



## **GLJ-ILRF submission to the Special Procedures of the UN Human Rights Council regarding freedom of speech and arbitrary detention violations by Malaysia against Rayhan Kabir and related global trends**

Attention to the following UN Special Rapporteurs:

- Irene Khan, UN Special Rapporteur on the promotion and protection of freedom of opinion and expression;
- Felipe González Morales, UN Special Rapporteur on the human rights of migrants;
- E. Tendayi Achiume, UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;
- Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders;
- Tlaleng Mofokeng, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health.

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### **Summary**

GLJ-ILRF urges the above mentioned UN Special Rapporteurs to issue a communication to Malaysia regarding its immigration enforcement action against Rayhan Kabir, a Bangladeshi migrant worker, amounting to violations of his rights to freedom of expression and against arbitrary detention. Beginning July 6, Malaysia engaged in immigration enforcement action against Rayhan Kabir, including his detention from July 24, 2020 to August 19, 2020, in apparent retaliation against him for defending the human rights of migrants in a recent *Al Jazeera* documentary.<sup>1</sup> On August 21, Rayhan Kabir was repatriated, but Malaysia has announced its intent to blacklist him from the country.<sup>2</sup>

On May 21, 2020, several UN Special Rapporteurs called for Malaysia to strongly oppose xenophobia and hate speech, and end its crackdown on noncitizens, journalists, and broader civil society. Malaysia's treatment of Rayhan Kabir case indicates that Malaysia has not adopted these recommendations, and has instead escalated punitive tactics against noncitizens. We further urge

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<sup>1</sup> Malaysia to expel Bangladeshi who featured in Al Jazeera report, *Al Jazeera* (25 July 2020) <https://www.aljazeera.com/news/2020/07/malaysia-expel-bangladeshi-featured-al-jazeera-report-200725085008073.html>.

<sup>2</sup> Immigration Dept to deport and blacklist Md Rayhan, *The Star* (Malaysia) (26 July 2020) <https://www.thestar.com.my/news/nation/2020/07/26/immigration-dept-to-deport-and-blacklist-md-rayhan>.

the relevant UN Special Rapporteurs to continue to address general patterns and worldwide trends of arbitrary detention of noncitizens -- and of retaliation for exercise of free speech by workers, including migrant workers, and by their defenders.

### *Relevant international human rights standards*

This submission concerns the following international standards:

- Freedom against arbitrary detention, as provided in Universal Declaration of Human Rights (UDHR) Article 9 and the International Covenant on Civil and Political Rights (ICCPR) Article 9;
- Freedom of expression, as provided in UDHR Article 19 and ICCPR Article 19(2-3);
- Freedom against discrimination, as provided in UDHR Article 7, ICCPR Article 26, and the Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 1(2);
- Right to health, as provided in International Covenant on Economic, Social and Cultural Rights (ICESCR) (Article 12); and
- Freedom of association, as provided in UDHR Article 12(1), ICCPR Article 22, ICESCR Article 22, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), Article 26.

### *GLJ-ILRF*

This submission is provided by Global Labor Justice-International Labor Rights Forum (GLJ-ILRF).

GLJ-ILRF brings strategic capacity to cross-sectoral work on global value chains and labor migration corridors. GLJ-ILRF holds global corporations accountable for labor rights violations in their supply chains, advances policies and laws that protect decent work and just migration, and strengthens freedom of association, new forms of bargaining, and worker organizations.<sup>3</sup>

## **Introduction**

Malaysia's detention of Bangladeshi migrant worker Rayhan Kabir from July 24, 2020 to August 19, 2020 violates international standards protecting rights to freedom of expression and against arbitrary detention.<sup>4</sup> Malaysia has arrested and detained Rayhan Kabir's during a recent increase in xenophobia and hate speech against noncitizens in Malaysia, especially against Rohingya refugees and migrant workers.<sup>5</sup> Furthermore, Rayhan Kabir's case highlights the disturbing use of

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<sup>3</sup> Global Labor Justice-International Labor Rights Forum (GLJ-ILRF), <https://globallaborjustice.org/>

<sup>4</sup> Although Malaysia is not a signatory to the International Covenant on Civil and Political Rights (ICCPR), it has committed to upholding the Universal Declaration of Human Rights. See Human Rights Commission of Malaysia (Suhakam), Suhakam Welcomes the Government's Commitment to the Principles and Values of Human Rights (17 May 2014), <http://www.suhakam.org.my/2014/05>.

<sup>5</sup> Morales *et al.*, Malaysia / COVID-19: "Stop crackdown on migrants, journalists and civil society" – UN rights experts, *UNOHCHR* (21 May 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25900&LangID=E>.

immigration detention to silence dissent, which violates Kabir's right to freedom of expression and against arbitrary detention.

Rayhan Kabir's case is part of a concerning global trend of states suppressing dissent, which both predates COVID-19 and which COVID-19 has exacerbated. GLJ-ILRF calls on the UN Special Rapporteurs to continue to address these rights violations in order to counteract the increasingly hostile civic space for migrant<sup>6</sup> and all workers worldwide.<sup>7</sup>

Civil society in Malaysia and Bangladesh have taken serious note of this case. On May 11, 86 organizations worldwide sent a letter to Malaysia expressing concern over the recent increase in hate speech and violent threats against asylum seekers, especially members of the Rohingya ethnic group.<sup>8</sup> After Rayhan Kabir's detention, two coalitions representing a total of 85 civil society organizations in Bangladesh have staged protests<sup>9</sup> and directly demanded Rayhan's release.<sup>10</sup> In Malaysia, rights groups alarmed by the government's escalating crackdown on migrants are publicly condemning Malaysia's retaliation against Rayhan and demanding his release, saying the arrest "sends a chilling message to migrants not to speak out or report abuse to the authorities."<sup>11</sup>

The submission is organized as follows:

- Part I provides key facts regarding the detention of Rayhan Kabir by Malaysia after Rayhan Kabir spoke publicly in defense of migrant rights in a news broadcast that aired July 3. Rayhan Kabir was detained July 24 in retaliation for his comments regarding mass immigration raids Malaysia has conducted since May. These facts indicate that Malaysia detained Rayhan Kabir in violation of his rights against arbitrary detention and to freedom of expression in violation of international human rights standards.
- Part II provides examples of state retaliation against workers and migrant workers for exercise of free speech and arbitrary detention of non-citizens during the COVID-19 pandemic in several countries, including the United States, Mexico, Russia, Cambodia,

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<sup>6</sup> CIVICUS and Solidarity Center, *Freedoms on the Move: The Civic Space of Migrant Workers and Refugees* (October 2019), <https://www.civicus.org/index.php/freedoms-on-the-move>.

<sup>7</sup> ITUC Global Rights Index 2020 (June 2020) <https://www.ituc-csi.org/violations-workers-rights-seven-year-high>.

<sup>8</sup> Joint Letter Re: End Violent Threats and Anti-Rohingya Campaign: Violent Threats and 'Hate Speech' against Rohingya Community in Malaysia, *Human Rights Watch* (11 May 2020) <https://www.hrw.org/news/2020/05/11/joint-letter-re-end-violent-threats-and-anti-rohingya-campaign>.

<sup>9</sup> Bangladeshi civil society coalition demands Rayhan Kabir's release in Dhaka protest, *Malay Mail* (Malaysia) (30 July 2020) <https://www.malaymail.com/news/malaysia/2020/07/30/bangladeshi-civil-society-group-demands-rayhan-kabirs-release-in-dhaka-prot/1889433>.

<sup>10</sup> Bangladesh CSOs Demand Release of Rayhan Kabir in Malaysia, *Migration News* (Bangladesh) (25 July 2020) <https://migrationnewsbd.com/news/view/32333/38/Bangladesh-CSOs-Demand-Release-of-Rayhan-Kabir-in-Malaysia>.

<sup>11</sup> Lawyers for Liberty (Malaysia), The authorities must stop the unlawful harassment against Md Rayhan Kabir (27 July 2020) <https://www.lawyersforliberty.org/2020/07/27/lfl-the-authorities-must-stop-the-unlawful-harassment-against-md-rayhan-kabir/>.

Jordan, India, Qatar and Kuwait. These examples illustrate the global scope of the issues of retaliation and arbitrary detention inflicted upon Kabir's by the Malaysian government.

## **Part I: Freedom of expression violations and arbitrary detention of Rayhan Kabir by Malaysia**

*The following are the facts of Rayhan Kabir's case, based on public information.*

- **Biographical information.** Rayhan Kabir is a 25 year old Bangladeshi citizen. Rayhan first came to Malaysia as a student for college. Prior to his detention on July 24, 2020, Rayhan Kabir held an employment visa and worked in marketing.
- **July 3, 2020: Al Jazeera airs interview on arrest and detention of migrant workers in Malaysia, featuring Rayhan Kabir.** *Al Jazeera* broadcast "Locked Up in Malaysia's Lockdown," covered arrests of undocumented persons in Kuala Lumpur. In the episode, Rayhan recounted the arrest and detention of a friend whose visa had expired, raised concerns about the health and safety of his friend and other migrant workers detained in Malaysian police raids, and identified a climate of fear among migrant workers.<sup>12</sup>
- **July 6, 2020: Malaysia announces public investigation into Rayhan Kabir.** On July 6, Malaysia's Department of Immigration posted Rayhan Kabir's personal details on its public Facebook page including his last known address, and urged members of the public

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<sup>12</sup> Transcript of Rayhan's comments from "Locked Up in Malaysia's Lockdown," *101 East*, Al Jazeera (3 July, 2020), [https://www.youtube.com/watch?v=zyl\\_xsdptel&feature=youtu.be](https://www.youtube.com/watch?v=zyl_xsdptel&feature=youtu.be).

*[At 5 minutes, 35 seconds] "They made a trap for us. They may give food, they give medication. All these things they give. So, no one is expecting they're going to arrest people. They're not murderers. They're not criminals. They're just undocumented" ... [speaking about his friend who was arrested] "He also has been arrested this time. That was not his fault. His company never renewed his visa. He was arrested. You know, I ran, I ran to immigration, I ran to the police station, I cried at the gate, 'Please, let me meet my friend.'"*

*[At 8 minutes, 30 seconds] Speaking to a human rights lawyer about his detained friend] "It's about last year. His company got bankrupt ... Then, the boss also was hiding. His visa he cannot renew. He cannot go back to Bangladesh because he had the loan money, everything. So he became undocumented. ... [when she asks if his friend filed a case], "miss, the thing is, people like them who are workers here, labourers here, how do they know these things? They don't know. So, is there any way? I want to meet my friend. Is there any way?"*

*[At 9 minutes, 30 seconds] Outside the gate of the Bukit Jalil detention center where his friend was detained] "When I come here, I become emotional. It's unbearable for me. I cannot meet him. I don't know if he is eating or not. I can't give him food. I am very much worried about him."*

*[At 10 minutes] "This is a total, a clear act of racism. That's the thing. A clear act of humiliating people. So that's why I feel scared about the future of migrant people. I don't think that people will give their trust again for the government because they'll be afraid."*

to report him to authorities.<sup>13</sup> His public details were also published on several news websites and garnered xenophobic comments encouraging violence against him in light of his comments to *Al Jazeera*.<sup>14</sup>

- **July 7, 2020: Malaysia issues warning to all noncitizens.** On July 7, Malaysia signalled that it would punish future cases of noncitizens defending human rights publicly.<sup>15</sup>
- **July 8, 2020: Malaysia cancels Rayhan's visa.** Rayhan's visa had been scheduled to expire on July 9, 2020.
- **July 10, 2020: Malaysia questions and releases *Al Jazeera* journalists.** Malaysian police held *Al Jazeera* journalists who authored the episode in which Rayhan Kabir appeared in custody for questioning. Police ultimately released them.<sup>16</sup>
- **July 24, 2020: Malaysia arrests and detains Rayhan Kabir.**
  - Malaysia's Department of Immigration arrested Rayhan Kabir at a condominium in Jalan Pahang.<sup>17</sup>
  - Malaysia's Immigration Director-General issued a statement that he would be deported and permanently blacklisted from entering Malaysia.

Regarding Rayhan's detention, note that Rayhan attested that his visa had been canceled on July 8, 2020 and that by maintaining presence in Malaysia he was in violation of Malaysian immigration law and was subject to deportation. In detention, consular officers from Bangladesh contacted Rayhan.

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<sup>13</sup> Jabatan Imigresen Malaysia, Orang Dikehendaki Jabatan Imigresen Malaysia (7 July 2020), <https://www.facebook.com/imigresen/photos/a.540547279345065/3287713151295117/?type=3&theater;> Esther Landau, Immigration Department looking for 'Md Rayhan Kabir,' *New Straits Times* (7 July 2020), <https://www.nst.com.my/news/nation/2020/07/606569/immigration-department-looking-md-rayhan-kabir>.

<sup>14</sup> Robert Augustin and Ainaa Aiman, Publishing Rayhan's details uncalled for, say activists as xenophobia fills immigration Facebook, *Free Malaysia Today* (9 July 2020), <https://www.freemalaysiatoday.com/category/nation/2020/07/09/publishing-rayhans-details-uncalled-for-say-activists-as-xenophobia-fills-immigration-facebook/>.

<sup>15</sup> Malaysia's Immigration Director-General stated at a press conference that "*The Immigration Department strongly warns all foreigners especially the long-term pass holders such as Student Pass, Temporary Employment Pass, Residence Pass and others to be careful when making any statement. They are facing the risk of revocation of their passes and will be required to leave the country immediately if the statement is inaccurate and aimed at damaging Malaysia's image.*" Note that on August 4, Malaysia's home minister also stated that all foreigners could be expelled if they were deemed "unwanted." Aria Yunus, Rayhan Kabir's employer under probe, *Dewan Rakyat* told, *New Straits Times* (Malaysia) (4 August 2020) <https://www.nst.com.my/news/nation/2020/08/613987/rayhan-kabirs-employer-under-probe-dewan-rakyat-told>.

<sup>16</sup> Associated Press, Malaysian police grill *Al Jazeera* over report on immigrants, *Washington Post* (10 July 2020) [https://www.washingtonpost.com/world/asia\\_pacific/malaysian-police-grill-al-jazeera-over-report-on-immigrants/2020/07/10/07aa43c6-c295-11ea-8908-68a2b9eae9e0\\_story.html](https://www.washingtonpost.com/world/asia_pacific/malaysian-police-grill-al-jazeera-over-report-on-immigrants/2020/07/10/07aa43c6-c295-11ea-8908-68a2b9eae9e0_story.html).

<sup>17</sup> Ellen Ng, Malaysia to expel Bangladeshi in Critical *Al Jazeera* report, *Washington Post* (25 July 2020), [https://www.washingtonpost.com/world/asia\\_pacific/malaysia-to-expel-bangladeshi-in-critical-al-jazeera-report/2020/07/25/0d1ed35a-ce32-11ea-99b0-8426e26d203b\\_story.html](https://www.washingtonpost.com/world/asia_pacific/malaysia-to-expel-bangladeshi-in-critical-al-jazeera-report/2020/07/25/0d1ed35a-ce32-11ea-99b0-8426e26d203b_story.html).

- **August 6, 2020: Malaysia secures new authorization to detain Rayhan Kabir in light of “national integrity.”**

Malaysia had detained Rayhan on the basis of his attestation regarding overstay of his visa. However, Malaysia sought an extension of their powers to detain Rayhan Kabir in light of “national integrity,” despite no documentation that he posed a national security threat.

- **August 19, 2020: Malaysia releases Rayhan Kabir from detention.**
- **August 21, 2020: Malaysia repatriates Rayhan Kabir to Bangladesh.**

Upon arrival in Bangladesh, Rayhan stated:

*"I gave a very simple interview. I only expressed my views, spoke about what I saw in Malaysia during the pandemic. But Malaysians did not like it. Police have repeatedly asked me why I said what I said. ... I was in Malaysia for about six years. I often saw drives against migrant workers. They would be handcuffed, chained and humiliated. Often, this was done to Bangladeshis. This is not how citizens of other countries are treated. You won't find Europeans, Americans and Chinese being tied up. This is how Bangladeshis are treated. It deeply hurt me. I said the same to Malaysian police."*

*Malaysia used its immigration enforcement to retaliate against Rayhan Kabir for his exercise of freedom of expression.*

Rayhan Kabir’s case is a chilling precedent that threatens to undermine freedom of expression for migrant workers in Malaysia, critical prerequisites for decent work. The timing and context of Malaysia’s investigation and arrest of Rayhan Kabir signal retaliation for his statements to *Al Jazeera*. Malaysia publicly announced and pursued immigration enforcement action against Rayhan Kabir in connection with his public statements to *Al Jazeera*, and signaled that other migrants will face similar consequences if they express dissent against Malaysia’s government.

Any additional or alternative justification that Malaysia has for revoking Rayhan Kabir’s visa should be scrutinized as pretext in light of Malaysia’s clear intent to retaliate against him for his public statements describing human rights violations against migrants on *Al Jazeera*. This is especially critical given that decisions to revoke a visa under Section 9 of Malaysia’s Immigration Act 1959/63 are not subject to appeal.<sup>18</sup>

Malaysia has a pattern of using immigration enforcement to repress migrant workers’ freedom of expression. In recent years, Malaysian officials have acknowledged to UN officials that migrant workers in Malaysia are “scared’ to report rights violations due to fear of deportation” that

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<sup>18</sup> Immigration Act 1959/63 (Malaysia), Section 33(2), available at: <https://www.refworld.org/docid/3ae6b54c0.html>.

officials acknowledged was well-founded.<sup>19</sup> Malaysia's current migration regime facilitates this type of retaliation by imposing universal mandatory detention and deportation for noncitizens who violate the immigration law, regardless of fault or protected status, for example, as an asylum-seeker.<sup>20</sup>

The right to freedom of expression, especially in context of identifying workplace rights violations, is inextricably linked to the right to freedom of association and collective bargaining and, is essential for creating conditions for migrants and other workers to realize their rights to decent work.<sup>21</sup> Use of immigration enforcement to retaliate against migrant workers for exercising their rights to freedom of expression, as in Rayhan Kabir's case, has a chilling effect on not only migrant workers' speech, but also their freedom to associate in unions and workers' organizations--an essential condition for decent work.

Especially during the COVID-19 pandemic, protecting the rights of noncitizens is critical for protecting their right to health, including in Malaysia.<sup>22</sup> Freedom of expression is a prerequisite for free flows of information between government actors and noncitizens that are essential for providing health care and collecting public health data. All noncitizens must be protected in their exercise of freedom of expression, regardless of migration status, consistent with their fundamental human rights and in the interest of public health.

*Malaysia's use of immigration enforcement to retaliate against Rayhan Kabir amounts to arbitrary detention.*

Arrest or detention as punishment for the legitimate exercise of rights, including freedom of opinion and expression, and freedom of association, constitutes arbitrary detention.<sup>23</sup> Though Malaysia offers the expiry of Rayhan Kabir's visa as a *prima facie* neutral reason for having detained Rayhan Kabir it is clear that Malaysia pursued investigation into his case and broadcast their investigation publicly in retaliation for his public statements to *Al Jazeera*. As such, the justification that Malaysia offers for revoking Rayhan Kabir's visa must be scrutinized as pretext for retaliatory immigration enforcement.

Furthermore, Malaysia sought and obtained a 14 day extension of their authorization to detain Rayhan Kabir citing "national integrity." Immigration related detention is non-arbitrary only if the state demonstrates, on an individual, case by case basis, reassessed over time, that such detention is reasonable, necessary and proportionate to the apparent risk of acts against national security. Detention maintained without such a showing is arbitrary.<sup>24</sup> Our understanding is that

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<sup>19</sup> Statement by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, on his visit to Malaysia, 13-23 August 2019, 23 August 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24912&LangID=E>.

<sup>20</sup> See e.g., Human Rights Watch, Malaysia: Stop Treating Rohingya Refugees as Criminals (22 July 2020) <https://www.hrw.org/news/2020/07/22/malaysia-stop-treating-rohingya-refugees-criminals>.

<sup>21</sup> *Supra* notes 6, 7.

<sup>22</sup> Human Rights Watch, Malaysia: Migrants, Stateless at Extra Risk from Virus (24 March 2020) <https://www.hrw.org/news/2020/03/24/malaysia-migrants-stateless-extra-risk-virus>.

<sup>23</sup> UN Human Rights Committee (CCPR), Comment No. 35 (23 October 2014), para 17.

<sup>24</sup> *Id.* at para 18.

after Rayhan Kabir had attested to immigration violations and consented to deportation, effectively resolving allegations against him, Malaysia continued to detain him and did not in this case make such a showing.

*Malaysia wrongfully retaliated against Rayhan Kabir in a context of xenophobia and state crackdowns on migrant workers.*

- Since April, hate speech against noncitizens in Malaysia has increased significantly;<sup>25</sup>
- Since May, Malaysia's Department of Immigration has undertaken sweeping immigration enforcement raids that have resulted in the detention of thousands of noncitizens for immigration offenses;<sup>26</sup>
- In July, Malaysia sentenced at least 40 Rohingya asylum seekers to who had been charged with criminal penalties for illegal entry, in violation of international law.<sup>27</sup>

On May 21, 2020, several UN Special Rapporteurs called for Malaysia to strongly oppose xenophobia and hate speech, and end its crackdown on noncitizens, as well as journalists, and broader civil society.<sup>28</sup> Malaysia's treatment of Rayhan Kabir case indicates that Malaysia has not adopted these recommendations, and has instead escalated punitive tactics against noncitizens.

## **Part II: Global pattern of freedom of expression violations and arbitrary detention**

Rayhan Kabir's arrest and detention for exercising his right to freedom of expression takes place in context of global patterns of state retaliation against workers and migrant workers for exercise of free speech and arbitrary detention of non-citizens during the global COVID-19 pandemic.

*Examples of state retaliation for exercise of freedom of expression by or in support of workers, including migrant workers, during COVID-19*

- **Cambodia.** In June, Cambodia arrested activists and three former members of an opposition political party in retaliation for their demands that microfinance institutions relieve or postpone debt payments to low-income borrowers during COVID-19.<sup>29</sup> Borrowers seeking relief are primarily workers in garment manufacturing who had lost their jobs due to COVID-19.

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<sup>25</sup> Joint letter, *supra* note 9.

<sup>26</sup> Emily Fishbein and Jaw Tu Hkawng, "The Fear Is Always With Me": Refugees in Malaysia Recount Recent Lockdowns and Raids, *New Naratif* (15 June 2020), <https://newnaratif.com/journalism/the-fear-is-always-with-me-refugees-in-malaysia-recount-recent-lockdowns-and-raids/share/pybxxr/5a022e2f216f49a3ea6f87e4f229e3f6/>.

<sup>27</sup> Human Rights Watch, *supra* note 20.

<sup>28</sup> Morales *et al.*, *supra* note 5.

<sup>29</sup> Morm Moniroth, Khut Sokun and Matt Surrusco, Hun Sen Vows to Arrest Economic Subversives, Three From CNRP Jailed, *VOD* (Cambodia) (3 June 2020), <https://vodenglish.news/hun-sen-vows-to-arrest-economic-subversives-three-from-cnrp-jailed/>; Global Labor Justice, Cambodian unions show microloans compound COVID impacts for garment workers, <https://globallaborjustice.org/cambodian-unions-show-microloans-compound-covid-impacts-for-garment-workers/>.

- Jordan. In August, Jordan closed a 140,000 member independent teachers' union and detained its board members, prohibiting any public discussion of the legal case against the board members as well.<sup>30</sup> Jordan's action was direct retaliation against the union for criticizing the government's decision not to honor its pre-COVID commitments regarding better teacher pay, which the union had won after a four-week strike in September 2019.
- Malaysia. On July 7, the director of the nongovernmental organization Refuge for the Refugee was detained and investigated for criminal defamation and violating the Communications and Multimedia Act because of a social media post she made alleging mistreatment of refugees at immigration detention centers.<sup>31</sup>
- United States. During the COVID-19 pandemic, migrant farmworkers have struggled to access personal protective equipment without retaliation from their employers.<sup>32</sup>
- India. In May, Mumbai police detained for several hours a lawyer transporting stranded migrant workers during COVID-19 lockdown restrictions.<sup>33</sup>

*State arbitrary detention of non-citizens during COVID-19*

- Kuwait. As of May, Kuwait had detained over 20,000 migrant workers who had come forward for government-offered amnesty in light of COVID-19 in a desert camp.<sup>34</sup> Workers stated they were denied the option of leaving the compound.
- Mexico. In March and April, Mexico arbitrarily detained Honduran and Salvadoran migrants in response to border closures in Honduras and El Salvador.<sup>35</sup>
- Qatar. In April, Qatar detained hundreds of migrant workers on the pretext of COVID-19 testing, then detained and deported them.<sup>36</sup>

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<sup>30</sup> Voule *et al.*, Jordan: UN experts call for release of labour union officials from detention, lifting of gag orders, *UN OHCHR* (19 August 2020)

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26174&LangID=E>.

<sup>31</sup> Cops question NGO head over Facebook post on immigration *FMT News* (Malaysia) (7 July 2020)

<https://www.freemalaysiatoday.com/category/nation/2020/07/07/cops-question-ngo-head-over-facebook-post-on-immigration/>

<sup>32</sup> Monica Campbell, Farmworkers are getting coronavirus. They face retaliation demanding face conditions., *Public Radio International* (29 July 2020) <https://www.pri.org/stories/2020-07-29/sick-covid-19-farmworkers-face-retaliation-demanding-safe-conditions>.

<sup>33</sup> Pratik Salunke, Activist Afroz Shah detained on charges of ferrying stranded migrant workers, *Hindustan Times* (India) (20 May 2020), <https://www.hindustantimes.com/india-news/activist-afroz-shah-detained-on-charges-of-ferrying-stranded-migrant-workers/story-AyRewBUD09pNFgLcfnDcAN.html>.

<sup>34</sup> Areeb Ulah, 'Like sardines': Migrant workers suffering in Kuwait's desert detention camps, *Middle East Eye* (15 May 2020) <https://www.middleeasteye.net/news/coronavirus-kuwait-migrant-workers-bangladesh-detention-camps>.

<sup>35</sup> Human Rights Watch, Mexico: Free Detained Migrants Amid Pandemic Allegations of Excessive Force to Quell Protests, (14 April 2020)

<https://www.hrw.org/news/2020/04/14/mexico-free-detained-migrants-amid-pandemic>.

- Russia. In April, Russia was detaining migrants indefinitely in overcrowded, dirty detention centers without adequate medical care.<sup>37</sup>
- United States.
  - In May and June, immigration enforcement targeted persons of Latinx descent protesting police brutality and racial discrimination at Black Lives Matter protests, arresting at least one noncitizen and one citizen of Latinx descent.<sup>38</sup>
  - Since the onset of the COVID-19 pandemic, Immigration and Customs Enforcement (ICE) has maintained dangerous conditions in ICE detention facilities without implementing adequate public health protections or providing sufficient health care, recklessly exposing noncitizens currently in detention to an unnecessarily elevated risk of COVID-19.<sup>39</sup> As of writing, six people have died from COVID-19 while in ICE detention.<sup>40</sup>

## Conclusion

We would request that the UN Special Rapporteurs take cognizance of Rayhan Kabir's case and bring to the attention of Malaysia the human rights implications of its conduct.

Malaysia should remedy the ongoing impacts of its retaliation against Rayhan Kabir.

- Remedy for Rayhan Kabir. Most directly, this involves remedying its treatment against Rayhan Kabir, including acknowledging its retaliation against him and rescinding any blacklisting and/or committing to refrain from future blacklisting;
- Remedy for noncitizens in Malaysia. In addition, Rayhan Kabir's case has already had a chilling effect on speech for noncitizens in Malaysia. In order to remedy the harms caused, Malaysia must reaffirm the rights of all noncitizens in Malaysia, including migrant workers and refugees, to freedom of expression and against arbitrary detention, and take significant affirmative steps to protect the rights of noncitizens moving forward.

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<sup>36</sup> Amnesty International, Qatar: Migrant workers illegally expelled during COVID-19 pandemic, 15 April 2020) <https://www.amnesty.org/en/latest/news/2020/04/qatar-migrant-workers-illegally-expelled-during-covid19-pandemic/>.

<sup>37</sup> Human Rights Watch, Russia: As Pandemic Grows, Migration Detention Deadlock With Risk of Spreading Covid-19, Government Should Find Alternatives (16 April 2020) <https://www.hrw.org/news/2020/04/16/russia-pandemic-grows-migration-detention-deadlock>.

<sup>38</sup> Jennifer Medina, After an Arrest at a Black Lives Matter Protest: Deportation Proceedings, *New York Times* (11 July 2020) <https://www.nytimes.com/2020/07/11/us/politics/black-lives-matter-phoenix-daca.html>; Jasmine Aguilera, ICE Agents Detain a Police Brutality Protester, REportedly a U.S. Citizen and Military Vet, in New York City, *TIME Magazine* (6 June 2020) <https://time.com/5849517/protester-new-york-city-protests-immigration-ice/>.

<sup>39</sup> Eunice Cho, DHS Watchdog Confirms: ICE is Failing to Protect Detained People from COVID, *American Civil Liberties Union (ACLU)* (29 June 2020) <https://www.aclu.org/news/immigrants-rights/dhs-watchdog-confirms-ice-is-failing-to-protect-detained-people-from-covid/>.

<sup>40</sup> Deaths at Adult Detention Centers, *American Immigration Lawyers Association* (1 September 2020) <https://www.aila.org/infonet/deaths-at-adult-detention-centers>.

We further urge the relevant UN Special Rapporteurs to continue to address general patterns and worldwide trends of arbitrary detention of noncitizens and of retaliation for exercise of free speech by workers, including migrant workers, and by their defenders.

Sincerely,

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