



# Deportado, Dominicano, y Humano

The Realities of Dominican Deportations  
and Related Policy Recommendations

**Northern Manhattan**  
COALITION FOR IMMIGRANT RIGHTS

Educating, Organizing and Defending Immigrant Communities

In cooperation with New York University School of Law Immigrant Rights Clinic

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**and Related Policy Recommendations**

By  
Northern Manhattan Coalition for Immigrant Rights

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*NMCIR works with over 6,000 families a year on issues such as immigration, citizenship, deportation and voter participation focusing on keeping families together, facilitating integration and building community power.*

*The Coalition Educates, Organizes and Defends the Immigrant Community.*

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## PREFACE

The purpose of this report is to delineate the extent to which deportations have transformed the Dominican community. In addition, this report seeks to emphasize the particularity of the deportation epidemic in the Dominican community. Multiple factors have come together to make deportation a unique and challenging crisis for Dominicans. Of the top seven immigrant groups deported from the United States in 2007, Dominicans have the highest proportion of those deported for criminal convictions. Due to the historical and familial roots of Dominican immigration, there is much reason to believe Dominicans who are being deported have lived in the United States the longest, and have the highest proportion of legal permanent residents of such immigrant groups suffering deportation *en masse*. Given these realities, this report specifically targets those who have the power to change the negative laws and policies that have created the situation we see in the Dominican community today—those who have the responsibility of upholding the law and ensuring that human rights are protected. This report is also targeted towards those who fight for the rights of immigrants and for social justice more generally, and have not yet seen how the struggle of Dominican detainees, deportees and their families relates to their own. Lastly, and most importantly, this report is targeted to all Dominicans everywhere impacted by deportation. The Northern Manhattan Coalition for Immigrant Rights (NMCIR) hopes that the data in this report can help make those directly affected more aware of the causes of their suffering, and thus, better prepared to fight the forces of displacement and family separation.

The end of the report lays out policy recommendations to three key players that can influence the future course of deportations in the Dominican community. These players are the United States government, the New York City government, and the Dominican government and consulate in the United States. Throughout the report, these policy recommendations will be highlighted. In addition, the report includes the stories of NMCIR's members, as well as detailed information about the laws that have created the situation we are living in today.

The Northern Manhattan Coalition for Immigrant Rights was founded over twenty five years ago largely in response to the effects that deportations were having in the Dominican and Washington Heights community. According to Dr. Rafael Lantigua, one of NMCIR's founders, some of the first cases that NMCIR handled were deportation cases.<sup>1</sup> NMCIR has remained active in the fight against unjust family separation caused by deportation. This fight is especially urgent in Washington Heights, one of the most concentrated areas of Dominican residence in a city and region where Dominicans make one of the largest immigrant groups. Given the size and the rootedness of the Dominican community in the United States, one of the effects of deportation (and of the incarceration that all too often leads to deportation), is the under-designation of economic resources. Dominicans are being ripped from their communities, and as a result, these communities are losing the money they deserve for critical services. During the upcoming 2010 census, tens of thousands of Dominicans will be missing from communities that need these resources, and up until now, there has been no discussion of how displaced individuals will be counted.

This report will bring to light the ways in which the criminal justice and immigration systems collide and create the environment for increased deportations. NMCIR hopes that recent changes to the Rockefeller Drug Laws will reduce the number of Dominicans being deported. We hope that the criminal justice and immigration systems consider rehabilitation, forgiveness, family unity, and the global economy before they consider incarceration and deportation. And we hope that talks of Comprehensive Immigration Reform do not exclude considerations of those immigrants with criminal convictions. The immigrant community is too varied and too interconnected to sell any one group out, and our unity will ensure that legalization on the one hand will not mean increasing enforcement and deportation on the other.



## **EXECUTIVE SUMMARY**

Deportation is causing a severe crisis in Dominican communities in the United States. Since the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) was enacted into law in 1996, over 36,000 Dominicans have been deported. Unofficial estimates place the total number of deportations of Dominicans above 50,000. The result of unjust immigration policies and practices, these stark figures only hint at the real economic and social costs of deportations. The steady deportation of Dominicans is upending families and communities on both shores, in the United States and the Dominican Republic.

Mandatory deportation is unjust on several grounds. First, many of the individual deportees are lawful permanent residents (LPRs) and have spent most of their lives in the United States. Under harsh immigration laws enacted in 1996 and their hyper-enforcement by federal authorities, even long-time lawful permanent residents with extensive family and community ties to the United States are subject to mandatory detention and deportation if they have committed certain offenses, no matter how minor or long ago their offenses were. Since the IIRAIRA expanded the range of deportable offenses to envelop many nonviolent offenses, a shockingly high number of Dominicans have been, and are being, incarcerated and removed from their communities based upon convictions which were previously not grounds for mandatory deportation. Many times, these convictions are relatively minor (and are sometimes even considered misdemeanors under state criminal law) and were committed long ago.

This lopsided punishment causes indelible harm to families and communities. Increased collaboration between local law enforcement and Immigration and Customs Enforcement (ICE) has created a system that automatically places individuals detained for criminal charges—rightly or wrongly—into the United States deportation machinery. Once in the system, they endure mandatory detention and are separated from their families, often for months, before being permanently removed to the Dominican Republic. Stories of abuse are widespread in detention: Detainees suffer harsh conditions and are denied medical treatment; they are transferred without notice and often to



faraway facilities where they cannot contact their families or obtain legal assistance to fight their deportations. The gross failure of due process does not end upon ‘repatriation’ to the deportee’s ‘home country.’ Expelled to a place they hardly know, deportees in the Dominican Republic must struggle to survive in a country where they are viewed as outsiders and targeted for abusive and discriminatory treatment.

In effect, most deported Dominicans face a triple punishment that is grossly disproportionate to their crimes. After repaying their debt to society by serving their sentences, individuals are again subject to prison-like conditions under ICE detention, only to be punished a third time when they are removed to the Dominican Republic where they must confront the stigma and persecution of being a deportee. Families here end up losing loved ones who used to help care and provide for family members. In today’s uncertain economic times, the loss of a wage earner can easily throw a family into financial chaos, and most certainly disrupts family bonds. Moreover, the emotional damage caused to separated families cannot be quantified.

Northern Manhattan in New York is the ground zero for the deportation of thousands of Dominicans every year. As a witness to the deportation crisis facing the Dominican community, Northern Manhattan Coalition of Immigrant Rights (NMCIR) calls upon the governments of the United States, the Dominican Republic and New York City to take urgent action to end the deportation crisis. These actors have ignored the plight of the Dominicans for too long, and their failure to act amounts to complicity in perpetuating a regime that imposes enormous costs on communities on both shores. Because the deportation machinery involves acquiescence among these three actors, any single actor could refuse to cooperate; yet all three have chosen to shun accountability. NMCIR urges these three key state actors to take on their responsibilities to stop unjust deportations and to ensure a humane and fair immigration enforcement regime:

First, the **United States** must begin to ensure minimum levels of due process in the immigration proceedings, including detention and removal. Legislators must undertake immigration reform and sign the Child Citizen Protection Act (CCPA) into law.

Second, **New York City** must stop actively collaborating with immigration enforcement officials that operate outside of any regulatory framework, interrogating immigrants in jails with impunity and sweeping into detention unsuspecting individuals who are held in custody or those who are simply complying with their probation requirements. New York City must stop wielding local law enforcement as an arm against the very immigrants who they have an obligation to protect.

Third, the **Dominican Republic** should not remain complicit through its silence. The Dominican Consulate should stop issuing travel documents that allow the U.S. government to deport their nationals until basic standards of due process are met. Finally, the Dominican government must stop its disturbing practice of tracking deportees in that country—a practice that creates a stigmatized caste and vitiates deportees' ability to reintegrate into Dominican society.

Ultimately, the deportation regime is devoid of fairness and basic due process. With such astronomical costs for the machinery, perhaps it is time to question the direction the nation is headed. It is time to consider the health of our communities and families before we continue the arbitrary practice of banishing those who our misconceived laws fail to protect.

## **THE REALITIES OF DOMINICAN DEPORTATIONS**

The story of Dominican migration is a familiar one: a journey from one land to another, in search of opportunities and betterment. Dominicans began settling in the United States in the mid-nineteenth century, a migration that was gradual and sporadic until 1961, when the American Consulate expanded its visa program to allow Dominicans to move here amidst the upheaval following the assassination of Dictator Rafael Trujillo.<sup>2</sup> The turmoil of civil war and the ensuing U.S. military invasion sparked an exodus of Dominicans from their homeland to the U.S. A second wave of migration in the 1980s brought another generation of Dominicans seeking economic opportunities. The rate of immigration has continued unabated, leading to the emergence of Dominican-Americans as a visible New York community.

Today, the Dominican community represents one of the largest Latino immigrant groups in the United States and the fastest growing ethnic minority in New York City. Northern Manhattan and the Bronx are a vibrant patchwork of Dominican and Latino cultures and home to thousands of Dominican families, the vast majority of whom have called New York home for the past decades, many since the early 1960s. In addition to being an important base for Dominican accomplishment in the political, cultural, and athletic arenas, Washington Heights also boasts many Dominican-owned businesses that drive the local economy. Through the years, Dominicans have transformed and revitalized the neighborhoods of Northern Manhattan.

Beneath the surface of this dynamic and strongly rooted immigrant community lies a lesser known fact: Northern Manhattan is the ground zero for the deportation of thousands of Dominicans each year. Deportation is a silent epidemic that fractures families, destroys livelihoods, and uproots communities on both shores. Those being deported are neighbors, co-workers, parents and spouses. This report examines the impact of deportation on the Dominican community, in New York and beyond. It seeks to show how such stories are becoming tragically commonplace, and also highlights how

the United States, New York City, and Dominican governments have turned a blind eye to the unjust laws and policies that perpetuate the deportation process.

### **I. Deportation Is Devastating the Dominican Community in the U.S.**

Over 36,000 Dominicans have been deported since 1996—with an expected surge to come, given the 600 Dominicans deported in the first five weeks of 2009<sup>3</sup>—while nearly 1.6 million Dominicans reside in the United States.<sup>4</sup> If the current rate of deportation continues, immigration enforcement will remove over 5,000 Dominicans in 2009, almost double that total the previous years.<sup>5</sup>

The escalating rate of deportation of Dominicans is shocking, given the large number of Dominicans who have legal status within the United States. Over one-third of foreign-born Dominicans in the U.S. are naturalized American citizens; while most of the remaining two-thirds are lawful permanent residents.<sup>6</sup> The vast majority of non-citizen Dominicans are permanent residents, with an increasing number applying for admission and adjustment as permanent residents each year (22,600 in 2002 alone).<sup>7</sup> The long-standing Dominican ties to the U.S. is reflected in how two-thirds of the Dominicans obtaining LPR status in 2007 did so through immediate relatives who were *already* U.S. citizens—roughly 14,000 of 28,000 Dominicans granted LPR status.<sup>8</sup> Almost all of the remaining one-third also obtained LPR status through family sponsored preferences,<sup>9</sup> showing just how firmly rooted Dominican families are in the U.S. The Dominican presence is especially felt in New York City, where over half of all Dominicans live, work, and raise families.<sup>10</sup> As family members travel between the U.S. and the Dominican Republic, a growing number become citizens while even more can become legal residents.

The fact that most Dominicans are either U.S. citizens or LPRs holds great importance in how they face immigration enforcement, since Dominicans seldom can be deported on grounds of unlawful *immigration* status (i.e. undocumented status) alone. Thus, many Dominicans had little reason to fear deportation until changes to immigration laws greatly expanded the category of criminal offenses which constitute grounds for removal. Of the 2,990 Dominicans deported in 2007, 2,108 of them were removed for

reasons of ‘criminal status.’<sup>11</sup> Many of these offenses include drug crimes as well as other misdemeanors, for which minority communities suffer targeted enforcement.

Racial profiling,<sup>12</sup> combined with increased criminal law enforcement on the state and local levels—including local law enforcement combing jails for non-citizens<sup>13</sup>—has left the Dominican community extremely exposed to deportation on criminal grounds.<sup>14</sup> The War on Drugs, which has impacted New York State through the punitive Rockefeller Drug Laws, has had a disproportionate impact on Black and Latino communities. From 1987 to 2006, marijuana arrests in New York City increased by over 1000 percent.<sup>15</sup> Part of an aggressive policing campaign, this “marijuana arrest crusade” disproportionately affects immigrant communities, with Hispanics being three times more likely to be arrested than Whites.<sup>16</sup> Inmate numbers from the New York State Department of Correctional Services corroborate the marijuana arrest statistics. Between 1985 and 2007, the foreign-born inmate population in New York State sky-rocketed and increased by 148 percent, which was almost twice the rate of growth in the native-born inmate population during the same period.<sup>17</sup>

Mandatory sentencing requirements under the Rockefeller regime, even for first-time low-level offenders, suffer from a total lack of proportionality and have been criticized for decades as overly punitive and disproportionately harmful to minorities. Although the harshest provisions of the Rockefeller laws are being overhauled,<sup>18</sup> the damage has already been done. New York’s punitive Drug Laws have incarcerated a steady flow of Dominicans over the years. In 1996, Dominicans made up nearly *one-third* of the foreign-born inmate population in New York held under DOCS custody,<sup>19</sup> where more than half of the Dominicans under custody were being held for drug offenses.<sup>20</sup> Today, 1,585 Dominicans are in New York DOCS custody.<sup>21</sup> The combination of over-policing Dominican neighborhoods, racial profiling, lack of job opportunities, and harsh laws has led to a disproportionately high rate of Dominicans being incarcerated. Dominicans continue to be the largest incarcerated group among foreign-born inmates, nearly double the next closest group.<sup>22</sup> This has had tremendous implications for Dominicans, since many immigrants are picked up by Immigration and Customs Enforcement through routine jail sweeps.<sup>23</sup>

The increased prosecutions of immigrants for drug-related offenses have had serious collateral immigration consequences for Dominicans, as drug offenses are the foremost basis for criminal removal by DHS.<sup>24</sup> The spillover effects of the Rockefeller Laws continue to harm immigrant communities, as those drug sentences turn into ones for permanent removal from the country. Thus, many Dominicans who are lawful permanent residents and, having lived in the United States for such a long time, are shocked when minor crimes lead to their removal from a country they consider their own, to the Dominican Republic, a country foreign to them in many ways. To better understand the psychological and socioeconomic effects of deportation, it is worth a closer look at the profile of Dominican deportees.

#### A. DOMINICAN DEPORTEES ARE AMERICANS

Dominican Deportees are often more American than anything else: One study found that out of every four deportees removed for criminal reasons has **lived over 20 years** outside of the Dominican Republic.<sup>25</sup> Many of these deportees are from New York City. Their departure uproots families and rips communities apart. After the tectonic shift in immigration policy under the IIRAIRA, the profile of the average Dominican deportee also shifted—to include people with very minor convictions, even individuals who have spent no time in prison. Despite family roots and lifetimes spent in the U.S., many Dominican deportees face a daunting sentence for their transgressions: exile to the Dominican Republic without their families, to be seen as ‘criminals’ by the Dominican government and as ‘foreigners’ by the locals. Many members of NMCIR share such stories of injustice.

One of NMCIR’s most active member, Rafaela Lozano, has lost several members of her family to deportation. One of these family members, her recently deported nephew, was killed on December 24, 2008. He was targeted by a popular group in the Dominican Republic called FALPO, Frente Amplio de Lucha Popular (Broad Front of Popular Struggle), that protests the lack of public services throughout the Dominican Republic. However, according to Rafaela, FALPO consists of a violent segment that targets those who are seen as “immoral,” which FALPO apparently has concluded

includes Dominicans deported for criminal offenses. Rafaela is still involved in ongoing investigations to reveal the circumstances around her nephew's death.

Many Dominican criminal deportees are people with convictions that the criminal justice system decides should be paid for with a fine, probation, parole, or jail time. To be deported permanently (if the crime is considered an aggravated felony under immigration law—even if it only a misdemeanor under criminal law) after paying for this crime in sometimes very minor ways, is excessive. Available data suggests that an overwhelming majority of Dominican deportees are being removed for drug offenses.<sup>26</sup> Given that many Dominicans in the U.S. face targeted enforcement and are incarcerated for low-level offenses, that would make the average deportee substantially likely to have a nonviolent drug offense on their record as the sole grounds of deportation.<sup>27</sup> Removal on such grounds seems extraordinarily punitive, especially considering that many of these individuals may have been eligible for U.S. citizenship before their convictions.<sup>28</sup> These individuals also have families in the U.S., and in some cases have no linguistic or cultural connections to the Dominican Republic.<sup>29</sup> When judges sentence lawful permanent residents, or “green card holders,” for committing minor offenses, the options may range from serving jail time to completing rehabilitative programs or community service—but most judges would not likely sentence that person to permanent exile from his/her family and friends. Yet this is one of the results of the 1996 change in law which, combined with collaboration between local law enforcement and ICE, has led to an assembly-line-deportation regime that fails to consider the interests of children, families, communities or the economy.



## Punitive Effects of the 1996 Laws

The 1996 laws—particularly the Illegal Immigration Reform and Immigrant Responsibility Act and the Antiterrorism Effective Death Penalty Act—established the draconian policies leading to the massive growth in deportations. These laws not only expanded the range of offenses that made a person deportable; they also severely restricted the rights of immigrants to defend themselves against deportation. Of particular concern to the Dominican community, these laws subjected many lawful permanent residents with minor convictions to deportability and detention, often with devastating results.

The 1996 laws greatly increased the number of permanent residents who are deportable. Many crimes became redefined as “aggravated felonies,” an expansive category that even includes some misdemeanors that are not punishable by jail time. Any drug sale conviction deemed as a “trafficking” offense, even if by a first-time offender, is also classified as an aggravated felony. In addition, the laws consider any drug possession offense, unless it is less than 30 grams of marijuana, a deportable controlled substance offense.

These laws also increased the number of those who are ineligible for relief from deportation. The expanded definition of aggravated felony barred permanent residents with convictions from eligibility for all forms of relief that was previously available to them. Thus, a person convicted of an aggravated felony is subject to mandatory deportation, regardless of the time that they have served in prison or whether they served any prison sentence at all. As long as the crime fits the new federal definition of an “aggravated felony,” no relief is available, and an immigration judge is prohibited from exercising discretion and considering an immigrant’s equities in determining whether or not the person will be deported, including the fact that the deportable immigrant may be a long-term resident who have paid taxes, provided military or other community service to this country, or married an American citizen or have U.S. citizen children.

Moreover, important relief previously available for LPRs with criminal offenses is not available today, a fact with drastic consequences for the Dominican community. For instance, section 212(c) of the Immigration and Naturalization Act, which allows for discretionary relief from removal for immigrants with criminal convictions, was repealed entirely and replaced with Cancellation of Removal, a harder standard of relief to meet that also requires seven years of continuous residence. **Given the excessive amount of unjust deportations based upon minor convictions, the United States would be wise to reinstate section 212(c).**

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When IIRAIRA was passed in 1996, it was applied retroactively to all those convicted of deportable offenses, which included U.S. residents who committed minor crimes decades ago. In the most extreme cases, convictions that previously would have had no possible deportation consequences mandated deportation.

Take the case of Jesus Collado, whose ordeal highlights the punitive effects that 1996 laws could have on the lives of ordinary citizens who committed crimes long ago. Collado has legally resided in New York since 1974. When he was a teenager, he had a sexual relationship with his girlfriend who was a minor at the time. The girlfriend's mother pressed charges, and he pled guilty to the crime of sexual abuse in the second degree. Collado served no prison sentence for this crime, and at the time he pled guilty, his crime did not constitute grounds for his deportation. Under the 1996 laws, however, a conviction for "sexual abuse of a minor" is deemed an "aggravated felony." In 1998, Collado was stopped by immigration officials at JFK when returning from a trip to the D.R. and sent to jail to await deportation for a crime he committed more than 24 years ago. Despite the fact that he had committed no further crimes and proceeded to establish his life in this country, marry, raise children, and manage a restaurant, Collado was rendered deportable based upon retroactive application of the 1996 laws. Collado was detained by the INS for over half a year. Amid rising protests over the injustice of Collado's detention and pending deportation, the Court terminated removal proceedings against him.

In 2001, the U.S. Supreme Court decided that Congress did not intend IIRAIRA to be applied retroactively to those who pleaded guilty to a crime prior to its enactment. Yet, even for those whose convictions were after 1996, the harshness of the 1996 laws can come as a complete surprise, and lead to proceedings a decade after the offense. This scenario, unfortunately all too common, is illustrative of the unforgiving deportation regime that continues to impose harsh immigration consequences that far outweigh the criminal ones.

Furthermore, because of the complicated nature of immigration laws, many people, even those with legal representation, may not realize the full immigration consequences of their convictions and end up pleading guilty to offenses that render them deportable.

## B. DEPORTATION IS TEARING FAMILIES APART

Deportation does more than just upset the immediate lives of Dominican deportees, it also leaves children behind, destroys family incomes, and harms local economies. According to Human Rights Watch, deportation policies in this country have separated an estimated 1.6 million families.<sup>30</sup> The last decade of immigration enforcement has treated immigrants quite severely, with the 1996 change in law dragging a net so large that it forces apart families with U.S. citizens: A recent report issued by the Department of Homeland Security estimated that the government deported well over 100,000 parents of U.S. citizens in the decade ending in 2007.<sup>31</sup> Of course, in many instances where the citizens were children, these deportations forced them to emigrate with their parents to foreign countries. In such an instance, the U.S. government deports, *de facto*, its own citizens. In the words of U.S. Congressman José Serrano, “[n]o matter which side of the immigration issue you fall on, there’s something wrong with the notion of kicking American citizens out of their own country.”<sup>32</sup>

In the very least, each of these deportations represents an instance where the government has forced families to choose between staying together or leaving their children behind to pursue the American dream. Such is the result of a policy aimed at removing *every* deportable immigrant without regard to the gravity of their immigration violation or the effects of their removal. NMCIR members, mostly Dominicans from Northern Manhattan, continue to suffer injustices that speak to the irreversible damage caused by our immigration policies. The following stories represent a sliver of the many NMCIR members hurt by this current dysfunction.

THE STORY OF PATTY MARTINEZ<sup>33</sup>

Patty Martinez moved to the United States thirty-one years ago, when her only son was three years old. She came to live with her older brother, who arrived here in the 1960s during the tumultuous era following Trujillo's assassination. Her son now faces an order of removal for a criminal conviction, to be sent to a country he has no memory of. Patty's son, Alberto Tavarez, speaks English as a first language, and has no formal education in Spanish. The United States has been his home since before he could read or write. Yet Alberto lacks another essential connection to his 'homeland' beyond language: He has no family waiting for him in the Dominican Republic. When asked if Alberto could find someone in the extended family to live with, Patty responds tearfully, "How could he if we are all here?" Most of Patty's family members are American citizens today; under the Trujillo dictatorship, her father was 'disappeared' for a period of over a month, tortured, and returned to his family. A shoe polisher who spoke English to an American tourist, Patty's father was suspected of espionage and reported by an agent of Trujillo. Now, over forty years later, Patty faces the loss of another family member under the impassive laws of her new nation, the United States.

THE STORY OF JUANA BETANCES<sup>34</sup>

Juana's case exemplifies how immigration enforcement leads to unjust and debilitating ends for a Dominican family. A proud matriarch, mother of seven, with many more grandchildren, Juana recently lost her son Robert<sup>35</sup> to deportation. She had another son, John,<sup>36</sup> who was deported in 1999. Juana has lived in the United States for 15 years, having worked until medical problems forced her into retirement. Since her sons' deportation fragmented the family, Juana has seen her grandchildren suffer emotionally, her two sons struggle in an unwelcoming Dominican Republic, and the family's budget disappear.

ICE deported Robert in March 2006. Robert was ordered removed based on a single drug sale offense, a crime for which he was serving a six month sentence. It was his first and only conviction. Four months into his sentence and just as he was

completing his time, Robert was served with a Notice to Appear and swiftly ordered deported, *one month later, before even completing his time*. He was sent back to the Dominican Republic by the end of the month. The family, having spent all their savings on an attorney for John's immigration case, could not afford to hire an attorney for Robert to fight his deportation.

Robert had been living in the United States as a legal permanent resident for 26 years when he was deported. His deportation turned the Betances family upside down. The family was forced to make a terrible choice—lose a husband, father, and son from their lives, or leave behind their lives and loved ones in the United States in order to remain together with Robert as he returns to a country as foreign to him as it is to his children. Indeed, Robert's wife was forced to stay behind in the United States because she and Robert could not afford to move the whole family to the Dominican Republic. His deportation separated him from his two sons—one currently in his early twenties, the other 20 years old—and his daughter, currently 16 years old. Because of a lack of money, they have not been able to visit their father since he was deported. His wife recently lost her job, making supporting her three children even harder.

Because his crime was deemed an aggravated felony, his strong ties to the United States did not factor into the decision to deport him. Juana describes Robert as a “family man,” a model father and husband who worked hard at his job as a park groundskeeper. Although he made a mistake, his crime did not fit the punishment, for which his family is also suffering. Robert went from working constantly and providing for his family to a penniless existence in the Dominican Republic, now unable to support his children. The children still attend school, but Juana fears for their futures. As Juana describes, “[t]hey are children who study hard but don't have resources, don't have a father around to help them.”<sup>37</sup> Where Robert once contributed to family funds, he now struggles to maintain employment in the uncertain Dominican economy and lives day-to-day in the Dominican Republic. Juana scrapes together whatever money she can to send to him and his younger brother John, in addition to helping her daughter-in-law, and her grandchildren. The entire family must send Robert and John “as much as [they] are able to,” which is no more than 50 or 100 dollars a month, not nearly enough money to support them, since the average monthly expenses in the Dominican Republic for rent, food, and transportation

alone are at least \$250 a month, according to René Vicioso, a deportee in the Dominican Republic who works to help others who have been deported.

Juana's story demonstrates the long-lasting costs incurred by families of deportees. Because of U.S. deportation policies, aging parents are left without the care of their children, whom they depend on for emotional and financial support. Juana wants the **U.S. government to "give a pardon** to her sons, who [she] needs because [she] is elderly and sick."<sup>38</sup> In real terms, deportation has upended this strong family unit, placing enormous emotional and financial stress on Juana, her children and her grandchildren.

### C. DEPORTATION CAUSES LONG-LASTING ECONOMIC CONSEQUENCES FOR FAMILIES

As Juana's story shows, the economic and human costs of deportation to immigrant workers and their families are all too high. Immigrants and their families caught in the deportation process suffer undue economic hardship that extends beyond the loss of a breadwinner's income. Deportation also frustrates the ability of immigrant families to enforce a range of economic rights and opportunities. Individuals who are deported are unable to reap the benefits from lifelong investments in businesses and education in the United States. Hard-working families lose retirement benefits after years of contributing to social security. These costs have far-reaching effects and undermine the social and economic wealth of communities in the U.S. and the Dominican Republic.

Many deported Dominicans had enjoyed legal full-time employment, paid into social security and had accumulated assets during their time living and working in the U.S. All this can change in a matter of days, once a person is placed into removal proceedings and held in custody by immigration authorities. The costs of deportation cannot be discussed without the economics of detention and its harsh effects on families and communities.

Prosecutorial zeal and a tough attitude towards enforcement have colored the implementation of the 1996 laws. The Department of Homeland Security (DHS) interpreted the 1996 amendment to mandate detention, without release, for most noncitizens who are convicted, regardless of their legal status.<sup>39</sup> Commission of even

minor crimes results in mandatory immigration detention for the full period of deportation proceedings, even for immigrants who have significant ties to the community and whose family suffers extreme hardship as a result of the continued detention.<sup>40</sup> Detentions are often lengthy, lasting from months to sometimes even years.<sup>41</sup>

The economic and social consequences of detention go far beyond the detention period itself. As a result of strict policies that mandate detention, many immigrants lose work time while in detention. While suffering detention, individuals cannot generate an income, have problems paying bills, and often default on credit through no fault of their own. As a result, individuals facing deportation often lose more than their income. They may lose their home and their businesses. Their health may also suffer as a result. The loss of health insurance can be disastrous for immigrant families, especially at a time when the physical and emotional stress of detention and deportation leads to greater medical needs, for both the detained individual and his/her family members.

All these factors can have devastating impact on the entire family. Take the case of Jesus Collado, whose ordeal drew wide media attention and became a focal point of criticism and outrage against the punitive effects of the 1996 laws. Stopped at the border for a crime he had committed over 20 years ago and for which he served no prison sentence, long-term resident Collado was placed into deportation proceedings and detained without bond for over six months. He and his family suffered tremendous economic consequences and nearly lost their restaurant in Washington Heights. As a result of his detention, Collado owed \$13,000 to vendors and \$36,000 in back rent to his landlord, and \$30,000 in medical bills.<sup>42</sup>

For long-term residents who are deported, the economic consequences of deportation are even harsher because they are prohibited from receiving their hard-earned social security benefits.<sup>43</sup> Other government benefits such as disability benefits are also withheld.<sup>44</sup> The loss of social security benefits is especially unjustified, considering that many immigrants have paid into social security during their time working in the U.S. By disallowing access to these benefits, the U.S. government is taking away hard-earned money immigrant families that can enable deportees to return to their home country and to have the resources to establish a better livelihood, or to pay for their families left behind in the U.S. to visit them in the Dominican Republic.



As a result of these hidden costs, individuals facing deportation lose the ability to support and maintain their families both in the U.S. and in the Dominican Republic. Before their arrest and deportation, many of the deportees had been family providers who send money back to the Dominican Republic. For many individuals, deportation brings an end to their family remittances. Of the total number of adult Dominican immigrants in the U.S, more than 70% send remittances on a regular basis.<sup>45</sup> In 2004, some 710,000 Dominican immigrants in the U.S. sent close to \$1.6 billion dollars to their relatives in the D.R. annually.<sup>46</sup> 500,000 of the 700,000 Dominicans living in the New York area send over \$1 billion in remittances every year.<sup>47</sup> Based on these figures, the removal of 35,000 Dominicans since 1996 represents the potential loss of 35 to 56 million in remittances to the Dominican Republic.<sup>48</sup> Given these enormous contributions to the Dominican economy, in addition to the votes cast in Dominican elections by Dominicans in the United States, **the Dominican government would be acting in its best interests to ensure that its nationals receive a fair chance at contesting deportation, as well as the due process they are entitled to.** One manner by which it could better defend its nationals would be to investigate violations of due process in the deportation regime and then withhold travel documents until Dominicans receive fair hearings for their claims of relief. This report will present examples of instances where such action by the Dominican consulate could have obviated great harm and injustice.

Unnecessary detention and deportation has tremendous economic and social costs for communities that reach far beyond the damages caused to the deported individual. Governments must account for these costs and stop the harm caused by the deportation regime.

## **II. Getting Caught in the Machinery of Detention and Deportation**

### **A. COLLABORATION BETWEEN ICE AND LOCAL LAW ENFORCEMENT**

The cooperation between Immigration and Customs Enforcement (ICE) and criminal law enforcement has facilitated the deportation of thousands of Dominicans. In recent years, ICE has collaborated with law enforcement to ensure the removal of immigrants convicted under the IIRAIRA's new grounds of deportation—no matter how slight the offense.<sup>49</sup> Once an immigrant finds himself arrested or detained, New York law enforcement performs status checks on behalf of ICE, so that ICE can issue detainers on any immigrants it finds deportable. Of course, such a check is an appendage of immigration law, and is unrelated to traditional local law enforcement duties. Yet such checks have continuously increased in preceding years. 12,770 status checks were conducted in 2007 alone, nearly double that amount in 2003.<sup>50</sup>

### **One-Way Ticket to Deportation – ICE at Rikers**

ICE has forged agreements with Rikers Island jail facilities, parole officers, and state governments, to snatch people with any deportable offense on their rap sheet. The collaboration between the Department of Correctional Services (DOCS) and ICE especially affects Dominicans in New York, as they are funneled into the criminal justice system and exposed to severe immigration consequences. In recent years, ICE has installed a field office at Rikers, where ICE officials regularly conduct interviews with individuals held in custody to screen for deportable persons. This has resulted in 12,929 individuals being placed on detainers and charged with removability.<sup>51</sup>

Such streamlining of the detention and deportation process raises troubling due process concerns. In order to clamp detainers onto individuals, ICE employs subterfuge-like tactics to get inmates and pre-trial detainees into meetings with officials and to extract information out of the interviewees. The screening process lacks transparency: individuals questioned about their immigration status receive no notice, as most

interviews occur less than 24 hours after admission.<sup>52</sup> In fact, those being interviewed may not even be aware that they are being questioned by immigration officials, as ICE agents are not required to wear uniforms or to identify themselves as officers of the agency prior to conducting the interview.<sup>53</sup> Moreover, individuals held at Rikers do not receive any instructions prior to the interview, nor are they informed of their right to remain silent.<sup>54</sup> Instead, they are routinely questioned about their immigration status without the presence of an attorney or an interpreter.<sup>55</sup> ICE may provide a form with a list of free legal organizations, but only if the detainee himself requests representation.

Most crucially, individuals held at Rikers are not aware that an immigration detainer has been placed on them after the interview. No system or policy exists to notify an inmate of his detainer or imminent transfer to immigration custody, as the detainer is served on the DOCS only.<sup>56</sup> Inmates and their families find out about the second period of detention only at the very last minute. Instead of being released upon completion of their sentences, inmates who have detainers are transferred to ICE detention where, with few exceptions, they are held for an indefinite period awaiting the outcome of their immigration proceedings.

### **New York City – Active Collaborator in the Deportation Machinery**

New York City need not provide an entry point into federal detention. The City could leave DHS to institute removal proceedings through proper notice that provides immigrants the chance to obtain a lawyer and answer charges. The U.S. Government detains over 300,000 people a year—more than triple the number of people in detention just nine years ago—in over 400 facilities, at an annual cost of more than \$1.2 billion. The U.S. government continues to increase spending on detention facilities to meet rising physical enforcement, which has led to a burgeoning detention population of over 30,000 people on any given day,<sup>57</sup> with an average cost of \$85 per day per detainee.<sup>58</sup> New York City need not feed this monster.

#### **Pedro's Story**

Pedro was born in the Dominican Republic, but has lived here for 14 years and considers the United States his home. Both his mother Amanda and his younger sister are U.S. citizens. Despite his long presence in the U.S., Pedro never took steps to naturalize; he was already over 18 years old when Amanda naturalized and so he could not obtain derivative citizenship through her. When he was 20 years old, Pedro was arrested twice for marijuana possession. His sentence was simply to pay a \$50 fine for the first conviction, and a \$100 fine for the second conviction. In 2008, when Pedro was 25, he was arrested and convicted for drug possession again. This time he was held at Rikers for six months and was immediately placed under an immigration detainer.

*continued next page*

The day he was to be released from Rikers, ICE took hold of Pedro. His family was not notified and did not even know that Pedro had an immigration detainer placed on him. Amanda had gone to Rikers with food ready for him, and other family members were waiting at home, but Pedro failed to appear because Rikers officers had already turned him over to immigration. According to Amanda, "From that moment a whole new ordeal began." Apparently ICE had placed a detainer on him, and no one in his family knew where he was going to be taken, when, or why. Only with the help of the NMCIR anti-deportation organizer and detainees with whom Pedro had become friends, was Amanda able to find her son. Pedro was transferred to the Varick Street immigration Processing Facility where he was imprisoned for about five months; ICE then transferred him to Alabama. Amanda recounts how, despite the fact that it was November, ICE transported the detainees to Alabama on a bus in their prison uniforms, with no coats, and kept them chained during the entire trip.

Pedro stayed in Alabama until his individual hearing in New York in February. After he was ordered deported, he was then sent to a county jail in New Jersey to wait deportation. During the time that Pedro was in Alabama, Amanda did not see her son, and talking to him on the phone cost her over \$70 a week. After not seeing her son for over three months, Amanda and her daughter had to travel for over two hours to the jail in northern New Jersey where he was awaiting deportation. ICE removed Pedro to the Dominican Republic in March of 2009. He spent an additional nine months in immigration detention before being deported, a period longer than his original criminal sentence.

Amanda is heartbroken over the deportation of her son. Before he was placed into detention, Pedro supported his family in the U.S. and in the Dominican Republic. Since his arrest, his family has spent well over \$5000, possibly more than \$10,000, on attorney fees in attempt to fight his criminal case, and was shocked to find out that Pedro had been detained by ICE. The attorney that Amanda hired was extremely rude to Amanda on several occasions, even calling her a "crazy" woman when Amanda called to inquire about the whereabouts of her son and the status of his case. Amanda is still fighting for the appeal of her son's case, in hopes that he can be reunited with his family.

Once funneled into detention the chances of successfully defending against removal are slim. Detainees face thwarted access to counsel, documents, records and family members, any of which can be the crucial link to a successful removal defense. Furthermore, once transferred to ICE detention, as in Pedro's case, it is not uncommon for a person to be detained in remote locations like Texas or Louisiana. The lack of access to counsel and the necessary support and information make it more difficult to properly defend a case. For example, in order to post a bond for temporary release from detention, a detainee must show an immigration judge that they are not a danger to the community and that they are not a flight risk. Without access to any of their personal records or legal help, detainees struggle to meet this burden of proof. Conversely, defending one's case closer to home, especially if free from detention, with access to an attorney, and family members nearby who can provide records, information, and support, can be a determinative factor in a person's ability to successfully defend his case.

### **Probation and Parole – Furtive Ensnarement**

ICE also collaborates with the Department of Probation (DOP) and the Parole Department (PD) to expedite the removals of immigrants. These Departments notify ICE officers about upcoming probation/parole appointments and allows ICE to use these as an opportunity to make arrests.<sup>59</sup> People show up for their appointments, only to be met by an ICE official, handcuffed, taken to a detention facility, and possibly deported. These individuals often have simply pled guilty and received probation for minor offenses, and the manner in which ICE ensnares them often shocks the conscience, including ambushing individuals who are simply reporting to their parole officers, and break-of-dawn raids on people's homes. Such was the case of Escar Pérez, a 27 year-old Dominican father of a seven-year-old boy, who was released on parole after a year in jail for a minor drug offense.<sup>60</sup> Armed with information provided by his parole officer, ICE raided Pérez's home at daybreak, overturning his sofa, scaring his young boy and girlfriend of seven years with whom he lived, in order to handcuff Escar and drag him before an immigration judge half-naked. Pérez would only be able to contact his

girlfriend via telephone *two days* later, solely to tell her that his conditions of detention were so miserable as to force him to waive any claim of relief and accept deportation.<sup>61</sup>

Stories like that of Escar Pérez have played out over and over again in New York City, where the firmly rooted Dominican community is composed of many non-citizens vulnerable to changes in immigration law and enforcement. Further, collaboration between DOP and ICE targets people who, by nature of being sentenced to probation—instead of prison—have been convicted of relatively minor crimes. These are people who the criminal justice system judged as good candidates for rehabilitation. These probation and parole stings also unfairly punish those who are complying with the law by going to their appointments. Such unjust enforcement actions discourage people who to attend their appointments and, ultimately, undermine rehabilitation.

The Northern Manhattan Coalition for Immigrant Rights (NMCIR) has witnessed how these coordinating measures between ICE and local corrections and law enforcement have laid waste to the Dominican population in New York City. In the words of the Executive Director of NMCIR, Raquel Batista, this collaboration has damaged families, who “are losing parents, spouses and siblings; they are also losing stability—financial, psychological and emotional.”<sup>62</sup> Moreover, this collaboration targets people who have already paid their debt to society by serving their jail time and/or complying with probation sentences. The fact that the state authorities, in facilitating the deportation process, detain people convicted of crimes beyond their sentences seems doubly punitive. Time in state jails is simply not the same as time spent in immigration detention.<sup>63</sup>

## **B. THE DEPORTATION REGIME, DEVOID OF DUE PROCESS**

### **Without Competent Counsel, Immigrants Lose on Valid Claims**

Individuals confronting deportation are not constitutionally guaranteed counsel, but are only provided a right to find their own attorney that, given the enormous obstacles to obtaining competent counsel, remains largely ineffective.<sup>64</sup> The government does not ensure immigrants representation due, in part, to the fact that immigration proceedings



are deemed ‘civil’ for legal purposes,<sup>65</sup> despite the fact that immigrants suffer an undeniable loss of liberty in detention, and even more so if permanently removed from the United States. Moreover, as previously highlighted in this report, the change in immigration laws in 1996 produced a gnarly legal ball that even lawyers struggle to decipher, including expanded grounds for removal, mandatory detention, and the ever-expanding category of “aggravated felonies.” Immigrants facing removal based on such laws cannot adequately represent themselves, and many that try end up detained for indefinite periods and removed despite having solid legal claims of relief. Moreover, people in federal immigration detention face transfer across the country to remote facilities—further encumbering their ability to obtain legal help—as well as exorbitant bonds, inhumane detention conditions and restrictions on accessing resources. All these factors leave many Dominicans susceptible and unable to assert their claims against deportation.

Immigration law is extremely complex, and immigrants herded through the removal process cannot adequately represent themselves without the competent legal counsel that the United States fails to provide. Yet, as competent lawyers are difficult to find and even more difficult to afford, less than half of all immigrants in removal proceedings manage to obtain an attorney.<sup>66</sup> The 1996 shift in immigration law left even smaller legal avenues for relief amongst a sea of deportable offenses,<sup>67</sup> making it even more crucial to have competent counsel throughout the process. Ultimately, it is clear that immigrants without access to counsel are significantly disadvantaged: They are unlikely to understand the law, unlikely to appeal reversible decisions, and ultimately unlikely to win meritorious claims.

Furthermore, the lack of adequate controls in the removal process has allowed for fraudulent immigration ‘attorneys’ to prey on immigrants’ bank accounts while ruining their legal claims. NMCIR has seen the practice of incompetent or untrustworthy immigration attorneys afflict its members. One such member is Juan Beltré, a Dominican LPR who was ordered removed after fifteen years of residence in the United States.<sup>68</sup>

## THE STORY OF JUAN BELTRÉ

Juan Beltré has four United States citizen children; he was returning from a trip to his mother's funeral in the Dominican Republic when the Immigration Judge ordered his removal based upon a minor drug conviction from 1995. Mr. Beltré was a prime candidate for discretionary relief from removal under former section 212(c) of the Immigration and Naturalization Act ("INA"), but his 'attorney,' Victor Espinal, was neither an attorney nor competent enough to meet the application filing deadline, despite several reminders by the Immigration Judge. Posing as an immigration attorney, Mr. Espinal gave bad advice to hundreds of immigrants, many of whom belonged to the Dominican community.<sup>69</sup>

Mr. Beltré, having poor English and unable to follow the legal aspects of his removal proceedings, assumed his 'attorney' would timely file his application for relief. His 'attorney' missed the deadline. The Immigration Judge subsequently ruled that Mr. Beltré waived his application for relief. Of course, given the total injustice Mr. Beltré suffered, **the Dominican Republic's Consulate could have refused to issue the travel documents necessary to deport him until his claim for relief was appropriately considered.** The Consulate did not do so.

Juan Beltré was originally arrested in 1995 and charged with seventh degree possession of a controlled substance—a charge he pled to despite claiming his innocence because the prosecutor threatened him with several years in jail if he did not plea.<sup>70</sup> At that point, Mr. Beltré had been living in the United States for nearly a decade but still had poor English. His defense attorney could not predict the immigration consequences of his conviction, which would change radically in 1996 with the IIRAIRA. Nor did the NYPD officers that arrested him inform him of his right to contact the Dominican Consulate.<sup>71</sup> Instead of jail time, Mr. Beltré received three years probation, which he completed without fault. He moved on with his life and dedicated himself to raising his four U.S. citizen children. Beyond his 1995 conviction, Mr. Beltré has never been arrested or charged with any other crime during the twenty years of his residence in the United States. In 2002, he traveled to the Dominican Republic to attend his mother's funeral. Upon return to the United States, customs officials asked if he had ever been

arrested, which he answered affirmatively. ICE officials then detained him and commenced removal proceedings against him. Due to his fake attorney's malpractice, he did not successfully apply for 212(c) relief which would have enabled him, like other immigrants with pre-1996 minor convictions, to stay in the country. Instead, ICE detained him and transferred him to New Jersey. On May 6, 2005, The Legal Aid Society filed a last minute emergency petition for habeas corpus in the Southern District of New York, but the United States deported him to the Dominican Republic anyway.<sup>72</sup> After a protracted and miserable stay in the Dominican Republic, Mr. Beltré's new attorneys secured his return to the United States. Recently, he won relief under his application for 212(c) and will only now be able to remain with his family.

Mr. Beltré's case effectively demonstrates how three key actors—the Dominican government, the United States federal government, and New York City (i.e. local municipalities)—share equal responsibility for the deportation regime: Each constitutes a cogwheel in the machinery and each is dependent upon the others' well-oiled compliance to churn out continued injustice. Any one of these governmental actors could have prevented the abuses suffered by Mr. Beltré. The NYPD had the international obligation to inform Mr. Beltré of his right to speak with his consulate, especially since Mr. Beltré did not speak English. His consulate, then, could have helped explain the consequences of pleading to a criminal offense; or, in the very least, could have intervened in Mr. Beltré's immigration proceedings when his "attorney" exploited him while failing to apply for 212(c) relief, for which Mr. Beltré was supremely qualified. Had the Dominican Consulate intervened, it could have saved Mr. Beltré and his family substantial hardship, including possibly Mr. Beltré's time in detention and most certainly his subsequent deportation. Later, his family would engage with NMCIR in community roundtables with consulates, including the Dominican consulate, to seek intervention on behalf of all families whose loved ones were being deported. Because no one thought to ask questions, Mr. Beltré was speedily deported without any inquiry into his removal. Mr. Beltré was saved only by emergency representation; countless others are not so lucky and are deported everyday. The Consulate can prevent others from facing similar fates, yet the Dominican government vacillates in taking a firm stance in support of its nationals.<sup>73</sup>

Finally, Mr. Beltré never would have missed his filing deadline if the United States guaranteed immigrants access to free and competent counsel, a right granted to people facing criminal charges. The arguments first used to secure a right to counsel in criminal proceedings have now become very applicable to immigration proceedings: the growing state expenditures on the machinery of deportation, the complexity of the laws, and the ubiquitous understanding that having a lawyer is necessary for a fair hearing.<sup>74</sup> The United States government also must take responsibility for its harsh imposition of immigration laws, and the draconian nature of the laws themselves. Mr. Beltré's plight shows just how much both countries must do to improve due process in removal proceedings.

### **Detention Facilities Do Not Meet Minimal Standards of Due Process**

As of now, the government continues to increase its funding on enforcement and prosecutorial regimes without ensuring due process to the people the deportation 'machine' has been chewing up. Recent evidence suggests that among the 300,000 men, women and children detained each year, a shocking number spend an unconstitutional amount of time imprisoned, including periods up to four or more years.<sup>75</sup> Amnesty International has recently reported the prevalence of individuals detained for periods of several years—such as a lawful permanent resident of over 40 years who spent four years in mandatory detention, ultimately released on a \$10,000 bond that ICE did not return for five months after *federal* courts found him not-deportable.<sup>76</sup> **The increasing importance of federal review of administrative rulings buttresses support for constitutionally mandated counsel for immigrants in removal proceedings. Immigrants transferred across the country, like many Dominicans moved from overcrowded facilities in New York, are denied access to counsel and lack the legal understanding needed to file federal petitions and appeals themselves.**

As we have seen throughout this report, the cold concentration on removing everyone who is “deportable” under the law has come at enormous costs to families, civil liberties and communities. Such overwhelming failures to provide minimal due process

reflect ICE's inability to meaningfully adhere to the Supreme Court's ruling on the minimal requirements of process due to immigrants facing removal.<sup>77</sup>

### **Detention Facilities Fail To Meet Basic Medical Standards**

National Detention Standards for Medical Care require immigrant detainees to receive a medical screening within 24 hours of arriving to detention.<sup>78</sup> Further, the Standards mandate that detention medical staff provide immigrants with a physical exam within 14 days of arrival. Yet DHS has recently found that ICE detention facilities consistently fail to meet these basic standards, often by not screening immigrants for medical problems—and sometimes never at all.<sup>79</sup> Of course, the failure to screen immigrants for ailments before housing them in large populations of detained people increases possibilities for widespread exposure to infectious diseases, like tuberculosis, which purportedly must be screened for within 12 hours of intake.<sup>80</sup> Such situations are not only unjust and unsanitary, they trample upon detainees' rights and ICE's own guidelines.<sup>81</sup>

### **ICE Continues To Transfer Individuals Without Notice**

ICE continues to ride roughshod over detainees' due process rights, making paramount the need for enforceable rights in the detention process, as well as the need for foreign consulates to closely scrutinize U.S. immigration enforcement. A recent report by the Office of the Inspector General for DHS demonstrates how ICE fails to meet its own National Detention Standards for medical screenings and detainee transfers.<sup>82</sup> ICE operates detention facilities all across the United States, and it may transfer a detained immigrant from one part of the country to any other part of the country at any moment. Indeed, ICE completed 261,910 transfers in the year of 2007.<sup>83</sup> For each transfer, ICE guidelines require detention officials to fill out a standardized Detainee Transfer Notification form in addition to notifying the attorney on record for the immigrant to be transferred. Yet of the 144 transfers studied, ICE failed to provide proper notification for 143 immigrants, a staggering 99.3% of transfers.<sup>84</sup> As the report notes, some of ICE's

management “consider[s] the Detainee Transfer Notification form unnecessary if a detainee was being transferred to a new location to be deported,” even though such exceptions do not exist under ICE’s guidelines and detainees facing a transfer ‘to a new location to be deported’ may have valid legal claims of relief.

**Notification is crucial—not only for the legal counsel of immigrants facing deportation, but for their families as well.** Lawyers cannot provide effective assistance if they do not know where their clients are. Forcing families to go long periods without speaking to their loved ones or knowing where they are is the cruelest form of treatment, and it violates fundamental due process concerns. Many of NMCIR’s members have experienced enormous hurdles to effective representation due to transfer across the country. In the case of Amanda’s son, Pedro,<sup>85</sup> Amanda recalls the process of transferring immigrants from jail sentences to immigration detention. “They simply take them like animals and transport them. Then they took [Pedro] to Alabama ... I did not hear from him for many days.” A common practice, transferring individuals to remote facilities across the country not only leaves family members worried, incommunicado, but also prevents immigrants from accessing resources, their attorneys, and social networks essential for supporting valid claims for relief, such as evidence to prove citizenship, and other evidence in support of positive equities.

It is clear that the United States is not meeting its own, or international, standards of due process in removal proceedings. Until these standards are met, the Dominican Republic has the responsibility to stand up for its nationals. When the Dominican Republic *does* intervene, there have been positive and laudable results. In the case of Elvin, a Dominican National with a severe medical condition, the Dominican consulate responded to calls of help. The Consulate wrote a letter enumerating the dangers of deporting someone in such a vulnerable physical state, as Elvin needs special dialysis treatment. With the help of the letter, Elvin was able to remain in the United States with a stay of deportation. The Consulate, seeing these positive results, would best serve its nationals by intervening similarly in instances of due process violations. [A *list of acts the Dominican government should take can be found in the Recommendations Section infra.*]

## **The Costs of Machinery: New Policy of Aggression, Same Old Results**

Since the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), the number of immigrants in the United States that Immigration and Customs Enforcement (ICE) physically deports each year has increased almost five times. U.S. immigration policy has shifted from realizing ostensibly just, civil administration of immigration laws towards extreme enforcement mechanisms. And no single demographic better unmasks the perverse results of anti-immigrant rhetoric, law, and the injustice rendered by extreme enforcement measures, than the Dominican community.

Since the Dominican community consists primarily of lawful permanent residents, the deportation of Dominicans occurs through the criminal justice system. Indeed, ICE is twice as likely to deport Dominicans on criminal grounds as other immigrant groups. Using the rhetoric of being tough on crime, the U.S. government keeps ratcheting up its level of aggressive enforcement. The Department of Homeland Security has requested \$ 50.5 billion in funding for 2009, a 6.8 percent increase from 2008, which it justifies by the need to “Continue to Protect Our Nation from Dangerous People”—when it is in fact deporting those with minor offenses.

Increased physical enforcement adversely affects detention conditions and due process in immigration courts. Yet, the U.S. government continues to increase spending on detention facilities to meet rising physical enforcement, which has led to a burgeoning detention population of around 30,000 people on any given day. Increased caseloads for immigration judges have led ICE to imprison immigrants for months, sometimes even years, longer than its proclaimed 30-day average. Dominicans in detention may spend months in detention, only to be transferred between facilities in New York, New Jersey, Alabama, Louisiana, Texas, New Mexico, and so on while they wait to be heard by an Immigration Judge (See Pedro’s Story).

When ICE detains Dominicans on criminal grounds of deportability, they are less likely to be released from detention facilities during their immigration proceedings, thus subjecting them to harsh conditions of detention. Given the high proportion of Dominicans removed on criminal grounds, they constitute a group particularly affected by the lack of due process in removal proceedings. Why the Dominican government and Consulate have not paid closer attention to this systemic abuse of Dominicans does not make sense.

### **III. Deportees Face Extreme Stigma and Persecution Upon Returning to the Dominican Republic**

Deportees returning to the Dominican Republic have received increasing attention from governments and community organizations. The stigma and the oppression suffered by deportees prevents them from fully integrating into the Dominican Republic, and is spurred on by the Dominican government's policy of ostracizing deportees instead of supporting them. The stigmatization of deportees has led to outright abuses at the hands of government officials and employers. By the time criminal deportees return to the Dominican Republic, they have been triply punished: First, they have paid for their crimes by serving their sentences in the U.S. criminal justice system; second, they have been ripped from their communities and deported from the U.S.; and third, they face daunting challenges, public scorn and scapegoating in the Dominican Republic, as the case of Rafaela's nephew so tragically shows. Given that many of their underlying crimes were for simple drug charges—as exemplified by the case of Juan Beltré<sup>86</sup>—the cumulative effect of deportation becomes unconscionable.

Deportees return in groups by chartered plane from the U.S. to Santo Domingo, where they begin a process of special registration with the Dominican government. The U.S. washes its hands of any responsibility once the deportees step foot on Dominican soil, while the Dominican government, like many Latin American governments receiving increased numbers of deportees, fears that deportees will resort to crime as a means to survival, and blames the growing crime rates on them accordingly. However, a recent hearing before the Committee on Foreign Affairs in the U.S. House of Representatives set out to address these issues, during which the State Department stated that no studies show a cause-and-effect relationship between deportations from the U.S. and increased crime in those countries.<sup>87</sup> Yet the Dominican government continues using deportees as scapegoats, claiming that their presence in the country has increased drug trafficking.<sup>88</sup>

These misperceptions have stigmatized deportees in the Dominican Republic. Although many deportees are removed to the Dominican Republic based on their



“aggravated felon” status, that does not necessarily mean that they are dangerous or even felons; as their underlying crimes are interpreted much more severely under immigration law than under criminal law. Nonetheless, the Dominican government created the Department of Deportees in order to monitor these former American ‘criminals,’ despite the fact that many deportees are nonviolent felons and have already paid for their crimes.<sup>89</sup> Now, upon returning to the Dominican Republic, deportees must register their information into the national criminal database, information readily accessible by banks, employers and credit agencies.<sup>90</sup> Mercedes, a NMCIR member whose son was deported to the Dominican Republic, said that after looking for work in the Dominican Republic for several months, her son has not been offered a single job because possible employers check this national database and discover that he is a deportee. This stigma often overrides the employers’ best interests: Mercedes’ son speaks English very well and was on the cusp of getting a job at a hotel, but the hotel decided not to employ him after discovering his deportee status. The registration system is counterproductive: deportees are among those in society who need the most support to reintegrate themselves—via loans, jobs and credit lines—yet the government allows employers and banks to easily discriminate against them based on their deportee status, despite the fact that deportees would otherwise qualify for these very jobs, loans and credit lines. Moreover, deportees must have family members sign for them to be released from police custody, which poses a problem for those without strong ties to the Dominican Republic. The government further monitors deportees by requiring psychological ‘checkups’ for the first six months in the country.<sup>91</sup> These measures are sufficient in and of themselves to ensure a difficult integration process, but many deportees lack the connections needed to acclimate under any condition, much less under the current pall of rejection by mainstream Dominican society.

Often times, returning Dominicans lack a true connection to local culture, having emigrated to the U.S. at very young ages. Indeed, according to the Executive Director of Bienvenido Seas, René Vicioso, deportees suffer extreme psychological harm trying to adjust to life in the Dominican Republic.<sup>92</sup> René is a deportee himself, having served a heavy sentence under New York’s oppressive Rockefeller drug laws, he returned to the Dominican Republic in 2004, only to find that he was ineligible for a bank account and

lines of credit. As soon as employers saw he was a deportee, he was rejected from positions for which he was qualified. And when he tried to obtain a letter of good conduct from the police, he found that they had stamped his status as a deportee on the letter. In René's words, deportees "come to the Dominican Republic to be third class citizens... We are judged in the United States and when we arrive here we are judged again for the same crime."

René's story is not unique; it is one he encounters every day as he directs Bienvenido Seas, a non-governmental organization dedicated to helping returning deportees in the Dominican Republic. Working to help deportees obtain work, training, and essential services to transition to life in the D.R., René says he sees a picture quite the opposite of what the government portrays. Of the 60,000 deportees struggling to survive there, René says that only roughly 1.5% recidivate, a number far too low to account for any increase in crime rates. Other commentators, including the United States Department of State,<sup>93</sup> have also noted that deportees cannot be attributed as the cause of increased crime rates, and many see the current and former police and military personnel as largely responsible for much of the criminal activity in the Dominican Republic.<sup>94</sup>

Deportees from America, René states, often have useful skills for the Dominican economy, which needs more participants; but they are barred from participating because of the widespread stigma cast upon them. For example, René says that hotels will fire people immediately if they find out they are a deportee.<sup>95</sup> But many deportees have advanced degrees in medicine and other professions, and most maintain fluency in both languages, a valuable asset that has not gone unnoticed by foreign companies operating in the D.R. According to René, deportees rely on foreign companies for work, entities that will not hold their 'criminal deportee' status against them, but will understand the value of employing people with their skills. Because the profile of the average deportee is not the hardened criminal, but of a person convicted of a minor drug offense, deportees would be prime candidates for vocational training and reintegration into the economy. Yet the Dominican government provides no services, and instead focuses its time on tracking deportees.

Some deportees left the D.R. at such a young age that they do not understand Dominican culture or even speak Spanish. As René says, "[i]magine, you're living in a

country where you do not even speak the language and you do not have any relatives because they are all in the United States.” These individuals find themselves a world apart, with the U.S. government washing its hands of them and the Dominican government rejecting them outright. Yet there are simple steps that can be taken, some at virtually no cost to either government, that would help remedy deportees’ unnecessary woes.

## RECOMMENDATIONS

THE UNITED STATES, THE DOMINICAN REPUBLIC, AND THE CITY OF NEW YORK MAINTAIN EQUAL RESPONSIBILITY—EACH ENTITY COULD PREVENT CONTINUED INJUSTICES.

### **The United States Must Reform Immigration Laws to Ensure Due Process**

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#### **1. Pass the Child Citizen Protection Act, H.R. 182, to provide immigration judges the discretion needed for fair enforcement of the laws**

Current law does not allow judges to consider the interests of U.S. citizen children in most deportation cases. The Child Citizen Protection Act (CCPA) would provide an avenue for judges to do so, an essential step for immigrant families, especially those in the Dominican community. Under the CCPA, many Dominicans would not be unjustly deported on the sole ground of removal, without regard to how onerous their removal is to their children, like the case of Juana's son Robert, whose children suffered a great injustice when the government forever took their father from them.

Amidst a community's struggle against extreme enforcement measures, NMCIR has worked alongside groups like Families for Freedom (FFF) to promote humane immigration policy and legislation. On July 20, 2008, NMCIR organized a rally to urge that the best interests of U.S. citizen children be taken into consideration in immigration proceedings, as set forth in the CCPA.<sup>96</sup> U.S. legislators should enact the CCPA to keep families united.

#### **2. Repeal the IIRAIRA, or at least its harshest provisions**

The IIRAIRA has had a devastating effect on all immigrant communities in the United States. The expansion of the aggravated felony term under this law needs to be cut back. In addition, mandatory detention and deportation policies should be revised. Discretion needs to be restored to immigration judges so that they can determine whether a person afflicted with cancer, HIV/AIDS or diabetes should be detained indefinitely as he fights his immigration case, or whether someone who has served in the military, and has only committed one crime in the United States, should be exiled from the United States forever. Congress should reinstate a pardon, such as 212 (c), so that it is available for persons with convictions that occurred after 1996. Permanent bars from immigrating to the United States for those who have been deported because of an "aggravated felony" should also be repealed, and people who have rehabilitated in their country of origin should have the opportunity to try and come back to the United States legally.

### **3. The Comprehensive Immigration Reform Movement needs to consider individuals with criminal convictions, and not sell them out to more enforcement and deportation in order to obtain legalization**

As newly elected President Obama now considers comprehensive immigration reform after many years of emotional debate from opposing sides,<sup>97</sup> it is time to ensure fairness in the deportation process, protect the due process rights of immigrants, and consider the best interests of children, families and communities. All compelling interests must be balanced before we forever wrench individuals from the places they live, work, and raise their families.

According to NMCIR's anti-deportation community organizer, Sandy Placido, the challenges for the Obama administration are many:

*At the forum that followed the impressive immigration march to ICE headquarters the day after Obama's inauguration, Congressman Gutierrez said, essentially, that deporting immigrants with criminal backgrounds was OK, as long as hardworking immigrants stay. Gutierrez's inability to see that all immigrants cannot be placed in one of two mutually exclusive categories is demonstrative of a larger epidemic, where the complexity and diversity of immigrants, their families, and their communities are ignored. Within the same family and community, there are individuals who have different immigration statuses and varying levels of interactions with the criminal justice system.*

*Obama's inauguration and the successful immigrant rights march in DC which quickly followed ushered in what will prove to be a challenging four years. One of our main challenges will be using our eyes, ears, hearts, and common sense to differentiate between broken systems and just ones, not between color, status or criminal history. For the Dominicans and other individuals, entry into the criminal justice system is determined by conditions in the United States, and not by the country of birth they end up being deported to. With deportations, the punishment does not fit the crime—it exponentially exceeds it, making individuals “pay their debt to society” several times and for the rest of their lives.*

### **4. Restore Due Process to Immigration Proceedings**

Individuals need to be provided with attorneys during immigration proceedings. There should be no indefinite detention. Better conditions in immigration facilities are imperative. Facilities should maintain better communication with families and provide them with notification for all transfers of detainees.

## **New York City Must End Its Active Role in Unjust Deportation Processes and Stop the Collaboration between ICE and Local Law Enforcement**

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### **1. Get ICE Out of Rikers**

New York City continues its contracts with the Department of Homeland Security, allowing for ICE officials to enter state prisons to perform unannounced interrogations of possible ‘immigrants’ in state custody, and can do so in plainclothes without identifying themselves as immigration officials.<sup>98</sup> These ICE officials do not properly notify immigrants of whether or not they place detainers on them, and therefore the imprisoned individuals have little idea of whether or not they will be transferred to removal proceedings after serving their sentences. ICE conducts nearly 4,000 such interrogations a year without any policy for providing interpreters, notification to family members or attorneys on record, and without explaining the purpose or consequences of these interactions. In essence, the city has simply allowed ICE officials to sidestep due process concerns by granting them unfettered access to state criminal detention facilities and the inmates therein. New York City does not properly train its own officials on how to handle immigrants’ cases, as exemplified by the failure to notify immigrants of their right to speak to their consulate upon detention, and its deference to ICE is both disturbing and unjust: immigration and criminal justice systems are distinct and must be treated differently.

**New York City should no longer allow ICE officials to conduct unfair interviews in city jails and tag immigrants for deportation.** Both arrested and convicted immigrants are entitled to due process. Furthermore, the city must end collaboration between parole officers and ICE, a practice that discourages immigrants from rehabilitating themselves for their crimes, and strains the relationships between local law enforcement and communities quick to distrust police and parole officers who become tools of a deportation regime many view as overly punitive and unfair. Immigrants should not be fearful to contact local law enforcement to keep their communities safe, yet the expanded prerogatives the city has granted ICE pit immigrants against the very people who are responsible for their safety.

### **2. Inform Individuals of Immigration Consequences of Pleading Guilty to a Crime**

Currently in the New York State legislature, State Bill A04957 requires a court to inform a non-citizen of the immigration consequences of pleading guilty to an offense. This would assist non-citizens who do not realize that pleading guilty to certain convictions can lead to deportation. This will allow non-citizen defendants and their lawyers to find alternative convictions that will not be grounds for deportation. In addition, the bill proposes that in those cases where a non-citizen is not informed of the consequences of a guilty plea, he or she may withdraw his or her guilty plea if threatened

with deportation. NMCIR believes that the passage of this bill would ensure that non-citizens make well-informed decisions in the courtroom.

### **3. Consider the Impact of the Repeal of the Rockefeller Laws on Immigrants**

The overhaul of the state's tough Rockefeller drug laws – long overdue – will mean more equitable treatment of offenders, for citizens and immigrants alike. The repeal means judges will have the opportunity of remanding first-time offenders who plead guilty into treatment rather than sending them to prison.

The big changes that will come into effect in October could result in as many as 1,500 prison inmates being released. The U.S., New York City, and the Dominican Governments need to be prepared to deal with those who may be released from prison early because of reduced sentencing. Many affected Dominicans are likely to face deportation upon release from prison. The U.S. should consider vacating sentences for immigration purposes, and the Dominican government should advocate for such changes.

For future offenders and those who have yet been sentenced, a provision in the repeal bill allows judges the discretion of waiving the requirement of a guilty plea in face of exceptional circumstances such as “severe collateral consequences,” including deportation for noncitizens. NMCIR applauds the inclusion of this important provision. By allowing offenders to avoid a criminal record upon successful completion of treatment, this provision gives them a meaningful opportunity for rehabilitation and a chance to better their lives and the lives of their family and community, without having to face collateral consequences such as deportation.

### **4. Avoid Sentencing as an Aggravated Felon**

NMCIR calls on judges and prosecutors to seek sentences that are sensitive to immigration consequences. In some instances, this may include requesting sentences of 364, as opposed to 365, days for certain convictions. Prosecutors can also charge for offenses that do not fall under the “aggravated felony” category. Sensitizing prosecutors and judges in the criminal justice system so that they are aware of the long-term immigration consequences that certain convictions and sentences can have for a non-citizen would help strengthen all of our communities.

### **5. When Distributing Funds, New York City Should Consider Those Who Are Forcibly Removed from their Communities**

Given the size and the rootedness of the Dominican community in the United States, one of the effects of deportation (and of the incarceration that all too often leads to deportation), is the under-designation of economic resources. Dominicans are being ripped from their communities, and as a result, these communities are losing the money

they deserve for critical services. During the upcoming 2010 census, tens of thousands of Dominicans will be missing from communities that need these resources, and up until now, there has been no discussion of how displaced individuals will be counted. We urge the City of New York to consider those who are forcibly removed from their communities when distributing funds.



**The Dominican Government and Consulate Must Take a Stand Against  
Deportation: Stop Stigmatizing Deportees and Intervene when the Flawed U.S.  
System Fails to Provide Due Process to its Nationals**

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**To the Dominican Government**

**1. Stop Booking Deportees**

Dominican deportees return to a country predisposed to reject them, but the Dominican government can take simple steps to reduce this unjustified stigma. First, the government must stop ‘booking’ deportees and entering their information into a national criminal database. Deportees should not be punished twice, arguably in violation of the Dominican Constitution’s double jeopardy clause,<sup>99</sup> for a crime they committed in the United States. Second, the government must prohibit potential employers and banks, as well as other parties, from accessing deportees’ information stored in governmental databases. Not only is such a practice ostracizing, but it also perpetuates the alienation deportees suffer upon their return to the Dominican Republic.

**2. Provide Training and Opportunities for Deportees, by Funding Organizations that Help Deportees Reintegrate into Dominican Society**

The government should devote its resources to providing training and services to deportees so as to reintegrate them into Dominican society and the economy. Furthermore, the police officers and other government personnel that have blackmailed and abused deportees must be punished appropriately. The current response seems bent towards creating scapegoats for the Dominican government in the face of rising crime rates and economic despair, with the government attributing the latter to criminal deportees.<sup>100</sup> This perspective is reflected in the lack of action taken by the Dominican Consulate in New York to respond to the wreckage wrought by a decade of enforcement in the Dominican community.

**3. Realize that Dominicans Abroad are an Important Asset to Your Economy and Political and Social Well-being**

Given the enormous contributions to the Dominican economy and to the votes cast in Dominican elections by Dominicans in the United States, the Dominican government would be acting in its best interests to ensure that its nationals receive a fair chance at contesting deportation, as well as the due process to which they are entitled.

## **To the Dominican Consulate**

### **1. Review Cases before Issuing Travel Documents Before Every Deportation**

When faced with abuse by the American government against its citizens, the Dominican Consulate has the right and duty to withhold the travel documents needed by the U.S. to carry out their deportations. Under international law, the U.S. is required to provide a minimum standard of due process, as well as human conditions of detention, to immigrants facing removal.<sup>101</sup> With its duty to protect the international rights of its citizens, the Dominican Consulate has the ability to withhold travel documents from the U.S. and prevent impending deportations—so long as the U.S. fails to inform Dominicans of their rights, improve the deplorable conditions of detention, and provide Dominicans with the requisite level of due process.

### **2. Advocate for Detainees**

On the issue of detention, because New York City has no known policies or procedures to protect the rights of suspected non-citizens in the criminal justice system, the Dominican Consulate must advocate for the rights of its citizens who are detained. The Consulate must not only verify that a detainee's rights were not violated in prison, but also actively work to prevent the transfer of detainees to locations where they cannot be visited by family or their advocates.

### **3. Meet with NMCIR to Plan a Forum and Other Events to Bring Public Awareness to the Impact of Deportation**

NMCIR has campaigned boldly to meet with Dominican consular and governmental officials to speak about the drastic consequences of deportation. NMCIR has called upon the Consulate to state its position on deportation, as many in the New York Dominican community see the Consulate as complicit with the U.S. government's harsh enforcement regime. NMCIR has also requested a meeting with President Leonel Fernandez during his recent visit to the U.S. and hopes that he fulfills his promise to meet with them in the near future. Representatives from the Consulate and the Dominican government must explain their position on deportation and why they have chosen not to protect Dominicans' rights. NMCIR calls upon the Consulate to perform more community-based outreach and to speak with NMCIR members, who have suffered greatly the costs of deportation.

### **4. Implement the Following Consular Recommendations Developed by NMCIR and Families for Freedom:**

FAMILIES FOR FREEDOM<sup>102</sup> INTERNATIONAL DEPORTEE JUSTICE COMMITTEE

## Consular Recommendations

[www.familiesforfreedom.org/deporteeinternational](http://www.familiesforfreedom.org/deporteeinternational)

**CRIMINAL ARREST:** *Immigration problems typically begin when nationals are given inadequate advice about the criminal system.*

### **Recommendation One: REQUIRE NOTIFICATION OF ARRESTS AS PROVIDED FOR BY THE VIENNA CONVENTION**

- Persuade all law enforcement agencies (including the Department of Corrections) to notify *all* arrestees of the rights of foreign nationals to contact their consulates.
- Mandatory notification consulates should insist that law enforcement agencies contact them immediately upon discovering that an arrestee is a foreign national.
- Insist that law enforcement notify consulates *before* sharing information about detainees with Immigration and Customs Enforcement (ICE).
- Develop a pocket card informing nationals of their right to contact the consulate upon arrest and distribute it to nationals.

### **Recommendation Two: TAKE ACTION ONCE A NATIONAL IS ARRESTED**

- Inform arrestees that criminal convictions—even pleas to misdemeanors—may have potential immigration
- consequences and that they should obtain legal representation.
- Implement a standard written policy that details the actions that a consulate is required to take immediately upon notification that a national has been arrested. These actions should include:
  - Provide all arrested nationals with a written warning about the potential deportation consequences of a conviction. Include self-help resources.
  - Communicate with the arrestee or family members to help them obtain information or legal representation.

**IMMIGRATION ARREST:** *Though similar to criminal arrests, immigration arrests require heightened vigilance: procedural protections of rights are lower and lifelong exile is a possible outcome.*

### **Recommendation Three: TAKE ACTION WHEN A NATIONAL IS DETAINED BY IMMIGRATION**

- Provide all detained nationals with deportation assistance resources immediately when they are detained. The materials should also explain the deportation process.
- Prevent ICE from transferring detainees to distant locations where consulates would be inaccessible.
- Provide an 800 number for detained nationals to contact their consulate.
- Implement a standard written policy that details the actions that a consulate is required to take immediately upon notification that a national has been detained by immigration. These actions should include:
  - Always provide family members with information about a detained national's location and alien registration number (A#). Consulates can locate a detained national more quickly than his or her family.
  - Write letters of support for nationals who would suffer hardship due to illness or other reasons if deported. These letters can help convince government lawyers

to exercise prosecutorial discretion in favor of a national, or convince judges in immigration court to grant discretionary relief.

**Recommendation Four: IN-PERSON INTERVIEW WITH NATIONAL**

- Interview nationals in-person.
- Verify every national's identity.
- Check that the national is not being deported prematurely.
- Check that the national not been subject to abuses or other rights violations in detention.

**Recommendation Five: REQUIRE TRAVEL DOCUMENTS BEFORE EVERY DEPORTATION**

- Require that a travel document be issued prior to every deportation, even if a national has a passport.
- Before issuing travel documents, make sure all the national's rights in the deportation process have been exercised and that national has exhausted all legal and judicial remedies, including appeals.

**Recommendation Six: MAKE REQUIREMENTS FOR ISSUING TRAVEL DOCUMENTS**

- Require verification before issuing travel documents.
- Hold travel documents until all legal remedies have been exhausted.
- Ensure that nationals are not deported prematurely and in violation of their rights.
- Provide U.S. officials with a Verification Checklist and require U.S. officials to answer in writing all of the following:
  - Whether the national has exhausted all legal remedies, including all judicial remedies;
  - Whether the impact of deportation on a national's U.S. citizen family has been taken into consideration;
  - Whether the national has access to his/her financial assets in the U.S., including accrued retirement savings and pensions; and
  - Whether the national has been permitted to contact his/her relatives in the home country.

**Recommendation Seven: NOTIFY FAMILIES OF DEPORTATION DATES**

- Provide family members with the date of their loved one's deportation, even if DHS requests to the contrary.
- Families may make arrangements in preparation for deportation, alleviating the burden on home governments.

**Recommendation Eight: INTERVENE AGAINST ABUSE OF NATIONALS IN JAILS AND DETENTION CENTERS.**

- Visit detention centers to investigate complaints of abuse.
- Intervene when detention facilities do not accommodate detainees' religious beliefs, language needs, and dietary needs.
- Ask U.S. Government officials to conduct official investigations into detainee abuse. Even when official investigations do not produce official findings, the treatment of detainees in facilities subject to investigation improve dramatically.

FAMILIES FOR FREEDOM  
COMITÉ DE JUSTICIA INTERNACIONAL PARA LOS DEPORTADOS  
**Recomendaciones para los Consulados**

[www.familiesforfreedom.org/deporteeinternational](http://www.familiesforfreedom.org/deporteeinternational)

**DETENCIÓN POR CARGOS CRIMINALES:** *La mayoría de los problemas de inmigración comienzan.*

**Recomendación Uno:** Solicite notificación de arrestos según indica la Convención de Viena.

- Asegurarse de que todas las agencias de aplicación de la ley cumplan en notificar a todos los arrestados de su derecho como extranjeros a ponerse en contacto con sus consulados.
- Los consulados de notificación obligatoria deben insistir en que las agencias de aplicación de la ley se pongan en contacto con ellos inmediatamente después de descubrir que un arrestado es ciudadano extranjero.
- Insistir en que las agencias involucradas notifiquen al consulado antes de compartir la información sobre detenidos con Immigration and Custom Enforcement (ICE).
- Desarrollar una tarjeta de bolsillo informando a los ciudadanos de su derecho a contactarse con su consulado en caso de detención y distribuirla entre los ciudadanos.

**Recomendación Dos:** Actuar una vez que un ciudadano es arrestado

- Informar a los arrestados que las condenas por cargos criminales pueden tener consecuencias en materia de inmigración y que deben obtener representación legal.
- Implementar una política escrita que detalle las acciones que el consulado debe tomar inmediatamente cuando se le notifica que un ciudadano ha sido arrestado. Estas acciones deben incluir:
- Hacer llegar a todos los ciudadanos arrestados una advertencia escrita sobre las posibles consecuencias en materia de deportación de una condena. Incluir recursos de autoayuda.
- Comunicarse con el arrestado o miembros de su familia para ayudarlos a obtener información o representación legal.

**DETENCIÓN POR INMIGRACIÓN:** *Aunque similares a las detenciones por cargos criminales, las detenciones por inmigración requieren más vigilancia: las protecciones procedimentales son menores y está presente la posibilidad de ser exiliado para siempre.*

**Recomendación Tres:** Actuar una vez que un ciudadano es arrestado por inmigración

- Proveer a todos los ciudadanos detenidos de recursos explicando el proceso de deportación inmediatamente después de la detención.
- Evitar que ICE transfiera a los detenidos a lugares lejanos donde no hay consulados accesibles.
- Proveer un número telefónico 800 para que los ciudadanos detenidos puedan contactarse con su consulado.
- Implementar una política escrita que detalle las acciones que el consulado debe tomar inmediatamente cuando se le notifica que un ciudadano ha sido arrestado. Estas acciones deben incluir

Siempre proveer a la familia de información sobre la ubicación del detenido y su “alien registration number” (A#). Los consulados pueden localizar a un detenido más rápido que su familia.

Escribir cartas de apoyo para ciudadanos que sufrirían por enfermedades u otros motivos en caso de ser deportados. Estas cartas pueden ayudar a convencer a los abogados del gobierno de que ejerzan discreción procesual a favor de un ciudadano, o convencer a los jueces en el tribunal de inmigración de que concedan un alivio discrecional.

#### **Recomendación Cuatro: Entrevista personal con los ciudadanos**

- Entrevistarse con los ciudadanos personalmente.
- Verificar la identidad de cada ciudadano.
- Chequear que el ciudadano no esté siendo deportado prematuramente.
- Chequear que el ciudadano no sufra abusos u otras violaciones de sus derechos mientras se encuentra detenido.

#### **Recomendación Cinco: Requerir documentos de viaje antes de cada deportación**

- Requerir que se emitan documentos de viaje antes de cada deportación, incluso si el ciudadano tiene pasaporte.
- Antes de emitir documentos de viaje, asegurarse de que se hayan respetado todos los derechos del ciudadano en el proceso de deportación y que se hayan extenuado todas las posibilidades jurídicas, incluyendo apelaciones.

#### **Recomendación Seis: Pedir requisitos para emitir documentos de viaje**

- Requerir verificación antes de emitir documentos de viaje.
- No entregar documentos de viaje hasta que todas las posibilidades legales estén exhaustas.
- Asegurarse de que los ciudadanos no sean deportados prematuramente o sus derechos sean violados.
- Proveer a los oficiales del gobierno de los Estados Unidos con una Verification Checklist y requerir que contesten por escrito todo lo siguiente:
  - Si el ciudadano ha extinguido todas sus posibilidades legales y judiciales;
  - Si el impacto de la deportación sobre los miembros de la familia que sean ciudadanos de los Estados Unidos ha sido tenido en cuenta;
  - Si el ciudadano tiene acceso a sus activos financieros en los Estados Unidos, incluyendo ahorros para su retiro y pensiones; y
  - Si al ciudadano se le ha permitido estar en contacto con sus parientes en su país de origen.

#### **Recomendación Siete: Notificar a las Familias sobre las Fechas de Deportación**

- Informar a la familia la fecha de deportación de su ser querido, incluso si el DHS solicita lo contrario.
- Las familias pueden así prepararse para la deportación, aliviando la carga del gobierno en los países de origen.

#### **Recomendación Ocho: Intervenir en casos de abusos contra ciudadanos en cárceles o centros de detención**

- Visitar los centros de detención para investigar reportes de abuso.
- Intervenir cuando los centros de detención no respetan las necesidades de los detenidos, sea en materia de religión, lenguaje, o alimentación.
- Solicitar al gobierno de los Estados Unidos que lleve adelante investigaciones oficiales sobre abusos

Northern Manhattan Coalition for Immigrant Rights will continue to organize those directly impacted by deportation in order to address those within the Dominican consulate, the Dominican government, and the United States government. There is great hope amongst our members that our stories, our struggles and our rights will not continue to be overlooked by those who have been elected to protect us on multiple shores.

**END**

## SOURCES

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<sup>1</sup> Phone Interview with Raquel Batista, New York, N.Y. (Apr. 26, 2009).

<sup>2</sup> See generally, Christopher Mitchell, *U.S. Foreign Policy and Dominican Migration to the United States*, in WESTERN HEMISPHERE IMMIGRATION AND UNITED STATES FOREIGN POLICY (1992).

<sup>3</sup> The U.S. government removed 2,990 Dominicans in 2007 alone. See DEPARTMENT OF HOMELAND SECURITY (DHS), YEARBOOK OF IMMIGRATION STATISTICS: 2007 (Sept. 2008), Table 37, “Aliens Removed by Criminal Status and Region and Country of Nationality: Fiscal Years 1998 to 2007” available at [http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2007/ois\\_2007\\_yearbook.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2007/ois_2007_yearbook.pdf), (last visited Apr. 27, 2009) [hereinafter DHS YEARBOOK 2007]; René Vicioso, Director of Bienvenido Seas, an NGO in the D.R. working with returning deportees, calculates that 600 Dominicans have already been deported in 2009 from the U.S. Telephone Interview with René Vicioso, Director, Bienvenido Seas (Feb. 5, 2009).

<sup>4</sup> The Dominican Population in the U.S. is projected to be 1.6 million in 2010, as based on Census 2000 figures. MIGRATION POLICY INSTITUTE, THE DOMINICAN POPULATION IN THE U.S.: GROWTH AND DISTRIBUTION, 1 (Sept. 2004), available at [http://www.migrationpolicy.org/pubs/MPI\\_Report\\_Dominican\\_Pop\\_US.pdf](http://www.migrationpolicy.org/pubs/MPI_Report_Dominican_Pop_US.pdf) (last visited Apr. 27, 2009) [hereinafter MIGRATION POLICY INSTITUTE].

<sup>5</sup> 2,990 Dominicans were deported in 2007. DHS YEARBOOK 2007, *supra* note 3, Table 37.

<sup>6</sup> See MIGRATION POLICY INSTITUTE, *supra* note 4, at 3 et seq.

<sup>7</sup> *Id.* at 9 (see Fig. 3).

<sup>8</sup> DHS YEARBOOK 2007, *supra* note 3, Table 10, “Persons Obtaining Legal Permanent Resident Status By Broad Class Of Admission And Region And Country Of Birth: Fiscal Year 2007.”

<sup>9</sup> *Id.*

<sup>10</sup> The majority of Dominicans in the United States call New York their home. MIGRATION POLICY INSTITUTE, *supra* note 4, at 17.

<sup>11</sup> DHS YEARBOOK 2007, *supra* note 3, Table 37, “Aliens Removed by Criminal Status and Region and Country of Nationality: Fiscal Years 1998 to 2007.”

<sup>12</sup> Racial profiling is surprisingly rampant in New York City. A recent District Court ruling (*Floyd v. City of New York*) compelled the NYPD to publish all of its ‘stop-and-frisk’ data from 1998 to present day. The Center for Constitutional Rights (CCR), counsel on that suit, has recently reported that **over 80%** of all stop and frisks by the NYPD were against Blacks and Latinos, which only constitute 25 and 28% of the city’s populace, respectively. See CENTER FOR CONSTITUTIONAL RIGHTS (CCR), *Newly Released NYPD Data Shows Shocking Disparity in Stop-and-Frisks* (Jan. 15, 2009), available at <http://ccrjustice.org/newsroom/press-releases/newly-released-nypd-data-shows-shocking-disparity-stop-and-frisks> (last visited Feb. 18, 2009).

<sup>13</sup> New York State local law enforcement has continuously increased its role in immigration enforcement—a traditionally federal duty—by augmenting its Alien Status Checks over 100% over the last 3 years, ensuring that ICE can issue a detainer on any



non-citizen in detention (whether after arrest or conviction) who is removable. *See* NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, CRIMINAL ALIEN IMPROVEMENTS, 2007 CRIMESTAT UPDATE (Mar. 31, 2008), *available at* [http://criminaljustice.state.ny.us/pio/annualreport/criminal\\_alien.pdf](http://criminaljustice.state.ny.us/pio/annualreport/criminal_alien.pdf) (last visited Feb. 18, 2009) [hereinafter CRIMESTAT UPDATE].

<sup>14</sup> *See infra*, Punitive Effects of 1996 Laws.

<sup>15</sup> *See* HARRY G. LEVINE & DEBORAH PETERSON SMALL, NEW YORK CIVIL LIBERTIES UNION, MARIJUANA ARREST CRUSADE: RACIAL BIAS AND POLICE POLICY IN NEW YORK CITY, 1997-2007 (April 2008), *available at* [http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE\\_Final.pdf](http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf) (last visited Feb. 20, 2009).

<sup>16</sup> *Id.*

<sup>17</sup> STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES (DOCS), THE IMPACT OF FOREIGN-BORN INMATES ON THE NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES 2 (Jul. 2008), *available at* [http://www.docs.state.ny.us/Research/Reports/2008/Impact\\_of\\_Foreign-Born\\_Inmates\\_2008.pdf](http://www.docs.state.ny.us/Research/Reports/2008/Impact_of_Foreign-Born_Inmates_2008.pdf) (last visited Mar. 16, 2009) [hereinafter DOCS].

<sup>18</sup> The bill calls for the repeal of mandatory minimum sentencing requirements that existed under the former law for lower-level drug felons, and reinstates judicial discretion by giving judges the authority to send first-time nonviolent offenders to treatment through diversion programs instead of prison where a guilty plea is required. *See* Jeremy W. Peters, *Albany Reaches Deal to Repeal '70s Drug Laws*, N.Y. TIMES, Mar. 26, 2009, at A1.

<sup>19</sup> There were 2,732 Dominicans under DOCS custody on December 31, 1996. The total foreign-born inmates number at 9,052. DOCS, *supra* note 17, Table 3.2.

<sup>20</sup> DOCS, *supra* note 17, Table 11 (citing 56% of Dominican inmates under DOCS custody in 1996 were held for a drug offense).

<sup>21</sup> *Id.*, Table 3.1.

<sup>22</sup> *Id.* at 3, *see also* Table 3.1. The next closest group of foreign-born inmates consists of Jamaicans, with 984 inmates.

<sup>23</sup> *See infra*, Part II.A on *Collaboration between ICE and Rikers*.

<sup>24</sup> In 2006, DHS removed 33,046 persons because of drug convictions, which makes up 34.5% of the total number of persons removed because of criminal convictions. DHS YEARBOOK 2007, *supra* note 3, Table 4, “Leading Crime Categories of Criminal Aliens Removed: Fiscal Year 2006.” This is a continuing legacy of the 1996 laws which mandated deportation for almost any drug offense involving sale and distribution, as well as for second possession offenses under certain circumstances. The percentage of Dominicans being removed for drug offenses is believed to be significantly higher than for the general immigrant population. *See infra* note 26.

<sup>25</sup> *See* Leonora Ramírez, *Sugiere Dominicanos en EU opten por ciudadanía*, EL PAÍX, Aug. 2, 2005 (citing research on Dominican deportees conducted by Nina Siulc); *see also* Vielka Polanco Morales, “Dominicanos/as repatriados/as desde los Estados Unidos: Problemáticas y alternativas de solución,” reporting research conducted by Nina Siulc, 4th Session of the Forum on Security and Citizenship, April 25, 2007, Santo Domingo.

<sup>26</sup> In a statement made in 2006, Dominican Police Colonel Francis Abreu Peña stated that 90% of the 23,800 registered Dominicans repatriated for crimes had only committed drug

offenses. Panky Corcino, *Más de 23,000 deportados desde EE.UU.*, EL DIARIO, Mar. 26, 2006. This finding is corroborated by findings from a report prepared for the Dominican Studies Institute of the City University of New York, which show that the majority of deportees have been repatriated for drug offenses. See Charles R. Venator-Santiago, *Dominican Deportees: Notes for Further Research* 29 (2008) (Unpublished Monograph, on file with Storrs: University of Connecticut).

<sup>27</sup> According to a recent study by Human Rights Watch, 77 percent of legal immigrants who were deported had been convicted of nonviolent crimes. Some of the most common crimes for which people were deported were relatively minor offenses, such as marijuana and cocaine possession or traffic offenses. HUMAN RIGHTS WATCH, *FORCED APART (BY THE NUMBERS): NON-CITIZENS DEPORTED MOSTLY FOR NONVIOLENT OFFENSES* (Apr. 2008), available at <http://www.hrw.org/sites/default/files/reports/us0409web.pdf> (last visited Apr. 27, 2009).

<sup>28</sup> A recent spike in application costs for citizenship provides further barriers to Dominicans seeking citizenship in the future. Fees rose from \$400 to \$675 on July 30, 2007, immediately followed by plummeting numbers of applicants. See Emily Bazar, *Higher Form Fees Limit Citizenship Seekers*, USA TODAY, Sept. 10, 2008, available at [http://www.usatoday.com/news/nation/2008-09-09-citizenship\\_N.htm](http://www.usatoday.com/news/nation/2008-09-09-citizenship_N.htm) (last visited March 26, 2009).

<sup>29</sup> See *infra*, Part III, *Returning Deportees Face Extreme Stigma in the Dominican Republic*.

<sup>30</sup> HUMAN RIGHTS WATCH, *FORCED APART: FAMILIES SEPARATED AND IMMIGRANTS HARMED BY UNITED STATES DEPORTATION POLICY* (Jul. 2007), available at <http://www.hrw.org/en/reports/2007/07/16/forced-apart> (last visited Apr. 27, 2009).

<sup>31</sup> See DEPARTMENT OF HOMELAND SECURITY (DHS), *REMOVALS INVOLVING ILLEGAL ALIEN PARENTS OF UNITED STATES CITIZEN CHILDREN* 5 (Jan. 2009), available at [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_09-15\\_Jan09.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_09-15_Jan09.pdf) (last visited Apr. 27, 2009) (citing that 108,434 noncitizen parents of U.S. citizen children were removed between 1998 and 2007).

<sup>32</sup> See Michael Falcone, *100,000 Parents of Citizens Were Deported Over 10 Years*, N.Y. TIMES, Feb. 13, 2009 at A16.

<sup>33</sup> Name changed for purposes of confidentiality. All NMCIR member stories were taken from direct interviews.

<sup>34</sup> All NMCIR member stories were taken from direct interviews. Interviews are on file at the Immigrant Rights Clinic of Washington Square Legal Services, Inc.

<sup>35</sup> Name changed to protect confidentiality.

<sup>36</sup> Name changed to protect confidentiality.

<sup>37</sup> All translations performed at New York University School of Law's Immigrant Rights Clinic.

<sup>38</sup> Telephone interview by Sandy Placido, in New York, N.Y. (Apr. 25, 2009).

<sup>39</sup> INA § 236c, 8 U.S.C. § 1226c (amended 1996). Even in non-mandatory detention cases, bond costs start at \$1,500 and are often set at well beyond the minimum. See AMNESTY INTERNATIONAL, *JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE USA* (2009) available at <http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf> (last visited, Apr. 7, 2009) [hereinafter AMNESTY INTERNATIONAL].

<sup>40</sup> AMNESTY INTERNATIONAL, *supra* note 39 at 18.

<sup>41</sup> *Id.* at 6.

<sup>42</sup> See Mirta Ojito, *Immigrant Fights Off His Detention*, N.Y. TIMES, Sept. 4, 1998 at B3.

<sup>43</sup> See FAMILIES FOR FREEDOM, FINANCIAL HANDBOOK FOR FAMILIES FACING DETENTION AND DEPORTATION, CH. 11, Social Security Benefits and Deportation (Apr. 2008). The process to recover social security benefits is complicated and depends on whether there is a treaty between the U.S. and the receiving country. U.S. and the D.R. do not have such an agreement (on file with author).

<sup>44</sup> *Id.*

<sup>45</sup> MULTILATERAL INVESTMENT FUND INTER-AMERICAN DEVELOPMENT BANK, SENDING MONEY HOME: REMITTANCE RECIPIENTS IN THE DOMINICAN REPUBLIC AND REMITTANCE SENDERS IN THE UNITED STATES 3 (Nov. 2004), [http://dr1.com/news/2004/121704\\_sendingmoney.pdf](http://dr1.com/news/2004/121704_sendingmoney.pdf) (last visited Apr. 27, 2009).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 4.

<sup>48</sup> Assuming that half to 80 percent of deportees were active wage-earners at the time of their deportation.

<sup>49</sup> Although reported extensively in the media nationwide, this collaboration has been particularly shocking in New York, especially northern Manhattan. See Eva Sanchis, *NY colabora con la 'migra*, EL DIARIO, Jun. 15, 2004, New York; see also Metro Briefing, *Manhattan: Immigrants' Arrests Protested*, N.Y. TIMES Jun. 15, 2004 (state parole officers helping federal immigration officials to seize 134 immigrants convicted of crimes, 115 of whom had green cards).

<sup>50</sup> See CRIMESTAT UPDATE, *supra* note 13 at 4.

<sup>51</sup> As of July 31, 2008. In 2007, 3,979 inmates were interviewed by ICE officers at Rikers. Of those interviewed, 3,212 were subsequently placed on immigration detainers. See Letter from Department of Homeland Security (DHS) to Nancy Morawetz in response to FOIA request (Dec. 12, 2008) (on file with the Immigrant Rights Clinic at the New York University School of Law) [hereinafter DHS LETTER].

<sup>52</sup> DHS LETTER, *supra* note 51.

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

<sup>54</sup> DHS has no policy governing the use of interpreters in these interviews. *Id.*

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

<sup>56</sup> As long as Rikers maintains physical custody, the decision to notify the inmates rests within their jurisdiction. *Id.*

<sup>57</sup> An official ICE database, obtained under the Freedom of Information Act, showed a U.S. detainee population of exactly 32,000 on Jan. 25, 2009. Michelle Roberts, *AP Impact: Immigrants Face Detention, Few Rights*, A.P., Mar. 15, 2009, <http://abcnews.go.com/US/wireStory?id=7087875> (last visited Apr. 25, 2009); see also United States Government Accountability Office, *Alien Detention Standards: Observations on the Adherence to ICE's Medical Standards in Detention Facilities*, at 1, June 4, 2008, <http://www.gao.gov/new.items/d08869t.pdf> (last visited Apr. 25, 2009) [hereinafter GAO DETENTION].

<sup>58</sup> See Office of the Federal Detention Trustee, United States Department of Justice, Statistics, <http://www.usdoj.gov/ofdt/statistics.htm> (last visited Oct. 19, 2008) [hereinafter DOJ DETENTION STATS].

<sup>59</sup> Daniela Gerson, *Parole System Used to Deport Immigrants*, THE SUN, June 15, 2004.

<sup>60</sup> See Eva Sanchis, *supra* note 50, *NY colabora con la 'migra*, EL DIARIO, Jun. 15, 2004, New York; see also N.Y. TIMES, Metro Briefing, *Manhattan: Immigrants' Arrests Protested*, Jun. 15, 2004 (state parole officers helping federal immigration officials to seize 134 immigrants convicted of crimes, 115 of whom had green cards).

<sup>61</sup> Sanchis, *supra* note 60.

<sup>62</sup> Raquel Batista, *80 deportados y una comunidad en crisis*, Opinion, EL DIARIO, Oct. 18, 2005 (translation by the author).

<sup>63</sup> See *infra*, Part II, Getting Caught in the Machinery of Detention and Deportation.

<sup>64</sup> Immigrants have a right to counsel, but 'at no expense' to the United States government. See Immigration and Nationality Act of 1952, 8 U.S.C. §§ 1001 et seq.

<sup>65</sup> See *INS v. Lopez Mendoza*, 468 U.S. 1032, 1038 (1984) ("A deportation proceeding is a purely civil action to determine eligibility to remain in this country...").

<sup>66</sup> Based on data between 2003-2007. *Id.*

<sup>67</sup> See *infra*, *Punitive Effects of the 1996 Laws*.

<sup>68</sup> See Petition for review of the Board of Immigration Appeals Agency Decision, 05-4610-ag, filed before the U.S. Court of Appeals for the Second Circuit.

<sup>69</sup> When the truth surfaced that Victor Espinal was falsely posing as an immigration attorney, his arrest provoked outrage among his clients. See Nina Bernstein, *This Time, Legal Advice for Immigrants is Real*, N.Y. TIMES, Feb. 24, 2009, available at <http://cityroom.blogs.nytimes.com/2009/02/24/this-time-legal-advice-for-immigrants-is-real>; Noeleen G. Walder, *Immigrants Taken by Fake Lawyer Pack Legal Fair*, N.Y. LAW JOURNAL, Feb. 25, 2009, available at <http://www.law.com/jsp/nylj/PubArticleNY.jsp?hubtype=TopStories&id=1202428561473> (last visited Apr. 27, 2009).

<sup>70</sup> See Testimony of Mr. Beltré's son, Julio Beltré, Immigration Matters: Unjust Deportation Policies Must Be Reformed, Too, NEW AMERICA MEDIA, Apr. 26, 2006 available at [http://news.newamericamedia.org/news/view\\_article.html?article\\_id=c63b39d1d0524534ba5f441e9b092223c](http://news.newamericamedia.org/news/view_article.html?article_id=c63b39d1d0524534ba5f441e9b092223c) ) (last visited Apr. 12, 2009).

<sup>71</sup> The United States has the obligation to inform, "without delay," foreign nationals of the right to contact their consulate upon arrest or detention. Vienna Convention on Consular Relations art. 36, Dec. 24, 1969, 21 U.S.T. 77.

<sup>72</sup> See Petition for review of the Board of Immigration Appeals Agency Decision, 05-4610-ag, filed before the U.S. Court of Appeals for the Second Circuit, at 12.

<sup>73</sup> NMCIR has an extensive membership network of Dominican nationals, many of whom view the Dominican government, at best, as indifferent to the plight of deportees and, at worst, actively engaged in attributing problems in the D.R. to their return to the country. See *infra* Part III, *Dominican Deportees Face Extreme Stigma And Persecution Upon Returning to the Dominican Republic*.

<sup>74</sup> See *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) ("That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest

indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries.”).

<sup>75</sup> A recent Amnesty International report expresses the concern that ICE is not conducting constitutionally mandated custody reviews to determine the flight risk or danger to national security individuals’ pose. *See* AMNESTY INTERNATIONAL, *JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE USA* (Mar. 2009)

<http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf> (last visited, April 7, 2009).

<sup>76</sup> *Id.* at 22.

<sup>77</sup> *See id.*; *see also* *Zadvydas v. Davis*, 533 U.S. 678 (2001) (requiring that an immigrant’s period of post-removal detention be reasonably necessary to bring about the immigrant’s removal).

<sup>78</sup> *See* Department of Homeland Security, Operations Manual, ICE Performance Based National Detention Standards, Part 4, sec. 22,

<http://www.ice.gov/partners/dro/PBNDs/index.htm> (last visited Apr. 8, 2009)

[hereinafter OPERATIONS MANUAL; *see also* Department of Homeland Security, Office of Inspector General, Immigration and Customs Enforcement’s Tracking and Transfer of Detainees, March 2009, OIG-09-41, [http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_09-41\\_Mar09.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_09-41_Mar09.pdf) (last visited Apr. 8, 2009) [hereinafter TRACKING & TRANSFER].

<sup>79</sup> TRACKING & TRANSFER, *supra* note 78, at 9-10.

<sup>80</sup> OPERATIONS MANUAL, *supra* note 78, Part 4, sec. 22 at 6.

<sup>81</sup> *Id.*

<sup>82</sup> OPERATIONS MANUAL, *supra* note 78.

<sup>83</sup> *Id.* at 7.

<sup>84</sup> *Id.*

<sup>85</sup> *See infra* Part II, *Getting Caught in the Machinery of Detention and Deportation*.

<sup>86</sup> *See supra*, section *The Deportation Regime, Devoid of Due Process*.

<sup>87</sup> Statements of Ambassador Shapiro, *Deportees in Latin America and the Caribbean*, Hearing and Briefing Before the SUBCOMMITTEE ON THE WESTERN HEMISPHERE, COMMITTEE ON FOREIGN AFFAIRS, H.R. 110-107, July 24, 2007, at 30.

<sup>88</sup> *See* Panky Corcino, *Deportados incrementan el narcotráfico*, EL DIARIO, Jul. 30, 2008; *see also* Presidencia de la República Dominicana, Consejo Nacional de Drogas, *Plan Estratégico Nacional Sobre Drogas 2008-2012*, at 20 (citing repatriated Dominicans as a cause of increased drug trafficking given their criminal records, without providing any other evidence) (available by request).

<sup>89</sup> *See, supra*, Part I.A *Dominican Deportees ARE Americans and Punitive Effects of 1996 Laws*; *see also*, Daniela Gerson, *Alarm Growing in Dominican Republic Over Influx of Deportees from America*, N.Y. SUN, Oct. 20, 2004.

<sup>90</sup> Gerson, *supra* note 89.

<sup>91</sup> *Id.*

<sup>92</sup> Interview with Vicioso, *supra* note 3. Mr. Vicioso is the Exec. Dir. Of Bienvenido Seas, an NGO working to help Dominican deportees adapt to life, find jobs, and provide them with support.

<sup>93</sup> SUBCOMMITTEE ON THE WESTERN HEMISPHERE, *supra* note 87 at 30.

<sup>94</sup> Gerson, *supra* note 89; *see also*, Interview with Vicioso, *supra* note 2.

<sup>95</sup> Telephone Interview by Sandy Placido, New York, N.Y. (Apr. 25, 2009).

<sup>96</sup> Reported by NY News 1, *Dozens in Washington Heights Rally Against Deportation*, Jul. 20, 2008 available at <http://www.ny1.com/ny1/content/index.jsp?stid=8&aid=83967> (last visited Feb 8, 2009).

<sup>97</sup> According to the N.Y. Times, President Obama plans on pushing an immigration reform bill this year. Julia Preston, *Obama to Push Immigration Bill as One Priority*, N. Y. TIMES, Apr. 9, 2009, at A1.

<sup>98</sup> Information about the relationship between the City government (i.e. Rikers Island Detention Facility) and DHS has been obtained by the Immigrant Rights Clinic at New York University School of Law pursuant to a Freedom of Information Act request. Documents available upon request.

<sup>99</sup> Constitución de la República Dominicana, Título Sección I, De Los Derechos Individuales y Sociales, Art. 8(2)(h) (“Nadie podrá ser juzgado dos veces por una misma causa”).

<sup>100</sup> Presidencia de la República Dominicana, Consejo Nacional de Drogas, “Plan Estratégico Nacional Sobre Drogas 2008-2012,” at 20 (citing repatriated Dominicans as a cause of increased drug trafficking given their criminal records, without providing any other evidence) (available by request).

<sup>101</sup> See Universal Declaration of Human Rights, Art. 9, G.A. res. 217A(III), U.N. Doc. A/810 at 71 (1948); International Covenant on Civil and Political Rights, Art. 9, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. doc. A/6316 (1966), 999 U.N.T.S. 71; Vienna Convention on Consular Relations, 596 U.N.T.S. 261.

<sup>102</sup> [www.familiesforfreedom.org](http://www.familiesforfreedom.org), date accessed, Apr. 25, 2009.