



Comment of Public Citizen to the White House Office of Science and Technology  
**Request for Information: Automated Worker Surveillance and Management**  
**Docket Number OSTP-FRDOC-0001**

On behalf of Public Citizen's 500,000 members and supporters, we thank the White House Office of Science and Technology ("Office") for working to ensure automated surveillance systems do not undermine workers' rights, opportunities, access, health or safety.

Public Citizen stands for the right of people to live their lives without undue interference from corporate power, and for putting power back where it belongs — in the hands of human beings.

It is impossible to live a life in the modern world free from commercial surveillance. The connected world has brought benefits, but those benefits have come with costs. We therefore again commend the Office on starting the valuable process of categorizing the harms of surveillance in the workplace, and even more importantly beginning to rebalance power in favor of workers rather employers who seek to use surveillance that endangers the health and safety of workers.

**Workers Need Protections Against the Abuse of Surveillance by Employers (Question 1)**

Oversight of employee performance is an integral aspect of managing a productive workforce. However, there is an important distinction between supervising effective performance of workers and abuse of technology to patrol all employee activities. Data collection tactics developed in the consumer realm are now being used by employers to assert control over the workplace and, in turn, control over workers.<sup>1</sup> Unfortunately, the adoption of invasive and exploitative workplace surveillance is being normalized, with eight out of 10 of the largest employers in the U.S. digitally monitoring their employees.<sup>2</sup> It's a practice that degrades the rights, privacy, health and safety of workers.

Employees may not know how they are being tracked and what information is being collected about them. It can include sensitive information and a security breach that reveals the worker data raises the same privacy concerns and damage risk as a security breach of customer

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<sup>1</sup> Sam Adler-Bell and Michelle Miller, *How Surveillance and Capitalism Are Shaping Workers Future Without Their Knowledge*, THE CENTURY FOUNDATION (December 19, 2018), <https://bit.ly/3E8IP8y> [hereinafter Adler-Bell and Miller, *How Surveillance and Capitalism Are Shaping Workers Future*.].

<sup>2</sup> Jodi Kantor and Arya Sundaram, *The Rise of the Worker Productivity Score*, NEW YORK TIMES (August 14, 2022), <http://bit.ly/3AnOV3U> [hereinafter Kantor and Sundaram, *The Rise of the Worker Productivity Score*.].

information.<sup>3</sup> Additionally, some employers use information acquired from data brokers to make hiring decisions, yet “[a]lgorithmic decisions made based on these data points can easily become proxies for discrimination and bias.”<sup>4</sup> Others employ surveillance to chill worker collective organizing.<sup>5</sup>

Invasive surveillance systems create a harmful work environment. The lack of transparency in data collection also puts workers at an extreme informational disadvantage, increasing corporate power and decreasing the bargaining power of the labor force.<sup>6</sup> The imbalance gives employers the control to exploit workers, particularly vulnerable and marginalized populations,<sup>7</sup> even using opaque data collection to engage in wage theft.<sup>8</sup> Workers must submit to unfair and deleterious workplace practices in order to put food on their tables.

### *Surveillance of Workers Has Increased Dramatically*

There is a long history of aggressive scrutiny of workers, and even the use of investigative services to gather information on employees.<sup>9</sup> However, that level of surveillance was used sparingly because it is both expensive and time consuming.<sup>10</sup>

As technology has quickly advanced, so have the options for monitoring the actions of employees both inside and outside the workplace.<sup>11</sup> The use of closed-circuit television cameras and key cards that track employee entrance and exit from the workplace have graduated to body cameras and GPS trackers. A Wisconsin tech company started an optional program that implants microchips in employees.<sup>12</sup> Despite dubious scientific validity and racial and sexist bias,<sup>13</sup> facial tracking and voice recognition software is being used to scrutinize public-facing workers to ensure they are using appropriate facial expressions and vocal tone with customers.<sup>14</sup> Bio-tracking, though still in early development, can be a useful worker protection tool to identify dangerous changes in heart rate, body temperature, kidney function and other physiological

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<sup>3</sup> Andrea Miller, *More Companies Are Using Technology to Monitor Employees, Sparking Privacy Concerns*, ABC NEWS (March 10, 2018), <http://bit.ly/3GIEBNq> [hereinafter Miller, *More Companies Are Using Technology to Monitor Employees*.].

<sup>4</sup> Adler-Bell and Miller, *How Surveillance and Capitalism Are Shaping Workers Future*.

<sup>5</sup> See, e.g., Jo Constantz, *‘They Were Spying On Us’: Amazon, Walmart, Use Surveillance Technology To Bust Unions*, NEWSWEEK (December 13, 2021), <http://bit.ly/3EGjEf7>; Daniel A. Hanley and Sally Hubbard, *AMAZON’S SURVEILLANCE INFRASTRUCTURE AND REVITALIZING WORKER POWER*, OPEN MARKETS INSTITUTE, (September 1, 2020), <http://bit.ly/3EeukA2> [hereinafter Hanley and Hubbard, *AMAZON’S SURVEILLANCE STRUCTURE*.].

<sup>6</sup> Adler-Bell and Miller, *How Surveillance and Capitalism Are Shaping Workers Future*.

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

<sup>8</sup> KATHRYN ZICKUHR, *WORKPLACE SURVEILLANCE IS BECOMING THE NEW NORMAL FOR U.S. WORKERS*, WASHINGTON CENTER FOR EQUITABLE GROWTH (August 18, 2021), <http://bit.ly/3Ak4FVA>. [hereinafter ZICKUHR, *WORKPLACE SURVEILLANCE IS BECOMING THE NEW NORMAL*.]

<sup>9</sup> ZICKUHR, *WORKPLACE SURVEILLANCE IS BECOMING THE NEW NORMAL*.

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

<sup>11</sup> This includes surveillance of contract workers, as well as surveillance of franchise workers by corporate headquarters. *Id.*

<sup>12</sup> Miller, *More Companies Are Using Technology to Monitor Employees*.

<sup>13</sup> Kate Crawford, *Artificial Intelligence is Misreading Human Emotion*, THE ATLANTIC (April 27, 2021), <http://bit.ly/3GDLOsH>.

<sup>14</sup> See, e.g., ZICKUHR, *WORKPLACE SURVEILLANCE IS BECOMING THE NEW NORMAL*.

factors. However, employers are also spuriously attempting to use it to measure worker emotion and mood, a presumptive proxy for worker productivity.<sup>15</sup>

An explosion of digital monitoring unfolded as more of the workforce began working from home. Use of surveillance software dramatically increased with the COVID-19 pandemic.<sup>16</sup> Technological systems available to employers include software giving employers access to private worker messages on Slack, “attention tracking” on Zoom videoconferencing,<sup>17</sup> random screenshots of an employee’s computer, and recordings of every keystroke an employee makes.<sup>18</sup> Microsoft Office 365 software allows employers to track worker activity in great detail without notifying a worker that they are being tracked.<sup>19</sup> In a recent survey, 78% of employers acknowledged the use of monitoring software to track employees and 73% reported evaluating employee performance and/or making decisions to terminate employees using stored worker emails, calls and videos.<sup>20</sup> Yet, 83% of employers in the same survey admitted that this type of data collection is ethically questionable.<sup>21</sup>

### *Worker Surveillance Offers Limited Benefit to Employers*

Surveillance technologies can be useful in guarding against theft, unsafe work practices and workplace violence. While these purposes are often cited by employers, concerns about productivity are the primary reason given for use of most technological surveillance systems. However, many types of surveillance and the manner in which they are used belie this rationale. For example, many employers utilize technology to furtively monitor and record workers without notifying workers that they are doing so. In these cases, decisions about the worker — including salary, promotions, discipline and termination — are made based on information the worker did not know was being collected or used. By failing to use collected data to provide workers with appropriate feedback, there is no opportunity to improve job performance or increase their productivity.

Even when workers are aware of surveillance by the employer, workplace productivity may not improve. In fact, it may reduce worker performance by increasing mistakes and causing workers focus on quantified behavioral metrics that may not reflect tasks necessary for successful

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<sup>15</sup> Emine Saner, *Employers Are Monitoring Computers, Toilet Breaks – Even Emotions. Is Your Boss Watching You?*, THE GUARDIAN (May 14, 2018), <http://bit.ly/3EA6xMe>.

<sup>16</sup> Jennifer Alsever, *Your Company Could Be Spying On You: Surveillance Software Use Up Over 50% Since Pandemic Started*, FORTUNE (September 1, 2021), <http://bit.ly/3OcqzOq>.

<sup>17</sup> Public outcry against the ZOOM’s monitoring software caused the company to disable the feature. See, Eric S. Yuan, *A Message to Our Users*, ZOOM BLOG (April 1, 2020), <http://bit.ly/3E9UNyI>.

<sup>18</sup> Sara Morrison, *Just Because You’re Working From Home Doesn’t Mean Your Boss Isn’t Watching You*, VOX (April 2, 2020), <http://bit.ly/3UDkYVv> [hereinafter Morrison, *Just Because You’re Working From Home Doesn’t Mean Your Boss Isn’t Watching You*]; ZICKUHR, WORKPLACE SURVEILLANCE IS BECOMING THE NEW NORMAL.

<sup>19</sup> Rachel Sandler, *Microsoft’s New Productivity Score Lets Your Boss Monitor How Often You Use Email and Attend Video Meetings*, FORBES (November 25, 2020), <http://bit.ly/3UK80Wb>. Though Microsoft modified the software to aggregate worker data in response to public pushback, research shows that the program continues to allow employers to collect extensive data on individual workers. Bill Goodwin, *Microsoft Office 365 Has Ability To Spy On Workers*, COMPUTER WEEKLY (June 21, 2022), <http://bit.ly/3Gv3yGe>.

<sup>20</sup> Mark C. Perna, *Why 78% Of Employers Are Sacrificing Employee Trust By Spying On Them*, FORBES (March 15, 2022), <http://bit.ly/3txeZG1>.

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

completion of job goals.<sup>22</sup> Surveillance also creates an environment of distrust between workers and management, causing a disconnect that hampers worker loyalty and accountability. Research has shown that, in some cases, monitored workers may be more likely to disregard instructions, work at a slower pace, and even steal from the company.<sup>23</sup> Creating zones of privacy for workers, on the other hand, has been shown to increase performance.<sup>24</sup>

The newfound ease of inexpensively collecting information on employees has led many employers to engage in intensive oversight through surveillance of almost every aspect of a worker's activities.<sup>25</sup> This level of data collection is impossible for employers to analyze. Therefore, they turn to algorithms that fail to effectively capture worker performance — focusing on specific actions rather than outcomes.<sup>26</sup> By relying on these algorithms to determine worker pay or direct disciplinary actions,<sup>27</sup> employers betray the rights of employees and make arbitrary, unprofitable business decisions.<sup>28</sup>

### *Intense Scrutiny is a Weapon to Control Workers*

Unfortunately, the adoption of invasive and exploitative workplace surveillance is being normalized and employers are increasingly operating with a “Big Brother” mentality.

Amazon warehouses, for example, use sensors and tablets to monitor workers' movements, tracking how many boxes they've filled.<sup>29</sup> Amazon uses its package scanners not only to track packages, but also to measure the number of seconds between each scan made by a worker.<sup>30</sup> One worker reported that the established quota required her to scan one item every 11 seconds (300 items per hour).<sup>31</sup> Workers who fail to reach their quotas may be reprimanded or fired.<sup>32</sup> The breakneck pace of the work can cause repetitive stress injuries.<sup>33</sup> Also, workers feel pressured to ignore safety precautions in order to keep up, increasing the chances of workplace

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<sup>22</sup> ZICKUHR, WORKPLACE SURVEILLANCE IS BECOMING THE NEW NORMAL; Kantor and Sundaram, *The Rise of the Worker Productivity Score*.

<sup>23</sup> Chase Thiel, Julena M. Bonner, John Bush, David Welsh and Niharika Garud, *Monitoring Employees Makes Them More Likely To Break Rules*, HARVARD BUSINESS REVIEW (June 27, 2022), <http://bit.ly/3V5jUcH>.

<sup>24</sup> Ethan S. Bernstein, *The Transparency Paradox: A Role For Privacy In Organizational Learning And Operational Control*, 57 (2) ADMINISTRATIVE SCIENCE QUARTERLY (2012) 181-216, <https://doi.org/10.1177/0001839212453028>.

<sup>25</sup> Michel Anteby and Curtis K. Chan, *Why Monitoring Employees' Behavior Can Backfire*, HARVARD BUSINESS REVIEW (April 25, 2018), <https://hbr.org/2018/04/why-monitoring-your-employees-behavior-can-backfire> [hereinafter Anteby and Chan, *Why Monitoring Employees' Behavior Can Backfire*.]

<sup>26</sup> ZICKUHR, WORKPLACE SURVEILLANCE IS BECOMING THE NEW NORMAL.

<sup>27</sup> Employers are increasingly using quantitative surveillance data algorithms for semi- or fully- automated management that makes decisions for employer action. Id. For example, Amazon has used automated management systems that can terminate an employee or contract driver without the input of a human supervisor. See, e.g., Colin Lecher, *How Amazon Automatically Tracks And Fire's Warehouse Workers For 'Productivity'*, THE VERGE (April 25, 2019), <http://bit.ly/3OdWOi7>; Spencer Soper, *Fired By a Bot At Amazon: 'It's You Against The Machine'*, BLOOMBERG (June 28, 2021), <http://bit.ly/3AosHPo>.

<sup>28</sup> ZICKUHR, WORKPLACE SURVEILLANCE IS BECOMING THE NEW NORMAL.

<sup>29</sup> Id.

<sup>30</sup> Hanley and Hubbard, AMAZON'S SURVEILLANCE STRUCTURE.

<sup>31</sup> Will Evans, *Ruthless Quotas at Amazon Are Maiming Employees*, THE ATLANTIC (November 25, 2019), <http://bit.ly/3gc8QvS> [hereinafter Evans, *Ruthless Quotas at Amazon*.]

<sup>32</sup> Id.

<sup>33</sup> Id.

accidents.<sup>34</sup> Indeed, inspectors with the Washington Department of Labor and Industries cited a direct connection between the pressure to work at high speed and worker injuries at an Amazon delivery station.<sup>35</sup>

Sometimes the procedures for monitoring can be the direct cause of an injury. FedEx workers have experienced intense, persistent pain from the repetitive stress of moving boxes with a heavy package scanner strapped to their forearm.<sup>36</sup>

As part of its Global Smart Logistics Network,<sup>37</sup> UPS trucks have become a rolling computer filled with hundreds of sensors that track every aspect of the worker and truck movements, such as when the engine is turned on, if the truck is backing up, when the door is open, and whether a seat belt is buckled.<sup>38</sup> The handheld computer used to gather customer signatures is also a GPS monitor.<sup>39</sup> It prescribes turn-by-turn directions and tracks when delivery drivers exceed time limits for each package delivery.<sup>40</sup> UPS guidance, sometimes called “The 340 Methods,” includes everything from which shirt pocket to stow their pen to how to occupy their time on an elevator.<sup>41</sup>

Surveillance practices that monitor workers every minute place intense scrutiny on any time not being used to accomplish work tasks. Workers feel forced to work through pain and injuries.<sup>42</sup> The system pressures workers to limit rest and bathroom breaks.<sup>43</sup> UPS drivers, for example, have to account for Stops Per On-Road Hour, forcing them to justify bathroom breaks.<sup>44</sup> Not surprisingly, UPS drivers and workers at other companies that enforce minute-by-minute accountability report limiting their bathroom breaks.<sup>45</sup> This puts the health of the worker at risk and can increase workplace accidents due to worker distraction. Additionally, rest breaks are essential to avoid health risks to workers, including heat-related illness.<sup>46</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> Will Evans, *Amazon’s Warehouse Quotas Have Been Injuring Workers for Years. Now Officials Are Taking Action*, REVEAL (May 15, 2022), <http://bit.ly/3OkEzAH>.

<sup>36</sup> Jessica Bruder, *These Workers Have a New Demand: Stop Watching Us*, THE NATION (May 27, 2015), <http://bit.ly/3hOjGbA> [hereinafter Bruder, *Stop Watching Us*].

<sup>37</sup> See, *UPS Deploys Purpose-Built Navigation For UPS Service Personnel*, UPS (December 4, 2018), <http://bit.ly/3UJRWn6>.

<sup>38</sup> Andrea Miller, *More Companies Are Using Technology to Monitor Employees, Sparking Privacy Concerns*, ABC NEWS (March 10, 2018), <http://bit.ly/3G1EBNq>; Jacob Goldstein, *To Increase Productivity, UPS Monitors Drivers Every Move*, NPR (April 17, 2014), <http://bit.ly/3TI4II1>; Jacob Goldstein and Zoe Chase, *The Future of Work Looks Like a UPS Truck*, PLANET MONEY, NPR (May 2, 2014), <http://bit.ly/3hM3jfM> [hereinafter Goldstein and Chase, *The Future of Work*].

<sup>39</sup> Goldstein and Chase, *The Future of Work*.

<sup>40</sup> *Id.*: *UPS Deploys Purpose-Built Navigation For UPS Service Personnel*, UPS (December 4, 2018), <http://bit.ly/3UJRWn6>.

<sup>41</sup> Bruder, *Stop Watching Us*.

<sup>42</sup> Evans, *Ruthless Quotas at Amazon*.

<sup>43</sup> See, e.g., ZICKUHR, WORKPLACE SURVEILLANCE IS BECOMING THE NEW NORMAL; Evans, *Ruthless Quotas at Amazon*; Conley, *Strict Rules*; Hanley and Hubbard, *AMAZON’S SURVEILLANCE STRUCTURE*.

<sup>44</sup> Bruder, *Stop Watching Us*.

<sup>45</sup> See, e.g., ZICKUHR, WORKPLACE SURVEILLANCE IS BECOMING THE NEW NORMAL; Evans, *Ruthless Quotas at Amazon*; Bruder, *Stop Watching Us*; Emine Saner, *Employers Are Monitoring Computers, Toilet Breaks – Even Emotions. Is Your Boss Watching You?*, THE GUARDIAN (May 14, 2018), <http://bit.ly/3EA6xMe>.

<sup>46</sup> See, e.g., Juley Fulcher, *BOILING POINT: OSHA MUST ACT IMMEDIATELY TO PROTECT WORKERS FROM DEADLY TEMPERATURES*, PUBLIC CITIZEN (June 2022), <https://www.citizen.org/article/boiling-point/>.

### *Workplace Surveillance Damages the Mental Health of Workers*

The stress of constant surveillance creates a serious problem for the mental health of workers. Often the perception of workers is that they are under coercive surveillance<sup>47</sup> with an eye toward finding people to fire.<sup>48</sup> In a study of TSA agents under surveillance using closed circuit television, one officer described the surveillance system as managers “looking for excuses to slap you on the hand.”<sup>49</sup> A UPS driver said, “It’s like you’re fighting for your job every day.”<sup>50</sup> And a report on Amazon’s use of surveillance described the relationship between the company and its employees as one of “control, humiliation and unabating anxiety.”<sup>51</sup>

Michael Childers, the director of the University of Wisconsin’s School for Workers called this type of surveillance activity “management by stress.”<sup>52</sup> He described the anxiety and exhaustion of workers at a call center where every conversation and keystroke was monitored, “You had 20-year employees quitting, people throwing up in the parking lot.”<sup>53</sup> Such surveillance can create a “constant low-grade panic” that seeps into a worker’s private time and even invades their sleep.<sup>54</sup> The deterioration of mental and physical health caused by this stress is compounded by the increased risk of injury as a worker’s ability to function is compromised.

### *Workers Risk Losing Their Jobs for Reporting Dangerous Employee Practices*

Employers often retaliate against workers who report improper employer practices through discipline, demotions, reduced hours, termination and interference with attempts to gain alternative employment. The fear of retaliation is a powerful deterrent for employees who cannot afford to lose their livelihood, leaving the door open for unrestrained exploitation of workers. Any attempts to hold employers accountable for abusive and dangerous surveillance practices are undermined if those in a position to identify it are unable to come forward.

It is only through effective protection of employees from retaliation that abusive worker surveillance practices can be identified and stopped. Such protection includes education of employees on their rights and easy access to a responsive complaint system. Importantly, the employee must be able to access relief swiftly. Delays leave workers suffering emotionally and financially while they wait for agency action. In addition, slow investigations allow employers to continue unacceptable employment practices, leading to the continued harm of workers. Any policy placing limits on the use of surveillance practices must, of necessity, include whistleblower protections for workers.

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<sup>47</sup> Anteby and Chan, *Why Monitoring Employees’ Behavior Can Backfire*.

<sup>48</sup> Morrison, *Just Because You’re Working From Home Doesn’t Mean Your Boss Isn’t Watching You*

<sup>49</sup> Anteby and Chan, *Why Monitoring Employees’ Behavior Can Backfire*.

<sup>50</sup> Bruder, *Stop Watching Us*.

<sup>51</sup> Hanley and Hubbard, *Amazon’s Surveillance Structure*.

<sup>52</sup> Bruder, *Stop Watching Us*.

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

<sup>54</sup> See, e.g., Hanley and Hubbard, *Amazon’s Surveillance Structure*.

*The White House Office of Science and Technology Should Work with the Occupational Safety and Health Administration (OSHA) to Implement Rules to Protect Workers From Exploitative Surveillance*

Concentrated markets and the growing dominance of large employers have seen wages of the average worker stagnate while the salaries of top executive soar.<sup>55</sup> The imbalance has allowed employers to capitalize on the absence of regulations on the use of surveillance technologies to exploit workers at the expense of worker rights, privacy, safety and health.<sup>56</sup> With worker power eroded, it is necessary for OSHA to step in and provide oversight protection to workers.

For the reasons outlined above, a rule limiting the use of surveillance practices must include the following protections for workers:

- 1) Employers should be prohibited from invasive surveillance of workers, including the capture and/or use of information without a clear and valid business purpose that outweighs the privacy and safety risks to employees.
- 2) Employers should be prohibited from selling, sharing or transferring any surveillance data collected on employees to third parties and limitations should be placed on the length of time data can be stored.
- 3) Employers should be required to disclose surveillance practices to workers, including what information is collected, how it is collected, how long it will be retained, who has access to it, and how it will be used.
- 4) *The Office* should work in concert with OSHA to protect workers from surveillance practices that expose workers to a risk of physical or psychological harm.
- 5) An OSHA rule should delineate strong, unambiguous protections of workers from retaliation by employers for reporting abusive or dangerous surveillance practices or violations of consumer privacy. The anti-retaliation protections must include a clear enforcement mechanism through the OSHA Whistleblower Office<sup>57</sup> and the option to seek redress in the courts if worker claims cannot be investigated in a timely manner.

## Conclusion

The erosion of our autonomy through invasion of our privacy in and out of the workplace is not minor or imaginary, nor is privacy correctly imagined as lurking under some kind of nebulous constitutional shadow.<sup>58</sup> The rights, and the harms, are concrete. Privacy rights are civil rights.<sup>59</sup>

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

<sup>56</sup> *Id.*

<sup>57</sup> The OSHA Whistleblower Office enforces 25 whistleblower statutes. See, <https://www.whistleblowers.gov>.

<sup>58</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965) at 481-86.

<sup>59</sup> See, e.g., Leadership Conference on Civil and Human Rights, *Support a Comprehensive Consumer Privacy Law that Safeguards Civil Rights Online*, <https://bit.ly/3hR5a2U>.

They are human rights.<sup>60</sup> Workers rights are human rights.<sup>61</sup> And in the corporate surveillance economy, they are violated every day.

*The White House Office of Science and Technology* has a chance to take a decisive step toward rebalancing power in favor of workers and to ensure they do not have to trade their health and safety for their livelihoods. We applaud the Office for doing this important work, and look forward to engaging further as the process goes forward.

Thank you for the opportunity to comment on this significant worker health and safety issue. For questions, please contact Juley Fulcher, worker health and safety advocate in Public Citizen's Congress Watch division, at [jfulcher@citizen.org](mailto:jfulcher@citizen.org).

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<sup>60</sup> United Nations, Universal Declaration of Human Rights, Article 12. <https://bit.ly/3X13GOM>.

<sup>61</sup> United Nations, Universal Declaration of Human Rights, Articles 23 and 24 (1948), <https://bit.ly/46uoF69>; international covenant on economic, social and cultural rights (1966), <https://bit.ly/3CQPC6q>.