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Who's Next? United States' Removal of Rights and Protections for Salvadoran Immigrants

February 14, 2018
by Andrew Johnson

In early January 2018, President Trump's administration announced it was ending the [temporary protected status](#) (TPS) for Salvadoran immigrants. Former President George Bush Sr. began the [TPS program](#) in 1990. It was designed for nationals of a different country to [stay temporarily and legally](#) in the United States because of unsafe conditions in the nationals' home country. The [unsafe circumstances](#) that prevented foreign nationals from returning home ranged from environmental disasters to armed conflicts.

In 2001, Salvadorans were given temporary protected status after two devastating earthquakes [killed over a thousand people in El Salvador](#) and destroyed much of the country's infrastructure. President Trump's administration has [justified](#) ending TPS for Salvadoran immigrants because El Salvador has had enough time to recover and rebuild its infrastructure since 2001. The administration is giving [Salvadoran immigrants](#) until September of 2019 to uproot and abandon the lives they have built here in the United States for the past seventeen years.

To say that it is safe for Salvadorans to return to their home country and that El Salvador is ready to receive 200,000 people is a fiction. TPS has been extended to Salvadorans over the last seventeen years on numerous occasions, most recently in 2016, due to [drought, gang violence, and widespread poverty](#).

According to a report conducted by the World Bank in 2016, El Salvador is the [slowest growing economy](#) in Central America and forty-one percent of households live below the poverty line. Although gang violence continues to threaten economic and social development in El Salvador, the country has reduced inequality and experienced some [growth in areas like the health sector](#). Nonetheless, burdening the country by forcing them to take in 200,000 people displaced from the United States would [seriously hinder](#) what little economic growth the country is experiencing.

El Salvador is clearly not capable nor willing to receive 200,000 people, evidenced by the fact that El Salvador's president has urged the United States [to renew TPS](#) for Salvadorans. Moreover, the president of El Salvador has attempted to make a deal with the government of Qatar, which would allow Salvadorans coming from the United States [to work as migrants in Qatar](#). Qatar is notorious for [human rights violations](#) to migrant workers, and the willingness to subject Salvadorans to such human rights abuses shows the Salvadoran government's desperation and an inability to receive so many people.

The principle of non-refoulement, expressed in Article 33(1) of the [1951 UN Convention on the Status of Refugees](#), states "no contracting State shall expel or return a refugee in any manner to the frontiers of territories where his life or freedom would be threatened on account of his race,

religion, nationality, membership of a particular social group or political opinion.” Under current international law, [a refugee](#) is any person fleeing a country on fear of persecution based on race, religion, nationality, membership of a social group, or political opinion. Salvadorans [would not likely qualify for refugee status](#) because they do not face a specific form of persecution if returned to El Salvador.

According to a [UN Human Rights Council advisory opinion](#), however, non-refoulement does not only apply to recognized refugees but to any person who has not had their status formally declared or any person seeking asylum. Salvadorans should be considered as asylum-seekers in the United States because of the unsafe conditions and lack of opportunity in their home country. If they are considered asylum-seekers, [it is illegal](#) under Article 33(1) of the 1951 UN Convention to return them to El Salvador.

To deport Salvadorans, who have lived legally in the United States since 2001 could also be a violation of the [International Covenant on Civil and Political Rights](#) (ICCPR). Article 6(1) of the ICCPR states that every human has the inherent right to life. According to the [UN Human Rights Council advisory opinion](#), Article 6 is also interpreted to mean that a State is under the obligation not to “extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm.”

To force Salvadorans immigrants to uproot their lives and return to a country that is plagued with poverty and violence is a serious deprivation of life. The United States should, at the minimum, renew TPS for Salvadoran immigrants until conditions are safe to ensure the preservation of Salvadoran’s human rights. Ultimately, however, the United States should seek to implement a long-term solution to give Salvadorans, who have built a life in the United States, a permanent home in the United States.

Fire and Fury and Fake News: A Demand for Stricter Libel Laws Against a Free Press

February 20, 2018
by Ridhi Shetty

Sparking mixed reactions regarding its veracity, Michael Wolff's book *Fire and Fury* generated enough [demand to prompt an earlier release](#) date on January 5, 2018. Much to the President's chagrin, the book includes [allegations that depict President Donald Trump](#), his family, and his administration as incompetent and divided. While the book's publishing company, Henry Holt & Co., claims that the book contributes to the current national discourse, the White House's response [denied Wolff's credibility](#) as an author and columnist.

The White House has since issued a cease-and-desist letter to Henry Holt to [prevent further publication](#) and dissemination, and to Steve Bannon, President Trump's former Chief Strategist who is quoted in the book, to [preclude further violation of a confidentiality agreement](#). President Trump has now added *Fire and Fury* to his [ongoing campaign against "fake news"](#) and renewed calls for changes to current libel laws that he argues are not doing enough to protect victims of libel. If President Trump decides to follow up the cease-and-desist letters with legal action, his legal team must overcome [court precedence that](#) refutes potential legal action against the book.

The United States Supreme Court found in *New York Times v. Sullivan* that the First and Fourteenth Amendments do not allow for an award of damages for false statements made about official conduct unless there is actual malice or a reckless disregard for whether the information being shared is false. As the Court asserted, libel must be measured within the parameters of the First Amendment's protections, and a presumption of malice cannot be created to circumvent the United States Constitution. The Supreme Court has further defined [reckless disregard for the truth](#) as a defendant having serious doubts about the truthfulness of the statements in the defendant's publication.

President Trump's appointment to the Supreme Court, Justice Neil M. Gorsuch, [recognizes the authority and importance](#) of *New York Times v. Sullivan* decision, which requires a higher standard of proof of actual malice and guarantees special protection for the media in coverage of public officials. Justice Gorsuch has also noted in a [Tenth Circuit opinion](#) that libel law seeks to protect an individual's honestly earned positive reputation, which raises the question of whether the publication of *Fire and Fury* caused any quantifiable damage to President Trump's reputation. This standard may be what President Trump seeks to change about current libel laws.

Over the course of his presidential campaign and the first year of his term, President Trump has appeared to [apply the First Amendment selectively](#), citing religious freedom as justification for denying medical and civil services while criticizing peaceful expression of views that oppose his. Unlike his subjective interpretation of the First Amendment, Article 19 of the [Universal Declaration of Human Rights](#) recognizes that all individuals have the right to freedom of expression, which includes the right to seek and disseminate information and ideas through any channel. This right is affirmed by Article 19 of the [International Covenant on Civil and Political](#)

[Rights](#), which further specifies that the media through which this right may be exercised includes writing, print, and art.

Article 19 of the International Covenant on Civil and Political Rights also states, however, that this right carries an obligation as created by law to respect the reputations of others. As the New York Times explained in [response to President Trump's demand for a retraction](#) following reported sexual misconduct allegations, President Trump's own past comments regarding his views, conduct, and relationships have compromised any positive reputation he retains. Thus, there has yet to be any demonstrable tarnishment to President Trump's reputation caused by Wolff's writings.

Prior to the 2016 presidential election, doubts over the effect of Justice Gorsuch's appointment to the Supreme Court caused speculation about [potential stricter libel laws](#) under President Trump's administration. In 1988, the [relatively conservative Supreme Court](#) found that public officials could not recover damages arising from publications that depict officials in a negative light unless they could prove that the statements were false and made with actual malice. Thus, neither Justice Gorsuch's conservative leanings nor his expressed stance on libel laws indicate that his appointment to the Supreme Court will be enough to change libel laws. President Trump will need far more than the current debate over the accuracy of *Fire and Fury* to effect the sweeping changes that he has been threatening to make since he entered the political sphere.

Current Immigration Enforcement Focus Violates Due Process Rights

February 26, 2018

by Tamara Castro Márquez

Recent [political discourse](#) in the United States has framed immigration as a criminal enforcement issue, [likening immigrants to criminals](#). When it comes to immigration enforcement, there has been a recent [focus on using gang databases to target noncitizens for deportation](#). Law enforcement agencies label an individual as having gang ties and place that individual in a gang database for things as simply as having [gang tattoos, frequenting an area notorious for gangs and wearing gang apparel](#). This designation of gang affiliations does not necessarily require a criminal conviction or other judicial process. Further persecution based on that designation is a violation of the individual's due process rights under international human rights law.

Under the [American Declaration of the Rights and Duties of Man](#) (“the American Declaration”) and the [International Covenant on Civil and Political Rights](#) (“ICCPR”), the United States has a responsibility to protect individuals' due process rights. Article XXVI of the American Declaration states “every person accused of an offense has the right to be given an impartial and public hearing ... and not to receive cruel, infamous or punishment.” Article 9 of the ICCPR states, “Anyone arrested or detained on a criminal charge shall be promptly before a judge ... and shall be entitled to trial within a reasonable time or to release.” Furthermore, under Article 2 of the ICCPR, the United States is obligated to ensure the rights of all citizens within its territories without distinction of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Finally, under Article 14, paragraph 2, “everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to the law.” The United States is a signatory of the American Declaration, having signed it in 1948. The United States ratified the ICCPR in 1992. As such, the United States is bound to the obligations outlined in both the American Declaration and the ICCPR.

The practice by immigration enforcement officers to use gang databases as targeting tools for deportations of noncitizens violates the individuals' rights under the both American Declaration and the ICCPR. By using the gang databases as a justification to commence removal proceedings, the United States is presuming that those individuals are guilty of being gang members and of committing gang violence. Whether the noncitizen is in lawful status, under the ICCPR, all individuals in the United States have a right to due process rights to argue against that labeling. Current targeting of non-citizens in gang databases presumes that those noncitizens have gang affiliations. For non-citizens, inclusion in gang databases has meant [unwarranted searches and seizures, detention, exorbitant bails, and deportation](#). Under the [Immigration and Nationality Act](#) (“INA”), certain crimes and criminal activity, as stated in Sections 212 and 237, are grounds for removal of a noncitizen. The presumption of gang affiliation based on inclusion in a gang database has meant that in [petitions to U.S. Citizenship and Immigration Services and in removal proceedings](#) individuals are required to provide much more evidence to show that he or she does not, in fact, have gang affiliations. Essentially the burden has been inverted for noncitizens, disregarding the presumption of innocence required by Article 14 of the ICCPR.

In the circumstances of removal proceedings, the deportations are taking the place of punishment for the accusation of the gang affiliation. Because removal proceedings have different burdens of proof than a criminal case, the government needs very little evidence to prove the gang affiliation. Currently, inclusion in a gang database is itself being used as evidence of the gang affiliation. Usually gang activity is a criminal charge, and when charged for gang related crimes, the burden of proof is that of beyond a reasonable doubt and the defendant has the right to appointed legal representation. In the immigration setting, the burden of proof is usually that of clear and convincing evidence and the respondent does not have the right to appointed legal representation. For these reasons, respondents in these proceedings are denied their due process rights.

Furthermore, there have already been [instances of errors or intentional overreaches](#), such as inclusion of individuals who would have been a year old at the time of inclusion, when entering an individual in a gang database. In January, a Chicago resident was [finally released from detention](#) following a lawsuit that alleged that ICE relied on false reports and that Chicago's over inclusive gang database incorrectly identified the individual as having gang relations. The probability of including innocent people in gang databases, coupled with the [stated motivation of these operations](#), shows that these practices are discriminatory in nature. Where the gang databases are being used as a tool by the United States to justify immigrants' punishment through deportation, immigrants are owed their due process rights.

President Trump Opens Protected Native American Land to Mining, Lawsuits Pending

February 28, 2018
by Catherine Perrone

In [1906](#), President Roosevelt signed the Antiquities Act, which created the first legal protections of American cultural and natural resources. In December [2016](#), President Obama, with the authority granted to him under the Antiquities Act, declared Bears Ears a National Monument. Proclamation 9558 conserved over 100,000 Native American cultural and archeological sites within Bears Ears, a 1.35-million-acre Monument in Utah, which encompasses various tribes' sacred land. About a [year](#) after President Obama protected Bears Ears National Monument, the Trump Administration announced that it would seek to shrink the size of both Bears Ears and Grand Staircase-Escalante, another national monument in Utah. [Just recently](#), the land formerly part of Bears Ears and Grand Staircase-Escalante became open to mining claims.

Following President Trump's announcement in December, five Native American tribes and nations [filed suit](#) in the US District Court for DC against the President and other members of the Executive, including Secretary of the Interior Ryan Zinke and Secretary of Agriculture Sonny Perdue. Under the Antiquities Act President Obama protected these tribes' land by creating the Bears Ears and Grand Staircase-Escalante National Monuments. [Four other lawsuits](#) have been filed by different groups. The Complaint alleges that President Trump is abusing his power under the Antiquities Act. The Complaint also alleges that the power to rescind or modify national monuments is reserved to Congress, through legislation. Removing protections from such culturally and naturally significant land not only violates the [Antiquities Act](#), but these actions also conflict with the [UN Declaration on the Rights of Indigenous Peoples](#).

President Trump and many Republican officials in Utah have thought that previous presidents, like President Obama, [abused their authority](#) by limiting industrial development and similar activity in the region. Some people highlight that the Antiquities Act requires presidents to protect important land while also "using the [smallest](#) amount of land possible." Native American land can be protected through other ways and using other federal legislation, but Bears Ears and Grand Staircase-Escalante were protected by the Antiquities Act. Additionally, the Antiquities Act can protect non-Native American land. Regardless, the coalition of tribes cite [federal property law](#) from the 1970s, [specifically](#) the Federal Land Policy and Management Act of 1976, that only allows Congress to restrict or change national monument status.

The United States has supported the UN Declaration on the Rights of Indigenous Peoples and President Trump's behavior and decisions regarding Native American land conflict directly with the purpose of the Declaration. Article 26, paragraph 3, explicitly says that States shall legally recognize and protect indigenous lands, territories, and resources, and that "[such] recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned." Article 29, paragraph 1, recognizes that "Indigenous peoples have

the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.” Trump’s decision here happens to violate both the Antiquities Act and the UN Declaration.

President Trump acted without authority when he reduced the size of [Bears Ears by 85% and Grand Staircase-Escalante by 46%](#). Trump’s actions violate the purpose and go outside the scope of the Antiquities Act, and through the Federal Land Policy and Management Act of 1976, only the Congress has the authority to reduce the size or change National Monument status. While the Declaration on the Rights of Indigenous Peoples is not legally binding, President Trump’s actions undermine serious land protections that the international community has accepted as essential to protecting Indigenous human rights. President Trump should repeal the Trump Proclamation and restore Bears Ears and Grand Staircase-Escalante.

Most registered voters in Utah appear to support the President’s move, with [51% surveyed](#) saying that “they support Trump’s proclamation to toss out the larger Bears Ears monument in favor of two smaller designations.” The Trump administration is seeking to [transfer the suits](#) from Federal District court in DC to Federal District Court in Utah, which is likely because the administration seeks a more sympathetic jury in Utah, where more people support his decision. The courts have the power to prevent enforcement of the Proclamation. The courts have to uphold the law of the land and should find in favor of the Native American tribes and other groups who have sued. Using the Antiquities Act to reduce the size of two such culturally significant places sets a dangerous precedent that would lead to even more abuse of an [already-marginalized](#) group of people in America.

It took years for the Bears Ears coalition to lobby President Obama to declare their sacred land a National Monument. To walk back on that decision not only violates domestic law but goes against international legal norms and will eventually lead to further abuses of authority against Native Americans.

Not a First World Problem: The Staggering Rates of Child Mortality in the United States

March 21, 2018

by Andrew Johnson

The United States government is failing its children. According to research published in the journal, Health Affairs, children in the United States are [seventy times more likely to die](#) before adulthood than children in other developed countries.

In a survey of twenty developed nations, including France, Canada, and the United Kingdom, [the United States had the most childhood deaths](#), and it has held this title consistently since the 1990s. Health Affairs' study was published only a few months after the United States government almost allowed the Children's Health Insurance Program (CHIP) to expire, which [provides nine million low-income children with health care](#). After 114 days without funding, [Congress extended the program](#) on January 22, 2018 for six years. While CHIP is a vital resource for low-income children, it only applies to twelve percent of the [population of children in the United States](#). This does not solve the problem.

The research conducted by [Health Affairs](#) attributes the high childhood death rate to a fragmented health care system and gun violence. Health Affairs found that gun violence [contributed significantly](#) to child death rates in the United States. [Teenagers are far more likely to die from gun violence](#) than those in similar developed countries. While child deaths have decreased overall since the 1960s, the evidence clearly shows that a lack of funding for children's health insurance and the absence of any meaningful efforts to curb gun violence has caused the United States to [lag far behind its peers](#) in children's health.

The same day that CHIP expired, the [Maternal, Infant, and Early Childhood Home Visiting program](#) expired, and unlike CHIP, there was no extension its budget. The program provided [low-income mothers and families](#) resources and skills to raise their children. The program touted [several achievements](#), such as, improving maternal and newborn health, reducing crime and domestic violence, and reducing child abuse and neglect.

According to Article 24 of the [Convention on the Rights of the Child \(CRC\)](#), every child has the right to the highest attainable standard of health. Moreover, [the Convention obliges countries](#) to ensure the provision of necessary medical assistance and health care. Article 24 also requires [countries take all appropriate measures](#) to achieve full implementation of the child's right to health.

[Children's poverty rates](#) have risen substantially in the United States since the 1980s. Defunding and delaying the implementation of programs that provide health care and assistance to low-income children significantly hinder the United States' compliance with the provisions of the CRC. The fact that the United States has the most child deaths compared to its peer countries shows that the United States has not taken all appropriate measures to ensure its children's right to health.

Healthcare is only part of the problem. [Gun violence](#) in the United States has also contributed to child death rate. Research shows gun ownership rates have a significantly positive correlation to homicide rates, and the citizens of the United States have an arsenal of almost [half of the world's civilian-owned guns](#). Congress has refused to enact any form of meaningful gun control reform, which is likely one explanation for the [consistent gun violence](#).

Children and teenagers are [eighty-two times more likely to die](#) from gun violence than in similarly developed countries. Article 6, Section 1 of the CRC states unequivocally that every child has the [inherent right to life](#). Health Affairs research estimates that since 1960, Congress' lack of action in introducing meaningful legislation on health care and gun reform has accounted for [600,000 child deaths](#). The government's inability to implement health care and gun control reform is violating United States' children's right to life and right to health.

Additionally, Article 6, Section 2 states that governments are obliged to ensure to the maximum extent possible, the [survival and development of the child](#). Congress has refused to fund the Center for Disease Control to investigate gun violence in the United States. The fact that the United States will [not even allow research](#) on the issue that is affecting its children displays non-compliance with Article 6.

The United States is the only country in the United Nations that has not ratified the CRC, which means they are [not legally bound by it](#). However, it has signed [the CRC](#) and under Article 18 of the [Vienna Convention of the Law of Treaties](#), the United States is required not to defeat the object and purpose of the treaty. By defunding programs that provide necessary assistance to low-income children and refusing to implement responsible gun control reform, the United States is defeating the purpose of the CRC by not taking into account their rights.

Lee Boyd Malvo and the Exception to No Juvenile Life-Without-Parole Sentencing

March 31, 2018
by Heidi Smucker

Lee Boyd Malvo, one of the convicted gunmen from the 2002 Beltway sniper attacks, is [appealing his sentence](#) of life without the possibility of parole to the Fourth Circuit Court of Appeals. Malvo was just seventeen when he served as John Allen Muhammad's [accomplice during the attacks](#) that stretched over three weeks and paralyzed the Washington D.C. metropolitan area. The pair selected and shot their victims at random from the trunk of a 1990 Chevrolet Caprice, killing ten people and critically injuring three others.

Malvo received his [first sentences](#) of life without the possibility of parole when he was convicted of capital murder for the death of Linda Franklin, an FBI analyst. He later agreed to plea deals in subsequent cases in Virginia and Maryland and received a total of ten additional life sentences. Now, Malvo's lawyer claims he is entitled to a new sentencing hearing and [asked the Fourth Circuit](#) to follow the Supreme Court's 2016 ruling that retroactively applies their prior decisions regarding the unconstitutionality of juvenile life sentences.

The Supreme Court first tackled [juvenile sentencing standards](#) in 2005 with [Roper v. Simmons](#) and ruled that juvenile death sentences are unconstitutional based on Eighth and Fourteenth Amendment protections. They found this level of punishment was drastically disproportionate when considering a minor's potential culpability. States could no longer impose the death penalty on offenders who were minors when they committed their crimes and [seventy-two prisoners, across twelve states](#), were accordingly taken off death row. Life without the possibility of parole was now the harshest sentencing standard available in the U.S. juvenile justice system.

Six years later, in 2011, the Court first addressed the constitutionality of juvenile life without parole. They decided in [Graham v. Florida](#) that this sentence was inappropriate for cases not involving homicide, again addressing proportionality under the Eighth Amendment "cruel and unusual punishment" clause. The Supreme Court thus restricted life without parole sentences to only the most heinous juvenile crimes.

However, just one year later the Supreme Court heard two more juvenile life without parole cases and decided concurrently in [Miller v. Alabama](#) and [Jackson v. Hobbs](#) that mandating these sentences for any crime committed by a minor violated his or her Eighth Amendment rights. The Court held that the totality of an adolescent's "transient rashness, proclivity for risk, and inability to assess consequences" should mitigate against states levying these harsh punishments.

The most recent, and perhaps most impactful, of all the Supreme Court's rulings on the subject was handed down in 2016. After the [Miller](#) and [Jackson](#) decisions, [states were divided](#) on how to interpret the holding. Some state supreme courts ruled it should be applied retroactively, while others declined to extend it in that manner. Additionally, six states passed juvenile sentencing

legislation that applied retroactively. The inconsistent interpretations and legislative decisions [culminated](#) in the Supreme Court's holding in [Montgomery v. Louisiana](#). Here, the Court held that when their ruling establishes a substantive constitutional rule, like the one created by [Miller](#), [it applies retroactively](#) because these rules grant constitutional rights reaching beyond basic procedural guarantees.

Juvenile culpability was at the center of the Court's six-three decision in favor of interpreting that their previous holdings [should be applied retroactively](#). In his opinion, Justice Kennedy concluded that juvenile offenders "must be given the opportunity to show their crime did not reflect irreparable corruption; and if it did not, their hope for some years of life outside prison walls must be restored."

While the issue may appear cut and dry following the Supreme Court's 2016 decision, applying [Montgomery](#) to Malvo's case could prove difficult. Maryland prosecutors have already [successfully argued](#) that the Supreme Court's holding is not valid in states where life without parole sentencing is not mandatory. This interpretation weaves in state law sentencing mandates and paints them as the crux of the larger issue. Under this view, if a state does not mandate life without parole sentences for any particular class of crimes committed by juveniles then these sentences are not inherently biased or skewed per the "cruel and unusual punishment" language in the Eighth Amendment.

Currently, the Virginia Attorney General's office is attacking Malvo's request for a new sentencing hearing, [claiming](#) Malvo's case falls under the "incurable and unable to be reformed" exception in [Montgomery](#). Justice Kennedy's opinion included [a caveat](#) that juveniles can still be sentenced to life without parole in cases of "irreparable corruption." The Virginia prosecutor has seized on this terminology and characterized Malvo's involvement as one of the [rare cases](#) in which the original sentence is still appropriate. This theory recently prevailed in a juvenile murder-for-hire case in Ohio. A teenager was convicted of working as a contract killer and showed [no possibility of rehabilitation](#) in the eyes of the court following statements he made from prison about retaliation against witnesses from his trial. Here, the lack of plausible rehabilitation for the killer, combined with the gravity of his crimes, were central factors when the court handed down the maximum sentence of life without parole.

This exception in the [Montgomery](#) decision left a small crack in the proverbial door and presents a problem in juvenile sentencing equity across the country. Specifically, Malvo's case highlights the underlying trouble of the Supreme Court's irreparable corruption exception and begs the question of whether or not the Court's broad ruling will have [any concrete effect](#) on juvenile sentencing going forward.

Currently, the United States is the [only developed country](#) in the world that utilizes life without parole sentencing in its juvenile justice system. The [current number](#) of prisoners serving this sentence for a crime they committed as a minor is over 2,000. Even more troubling, the demographics of this number tie back to the pervasive problem of systemic racism in American penal codes that directly results in the mass incarceration of African-American men. From more than 2,000 prisoners, ninety-seven percent are male and sixty percent are black.

As state and federal courts grapple with the task of resentencing former juvenile offenders, a [wide disparity](#) has emerged. Prosecutors in several states, including Michigan who has the second largest population of these inmates in the country, have retried many of their cases. However, the newly imposed sentences of 40, 50, 60, or even 80 years are, in effect, a life sentence for inmates who have been in prison for several decades. Even more troubling, states like Michigan have retried cases and simply asked for, and received, [the same sentence of life-without-parole](#) under a broad interpretation of the Supreme Court's "irreparable corruption" exception.

While it is unclear why exactly the Supreme Court created this small opening, and whether or not it was intentional, it is already apparent the exception could be used to dismantle the Court's overarching goal: preventing juvenile offenders in the United States from suffering grossly disproportionate sentences. Yet, this loophole may also provide a future avenue for the Court to rule on the issue again. The Court left the window cracked, perhaps in part to see how far states would go to fling it wide open. Should a case challenge the broad interpretations of [Montgomery's](#) exception, the Court could use it as an opportunity to close the loophole with a clear definition of what constitutes "irreparable corruption."

The Supreme Court precedent governing juvenile life without parole sentencing has progressed remarkably over the past thirteen years. Since 2005, the parameters of sentencing in the United States' juvenile justice system have shrunk and now more accurately reflect modern views. Public [sentiment](#) largely holds the belief that juvenile offenders should not be subjected to the same punishments as adults because the differences in culpability cannot be fairly measured in one broad stroke.

Lee Boyd Malvo's case highlights the potential for inconsistencies in applying the Supreme Court's decision. It demonstrates the creative ways in which state prosecutors are getting around the Court's sweeping language through an intense focus on a broad interpretation of the irreparable corruption exception. The Fourth Circuit in this case may be more inclined to vacate Malvo's life without parole sentences in Virginia because his sentences in Maryland have been upheld. Malvo will likely spend the rest of his life in prison because of his consecutive sentences in Maryland, therefore the appellate judge may allow new sentencing in Virginia simply to narrowly define the [Montgomery](#) exception and set a foregoing precedent. Currently, the Supreme Court's reasoning and intentionality behind including this exception is unknown. As new juvenile criminal cases are tried across the country, the exception's impact will likely be interpreted differently, determining whether it ultimately undermines the Supreme Court's sweeping ruling or remains just what it is, an exception.

Police Brutality Persists in Brazil

April 2, 2018

by Catherine Perrone

Police brutality in Brazil is more prevalent and more violent than in the [United States](#). In [2016](#), Brazilian civilian and military police forces killed 4,224 people. Compared to similar data from 2015, Brazil saw a twenty-six percent increase in police-related civilian deaths. Some killings are from a legitimate use of force, but others are extrajudicial and illegal. Reports show civilians with several bullet wounds, some at point-blank range. Brazil goes so far as to punish military police officers for speaking out on the subject; officers are fired from the police force and are sent to prison for criticizing a superior officer or a government decision. The police and government often cover up these killings, too. These extrajudicial killings are [illegal under](#) both Brazilian national and [international law](#).

Police brutality is a problem all over the country, in both urban and rural areas. During the first two months of 2017, the police killed [182 people in favelas in Rio](#), which is a seventy-eight percent increase compared to the same period in 2016. [Favelas](#) are often associated with high crime and violence. Those living in favelas make up nearly twenty-four percent of Rio's population alone. Brazil's police have been an active and violent force in trying to end [the ongoing land rights conflicts](#) in rural areas as well. The military police often kill indigenous leaders and activists unchecked. In 2016, [sixty-one people](#) in land conflicts died violently. Just between January and October of 2017, sixty-four people in land conflicts died violently.

Brazil's government is continuing to make this problem worse. [In October](#) 2017, Brazil's Congress approved a bill that protects military police officers when they unlawfully kill civilians. [In December](#), President Temer signed the bill into law. Instead of a trial in civilian courts, military police that kill civilians are now tried in military courts. This violates Brazil's obligations under international law as military courts in Brazil do not guarantee a fair trial. Under [Article 14](#) of the International Covenant on Civil and Political Rights, "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." Permitting a military court to try military police is not a hearing by an "independent and impartial" court. In fact, the [Inter-American Commission on Human Rights](#) has held that independence and impartiality, as required by the ICCPR, are both clearly at risk in these situations. [Specifically](#), "[w]here the state allows investigations to be conducted by the organs potentially implicated, [in this case, Brazil's military,] independence and impartiality are clearly compromised."

The government should not be protecting these violent officers. Between 2009 and 2013, the number of police homicides actually decreased, showing that [it is possible to curb police brutality](#). To do so, the government must hold these officers accountable for their actions. [Human Rights Watch](#) recommends some steps that Brazil can take to curb the heavy police violence, which include investigating these cover ups, funding and empowering GAESP (translated from Portuguese to mean Group of Specialized Action in Public Security), and monitoring and auditing the actions of the military police. Investigating these police cover ups and repealing the newly implemented law are two imperative steps to getting to the root of this violence and addressing the problem as a whole. Further, GAESP was established to confront these killings, but it lacks funding

and the proper authority to address the issue and strongly as they could. The government has the power to add more staffers, increase access to technology, and allow GAESP prosecutors the proper jurisdiction over police killings.

Finally, authorizing the already aggressive Brazilian military to act as police forces in both rural and urban areas has harmed the civilians, encouraged officers to participate in unlawful killings, and is dangerously reminiscent of Brazil's military dictatorships. Any officer that speaks out against the unlawful killings or denounces their fellow officers is usually threatened with death. The problem has persisted for years and will likely continue to do so without the country taking any concrete steps.

Cutting Through Trees and Rights: Peru's Construction of Highway Through Amazon Violates Indigenous Peoples' Rights

April 7, 2018

by Tamara Castro Márquez

Recently, Peru's legislative branch [passed a law allowing the construction of highways](#) through the border zones of the Peruvian Amazon. The largely untouched land is home to [indigenous peoples living in "voluntary isolation."](#) Indigenous peoples living in voluntary isolation have seen [their livelihoods and ancestral lands threatened](#) by a shrinking world in which unwanted contact is forced upon them by illegal loggers, drug traffickers, and other illegal third party actors. By approving the construction of highways through the Peruvian Amazon, Peru is violating indigenous peoples' rights to self-determination, life, and ancestral lands. Peru has an obligation to protect and ensure those rights under the American Convention on Human Rights ("American Convention") and the Indigenous and Tribal Peoples Convention ("ILO No. 169") of the International Labour Organization ("ILO").

Approved by Peru's Congress in December, the legislation passed into [law in January](#). This law approves [the construction of a network of highways](#) of a total length of 172 miles on the Peruvian-Brazilian border. Opposition to the proposed highway plan argue that around [680,000 acres of forest](#) are at risk of destruction if the highway is constructed. The construction of the highway is damaging to the indigenous peoples who call that forest home in two main ways. First, the environmental impact of the deforestation directly threatens the lives of the indigenous peoples. Second, by mere virtue of construction, there will be forced contact with peoples who live in voluntary isolation. The forced contact carries the risk of acts of violence against indigenous peoples, the transmission of deadly diseases to vulnerable populations, and the destruction of ancestral lands.

After ratifying the American Convention on July 12, 1978, Peru must fulfill its obligations to the indigenous peoples in voluntary isolation living within its territory. [The Inter-American Court](#) has interpreted Article 21, the right to territorial property, and Article 4, the right to life, of the American Convention as indigenous peoples' collective right to ancestral land. In [Sawhoyamaxa Indigenous Community v. Paraguay](#), the Court stated indigenous communities have a special relationship with their traditional lands that constitute their main means of survival and "form part of their worldview, of their religiousness, and consequently, of their cultural identity." The Court has consistently found that indigenous peoples' livelihoods and survival is closely tied to the physical integrity of their ancestral lands.

In Peru, the indigenous peoples living in voluntary isolation have clear ties with the land. In fact, the proposed highway plan would encroach on at [least three designated indigenous reserves](#) and protected areas. Given that deforestation is an inherent part of creating a highway through this area, the environmental destruction will directly impact indigenous peoples' use of the land. Their

ability to use the land for survival, religious purposes, and as a natural barrier in furtherance of their voluntary isolation will be severely hindered.

Under the [ILO No. 169](#), which Peru ratified on February 2, 1994, indigenous peoples have a right to self-determination. Specifically, the Preamble recognizes, “the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages, and religions, within the framework of the state in which they live.” Furthermore, Article 5 states, “the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected.”

By forcing contact, Peru is violating the indigenous peoples’ right to self-determination. Indigenous peoples in voluntary isolation [purposely limit contact with the outside community](#). Construction would necessarily bring outside workers and technology that the indigenous peoples in voluntary isolation have rejected. Additionally, outside contact puts peoples in voluntary isolation at great risk of contracting a disease for which they do not have the immunological defenses, leading to outbreaks of epidemics within the community and a high mortality rate.

In moving forward, Peru should look to its own steps in protecting the rights of indigenous peoples. On the international stage, Peru [introduced](#) the [UN Declaration on the Rights of Indigenous Peoples](#) (“UNDRIP”). Although a non-binding document, in ratifying the document, Peru is recognizing the “fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social, and cultural development.” Considering that the proposed plan of highways will negatively affect a large area of the Amazon, bringing environmental destruction and a high threat to the lives of the indigenous peoples living in that area, Peru should take time to fully evaluate the risk to life and consult with civic society groups to limit the potentiality of infringing on the voluntary isolation.

Mistreatment in Nursing Homes Through Antipsychotics

April 7, 2018
by Aya Badr

All over the United States, nursing homes are trying to [control seniors](#) by putting them on antipsychotic drugs without any authorization. This practice, unsurprisingly, makes the nurses' job more [convenient](#) because the seniors' become lethargic or suffer more severe physical reactions. In addition to the legal and moral issues that stem from this misuse of drugs, the practice also carries disastrous health repercussions for residents.

According to the [Food and Drug Administration \(FDA\)](#), antipsychotic drugs are meant to treat [psychiatric conditions](#). Nurses, however, are administering antipsychotic drugs to seniors – not for its intended purpose – but as an unwarranted sedative for residents with dementia. The [FDA](#) requires manufacturers to label antipsychotic drugs with the strongest [“black box” warning](#) about the risks they pose to people with dementia because these drugs nearly double the risk of death for residents. [One director](#) of nursing stated that seeing a senior decline on an antipsychotic is “sadder than watching someone with dementia decline.”

This inhumane phenomenon is so widespread that, according to a [report](#) by the Human Rights Watch, every week over [179,000 residents](#) who do not have diagnoses requiring antipsychotic drugs are still given them. This practice reaches beyond creating irreversible health repercussions for seniors. Unnecessarily putting peoples' parents, grandparents, and other relatives on drugs without authorization from the senior or his or her family also violates human rights norms.

This widespread phenomenon blatantly violates the [1987 Nursing Home Reform Act](#), which provides a Bill of Rights to each resident to protect rights and ensure a level of care. The Act is supposed to ensure that nursing home residents a quality of care “that will [result](#) in their achieving or maintaining their ‘highest practicable’ physical, mental, and psychosocial well-being.” Administering antipsychotic drugs to residents with dementia yields the exact opposite effect. Instead of maintaining the [“highest practicable”](#) physical, mental, and psychosocial well-being, this practice increases the speed of these seniors' health deterioration.

Under this act, the residents have a right to be “fully informed in advance about care and treatment.” The residents, however, are administered these drugs [without adequate information for them or a family member to properly consent](#) nor the opportunity to object. For example, a resident of a [Texas nursing home](#) explained that she had no idea she was being given antipsychotic drugs because “they crush it and put it in baby food, so you don't know what you're getting fed.”

The [1987 Nursing Home Reform Act](#) also provides that the residents' care is free from improper medical treatment. Abusing antipsychotic drugs, however, puts lives at danger, and is worse than improper medical treatment. This treatment is inhumane.

While there are federal regulations in place to bar the use of drugs without adequate indication for use, there should be stronger enforcement in connection to nursing homes. One example of an

initiative that is already put in place is [the National Partnership to Improve Dementia Care in Nursing Homes](#) by [the Centers for Medicare & Medicaid Services](#). The issue, however, remains prevalent.

One potential reason for the continuation of unauthorized administration of antipsychotic drugs in nursing homes is because initiatives focus too much on the drugs, and less on the root of the problem, the rights of the residents. The [1987 Nursing Home Reform Act](#) focuses on the rights of the residents, but the value of this act depends on the effectiveness of its enforcement. Nursing home staff should be required to learn its principles. Additionally, the US government should work further to enforce residents' rights as per [the 1987 Nursing Home Reform Act](#) and hold nursing facilities accountable for their misconduct.

A Recent Argentinian Migratory Decree Analyzed Under Human Rights Standards

April 8, 2018
by Olivia Minatta*

I. Introduction

International migration is not a phenomenon that occurs only in developed countries. On the contrary, there are a large number of immigrants moving from one Latin American country to another.^[i] In 2017, 4.9% of Argentina's total population was immigrant. This rate was stable throughout the 1990-2017 period.^[ii]

Migration itself is a cultural concept that was originated from the nation-state conception; human mobility is characteristic of humanity throughout history. Migration largely depends on the social, political, and economic context of each State. Occasionally, certain migration policies are taken as a result of a demagogic cause that may conflict with international human rights standards.

One concrete example of this is the response to Argentina's recent Migratory Executive Order. In December 2016, a child in Argentina was shot in the head and killed. The killer was an underage boy from a Peruvian family that had settled in Argentina many years before. Since the offender was a minor, he was therefore immune from prosecution. In response, a series of street demonstrations occurred and protestors asked for his deportation as he was son of Peruvian people and had the Peruvian citizenship.^[iii] The Argentinian government expelled him to Peru, where he was destined to stay with his grandfather. One month later, Argentine President Macri issued an Executive Order^[iv] modifying the existing citizenship and migration laws, with the aim of accelerating deportation proceedings based on 'recent forms of organized crime.' The forms of organized crime covered by the new law were not specified. The decree pointed out that whereas immigrants represent the 4.5% of the total population, '21,38% of prison inmates are immigrants' and that '33% of those incarcerated for drug trafficking are immigrants.'^[v]

Based on these reasons, the Executive Order modified the National Migratory Act (Ley N° 25.871) and established a special summary trial to expel immigrants with criminal records or even those not registering criminal records, but who illegally entered the country. Similarly, it introduced significant reforms to the principle of family reunification, reducing the cases in which it could be invoked and restricting the scope of judicial review on this regard. These changes are an example of political measures that reflect the bias toward immigrants as responsible for what are in fact

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serious structural social problems, such as rising crime rates. In addition, as remarked previously, the decree had an impact on the whole immigrant community and was not limited only to those with criminal records.

In this context, it is vital to analyze these kinds of political decisions from a human rights perspective. Although States are enabled to determine their own migratory policies, the international human rights system sets limits to protect the fundamental rights that are at stake.^[vi] For that purpose, I will address criticisms to two main parts of Argentina's Migratory Executive Order, namely the reforms regarding the proceedings to challenge deportation and those related to the principle of family reunification. Following this analysis, I will suggest a specific measure to assess the impact that the new regulation has on immigrants' rights of access to justice and family life.

II. The Decree's Effect on Due Process Rights

Prior to the issuance of the Executive Order, Argentina's immigration law permitted immigrants subject to deportation to ask for an administrative review within ten to fifteen days of notified the deportation order, depending on the administrative appeal available in each case. Once the administrative appeal was denied, they were able to seek a judicial review within a period of thirty days. Based on Inter-American Human Rights standards, the Federal Chamber of Appeals of Buenos Aires' case law demanded that the National Department of Migration ensured a due notification, including information about the available appeal means and its deadlines, the right to be provided with free legal advice, and a free interpreter. To support this requirement, the Argentinian courts also put emphasis on the guarantee to effective judicial protection,^[vii] which requires that States take positive actions to ensure an adequate defense against any decision that may affect the rights of disadvantaged groups.

The Executive Order created a summary trial, as well as enabled the National Department of Migration to judicially ask for preventive incarcerations^[viii] and to decide whether the immigrant should be provided with a free immigration attorney. In order to qualify for a free attorney, the new Decree created a requirement that the immigrant proves his or her economic shortcomings before the Department of Migration, which is simultaneously entitled to decide on the legitimacy of the request. In addition, the Executive Order repealed the right to a special administrative review that allowed immigrants to ask the National Department of Migration to reconsider its expelling decision based on supervening facts or even on a violation to due process of law.

In *Vélez Loor v. Panama*, the Inter-American Court of Human Rights stated that immigration proceedings must be conducted in accordance with fair trial guarantees, regardless of whether the status of the migrants concerned is regular or irregular.^[ix] *Vélez Loor*, the Panamanian police arrested an Ecuadorian man for violating their immigration laws. The Court considered that the Panamanian State had not guaranteed the rights covered by Article 8.1 and 8.2 of the Inter-American Convention, as he had not been immediately brought before a judge and had not been provided with an attorney.

Article 8.2 of the American Convention incorporates the minimum guarantees that every criminal proceeding must comply with, namely the right of the accused to be assisted without charge by a translator or interpreter, to be notified of the charges against him, to have adequate time and means

for the preparation of his defense, to be assisted by legal council provided by the State, not to be compelled to plead guilty and to appeal the judgment to a higher court. According to the Inter-American Court's interpretation,^[x] the specific guarantees established in Article 8.2 apply to variety of matters that concern the determination of a person's rights and obligations of a civil, labor, fiscal, or any other nature, particularly those of a punitive character, 'a category into which proceedings to establish a person's migratory status clearly fall.'^[xi]

According to the Court, States must treat the migrant at all times as a true party to the proceeding, in the broadest sense of this concept, and not simply as an object thereof.^[xii] In *Pacheo Tineo v. Bolivia*^[xiii] and *Dorzema v. Dominican Republic*,^[xiv] the Inter American Commission on Human Rights (IACHR) argued that every deportation proceeding must provide immigrants with a free legal representation, and must "take into account the particular characteristics of the person's situation so that he or she has effective access to justice on equal terms."^[xv] Similarly, the Commission has stated that 'summary deportation proceedings or so called direct-back policies run counter to the guarantees of due process as they deprive migrants [...] the right to a hearing, to defend their rights adequately, and to challenge their expulsion.'^[xvi]

Following the Inter-American standards it is possible to state that: (i) deportation proceedings must comply with the guarantee to a fair trial irrespectively of the individual's migratory status; (ii) the judicial guarantees established in the Article 8.2 of the American Convention may be applicable to deportation proceedings because of its punitive nature; (iii) an effective administrative and judicial protection must attend to *de facto* inequalities. Hence, deportation proceedings require specific guarantees attending to the difficulties that usually surround immigrants, namely the lack of knowledge of the national legal system and the national language, as well as the economic, social and cultural obstacles they usually confront.

From this perspective, immigrants should be provided with the right to be assisted without charge by a translator or interpreter and the right to access to the services of an attorney free of charge.^[xvii] This means that States must ensure that the immigrants are able to understand the proceedings they are involved in and the rights they are entitled to. Similarly, the State must provide immigrants legal advice to guarantee a proper legal defense against deportation free of charge. Additionally, the state must duly notify all immigrants of these rights in advance. Ultimately, immigrants are entitled to a real legal defense -not a fictitious one- in which they are able to understand the proceeding, be aware of their rights and present all the arguments and proof they consider relevant to support their position. Equally important, authorities should be fully aware of all the peculiarities and specific circumstances of each case, as deportation must be an exceptional measure and the last alternative.

Viewed in these terms, Argentina's Executive Order represents a setback in the guarantee of an adequate defense and effective administrative and judicial protection in several ways. First, the Decree created a summary deportation proceeding thereby dramatically reducing administrative and judicial review from a minimum of ten days—and allowing up to thirty days depending on the nature and disposition of proceeding—to three working days in all cases.^[xviii] This short three-day period does not allow for preparation of an adequate defense, particularly when the immigrant may be in a vulnerable situation caused by language difficulties, lack of knowledge of the legal system, and obstacles accessing to a counsel. Considering the rights at stake—such as the right to

a family life—and the disadvantageous situations that immigrants often face, migration proceedings should reinforce the guarantee of access to justice instead of minimizing it.[\[xix\]](#)

Second, before the Executive Order was issued, the Department of Migration was obliged to inform the immigrants of their right to a free attorney and had no competency to analyze the immigrant’s financial situation in order to determine whether the immigrant would be entitled to for free representation. According to the Executive Order, a free attorney can only be provided by the National Department of Migration after evaluating whether the immigrant is in a poor condition to afford a private one. This is a further significant point of criticism, as the same authority in charge of initiating the expelling proceeding is empowered to prohibit the immigrant’s access to a free attorney, leaving the immigrant defenseless.

Third, the Executive Order enables the National Department of Migration to judicially ask for the immigrant’s preventive incarceration during the appeals proceeding of the deportation order. The threat of incarceration during the appeals process will likely have a negative consequence for the immigrant and ultimately will result in a disincentive to the exercise of the right to defense.

Finally, the Executive Order repealed the right to a special administrative review that allowed immigrants to ask the National Department of Migration to reconsider its expelling decision based on supervening facts or even on a violation to due process of law. This special review process is a critical element of deportation proceedings because important events—such as the birth of a child or the outbreak of a disease—can dramatically impact the circumstances taken into consideration in a deportation case.

III. The Decree’s Effect on Family Reunification

Deportations may affect the right to a family life and the best interests of the child.[\[xx\]](#) Before the Decree entered into effect, the Migratory Act Num. 25.871 established that the National Department of Migration could revoke a deportation order when the immigrant could prove he or she had an Argentinian family. Indeed, in several cases the Federal Court of Appeals of Buenos Aires demanded that the National Department of Migration considered and adequately motivated the deportation orders when the principle of family reunification was invoked. Nevertheless, the Argentina’s issuance of the Migratory Executive Order reduced the circumstances under which the principle of family reunification can be invoked to only cases of deportation based on minor crimes or irregular entry.[\[xxi\]](#)

Even though the Inter American Court of Human Rights has stated that “the child’s right to family life does not transcend *per se* the sovereign authority of the States Parties to implement their own immigration policies in conformity with human rights,”[\[xxii\]](#) the Court has also expressed that during deportation proceedings that involve children, States must offer specific guarantees aimed at protecting the interests of the children. Particularly, they must safeguard the right to enjoyment of family life, as a result of which the individual decision must be appropriate, necessary and proportionate.[\[xxiii\]](#)

It might happen that an immigrant, who could have lived for several years in certain country, had formed a family and had children. As a consequence, his or her deportation would have an impact on the family—for instance, the family could economically depend on the deported immigrant—

or on the best interests of the children involved—who might be forced to grow up without their parents or move to another country.^[xxiv] This tension between sovereign powers to decide about the residency of non-nationals and the right to a family life led the Inter American Court of Human Rights to the conclusion that States should decide on the basis of a balancing exercise. In *Expelled Dominicans and Haitians v. Dominican Republic*, the Court explained that ‘states should analyze the particular circumstances in each case, concerning: (a) the immigration history, the duration of the stay, and the extent of the ties of the parent and/or the family to the host country; (b) consideration of the nationality, custody and residence of the children of the person to be expelled; (c) scope of the harm caused by the rupture of the family owing to the expulsion, including the persons with whom the child lives, as well as the time that the child has been living in this family unit, and (d) scope of the disruption of the daily life of the child if her or his family situation changes owing to a measure of expulsion of a person in charge of the child, so as to weigh all these circumstances rigorously in light of the best interest of the child in relation to the essential public interest that should be protected.’^[xxv] Similarly, the Inter-American Commission of Human Rights has emphasized that the deportation should be the last resort when there are children involved and that, depending on the peculiarities of each case, it should be an exceptional measure to be taken.^[xxvi]

Argentina’s Migratory Executive Order did not incorporate the features, which according to the Inter American human right standards, should be assessed within the order of deportation when the principle of family reunification is invoked. More seriously, the Executive Order restricted the situations in which an immigrant could use the principle of family reunification to defend against deportation. Thus, in many cases, the National Department of Migration will be exempt from performing the “balancing exercise” to consider the particular circumstances in which the immigrant and his or her family are involved. This, in turn, could lead to the violation of human rights law standards such as prioritizing the best interest of the child.

IV. Conclusion

Argentina’s Executive Order is undesirable from a human rights perspective because it could lead to proceedings in which immigrants are left defenseless or unprotected and in proceedings in which immigrants may not be able to invoke the principle of family reunification. The Executive Order presents a setback when compared to the previous regulation. Previous regulation ensured that deportation proceedings were conducted according to the principles of family reunification and effective protection, whereas the recent Migratory Executive Order reduced the scope of guarantees afforded to the immigrant and the immigrant’s family.

Beyond the theoretical analysis, a good public policy would be to measure the real impact that the migratory regulation has on the exercise of the immigrant’s rights when applied to real cases. That would provide with useful statistics to improve migratory policies from a human rights perspective.

I recommend that the Argentinian State create specific indicators to monitor the Decree’s impact on immigrants’ human rights. For instance, the Government should collect data related to how many children are *de facto* expelled as a consequence of their parent’s deportation; how many immigrants alleged the principle of family reunification but were not able to provide enough

evidence to prove it; how many immigrants are assisted by a free attorney; how many appeals are dismissed for being submitted late.

Using statistical data it would be possible to assess whether the migratory system –involving specific regulations and the state apparatus performance– is, in practice, acting against the immigrants’ constitutional rights and the international standards that guide them.

Author’s Note

On March 23rd, 2018, the Federal Chamber of Appeals of Buenos Aires has recently declared the Migratory Executive Order unconstitutional.^[xxvii] The Chamber of Appeals stated that the Executive Order did not comply with the constitutional requirements to be issued and it implied a setback from a human rights perspective. The Court elaborated a strict test of reasonableness in relation to the right to freedom of movement and the right to judicial protection and understood that the Argentinian Government had not proved that the Executive Order was the least restrictive measure to obtain the objectives alleged. To conclude that, it emphasized that the immigrants are a vulnerable group and that the Executive Order meant an unequal treatment to immigrants. As a consequence, there is a reversion of the burden of the proof and the State must demonstrate that the Executive Order is not unconstitutional.

[i] A current example of this is the recent migratory movements that Colombia has recently received from Venezuela, CBC News, *Venezuela Crisis Has Neighbours Fearing Influx of More Refugees* (Feb. 8, 2018), <http://www.cbc.ca/news/world/venezuela-crisis-brazil-colombia-1.4527643>; Joe Parkin Daniels, *In Colombia Border Town, Desperate Venezuelans Sell Hair to Survive* (Feb. 17, 2018), <https://www.nytimes.com/2018/02/17/world/americas/venezuela-crisis-colombia-migration.html>.

[ii] <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates17.shtml>.

[iii] Agencia DyN (Dic. 26, 2016) *Murió Brian, el chico de 14 años que fue baleado en la cabeza por moto chorros en Flores* <https://www.lanacion.com.ar/1970461-murio-brian-el-chico-de-14-anos-que-fue-baleado-en-la-cabeza-por-motochorros-en-flores/>; Agencia Télam (Jan. 10, 2017), *Liberaron al sospechoso del crimen de Brian Aguinaco y sera enviado a Perú* <http://www.telam.com.ar/notas/201701/176217-libertad-sospechoso-adolescente-crimen-brian-aguinaco-barrio-flores.html>.

[iv] Executive Order Number 70/17, issue date 30-01-17. Available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/271245/norma.htm>.

The Executive Order was a ‘DNU’, a kind of decree (with similar effects to a regular law) that the Argentinian Constitution enables the President to issue in order to cope with urgency when the Congress is unable to meet (art. 99, inc. 3). In this case, activists and scholars also criticized the Executive Order for being issued against the conditions established in the Constitution. However, in the article I will not focus on this aspect of the criticism.

[v] The numbers provided in the Executive Order tries to link the phenomenon of crime to the presence of immigrants in the territory. For that reason, some explanations in regard to those percentages can be useful. The 4,5% is calculated on the basis of data that was gathered in the last National Census carried out in 2010. However, the percentages regarding immigrant inmates are taken from the last statistical data available of 2016. Plus, the 21,38% considered, refers to the number of inmates incarcerated in the Federal Service, but does not reflect the total quantity of immigrants in prison along the country. Indeed, taking into account all the immigrants who are in prison –in the federal or local services–, the percentage decreases to the 6% of the total population, which would be more representative of the proportion of immigrants over the whole population. This can be checked here: [http://www.jus.gob.ar/media/3268563/Informe%20ejecutivo%20del%20Sneep%202016%20\(Sistema%20Nacional%20de%20Estad%C3%ADsticas%20sobre%20Ejecuci%C3%B3n%20de%20la%20Pena\).PDF](http://www.jus.gob.ar/media/3268563/Informe%20ejecutivo%20del%20Sneep%202016%20(Sistema%20Nacional%20de%20Estad%C3%ADsticas%20sobre%20Ejecuci%C3%B3n%20de%20la%20Pena).PDF). Finally, it can be objected that the Executive Order highlights statistics related to drug trafficking when the measures taken involve all immigrants and not only those prosecuted for committing severe crimes.

[vi] The Inter-American Court said that ‘[s]pecial duties arise from the general obligations to respect and to ensure rights and they can be determined based on the particular needs of protection of the subject of law, owing either to his personal situation or to the specific situation in which he finds himself. In this regard, “migrants who are

undocumented or in an irregular situation have been identified as a group in a situation of vulnerability, because they are very exposed to potential or real violations of their rights and, owing to their situation, suffer a significant lack of protection for their rights [...] This does not mean that no action may be filed against migrants who do not comply with the laws of the State, but that, when taking the corresponding measures, States must respect their human rights, in compliance with the obligation to ensure to all persons subject to the State's jurisdiction, the exercise and enjoyment of these rights, without any discrimination based on their regular or irregular status, nationality, race, gender, or any other reason. This is even more relevant if it is borne in mind that, under international law, certain limits have been developed to the application of migratory policies that impose, in proceedings on the expulsion or deportation of aliens, strict observance of the guarantees of due process, judicial protection and respect for human dignity, whatsoever the legal situation or migratory status of the migrant', I/A Court H.R., Case of the Pacheco Tineo Family v. Bolivia.

[vii] The Argentinian Constitution provides for due process (art.18). Currently, Argentinian courts have broadened the scope of the guarantee of due process to the guarantee of effective judicial and administrative protection. This was taken from the Inter American Human Rights Court case law and is based on the articles 8 and 25 of the American Convention of Human Rights.

[viii] The preventive detention enables the Administration to ask for immigrants' incarceration from the very beginning of the administrative proceeding and is not established as an exceptional measure.

[ix] I/A Court H.R., Case of Vélez Loo v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, 'The right to due legal process must be guaranteed to everyone, regardless of their migratory status.^[ix] This means that the State must ensure that every foreigner, even, an immigrant in an irregular situation, has the opportunity to exercise his or her rights and defend his or her interests effectively and in full procedural equality with other individuals subject to prosecution' (para. 143).

Similarly, in its Advisory Opinion OC-18/03 on the "Juridical Condition and Rights of the Undocumented Migrants", the Court said that: 'for the due process of law a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants. To accomplish its objectives, the judicial process must recognize and correct any real disadvantages that those brought before the bar might have, thus observing the principle of equality before the law and the corollary principle prohibiting discrimination. The presence of real disadvantages necessitates countervailing measures that help to reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defense of one's interests. Absent those countervailing measures, widely recognized in various stages of the proceeding, one could hardly say that those who have the disadvantages enjoy a true opportunity for justice and the benefit of the due process of law equal to those who do not have those disadvantages.'

[x] See, i.e., Case of the Constitutional Court, supra note 110, para. 71; Case of Baena Ricardo et al., supra note 139, para. 127; Case of the Sawhoymaxa Indigenous Community, supra note 92, para. 82 and Case of the Yakye Axa Indigenous Community, supra note 130, para. 62. See Barbani Duarte vs. Uruguay, 13/10/2011. Similarly, I/A Court H.R., Case of the Pacheco Tineo Family v. Bolivia, para. 132. See also, I/A Court H.R., Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 157, and Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14, para. 112; I/A Court H.R., Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 358.

[xi] InterAmerican Commission of Human Rights, Human Mobility, Inter American Standards OEA/Ser.L/V/II. Doc. 46/15 31 December 2015.

[xii] I/A Court H.R., Case of Vélez Loo v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 21.

[xiii] I/A Court H.R., Case of The Pacheco Tineo Family v. Plurinational State of Bolivia. Preliminary Objections, Merits, Reparations and Costs, Judgment of November 25, 2013, Series C. No. 272, para. 133. In that case the IACHR.

[xiv] I/A Court H.R. Case of Nadege Dorzema et al v. Dominican Republic. Merits, reparations and costs. Judgment of October 24, 2014, Series C. No. 251, para. 160-166. In that case, after affirming that "international bodies for the protection of human rights have all established the characteristics for proceedings carried out by States in order to expel or deport aliens from their territory", the IACHR referred to the minimum guarantees that every immigrant subject to deportation is entitled to (according to different international human rights bodies): "...the alien must be empowered with the means to: (i) provide arguments against the expulsion (ii) submit his or her case before by the competent authority, and (ii) be heard and represented for such purpose before the competent authority [...] (ii) to be able to provide reasons against the expulsion; (iii) consular assistance; (iv) legal advice; (v) the right to free assistance and interpretation, and (vi) the right to be notified of the expulsion decision and the right to appeal it". Finally, the Court expressed that "in cases where the consequence of the immigration proceeding may be a punitive deprivation

of liberty –as the expulsion was in this case– “free legal representation becomes an imperative for the interests of justice.”

[xv] In the Case of Velez Llor v. Panama, the Court emphasized the importance of legal aid in cases involving a foreigner who may not know the country’s legal system and who is in a particularly vulnerable situation by being deprived of liberty.

[xvi] IACHR, Report on Merits No. 49/99, Case 11.610, Loren Laroye Riebe Star, Jorge Barón Guttlein and Rodolfo Izal Elorz (Mexico). April 13, 1999, paras. 55; IACHR, Report on Admissibility No. 68/05, Case 11.495, Juan Chamorro Quiroz (Costa Rica). October 5, 2000, paras. 32-36. Also IACHR, Report on Merits No. 78/11, Caso 12.586, John Doe et al. (Canada). July 21, 2011, para. 116. IACHR, Report on Merits No. 51/96, Case 10.675, Haitian Interdiction (United States), TMarch 13, 1997, para. 180. In this respect, the claim submitted by the Civil Association CELS, pointed out that ‘sometimes the immigrant subjected to an expulsion may be already incarcerated [...] which decreases the possibilities of collecting evidence, develop a defense strategy or even have timely access to a legal advisor...’ The claim is available in Spanish, and the translation is of my own.

[xvii] Indeed, the Argentinian federal courts have followed that doctrine. See, for example, CNCAF, case num. 57.800/2016, judgment of March the 9 of 2017; Case num. 71.921/2016, judgment of July the 4 of 2017, among others.

[xviii] In no other administrative proceedings specified in Argentinian legislation, is the legal deadline shorter than that established in the law that regulates the general proceeding. See, for example, the tax proceeding (Ley Núm. 11.683); the public procurement proceeding (Decreto 1023/01, Decreto Num 1030/16); the Public Employment Law (Ley Núm. 25.164), among others.

[xix] The IACHR has emphasized that immigrants are a vulnerable group and expressed that ‘an ever-present challenge the Commission has identified in the case of persons in the context of migration are the serious obstacles to access justice and thereby avail themselves of a suitable remedy for human rights violations. This is evidenced by the considerable discretion that many authorities exercise when deciding cases involving these individuals or their family members, the failure to observe the guarantees of due process in proceedings involving these individuals, and the little or lack of judicial protection they are afforded when their human rights are violated, with the result that such violations go unpunished...’ Human Mobility: InterAmerican Standards 2016 OEA/Ser.L/V/II. Doc. 46/15 31 December 2015.

[xx] The right to family life is widely recognized in the Inter-American and international system of human rights. See, i.e., Articles 11.2 and 17.1 of the American Convention as well as Articles V and VI of the American Declaration. Article 17.1 provides that “The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.” Similarly, Article 23 of the International Covenant on Civil and Political Rights and Article 14 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Article 9 of the Convention on the Rights of the Child recognizes the possibility of family separation as a result of a proceeding of deportation; however, the article demands that the States guarantee the best interest of the child and their right to be heard. Finally, the International Convention on the Protection of the Rights of All Migrant Workers, establishes as a general rule, that States are obliged to ‘take appropriate measures to ensure the protection of the unity of the families of migrant workers’ (article 44.1.) and ‘to facilitate the reunification of migrant workers with [their family]’ (article 44.2.).

[xxi] For instance, those who were convicted for offences punishable by a term of imprisonment of more than three years are not allowed to allege the right to family life to stay in the country.

[xxii] Inter American Court H.R., Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 417.

[xxiii] See the OC-21/14, para. 279 and Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282.

[xxiv] ‘The Commission has determined that in this area nor the scope of the State nor the rights of a person who is not a national are absolute. Instead [...] there should be a trial weighting, under which it must balance the legitimate interest of the State to protect and promote the general welfare vis-a-vis the fundamental rights of people not national, such as the right to family life. It is recalled what was said by the Commission in relation to that “immigration policy should guarantee an individual decision with all the guarantees of due process; You must respect the right to life, to physical and mental integrity, family and the right of children to obtain special means of protection’ (Human Mobility: Inter-American Standards 2016 OEA/Ser.L/V/II. Doc. 46/15 31 December 2015, parr. 348).

[xxv] Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 357.

[xxvi] For instance, CIDH, Informe No. 81/10, Caso 12.562, *Wayne Smith, Hugo Armendariz y otros* (Estados Unidos), 12 de julio de 2010, párr. 50; en general, véase, CIDH, *Informe sobre la situación de los derechos humanos de los solicitantes de asilo en el marco del sistema canadiense de determinación de la condición de refugiado*.

[xxvii] The sentence is available at the Web page of the Argentinian Federal Judicial Power <https://www.pjn.gov.ar/>. Cámara Nacional en lo Contencioso Administrativo Federal, Sala V, “Centro de Estudios Legales y Sociales y otros c/ EN-DNM”, Expdte. N° 3061/2017, sentence of the 23/03/2018.

Right to Fair Trial Threatened by Government Secrecy

April 9, 2018
by Aya Badr

One element of [the Department of Justice's](#) (DOJ) mission is “to ensure fair and impartial administration of justice for all Americans.” The [Merriam-Webster Dictionary](#) defines “fair” as “marked by impartiality and [honesty](#).” Parallel construction is a practice in federal government that allows officials to keep an investigative activity hidden from the courts and the defendants by going through motions of re-discovering evidence in a different way. This practice leaves many questioning the impartiality in the DOJ's mission. Further, this practice potentially creates legal implications and infringes on human rights.

In his [Huffington Post article](#), [Peter Van Buren](#) provides an illustration of parallel construction: “An [NSA](#) (National Security Agency) email intercept shows our Mr. Anderson received a Fedex package with drugs, which he hid under his bed. The [DEA](#) takes this info, and gets a search warrant for the Fedex data, which leads them to Mr. Anderson's. A new legal warrant authorizes a search and agents “find” the drugs right where the [NSA](#) said they were in the first place.” In sum, through parallel construction, law enforcement uses evidence in the [NSA](#) database, which was gathered in methods like communication-tapping, and [restructures](#) the evidence to make it seem like they learned about it in an alternative way.

According to a [Human Rights Watch report](#), the practice of parallel construction happens frequently, maybe even daily. This is problematic because it allows the United States federal government the opportunity to [conceal](#) potentially illegal methods that intelligence or law enforcement agencies used to identify or investigate suspects. It also allows officials to keep investigative activity [hidden](#) from courts, and in turn, the public.

In an attempt to justify this practice, the government often cites the “[exclusionary rule](#),” a doctrine that gives judges the authority to “not allow” prosecutors to bring in evidence that was more than likely acquired illegally. This, however, can open the floodgates to potential investigation based on prejudice and creates a slippery slope for the [misconduct](#) of officials. If federal agencies and prosecutors have this immense power and no obligation to record how they found evidence, the question hinges on where to draw the line.

The common practice of parallel construction has the potential of violating many privacy acts such as [18 U.S. Code Section 2515](#), which prohibits the use of evidence from intercepted wire or oral communication. When officials are not obligated to report how they found evidence, they can be more tempted to encourage [unlawful](#) behavior such as parallel construction.

Parallel construction, while common and accepted, infringes on major constitutional right. Under binding [international human rights law](#), criminal court case proceedings must be “fair” and take place in a “competent tribunal.” Since parallel construction, however, extends the opportunity to hide methods of discovering information, it is unfair and threatens defendants' [Fourteenth](#)

[Amendment](#) Rights. [The Fourteenth Amendment](#) protects citizens from unwarranted and unreasonable searches, but after reconstructing the evidence, defendants might be “experiencing serious [infringements](#) of their rights without their knowledge.”

Parallel construction also [threatens](#) criminal defendants’ Sixth Amendment Right to a Fair Trial. [The Sixth Amendment](#) guarantees the rights of criminal defendants, including their right of knowing the evidence being brought against them. When officials are permitted to hide their methods of finding evidence, defendants cannot [discover](#) or challenge the possibility of a violation of their rights. In addition to the infringement of a defendant’s rights, parallel construction also threatens the right to a Fair Trial because defense counsel cannot formulate the most [effective case](#) in order to properly represent their client.

Not only does parallel construction infringe on human rights by infringing on constitutional rights and depriving them of a fair trial, but it is also a form of discrimination. Technology could be inaccurate and therefore lead to wrongful convictions. By allowing officials to take extreme measures and lie to courts, parallel construction undermines the human right of defendants to be innocent until proven guilty. In sum, parallel construction condones unfair practices toward criminal defendants, and offers an unjustifiable sense of leniency and preference to officials because of their position.

[The Justice Department](#) should take the proper steps to prohibit the practice of parallel construction. Another pivotal actor in eliminating this practice is [the judiciary](#). It is possible that judges themselves hold the most weight in fighting this injustice. They can do so by directing the prosecution to disclose all investigative findings. Ultimately, the abuse of this practice needs to be combatted through [legislation](#) requiring prosecutors and officials to disclose their methods of finding evidence.

Giving Prejudice Power: New Civil Rights Division Allows Healthcare Workers to Discriminate

April 11, 2018
by Ridhi Shetty

A January 2018 [report released by Columbia Law School](#) found that pregnant women of color in the United States disproportionately turn to Catholic hospitals and face a greater risk of being denied reproductive healthcare due to religious restrictions. The report notes that hospitals often prioritize religious beliefs over best medical practice, creating a loophole that permits evasion of professional responsibility by citing religion as a basis for refusal. Coinciding with this report, [a new division](#) within the Office of Civil Rights in the Department of Health and Human Services (HHS)—called the Conscience and Religious Freedom Division—was announced to ensure that medical professionals can legally deny certain medical services to patients based on religious objections.

The Office of Civil Rights of the HHS has already possessed the authority to protect the religious freedom of medical professionals. As the [Guttmacher Institute has stated](#), Title VII of the Civil Rights Act bars employers from discrimination against employees based on protected classes that include religion. The reports by Columbia Law School and the Guttmacher Institute identify states with laws that allow refusal of medical services on conscience-based grounds, demonstrating that almost all states permit certain healthcare providers to refuse abortion and several states permit denial of other reproductive care.

Roger Severino, director of the Office of Civil Rights, claims that the multitude of [state laws protecting religious convictions are meaningless](#) without a specific body to enforce them. Steps by President Trump's administration to restrict reproductive care began as early as last May with [an executive order](#) that, in part, calls for amended regulations supporting conscience-based objections to the Affordable Care Act's mandate on preventive care. Another development came in October when the Trump administration [reversed a requirement](#) that employers cover birth control in their health insurance plans. In response to the latest development of the Conscience and Religious Freedom Division, [Planned Parenthood recognizes](#) the new division as a tool to reinforce discriminatory practices against women and LGBTQ patients.

Supporters of the new division cite case precedence and federal law to support enhanced protection of religious objections to medical care. Some supporters refer to [Roe v. Wade](#), which stated that medical personnel may not be required to perform services that violate personnel's moral principles. Further, [Burwell v. Hobby Lobby Stores, Inc.](#) held that the contraceptive mandate under the Affordable Care Act violated the Religious Freedom Restoration Act of 1993 as it applied to corporations with limited shareholders. The [statutes used to support the division](#), however, refer more specifically to reproductive services such as abortion. This causes speculation as to how [non-reproductive services could likewise be denied](#) on the basis of sexual and gender identity.

Though international human rights instruments protect religious freedom, they impose limitations on a government's protection of this freedom. The United States has ratified the [International Covenant on Civil and Political Rights](#) (ICCPR). Article 8 of the ICCPR prohibits forced or compulsory labor but states that this type of labor does not include service that comprises normal civil obligations. Articles 18 and 19 of the ICCPR also state that religious freedom may be subject to limitations as necessary to protect public health. Under these articles, healthcare providers inherently have the civil responsibility to protect public health, and they are thus prohibited from imposing their religious beliefs on patients.

The [American Civil Liberties Union \(ACLU\)](#) asserts that the right to religious freedom does not grant the right to discriminate or impose religious beliefs on others. [Keeton v. Anderson-Wiley](#) held a similar stance: the Eleventh Circuit found that a university's neutral requirement—that all students trained in a counseling program must comply with the American Counseling Association Code of Ethics—did not target any particular religious beliefs. The Eleventh Circuit further stated that because this requirement was unbiased in its application to all students, a student enrolled in the program who did not wish to comply was looking for preferential rather than equal treatment.

International and federal law require a balance between protecting the rights of religious freedom and public health. According to the ACLU, the Trump administration has applied a [double standard to religious freedom](#) since the President first took office. While there are measures in place for protecting the religious freedom of medical professionals, the Trump administration has sought to add greater protections only for certain religions. The administration relies on vague language and selective reference to case law to defend its actions. Under the ICCPR and the Eleventh Circuit, a distinction must be respected in protecting all religious beliefs without allowing preferential treatment to deny a universally recognized right to health.

Discriminatory Laws in the Eastern Caribbean: Effect on the LGBT Community

April 18, 2018
by Aya Badr

Discriminatory laws against LGBT people continue to plague the Eastern Caribbean. The [countries](#) that continue to exhibit this homophobic culture include, but are not limited to, Antigua and Barbuda, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. Eastern Caribbean countries continue to implement and enforce buggery and indecency laws, which [criminalize consensual sexual activity among people of the same sex](#). The discriminatory laws adversely influence the [social culture](#) in these countries. Additionally, the direct and collateral effects of the laws carry serious irreversible physical and psychological threats to LGBT persons in these countries. Continuing to enforce these laws would violate human rights obligations to prevent discrimination and fail to protect citizens from [violence and fear](#).

In their report concerning discrimination against LGBT persons in the Eastern Caribbean, [the Human Rights Watch](#) conducted interviews to illustrate the impact of the homophobic laws and the surrounding culture. One [interviewee](#), Rosa, started the first LGBT organization in St. Kitts, the [St. Kitts/Nevis Alliance for Equality](#). She was a lesbian who felt discriminated against but emphasized that two females could kiss in public, while a [“man on man could never do that.”](#) She explained that gay men are attacked, threatened, and abandoned by their families. The homophobic culture seeping into families was common, Ernest from Barbados explained: [“My mom called her brothers to beat me. I think they were trying to beat it out of me, convert me. But this is who I am. I can’t change it.”](#) Not only are members of the LGBT community being physically assaulted by family members, but it is a common phenomenon among [strangers](#) as well. The interviewees expressed that, as a result of the discrimination and oppression, they often experienced [“depression, suicidal thoughts, and self-inflicted harm.”](#)

The Eastern Caribbean countries, with the exception of Antigua and Barbuda, are parties to the [International Covenant on Civil and Political Rights](#) (ICCPR). This covenant enforces the protection and respect of the civil and political rights of individuals. These rights include the right to life, freedom of religion, freedom of speech, and privacy. Additionally, [the American Convention on Human Rights](#) (ACHR) harnesses the core duty of upholding the “respect for the essential rights of man.” The Eastern Caribbean countries are also parties [to the Caribbean Community](#) (CARICOM), whose core values include the security of each citizen and the guarantee of human rights and social justice.

Further, [the ACHR](#) specifies that parties must ensure the rights and freedoms to all citizens “without discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” In 2012, the Inter-American Court [specified](#) the meaning of “social condition” by prohibiting “any regulation, act, or practice considered discriminatory based on a person’s sexual orientation.” The buggery and indecency laws, by only applying to those who engage in same-sex sexual activity,

discriminate against persons based on sexual orientation. By enforcing these laws, the countries blatantly violate [the ACHR](#). Similarly, because of the mere existence of the laws in combination with their direct and collateral effects, the countries violate [the CARCIOM](#) by failing to protect human rights.

The governments of the Eastern Caribbean countries are failing to protect their citizens against violence and discrimination. Moreover, by enforcing discriminatory laws targeting the LGBT community, the countries violate international human rights ordinances and treaties that they are obligated to follow. For example, the buggery and indecency laws violate the [ICCPR](#) because they suffocate the LGBT persons' right to privacy in their sexual activities and their freedom to safely be themselves.

By enforcing discriminatory laws, the countries create an environment of welcoming and normalizing discrimination amongst its citizens. To combat this, the governments of each of the affected countries in the Eastern Caribbean should repeal any law that criminalizes consensual same-sex conduct and pass laws against the discrimination of the LGBT community. Additionally, the police should focus on properly investigating allegations involving threats and violence based on sexual-orientation. When the police begin to condemn and punish discriminatory behavior, the phenomenon will begin to transform from being seen as widely-accepted to being seen as wrong. Additionally, the LGBT community will feel safer and less-inclined to feel like they need to hide.

Bipartisan Bill Compels Lawmakers to Foot the Bill for Their Acts of Sexual Misconduct

April 25, 2018
by Ridhi Shetty

When reports emerged in October about [producer Harvey Weinstein's history](#) of sexual misconduct against women working in Hollywood, a movement [originated by activist Tarana Burke](#) to give voice to sexual abuse survivors gained momentum on social media as women began [sharing their experiences](#) of abuse from men in authoritative positions. As the [Center for American Progress reports](#), sexual harassment is rampant across industries, including public administration—an industry that accounted for 6.48% of sexual harassment charges filed from 2005 to 2015. A new bipartisan bill takes a step toward reducing this statistic by focusing on lawmakers who perpetrate sexual misconduct and their victims.

One of the biggest [challenges in addressing sexual harassment](#) by members of Congress has been gathering information about past claims, which is hindered by the complaint process, confidential counseling and mediation requirements, settlement agreements, and retaliation. A turning point came after several Democratic and Republican [lawmakers resigned following sexual abuse claims](#), resulting in the [Congressional Accountability Act of 1995 Reform Act](#) (CAA Reform Act). This bipartisan bill, proposed by Rep. Jackie Speier (D-Calif.) and introduced by Rep. Gregg Harper (R-Miss.), who wrote the legislation with Rep. Robert Brady (D-Pa.), [expands the rights and resources](#) available to victims when filing complaints and bars lawmakers from settling claims with victims using taxpayer funds.

The CAA Reform Act [amends the 1995 legislation](#) by revising procedures for investigating and resolving employees' claims of violations that include sexual harassment. In addition to making the process for filing complaints less onerous for employees, accused lawmakers will now be required to reimburse the United States Treasury within ninety days of their settlements to avoid having their wages garnished. The [House of Representatives approved the bill](#) in February, but progress on the bill reached a standstill in the Senate.

The foundation of this bill was laid as far back as the 1980s, when the United States Supreme Court determined that workplace sexual harassment violates [Title VII of the Civil Rights Act of 1964](#). In its 1986 decision for [Meritor Savings Bank v. Vinson](#), the Supreme Court noted that the Equal Employment Opportunity Commission [issued guidelines specifying](#) that sexual harassment is a form of sex discrimination. The Supreme Court's decision, despite setting a clear standard, [did not lead to reduced incidents](#) of sexual harassment across sectors, demonstrating that existing legislation and case law has been insufficient to curb sexual harassment, especially when individuals in higher federal government positions have managed to [evade repercussions of committing sexual harassment](#).

Not only does the demand for this bill align with existing law in the United States, but it also falls within provisions of international human rights instruments that demand fair treatment of women. The United States has signed, but not ratified, the [Convention on the Elimination of Discrimination](#)

[Against Women](#), which in part requires parties to adopt legislative and non-legislative measures in the political field to prohibit sex discrimination, modify laws and practices that constitute sex discrimination, and provide women with legal protection of their rights equal to men. Similarly, the United States has only signed, without ratifying, the [International Covenant on Economic, Social, and Cultural Rights](#), which guarantees the right to employment without discrimination on the basis of classes including sex, and the [American Convention on Human Rights](#), which protects the right to physical and mental integrity and prohibits cruel and degrading treatment.

Because the United States has not yet ratified these treaties, it may be argued that the United States has not effectively agreed to be bound by these instruments. The United States has, however, signed and ratified the [International Covenant on Civil and Political Rights](#), which provides broad protections by prohibiting any act, including sex discrimination, that constitutes disrespect for a person's inherent dignity, forced or compulsory labor, or degrading and cruel treatment.

The CAA Reform Act should be passed to create significant change with regard to sexual harassment in politics. The requirements imposed in the bill create greater accountability than other methods that have either been unenforced or unsuccessful in preventing sexual harassment. At a time when women and men who have endured sexual misconduct have grown emboldened to vocalize their experiences, [female senators are making bipartisan efforts](#) to push Senate leadership to take concrete steps to pass sexual harassment legislation. The federal government can no longer turn a deaf ear to sexual harassment as the voices of survivors and their supporters grow louder.

The Trafficking Victims Protection Act: A Rare Sign of Progress in a Nation Divided by Immigration

April 26, 2018
by Susam Imerman

Despite the negative political climate surrounding immigration in the United States, legislation pertaining to human trafficking has gained traction and bi-partisan support in the past year. In 2017, the Trump Administration’s “travel ban,” reports of increased immigration enforcement, and proposals to restrict immigration visas, dominated the news coverage. Accordingly, the House’s unanimous vote on July 12, 2017 which re-authorized federal law to combat human trafficking went largely unnoticed. “[H.R. 2200](#) is known as the Frederick Douglass...of 2017. A bipartisan coalition of House Representatives from across the country introduced this bill. In the words of President Trump, this law is ‘an important step’ towards ‘ending the horrific practice of human trafficking.’”

Congress [enacted](#) the first Trafficking Victims Protection Act (TVPA) in 2000 and has reauthorized it four times since, establishing the United States as a global leader in the fight against modern-day slavery. Nevertheless, since its passage in 2000, over 20.9 million men, women, and children [worldwide](#) have been induced through force, fraud, or coercion to perform commercial sex acts or work in a wide swath of industries, including manufacturing, restaurant, agriculture, and domestic services. According to International Labor Organization (ILO) [estimates](#), fifty-five percent are women and girls, and twenty-six percent are children.

From the beginning, the TVPA’s goal has been to identify and protect survivors, punish traffickers, and prevent new cases by addressing factors that make individuals and communities vulnerable to human trafficking. The TVPA provides a [legal definition](#) of human trafficking, dedicates funding for legal, social, and other services for survivors, makes resources available for law enforcement investigations and prosecutions, establishes criminal sentences for traffickers, and supports a broad range of training and outreach initiatives.

The House’s reauthorization of the TVPA in 2017 expanded measures for investigating human trafficking, increased prevention strategies, and bolstered protections for victims. Key components included:

- Strengthening the State Department’s annual Trafficking in Persons Report and Country Tier Rankings by removing the possibility of manipulation for diplomatic, economic, or political considerations;
- Allowing the State Department and law enforcement agencies to offer bounties for the arrest and/or conviction of human traffickers;
- Expanding training for federal, state, and local law enforcement agencies;

- Promoting training for civilians in the airline, hotel and other industries on how to identify and assist potential victims;
- Directing law enforcement agencies to take a more victim-centered approach in investigating and prosecuting cases of human trafficking and to refrain from arresting and prosecuting victims for crimes that they were forced to commit as part of the human trafficking situations; and
- Requiring law enforcement agencies to screen for victims in populations where they are more likely to be found.

In addition to its domestic efforts, the new TVPA mandates the release of a Department of State report that determines annually the extent to which countries across the globe are meeting minimum standards for eliminating human trafficking. The State Department's published assessment places public pressure on countries to improve their efforts to combat trafficking through a public accountability ranking system. In order to ensure country action, the reauthorized Act ensures that only concrete actions taken by governments are considered for reporting. Empty promises of future legislation and far away commitments are no longer taken into account with the new TVPA. As a result, lawmakers hope to bring increased transparency to the widespread global trafficking problem and to keep nations, whose combative efforts fail to prevent human trafficking within their borders, accountable.

The 2017 passing of the TVPA marks a landmark piece of federal human trafficking legislation that passed in a mere three months in both the House and the Senate – a bureaucratic miracle in the current political climate. The TVPA legislation is proof that despite the Congress' ongoing immigration battle, eradicating human trafficking seems to be one issue everyone in Washington can agree on.

Central America's Ongoing Refugee Crisis

May 7, 2018

by Catherine Perrone

Over the last decade, [Central America](#) has been experiencing an ongoing refugee crisis. Generalized violence threaten people from the “Northern Triangle” countries, Guatemala, El Salvador, and Honduras, causing them to flee to Mexico and elsewhere. Mexico maintains the practice of routinely forcing these refugees out of Mexico and back to their home countries, violating the [non-refoulement principle](#). According to the [UN Refugee Agency](#), under Article 33 of the [Convention Relating to the Status of Refugees](#), the non-refoulement principle requires that no country “expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

Systemic violence has plagued the region since the [1980s](#), during which the three countries experienced violent civil wars. Even after the conflicts ended, war criminals escaped prosecution, and a new wave of gang violence and corruption began. In 2016, people fled and died at the same rate as they did during the country's twelve-year civil war. In fact, the gangs, often called maras, use the [same assault weapons from the civil wars](#) when waging violence. [Today](#), maras have made the Northern Triangle one of the [most dangerous areas in the world](#). With increased border protections preventing asylum-seekers from staying in the [United States](#), more and more of these people seek asylum in Mexico. [Amnesty International](#) found that forty percent of those detained by Mexico's Instituto Nacional de Migración (INM) [National Institute of Migration] expressed valid testimony that refoulement occurred, while seventy-five percent of detainees were not informed of their right to seek asylum in Mexico.

[Mexican law](#) requires INM agents to inform asylum seekers of their rights. This law was enacted as a safeguard against refoulement and to ensure proper protection for those seeking asylum. Instead of abiding by the law, INM agents regularly coerce migrants to sign “voluntary return” papers, which essentially permits their deportation. [One man recalled a conversation](#) with an INM official; the official said “if you don't sign here, we won't give you food, you won't be able to have a shower. We will treat you like you don't exist.”

In response to a Honduran man expressing fear of returning to Honduras, an [INM agent said](#) “[h]ere we are not interested in your lives. Our job is to deport you.” Another man was murdered by a gang just three weeks after being illegally deported back to Honduras by the INM; he was an employee of the Honduran transport industry, a group specifically outlined by the UNHCR as a targeted group in Honduras. Mexico ratified the 1951 [Convention Relating to the Status of Refugees](#) and the 1967 Protocol and, as such, is required to follow the law established therein.

[Amnesty International](#) recommends that the President of Mexico and INM implement measures to prevent further violations of the non-refoulement principle. Amnesty International's main recommendation relates to INM's screening processes. INM should adopt and implement a systemic review of its screening processes to ensure that detained asylum-seekers know their

rights. Further, the review would curb refoulement and promote a system that properly identifies detainees as asylum seekers. According to [UNHCR Mexico](#), detention limits the access to Mexico's asylum system and procedures. Specifically, prolonged detention, lack of available alternatives, and inadequate conditions all undermine the asylum system and make it more difficult for those detained to be granted asylum. This problem has persisted in Mexico for years; the [UNCHR National Action Plan](#) is already several years old, and it appears as if this problem is going to continue to persist, given new talks between Mexico and the United States. By [barring asylum-seekers](#) from entering the United States, it makes it more difficult for asylum-seekers to escape violence and strains [Mexico's immigration](#) system as well. If more people seek asylum in Mexico, it is very likely that the violations of the non-refoulement principle will get worse.

The Brock Turner Appeal: Sexual Violence Against Women in the Criminal Justice System During #MeToo

May 21, 2018
by Heidi Smucker

Brock Turner, the Stanford University student [convicted](#) of sexually assaulting an unconscious woman behind a frat party, filed a [172-page appeal](#) with [California's 6th District Court of Appeals in December 2017](#) asking for a new trial, despite receiving a lenient sentence. Turner's victim's statement on the sexual assault and rape sparked a national conversation that has now reached a fever pitch. The remaining question is whether this rising tide of public support for victims of sexual violence is enough to affect concrete legal and legislative changes.

Turner's appeal [claims](#) the prosecutor wrongfully characterized the assault as taking place behind a dumpster and further accuses Judge Aaron Persky of depriving Turner of his right to a fair trial based on the jury instructions and Persky's decision to exclude testimony from Turner's character witnesses at trial. Judge Persky [came under fire](#), and brought Turner's case into the national spotlight, when he sentenced Turner to six months in prison and three years' probation and required Turner to register as a sex offender. Turner was later [released early](#) from jail for good behavior, inciting [outrage](#) and further accusations that his ninety days of incarceration reflected the justice system's failure to protect victims of sexual violence.

While Turner's appeal brings up [fresh anger](#) for many, the national dialog around sexual assault has only continued to heat up. Time Magazine's 2017 Person of the Year was simply the ["Silence Breakers,"](#) highlighting individuals and celebrities who spoke out against sexual misconduct, assault, and rape through court cases, movements, or by publicly sharing their stories. The #MeToo [movement](#) dominated social media and the Golden Globes [red carpet](#). Former powerful film producer Harvey Weinstein was [disgraced](#) when a flood of women, including A-List actresses, brought his decades-long pattern of sexual misconduct into the spotlight; he ultimately lost control of his company and status as a Hollywood power player.

Although the #MeToo movement is amplifying victims' voices, changes in the U.S. criminal justice system are not yet apparent. While the sentencing in Turner's case was a fierce point of contention, lenient sentencing for sexual offenders is [not the only issue](#) plaguing sexual assault cases in the criminal justice system. A more prevalent problem is that convictions for sexually violent crimes in the United States are [rare](#); out of every 1000 rapes, 93 perpetrators will never be convicted. In light of this shockingly low number, Turner's conviction is almost an anomaly. However, the U.S. justice system's [dismal](#) treatment of sexual violence victims and wariness in [sentencing perpetrators](#) is not, in itself, unique.

Stories from other countries, including world leaders like Canada, the U.K., and Australia, detail equally depressing track records of [not protecting women](#) from sexual violence and failing to prosecute and/or appropriately sentence perpetrators. Recently, a judge in [Canada](#) moved the

timing of a ninety day jail sentence for a twenty-one-year-old student so it wouldn't conflict with his college courses, despite his conviction for soliciting nude pictures from a thirteen-year-old girl. In the U.K. there was a twenty-five percent uptick recorded over five years for [“warnings”](#) issued to offenders of serious crimes, including 1,100 to sex offenders, sixteen of which were for rapes. These warnings allow perpetrators to admit guilt for their crimes while avoiding court proceedings and keeping their records mostly clear.

The startling lack of justice for victims of sexual violence, across both developed nations and developing countries, demonstrates a pervasive problem that reaches far beyond Brock Turner and his recent appeal. Globally, [thirty-five percent](#) of women have experienced either domestic or sexual violence from a partner or sexual violence from someone else. Moreover, the [economic side effects](#) are massive, and the combined global cost of violence against women could soon top \$1.5 trillion annually, roughly the equivalent of Canada's annual gross domestic product. This number includes losses sustained from time away from paid work. Some [studies from India](#) show eighty-two percent of Indian women are reducing their working hours or even quitting their jobs so they do not commute after dark, when the risk of assault is much higher. In Uganda, nearly ten percent of all violent incidents against women resulted in their loss of paid work and a half month's salary.

Clearly, if one in three women worldwide has already experienced some type of violence in her lifetime and the monetary cost continues to climb in the trillions, both the [laws and the behavior](#) concerning violence against women must change. As despicable crimes continue to happen across the world, there have been some positive measures taken in response to public sentiment and outrage. Following the horrific, fatal [gang rape of a female student](#) in Delhi, India in 2012, the Indian parliament [quickly passed](#) harsher rape laws. These laws included new categories of crimes like stalking, acid violence, and voyeurism and explicitly laid out that a woman's lack of physical struggle does not imply consent. Yet these reforms have [done little](#) to curb the onslaught of sexual attacks across the country. Most recently, a sickening case in Delhi involved an [eight-month-old infant](#) who was raped by an adult family member and needed hours of surgery to fix damage to her internal organs. Rape culture is [still prevalent](#) in India and demonstrates that behavior is not often quick to follow legal reform.

However, one reactionary, yet unique, approach in the United Kingdom provides a safety net within sentencing of violent crimes and allows victims to potentially influence their offender's sentencing, even many years later. The [Unduly Lenient Sentencing procedure](#) allows victims to challenge their perpetrator's sentence if they view it as too lenient. This program includes reexamining and adjusting sentencing for crimes, including rape. In 2016, 141 prison terms were extended under the scheme, 41 of which were for sexual crimes. The option to challenge a lenient sentence may be more appealing to victims over legislative changes to sentencing standards, similar to the sentencing laws enacted by the California legislature after Brock Turner's trial.

After the widespread outrage over Turner's sentencing, the California [legislature passed](#) a mandatory sentencing law for sexual assaults of unconscious victims or those unable to give consent due to intoxication. Yet, there is [concern](#) that previous reactive legislation has not been a successful deterrent for crime and this approach will not realistically benefit victims. Because mandatory sentencing increases the burden of proof necessary to convict perpetrators, these laws can potentially backfire and give perpetrators an added layer of protection. Oftentimes, judges and juries are presumptively hesitant to convict people accused of sexual violence, because testimony

is often “he said, she said.” Furthermore, critics point to the fact that mandatory sentencing is almost certain to [disproportionately impact](#) communities of color, like it has in other crimes.

However, a legislative approach to curbing violence against women still holds a strong potential for affecting lasting change. While instituting mandatory sentencing minimums through legislation may be misguided, [countries that codify domestic legal protections](#) for women demonstrate better gender equality, women’s development, and lower rates of female HIV rates. Moreover, as countries ratify the 2008 United Nations Convention on the Elimination of All Forms of Discrimination Against Women ([CEDAW](#)) they become more likely to institute thorough legal protections for women on a state level. These laws may be reactionary, and cannot always guarantee a shift in local attitudes, but they are an important step towards cementing protections for women and victims of sexual and domestic violence.

In the United States, the 1995 [Violence Against Women Act](#) (VAWA) was a huge legislative victory for women’s groups and advocates that had been demanding more [comprehensive federal legal protections](#) for decades. VAWA included provisions focused on prevention of rape and battery and allocated money for victim services. It was subsequently expanded in 2000 and reauthorized in 2005 and prevention now includes educational and training programs for individuals ranging from health professionals to law enforcement and even judges. The original act was targeted at improving the criminal justice system’s response to violence against women and ensuring funding for services that benefit victims. However, while VAWA has [increased prosecution rates for domestic violence](#) in the U.S., there is little evidence that the legislation reduced incidences of gender-based violence since it was passed, leaving victims disillusioned.

Additionally, victims are powerless during U.S. criminal proceedings because cases are brought, dictated, and controlled by the government. Victims have no say in what charges are brought, plea bargains made, or sentences imposed; they cannot contribute or appeal at any stage. Introducing a system similar to the U.K.’s could give victims a voice in proceedings and, at the very least, provide a second avenue of recourse if they feel dissatisfied with the final sentencing.

Brock Turner’s appeal opens a fresh wound during a time rife with demands for substantive justice for victims of sexual assault in the United States and across the world. While Turner’s sentencing was ultimately the source of controversy, his case highlights the two ways in which victims feel betrayed by the U.S. criminal justice system: the small number of convictions for sexually violent crimes and lenient sentences for offenders. Although one in two American women have been victims of sexual violence and the cost of violence against women in the U.S. could top [\\$500 billion](#) annually, this is not reflected in national conviction statistics for sexually violent crimes. The disconnect between estimated crime numbers and the low conviction rates for sexual offenders lends weight to commentary that the justice system does little, if anything, to provide victims with real justice.

While the conversation around sexual crimes against women is now robust, the path forward within the U.S. criminal justice system is unclear. Whether the potential economic, legislative, and electoral consequences can wield influence and impact change has yet to be determined and a remedy may take years, or even decades. So while change in the criminal justice system is necessary for cementing real protections for victims, perhaps a small, recent victory is the enduring strength of the national conversation. The issue has not faded from society’s conscious in the past

year, but instead is gaining steam and becoming a major political talking point. Indeed, the real strength of the conversation today is that victims can raise their voice, join the conversation, and know they have the formidable power of public sentiment behind them.