



SURVEIL, TARGET & DEPORT: DEFENDERS UNDER ATTACK

**SUBMISSION FOR THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
HEARING: SITUATION OF HUMAN RIGHTS DEFENDERS OF MIGRANTS IN THE
UNITED STATES**

SUBMITTED BY

**UNIVERSITY OF WASHINGTON SCHOOL OF LAW, INTERNATIONAL HUMAN RIGHTS CLINIC
UNIVERSITY OF NOTRE DAME, INTERNATIONAL HUMAN RIGHTS ADVOCACY SEMINAR
UNIVERSITY OF WASHINGTON CENTER FOR HUMAN RIGHTS
NEW YORK UNIVERSITY IMMIGRATION CLINIC
NWDC (NORTHWEST DETENTION CENTER) RESISTANCE
NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD (NIPNLG)
MIGRANT JUSTICE**

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Table of Contents

Introduction.....	4
Not a Coincidence: Targeting Immigrants Rights Defenders for Their Activism in the United States—Case Studies:	
Maru Mora Villalpando, NWDC Resistance.....	6
Saja and ShaCorrie Tunkara, NWDC Resistance.....	9
Enrique “Kike” Balcazar, Migrant Justice.....	11
Alejandra Pablos, Reproductive Rights Activist.....	13
Jean Montrevil and Ravi Ragbir, New Sanctuary Coalition.....	15
Janay Cauthen, Defending Family Rights.....	17
Importance of Immigrants Rights Defenders in the Context of Discrimination.....	18
Freedom of Speech and the Impact of Targeting Immigrants Rights Defenders for their Activism in their Lives, their Families and their Communities.....	22
Lack of Judicial Protection for Immigrant Rights Defenders in Domestic Courts.....	27
Lack of Transparency and Impact in Access to Information from Immigration Enforcement Offices.....	29
Questions and Recommendations to Address the Particular Situation a Human Rights Defender Faces when Undocumented.....	31

INTRODUCTION

The United States has ratified, among other instruments, the International Covenant on Civil and Political Rights (ICCPR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the 1967 Protocol to the 1951 Convention Relating to the Status of Refugees (Refugee Convention), and has also signed the United Nations Declaration on Human Rights Defenders (UNDHRD). This has played a key role in advancing human rights by adhering to the American Declaration of the Rights and Duties of Men, and signed the American Convention on Human Rights. These instruments require the United States to respect and ensure the rights to, inter alia: equal protection and nondiscrimination, freedom of speech, due process in immigration proceedings, liberty, family life, judicial protection, non-refoulement, and to seek asylum. These rights are in jeopardy in the situation of immigrants' human rights defenders targeted for their activism in the United States.

According to the US Department of State Bureau of Democracy, Human Rights, and Labor, human rights have not only been part of the United States since its beginning, but in the twentieth century became recognized and protected in international human rights instruments that the US had a central role in advancing.¹

Thematic Hearings are the perfect mechanism to engage in constructive dialogue with the United States Government. The IACHR has the mandate to monitor human rights situations in the continent and there is no need to exhaust domestic remedies. Existing cases pending litigation domestically do not impede the Commission nor the Government to engage in constructive dialogue on contemporary matters. Always unfair policies, practices and laws are subject to domestic litigation that could take years before reaching a decision. That is why is crucial that the IACHR perform its powers through thematic hearings.

NOT A COINCIDENCE: TARGETING IMMIGRANTS' RIGHTS DEFENDERS FOR THEIR ACTIVISM IN THE UNITED STATES

The International Human Rights Clinic at the University of Washington, School of Law has been following concerning information indicating that immigrant human rights defenders and community leaders are being surveilled and targeted by the United States Department of Homeland Security, after being identified for their public advocacy work to defend immigrants' rights and social justice. At least 17 cases of activists targeted have been reported throughout the Country, in 11 States, and discussed publicly².

¹ U.S. Department of State, U.S. Support for Human Rights Defenders. Fact Sheet. Bureau of Democracy, Human Rights, and Labor (January 20, 2017). Available at <https://www.state.gov/j/drl/rls/fs/2017/266903.htm>

² Migrant Justice, et al. v. Kirstjen Nielsen, Secretary of the U.S. Department of Homeland Security (DHS), et al., United States District Court, District of Vermont; NWDC Resistance, et al. v. Immigration & Customs Enforcement, et al., United States District Court, Western District of Washington (Seattle); Maria Mora-Villalpando v. United States Immigration and Customs Enforcement, et al., United States District Court, Western District of Washington (Seattle). See also, NPR article The 20+ Immigration Activists Arrested Under Trump. Available at <https://www.npr.org/2018/03/16/591879718/see-the-20-immigration-activists-arrested-under-trump> .

17 TARGETED HUMAN RIGHTS DEFENDERS...

DANIELA VARGAS
BALTAZAR "ROSAS" ABURTO GUTIERREZ
AMER OTHMAN ADI
ALEJANDRA PABLOS
SERGIO SALAZAR
EMILIO GUTIERREZ-SOTO
JOSE VICTOR GARCIA DIAZ
MIGUEL ALCUDIA GAMAS
JOSE ENRIQUE "KIKE" BALCAZAR SANCHEZ
ELISEO JURADO FERNANDEZ
CLAUDIA RUEDA
ZULLY PALACIOS RODRIGUEZ
YESENIA HERNANDEZ RAMOS
ESAU PECHE VENTURA
MARU MORA-VILLALPANDO
JEAN MONTREVIL
RAVI RAGGIR



These defenders have been in the forefront denouncing unacceptable and inhumane practices of the immigration authorities, through demonstrations, videos, radio, television, interviews, public remarks, public statements, lawsuits and effective advocacy. Their goal, among others, has been to move other states and local authorities to exercise their power to protect immigrants. The aforementioned occurs in the context of restrictive United States immigration laws, policies and practices, for which the IACHR and the United Nations have previously expressed its concern and categorized them as unlawful and arbitrary.³

³ IACHR, Human Rights Situation of Detained and Deported Migrants along the Southern Border of the U.S., March 27, 2012 at https://www.youtube.com/watch?v=sSWFb3_MKLM (minute 15:50); IACHR, *Refugees and Migrants in the United States: families and unaccompanied children*, 24 July 2015, OAS/Ser.L/V/II. 155. Human Rights Council, *Report of the Working Group on Arbitrary Detention on its visit to the United States of America*, Un. Doc. A/HRC/36/37/Add.2, 17 July 2017, Human Rights Committee noted in its concluding observations on the fourth periodic report of the United States that “mandatory detention of immigrants for prolonged periods of time without regard to the individual case may raise issues under article 9 of the Covenant.” *Concluding observations on the fourth periodic report of the United States of America*, CCPR/C/USA/CO/4, 23 April 2014, par. 15. Among the recommendations issued by the UPR to the United States Government in the second cycle, the following are worth mentioning: “Put an end to unlawful practices which violate human rights, including... arbitrary detention, and close any arbitrary detention centers... Prevent torture and ill-treatment in places of detention... seek alternatives to detention and end use of detention for reason of deterrence... Consider alternatives to the detention of migrants.” *Report of the Working Group on the Universal Periodic Review*, United States of America, A/HRC/30/12, 20 July 2015, par. 176.203, 176.213, 176.252, 176.253. UN Working Group on Arbitrary Detention, Opinion No. 18/2004, Communication addressed to the United States of America on 07 May 2004; Opinion No. 32/1999, Communication addressed to the United States of America on 04 May 1998; Opinion No. 72/2018 concerning Marcos Antonio Aguilar-Rodriguez (United States of America), A/HRC/WGAD/2017/72, 28 December 2017.

All have been forced to divert scarce resources to fighting ICE’s retaliation against defenders, thereby impairing their missions to draw attention to confront and challenge immigration detention conditions.

CASE STUDIES

MARU MORA VILLALPANDO: BRINGING VOICES FROM IMMIGRATION DETENTION



Country of origin: Mexico

State: Washington

Years in USA: 22

Main issue: human rights violations at Northwest Detention Center, Tacoma (ICE and GEO)

Government action: deportation proceedings for “extensive involvement with anti-ICE protests and Latino advocacy programs”

Consequences:

- anxiety about family separation
- divert resources to her defense
- change in advocacy methods
- chilling effect in people in detention
- economic burden

Maru Mora Villalpando is an immigrants’ rights defender and co-founder of the Northwest Detention Center Resistance (NWDC Resistance), a grassroots undocumented led movement working to end immigrant detention, stop all deportations and call for the right to return for deported communities and families. They also demand the end of the for-profit detention model, better treatment and conditions at the Northwest Detention Center (NWDC) in Tacoma, WA, including better medical care, nutritionally adequate food, fair wages for work performed at the facility, contact visits with family, due process and humane treatment in general. She was appointed by the Mayor of Seattle as Commissioner of the Immigrants and Refugees Rights Commission.⁴ She has received state and national awards for her advocacy.⁵

⁴ See http://clerk.seattle.gov/~public/meetingrecords/2013/cf_312812.pdf

⁵ The Seattle Globalist, Maru Mora-Villalpando, emerging POC journalists to be honored at 2018 Globies, September 24, 2018. Available at <http://www.seattleglobalist.com/2018/09/24/2018-globalist-of-the-year-maru-mora-villalpando-emerging-poc-journalists-to-be-honored-at-globies/77046>

Ms. Villalpando has been in the United States for 22 years, entering in 1996 on a visa. She has a United States Citizen daughter, who recently turned 21 years old. She filed for adjustment of status and her case is pending in immigration courts. During all these years, she has never been in immigration proceedings, has not had any encounters with law enforcement that triggered the process against her, and has not fallen under ICE priorities, even after President Trump's policies changed. She cannot be considered a threat to national security and has the right to stay. She is often featured in numerous news publications and TV interviews. She is an organizer of community actions in front of the detention center; also a primary public voice of hunger strikers inside detention centers in the Northwest United States. Further, she has also conducted legislative advocacy and effective international and domestic advocacy.

Maru Mora Villalpando has taken the human rights situation of the NWDC to the international level. In **October 2016** Ms. Villalpando met with the United Nations Working Group on Arbitrary Detention (UNWGAD) in San Diego, California and submitted a shadow report to the Working Group for its country visit, requesting to take into account a business and human rights angle and criticize GEO Group Inc. (GEO). In **July 2017**, the **UNWGAD** issued a **country report** addressing explicitly the profit model and making several recommendations on the topic to the United States.⁶ In addition, she submitted an urgent appeal to the UNWGAD concerning several hunger strikes and suicidal attempts. Since **September 2017**, Maru has been providing people in detention information about the UNWGAD.

Moreover, she has also used the Inter-American System (IAS). In **March 2017**, Ms. Villalpando addressed the IACHR during a public hearing on the impact of the United States Executive Orders at the 161st Period of Sessions in Washington, D.C. She was the only undocumented person in the hearing, she presented pictures and testimonies from people detained and she specifically talked about the fear for retaliation. Maru's advocacy is effective and bothers both government and companies profiting over human dignity. On **August 2017**, following up with the hearing the IACHR issued a press release expressing "its deep concern about [...] hunger strikes which have occurred during these past months in the migrant detention centers of the Adelanto Correctional Facility in the state of California and the **Northwest Detention Center in the state of Washington**, both operated by the private corporation GEO Group."⁷ The Commission stated that "[d]uring the hunger strikes, migrant persons and asylum applicants have reclaimed decent detention conditions, due process guarantees, the possibility of requesting asylum and access to bails to continue with their processes in liberty. According to information received, the Commission is concerned about the use of solitary confinement, as well as beatings and the use of pepper sprays."⁸

Ms. Villalpando has also been conducting effective **domestic efforts** to defend rights. Three strategies are worth mentioning. **First**, in 2016 and 2017 she collaborated with the International Human Rights Clinic at the University of Washington to visit people in detention to document conditions. No other organization was addressing the issue at that moment. The Clinic visited at least 40 people in detention last semester, conducted 2 stakeholders tours, sent letters requesting information, documented human rights violations and requested the Office of

⁶ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its visit to the United States of America*, Un. Doc. A/HRC/36/37/Add.2, 17 July 2017.

⁷ Testimony from Maru Mora Villalpando during an interview with University of Washington School of Law International Human Rights Clinic.

⁸ IACHR, IACHR Expresses Deep Concern for Deaths and Detention Conditions at Migrant Detention Centers in the United States, August 11, 2017. Available at http://www.oas.org/en/iachr/media_center/preleases/2017/119.asp

Washington State Attorney General (AG) to address the injustices occurring there. On **September 2017**, the AG brought a lawsuit against GEO, the private corporation managing the detention center, for paying \$1 dollar per day for work done by immigrants in detention. **Second**, she also conducted effective advocacy before the Tacoma City Council by asking the Council to consider revoking the corporation's license to operate and to label the center as a "detention facility" not a "correctional" one. She presented public testimony before the Council several times and forced the CEO of GEO to make a rare appearance. After the AG lawsuit and the City Council decision to stay with the "detention facility label," GEO sued the City of Tacoma.

That timeline, matched with the scarce documents we were able to access through the Freedom of Information Act (FOIA), shows this is not a coincidence. **On September 1st 2017, after the IACHR published its press release and the AG was visiting people in detention for the first time**, an ICE officer sent an email seeking information on Maru's entrance to the United States. Records obtained by FOIA indicates that they were in a rush to put her in deportation proceedings, and went long ways to get more information through the Department of Vehicles. "I want to mail out an NTA to Maru Mora-Villalpando" -ICE Officer. On **December 20th**, without any sort of warning -*i.e.* she has never been involved in criminal incidents or contact with law enforcement-, and without gathering all the information necessary on Maru, ICE issued Ms. Villalpando a *Notice to Appear* in deportation proceedings and sent it to her home address. The notice is explicit on the reasons. The I-213 states:

*Maru Mora Villalpando has long been known to ICE-ERO, but ICE elected to elevate her case for consideration for removal proceedings after an interview in which she stated that she is "undocumented" and that "many people like me come on a visa and then do not return to their countries when the visa has expired."⁹ Upon review of the article and available information regarding her situation it should also be noted that she has "extensive involvement with **anti-ICE protests and Latino advocacy programs**. Villalpando **has become a public figure** primarily in Whatcom County, where she currently resides." FOIA information shows that ICE in February was still trying to find out if she had a pending visa application.*

On **January 3rd**, her immigration lawyer requested to access her ICE record and the written decision with justification of such a move. But she was denied, stating that she needed to submit a FOIA request. The immigration attorney submitted a FOIA request but they were still not able to access her documents and they required congressional intervention to secure them.

On **May 4th, 2018**, Maru filed a FOIA lawsuit due to the lack of access to key information about government actions against her and other leaders.¹⁰ ICE is still withholding important information. In a troubling move, the government contends that contentions of retaliation should be struck from the FOIA request but the judge has rejected such attempts.¹¹

⁹ Kathryn Fantress, Maru Mora Villalpando and Latino Advocacy, Watchcom Watch, June 2017. Available at <http://whatcomwatch.org/index.php/article/maru-mora-villalpando-and-latino-advocacy/>

¹⁰ Mora Villalpando v. ICE, 2:18-cv-00655 (W.D. Wa, May 4, 2018).

¹¹ "U.S. District Judge James L. Robart turned down ICE's request to remove portions in Maria Mora-Villalpando's amended complaint that it alleged had "nothing to do" with her FOIA claims, ruling that the agency failed to show that certain paragraphs relating to the Trump administration's purported animus toward immigrants and its alleged practice of targeting activists had "no possible relation to the controversy." See "ICE Can't Nix Parts of Activist's FOIA Suit, Judge Says," Hu, Tiffany, Law360, July 24, 2018.

Preliminary review of FOIA documents suggests that Maru was under surveillance by both ICE and the local police, who forwarded information to ICE.

On **October 24th, 2018**, National Immigration Project of the NLG and a law firm filed a lawsuit on behalf of NWDC Resistance, an organization that Maru founded to stop Immigration and Customs Enforcement's (ICE) unconstitutional policy of retaliating against organizations engaged in First Amendment-protected advocacy in support of immigrants' rights.

It is evident that Maru is being targeted because of her work and is suffering retaliation for engaging effectively with the United Nations, the IACHR and local authorities. Measures like the one we are denouncing today are directed to create fear and silence voices defending immigrants.

SHACORRIE TUNKARA: SPEAKING UP AGAINST INHUMANE TREATMENT OF HUSBAND SAJA TUNKARA¹²



Country of origin of Saja Tunkara: Sierra Leone, but lived in Gambia

Country of origin of ShaCorrie: United States

State: Washington

Years in USA: 17

Main action: **October 10th, 2018** interview with Seattle Weekly about lack of decent medical attention at Northwest Detention Center, Tacoma (ICE and GEO) is published

Government action: **retaliation inside and sudden deportation at 4 am**

Consequences:

- family separation
- children distress
- chilling effect in people in detention
- economic burden

ShaCorrie Wimbley Tunkara is a United States Citizen and mother of two whose husband, Saja Tunkara, was in detention in the Northwest Detention Centre (NWDC) and has faced retaliation from immigration officers as a result of public statements he made regarding conditions in the NWDC. ShaCorrie is fighting to keep her family together and secure for Saja's much-needed medical care for ongoing health conditions that were not being properly addressed by the NWDC.

¹² This section is taken from the testimony of ShaCorrie Tunkara from an interview with the University of Washington School of Law International Human Rights Clinic. A full statement is attached.

Saja is an immigrant from Sierra Leone that lived most of his life in The Gambia. Upon arrival in the United States Saja applied for asylum, which was ultimately denied. After his marriage to ShaCorrie in 2010, the couple began the process of applying for a Green Card. After multiple attempts, all of which were denied, Saja was sent a final deportation notice requiring him to leave the country within a certain period of time. Saja chose not to leave as his family had financial issues and he was the sole support for his wife, ShaCorrie.

In October 2017, the couple learned of a tumor that had grown on the right side of Saja's neck. He was scheduled for surgery in mid-January of 2018, however, on January 9th 2018 Saja was detained by Immigration and Customs Enforcement (ICE) and sent to the NWDC. The detention centre was made aware of his condition and ShaCorrie requested that they get Saja's medical records and that he get the surgery necessary to remove the tumor and prevent cancer from developing. The surgery was significantly delayed, but on April 27th Saja underwent the surgery without ShaCorrie's knowledge of where he was or how he was doing. Post-surgery ShaCorrie found out, through ICE medical records sent to her by Saja, that he suffers from acute asthma, has trouble swallowing food due to pain, and suffered from head pain and impaired vision as well as impaired mobility to his right arm. ShaCorrie was told that he needed surgery or could face losing vision in both of his eyes. Delayed treatment and lack of sympathy for Saja and his case put not only his vision at risk, but also his life. ShaCorrie has stated that she wishes for the implementation of a policy where anybody detained suffering from severe medical conditions are to be released or placed somewhere where their condition can be monitored.

ShaCorrie has claimed that Saja did not receive proper nutrition in the NWDC as he was provided food with little to no nutritional value. He has been subjected to racial slurs from the guards as well as being shackled during his medical procedure. She says that the detainees' clothes are dingy and dirty, any clothes or personal items need to be purchased, but the detainees are paid one dollar for an eight hour working day, meaning there is little opportunity to purchase such items.

ShaCorrie affirmed that Saja experienced retaliation from ICE for an interview Saja gave with Seattle Weekly in October 2018 regarding the conditions in NWDC as well as the handling of his medical condition and the failures of the staff to appropriately care for him in a timely fashion. The day after the interview was published, ShaCorrie was told by an ICE officer to prepare a suitcase of Saja's belongings in the event that he was deported. The NWDC Resistance held a rally on October 21st in protest of Saja's imminent deportation. On October 30th 2018, 20 days after the interview with Seattle Weekly was published, ShaCorrie was informed that her husband was being deported that day and that she had one hour to bring his belongings and money to a U.S. Citizenship and Immigration Services facility in Tukwila. As a result of the abrupt deportation ShaCorrie and the couple's two children were unable to say goodbye to Saja. Despite ICE's declaration that her husband was not a scapegoat targeted for whistleblowing, ShaCorrie has requested that the office of U.S. Representative for Washington's 9th Congressional District, Adam Smith, further investigate the matter. She ultimately hopes that Saja will be able to return to the U.S. so he can access proper medical treatment for his decreased

eyesight and impaired arm mobility caused by the neck tumor. Saja is currently in Sierra Leone but ShaCorrie is still fighting for Saja to return and for him to be able to remain with his family.

JOSE ENRIQUE “KIKE” BALCAZAR SANCHEZ¹³: DEFENDING IMMIGRANT FARM WORKERS WITH MIGRANT JUSTICE IN VERMONT



Country of origin: Mexico

State: Vermont

Years in USA: 8

Main action: defending immigrant farm workers and their families

Government action: surveillance and detention

Consequences:

- fear of deportation
- reduced activism
- financial loss due to \$2,500 bond
- incarcerated for 11 days in a detention center

Jose Enrique “Kike” Balcazar Sanchez is a leader and spokesperson for the human rights organization, Migrant Justice. Founded in 2009 by immigrant dairy workers in the United States’ state of Vermont, Migrant Justice is an organization dedicated to defending and advancing the rights of immigrant farm workers and their families.

Dairy farms are an integral part of the economy, society, and culture of the state of Vermont, and of much of the Northeastern United States. With changes in economic conditions in recent decades, the dairy industry has come to increasingly rely on immigrant workers. Given the United States’ restrictive immigration policies, and absent an applicable visa program, the majority of the workforce is undocumented. Migrant Justice estimates that 90% of workers milking cows in Vermont are undocumented. Workers typically labor 60-80 hours per week, for less than the state minimum wage, in notoriously dangerous conditions, often living in substandard housing.

¹³ This section is taken from the testimony of Jose Enrique Balcazar Sanchez from an interview with the University of Washington School of Law International Human Rights Clinic. A full statement is attached.

Mr. Balcazar migrated from Mexico to the United States in 2011, when he was 17 years old. He joined his parents working on dairy farms, hoping to save up enough money to return home to Mexico and continue his education. Soon after he arrived in the United States, he became involved in Migrant Justice, where he attended community assemblies. He became a leader in the organization's successful campaign to expand access to driver's licenses in Vermont to applicants without social security numbers, a landmark legislative victory advancing the human right to freedom of movement.

Mr. Balcazar is a nationally-recognized human rights leader. He is the recipient of the Mario Savio Young Activist Award, the Discount Foundation Legacy Award, and the Vermont Access Network Free Speech Award. He serves on the state's Immigration Task Force, convened by the Vermont Attorney General to provide guidance to state policy makers on immigration issues. Mr. Balcazar is also one of the principal architects of Migrant Justice's initiative "Milk with Dignity," a worker-driven social responsibility program that ensures human rights for dairy workers through legally-binding supply chain agreements with dairy companies. In 2017, on behalf of Migrant Justice, Mr. Balcazar signed the first Milk with Dignity agreement with Ben & Jerry's Ice Cream.

In March, 2017, Mr. Balcazar was arrested by ICE agents, alongside Migrant Justice member Zully Palacios. The two were detained, while leaving the Migrant Justice office following a meeting discussing a response to the recent immigration arrest of Mr. Balcazar's cousin. Their car was stopped by undercover vehicles and surrounded by armed officers, not clothed in uniforms. They were pulled from their car, shackled, detained, prohibited from calling an attorney and expressly forbidden from contacting Migrant Justice.

ICE detained Mr. Balcazar and Ms. Palacios as part of a multi-year operation to surveil Migrant Justice, harass and detain its members, and destabilize the organization by maliciously spreading misinformation. ICE compiled information on Mr. Balcazar, in part, by recruiting a civilian informant to infiltrate the organization and Mr. Balcazar's private associations. The agency also relied on confidential information requested and received from the Vermont Department of Motor Vehicles, in contravention to the Department's policies. When another Migrant Justice leader was arrested several months earlier, ICE agents stated that Mr. Balcazar would be "next," expressing displeasure with his public advocacy. The agency also referred to Mr. Balcazar as "a famous person" and a "high-profile case," and created a dossier on Mr. Balcazar's public activities.

After 11 days in detention, Mr. Balcazar and Ms. Palacios were released on bond. Their release followed a public outcry, which included more than 10,000 emails sent to ICE and the Immigration Court, as well as letters from Vermont's congressional delegation and public statements from many state elected officials. Both remain in removal proceedings. On November 14th, 2018, Mr. Balcazar, along with several other plaintiffs, filed suit in the United States District Court against ICE, the Department of Homeland Security, and the Vermont DMV. Plaintiffs ask for declaratory and injunctive relief to stop defendant's violation of their First Amendment Rights of Freedom of Speech and Association.



Country of origin: Mexico

State: Washington, D.C.; Arizona

Years in USA: since she was a baby, 33 years

Main fight: reproductive and criminal justice

Government action: arrest during a protest, sent to detention center

Consequences:

- fear of deportation
- reduced activism
- financial loss due to bonds and lawyers
- separation from U.S. citizen family

Alejandra Pablos, 33, is a field coordinator for the National Latina Institute for Reproductive Health, where she has advocated to organize Latin American people to fight for change in policies that harm women’s health and their families. Her work reflects that immigrant rights and reproductive justice are heavily intertwined. Pablos lived in Arizona but moved to Washington, D.C. in 2016. Since her move, she has advocated for legislation that would allow undocumented immigrants to obtain driver’s licenses and to pay in-state college tuition rates, as well as has organized a protest against President Trump’s stringent immigration policy changes. Margie Del Castillo, who is an associate at the National Latina Institute for Reproductive Health has stated that Ms. Pablos is a “primary organizer,” who has been “very instrumental in leadership development for other activists.”

Pablos has lived in the United States since she was a baby. Most of her family, including her mother, has become United States Citizens, since moving to the United States from Mexico. Because of her family’s immigration status, Ms. Pablos was able to become a Legal Permanent Resident. This status was stripped from her, when Alejandra Pablos drove under the influence in 2012 in Arizona, and served time in both prison and immigration detention for conduct that in other states is not even considered a felony. Arizona has the highest Latino incarceration rate in the country and is known for its tough immigration laws. Pablos calls what happened to her “a direct result of crimmigration,” meaning that in most states her DUI charges would have been a misdemeanor and not a felony and deportable offense, such as is the case in Arizona. Since her

¹⁴ This section is taken from the testimony of Alejandra Pablos from an interview with the University of Washington School of Law International Human Rights Clinic. A full statement is attached.

release, Pablos has filed for asylum in the United States, out of fear that she will not be able to return to Mexico due to her activism.

Once released from detention, Pablos was ordered to check in with ICE in Arizona every three months. She had been fully compliant with these orders. Regardless, when she went back to one of her routine check-ins at the ICE field office in March, she was sent back into detention. This arrest followed a peaceful protest in January against deportations outside of the Department of Homeland Security, where Pablos spoke out with a few dozen people from several different groups, and was arrested. She said that,

[g]etting arrested that day was a shock to me. It definitely wasn't part of the plan. I remember bits and pieces, like everyone looked scared for me because the officer wouldn't let go of me. And this wasn't local law enforcement; this was DHS. My knees got bloody, he twisted my arm. My nails broke. I wasn't running away from him; I was just confused and my impulse was to pull away from him and not let this man I didn't know grab me. He aggressively arrested me without a warrant and I knew what this would trigger. I knew ICE would come for me. I was scared of sleeping at my house for two weeks straight.

Many of her fellow activists say that she was targeted because of her activism on behalf of immigrants. This is the case especially because it appears that many legal permanent residents have a lot worse criminal records but do not get deported. Even though ICE states that it does not single out individuals based on any advocacy or critical comments, when asked, the ICE spokeswoman could not provide any information regarding any other lawful reason for Pablos' detention, following her arrest. In fact, the DHS office himself stated that he knew he was arresting Ms. Pablos because she was the loudest one and that his goal was to diffuse the whole protest, even though it was a non-violent, peaceful protest. Out of 30-40 protestors, Alejandra Pablos appears to be the only one who got arrested that day.

Following this incident, Ms. Pablos spoke to her detention officer in Arizona, who told her that she should not worry and that during her next check-in she would be reclassified, releasing her from the ICE supervision that she had been under for the last five years. Instead of being reclassified at her next check-in meeting on March 7th, 2018, she was detained upon arrival. She has since been released on bond after a federal judge granted her release on April 19th, but she spent 40 days in the Eloy Detention Center, the deadliest immigration detention center in the country. She is now awaiting her next hearing regarding deportation in front of the United States' court system. Many individuals rely on Pablos to help their situation through her activism, but the detention has shown her that she needs to be careful if she wants to remain in the United States.

	
<p>Country of origin: Haiti State: New York Years in USA: 31 Main action: Sanctuary coalition Government action: detention and threat of deportation Consequences:</p> <ul style="list-style-type: none"> ● deported in January 2018 back to Haiti ● family distress ● family separation ● economic burden on family 	<p>Country of origin: Trinidad State: New York Years in USA: 25 Main action: Sanctuary Coalition Government action: detention and threat of deportation Consequences:</p> <ul style="list-style-type: none"> ● fear of deportation since 2006 ● family distress ● incarcerated for 18 days at a detention center ● reduced activism

Ravidath (“Ravi”) Ragbir and **Jean Montrevil** are immigrants’ rights leaders with the New Sanctuary Coalition in New York City. The New Sanctuary Coalition is an interfaith network of congregations, organizations, and individuals, standing publicly in solidarity with families and communities, resisting detention and deportation in order to stay together. Mr. Ragbir is the Executive Director of the New Sanctuary Coalition and Mr. Montrevil is the Co-Founder of the New Sanctuary Coalition.

Mr. Ragbir and Mr. Montrevil have been outspoken critics of the United States’ deportation system. Both have directly experienced the system for many years, receiving deportation orders based on old criminal convictions, without meaningful hearings into their evidence of community ties and contributions to society. Although they did not know each other at the time, they shared a sense of injustice after witnessing human rights violations in the deportation system and began to share their insights with faith communities and the broader public through the New Sanctuary Coalition.

For many years following their old deportation orders, the United States government officially permitted Mr. Ragbir, a citizen of Trinidad, and Mr. Montrevil, a citizen of Haiti, to

¹⁵ This section is taken from the testimony of Ravidath Ragbir from an interview with the University of Washington School of Law International Human Rights Clinic and the information provided by Alina Dass, Director of the NYU Immigration Clinic. A full statement is attached.

live and work in the United States on “orders of supervision” in recognition that they were not flight risks or dangers to society. Both were husbands and fathers to U.S. citizens, both had volunteered with civic organizations as human rights defenders. Mr. Ragbir and Mr. Montrevil used this time to continue their human rights work, while also pursuing their legal remedies to challenge their orders of deportation. Both had pending legal cases as recently as 2018, and both were promised the opportunity to pursue those cases.

Despite these promises, the New York Immigration and Customs Enforcement (“ICE”) Field Office launched a coordinated operation to arrest both immigrant rights leaders in January 2018. The action followed a year of escalating tension between the New Sanctuary Coalition and new ICE leadership, which began to refuse New Sanctuary Coalition leaders and volunteers access to ICE spaces where immigrants were awaiting supervision appointments. Mr. Ragbir and Mr. Montrevil had spoken out publicly against ICE and deportation policies throughout 2017, highlighting changes in the administration.

On January 11, 2018, immigrants agents arrested Mr. Ragbir at his annual supervision appointment at the federal ICE building in New York, transferred him to Krome Detention Center in Florida, and attempted to deport him the next day. He had a federal lawsuit challenging his prior criminal conviction, a federal pardon petition, and a request to ICE counsel’s office to join in a motion to reopen his removal proceedings, all pending at the time. His lawyers from the NYU Immigrant Rights Clinic, Alina Das, Jessica Rofé, with law students Brittany Castle and Cody Cutting, were able to receive a stay of removal and a transfer order from a district court in New York, which ultimately ordered his release from detention. They subsequently received a stay of removal from the federal court in New Jersey, that continues to preside over his challenge to his criminal conviction (the case has been fully briefed and is awaiting decision). Shortly after his release, he and several organizations (New Sanctuary Coalition, CASA, Detention Watch Network, National Immigration Project of the National Lawyers Guild, and New York Immigration Coalition) sued the federal government for targeting immigrant rights’ activists in violation of their First Amendment Rights. They lost a preliminary injunction motion in district court, and an appeal is pending at the U.S. Court of Appeals for the Second Circuit (the case has been fully briefed and is awaiting decision). The Second Circuit entered a stay of removal in that case. Mr. Ragbir also filed his motion to reopen and reconsider his removal proceedings with the Board of Immigration Appeals, which denied the request and an appeal of that decision is pending before the Second Circuit as well (the case has not yet been briefed). Finally, the U.S. government has filed an appeal of the decision that ordered Mr. Ragbir’s release, which has been partially briefed before the Second Circuit.

On January 3, 2018, immigration agents arrested Mr. Montrevil outside his home in Queens, New York, transferred him to Krome Detention Center in Florida, and deported him approximately two weeks later. He had a motion to reopen his removal proceeding pending before the Board of Immigration Appeals that was quickly denied just prior to his deportation. His lawyer, Joshua Bardavid, was able to file a petition for review to the U.S. Court of Appeals for the Fourth Circuit, but that court denied the petition earlier this year. No additional legal actions are pending at this time.



Janay Cauthen, Jean Montervil ex-wife, is a defender fighting to get his ex-husband back from Haiti. She knows the father of her 3 children was targeted by ICE because of his fierce activism. The deportation order was issued inhumanly. Jean craved for social justice and he publicly spoke about imperfections of ICE. He had big hopes that his pending legal case would have been successful and he would have been able to live the American Dream of raising his children since he lost his mom at the age of 9 and his dad died while he was incarcerated thirty years ago for a non-violent charge. She will continue to speak out against injustices of NON CITIZENS in the US as she knows she is a US Citizen with more protections and rights. She became a single parent overnight and her children became fatherless. Her son, who was a freshmen in Brooklyn Tech high school, which is a specialized high school for gifted children grades from A's to D's and F's. He has been diagnosed with depression and placed on medication. The oldest daughter who is a junior in college is no longer able to live on a college campus because dad is not able to help with expenses. Our youngest daughter who is 11 is now in mental health therapy and has been diagnosed with a separation disorder.

¹⁶ This section is taken from the testimony of Janay Cauthen, from an interview with the University of Washington School of Law International Human Rights Clinic. A full statement is attached

IMPORTANCE OF IMMIGRANTS RIGHTS LEADERS IN A CONTEXT OF DISCRIMINATION

The American Declaration on the Rights and Duties of Man protects the right to equality before the law, stating that everyone “have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor”¹⁷, including immigration status.

It is well recognized now that the United States government is deliberately implementing inhuman and discriminatory immigration policies and practices¹⁸. These practices include the use of torture, cruel, inhuman and degrading treatment in detention centers, criminalizing immigration, exploiting workers detained,¹⁹ separating families and attacking children and placing the lives of persons in need of protection at greater risk. The latest low is the militarization on the border and use of tear gas against asylum seekers, refugees, women and children²⁰. These policies are arbitrary and unlawful²¹. The U.S. generated a climate of fear and uncertainty, fomenting panic²², targeting people of color, inflicting trauma on immigrant communities and our society at large. Moreover, the government has created an industry of immigrant incarceration profiting over human dignity.²³ No judicial oversight could stop the irreparable harm being caused to immigrant communities and to the rule of law in the United States. Accountability and justice for all affected persons seem unreachable and the need of international awareness is dire.

The grass-roots movement to stop all deportations and shut down immigration detention centers was the key to exposing the human rights violations which were often overlooked in the immigration system. The movement suffered a setback when President Trump was elected, increasing the number of deportations and family separation. On January 25, 2017, President Donald Trump set out an Executive Order²⁴ indicating immigration priorities. Following the order the Department of Homeland Security (DHS) listed the directions for the implementation, which includes amongst others removal of immigrants whose criminal offenses have not been

¹⁷ Article II. Available at <https://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm>

¹⁸ IACHR Expresses Concern over Recent Migration and Asylum Policies and Measures in the United States, June 18, 2018; UN High Commissioner for Human Rights, June 18, 2018.

¹⁹ Washington State Attorney General lawsuit against GEO. Available at https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/State%20v%20GEO%20Complaint.pdf

²⁰ See e.g., OAS, IACHR Expresses Concern over Executive Orders on Immigration and Refugees in the United States (February 1, 2017). Available at http://www.oas.org/en/iachr/media_center/PReleases/2017/008.asp

OHCHR, Migrant caravan: States have duty to protect human rights (November 28, 2018). Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23941&LangID=E>

UNHCR statement on new US regulation on asylum (November 9, 2018) Available at <https://www.unhcr.org/news/press/2018/11/5be5bfac4/unhcr-statement-new-regulation-asylum.html>

²¹ UN High Commissioner for Human Rights, June 18, 2018.

²² ACLU, *Put Ice Back on Its Leash*. Available at https://action.aclu.org/secure/put-ice-back-leash?ms=web_180130_immigrantrights_freespeech_ICEactivists

²³ Detention Watch Network (DWN). ICE Lies. Public Deception, Private Profit. Available at https://www.detentionwatchnetwork.org/sites/default/files/reports/IceLies_NIJC_DWN.pdf

²⁴ Executive Order 13,768 (Enhancing Public Safety in the Interior of the United State). Available at <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>

resolved.²⁵ This Executive Order and memoranda has been the basis for many deportations of immigrants in the last years, including those who still have cases pending in Court²⁶. In 2017 alone, ICE conducted 143,470 administrative arrests and 226,119 deportations, which was noted to be the “highest number of administrative arrests over the past three fiscal years”²⁷. There has been a high increase in the deportation of immigrants under the President Trump’s administration. The proportion of deportation by ICE increased from 27% in 2016 to 36% in 2017²⁸. There has been a 156 percent increase in the arrest of undocumented immigrants who did not have a criminal record, compared to the years before.²⁹ Moreover the UW Center for Human Rights found that the numbers of deportations categorized as criminals are misleading, including people without criminal conviction, or inflating the numbers by counting the crimes instead of people.³⁰

In April 2018 then U.S. Attorney General Jeff Sessions ordered prosecutors along the border to “adopt immediately a zero-tolerance policy” for illegal border crossings. That included prosecuting parents traveling with their children as well as people who subsequently attempted to request asylum.³¹ Since early May, 2,342 children have been separated from their parents after crossing the Southern U.S. border, according to the Department of Homeland Security. That has prompted widespread outcry and the request for precautionary measures from several human rights governmental institutions.³² President Trump issued an executive order to stop separation at the border, but instead ordering to incarcerate children with their parents. Now immigrants are afraid of seeking necessary support from the hospital, police, courts and other public services because of fear of arrest and deportation. Detained immigrants are trapped in a system where they can’t complain effectively about detention conditions, and most of them are unrepresented.

In that context, immigrant rights’ defenders are bringing light to an obscure reality. The leaders and their human rights causes, are featured in numerous news publications.³³ They

²⁵ February 20, 2017 memorandum, Enforcement of the Immigration Laws to Serve the National Interest. Available at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf

²⁶ Amy Goodman, NYC Immigration Activist Jean Montreuil Speaks Out After Deportation to Haiti: “My Heart Is Broken”, Interview with Democracy Now (January 17, 2018). Available at https://www.democracynow.org/2018/1/17/nyc_immigration_activist_jean_montreuil_speaks

²⁷ US Immigration and Custom Enforcement- Fiscal Year 2017 ICE Enforcement and Removal Operations Report. Available at <https://www.ice.gov/removal-statistics/2017>

²⁸ *Id.*

²⁹ Graham Lanktree, *Ice Immigration Agents Directed to Go After Undocumented Immigrants Attending Court*, News week (February 1, 2018). Available at <http://www.newsweek.com/ice-immigration-agents-directed-go-after-undocumented-immigrants-attending-796964>

³⁰ *See e.g.*, Christie Thompson, How ICE Uses Secret Police Databases to Arrest Immigrants (August 28, 2017). Available at <https://www.themarshallproject.org/2017/08/28/how-ice-uses-secret-police-databases-to-arrest-immigrants>. Also, Los Angeles Times, ‘Even the cops don’t like us anymore’: Under Trump, ICE is despised and divided, by Brittny Mejia (June 30, 2018). Available at <https://www.latimes.com/local/lanow/la-me-ln-ice-conflict-20180630-story.html>

³¹ US Customs and Border Protection: Zero Tolerance Immigration Prosecutions – Family Fact Sheet. Available at <https://www.cbp.gov/newsroom/zero-tolerance-immigration-prosecutions-family-fact-sheet>

³² IACHR, Migrant Children affected by the “Zero Tolerance” Policy regarding the United States of America. Precautionary Measure No. 731/18. Resolution 64/2018. August 16, 2018.

³³ *See e.g.*,

El Universo, Debemos prepararnos, la ley no está de nuestro lado (March 22, 2017). Available at <http://www.eluniversal.com.mx/articulo/mundo/2017/03/22/debemos-prepararnos-la-ley-no-esta-de-nuestro-lado>;

organize community actions in front of the detention center and ICE offices,³⁴ and they became the primary public voice during hunger strikes inside the detention center.³⁵ These advocacy efforts amplified the voices of detained immigrants and revealed issues going beyond specific immigration cases or law. Most recently, they discovered preventable deaths in custody of asylum seekers, such as Amar Mergansana,³⁶ triggering a congressional letter demanding an independent investigation. The advocacy efforts to reach accountability also touches corporation interests. Our demands led the Washington State Attorney General to bring a lawsuit against the private corporation managing the detention center, GEO, for paying \$1 dollar per day for work done by immigrants in detention.³⁷ A similar class action is ongoing. Judges are rejecting the motions from the company to avoid releasing financial information that could expose human rights violations³⁸. It is evident that the government and corporations want to remain obscure and use their power to neutralize efforts to seek accountability. For example, GEO subpoenaed Attorney General Bob Ferguson in the lawsuit, causing U.S. District Judge Robert Bryan to

The New York Times, ICE detained my husband for being an activist (January 18, 2018). Available at <https://www.nytimes.com/2018/01/18/opinion/ravi-ragbir-immigration-ice.html>; Socialist Worker, Why did ICE want to silence Jean Montrevil (January 29, 2018). Available at <https://socialistworker.org/2018/01/29/why-did-ice-want-to-silence-jean-montrevil>; The Washington Post, Va. activist held by ICE, prompting immigrant groups to push for her release (March 8, 2018). Available at https://www.washingtonpost.com/local/virginia-politics/va-activist-held-by-ice-prompting-immigrant-groups-to-push-for-her-release/2018/03/08/3af9ebe6-22f6-11e8-badd-7c9f29a55815_story.html?utm_term=.32dca690cc96; Socialist Worker, Fighting for her detained husband's life (July 19, 2018). Available at <https://socialistworker.org/2018/07/19/fighting-for-her-detained-husbands-life>; The Sun, Dairy workers claim ICE intimidation (November 27, 2018). Available at <https://www.suncommunitynews.com/opinions/editorials/dairy-workers-claim-ice-intimidation/>

³⁴ See e.g., Seattle Times: 10,000 demonstrate in SeaTac against Trump's 'zero tolerance' immigration policy (July 2, 2018). Available at <https://www.seattletimes.com/seattle-news/politics/10000-strong-demonstrate-at-seatac-detention-facility-against-president-trumps-zero-tolerance-immigration-policy/>; A conversation with Maru Mora Villalpando. Available at <https://www.seattlechannel.org/feature-shows/citizen-university-tv-segments?videoid=x82637>

³⁵ See e.g., The Stranger, Immigrant Advocates Will Take Up Hunger Strike to Protest Treatment Inside Northwest Detention Center (January 19, 2017). Available at <https://www.thestranger.com/slog/2017/06/19/25225363/immigrant-advocates-will-take-up-hunger-strike-to-protest-treatment-inside-northwest-detention-center>; Red Nacional de Radio Pública Latina, Presión de indocumentados en huelga de hambre causa liberación de 4 de ellos en NWDC (Sep. 7, 2017). Available at <http://radiobilingue.org/features/presion-de-indocumentados-en-huelga-de-hambre-causa-liberacion-de-4-de-ellos-en-nwdc/>; The Seattle Times, Hunger strike at Tacoma immigration detention center grows to 750, activist says (April 3, 2017). Available at <https://www.seattletimes.com/seattle-news/hunger-strike-at-tacoma-immigration-detention-center-growing-activist-says/>

³⁶ Congress of the United States, Washington, D.C. (November 29, 2018). Available at https://adamsmith.house.gov/_cache/files/a/f/afa3e2e5-a4f8-4c08-b247-64de5adfcfcc/5CB81EBAA04EB388859293E49DBD02A4.letter-to-dhs-ig-to-investigate-conditions-at-the-nwdc.pdf

³⁷ See e.g., Inlander, Washington AG sues for-profit prison company that pays inmates in chips and candy (September 20, 2017). Available at <https://www.inlander.com/Bloglander/archives/2017/09/20/washington-ag-sues-for-profit-prison-company-that-pays-inmates-in-chips-and-candy>

³⁸ The Seattle Times, Judge: GEO must turn over financial info on immigration jail (November 27, 2018). Available at <https://www.seattletimes.com/seattle-news/judge-prison-operator-geo-must-turn-over-financial-info-on-tacoma-immigration-jail/>

remind GEO lawyers that “it’s forbidden to depose an opponent’s lawyer.”³⁹ Immigrants’ rights leaders are also conducting effective advocacy before their Cities and Councils, asking to consider revoking the corporation’s license to operate, triggering rare appearances and responses from the companies operating the centers,⁴⁰ getting companies to sign commitment to respect human rights⁴¹, passing municipal law to block local law enforcement cooperation with immigration⁴² or to provide migrants with a driver license.⁴³

Undocumented leaders are also triggering international oversight. International human rights monitoring bodies, including the Inter-American Commission on Human Rights (IACHR) and the United Nations Working Group on Arbitrary Detention (UNWGAD) extensively challenged the legal framework and practices that allow for mass incarceration of immigrants in the U.S.⁴⁴ These bodies recommended the U.S. move toward a humane immigration model that avoids detention. International organizations, academic scholars⁴⁵ and domestic and international Non-Profit Organizations (NGO)⁴⁶ also recognize that the use of private companies to manage detention facilities is one of the primary causes for the expansion of immigration detention and for the deteriorating conditions and human rights violations inside the facilities.

The increase in the arrest of undocumented immigrants by Immigration and Customs Enforcement (ICE), under the direction of the Trump Administration has made the work of

³⁹ U.S. News, Judge: GEO Group Can't Depose Washington Attorney General (August 27, 2018). Available at <https://www.usnews.com/news/best-states/washington/articles/2018-08-27/judge-geo-group-cant-depose-washington-attorney-general>

⁴⁰ The News Tribune, Tacoma immigration detention center is misunderstood (April 15, 2017). Available at <https://www.thenewstribune.com/opinion/article144642549.html>; The News Tribune, Northwest Detention Center sues Tacoma over council's move to restrict expansion (March 23, 2018). Available at <https://www.thenewstribune.com/news/local/article206590509.html>

⁴¹ A good example is the Milk with Dignity Program based on Burlington, Vermont. For an in depth insight on the program, see <https://milkwithdignity.org/>

⁴² For a complete list of Sanctuary cities in the U.S., see <https://cis.org/Map-Sanctuary-Cities-Counties-and-States>

⁴³ See e.g., National Immigration Law Center: *Documents obtained under freedom of information act*. How U.S. Immigration & Customs Enforcement and State Motor Vehicle Departments Share Information <https://www.nilc.org/issues/drivers-licenses/ice-dmvs-share-information/>

⁴⁴ UNWGAD, Preliminary Findings from its visit to the United States of America (11-24 October 2016). Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20746&LangID=E>; OAS, IACHR Expresses Concern over Executive Orders on Immigration and Refugees in the United States (February 1, 2017). Available at http://www.oas.org/en/iachr/media_center/PReleases/2017/008.asp; Human Right Council, Report of the Working Group on the Universal Periodic Review (United States of America), UN Doc. A/HRC/16/11 (January 4, 2011); Report of the Working Group on the Universal Periodic Review (United States of America), UN Doc. A/HRC/30/12 (July 20, 2015); Committee against Torture, Concluding observations on the combined third to fifth periodic reports of the United States of America, UN Doc. CAT/C/USA/CO/3-5 (December 19, 2014); Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4 (April 23, 2014); Inter American Commission, UN Doc. OEA/Ser.L/V/II. 78/10 *Report on immigration in the United States: Detention and Due Process* (December 10, 2010).

⁴⁵ Christian Jorgensen, DePaul University, Immigrant Detention in the United States Violations of International and Human Rights Law (Spring 2016); Kimberly R. Hamilton, Berkeley La Raza Law Journal, Immigration Detention Centers in the United States and International Human Rights (2011).

⁴⁶ Human Rights Watch, US: Deaths in Immigration Detention (July 7, 2016). Available at <https://www.hrw.org/news/2016/07/07/us-deaths-immigration-detention>; Amnesty International, USA: Jailed without Justice (March 2009). Available at <https://www.amnestyusa.org/reports/usa-jailed-without-justice/>

immigrants' rights defenders even more essential⁴⁷. ICE is detaining 44,000 people around the nation. Immigrants have been exposed to discrimination, hate, arbitrary detention and criminalization in the United States for a long time, but the situation worsened after the last presidential election.⁴⁸ We are witnessing the incarceration of people with no criminal record,⁴⁹ within Court premises,⁵⁰ with some status such as DACA or permanent residency and with severe health problems. Now more than ever, immigrants' rights defenders are needed, but effective advocacy is bringing retaliation and reprisals, for the leaders' themselves, for the communities they serve, and also for the people in detention.

THE IMPACT OF TARGETING IMMIGRANTS' RIGHTS DEFENDERS FOR THEIR ACTIVISM

One of the methods of generating fear and silence protest by authoritarian governments is to attack human rights defenders and use domestic laws to arbitrarily restrict their rights, under the disguise of law enforcement.⁵¹ International law forbids such infringement of freedom of speech, personal freedom and family protection. The United States showed a pattern of arrest, detention, deportation and threats of deportation on immigrants' rights defenders for their activism on behalf of immigrants in the United States. The Inter-American Commission on Human Rights (IACHR) already expressed concern about the United States actions against immigrant leaders, calling on the United States to adopt measures to ensure an environment in which human rights defenders can work freely, without threat of immigration detention and deportation.⁵² In the statement, IACHR reiterated that "reprisals against human rights defenders not only affect the guarantees of every human being, but undermine the fundamental role that human rights defenders play in society and leave all those for whom they fight defenseless."⁵³ Furthermore, several United Nations special procedures urged the United States to protect the rights of immigrants' defenders.⁵⁴ They noted that "[g]iving people notice of deportation proceedings appears to be a part of an increasing pattern of intimidation and retaliation against

⁴⁷ TRAC Immigration, *Immigration and Customs Enforcement Enforcement*, <http://trac.syr.edu/phptools/immigration/detention/>

⁴⁸ The UN High Commissioner for Human Rights included Trump's decision to end DACA in his global update to the UN Human Rights Council. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E>

⁴⁹ Jeremy White, 'Everyone is fair game... it's very aggressive': Inside Donald Trump's immigration crackdown, Independent –The President's immigration policy –promised on the election campaign trail- is to remove criminals, but it is spreading fear among ordinary people. Available at <http://www.independent.co.uk/news/world/americas/us-politics/donald-trump-immigration-crackdown-one-year-election-ice-detain-drugs-crime-family-a8042266.html> (last visited February 2, 2018)

⁵⁰ Graham Lanktree, *Ice Immigration Agents Directed to Go After Undocumented Immigrants Attending Court*, News week (February 1, 2018). Available at <http://www.newsweek.com/ice-immigration-agents-directed-go-after-undocumented-immigrants-attending-796964>

⁵¹ IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II, Doc. 49/15, December 31, 2015. Available at <http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>

⁵² Press Release by IACHR Expresses Concern over Situation of Immigrant Defenders in the United States issued February 16, 2018. Available at http://www.oas.org/en/iachr/media_center/PReleases/2018/029.asp

⁵³ *Id.*

⁵⁴ See, OHCHR, US urged to protect rights defenders as activist Maru Mora Villalpando faces deportation case, February 14, 2018. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22657&LangID=E>

people defending migrants' rights in the US.”⁵⁵ The Seattle City Council⁵⁶ and the Seattle Human Rights Commission⁵⁷ have both issued a press statement condemning the move by ICE. They both stated that it is a clear attack on the rights of migrants and defenders. Congressional letters were also sent showing grave concern on the pattern.⁵⁸ The Seattle Human Rights Commission noted that there is an “escalating campaign to silence and suppress the voices opposing the callous anti-immigration actions of this administration.”⁵⁹ It further stated that the Commission was “committing itself to protect, respect and fulfill the full range of human rights inherent to all. These duties, set forth in the Universal Declaration of Human Rights and other international human rights treaties, impel us to protect activists from government retaliation.”⁶⁰

The case studies selected are examples of the pattern, showing the special impact of the tactic to instill fear and deter activism in the United States.

First, the threats of deportation are grave for the leaders themselves. Immigrant rights' defenders are in a particularly difficult situation as they face the absolute alteration of their lives for speaking up. Not only can the government incarcerate them for long periods of time, but they can also deport and separate them from their families, without any protection of their constitutional rights. Many of them face death and violence in their countries or have lived their whole lives in the US. This aspect is evident in the testimony of Alejandra Pablos: “I’ve lived in the United States almost my whole life...I am not a US Citizen but considered myself one and can’t imagine living in a foreign country. But I don’t know otherwise than to defend what I believe is fair and right; my only crime right now is demanding social justice and I shouldn’t be targeted for that.”⁶¹ Many immigrant rights defenders experience severe mental health problems as a consequence of cruel and inhuman conditions in the detention centers. This is exemplified by a note written by Amar:

They found a rope in my cell and thought that I wanted to hang myself . . . So they took me to another section — for those who are suicidal — and locked me up by myself, having taken away all my clothes. They gave me a mattress, cover

⁵⁵ *Id.*

⁵⁶ Seattle Council, City Council’s Statement on ICE Targeting Immigrant Rights Activist Maru Mora-Villalpando. Available at <http://council.seattle.gov/2018/01/16/city-councils-statement-on-ice-targeting-immigrant-rights-activist-maru-mora-villalpando/>

⁵⁷ Seattle Human Rights Commission, DACA statement. Available at <https://www.seattle.gov/Documents/Departments/SeattleHumanRightsCommission/Maru%20Villalpando%20statement.pdf>

⁵⁸ On January 26, 2018 Members of the Congress expressed their collective concern regarding ICE’s targeting of immigrant rights leaders in the U.S. To that end they subscribed a letter addressed to both the Secretary of the Department of Homeland Security and the Deputy Director of the Immigration and Customs Enforcement. See Victoria Bekiempis, *N.Y. Congress members call for meeting with ICE brass over ‘targeting’ of immigration activists* (Jan. 26, 2018), available at: <https://www.nydailynews.com/news/politics/ice-targeting-immigrant-rights-leaders-n-y-congress-members-article-1.3781770>.

⁵⁹ *Supra* note 43.

⁶⁰ *Id.*

⁶¹ Testimony from Alejandra Pablos, taken by Gabriela Ocampo Ucha from the University of Washington School of Law International Human Rights Clinic.

sheet and a thin blanket. It was uncomfortable and cold. Two days later, after a session with a psychologist, they took me back to my regular cell.⁶²

Second, the work they do is obstructed, severely altered or interrupted. Some leaders were eventually deported,⁶³ and others disrupted in such a way that they need to concentrate their energies, money and time to defend themselves.⁶⁴ By threatening the leaders with deportation the government is pushing the defenders to focus on their own cases, to seek legal support, attend hearings and courts. Maru Mora Villalpando's testimony clearly depicts this as a final goal of the Government:

[After] dedicat[ing] my life to the fight for immigrant justice, demanding an end to detention and deportation. None of the usual triggers for deportation—contact with the police, raids, prior deportations—apply in my case. U.S. Immigration and Customs Enforcement only knows about me because of my political work. With the letter delivered to my house, ICE has officially made the leap from a law enforcement agency to a political repression agency—crossing a line that should concern us all. After years of defending others, I am now the one in need of defense.⁶⁵

Third, attacks on immigrant rights leaders generated a chilling effect on other leaders, their families, and on the undocumented community itself.⁶⁶ International law and human rights Courts already expressed concerns at the “intimidating and inhibiting effect” of

⁶² Nina Shapiro, *What happened to Mergensana Amar? The Russian immigrant's handwritten note raises questions about treatment at Northwest Detention Center*, available at: <https://www.seattletimes.com/seattle-news/russian-immigrants-handwritten-note-leaves-many-questions-about-treatment-at-northwest-detention-center/?fbclid=IwAR0cnaT4MgycUSijxKpQ4PG3LAKgYRf36B47MiIxE4ycOR6AVBOhn7-VEvo> (last visited Dec. 5, 2018).

⁶³ See, e.g., *No Sanctuary*, The Intercept (January 19, 2018). Available at <https://theintercept.com/2018/01/19/ice-new-sanctuary-movement-ravi-ragbir-deportation/>. Also see, *ICE Detained My Husband for Being an Activist*, The New York Times (January 18, 2018). Available at <https://www.nytimes.com/2018/01/18/opinion/ravi-ragbir-immigration-ice.html>. And, *Sanctuary Activists Say Trump Is Targeting Them After ICE Detains Second Immigrant Leader*, Village Voice (January 12, 2018). Available at <https://www.villagevoice.com/2018/01/12/sanctuary-activists-say-trump-targeting-them-after-ice-detains-second-immigrant-leader/>

⁶⁴ “ICE seeks to chill free expression and silence immigrant advocates by using its deportation powers to intimidate and deport me and those I support.” <https://www.yesmagazine.org/people-power/i-stood-up-to-ice-and-now-theyre-trying-to-deport-me-20180117> ;

See also, *Migrant Justice et al. v. Kirstjen Nielsen, Secretary of the U.S. Department of Homeland Security (DHS) et al.*, United States District Court, District of Vermont; *NWDC Resistance et al. v. Immigration & Customs Enforcement et al.*, United States District Court, Western District of Washington (Seattle); *Maria Mora-Villalpando v. United States Immigration and Customs Enforcement et al.*, United States District Court, Western District of Washington (Seattle); *Ravidath Lawrence Ragbir et al. v. Thomas D. Homan et al.*, United States District Court, Southern District of New York.

⁶⁵ Maru Mora Villalpando, *I Stood Up to ICE, and Now They're Trying To Deport Me*, available at: <https://www.yesmagazine.org/people-power/i-stood-up-to-ice-and-now-theyre-trying-to-deport-me-20180117> (Dec. 5, 2018).

⁶⁶ “My life changed, my community is in fear, many went back to the shadows. This detracts from defending immigrants in detention, who now fear of retaliation for speaking out. Hunger strikers are left alone, not having access to our help is truly a matter of life and death.”-Maru Mora Villalpando, response taken during an interview with the University of Washington School of Law International Human Rights Clinic.

persecution of human rights defenders.⁶⁷ Particularly, people enduring inhuman detention condition whose voices are amplified by the defenders are inhibited to continue their plight for justice and attention. The testimony of ShaCorrie Tunkara, wife of Saja Tunkara, is a clear example of this:

But after [the surgery] he [Saja] needed physical therapy for the nerve damage in his arm and medications. He was going blind. His mental health deteriorated: he began hearing voices and lost about 20 pounds. He said to me: “I do not want to die in here” ... I asked the ICE officers to let my children and I say goodbye to their father, my husband, before he left. ICE simply replied “no, we don’t do that.” Saja was deported to Sierra Leone two and a half weeks after the Seattle Weekly article, without ever having had a chance to have a contact visit with his family in eight months of detention or the chance to say goodbye, without humanity, and with a life-threatening condition that requires constant medical supervision ... My children and I are in therapy and the kids have been diagnosed with PTSD ... Being released from detention and staying in this country was a matter of life or death for Saja but they still deported him and inflicted a permanent mental mark on our whole family.⁶⁸

Fourth, the democratic system deteriorates by weakening freedom of speech, disrespecting privacy or obstructing the right to access information. To restrict protections of the work immigrant rights leaders, the government increased surveillance mechanisms without any accountability. ICE is not showing any limits on their power to initiate investigations and deport people, disregarding First Amendment rights, and common law protections of privacy and surveillance.⁶⁹ Especially in Sanctuary cities or states,⁷⁰ the government is seeking to identify who is doing the work and start or accelerate with deportation proceedings. For example, the Department of Licensing was routinely handing over information on residents’ drivers license applications, including where they were born and whether they used foreign ID.⁷¹

⁶⁷ I/A Court H.R., *Case of Norín Catrیمان et al. (leaders, members and activists of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279, para. 376. Available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_279_ing.pdf

⁶⁸ Statement by ShaCorrie Tunkara in response to the deportation of her husband, Saja Tunkara, taken during an interview with the University of Washington School of Law International Human Rights Clinic.

⁶⁹ Migrant Justice, et al. v. Kirstjen Nielsen, Secretary of the U.S. Department of Homeland Security (DHS), et al., United States District Court, District of Vermont; *see also* University of Washington Center for Human Rights, *Secret Police: Access to information about immigration enforcement in the contemporary United States*, (December 5, 2018), Available at <https://jsis.washington.edu/humanrights/2018/12/05/secret-police>.

⁷⁰ *See, e.g., Inside the Churches That Are Leading New York’s Sanctuary Movement*, The Nation (December 2, 2016). Available at <https://www.thenation.com/article/inside-the-churches-that-are-leading-new-yorks-sanctuary-movement/>. *See also, Activist and Father of Four Faces Deportation*, Democracy Now! (July 19, 2017). Available at https://www.democracynow.org/2017/7/19/activist_father_of_four_faces_deportation. *And, Behind ICE’s Closed Doors: The “Most Un-American Thing I’ve Seen,”* The Village Voice (March 10, 2017). Available at <https://www.villagevoice.com/2017/03/10/behind-ices-closed-doors-the-most-un-american-thing-ive-seen/>

⁷¹ The Seattle Times. Nina Shapiro, Washington Department of Licensing details how often it gave residents’ info to immigration officials, April 17, 2018. Available at <https://www.seattletimes.com/seattle-news/times-watchdog/washington-state-discloses-how-often-it-shared-information-with-immigration-authorities/>

Sharing information provoked initiation of deportation proceedings of human rights leaders, detention and separation of families, showing a pattern of discrimination against latinos.⁷² The Director of the Department resigned due to the public outcry and Washington State is trying to make changes to protect immigrant data held by the government,⁷³ without offering any remedies to the families already affected by detention and deportation, including immigrants rights defenders. These trends can be seen in Enrique Kike Balcazar own words: “ICE monitors our homes, our emails, social networks, obtains private information about us and even works with people who have infiltrated our organization to obtain confidential information about our activities and our location.”⁷⁴

Notably, the Special Rapporteur on the situation of human rights defenders emphasized that States should “[e]nable people to promote and protect human rights **regardless of their immigration status**; in particular, people on the move and those who defend their rights should be able to exercise, inter alia, their right to freedom of information, freedom of expression, freedom of association and freedom of assembly.”⁷⁵ Those rights are of all, and there is no distinction possible based on “rights on basis of nationality or place of birth.”⁷⁶

Furthermore, international law states that States have the obligation to undertake positive actions that result in the elimination of hostile or dangerous environments for the protection of human rights. Any act sought to prevent the human rights defender from carrying out his or her work and to act to intimidate others is a contravention of human rights obligations.⁷⁷ All States must provide “support for the work carried out on the national and regional level by human rights defenders, recognize their valuable contribution to the promotion, respect, and protection of human rights and fundamental freedoms, [and condemn those] acts which directly or indirectly impede or obstruct [their] work in the Americas.”⁷⁸

The Inter American Court has emphasized that work undertaken by human rights defenders places them in a special situation of vulnerability,⁷⁹ against which States like the

⁷² Migrant Justice, et al. v. Kirstjen Nielsen, Secretary of the U.S. Department of Homeland Security (DHS), et al., United States District Court, District of Vermont.

⁷³ June 22, 2018: Highlights of the steps we've taken to Reaffirm Washington's Commitment to Tolerance, Diversity, and Inclusiveness. Available at <https://www.dol.wa.gov/about/eo-2017-01/updates/06-22-2018-highlights.html>

⁷⁴ Interview with Enrique Kike Balcazar, taken by University of Washington School of Law International Human Rights Clinic.

⁷⁵ Report to the HRC on human rights defenders who advocate for the rights of people on the move – Human Rights Council, Thirty-seventh session, 26 February–23 March 2018, Agenda item 3. Available at <https://www.protecting-defenders.org/en/report/report-hrc-human-rights-defenders-who-advocate-rights-people-move> [emphasis added]

⁷⁶ *Id.*

⁷⁷ See also, I/A Court H.R., Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Serie C No. 269. Available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_269_ing.pdf

⁷⁸ I/A Court H.R., Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192. Available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_192_ing.pdf

⁷⁹ I/A Court H.R., Case of Castillo González, et al. v. Venezuela. Merits. Judgment of November 27, 2012. Series C No. 256. Available at http://www.worldcourts.com/iacthr/eng/decisions/2012.11.27_Gonzalez_v_Venezuela.pdf

United States have obligation to provide the necessary means for human rights defenders to conduct their activities freely without threats.⁸⁰

The US Government is supporting this aspect internationally, but disregarding it domestically.

*LACK OF JUDICIAL PROTECTION FOR IMMIGRANT RIGHTS DEFENDERS IN DOMESTIC COURTS*⁸¹

International human rights law clearly protects the right to freedom of speech of everyone without any discriminatory distinction and with the right not to be arbitrarily detained. But undocumented immigrant rights defenders in the United States are not entitled to the same level of constitutional and judicial protections, because of their immigration status. They find severe impediments for redress.

First, immigrants facing deportation, even longtime residents with or without lawful status, are not provided with the right to counsel in deportation cases because they are not criminal offenses. Thus the first hurdle many face to protecting their First Amendment rights and liberty is the lack of legal representation to present such claims. Even for those who are able to press their claims, federal court litigation is generally required.

Second, U.S. immigration courts, which are administrative (not judicial) tribunals, do not generally recognize or adjudicate constitutional claims arising under the First Amendment. They are thus unlikely to provide any protection for immigrants raising freedom of speech claims. Sometimes the denial of the motions to terminate proceedings based on constitutional rights is concerning, as they seem to provide no limits for ICE to investigate human rights defenders⁸².

Third, efforts to address the motivation to target leaders because of their speech and political advocacy on behalf of immigrants' rights and social justice in District Courts were not successful so far, finding that the Courts lack subject matter jurisdiction⁸³, and the appeal is pending before the US Courts of Appeal for the Second Circuit.

Fourth, in addition to the hurdles that immigrants may face in bringing federal court litigation generally, there are other obstacles that make it difficult to press such claims. On one hand, the U.S. government takes the position that:

- a. immigrants like Mr. Ragbir, Mr. Montrevil and Maru Mora Villalpando, to name a few, have no First Amendment rights because they have valid deportation orders in the eyes of the law, and

⁸⁰ I/A Court H.R., *Case of Lysias Fleury et al. v. Haiti*. Merits and Reparations. Judgment of November 23, 2011. Series C No. 236. Available at http://www.worldcourts.com/iacthr/eng/decisions/2011.11.23_Fleury_v_Haiti.pdf

⁸¹ Prepared by Alina Dass, NYU Director of the Immigration Clinic.

⁸² Decision from Immigration Judge Parchert denying Maru Mora Villalpando a motion to terminate on political speech grounds. Available [here](http://www.uscis.gov/immigration-judges/decisions).

See, Ravidath Lawrence Ragbir, et al. v. Thomas D. Homan, et al. Available at <https://dlbjbjzgnk95t.cloudfront.net/1011000/1011176/ravi-ragbir-and-immigrant-groups-lawsuit-against.pdf> *Ragbir v. Sessions*, No. 18-cv-236 (KBF), Opinion & Order, n.1 (S.D.N.Y. Jan. 29, 2018), *Ragbir v. Sessions*, No. 18-cv-236 (KBF). Available at <http://www.nysd.uscourts.gov/cases/show.php?db=special&id=601>

⁸³ Ravidath Lawrence Ragbir, et al. v. Thomas D. Homan, et al., May 23, 2018 decision. Available at <https://www.courtlistener.com/recap/gov.uscourts.nysd.488209/gov.uscourts.nysd.488209.83.0.pdf>, and also at http://www.newsanctuarynyc.org/wp-content/uploads/2018/01/0327_001.pdf

- b. federal courts have no power to review the U.S. government's actions to deport them in any event.

Finally, the U.S. Supreme Court has established precedent that has made raising these claims more difficult. In *Reno v. AADC*, the Supreme Court held that that U.S. courts generally do not have the power to review “selective enforcement” claims, at least in the context of some deportation cases where no constitutional rights are implicated (in *AADC*, the individuals were targeted based on their involvement with entities the U.S. deemed to be “terrorist” organizations, and the Supreme Court declined to find any First Amendment violation). The U.S. government argues that *Reno v. AADC* applies to the claims that human rights defenders are raising now, despite the very different context.

International law clashes with the U.S. government's position in domestic courts. Immigrants do have the right to be free from government retaliation, including deportation, for their political speech, and federal courts should enforce the First Amendment of the U.S. Constitution to prohibit the U.S. government from attempting to silence its critics by deporting them. Making this distinction based on immigration status is plain discrimination. The Special Rapporteur on the Situation of Human Rights Defenders has recently recommended that States must condemn an act of intimidation or reprisals against human rights defenders and that their rights should be protected regardless of their immigration status.⁸⁴ The IACHR has also established that States like the United States may be held internationally responsible for failing to protect the human rights of defenders in situations, where State agents improperly use criminal law or other limitations to hamper legitimate activities of human rights defenders. It also advised that they should not use the punitive power of the State to harass human rights defenders.⁸⁵ The Inter-American Court held that a human rights defender carries out the promotion and protection of human rights. “State[s] shall take all necessary measures to ensure the protection by competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in this Declaration,”⁸⁶ and in the Resolutions 1818/01 of May 17, 2001 and 1842/02 of the General Assembly of the Organization of American States on Human Rights Defenders in the Americas.⁸⁷

Furthermore, the Government's position in domestic courts clashes with the position of the Bureau of Democracy, Human Rights and Labor of the US Department of State stating that respect and protect freedoms recognized in the Constitution, the bill of rights and the Amendments, became recognized and protected in international human rights instruments, that the US played a key role on drafting, and supporting the UN Declaration on Human Rights

⁸⁴ Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/37/51 (January 16, 2018), para 66. Available at <https://www.protecting-defenders.org/sites/all/libraries/pdf.js/web/viewer.html?file=https%3A%2F%2Fwww.protecting-defenders.org%2Fsites%2Fprotecting-defenders.org%2Ffiles%2FG1800851.pdf#page=2>

⁸⁵ *Supra* note 38.

⁸⁶ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 12(2).

⁸⁷ General Assembly of the AOS., Res. 1818/01, May 17, 2001; General Assembly of the AOS, Res. 1842/02, June 4, 2002.

Defenders⁸⁸. The US international position is that of protection for individuals who non-violently advocate for the promotion and protection of universally recognized human rights and fundamental freedoms, without distinctions. The US government recognizes that, “*they can come from any part of the world, and from any social class or background*” (emphasis added)⁸⁹. Moreover, as strategies to protect and support human rights defenders, the US is eager to work with international organizations, such as the IACHR to address “*specific threats to human rights defenders and discourage laws that restrict the freedoms of assembly, association or expression or otherwise constrain the operating space for human rights defenders*”.

In conclusion, the combination of the asymmetrical power in deportation cases, the U.S. government’s position in domestic courts that judicial review is limited and First Amendment rights are inapplicable, and negative Supreme Court precedent make it difficult to secure federal court intervention for human rights defenders of migrants.

We respectfully ask the US Government to drop the argument that freedom of speech doesn’t apply to undocumented immigrants when seeking national courts protections, let the courts decide on immigrants’ defenders freedom of speech claims, and adopt a coherent internal policy protecting human rights defenders of migrants from unlawful surveillance and investigation by ICE.

LACK OF TRANSPARENCY AND IMPACT IN ACCESS TO INFORMATION FROM IMMIGRATION ENFORCEMENT OFFICES⁹⁰

International law protects the right to access information to hold governments accountable and recognizes the principle of maximum disclosure and transparency in public administration, to enable all persons subject to its jurisdiction to exercise the democratic control of those actions, and so that they can question, investigate and consider whether public functions are being performed adequately⁹¹. All agencies have the obligation to provide access to information.

The Freedom of Information Act in the United States is an important protection. Unfortunately undocumented immigrants right to access information are not protected properly in the US. ICE and USCIS are not complying with the principle of maximum disclosure by having key information available to the public, without the need to file a FOIA request. Furthermore, they are constantly ignoring information requests, challenging the obligation to release information, and ignoring Court orders to release information.

First, information about specific immigration procedures against leaders, and about the practice of information sharing about them between government agencies is inaccessible. Documents are often denied and intentions hidden under immigration law enforcement. For example, when one of the most prominent immigrant rights leaders in the

⁸⁸ U.S. Department of State, U.S. Support for Human Rights Defenders. Fact Sheet. Bureau of Democracy, Human Rights, and Labor (January 20, 2017). Available at <https://www.state.gov/j/drl/rls/fs/2017/266903.htm>

⁸⁹ *Id.*

⁹⁰ UW HRC Report. Migrant Justice et al. v. Kirstjen Nielsen, Secretary of the U.S. Department of Homeland Security (DHS) et al., United States District Court, District of Vermont; Maria Mora Villalpando v. United States Immigration and Customs Enforcement, et al. Case No. C18-0655JLR. Order denying motion to strike.

⁹¹ See I/A Court H.R., Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, pp. 6-15.

United States was put in deportation proceedings, ICE denied access to her and her lawyer to the immigration file⁹². Furthermore it denied access to the document justifying the initiation of deportation proceedings, where the motivation could be analyzed. Moreover, the immigration court affirmed: “the request for her own A-files and other government records relating to her immigration history, the Court finds that the respondent has not demonstrated that such records are essential to an adjudication in her case”, and rejected any all request to produce evidence⁹³.

To access the document, after several direct requests and intervention from State Senators, the University of Washington's Center for Human Rights filed a series of Freedom of Information Act. When finally released, the document explicitly recognized that the immigration leader “has become a public figure” and “should be noted that she has extensive involvement with anti-Ice protests and Latino advocacy programs”⁹⁴. It confirmed the fear that she was being targeted based on her work at the NWDC and support for the rights of Immigrants detained by ICE.⁹⁵ ICE equally stated that she has no criminal records and ignored that only in a few months her US citizen daughter would turn 21 and could file a petition of adjustment of status on her behalf.⁹⁶ There was no need to hurry any deportation proceedings and no reason to impede access to key documents to build her defense.

Second, there is lack accountability for targeting leaders by ignoring requests to access information that could prove a practice of targeting advocates by immigration enforcement agencies at a larger scale. ICE and USCIS ignored requests under FOIA, intended to study and demonstrate the trend of targeting immigrant rights leaders. In February 2018 we requested public documents that could show ICE biases when initiating removal proceedings against activists. The request went unaddressed and on May 2018 and we filed a lawsuit against ICE in the District Court of Washington for violating the Freedom of Information Act (FOIA) by failing to respond to a request for public documents that allegedly show the organization’s biases when initiating the removal proceedings. The FOIA request also asked for records that showed enforcement actions against other activists involved in anti-ICE activities or political organizing. ICE’s response to the lawsuit was an unusual Motion to strike the request, which was denied on July 2018, Judge James L. Robart from the Ninth Circuit Western District of Washington, denied ICE the motion to strike and recognized plainly that motions to strike are “often used as a delaying tactic”. The Judge decided that “exemptions 6 and 7 (c) require a “balancing of the individual’s privacy interest, against the public interest in disclosure”, and the Court must consider “the nature of the requested document[s] and the importance of open[ing] agency action to the light of public scrutiny”. The Judge emphasized that the information Maru Mora requested “seeks to shed lights on the illegality of the Defendant’s actions against her and other immigrant rights activists” and is a matter of “grave public interest” and is key to “provide necessary context for the heightened public interest

⁹²University of Washington Center for Human Rights, *Secret Police: Access to information about immigration enforcement in the contemporary United States*, (December 5, 2018), Available at <https://jsis.washington.edu/humanrights/2018/12/05/secret-police>.

⁹³ Decision of immigration judge on motion to terminate, motion to subpoenas and motion for evidentiary hearing. May 11, 2018.

⁹⁴ I-213 on Maru Mora Villalpando deportation proceedings

⁹⁵ *Id.*

⁹⁶ *Id.*

concerns involving potential government wrongdoing⁹⁷. But until now, even with a Court order such as this one, ICE has not disclosed the information about the targeting of other leaders.

On the other hand, trying to find out how ICE accessed private information about human rights leaders when state agencies are prohibited to collaborate with ICE has been another major challenge. In January 2018, the University of Washington Center for Human Rights requested copies of emails by three different ICE agents to the Washington state Department of Licensing seeking Washingtonians' personal information. On May 25, ICE responded with *some* of the emails requested, but withholding 4 documents in full, asserting FOIA's B(5) exemption. The B(5) exemption is intended to protect the deliberative process within government agencies by allowing employees to discuss policies candidly behind the scenes. But it is clearly wrong to apply it to this case because these emails were exchanged with Washington DOL, with whom ICE employees have no reason to be formulating immigration policy. Furthermore, the Center for Human Rights cross-referenced these emails against emails given by DOL under Washington's public records law, and found that the email requesting Maru Mora's personal information is among those being withheld. We have examined the DOL's response to ICE's email about her, which makes it clear the ICE email was not deliberating policy; most likely, it contains information that ICE wants to conceal from the public because it constitutes evidence of their illegal profiling of a human rights defender based on her Constitutionally-protected defense of civil rights.⁹⁸ The Center appealed this determination, and Senator Cantwell's office has raised the matter with ICE, thus far to no appreciable effect.

Third, there is a dangerous trend from immigration enforcement agencies to consider themselves exempted from disclosure. Over the course of the past two years, the University of Washington Center for Human Rights have filed over 50 Freedom of Information Act requests of federal agencies involved in immigration enforcement (predominantly ICE and CBP), and over 100 requests of state and local agencies under Washington state's Public Records Act. They have also obtained and analyzed records from approximately 200 district court cases of prosecution under federal immigration charges in our state. For example, the Center found that the review of these records, coupled with the work of our partner organizations in affected communities, suggests that ICE/CBP engage in illegal profiling and punitive action against residents of our state, on the basis of **ethnic identity** and on the basis of **Constitutionally protected activity in defense of civil right**.⁹⁹

From these records, the Center has been able to draw important lessons about the human rights consequences of federal immigration enforcement in our state and today we are sharing the report *Secret Police: Access to information about immigration enforcement in the contemporary United States*.¹⁰⁰

⁹⁷ Maria Mora Villalpando v. United States Immigration and Customs Enforcement, et al. Case No. C18-0655JLR. Order denying motion to strike.

⁹⁸ University of Washington Center for Human Rights, *Secret Police: Access to information about immigration enforcement in the contemporary United States*, (December 5, 2018), Available at <https://jsis.washington.edu/humanrights/2018/12/05/secret-police>.

⁹⁹ Information provided by Angelina Godoy, Director of the University of Washington Center for Human Rights.

¹⁰⁰ University of Washington Center for Human Rights, *Secret Police: Access to information about immigration enforcement in the contemporary United States*, (December 5, 2018), Available at <https://jsis.washington.edu/humanrights/2018/12/05/secret-police>.

QUESTIONS TO THE UNITED STATES GOVERNMENT

1. Has the U.S. government, since 2016, had any operations, policy, or practice that authorized the targeting of immigrants for enforcement actions based on their media appearances, writings, or organizing?
2. If the U.S. had done this, how the information about immigrant human rights activists was collected? What tools are usually utilized for these purposes?
3. Has the U.S. government, since 2016, had any operations, policy, or practice that authorized the targeting of immigrants for enforcement actions based on their association with or advocacy for “sanctuary”, amnesty, workers’ rights, or other immigration reforms?
4. Has the U.S. government, since 2016, had any operations, policy, or practice that authorized the targeting of immigrants for enforcements action based on their criticism or protesting of ICE, CBP, DHS, President Trump, detention centers, or immigration policies in general?
5. Does the U.S. government believe that it is lawful to target immigrants for deportation because they speak out against deportation or detention policies?
6. Has the U.S. government launched any internal investigations of allegations that human rights defenders have raised about violations of their freedom of speech by various field offices or specific immigration officials?
7. Does the U.S. government have any policies in place to evaluate the effectiveness of ICE’s surveillance methods; their immediate and future costs, the effect this may have on civil liberties and privacy of citizens and noncitizens?
8. Does the U.S government intend to obstruct even more access to information about immigrants in deportations proceedings or in detention?
9. Does the U.S. government has any policy or intention to modify existing rules on access to information?

RECOMMENDATIONS TO THE U.S. GOVERNMENT

1. Stop immediately the discriminatory practice of targeting against human rights defenders under the misuse of immigration law enforcement, based on any grounds, such as race, colour, sex, language, religion, political or other opinion, **national or social origin**, property, **birth or other status**, and to desist, in this context, from any discriminatory measures against them, including **intimidation**, **profiling**, confiscation of assets, suspension of activities and exclusion from national consultative processes
2. Disclose operations, policies, or practices that authorized the surveillance and targeting of immigrants for enforcement actions based on their media appearances, writings, or organizing, on their association with or advocacy for “sanctuary”, amnesty, workers’ rights, or other immigration reforms, on their criticism or protesting of ICE, CBP, DHS, President Trump, detention centers, or immigration policies generally

3. Apply the strategies for protecting and supporting human rights defenders elaborated by the Department of State to defenders of migrants:
 - a. Designate a human rights officer whose portfolio includes the cases submitted here
 - b. work with the UN and IACHR addressing the retaliation immigrants' rights defenders are facing
 - c. change the laws, policies and practices that restrict freedom of expression and constraint the operating space for immigrants' rights defenders, and specifically drop the arguments that undocumented immigrants are not entitled to first amendment protections.
 - d. protect immigrant rights defenders through emergency technical and financial assistance, specially for those without legal representation facing deportation and retaliation in detention.
 - e. permit Saja Tunkara and Jean Montreuil to return to the United States
 - f. visit immigrants rights defenders in detention centers
4. Conduct and independent investigation of the sudden and unfair deportation of Jean Montreuil, Saja Tunkara and the death of hunger striker Amar Merganzana at the Tacoma NWDC.
5. Establish a mechanism to reunite them with their families and communities in the United States.

RECOMMENDATIONS TO THE COMMISSION

1. Ask the US government to prevent any consequences for testifying before the Inter-American Commission on Human Rights and in case of retaliation to any of the participants or the organizations presenting grant immediately precautionary measures. Specifically, in the case of Alejandra Pablos, a person living in the US her whole life, grant precautionary measures in case deportation is order.
2. Write a follow-up letter and convey a follow-up meeting on the issue with government participation.
3. Include the documentation on human rights defenders of migrants in the Annual Report
4. To the Special Rapporteur on Freedom of Expression:
 - a. Study and assess the obstacles for access to information from immigration enforcement agencies, and request the government to comply with the principle of maximum disclosure;
 - b. Study and assess the obligations of companies like GEO and Core Civic to comply with FOIA and recommend the United States to include corporations running detention centers to be subject to information requests.

