protesting against Line 3. On 30 July 2021, police used teargas and rubber bullets to violently disperse environmental and Indigenous rights defenders. Twenty people were arrested. On 27 August 2021, at least four people were arrested for protesting on Minnesota Capitol grounds.

Over several days in October 2021, hundreds of people demonstrated in front of the White House to demand that the Biden administration stop approving fossil fuel projects and declare the climate crisis a national emergency. Led by Indigenous activists from across the USA, the rallies kicked off on 11 October as part of the People vs. Fossil Fuels mobilisation, which called for five days of protest and civil disobedience actions. The protests were non-violent but dozens of protesters were subjected to police use of a long range acoustic device known as LRAD, which emits a piercing sound. Throughout the week of protests, 655 people were detained, according to organisers. Many were arrested on charges such as obstruction or crowding.

In Washington, DC, demonstrations near the US Capitol and the Supreme Court sometimes resulted in arrests. In July 2021, several lawmakers and activists were arrested while protesting for voting rights and calling on the Senate to approve election reform bills. On 1 December 2021, at least 33 protesters for abortion rights were detained outside the Supreme Court for blocking traffic. US Capitol Police said people were arrested after multiple warnings for ‘crowding, obstructing or incommoding in an area where protesting is prohibited’. A few days later, on 13 December 2021, more than 70 protesters were arrested in a demonstration outside the US Capitol demanding social welfare legislation. Members of the Poor People’s Campaign were arrested for crowding, obstructing, or blocking the street, a police spokesperson said.

SURVEILLANCE

In recent years, sweeping surveillance operations have made protesters in the USA vulnerable to rights violations and raised questions about the chilling effect such vigilance might have on freedoms of peaceful assembly and expression. The use of advanced and invasive technologies such as facial recognition has also reinforced discriminatory and racist practices in law enforcement, making the adoption of these technologies particularly concerning in the context of protests for racial justice. According to Amnesty International, mass surveillance technology is being used to identify, track and harass people who protest. In New York City, the organisation said, the widespread use of facial recognition technologies leaves minority communities highly exposed to discriminatory policing.

In 2021, an investigation by the ACLU of Northern California showed that the California Highway Patrol used aerial surveillance to record high-definition video of people protesting for racial justice in several cities in the state. According to the Electronic Frontier Foundation (EFF), the use of this type of surveillance without a warrant is often unconstitutional, violating the constitution’s Fourth Amendment right to privacy. The EFF’s research uncovered evidence that law enforcement agencies attempted to access footage from private home surveillance devices during racial justice protests in 2020.

Similarly, documents leaked in April 2021 showed that the law enforcement division of the US Postal Service (USPS) used an open-source intelligence tool to track social media activity related to protests between 2018 and 2021. The Internet Covert Operations Programme (iCOP)’s analysts monitored social media sites looking for ‘inflammatory’ postings and shared the information across government agencies. Among the documents obtained by Yahoo News was a bulletin with screenshots of social media publications about protests that included some users’ names and other identifying details.

The leak raised questions about not only the breadth of the US Postal Inspection Service’s jurisdiction but also the growing ties between intelligence gathering and law enforcement work. In July 2021, the EFF filed a Freedom of Information Act lawsuit against USPS and its inspection agency seeking records on the programme’s creation, operation and policies.
An USPS Inspector General probe into iCOP was launched at the request of Congress following media reports. In March 2022 it concluded that the agency had exceeded its legal authority by conducting sweeping intelligence collection on protests between February and April 2021. The report also said the investigation could not determine whether other agency work was legally authorised. This included at least 17 reports produced by iCOP between September 2020 to April 2021 on protest activities. In addition, the USPS's Inspector General stated that the agency did not properly maintain records associated with these intelligence-gathering activities.

PROTECTING FREEDOM OF ASSEMBLY: POSITIVE DEVELOPMENTS

In April 2022, the US Park Police and the US Secret Service agreed to policy changes as part of a settlement in lawsuits filed by Black Lives Matter advocates after protesters were attacked in order to clear a public area in Washington, DC for a presidential photoshoot on 1 June 2020. According to the ACLU of the District of Columbia, the settlement resolved portions of four separate lawsuits and included measures to protect the right to demonstrate, for example by providing that Park Police cannot revoke demonstration permits without there being ‘clear and present danger to the public safety’ or ‘widespread violations of applicable law that pose significant threat of injury to persons or property’. The new policies also require that Park Police wear clear identification, provide audible warnings before dispersing a crowd, enable the safe withdrawal of protesters and refrain from intimidating protesters by displaying anti-riot gear without approval from high-ranking officers.

On 25 May 2022, the second anniversary of the police murder of George Floyd, President Biden signed an executive order reforming a variety of policing practices to promote accountability, public trust and safety. Among other things, the order establishes a national database of disciplinary records and restricts practices such as chokeholds and no-knock warrants. The order also strengthens limits on the use of force by federal law enforcement agencies, places new limits on the transfer and purchase of military equipment by state and local police forces and enables state and local governments to implement alternative first responder models. While the executive measure fell short of the comprehensive criminal justice reform advocated for by activists, it constituted the most significant federal government action on police reform since protests began in May 2020.

There have also been cases of police officers and institutions being held accountable for human rights violations against protesters, with courts and jurors recognising police abuses. In February 2022, a Texas grand jury indicted 19 police officers in Austin, Texas on charges of ‘aggravated assault with a deadly weapon’ for their excessive force against racial justice protesters in 2020. In March 2022, a jury in Colorado awarded US$14 million to 12 people who had their constitutional rights violated by Denver police using excessive force during the same wave of protests.

In a separate case in March 2022, a federal appeals court revived part of a lawsuit filed by a Standing Rock activist who was injured and detained by North Dakota security forces during protests against the Dakota Access Pipeline in 2016. Marcus Mitchell alleges that law enforcement shot him with lead-filled bean bags that shattered his eye socket. The judges who reviewed the appeal said that if Mitchell’s claims are true, the Morton County law enforcement may have engaged in a ‘persistent pattern of excessive force against peaceful protesters that was tacitly authorised’ by the local sheriff.
EXPRESSION

The Biden government has undertaken an almost complete reversal of the Trump administration’s hostile anti-media rhetoric. However, despite efforts to normalise the relationship between the press and the White House, enduring issues affecting journalism remain unaddressed. According to Reporters Without Borders, these challenges include the loss of local news outlets, increasing media concentration and polarisation and the effect of social networks and digital platforms on journalism and democracy.

In the period covered by this brief, soaring distrust in media has remained an issue. Journalists continue to work in a climate of animosity, sometimes facing verbal attacks and aggression when covering protests or reporting in public areas.

ATTACKS ON JOURNALISTS AND ARBITRARY ARRESTS

The US Press Freedom Tracker, a project of Freedom of the Press Foundation and the Committee to Protect Journalists, documented 175 cases of physical assaults against journalists in the USA between January 2021 and the end of September 2022. Key perpetrators were private individuals and law enforcement officers. The same group recorded 70 cases of journalists being arrested or facing criminal charges.

There were several reports of journalists being assaulted, detained and harassed by police while covering protests. On 25 March 2021, at least 19 journalists were arrested by police in Los Angeles while covering demonstrations against the city’s plan to clear an encampment of unhoused people near Echo Park Lake. Police declared the protest an unlawful assembly and began kettling protesters before they could leave. The Los Angeles Times’ Jonathan Queally was arrested despite wearing visible credentials and telling officers that he was with the media. As reported by the Washington Post, an officer told him: ‘this is the policy tonight’. There have also been several cases of journalists being arrested while covering homelessness issues, including while interviewing people and covering evictions at encampments.

In April 2021, a number of journalists covering protests in Minneapolis sparked by the police killing of Daunte Wright were assaulted, pepper sprayed and harassed, and had their equipment damaged. Minneapolis Star Tribune photojournalist Mark Vancleave was injured after being struck with a rubber bullet on 13 April. Vancleave said he was wearing his press credentials when he was hit on his hand, which was holding a camera. This resulted in lacerations and two broken bones in his fingers. On the same day, CNN producer Carolyn Sung was thrown to the ground and arrested by Minnesota state police. Sung said she was strip-searched and ordered to put on orange prison clothing until her lawyers bailed her out. On 14 April, Getty Images photojournalist Scoot Olson’s camera equipment was damaged with rubber bullets shot by police officers. On 16 April, Agence France-Press journalist Robin Legrand and two colleagues were pepper sprayed by law enforcement while warning officers that they were members of the press.

On 7 June 2021, Alan Weisman, a freelance journalist on assignment for the Los Angeles Times, was detained, strip-searched and charged with trespassing while covering a protest against the construction of Line 3 in Minnesota. Weisman, one of hundreds of people arrested by police that day, had his phone, voice recorder, notebooks and prescription medications confiscated by police. ‘It was very clear that I was a journalist’, Weisman said, noting that he had a notebook in his hand and was conducting interviews at the time. He also claimed the officer did not give him any warning before his arrest or issue any commands to leave the area. He was initially charged with trespassing on critical public service facilities, but charges against him were dismissed in July 2021.

Growing distrust toward the media continued to translate into a difficult climate for reporters. On several occasions correspondents were assaulted by private individuals when attempting to do their jobs, were attacked by protesters or caught in clashes between protesters and counter-protesters.

Journalists covering the 6 January 2021 Trump rally on the National Mall were attacked and had their equipment destroyed by Trump supporters. Reporters for the Associated Press, CNN, local news outlets and foreign corres-
pondents were forced to flee the area after barriers separating the media from the crowd were destroyed. Associated Press photographer John Minchillo was dragged through the crowd and pulled down a flight of stairs. Inside the Capitol, several journalists were forced to shelter with members of Congress while the attack was taking place. According to the US Press Freedom Tracker, at least five people were charged for attacks on three journalists on 6 January. However, no charges were filed in relation to the cases of 15 other journalists who faced assaults.

On 22 August 2021, at least three journalists were assaulted while covering demonstrations by far-right groups and antifascist counter-protesters in Portland, Oregon. Independent journalist Maranie Staab and other journalists were attacked when they were caught between two clashing groups. Staab was first sprayed with a chemical she did not recognise, then said someone grabbed her mobile phone, threw it on the ground and smashed it.

On 26 August 2021, Traverse City Record-Eagle reporter Brendan Quealy was shoved to the ground and punched in the face while covering an anti-mask demonstration near Traverse City, Michigan. Two men at the demonstration approached him, told him to leave and pushed him. One of the men then shoved Quealy into a wooden fence and punched him in the face with both fists before others in the group intervened to stop the attack. In September 2021, two men were charged in connection with the assault. Charges against one of them were dropped, while the other did not contest misdemeanor charges for assault and battery and was sentenced in November 2021. Several similar incidents were reported at anti-vaccine and anti-mask rallies in 2021.

On a positive note, on 10 March 2021, a reporter with the Des Moines Register who was arrested while covering Black Lives Matter protests in 2020 was acquitted of all charges. Andrea Sahouri said she was clearly identified as press but the police pepper sprayed her face while she was handcuffed. The trial drew national attention because Sahouri was the first working American journalist to face a criminal trial since 2018, and several prominent human rights and free speech groups campaigned against her arrest and charges. A jury acquitted Sahouri of two misdemeanor charges: failure to disperse and interference with official acts. Both charges carried fines and sentences of up to 30 days in jail.

CENSORSHIP AND RESTRICTIVE LAWS

In February 2022, civil society group PEN America warned that a slew of bills moving through state legislatures that target LGBTQI+ people represent a ‘national assault’ on the US education system and the free speech of teachers and students. This includes several bills prohibiting and punishing teachers for discussing sexual orientation or gender identity, and others banning materials dealing with gender and sexuality or that centre LGBTQI+ people. The organisation documented more than 150 such ‘educational gag order’ bills introduced or pre-filed in 38 states since January 2021. Twelve have become law in 10 states.

Among the most controversial examples, Florida’s ‘Parental Rights in Education’ law – commonly referred as the ‘Don’t Say Gay’ law – prevents teachers from speaking to students about sexual orientation and gender issues. Under this initiative, parents are given greater authority to take legal action against school districts believed not to comply. Governor Ron DeSantis signed the law on 28 March 2022, enabling the legislation to come into effect from 1 July 2022, with all school district plans required to be updated by June 2023. On 31 March 2022, LGBTQI+ advocacy organisations filed a lawsuit against DeSantis and the state’s education officials seeking to block enforcement of the law.

These legislative restrictions have been accompanied by a wave of book bans in schools, universities and public libraries. These efforts have overwhelmingly targeted materials dealing with gender and sexuality. The record-breaking number of attempts to ban or restrict library resources led the American Library Association (ALA) to issue a statement warning of increased censorship. The organisation stated that 2021 saw the highest number of censorship attempts of this nature since it began its documentation over 20 years ago. Yet this record was set to be broken in 2022, with 681 attempts to ban or restrict library resources and 1,651 unique titles targeted by September.
‘The unprecedented number of challenges we’re seeing already this year reflects coordinated, national efforts to silence marginalised or historically underrepresented voices and deprive all of us – young people, in particular – of the chance to explore a world beyond the confines of personal experience’, said ALA President Lessa Kananiʻopua Pelayo-Lozada.

In addition, there has been a surge in bills to limit students’ exposure to teaching on racism and oppression in US history. In June 2021, teachers across the country mobilised against these bills, saying they were ‘anti-history’.

OTHER VIOLATIONS AND RESTRICTIONS

In early 2021, the Coalition For Women In Journalism reported a clear rise in difficult and at times hateful treatment towards Asian American journalists, particularly when they are also women. These attacks included racial slurs and sexist commentary. On 25 February 2021 amid a wave of Anti-Asian attacks, the Washington Post denounced online harassment against correspondent Seung Min Kim. The newspaper’s national editor said that a picture of the journalist posted on Twitter led to a ‘flood of racist, sexist and ill-informed attacks on Seung Min. The racist and sexist attacks have been vicious and typical. She and other minority women endure vile, baseless attacks daily, no matter what story they are working on, or tweeting about. The attacks on her journalistic integrity were wildly misguided and a bad faith effort at intimidation’.

In this period, the US Press Freedom Tracker also recorded at least 57 cases of subpoenas or legal orders being issued requiring journalists to testify in court or produce journalistic records or their work. However, the group said these numbers are likely to be an underestimation because many subpoenas are not publicly reported and legal orders for journalist records are conducted with high levels of secrecy.

In one case, the US House Select Committee investigating the 6 January attack subpoenaed three months of phone records belonging to Amy Harris, a British freelance photojournalist. Harris, who was near the Capitol on the day of the attack, reportedly had access to Trump’s inner circle and covered white nationalist group Proud Boys in the months leading to the assault. Telecoms company Verizon notified her on 2 December 2021 that it had received a subpoena compelling them to produce ‘all subscriber information and all call, text messaging, and other records of communications associated with Ms. Harris’ phone number for a period of almost three months between November 1, 2020 and January 31, 2021’.

In response, Harris filed a suit against the committee calling for the subpoena to be quashed. Harris’s attorneys argued that providing the information would violate her rights and professional obligations. Fifty-five media organisations spoke out in support of Harris, calling on the authorities to withdraw their sweeping subpoena for her phone records.

Bureaucratic restrictions on journalistic activity have been imposed in state legislatures of some US states. In early 2022, in a break with decades of precedent, journalists covering the state senates in Iowa and Kansas were confined to designated media galleries, rather than being able to work from the senate floor. Similar restrictions were imposed by Utah’s senate, which began requiring that journalists be accompanied by a senate employee and that they get permission to take photographs in some areas.

At the federal level, under the Biden administration the Justice Department has continued to pursue the extradition of WikiLeaks founder Julian Assange for publishing classified documents in 2010. In January 2021, the UK High Court ruled against the US government’s request for extradition, arguing that Assange’s mental health was at risk. In December 2021, the USA won its appeal against the ruling, in a decision that enabled Assange’s extradition to face charges under the Espionage Act and the Computer Fraud and Abuse Act. On 17 June 2022, the UK Home Secretary approved the request to extradite Assange to the USA, a decision that WikiLeaks vowed to appeal against. Civil society and press organisations called on the government to drop charges and close the case, which they said poses a grave threat to press freedom in the USA and abroad.

More information at www.monitor.civicus.org / Twitter: @civicusmonitor / Email: monitor@civicus.org
ASSOCIATION

WORKERS’ RIGHTS IN DISPUTE

Despite commitments under national and international law, workers’ rights are systematically violated in the USA. According to the International Trade Union Confederation, the free establishment of labour associations is impaired because employers can refuse to recognise a union and delay bargaining by filing multiple appeals with administrative agencies and courts. Several categories of workers are restricted or limited from forming a union, including agricultural workers, domestic workers, some public sector workers and managerial and supervisory staff. In addition, there are excessive restrictions on the right to strike and on collective bargaining.

In the period covered by this brief, unionisation campaigns emerged across the public and private sectors in the USA. These were often pushed forward by frontline workers looking to redress power imbalances between themselves and their employers, in the light of health and safety concerns that intensified as they worked through the COVID-19 pandemic. On 26 November 2021, for instance, Amazon employees and supporters staged walkouts and protests in multiple cities to demand better pay and workplace improvements, and to call on the company to address the climate crisis. ‘The pandemic has exposed how Amazon places profits ahead of workers, society, and our planet’, strike organisers said in a statement. ‘Amazon takes too much and gives back too little. It is time to Make Amazon Pay’.

On 1 April 2022, a majority of workers at one of Amazon’s warehouses in Staten Island voted to establish the company’s first-ever labour union. Over 2,600 workers elected to join the Amazon Labour Union (ALU), an independent union led by former and current warehouse workers. Previous efforts by Amazon employees to form unions had been defeated, and the company has been accused of adopting a wide range of anti-unionisation tactics. One of the leaders of the Staten Island campaign, Chris Smalls, was fired in 2020 after staging a walkout over COVID-19 safety. Soon after the April 2022 vote, Amazon filed a legal challenge to ALU’s victory and requested a rerun of the election.

There have been several similar efforts to discourage workers from forming unions. Over several weeks of the 2022 summer, employees at Starbucks held over 50 strike actions in at least 17 states over the company’s alleged unfair labour practices against unionisation. Employees claim that at least 87 workers were fired in 2022 in retaliation for organising. Hundreds of allegations of misconduct by Starbucks are under review at the National Labor Relations Board (NLRB), including claims of shutting down stores to bust unions and intimidating and threatening workers to prevent unionisation. In August 2022, the NLRB issued a complaint that accused Starbucks of breaking labour law by refusing to provide unionised workers with benefits extended to other employees. Despite union-busting tactics, as of 30 August 2022, Starbucks Workers United had won unionisation votes in 230 Starbucks stores around the USA, less than a year after the first store’s decision to unionise in December 2021.

In a positive note, the Biden administration has taken steps to support workers’ organising. After an effort to amend labour law stalled in the Senate after passing in the House in March 2021, the White House Task Force on Worker Organising and Empowerment issued a framework report outlining dozens of actions the federal government should take to promote labour rights through executive action rather than legislation. Released in February 2022, the report makes recommendations to promote worker organising and collective bargaining for public and private sector employees. For example, the report calls on agencies throughout the executive branch to let union representatives meet with newly hired federal employees at the worksite to explain what their union does, review collective-bargaining agreements and invite them to become union members.

On the state level, in September 2022 California passed the Fast Food Accountability and Standards Recovery Act, known as the ‘FAST Recovery Act’, which improves protections for restaurant workers from abuses and labour violations by their employers. It creates a state-wide council to set new standards on wages, working con-
ditions and training specific to the fast food industry. The council will be comprised of fast food employees, worker advocates, franchisors, franchisees and government officials. The bill was approved by the state governor on 5 September 2022.

BUREAUCRATIC AND LEGAL RESTRICTIONS ON THE BDS MOVEMENT

The Boycott, Divestment and Sanctions (BDS) movement works to end international support for Israel's oppression of Palestinians and pressure Israel to comply with international law. At the end of October 2020, news outlets reported that the Trump administration planned to declare the BDS movement and organisations perceived to support it as anti-Semitic. This would bar such groups from receiving funding. It was reported that this would include several international civil society organisations critical of Israel's settlement policies, including Amnesty International, Human Rights Watch and Oxfam. On 19 November 2020, Amnesty International published a statement saying that advocating for BDS is a form of non-violent advocacy and free expression that must be protected.

While the Trump administration did not issue a declaration, organisations participating in the BDS movement have faced legal challenges in several states. Thirty-three states of the USA have enacted some form of legislation targeting boycotts of Israel. In 2021 and 2022, over 70 bills were introduced at either the state or federal level to limit advocacy for Palestinian rights. These bills target the BDS movement in multiple ways, including by prohibiting state contracts for entities that support the movement, penalising schools and defunding student organisations, and conditioning disaster relief on pledges to not join the boycott.

Often these laws have been blocked by US courts. However, in June 2022, a court of appeals ruled that an Arkansas law requiring state contractors to pledge that they won't participate in the BDS movement does not violate the First Amendment. The court held that the BDS's definition of 'boycotting Israel' relates solely to commercial activities. A challenge to this ruling may lead the Supreme Court to take up the case.

OTHER DEVELOPMENTS

In January 2021 the Biden administration rescinded the Global Gag Rule, a policy that limited foreign aid to organisations that provide information, referrals or services for legal abortion. Officially called the ‘Mexico City Policy’, the rule was first implemented by the Reagan administration in 1984. Since then, it has been repeatedly repealed and reinstated from one administration to the next. The Trump administration had reinstated the policy on its first days in office in January 2017 and expanded its scope.

On a separate note, Amnesty International recounted in its 2021/2022 annual report that human rights defenders and journalists working on migration issues at the US border with Mexico have continued to face intimidation and harassment by the authorities, impacting on both their ability to do their work and their overall well-being.
RECOMMENDATIONS TO THE FEDERAL GOVERNMENT

• Effectively investigate all cases of arrest and detention of peaceful protesters, and acts of violence against them, and bring those responsible to justice.

• Publicly condemn at the highest levels all instances of the use of excessive and brutal force by security forces in response to protests, launch formal investigations into such instances and bring the perpetrators to justice.

• Continue to review and update existing human rights training for police and security forces, with the assistance of independent civil society organisations, to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.

• Adopt a framework for the protection of journalists from attacks, intimidation and harassment.

• Harmonise the legal framework that regulates communications surveillance to ensure the law is accessible and clear and meets international human law and standards, and establish an independent and effective oversight mechanism with a mandate to monitor all stages of intercepts of communications.

• Ensure freedom of expression is safeguarded in all arenas, including in literature and the arts.

• Guarantee the effective and independent functioning of autonomous trade unions by removing proscriptions on the formulation of independent labour unions and undue limitations on the right to strike.

• Ensure that human rights defenders working on migration and journalists covering border issues are able to carry out their legitimate activities without fear or undue hindrance, obstruction, or legal and administrative harassment.

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