

RIGHTS OF IMMIGRANTS AND MIGRANTS TO THE UNITED STATES:

A CRITICAL LOOK AT THE U.S. AND ITS COMPLIANCE UNDER THE CONVENTION

A Response to the 2007 Periodic Report of the United States of America.*

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I. INTRODUCTION: GLOBAL PERSPECTIVES ON IMMIGRATION

1. Immigrants and migrants in the United States are frequently denied their right to be free from discrimination their daily living and are often discriminatorily denied their fundamental civil and political rights, as well as their economic, social and cultural rights. The United States, through both its direct and indirect action, has failed in its obligations under the Convention to guarantee the rights of immigrants to be free from discrimination on the basis of race, ethnicity, national origin and ancestry, and to recognize and address the multiplicities of discrimination immigrants face and the intersection of gender, race, national origin and citizenship discrimination.

2. In its Periodic Report, the U.S. rightly identifies three areas of concern with regard to implementation of the Convention vis-à-vis immigrant communities: “subtle, and in some cases overt, forms of discrimination against minority individuals and groups continue to plague American society, reflecting attitudes that persist from a legacy of segregation, ignorant stereotyping, and disparities in opportunity and achievement;”¹ increased hate crimes and other acts of discrimination against persons of or perceived to be of Muslim, or of Arab, Middle Eastern, or South Asian descent in the aftermath of 9/11; and an increase in acts of discrimination and hate crimes against other immigrant communities attributed to the changing demographics in the United States.² The United States acknowledges “lack of resources for enforcement, and other factors” as among the reasons for the persistence of discrimination against immigrant communities,³ but does not acknowledge the more direct role of the State in influencing the very immigration trends it identifies as an underlying cause of discrimination, and in both sanctioning and perpetuating the multiplicities of discrimination experienced by immigrant communities.

3. This report highlights those areas in which the U.S. fails in its obligations to guarantee immigrants their right to be free from discrimination through both direct and indirect action. In seeking to redress the discrimination against immigrants, the United States must work towards eliminating the multiplicities of discrimination experienced by immigrants at the intersection of gender, race and national origin discrimination in addressing discrimination against both the immigrant and migrant populations.

II. CITIZENSHIP AND ITS INTERSECTION WITH PROHIBITED DISCRIMINATION UNDER ARTICLE I OF THE CONVENTION AND GENERAL RECOMMENDATION 30

4. As this Committee has made clear through General Recommendation 11 and in further detail in General Recommendation 30 on the rights of non-citizens, Article 1, ¶ 2 must not detract from the rights and freedoms recognized and enunciated in other human rights instruments and “must be construed so as to avoid undermining the basic

¹ U.S. Periodic Report, ¶ 53.

² Id., ¶ 54.

³ Id.

prohibition of discrimination.”⁴ The Committee further articulated: “Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.”

5. States Parties are also “under an obligation to report fully upon legislation on non-citizens and its implementation. Furthermore, States parties should include in their periodic reports, in an appropriate form, socio-economic data on the non-citizen population within their jurisdiction, including data disaggregated by gender and national or ethnic origin.” Unfortunately, while the U.S. has provided limited data with regard to the percentage of naturalized citizens among the foreign born and regional breakdowns for immigration, the only socio-economic data provided with regard to immigrants is for the Arab-American population. And, the data and information provided fails to address the intersection of citizenship and gender discrimination, and further fails to address the multiplicities of discrimination faced by immigrant communities, discrimination due at least in part to government sponsored law and enforcement policies.

III. MULTIPLICITIES OF DISCRIMINATION EXPERIENCED BY IMMIGRANT COMMUNITIES: TWO CASE STUDIES

A. U.S. Treatment of Haitian Immigrants⁵

6. The United States has a long history of targeting Haitian migrants in its immigration policy and practice, in a wide range of issues including detention and removal procedures, legislation concerning status adjustment and naturalization for various groups of immigrants, and the disparate application of temporary protections for refugees. The racial discrimination against Haitian refugees occurs through implementation of policies specifically targeting Haitians, neutral policies that leave too much discretion to immigration officials and allow the possibility of racially-based decisions, and preferential treatment for other nationality groups.

7. The United States has failed to fulfill its obligations under CERD to identify racially discriminatory practices and amend or nullify laws which have a racially discriminatory impact. Rather, it has increased its targeting of Haitians with stricter immigration policies in recent years, often under the asserted justification of homeland security concerns.

8. Currently, Haitian migrants who are interdicted in open water when trying to come to the U.S. and who “indicate” a fear of return are given a shipboard pre-screening interview, but the policy followed by the Coast Guard is to refrain from advising Haitian migrants of the right to request asylum. Even under the current policy very few Haitians are given pre-screening interviews, as few meet what has become known as the “shout

⁴ Gen. Rec. 30, at ¶ 2.

⁵ A further analysis of the discriminatory treatment of Haitian immigrants is attached as an Annex to this Report.

test”—only those migrants who wave their hands, jump up and down, and shout loudly are deemed to have “indicated” their fear of return.⁶

9. In contrast, when Cuban or Chinese migrants are interdicted, U.S. authorities take affirmative steps of identifying possible asylum seekers among the migrants, by making an announcement in Spanish and by distributing a questionnaire in Chinese. This procedure stands out against the situation of Haitian migrants, who are not offered any information and do not always have access to an interpreter.⁷ (Although interdiction at sea now applies to Cubans as well as other migrant groups, Cubans who reach land are generally paroled into the United States⁸ and receive other procedural benefits. Even in the interdiction process, there is clearly disparate treatment between migrant groups, as Haitians are offered no information or interpretation services, while Cubans and Chinese migrants are made aware of the possibility of applying for asylum.)

10. On December 3, 2001, the Coast Guard rescued approximately 167 Haitian migrants from an overcrowded sailboat off of the south coast of Florida. None of the migrants had any travel documents with them, and thus were placed into expedited removal proceedings. However, all of the migrants were given “credible fear” interviews, and 165 of them passed the interview and were thus given notices to appear for full non-expedited removal proceedings, which would include the opportunity to apply for asylum.

11. While there was a general presumption of paroling migrants in non-expedited removal proceedings, the INS changed its policies with respect to this group of Haitian migrants.⁹ INS Acting Deputy Commissioner Michael Becraft instructed the Miami district office that no undocumented Haitian should be released without the approval of INS Headquarters.¹⁰

12. In addition to discrimination in individual processing, Haitians have been discriminatorily denied as a group the protection of Temporary Protected Status (“TPS”), a legal status granted to foreign nationals from certain countries who face serious danger from natural disaster, draught, epidemic, or civil unrest if deported to their home countries.¹¹ The President of the U.S. determines which country’s nationals should be granted TPS on a yearly basis.¹² TPS is appropriate if “there exist extraordinary and temporary conditions in the foreign state”¹³ (such as an earthquake, flood, draught, epidemic, or other environmental disaster or civil unrest) and “the foreign state is unable temporarily to handle the return of its nationals and the foreign state has affirmatively

⁶ Stephen H. Legomsky, *The USA and the Caribbean Interdiction Program*, 18 INT’L J. REFUGEE L. 677 (2006).

⁷ Thomas J. White Center on Law & Government, *The Expedited Removal Study: Report on the First Three Years of Implementation of Expedited Removal*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 1 (2001).

⁸ *The Cuban Adjustment Act of 1966: ?Mirando por los Ojos de Don Quijote o Sancho Panza?*, 114 Harv. L. Rev. 902, 907 (2001).

⁹ *Jeanty v. Bulger*, 204 F. Supp. 2d 1366, 1369 (S.D. Fla. 2002)

¹⁰ *Id.*

¹¹ Sarah Anchors, *Temporary Protected Status Making the Designation Process more Credible, Fair and Transparent*, 39 Ariz. St. L.J. 565, 566 (2007).

¹² INA § 244; 8 U.S.C. § 1254(a) (2000).

¹³ INA § 244(b)(1)(B); 8 U.S.C. § 1254(b)(1)(B) (2000).

requested [TPS] designation.”¹⁴ Granting TPS must also not be “contrary to the national interest of the US.”¹⁵ TPS does not afford protection to people fleeing their country; it only covers persons already in the United States as of the initial grant date.

13. Despite the conditions in Haiti, Haitians have not been granted TPS, although other nationalities, including Pakistanis, Lebanese, and Southeast Asians national following the Tsunami, have often been granted TPS.¹⁶ In 2007, although TPS was renewed for Hondurans, Nicaraguans, and Salvadorans due to incomplete Hurricane recovery, Haiti’s similar situation due to natural disasters was not addressed and Haitians once again were passed over for temporary protected status.¹⁷

B. Treatment of Immigrant Communities following Hurricane Katrina

14. The multidimensional nature of discrimination toward immigrants was once again illustrated in the months and years following the August-September 2005 Katrina hurricane catastrophe in the Gulf region of the country. The devastating impact of the hurricane itself, the failed New Orleans, Louisiana levee system, and inadequate emergency preparedness and response on people living in Louisiana, Mississippi, and Alabama is well known and documented elsewhere in this report.¹⁸ The racial dimensions of the continuing Katrina crisis and the incompetence or blatant prejudice evidenced in some aspects of the official federal, state, and local responses are also well-documented.¹⁹ Unfortunately, relatively little attention was paid to the impact of the storm and its aftermath on immigrant communities.

15. The United States periodic report fails to fully address the many-layered discriminatory intent and impact of public and private actions before, during, and after the hurricanes on non-citizen individuals and on immigrant communities.

i. Vietnamese-American Neighborhood in New Orleans

16. For example, although the population of the city of New Orleans, Louisiana was two-thirds African-American, there were also significant and long-standing immigrant communities. New Orleans East, for example, is said to have one of the highest concentrations of Vietnamese-Americans in the United States (originating from the 1975 close of the war in Vietnam).²⁰ The neighborhood, less than one mile from the Chef

¹⁴ Id.

¹⁵ INA § 244(a)(b)(1)(C)(b); 8 U.S.C. § 1254(a)(b)(1)(C)(b) (2000).

¹⁶ Anchors, *supra* note 54 at 574.

¹⁷ Bastien, *supra* note 63.

¹⁸ For a discussion of the racially-disparate impact of Katrina and the rebuilding efforts, see, e.g., National Public Radio (All Things Considered) Survey: Racial Divide Worsening in New Orleans (May 10, 2007) <http://www.npr.org/templates/story/story.php?storyId=10119566>; The Henry J. Kaiser Family Foundation, Giving Voice to the People of New Orleans: The Kaiser Post-Katrina Baseline Survey (2007) http://www.npr.org/documents/2007/may/kff_summary.pdf

¹⁹ See, e.g., American Civil Liberties Union, Broken Promises: Two Years After Katrina (2007). Available at: <http://www.aclu.org/prison/conditions/katrina/katrina.html>

²⁰ See, e.g., Save New Orleans East: Citizens for a Strong New Orleans East, <http://www.csnoe.org/>

Mentour waste dumping site, risked severe environmental and damaging health impacts from the massive dumping of hazardous waste material from the flood.

17. Despite some Asian-American immigrants having lost their lives, homes, and businesses as a result of the hurricane, they were often either invisible in media coverage of the disaster, or treated as “outsiders”. The resilience of the Vietnamese-American community ties, however, was demonstrated in their subsequent efforts to rebuild their neighborhoods and to close the landfill.²¹ They also worked in coalition with African-American and Latino grassroots groups advocating for authentic participation in overall rebuilding efforts.

ii. Latino Immigrant Workers

18. While the workplace discrimination experienced by immigrants is discussed in greater detail in the Chapter on Labor, the experiences of Latino and other immigrant workers brought into help in the reconstruction of the Gulf Coast following Katrina is illustrative of the intersectionalities of discrimination either directly undertaken or tolerated by the U.S.

19. Katrina left thousands of homes and businesses under water or significantly damaged. Roads, schools, hospitals, and hotels had to be replaced or substantially repaired. Oil and gas, fishing, tourism, and manufacturing industries needed workers to help in the rebuilding process and to reclaim lost business. In the aftermath of the disaster, critics charged that federal, state, and local rebuilding contracts were awarded without sufficient attention to labor rights protections, including non-discrimination rights. Further, the ad hoc and poorly coordinated nature of the official post-disaster reconstruction efforts left the door open for unscrupulous private employers and subcontractors to exploit or defraud low-wage migrant workers.²²

20. Observers note that in the weeks and months following the disaster for example, some labor contractors recruited undocumented workers from Central and South America for construction or tourism-related work, in some cases charging workers exorbitant fees to come to the U.S. for work. Immigrants and labor rights organizations have documented a range of associated violations: racial or ethnic discrimination in employment and housing, non-payment or underpayment of contracted wages, hazardous working

²¹ The coalition’s campaign persuaded Mayor Nagin of New Orleans to order the closing of the Chef Mentour dumpsite. <http://www.csnoe.org/index.html>
The closure was followed by a federal court decision denying Waste Management permission to reopen the site. See, e.g., Press Release, Federal Court Denies Waste Management an Injunction to Reopen the Chef Mentour Landfill (August 15, 2006). <http://www.csnoe.org/> See, generally, Michael Kunzelman, Vietnamese Rebound in New Orleans. Associated Press, October 2007. Available at:

²² Statement of Jeanne M. Woods & Hope Lewis Prepared for the Hearing of the United Nations Special Rapporteur on Extreme Poverty, Dr. Arjun Sengupta on the Aftermath of Hurricane Katrina, New Orleans, Louisiana (October 27, 2005). Available at: <http://www.slaw.neu.edu/clinics/WoodsLewis.pdf>.

conditions, and the failure to provide adequate housing or health care for ill or injured workers.²³

21. Far from home, sometimes greeted with hostility or prejudice by a few members of local communities who saw the new workers as usurpers or unwelcome strangers, immigrant workers found it difficult to organize or advocate effectively for their human rights. Those working in flood-damaged areas often waded through “water” best described as a “toxic soup” full of oil and chemical waste, sewer water, and human and animal remains. Many cleaned out mold or stripped paint without protective masks or clothing. Ad hoc outdoor camps were set up in which workers slept outdoors in tents, with little alternative given the massive housing shortage in the region after the floods.²⁴

22. Underlying racial, linguistic, or cultural tensions between native-born and immigrant communities of color were deepened by the labor and employment practices. Shortly after the hurricane, the Bush administration relaxed basic labor laws for federal contracts under the 1931 Davis-Bacon Act, initially relaxing wage protections before public outcry forced a reversal.²⁵

23. Some construction and tourism employers deliberately sought out what they hoped would be guestworkers willing to accept lower wages from outside the country while ignoring potential workers among the many internally displaced survivors of the hurricane. In May of 2007, immigrant workers brought in on H-2B visas won legal recognition of use of race and national origin as a tool to exploit workers. In Castellanos-Contreras v. Decatur Hotels, LLC, litigation by Latino guest workers revealed a scheme to exploit Latino labor and to avoid employing available African-American workers, many of whom were survivors of the hurricane.²⁶

24. Coalitions among African-American, Latino, and Asian-American groups have been working together to advocate all workers their rights to participate in community life, to fair and equitable access to jobs, and to housing, a living wage, safe working conditions, and health care ‘without distinction as to race.’²⁷ They have worked together with local, regional and national civil and human rights organizations to combat efforts perpetuated by U.S. policy to “divide and conquer” by deepening ethnic and racial tensions among immigrants and native born communities in the Gulf region.

C. Gender, Immigration and CERD

²³ Brenda Muniz, *In the Eye of the Storm: How the Government and Private Response to Katrina Failed Latinos* (National Council of La Raza, 2006). Available at: <http://www.nclr.org/content/publications/download/36812>.

²⁴ *Id.*

²⁵ Statement of Jeanne M. Woods & Hope Lewis Prepared for the Hearing of the United Nations Special Rapporteur on Extreme Poverty, Dr. Arjun Sengupta on the Aftermath of Hurricane Katrina, New Orleans, Louisiana (October 27, 2005). Available at: <http://www.slaw.neu.edu/clinics/WoodsLewis.pdf>.

²⁶ Case No. 06-4340 (E.D. LA May 15, 2007) available at:

http://www.nilc.org/immsemplymnt/lwiw/Castellanos_Decision.pdf.

²⁷ “Gulf Coast Reconstruction Resolution”. International Tribunal on Hurricanes Katrina and Rita. <http://internationaltribunal.org/>.

25. In accordance with General Recommendation XXV, adopted in 2000, ICERD periodic reports must incorporate a gender perspective. Although the April 2007 U.S. Report includes some data about the gendered aspects of racial discrimination, it does not enumerate the specific civil, economic, social and health challenges facing immigrant women in the United States.

i. Access to Health Care, Gender and Discrimination

26. Article 5(e)(iv) guarantees all persons, “without distinction as to race, colour, or national or ethnic origin,” the right to “public health, medical care, social security and social services.”²⁸ Yet immigrant women in the U.S. experience poorer health outcomes and are four times more likely than their non-immigrant counterparts to be uninsured.²⁹

27. Immigrant women also face an increasing number of barriers to accessing health care. In 1996, federal welfare and immigration reform legislation tied eligibility for social services to an immigrant’s length of residency.³⁰ Since then, immigrants entering after the enactment date must wait at least five years until they can become eligible for Medicaid and the State Children’s Health Insurance Program (SCHIP), the country’s major public health coverage programs. Once eligible, SCHIP provides health coverage for many immigrant children and pregnant women, and gives states the option to use SCHIP funds to cover prenatal services for undocumented immigrant women.³¹

28. In recent years, immigrant women have been confronted with even more barriers to eligibility. The Deficit Reduction Act of 2005 imposed new citizenship documentation requirements for beneficiaries to maintain Medicaid coverage.³² Initially, the new citizenship documentation requirement also made it difficult for immigrant women to access Medicaid services for their newborns. Contrary to longstanding federal law which authorizes automatic Medicaid coverage for all U.S.-born infants, the Centers for Medicare & Medicaid Services (CMS) issued an interim regulation that excluded immigrant women who received only emergency Medicaid from accessing Medicaid services for their babies until they could verify the citizenship status of their U.S.-born child.³³ Constitutional challenges to the regulation were raised, and CMS eventually reversed its position and reinstated eligibility for infants regardless of maternal

²⁸ International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter CERD], art. 5.

²⁹ U.S. Department of Health and Human Services, Health Resources and Services Administration, *Immigrant Health*, WOMEN’S HEALTH USA 2005, at http://mchb.hrsa.gov/whusa_05/pages/0431ih.htm.

³⁰ Personal Responsibility and Work Opportunity Reform Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1997). The Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

³¹ Kaiser Commission on Medicaid and the Uninsured, *Medicaid and SCHIP Eligibility for Immigrants*, April 2006, at <http://www.kff.org/medicaid/upload/7492.pdf>.

³² Kaiser Commission on Medicaid and the Uninsured, *Citizenship Documentation Requirements in Medicaid*, March 2007, at <http://www.kff.org/medicaid/upload/7533-02.pdf>.

³³ California Immigrant Policy Center, *Access to Medicaid for Newborns of Immigrant Mothers*, November 2006, at <http://www.caimmigrant.org/source/MedicaidInfantsCIPC.pdf>.

citizenship status.³⁴ Nevertheless, the accumulation of anti-immigrant health policy changes have created a chilling effect that has discouraged eligible immigrant women from accessing Medicaid and SCHIP.

29. Moreover, over 3 million undocumented women and children in the U.S. continue to be ineligible for health care, while millions more must wait years to become eligible. These factors have left low-income immigrant women, particularly pregnant immigrant women, with few options.

ii. Immigration, Domestic Violence and Discrimination

30. Violence against women, including domestic violence, is a violation of women's human rights that "States are obliged to apply due diligence to prevent."³⁵ This Committee has recognized the "specific vulnerability of foreign women victims of domestic violence,"³⁶ related to the multiple discrimination faced by women (Gen. Rec. XXV) and non-citizens (Gen. Rec. XXX) of color. States parties are obligated to provide accessible services to battered immigrant women under Article 5(b), guaranteeing "security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution." With respect to this and other Article 5 rights, "States parties are under an obligation to guarantee equality between citizens and non-citizens" and may not differentiate with respect to citizenship except when proportional to a legitimate aim.³⁷

31. An estimated 1.3 million women are physically assaulted by an intimate partner in the United States every year.³⁸ Latina, South Asian, and Korean immigrant women are estimated to experience domestic violence at a rate of 30% to 50%,³⁹ compared with 22.1% of all women nationally in their lifetime.⁴⁰ A New York City study found immigrant women to be victims of intimate partner homicide at 1.69 times the rate of US-born women.⁴¹

³⁴ Kaiser Commission on Medicaid and the Uninsured, *Citizenship Documentation Requirements in Medicaid*, supra note 5.

³⁵ Joint Declaration of the Special Rapporteurs on Women's Rights (Mar. 8, 2002), available at <http://www.cidh.org/declaration.women.htm>. See also Resolution of the United Nations General Assembly, Elimination of Domestic Violence Against Women, U.N. Doc. No. A/RES/58/147 (Feb. 19, 2004).

³⁶ Concluding Observations of the CERD Committee: Denmark, U.N. Doc. CERD/C/DEN/CO/17 (Oct. 19, 2006).

³⁷ CERD Committee, Gen. Rec. No. 30: Discrimination Against Non Citizens, U.N. Doc. CERD/C/64/Misc.11/rev.3 (Oct. 1, 2004).

³⁸ CENTERS FOR DISEASE CONTROL AND PREVENTION, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES (2003), available at http://www.cdc.gov/ncipc/pub-res/ipv_cost/IPVBook-Final-Feb18.pdf [hereinafter CDC Report].

³⁹ Giselle Aguilar Hass, Nawal Ammar & Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses*, Legal Momentum, Apr. 24, 2006, available at <http://legalmomentum.org/legalmomentum/files/dvusc.pdf>.

⁴⁰ CDC Report, supra note 4.

⁴¹ NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, THE HEALTH OF IMMIGRANTS IN NEW YORK CITY (2006), available at <http://www.nyc.gov/html/doh/downloads/pdf/episrv/episrv-immigrant-report.pdf>.

32. Immigrant women experience particular vulnerability to abuse. They may be dependent on their abusers financially or because of limited English proficiency.⁴² Additionally, an abuser can exploit a woman's immigration status as a means of control, especially if she has conditional status based on marriage to a citizen or lawful permanent resident (LPR).⁴³ Divorcing an abusive citizen or LPR may lead to the victim's immigration status being raised in custody proceedings.⁴⁴

33. Battered immigrant women face unique obstacles in accessing services and legal remedies, including: (1) language and cultural barriers, (2) ineligibility for public benefits, and (3) fear of deportation. The federal government's response to these barriers has discriminated against undocumented and unmarried women and those whose abusers are not citizens or LPRs. The 2005 reauthorization of the Violence Against Women Act removed such discrimination in access to legal services, but not in the availability of legal residency status.⁴⁵ Additionally, the federal government has restricted federally funded services for all undocumented immigrants, shifting the burden of providing such services to state and local governments.

34. Consistent with national data, Minnesota Advocates identified five major obstacles that prevent an effective government response to violence against immigrant women in the Minneapolis/St. Paul metropolitan area. They are: 1) language barriers, 2) fear of deportation and legal systems; 3) obstacles in the law and the implementation of the law; 4) cultural barriers and community pressures; and 5) funding issues. These obstacles are trapping many women and their children in violent relationships and preventing or deterring them from effectively accessing systems and services designed to ensure their safety and security. In addition, these obstacles work to diminish the effectiveness of government agencies in providing services to immigrant women. Addressing these obstacles, as discussed in greater detail below, will both improve the government's response to domestic violence against immigrant women and make it likely that more battered immigrant women will access the resources and legal remedies available to them.⁴⁶

Language and Cultural Barriers

35. Inadequate interpretation services inhibit every phase of the process a victim of domestic violence must undertake to protect herself against her abuser—from speaking with the police to obtaining a civil Order of Protection to interacting with prosecutors,

⁴² Leslye Orloff, et. al., *Countering Abuser's Attempts To Raise Immigration Status of the Victim in Custody Cases* (National Network to End Violence Against Women 2003), available at http://www.legalmomentum.org/IWPpubs/PubBank_JusticeandFamily/DVChildrenCustody/CounteringAbuserAttempts.pdf.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. Law No. 109-162, 119 Stat. 2960 (2006).

⁴⁶ MINNESOTA ADVOCATES FOR HUMAN RIGHTS, *THE GOVERNMENT RESPONSE TO DOMESTIC VIOLENCE AGAINST REFUGEE AND IMMIGRANT WOMEN IN THE MINNEAPOLIS/ST. PAUL METROPOLITAN AREA: A HUMAN RIGHTS REPORT 9* (2004).

advocates and courts.⁴⁷ One advocate described the effect of language and cultural barriers on police interaction: “Women get arrested instead of the abuser because of language issues and body language. African women who seek help often seem more agitated than the man; that is how they communicate crisis. The abusers often know more English and relay things quietly to the police.”⁴⁸

Ineligibility for Public Benefits

36. The Welfare Act of 1996 limited eligibility for Medicaid, welfare, and other public benefits to immigrants in the U.S. for five years or more. Federally funded medical care is only available to undocumented battered immigrant women in emergency rooms, where the rate of domestic violence detection is low.⁴⁹ Battered immigrant women may get benefits through Family Violence Option waivers⁵⁰ or through VAWA if they were married to a citizen or LPR.⁵¹ However, ineffective eligibility screenings mar both of these options.⁵²

37. Federal eligibility restrictions also limit access to shelters for undocumented battered women. Some shelters choose to house women for whom there is a guarantee of reimbursement and deny those whose eligibility is questionable.⁵³ States, counties and municipalities have also set up eligibility requirements that preclude undocumented immigrants from accessing temporary or transitional shelter, exacerbating the trauma and stress of having left an abusive relationship, and leading victims to return to the abuser for economic reasons.

Fear of Deportation

38. Fear of deportation was identified as the primary reason that 64% of undocumented battered women in a San Francisco study did not seek social services.⁵⁴ Their fear is not

⁴⁷ MINNESOTA ADVOCATES FOR HUMAN RIGHTS, THE GOVERNMENT RESPONSE TO DOMESTIC VIOLENCE AGAINST REFUGEE AND IMMIGRANT WOMEN IN THE MINNEAPOLIS/ST. PAUL METROPOLITAN AREA: A HUMAN RIGHTS REPORT (2004), available at http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/FINAL_REPORT_Dec_10_2004_2.pdf [hereinafter Minnesota Advocates Report]. See also *infra* Court Proceedings section.

⁴⁸ *Id.* at 40 n.185.

⁴⁹ See Abbott et al., Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population, *Journal of the American Medical Association*, vol.273, no. 22, 1763, 1766 (June 1995).

⁵⁰ See Legal Momentum, *Family Violence Option: State by State Summary*, http://www.legalmomentum.org/issues/wel/FVO_statebystate.pdf.

⁵¹ Legal Momentum, *Public Benefits Access for Battered Immigrant Women and Children*, http://www.legalmomentum.org/IWPpubs//PubBank_Access/FactSheetsMemos/publicbenefitbatteredwomen.pdf.

⁵² Minnesota Advocates Report, *supra* note 12, at 20.

⁵³ LORA JO FOO, ASIAN AMERICAN WOMEN: ISSUES, CONCERNS, AND RESPONSIVE HUMAN AND CIVIL RIGHTS ADVOCACY 134 (The Ford Foundation 2002), available at <http://www.aapip.org/about.php?section=book>.

⁵⁴ Leslye Orloff & Rachel Little, *Overview of Domestic Violence and Battered Immigrant Issues*, available at <http://girlarmy.org/reader/DV%20Immigrant%20Women.pdf> (citing CHRIS HOGELAND AND KAREN ROSEN, DREAMS LOST, DREAMS FOUND: UNDOCUMENTED WOMEN IN THE LAND OF OPPORTUNITY 63 (Coalition for Immigrant and Refugee Rights and Services 1991)).

unfounded: post-9/11, the Department of Homeland Security has pushed states, cities, and localities to deputize local police to enforce federal immigration laws.⁵⁵ Battered women's advocates have predicted a chilling effect on domestic violence reporting; in addition to fearing inquiry into her own status, "one spouse may want the other punished, but not deported."⁵⁶ At least 82 localities nationwide have taken the opposite approach, limiting the enforcement of immigration laws by state and local authorities.⁵⁷ These localities face threats of sanctions from federal lawmakers, a measure endorsed by at least two of the 2008 Presidential candidates.⁵⁸

Discrimination in Granting Legal Residency Status

A woman abused by a citizen or LPR spouse has more rights than an unmarried woman or one abused by someone in any other immigration status (e.g. a student visa or undocumented). An abused spouse of a citizen or LPR can self-petition for lawful status under VAWA or obtain a Battered Spouse Waiver. The only option available to other victims is a U Visa, which requires cooperation with the investigation and prosecution of the abuser.⁵⁹ In communities of color targeted by police for racial profiling and abuse, women may not want to send a member of their community to jail. Additionally, victims sometimes have final orders of removal entered against them because the abuser prevented them from departing the country voluntarily earlier in their removal proceedings. While spouses of citizens and LPRs are able to have their removal cases reopened more easily and fix their status through one of the remedies described above, all other victims must depend upon the discretion of Immigration and Customs Enforcement.

iii. Increased Vulnerability of Pregnant Immigrant Women

39. Under Article 5(b), "the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution."⁶⁰ The U.S. government has failed to meet this obligation in its treatment of pregnant immigrant women, particularly those of undocumented status. Demographically, the population of Latinos and Asian Americans is increasing in the U.S. while birth rates for non-Hispanic white Americans are decreasing.⁶¹ These trends in population growth have been accompanied by growing nativist fears of an immigrant population explosion.

40. As such, pregnant immigrant women have been targets for deportation and scrutiny by government agencies and elected officials. For example, a Chinese immigrant woman miscarried her twins after she appeared for a routine interview with Immigration and

⁵⁵ Susan Sachs, *Long Resistant, Police Start Embracing Immigration Duties*, N.Y. TIMES, Mar. 15, 2002.

⁵⁶ Kareem Fahim & David W. Chen, *Police Voice Concerns Over a Directive on Immigrants*, N.Y. TIMES, Aug. 24, 2007. Additionally, the violation of a protective order is a deportable offense—a further deterrent to victims whose abuser may be undocumented or with uncertain status. See INA § 237(a)(2)(E)(ii).

⁵⁷ Emily Bazar, *Lawmakers Seek 'Sanctuary Cities' Crackdown*, USA TODAY, Oct. 24, 2007.

⁵⁸ *Id.*

⁵⁹ WomensLaw.org, *U-Visa Laws and Procedures*, <http://www.womenslaw.org/immigrantsUvisa.htm>.

⁶⁰ CERD, *supra* note 1, art. 5(b).

⁶¹ See U.S. Census Bureau, *General Demographic Characteristics: 2004*, 2004 AMERICAN COMMUNITY SURVEY.

Customs Enforcement (ICE) officials, and unexpectedly became subject to a violent deportation attempt.⁶² Another pregnant immigrant woman from Cameroon miscarried while she was under ICE custody after her requests for medical care went ignored for two days.⁶³

41. Over the last three sessions of Congress, members have also attempted to pass legislation that would amend the 14th Amendment to deny birthright citizenship to children born to non-citizens or parents who are not permanent resident aliens.⁶⁴ If enacted, this change would create an underclass of immigrant children and families who would have few civil and political rights.

iv. Women and Human Trafficking

42. Trafficking in persons is a widespread problem involving both sexual exploitation and labor exploitation of its victims. Trafficking affects all regions and the majority of countries in the world, and the U.S. Department of State estimates that between 600,000 to 800,000 people are trafficked internationally.⁶⁵ Of this number, it is estimated that approximately 17,500 individuals are trafficked annually to the U.S.⁶⁶ Immigrant women of color are disproportionately trafficked into the United States for various types of forced labor. The largest area of origin is South and Southeast Asia, followed by other regions including the Soviet Union, Latin America, and Africa,⁶⁷ a pattern indicating that trafficking disparately impacts people of other race and colors.

43. Victims of trafficking are subject to numerous violations of their human rights, such as the right to personal liberty and autonomy, the right to bodily integrity, the right to freedom of movement and expression, the right to freedom from torture or other cruel or inhuman treatment, the right to be free from discrimination, the right to be free from forced labor and slavery, the right to health, the right to free access to education and information, and the right to favorable working conditions, including just compensation and reasonable working hours. Upon exiting a trafficking situation, victims face a range of needs including physical and mental health care, job training and employment issues, housing issues and, possibly, childcare. Victims of trafficking may also face serious legal consequences; they may be detained or deported for immigration violations that are the result of being trafficked, or they may face prosecution for other criminal offenses committed as a direct result of being trafficked.

44. Trafficking victims' access to assistance, redress and justice may be hindered due to their race, national or ethnic origin, or citizenship status. Ensuring that trafficking victims may enjoy these protections without such discrimination is part of the U.S.' obligations

⁶² Nina Bernstein, *Protests Brew Over Attempt to Deport a Woman*, NEW YORK TIMES, February 14, 2006.

⁶³ Ruben Rosario, *Deportation Case Is No Model of Justice Served*, ST. PAUL PIONEER PRESS, November 7, 2005.

⁶⁴ See *Citizenship Reform Act of 2007*, H.R. 133.

⁶⁵ Facts about Human Trafficking,"= Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, Dec. 7, 2005.

⁶⁶ Trafficking in Persons Report, U.S. Department of State, June 5, 2006.

⁶⁷ Clare M. Ribando, *Trafficking in Persons: U.S. Policy and Issues for Congress*, Clare M. Ribando, Congressional Research Service, updated June 20, 2007.

under article 5 of the Convention,⁶⁸ as elaborated upon in General Recommendation 30, wherein the Committee urges States Parties “[t]ake effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particular by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault.”⁶⁹

45. Human trafficking is the result of global economic policies – many of which are promulgated by the United States – that are detrimental to developing countries and impede the ability of women and girls to make choices about their health, employment, and education. Strict U.S. immigration policies limit the migration of foreign-born women and perpetuate the degradation of poor immigrant women. Although there exist numerous federal, state, and local government entities dedicated to addressing human trafficking in the United States, these entities do not tackle the root causes of human trafficking to prevent exploitation from happening.

46. In 2000, Congress passed the Trafficking Victims Protection Act (TVPA) to address various aspects of trafficking in persons both in the U.S. and abroad. The Act created the T visa, which is available to survivors of trafficking, many of whom are immigrant women of color, who meet certain qualifications. One requirement is the survivor’s willingness to assist in the investigation and prosecution of her trafficker. However, if federal law enforcement officials do not provide an endorsement for the survivor, she may face deportation regardless of the victimization and exploitation she experienced while being forced to work in the U.S.

47. In addition, the U.S. needs to do more to recognize how strict immigration laws and lack of labor and employment law enforcement contribute to the continuing problem of human trafficking in the U.S. Although low-skilled foreign nationals may enter the U.S. with a H-2B visa, the cap for this type of visa is often reached half-way into the fiscal year.⁷⁰ Yet, the demand for cheap, unskilled labor continues to beckon immigrants while the number of available visas and routes for legal migration do not come close to meeting this demand. Thus, women and even children succumb to unsafe travel routes to enter the U.S. for work.

⁶⁸ Art. 5, CERD. Civil and political rights protected under CERD include the right to freedom of movement and residence within the border of the State; the right to leave any country, including one's own, and to return to one's country; the right to nationality; the right to marriage and choice of spouse; the right to own property alone as well as in association with others; the right to inherit; the right to freedom of thought, conscience and religion; the right to freedom of opinion and expression; the right to freedom of peaceful assembly and association. Art. 5(d). Economic, social and cultural rights protected under CERD include the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; the right to form and join trade unions; the right to housing; the right to public health, medical care, social security and social services; the right to education and training; the right to equal participation in cultural activities. Art. 5(e).

⁶⁹ General Recommendation no. 30: Discrimination against Non-Citizens, Committee on the Elimination of Racial Discrimination, Jan. 10, 2004. ¶ 34.

⁷⁰ US Department of Homeland Security, *Press Release: USCIS Announces H-2b Procedures – Reaches Cap*, available at <http://www.uscis.gov/files/pressrelease/H2BpressRelease3-10-04.pdf> (March 2004).

48. Furthermore, immigrant women and girls often labor as invisible workers in private homes as care takers, agricultural workers, or in small-scaled factories that lack legal protective measures, making them more vulnerable to exploitation and abuse. For example, domestic workers are not defined as protected employees under the National Labor Relations Act⁷¹ and are not covered by workplace regulations under the Occupational Safety and Health Act.⁷² The U.S. does not currently do enough to enforce existing labor and employment laws in the low-wage sectors in which immigrant women and children labor, and while its attention to enforcement of laws against trafficking in the sex industry is not to be diminished, said enforcement should not come at the cost of women and children trafficked for their labor, many of whom endure sexual abuse as well as the indentured servitude, forced labor and other violations of their fundamental human rights.

Recommendations

- Ensure availability of culturally and linguistically accessible social services.
- Amend federal law to eliminate the 5 year bar to Medicaid eligibility for lawful immigrant victims, and extend Medicaid eligibility to undocumented battered women.
- Extend eligibility for immigration relief under VAWA to unmarried women and women whose abusers are not citizens or lawful permanent residents.
- Stop the practice of deputizing local police for the enforcement of federal immigration law.
- Combat local immigration ordinances that seek to turn health care providers and other social services and community providers into immigration agents.

IV. THE DISCRIMINATORY IMPACT OF U.S. IMMIGRATION ENFORCEMENT ON THE RIGHTS OF IMMIGRANTS

49. Immigrant and refugee communities in the U.S. have been subjected to a range of abuses and assaults in recent years: systematic human rights violations directed by the federal government, local, county and state governments, law enforcement agents, employers and private citizen groups. Working collaboratively, they have advanced hundreds of measures that deny immigrants and refugees due process rights, a living wage, labor protections, and adequate public safety.

⁷¹ Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards. VI. Legal Obstacles To U.S. Workers' Exercise Of Freedom Of Association*, available at <http://www.hrw.org/reports/2000/uslabor/USLBR008-08.htm> (2006).

⁷² Human Rights Watch, *Appendix III: Legal Issues Relevant to Migrant Domestic Workers*, HIDDEN IN THE HOME: ABUSE OF DOMESTIC WORKERS WITH SPECIAL VISAS IN THE UNITED STATES, available at <http://www.hrw.org/reports/2001/usadom/usadom0501.pdf> (June 2001).

50. A soon-to-be-released report titled “*Over-Raided, Under Siege*”⁷³ analyzing 100 stories of human rights abuses, interviews with community leaders and summaries of numerous reports and data to better understand these patterns of human rights violations, concluded: the humanitarian crisis at the border has reached new heights as migrant deaths hit record numbers and the federal government pours billions of dollars into militarizing the region; immigrants are being detained at increasing rates and housed in detention facilities with inhumane living conditions; local law enforcement threaten public safety and community policing efforts by collaborating with federal immigration agents and the racial profiling of immigrants and persons perceived to be unlawfully in the United States; and employers continue to exploit workers using Social Security “no-match” letters and immigration status as a tool of intimidation while legislators are introducing temporary worker programs reminiscent of failed past initiatives.

A. Border Enforcement:⁷⁴ Use of Racial Profiling and Discriminatory Impact of Enforcement Measures on Latinos and other People of Color

51. Strategies that close off traditional points of entry funnel thousands of migrants through the most desolate and dangerous parts of the border region. When the former Immigration and Naturalization Service launched Operation Blockade in the El Paso, Texas, sector, and Operation Gatekeeper in the San Diego, California, sector, the Pima County Medical Examiner’s Office (PCMEO) saw a sharp spike in migrant deaths. PCMEO handles 90 percent of all unauthorized border crossing bodies in the U.S. Border Patrol’s Tucson Sector.⁷⁵

52. Between October of 2001 and September of 2007, 1,327 migrants perished crossing the Arizona (US)/Mexico border.⁷⁶ Most victims died from dehydration and hyperthermia.⁷⁷

⁷³ Arnoldo Garcia & Sheila Chung, “Over-raided, Under-Siege: The Impact of U.S. Immigration Enforcement on the Rights of Immigrants”, National Network for Immigrant & Refugee Rights, 2008.

⁷⁴ For more information on immigration enforcement along the U.S.-Mexico border and the ensuing humanitarian crisis, see attached annex *Human Rights Crisis at the U.S.-Mexico Border: U.S. Border Militarization and Immigration Control Are Causing Migrant Deaths and Destabilizing Communities*, prepared by the National Network for Immigrant and Refugee Rights.

⁷⁵ Raquel Rubio-Goldsmith, M. Melissa McCormick, Daniel Martinez and Inez Magdalena Duarte. Immigration Policy Brief: “A Humanitarian Crisis at the Border: New Estimates of Deaths Among Unauthorized Immigrants,” American Immigration Law Foundation, February 8, 2007, available at www.ailf.org/ipc/policybrief/policybrief_020607.shtml.

⁷⁶ Coalición de Derechos Humanos counts the number of bodies recovered in Arizona for the fiscal year, which begins October 1st, and ends September 30th of every year. Numbers are collected in collaboration with the Consular offices and county medical examiners. Coalición de Derechos Humanos, Webpage: “Arizona Recovered Bodies,” available at http://www.derechoshumanosaz.net/index.php?option=com_content&task=view&id=20&Itemid=34.

⁷⁷ Coalición de Derechos Humanos counts the number of bodies recovered in Arizona for the fiscal year, which begins October 1st, and ends September 30th of every year. Numbers are collected in collaboration with the Consular offices and county medical examiners. Coalición de Derechos Humanos, Webpage: “Arizona Recovered Bodies,” available at http://www.derechoshumanosaz.net/index.php?option=com_content&task=view&id=20&Itemid=34.

53. By the end of 2008, DHS aims to increase the number of border patrol agents from 15,000 to 18,300 (this figure represents a doubling of border patrol agents under the Bush administration). DHS also plans to add 370 miles of “fencing”; 300 vehicle barriers, 105 camera and radar towers and 3 unmanned aerial vehicles.⁷⁸

B. Internal Immigration Enforcement and Discrimination

54. Since the United States filed its initial CERD Report in September 2000, U.S. citizens and legal immigrant workers in the United States have endured a series of violent and disruptive raids at their workplaces and in their homes. US Immigration Customs and Enforcement (ICE) agents use these raids to apprehend undocumented individuals or individuals with criminal convictions, but the practice typically involves targeting a population of ethnic minorities that is hugely disproportionate to the number of people actually charged with violations. As a result, large numbers of legal US residents have been abused, arrested and detained on the basis of their ethnicity. These practices constitute plain violations of CERD Article 5(b). Workplace raids also violate Article 5(d)(i), Article 5(e)(i) and Article 5(e)(ii). Targeting ethnic minorities in their homes violates the right to housing protected by Article 5(e)(iii).

i. Increased Worksite Enforcement

55. In 2006, United States Immigration and Customs Enforcement (ICE) arrested approximately 4,000 individuals in worksite enforcement actions—more than seven times the total number of arrests in worksite enforcement cases in 2002 by ICE’s predecessor, the Immigration and Nationality Service.⁷⁹ The increase is a result of nationally coordinated worksite raids that target low-level employees like those carried out at six Swift & Company plants on December 12, 2006.⁸⁰ Numerous detained employees were citizens or lawful permanent residents of the United States who were not provided legal counsel and not advised of their right to remain silent. Several were searched without warrant or suspicion, and at least one worker was assaulted and battered by an ICE agent.⁸¹ Agents used mass warrantless detentions and arrested a total of 1,139 people. Of those, 150 arrests were for alleged crimes and only 65 people were charged with crimes related to identity theft.⁸²

56. Workers targeted during the raids at the Swift meatpacking plant in Worthington, MN have filed a lawsuit alleging that the tactics used by immigration agents were

⁷⁸ *Id.*

⁷⁹ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, FACT SHEET: EXECUTIVE SUMMARY ICE ACCOMPLISHMENTS IN FISCAL YEAR 2006 (2006), <http://www.ice.gov/pi/news/factsheets/2006accomplishments.htm>.; *See, also*, Rebecca Smith & Catherine Ruckelshaus, “Solutions, Not Scapegoats: Abating Sweatshop Conditions for all Low-Wage Workers as a Centerpiece of Immigration Reform”

⁸⁰ On December 12, 2006, 1,000 ICE agents arrested and detained numerous workers at the Swift plants in Cactus, Texas; Grand Island, Nebraska; Hyrum, Utah; Worthington, Minnesota; Greeley, Colorado; and Marshalltown, Iowa.

⁸¹ Swift complaint

⁸² Swift complaint

discriminatory and illegal.⁸³ Their complaint alleges that agents “hurled insults at the Hispanic workers, ordered female Hispanic workers to disrobe and ‘otherwise insulted, abused, and humiliated the plaintiffs on account of their race.’”⁸⁴ These violations of US law are also proscribed by CERD Article 5, which provides “the right to security of person and protection by the State against violence or bodily harm”,⁸⁵ and “the rights to work, to free choice of employment, to just and favourable conditions of work.”⁸⁶ In Worthington, Hispanic employees were abused and detained during the course of the raid while white employees were left undisturbed.⁸⁷

57. ICE officials have repeated this practice at other sites across the country. On March 6, 2007, armed federal officials descended on the Michael Bianco factory in New Bedford, Massachusetts and arrested about 350 employees, mostly mothers of young children.⁸⁸ The women were shackled and detained for days without any due process or legal representation. Nothing was done to provide for the minor children whose parents were detained. At a workplace raid at a candy packaging company outside Chicago seventeen immigrants detained for several weeks were allegedly “strip searched, denied medical attention, roughly handcuffed, coerced to sign deportation papers they did not fully understand, and charged up to \$23,000 for bond.”⁸⁹ In New Mexico, “Ms. Kim, a cook of about 60, was swept up in a raid on a massage parlor and detained for a month at the Regional Correctional Center in Albuquerque.”⁹⁰ She died in custody. Her death was finally reported a year later when a lawyer learned about the case from other Korean detainees and began investigating.

58. The fact that these raids target low-level employees is especially offensive because the practice implicitly condones workplace offenses committed by employers. In 1999, INS issued fine notices to 417 employers.⁹¹ In 2004, despite the agency’s increased focus on worksite enforcement actions, ICE issued fine notices to only three employers nationwide.⁹² Employers at the Smithfield Foods hog processing plant in Tarheel, North Carolina have routinely failed to secure “just and favourable conditions of work” for their

⁸³ Greg Aamot, *Worthington Workers Sue Over Tactics in Immigration Raid*, Minnesota Public Radio (Sept. 4, 2007) (online at <http://minnesota.publicradio.org/display/web/2007/09/04/swiftraidlawsuit/>, last visited 11/29/07).

⁸⁴ Greg Aamot, *Worthington Workers Sue Over Tactics in Immigration Raid*, Minnesota Public Radio (Sept. 4, 2007) (online at <http://minnesota.publicradio.org/display/web/2007/09/04/swiftraidlawsuit/>, last visited 11/29/07).

⁸⁵ CERD, Article 5(b)

⁸⁶ CERD, Article 5(e)(i)

⁸⁷ Aamot, *Worthington Workers Sue Over Tactics in Immigration Raid*, Minnesota Public Radio (Sept. 4, 2007) (online at <http://minnesota.publicradio.org/display/web/2007/09/04/swiftraidlawsuit/>, last visited 11/29/07).

⁸⁸ Ali Noorani, “US immigration system at its worst,” Boston.com (March 9, 2007)

⁸⁹ Kari Lydersen, “Abuses Alleged During Immigration Raid,” *InTheseTimes* (Apr. 23, 2007) available at http://www.inthesetimes.com/article/3143/abuses_alleged_during_immigration_raid

⁹⁰ Nina Bernstein, “New Scrutiny as Immigrants Die in Custody” *New York Times* (June 26, 2007), available at http://www.nytimes.com/2007/06/26/us/26detain.html?_r=2&oref=slogin&oref=slogin.

⁹¹ US GOV’T ACCOUNTABILITY OFFICE, GAO-05-813, IMMIGRATION ENFORCEMENT: WEAKNESSES HINDER EMPLOYMENT VERIFICATION AND WORKSITE ENFORCEMENT EFFORTS 6–7 (2005).

⁹² US GOV’T ACCOUNTABILITY OFFICE, GAO-05-813, IMMIGRATION ENFORCEMENT: WEAKNESSES HINDER EMPLOYMENT VERIFICATION AND WORKSITE ENFORCEMENT EFFORTS 6–7 (2005).

employees.⁹³ In 2000 and 2006, NLRB decisions found Smithfield liable for using illegal threats and violence against its workers.⁹⁴ Smithfield employees have made ongoing attempts to organize despite the company's union-busting campaigns and finally, in 2007 U.S. immigration officials raided the Smithfield plant and arrested 21 workers.⁹⁵ The arrests effectively sanction Smithfield practices that violate CERD protections, including Article 5(b), Article 5(e)(i) and Article 5(e)(ii), "the right to form and join trade unions."⁹⁶

ii. Home Raids

59. ICE has also conducted a series of home raids in communities with large populations of ethnic minorities, particularly Latinos. Over four days in April, 2007, ICE officials swept through towns across the country during Operation Cross Check. In Willmar, Minnesota, "ICE agents entered and searched Plaintiffs' private homes without warrants, without probable cause or exigent circumstances, and without the consent of the Plaintiffs, then detained, interrogated and in some cases arrested Plaintiffs in their homes."⁹⁷ The objective was to uncover illegal immigrants and individuals with criminal records, but the raids "were the calculated product of racial and ethnic profiling"⁹⁸ and violated CERD Article 5(b) as well as the equal right to housing, "without distinction as to race, colour, or national or ethnic origin," provided CERD Article 5(e)(iii).

60. In Willmar, only individuals who "appeared to be of Latino origin" were meant to be subject to the raids.⁹⁹ In at least one instance, when ICE agents discovered an occupant was white they ordered her out of the bedroom but did not ask for any identification.¹⁰⁰ Agents knocked on doors in Latino neighborhoods early in the morning, often announcing "It's the police". They "entered bedrooms while...families were sleeping, waking them up by shining flashlights in their faces."¹⁰¹ Approximately 50 people were seized during the raids and held in regional detention facilities. The agents also "failed to make reasonable efforts to accommodate children of detainees"; "nursing children [were] denied appropriate nourishment, leading to waning appetites."¹⁰²

61. In New Haven, Connecticut, immigration authorities swept up 31 undocumented immigrants just two days after the city approved a municipal identification card that will

⁹³ Blood, Sweat, and Fear, *passim*.

⁹⁴ <http://www.smithfieldjustice.com/aboutthecampaign.php>

⁹⁵ <http://www.smithfieldjustice.com/aboutthecampaign.php>

⁹⁶ CERD, Article 5

⁹⁷ Willmar Amended Complaint, ¶ 2. online at <http://www.aifl.org/lac/Arias-ammcmpl.pdf> (last visited 11/30/07).

⁹⁸ *Id.*, at ¶4. online at <http://www.aifl.org/lac/Arias-ammcmpl.pdf> (last visited 11/30/07).

⁹⁹ *Id.*, at ¶ 2.

¹⁰⁰ *Id.*, at ¶ 63.

¹⁰¹ *Id.*, at ¶ 62.

¹⁰² *Id.*, at ¶ 66.

all allow city residents, regardless of their citizenship status, to access basic city services.¹⁰³

62. Similar raids have been carried out in other communities. Most notably, there was a series of home raids in October 2007 in Lake County, IL near Chicago in which a number of “collateral arrests” were made. ICE told the media that the sweeps were intended to rid the streets of dangerous gang members, but several detained individuals had not been affiliated with gangs for over a decade.¹⁰⁴

63. In New Jersey, the Immigration and Customs Enforcement Agency (“ICE”) has conducted a clear pattern of intimidatory pre-dawn warrantless “raids” of immigrant since at least 2004, mirroring the home raids conducted nationally, discussed *supra*, with a sharp increase in frequency since the implementation of “Operation Return to Sender” in [date] 2006. The overwhelming majority of homes raided were, and continue to be, occupied by Hispanic immigrants. Such raids were reported in Trenton,¹⁰⁵ Freehold,¹⁰⁷ Hightstown,¹⁰⁸ Ewing, Princeton,¹⁰⁹ West Windsor,¹¹⁰ Union City,¹¹¹ and Bridgeton in 2004-2005. Since May 24, 2006, warrantless raids of immigrants’ homes have been consistently reported across New Jersey,¹¹² including in Edison (May 24, 2006),¹¹³ Metuchen (May 24, 2006),¹¹⁴ Woodbridge (May 24, 2006),¹¹⁵ Penn’s Grove (August 1, 2006), Bridgeton (June, 2006 and September, 2006), Princeton (October 12, 2006), Clifton (November 13, 2006), Vineland (February 1-2, 2007),¹¹⁶ Englewood

¹⁰³ Andrew Mangino, “Feds arrest dozens of illegal immigrants in New Haven raids,” Yale Daily News, June 6, 2007, available at <http://www.yaledailynews.com/articles/view/21076>.

¹⁰⁴ Reported by staff at the National Immigration Justice Center, Chicago (12/4/07).

¹⁰⁵ See “Advocates Decry Alien Raids,” The Trentonian, August 20, 2004 (http://www.zwire.com/site/news.cfm?newsid=12739087&BRD=1697&PAG=461&dept_id=44551&rft=6, accessed October 10, 2007). See also “Palmer makes push for immigrants,” The Trentonian, December 23, 2004.

(http://www.zwire.com/site/news.cfm?newsid=13613438&BRD=1697&PAG=461&dept_id=44551&rft=6, accessed October 10, 2007).

¹⁰⁶ See *id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*; see also Terry Golway, “Back Into The Shadows,” New York Times, February 20, 2005 (www.nytimes.com/2005/02/20/nyregion/thecity/20NJ.html?ex=1189137600&en=7e73291b9a7e4c37&ei=5070, accessed October 10, 2007).

¹⁰⁹ *Id.*

¹¹⁰ See *id.*

¹¹¹ See Alix Nguetack, “Raids Terrorize Communities,” New American Media, August 12, 2006 (news.newamericamedia.org/news/view_article.html?article_id=9f33d3d1eb4d1cbbc8f97728411c609a, accessed October 10, 2007).

¹¹² See Jennifer Lee and Julia Mead, “2,100 are Arrested on Immigration Violations,” New York Times, June 15, 2006 (<http://www.nytimes.com/2006/06/15/nyregion/15alien.html?partner=rssnyt&emc=rss>, accessed October 15, 2007)

¹¹³ See Brian Donohue, “Raids leave gaps in a thriving community: Immigration laws target Indonesians,” The Star-Ledger, July 9, 2006 (accessed on LexisNexis.com, October 17, 2007); Susan Epstein, “Immigration Raids Net 32 Fugitives : Agents Shake Up Middlesex County's Indonesian Community,” The Star-Ledger, May 25, 2006 (accessed on LexisNexis.com, October 17, 2007).

¹¹⁴ See *id.*

¹¹⁵ See *id.*

¹¹⁶ See Miles Jackson, “Immigration Agents Spook City Residents,” The Daily Journal (Vineland, New Jersey), February 2, 2007 (accessed on LexisNexis.com, October 17, 2007).

(March 26, 2007),¹¹⁷ Morristown (June 6, 2007),¹¹⁸ Lakewood (June 13, 2007), Freehold (June 13, 2007), Union City (August 14, 2007), Bloomfield (August 22, 2007), Vineland (August 29, 2007),¹¹⁹ Passaic (August - September, 2007), Patterson (August - September, 2007), Irvington (August - September, 2007), Livingston, (10-17 September, 2007), Union City (September 26-27, 2007), New Brunswick (August - October, 2007), and New Egypt (October 3, 2007).¹²⁰

64. Media reports and interviews of individuals across the state¹²¹ reveal a common *modus operandi* for the raids: Between four and ten immigration agents typically arrive at the home of one or multiple immigrant families in the early pre-dawn hours of the morning. They pound furiously on the door, and in many cases shout “police.” Someone in the house opens the door, assuming an emergency. At that point, the agents enter the home; if they do not have a clear path of entry, they forcibly push the door and often the individual who opened it. Multiple agents move through the home, armed, and force all of the individuals out of bed and to a central location in the home, in some cases at gunpoint. They do not state that they are immigration agents. The individuals are not allowed to change out of their bedclothes.

65. The agents state that they are looking for a particular individual. Regardless of whether that individual is known to the occupants (in numerous cases, the occupants have never heard of the person), or whether the individual is present in the home or not, the agents question all of the residents about their identity and immigration status. In front of children and other family members, they handcuff whomever they suspect is unlawfully present in the US and place them in a van outside the home. They do not allow the person to change their clothing, and often handcuff them in their underwear or bedclothes. They do not tell the family where they are taking the person. They move on to other houses in the neighborhood and repeat this sequence, filling the van with immigrant arrestees.

66. Hispanic immigrants have given numerous first-hand accounts¹²² of immigration agents pointing guns directly at the occupants of their home, including children (one family reported that immigration agents pointed a gun at a sleeping four-year-old child). Immigration agents have confiscated individuals’ cell phones and forced them to divulge details about relatives and friends whose numbers were in the phone. In many cases, the agents are verbally abusive, and if the occupants are uncooperative, physically abusive as

¹¹⁷ See Lucas Sanchez, “ICE Raid in Inglewood,” Blog at Blue Jersey.com, March 26, 2007 (<http://www.bluejersey.com/showDiary.do?diaryId=4373>, accessed October 9, 2007).

¹¹⁸ See Nancy Rosenstock, “‘La Migra’ Grabs 7 in New Jersey,” *The Militant*, June 25, 2007 (<http://www.themilitant.com/2007/7125/712507.html>, accessed October 10, 2007); Daily Record Staff Report, “Morris Gang Immigration Raid Nets 7,” *The Daily Record*, June 7, 2007 (accessed on LexisNexis.com, October 17, 2007).

¹¹⁹ See James Quaranta, “Six Arrested in Immigration Raids,” *The Daily Journal* (Vineland, New Jersey), August 31, 2007 (accessed on LexisNexis.com on October 17, 2007).

¹²⁰ Unless otherwise indicated, this information is based on first-hand interviews on file with Seton Hall Center for Social Justice.

¹²¹ Seton Hall Center for Social Justice has been working with immigration advocates across the state of New Jersey conducting numerous such interviews from September – November, 2007.

¹²² Interviews on file with Seton Hall Center for Social Justice.

well. Agents have threatened to break down doors if they were not opened, and in some cases, they have done so. In at least several cases, ICE refused to allow individuals to speak with their attorney after they had demanded to do so, and in at least two cases, agents mockingly stated that no lawyer could help the individual now.

67. The raids are perpetrated exclusively against immigrants or perceived immigrants, almost all of whom are Hispanic, and the majority of whom do not have any criminal record. The raids are conducted in primarily immigrant neighborhoods,¹²³ instilling fear within immigrant communities. In numerous cases, immigration agents searched homes neighboring the home of the person they were allegedly seeking, and in at least one case, they asked a superintendent for keys to all of the apartments in a mostly Hispanic-immigrant apartment building. The raids evidence a discriminatory pattern of harassment of immigrants, and in many instances, a denial of their humanity. As a local government official in Trenton, NJ stated, the raids “stripped away all dignity of the people living there; they were treated like dogs.”¹²⁴

68. By conducting these raids, ICE agents have failed to uphold the CERD “right to security of person and protection by the State against bodily harm.” By targeting ethnic minorities at work and in their homes, these raids also violate “the rights to work, to free choice of employment [and] to just and favourable conditions of work”; “the right to form and join trade unions”; and “the right to housing”, all of which are guaranteed in CERD Article 5, “without distinction as to race, colour, or national or ethnic origin.”

iii. Community Enforcement and Racial Profiling

69. Local law enforcement has increasingly entered into Memoranda of Understanding with the Department of Homeland Security wherein local law enforcement receive money and training to enforce the nation’s immigration laws. Immigrant rights advocates, local officials, social service providers and others historically argued that this delegation of authority could discourage the immigrant community from assisting law enforcement in community policing efforts. In addition, if local authorities begin to enforce immigration laws, the most vulnerable members of the immigrant community, including victims of domestic violence, trafficking, and other crimes, may be further isolated by their abusers (who often use immigration status to manipulate their victims) or simply by their own fear of arrest and deportation. Such fears are not unfounded.

70. The city of Waukegan, IL, recently voted to apply for federal training and grant programs designed to encourage local police to arrest undocumented immigrants. In early August 2007, a Waukegan woman called the police after witnessing her husband shot in their driveway. The police investigating the shooting reportedly searched the woman’s home and arrested her for possessing a fraudulent identification card.¹²⁵

¹²³ See Nguefack, “Raids Terrorize Communities,” *New American Media*, August 12, 2006.

¹²⁴ Statement by Councilman Manuel Segura reported in “Palmer makes push for immigrants,” *The Trentonian*, December 23, 2007.

¹²⁵ Ryan Pagelow, “Shooting Witness Arrested for Fake ID,” *Suburban Chicago News*, August 9, 2007.

71. According to legal staff at the National Immigrant Justice Center's office in Waukegan, IL, at least 20 clients have reported racial profiling of Latinos by city police during road block stops. NIJC clients state that road blocks are typically set up on Saturdays, always at the same major intersection. The two lane road is divided and police officers select passing cars to move to the right lane for inspection. At the inspection point, officers check to ensure cars' occupants are wearing seat belts and that the drivers have proof of insurance and a driver's license. Drivers who cannot show their license are reportedly taken to the police station where their names are run through law enforcement databases. Clients state that the cars are towed. Individuals with records indicating immigration charges are turned over to federal immigration officers. According to National Immigrant Justice Center clients, only Hispanic drivers are pulled over at the roadblocks, in clear violation of the Convention.

72. Staff at the Instituto del Progreso Latino (IDPL) in Chicago report that other types of traffic stops are common in Waukegan and target Latino families. A town ordinance allows the police to seize vehicles of drivers who are stopped for minor traffic infractions and cannot show a drivers license or proof of insurance. IDPL clients have observed that the vast majority of drivers affected by the ordinance are Latino. The most common charges leading to a traffic stop are obstruction of view (usually because the driver has hung a rosary or air freshener on their rear-view mirror) or failure to wear a seat belt. In one case, shared by IDPL, a pregnant woman was left on the curb of a high-traffic roadway when her car was seized.

73. Recently, the Human Rights Committee, the formal monitoring body under the ICCPR,¹²⁶ addressed U.S. immigration policies and urged that "only agents who have received adequate training on immigration issues enforce immigration laws."¹²⁷ Unfortunately, the cooperative agreements are on the rise, rather than the decline, and it is clear through the examples described above that despite the training received, local law enforcement are still employing discriminatory policies with a discriminatory impact.

iv. Local Immigration Ordinances

74. Across the country, state and local government officials across the country have responded to the perceived lack of federal action on immigration have passed local ordinances and taken other actions demonstrating the truly hostile and discriminatory environment immigrants now face. The Committee has cautioned governmental bodies against applying legislation to non-citizens that has the effect of racial discrimination, particularly in the area of adequate housing, education, and working conditions and requirements for non-citizens.¹²⁸

75. Hazleton's attempt to deputize local officials with immigration authority and to deprive undocumented residents of certain benefits based on their documentation status

¹²⁶ Parties to the ICCPR submit reports to the Committee on policies adopted pursuant to the treaty. ICCPR, art. 40, 999 U.N.T.S. at 181-82.

¹²⁷ *Id.* at ¶27.

¹²⁸ Gen. Rec. 30.

undermines the very guarantees of non-discrimination and dignity for all migrants highlighted by the Inter-American Court, the Human Rights Committee, and the CERD Committee. Enjoining the Hazleton Ordinances is therefore imperative to affirm the dignity interests protected by the U.S. Constitution, and to preserve the United States' standing in the international community as a country that honors its obligations under international law.

76. On the heels of the Eastern District of PA ruling the Hazelton ordinance unconstitutional, PA State Representative Daryl Metcalfe issued a report "Invasion PA: National Security Begins at Home Keystone State Report," which leads with the following inflammatory call to action: "With the federal government currently AWOL in fulfilling its Constitutional responsibilities to protect American lives, property and jobs against the clear and present dangers of illegal immigration, many states and local governments are left with no choice but to take individual action to address this important issue." The report lists as offenses purportedly committed by unauthorized migrants, "homicide, identity theft, property theft, serious infectious diseases, drug running, gang violence, human trafficking, terrorism and growing cost to taxpayers," but the report reveals no accounting for racial profiling or discrimination in the exercise of prosecutorial discretion and criminal enforcement, and it demonstrates a presumption of guilt rather than innocence in the arrests and detentions (rather than convictions) listed.

C. Detention and Removal of Immigrants

77. Detentions have increased 400 percent from 5,532 in 1994 to 27,500 in 2006.¹²⁹ In October 2007, ICE was holding 14,764 immigrants in detention facilities throughout the nation.¹³⁰

78. One of the alarming shifts in detentions has been the privatization of its facilities – both their operation and construction. Conditions in many of those private facilities, however, fail to meet international, and even national, immigrant detention standards. In 2006, the Office of the Inspector General conducted an audit of five detention facilities used by U.S. Immigration and Customs Enforcement (ICE). The audit found multiple instances of non-compliance with detention standards related to health care, environmental health and safety, general conditions of confinement, and the reporting of abuse.¹³¹

i. Conditions of detention for refugees and asylum seekers fail to meet international standards

¹²⁹ National Immigration Justice Center, Web page: "Detention Center Documentation Collection," September 19, 2007, available at <http://www.immigrantjustice.org/detentioncenterdocuments.html>.

¹³⁰ List of the number of detainees with final orders of removal received by the American Bar Association from ICE in October 2007 through a Freedom of Information Act (FOIA) request.

¹³¹ Department of Homeland Security Office of Inspector General, "Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities," December 2006, available at http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-01_Dec06.pdf.

79. Gen. Rec. No. 30. requires states parties to “[e]nsure the security of non-citizens, in particular with regard to arbitrary detention, as well as ensure that conditions in centres for refugees and asylum-seekers meet international standards.”¹³² The U.S. Report addresses General Recommendation No. 30 in the most general way, asserting that National Detention Standards have been implemented in all facilities detaining non-citizens.¹³³ Setting aside questions regarding the accuracy of that assertion, it is important to note that the U.S. continues to hold arriving asylum seekers in mandatory detention, violating the prohibition against arbitrary detention articulated in Gen. Rec. No. 30. In addition, most asylum seekers are detained under conditions which, although they might be deemed suitable in the criminal justice system, are entirely inappropriate for individuals fleeing persecution.¹³⁴ In many instances, asylum seekers are endangered by being housed together with criminal detainees, and that danger they face is only heightened by the inadequate training received by personnel at the institutions in which they are detained. Notably, of the 20 facilities that house over 70 percent of asylum seekers in expedited removal, only one facility informed its line officers or guards which detainees were asylum seekers.¹³⁵ In addition, very few facilities provide personnel with any training regarding the special needs and concerns of asylum seekers, such as the psychological problems faced by victims of torture.¹³⁶

Imprisoned and physically beaten for his religious beliefs, a 21-year-old Buddhist Tibetan fleeing religious persecution, arrived in the U.S. to seek asylum only to be detained in a county jail by ICE. His request for release was denied. He struggled to communicate with jail staff, and could only speak with his lawyer when a volunteer Tibetan interpreter was available. This young man, who sought safe haven and posed no threat to our communities, was detained for more than three months before ultimately winning asylum and being set free.

A victim of female genital mutilation as a young girl in West Africa, fled with her family to escape political persecution at the height of civil war and was admitted to the United States in 1999 as a refugee. A few later, she was arrested for a drug offense. While serving her sentence, she was diagnosed with post-traumatic stress disorder resulting from her experiences in her home country. Having completed her criminal sentence, she was taken into custody by ICE and detained for more than two years without even an opportunity to see a judge to ask for release. During this time she suffered from severe medical conditions. Even after she was granted CAT relief in early 2007, ICE insisted on detaining her for several more months before the government released her in response to a petition for writ of *habeas corpus* filed on her behalf by NIJC.

A 43-year-old Thai mother with two children sought asylum in the U.S. to escape a violent personal situation. She has been imprisoned in U.S. jails for over five

¹³² ¶ 19.

¹³³ Periodic Report, ¶ 88.

¹³⁴ U.S. Commission on International Religious Freedom, U.S. Commission on International Freedom 2005 Annual Report, available at <http://www.state.gov/g/drl/rls/irf/2005/> (“USCIRF Report”).

¹³⁵ *Id.*

¹³⁶ *Id.*

years. Though her asylum claim was originally denied, the federal courts later found she had not received a fair hearing. Pending a new decision, the government refuses to release her, subjecting her to months and possibly years of further detention.

An Afghan man, targeted by the Taliban because he worked as a translator with the U.S. military, was detained when he arrived in the United States and requested asylum. Despite having already been subjected to vigorous background checks before he began working with the U.S. military, he has been detained for more than a year, while he awaits a decision in his asylum case that is currently pending before the Seventh Circuit Court of Appeals.¹³⁷

80. Indefinite detention of immigrants, refugees and asylum seekers is a grave example of the arbitrary nature of immigration detention. This is especially punitive for asylum seekers who have no opportunity to appeal an agency determination to hold them in custody. Even though many of these individuals have committed no crime and pose no threat to the community, they remain detained.

ii. Non-citizens with valid asylum claims are denied sufficient due process guarantees to enable them to effectively pursue their right against expulsion

81. Gen. Rec. No. 30 requires states parties to “[e]nsure that . . . non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies.”¹³⁸ Under the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (“IIRAIRA”), immigration inspectors at U.S. airports and borders were given the power to order the immediate deportation of persons who arrive in the U.S. without proper travel documents. Under this procedure, referred to as “expedited removal,” asylum seekers are generally not provided a hearing before an immigration judge unless they are found by the inspector to have a “credible fear” of persecution or torture in their country of origin. But individuals in expedited removal are often not informed of their right to a credible-fear interview, and those who express such a fear are not always afforded an interview.¹³⁹ The likelihood that individuals with valid asylum claims will be improperly expelled is heightened when they are not provided interpreters.¹⁴⁰ In addition, once an inspector orders removal, asylum seekers have no meaningful opportunity for further administrative or judicial review.¹⁴¹

¹³⁷ Case examples provided by the National Immigrant Justice Center in Chicago, IL.

¹³⁸ ¶ 25.

¹³⁹ *Id.*

¹⁴⁰ Human Rights First, “Is This America? The Denial of Due Process to Asylum Seekers in the United States.” (October 2000) (documenting at least ten cases of asylum seekers wrongfully removed under expedited removal and noting that, in at least four of those cases, the asylum seeker was never provided with interpreter services).

¹⁴¹ *See* 8 U.S.C. § 1225 (b)(1)(C) (providing that except in limited circumstances, “a removal order . . . is not subject to administrative appeal.”); 8 U.S.C. § 1252 (a)(2) (“no court shall have jurisdiction to review . . . any individual determination or to entertain any other cause or claim arising from or relating to the

iii. Non-citizens in danger of being subjected to torture if returned to their country of origin are denied sufficient protections to ensure their right against refoulement

82. Gen. Rec. No. 30, ¶ 27, requires States Parties to “[e]nsure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment.” Federal regulations allow individuals to pursue claims under Article 3 of the Convention Against Torture (“CAT”) for protection from *refoulement*, but the regulations require the claimant to show that “it is more likely than not that he would be tortured” in order to be afforded that protection. This standard is inconsistent with CAT, which requires only that there be “substantial grounds for believing that [the claimant] would be in danger of being subjected to torture” if returned. The Board of Immigration Appeals has also improperly limited eligibility for *refoulement* protection by holding that such protection does not extend to persons who fear torture by private entities a government is unable to control.¹⁴² Although at least one U.S. federal appellate court has held that Article 3 prohibits return when the government in the receiving country is aware of the private entity’s behavior and does nothing to stop it,¹⁴³ the U.S. continues to deny protection to individuals facing human rights abuses from such entities.¹⁴⁴ Eligibility has also been constrained by the growing number of criminal offenses that are now defined as “particularly serious crimes” rendering individuals ineligible for protection.

iv. The U.S. fails to take account of the impact of expulsion on the right to family life

83. Gen. Rec. No. 30, ¶ 28, requires states parties to “[a]void expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life.” In mandatory removal cases and cases where permanent residents are ineligible for discretionary relief, the U.S. does not consider whether interference with family life is proportionate to the state’s interest in deportation. Indeed, as a procedural matter, there is no opportunity for individuals to even raise the issue of family integrity.¹⁴⁵

Recommendations

- Review impact of immigration enforcement on racial and ethnic minorities;
- Take affirmative measures to ensure non-discrimination in enactment and implementation of immigration laws;

implementation or operation of an order of removal pursuant to section 1225 (b)(1)”); see USCIRF Report.

¹⁴² See *Matter of S-V*, 22 I&N Dec. 1306 (BIA 2000).

¹⁴³ See *Zheng v. Ashcroft*, 332 F.3d 1186 (9th Cir. Jun 18, 2003); *Ochoa v. Gonzales*, 406 F.3d 1166 (9th Cir. May 16, 2005); see also *Perez v. Loy*, 356 F.Supp.2d 172 (D.Conn. Feb 17, 2005).

¹⁴⁴ See *Matter of S-V*-. (fn __ *supra*).

¹⁴⁵ By contrast, Canada provides petitioners the opportunity to raise the issue of family integrity and Canadian authorities weigh petitioners’ interests against state interests in deportation. See, e.g., *Canepa v. Canada*, Communication No. 558/1993, U.N.Doc. CCPR/C/59/0/558/1999, ¶¶ 9.3, 11.4, 11.5 (1997); *Stewart v. Canada*, Communication No. 538/1993, U.N.Doc. CCPR/C/79/Add.105, ¶ 12.10.

- Take affirmative measures to ensure that conditions of detention and removal comply with fundamental international human rights standards and do not discriminate on the basis of race, colour, descent, or national or ethnic origin;
- Take affirmative measures to combat local immigration ordinances, particularly those that contribute to racial profiling;
- Take measures to ensure that an immigrant's right to family integrity is not violated through the enforcement of immigration laws.

V. SPECIFIC POST-9/11 TREATMENT OF IMMIGRANTS: GOVERNMENT PRACTICES DENY DUE PROCESS AND RESPECT FOR THE FUNDAMENTAL HUMAN RIGHTS OF IMMIGRANTS AND ENCOURAGE RACIAL PROFILING

84. Since September 11, 2001, new federal laws and policies have limited non-citizens' access to due process, while at the same time creating an atmosphere of elevated fear and mistrust of those who are foreign-born, as well as those who are perceived to be of a particular religious or ethnic background. Among these measures are the USA PATRIOT Act of 2001, which in addition to expanding the government's power to search records, property and correspondence, also provided for the indefinite detention of non-citizens on suspicion of terror.¹⁴⁶ Under this latter provision, the Attorney General can order detention of a non-citizen based solely on "reasonable grounds to believe" that the non-citizen endangers national security.

85. Under the REAL ID Act of 2005, the standard of proof for the grant of asylum has been heightened, while the discretion of immigration judges to make credibility determinations and order removal based on asylum seekers' prior statements, including statements taken during immigration inspection and expedited removal, has been enhanced.¹⁴⁷ At the same time, federal courts have been stripped of their ability to review removal orders. For example, Congress eliminated aliens' ability to challenge removal orders in federal district court through habeas corpus petitions. In addition, the REAL ID Act contains a provision allowing the Department of Homeland Security to bar aliens from admission to the U.S. if they are deemed to have provided "material support" to a group defined as a terrorist organization,¹⁴⁸ even if the applicant bears no personal responsibility for such acts or was coerced into such activities. Because of this bar, thousands of refugees have had their cases denied, and over 500 asylum cases are on hold.¹⁴⁹

86. In addition to such laws, administrative policies governing alien registration were widely expanded following September 11. The specific targeting of Muslim and Arab

¹⁴⁶ USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

¹⁴⁷ REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231 (2005).

¹⁴⁸ The definition of a "terrorist group" was widely expanded in the REAL ID Act, § 103.

¹⁴⁹ See American Civil Liberties Union, RealNightmare.org, <http://www.realnightmare.org> (documenting problems created by the REAL ID Act).

men under these policies has legitimized profiling based on race, national origin, and religion. For example, the National Security Entry Exit Registration System (“NSEERS”) established a national registry for temporary foreign visitors (non-immigrant aliens) from certain countries of origin.¹⁵⁰ Such individuals are required to register upon arrival to and departure from the U.S., and can be detained for failing to do so. The system, which was purportedly designed to catch terrorists, has resulted in thousands of non-immigrant aliens without any connection to terrorism being detained. More than 13,000 men were put into removal proceedings within the first year of enforcement, and 2,800 were deported.

87. In spite of federal guidelines and training programs (*see* U.S. Report, ¶¶ 156-161), individuals interviewed by Minnesota Advocates for Human Rights report that, since September 11, they have been singled out for greater scrutiny or profiling by both law enforcement and private entities.¹⁵¹ Interviewees reported being stopped by police because they were Muslim, Black, or Latino, or being followed in stores under suspicion of shoplifting on account of race or national origin. Such scrutiny has created distrust, fear, and resentment, and damaged the sense of safety and security for members of immigrant, refugee, and religious minority communities. These actions constitute violations of article 5(a) of the Convention.

88. Further, violations of CERD Article 5(b) have also been documented. In Minnesota, hate crimes have occurred against Muslims and other communities perceived either as bearing some responsibility for September 11 or as outsiders after September 11.¹⁵² Interviewees reported crimes against the person, such as assaults and physical threats, and crimes against property. Interviewees also expressed dissatisfaction with the response from law enforcement, reporting that the police failed to properly categorize such incidents as hate crimes, did not take the alleged hate crimes seriously, and did not commit adequate resources to finding the perpetrators.

89. One aspect of the U.S. government’s response to September 11 involves changes to air travel and the corresponding creation of a new federal agency and new entry and exit procedures for both citizens and non-citizens.¹⁵³ Under these new regimes, many immigrants and refugees have reported experiencing aggressive, hostile, and demeaning treatment at the hands of Transportation Security Administration (TSA), Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) agents in violation of CERD Article 5(d)(i) and Article 5(f). Interviewees also reported screening

¹⁵⁰ Males over the age of 16 who are citizens or nationals of the following countries are required to register: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. *See* U.S. Immigration & Customs Enforcement, Changes To National Security Entry/Exit Registration System (NSEERS), <http://www.ice.gov/pi/news/factsheets/nseersFS120103.htm>. For more details, *see* Public Information, Topics of Interest, Special Registration (last accessed Jan. 11, 2007), <http://www.ice.gov/pi/specialregistration/index.htm>.

¹⁵¹ *See* Minnesota Advocates for Human Rights, “Voices from Silence: Personal Accounts of the Long-Term Impact of 9/11” (2007), at 13-16.

¹⁵² *Id.* at 21-23.

¹⁵³ *Id.* at 24-30.

procedures which, although ostensibly “random,” appear to disproportionately target immigrant, refugee, and religious minority travelers, resulting in frequent delays for such travelers. Not only is such screening apparently selective, but it also is often carried out in a manner inconsistent with federal guidelines. For example, a Muslim university student who has lived in Minnesota since age seven reported being targeted for scrutiny by TSA agents at the Minneapolis-St. Paul International Airport because she was wearing a hijab, being told by the agents to remove her hijab, denied a separate room, and made to partially remove her hijab in front of male security guards, even though an empty room and a female TSA agent were available.¹⁵⁴

90. Foreign students report experiencing similar hassles from airport security, as well difficulty with immigration registration. As a result, many of his classmates are simply choosing not to travel home during school breaks until they finish their schooling. Since September 11, it has also become increasingly difficult for students from certain regions of the world to obtain visas to come to the U.S. to study, and once in the U.S. they are subjected to stringent reporting requirements.¹⁵⁵ These travel restrictions extended beyond air travel to impact border crossings and automobile travel within the U.S. Interviewees cited increasingly closed borders, as well as the stigmatizing effect of new driver’s license policies, such as the designation of immigration status on driver’s licenses.

91. Post-September 11 laws, including the USA PATRIOT Act, have stifled civic and political participation in violation of articles 5(c) and (d)(vii) of the Convention. Real or perceived effects of the PATRIOT Act, which modified the rules on government searches, allowing the acquisition of church, synagogue, and mosque records without knowledge or consent, were reported to have chilled religious participation after September 11.¹⁵⁶ Interviewees also reported fear of contributing to certain charities or becoming active in other community and political affairs, including a fear of participating in lawful political protests.

Recommendations

- Eliminate federal programs that discriminate on the basis of race and national origin;

¹⁵⁴ Under Department of Transportation policy, “selecting a woman for an inspection solely because her hair is covered or she is wearing a veil, as some Muslim women do, is illegal discrimination.” If a search or inspection is necessary for safety or security reasons, whenever possible, screening personnel are to provide the person involved a choice of a public or private inspection and in front of female security personnel. *See*, Carrying Out Transportation Inspection and Safety Responsibilities in a Nondiscriminatory Manner, Dep’t of Transp. (Oct. 12, 2001), <http://airconsumer.ost.dot.gov/rules/20011012.htm>; Guidance for Screeners and Other Security Personnel, Dep’t of Transp. (Nov. 11, 2001), <http://airconsumer.ost.dot.gov/rules/20011116.htm>.

¹⁵⁵ For example, non-citizens who are required to be registered are also required to keep the Citizenship and Immigration Service (CIS) informed of their current address within ten days of any change. *See* U.S. CITIZENSHIP & IMMIGRATION SERVS., HOW DO I REPORT A CHANGE OF ADDRESS TO THE USCIS?, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9d686c854523d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=54519c7755cb9010VgnVCM10000045f3d6a1RCRD>.

¹⁵⁶ “Voices from Silence,” *supra* note __, at 39-42.

- Take affirmative measures to combat racial profiling and hate crimes;
- Work to ensure due process of law to all persons without discrimination as to citizenship status.

VI. Economic, Social and Cultural Rights

92. Article 5 of the Convention guarantees the right to “everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... (e) Economic, social and cultural rights,” notably those related to labor and employment; housing; public health, medical care, social security and social services; education and training. Unfortunately, immigrants in the United States do not enjoy the guarantee to fundamental economic, social and cultural rights, as provided for under the Convention. Access to and enjoyment of these rights is discussed in greater detail in those chapters enumerating on these rights,¹⁵⁷ and therefore this Chapter will only touch on those specific issues not addressed elsewhere.

A. Language Access

93. Language often serves as a proxy for national origin and race discrimination, and interferes with an individual’s full right of access to a range of civil and political rights as well as economic social and cultural rights. Most state and local ordinances aimed at combating unlawful immigration also include English-only provisions, which directly interfere with an English-language learners right to full participation in society. While the federal government has taken many positive and affirmative steps to guarantee non-discrimination on the basis of language,¹⁵⁸ more needs to be done to ensure that language is not used as the basis for discrimination in violation of the Convention.

B. Education

94. Children account for 1.8 million of the undocumented immigrants living in the United States.¹⁵⁹ They grow up here and know the U.S. as their home, and yet they are prevented from working or being able to afford college based on a decision their parents

¹⁵⁷ An extensive analysis of the labor and employment rights of immigrant workers is provided in the separate Chapter prepared by the Labor Working Group. For a discussion of the right to housing and immigrants, please see submission by Housing Working Group, ¶¶ 77-93, specifically “Local Housing Ordinances Targeting Undocumented Immigrants,” A Report to the Committee on the Elimination of Racial Discrimination on Racial Discrimination in Homelessness and Affordable Housing in the United States. For a discussion of the educational opportunities for immigrants and the discrimination experienced by immigrants, particularly English-Language Learners, see submission by Education Working Group, Racial Disparities in Educational Opportunities in the United States: Violations of the International Convention on the Elimination of All Forms of Racial Discrimination. For further discussion on health care, see discussion *supra* ¶¶ 26-29, 36-37 and discussion prepared by Immigration Sub-Committee on the NYC Coalition addressing Health Disparities and Public Benefits Access.

¹⁵⁸ See www.lep.gov.

¹⁵⁹ Roberto G. Gonzales, “Wasted Talent and Broken Dreams” Immigration Policy In Focus (Oct. 2007).

made years ago. Ineligibility for financial aid and lack of work authorization result in only 5-10% of these students being able to go to college.¹⁶⁰

95. U.S. policies preventing immigrant children from attaining higher education by preventing them from working or receiving in-state tuition and/or by causing them to be afraid of deportation violate CERD obligations. CERD, Article 5 provides: “States Parties undertake . . . to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the . . . right to education” Article 7 adds, “States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination” General Recommendation 30 urges parties to “[r]emove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education”¹⁶¹

96. Education opportunities in the United States are not equal; policies continue to limit the opportunities available to certain racial groups. For example, only 67% of Latino students complete high school on time, as compared to 82% of their white counterparts.¹⁶² There are several reasons suggested for this disparity, including that “Latinos are overrepresented in the population of students who do not have an opportunity to go to schools with adequate resources” and “the most poorly trained teachers are often those in classrooms where Latino students sit.”¹⁶³

97. Despite the difficulties in getting an adequate high school education, the same percentage (82%) of Latino high school graduates enter college as white high school graduates.¹⁶⁴ However, less than one quarter of the Latino students who enter college finish their bachelor’s degree and two thirds of them “end up with no postsecondary credential at all.”¹⁶⁵ They are academically prepared for college, but various factors contribute to their not being able to graduate. Seventy-seven percent of Latinos in a national survey cited the cost of tuition and the need to work and earn money as major reasons for not being able to attend/finish college.¹⁶⁶ Undocumented children of immigrants face added challenges. “Even though they were brought to the U.S. years ago as children, they face unique barriers to higher education, are unable to work legally in the U.S., and often live in constant fear of detection by immigration authorities.”¹⁶⁷

¹⁶⁰ *Id.*

¹⁶¹ Gen. Rec. 30 ¶ 29.

¹⁶² Richard Fry, “Latino Youth Finishing College: The Role of Selective Pathways,” (June 23, 2004) Pew Hispanic Center Report, at 1, *available at* <http://pewhispanic.org/files/reports/30.pdf>.

¹⁶³ Harvard Latino Law Review Spring, 2006 Conference, Eighth Annual Harvard Latino Law Review and Policy Conference and Commentary: Connecting Today, Impacting Tomorrow, 9 Harv. Latino L. Rev. 91, 137-38 (2005).

¹⁶⁴ Fry, *supra*, n.4 at 2.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 12, fig.9.

¹⁶⁷ Dream Act: Basic Information, Nat’l Immigration Law Center (Feb 2007), http://www.nilc.org/immlawpolicy/DREAM/dream_basic_info_0406.pdf

98. Earning potential is tied to education—“Someone with a bachelor's degree earns nearly \$1 million more over his or her lifetime than a high school graduate.”¹⁶⁸ Likewise, immigrants who are given a chance to become legal residents are able to get better jobs. “[T]he U.S. Department of Labor found that the wages of immigrants legalized under [the 1986 Immigration Reform and Control Act] had increased by roughly 15 percent five years later.”¹⁶⁹ Allowing undocumented students access to education and better jobs would benefit not only undocumented immigrant children, but also the entire U.S. economy—“[g]iven the opportunity to receive additional education and training, and move into better paying jobs, legalized immigrants pay more in taxes and have more money to spend and invest.”¹⁷⁰ Along with increased revenue, states would benefit from the increased number of educated workers. In California, there are more jobs requiring a college education than there is demand for these jobs. A California study predicts, “by 2025, 41 percent of the state’s jobs will require a college education, but only 32 percent of workers in the state will have the necessary education.”¹⁷¹

99. The government has failed to take steps to eliminate obstacles preventing qualified Latino students from reaching their full potential. The Development, Relief, and Education for Alien Minors Act (DREAM Act) legislation would help about 65,000 children of immigrants each year.¹⁷²

100. Furthermore, by failing to respond to, and in some cases by contributing to the angry anti-immigrant response to the DREAM Act,¹⁷³ the U.S. has violated its

¹⁶⁸ “Amount of schooling affects earning potential,” (July 18, 2002) <http://www.usatoday.com/news/nation/census/2002-07-18-degree-dollars.htm>; *See, also*, San Francisco Chronicle, “Getting a degree pays off with higher salary,” (Aug 18, 2007) *available at* <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/08/18/BUQ5RKS4J.DTL> (“The median annual salary for a high school graduate in 2006 was about \$30,940, according to the bureau. For college graduates with a bachelor's degree, the median was \$50,024.”).

¹⁶⁹ Wasted Talent, *supra*, n.1 at 3.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 8.

¹⁷² *See* 8 U.S.C. § 1623 (“[A]n alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State . . . for any postsecondary education benefit unless a citizen or national of the United States is eligible for such . . . without regard to whether the citizen or national is such a resident.”). The Dream Act would allow immigrant children, able to demonstrate good moral character, who were brought to the U.S. more than 5 years ago when they were under 16 years old, to apply for conditional status for up to six years of legal residence—during which time the student would have to complete at least two years of college education or U.S. military service. The DREAM Act would allow these students to apply for permanent residency after their education or service and it would also eliminate a federal provision that discourages states from providing in-state tuition to their undocumented immigrant student residents.

¹⁷³ Several members of Congress have issued statements contributing to the xenophobia referring to the children for whom the DREAM Act was drafted as “illegal” and “criminal.” *See* Todd J. Gillman “Cornyn ends dream for DREAM ACT,” The Dallas Morning News (Oct. 28, 2007) *available at* http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/DN-texwatch_28nat.ART.State.Edition2.42f2300.html (noting that Senator Cornyn complained the DREAM Act would “let criminals seek legal status”). *See, also*, U.S. Senator David Vitter, Official On-line Office, <http://vitter.senate.gov/?module=PressRoom/PressItem&ID=0771bd46-64b1-4d49-b347-656eccb10933> (““These illegal immigrants are already receiving millions in federal taxpayer dollars in Social Security, health care and other welfare programs, but now the DREAM Act wants American taxpayers to pay for their college tuition as well,” Vitter said.”).

obligations as outlined in General Recommendation 30, which advises States to “[t]ake steps to address xenophobic attitudes and behavior towards non-citizens”¹⁷⁴ The White House has opposed passage of the DREAM Act, expressing fear that it would “provide incentives for recurrence of the illegal conduct that has brought the Nation to this point” and “inevitably lead to large-scale document fraud.”¹⁷⁵

Recommendations:

- Work to ensure that language ability and immigration status are not used to interfere with the full enjoyment of Article 5(e) rights all persons without discrimination;
- Work to remove barriers to higher education for children who have adapted to life in a new country and excelled.
 - Allow immigrant children residents to pay in-state tuition.
 - Do not force immigrant children to choose between no legal status, an unaffordable education, or military service.¹⁷⁶
- Combat the dissemination of false and destructive information that scapegoats immigrants.

¹⁷⁴ Gen. Rec. 30 ¶ 11.

¹⁷⁵ “Statement of Administration Policy” EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET (Oct. 24, 2007) *available at* <http://www.whitehouse.gov/omb/legislative/sap/110-1/s2205sap-s.pdf>.

¹⁷⁶ *See, e.g.*, Kristen Scharnberg, “Immigrants’ dream nightmare for critics,” *ChicagoTribune.com* (Oct 7, 2007) *available at* <http://www.chicagotribune.com/news/nationworld/chi-dreamactoct07,1,613157.story>.