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Submitted by:

The Advocates for Human Rights,

a NGO holding ECOSOC Special Consultative status since 1996,

The Advocates for Human Rights (“The Advocates”) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring protection for refugees around the world and provides legal services to asylum seekers in the Upper Midwest region of the United States.

I. BACKGROUND

1. The Advocates submits the following information, drawn from its March 2014 report, *Moving from Exclusion to Belonging: Immigrant Rights in Minnesota Today*.¹ This report is the result of more than 200 interviews and 25 community conversations held throughout Minnesota in the past two years.² Our findings reveal how federal policies are implemented at the state and local level and where they fall short in protecting the human rights of immigrants and refugees. Though the information in this report is specific to Minnesota, it highlights many of the common problems with state-level human rights compliance around the United States.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

a. Equal Protection

2. The United States supported, either in whole or in part, almost all recommendations regarding ending racial profiling by law enforcement.³ Despite this support, The Advocates

¹ The Advocates for Human Rights, *Moving from Exclusion to Belonging: Immigrant Rights in Minnesota Today* (March 2014), <http://www.theadvocatesforhumanrights.org/belonging>. All cited interviews, conversations, and correspondence are from the report.

² Minnesota's immigrant population is unusually diverse compared to the national immigrant population, primarily because the state accepts large numbers of resettled refugees. The largest group of immigrants, 37.6% of the total, comes from Asia, while 27.7% come from Central and South America, and 19% from Africa. (2008-2012 American Community Survey 5-Year Estimates, B05006 - Place of birth for the foreign-born population in the United States). Given that most immigrants in Minnesota are racial and ethnic minorities, they can face a dual burden of national origin discrimination coupled with racial or ethnic discrimination. Immigrants and refugees in Minnesota are more likely to be people of color, more likely to have limited English proficiency, and more likely to be poor than U.S.-born residents. (Migration Policy Institute, "State Immigration Data Profiles: Minnesota," (2012 Income and Poverty Table), <http://migrationpolicy.org/data/state-profiles/state/income/mn>).

Minnesota is also home to approximately 85,000 undocumented immigrants, who either entered the United States without authorization or had legal status but have subsequently lost it, either because they stayed past the terms of their visas or failed to maintain the requirements of their immigrant status (Jeffrey S. Passel and D'Vera Cohn, "Unauthorized Immigrant Population: National and State Trends, 2010," (February 1, 2011), <http://www.pewhispanic.org/2011/02/01/unauthorized-immigrant-population-brnational-and-state-trends-2010/>). Undocumented immigrants have very few avenues for staying in the United States legally. If they are found by immigration enforcement, they face detention and removal (or deportation) from the United States.

³ The U.S. accepted in full the following recommendations: "Take legislative and administrative measures to ban racial profiling in law enforcement" (Democratic People's Republic of Korea); "Ban, at the federal and state levels, the use of racial profiling by police and immigration officers" (Plurinational State of Bolivia); "Prohibit expressly the use of racial profiling in the enforcement of immigration legislation" (Mexico); "Make further efforts in order to eliminate all forms of discrimination and the abuse of authority by police officers against migrants and foreigners, especially the community of Vietnamese origin people in the United States" (Viet Nam); "Prohibit and punish the use of racial profiling in all programs that enable local authorities with the enforcement of immigration legislation and provide effective and accessible recourse to remedy human rights violations occurred under these programs" (Mexico); "Enact a national legislation that prohibits religious, racial and colour profiling particularly in context of the fight against terrorism" (Qatar); and "Smarten security checks so as to take into account the frequent homonymy specific to Moslem names so as to avoid involuntary discrimination against innocent people with such names because of namesakes listed as members of terrorist groups" (Algeria). The U.S. accepted in part the following recommendations: "Review, with a view to their amendment and elimination, all laws and practices that

collected numerous reports of local law enforcement engaged in racial profiling of immigrants, often in an attempt to discover if they were undocumented, even though local law enforcement is not responsible for enforcement of immigration law.⁴

3. Only individuals who can demonstrate that they are lawfully present in the United States can receive a Minnesota driver's license or state identification card.⁵ In some instances, local law enforcement ask for identification and detain those who do not have Minnesota identification solely as a way to target undocumented immigrants who, once in local jails, are turned over to ICE for deportation.⁶
4. Immigration courts do not consider the constitutionality of the initial stop or whether racial profiling occurred when deciding deportation cases. Because immigrants are often deported prior to criminal charges being filed, no criminal court judge ever hears the case. Deportation therefore circumvents the criminal justice system's procedural safeguards against constitutional violations;⁷ immigrants who may have suffered unconstitutional racial profiling are deported and local law enforcement who engaged in unconstitutional activity are not held accountable.

discriminate against African, Arab and Muslim Americans, as well as migrants, in the administration of justice, including racial and religious profiling" (Egypt); "Attempt to restrain any state initiative which approaches immigration issues in a repressive way towards the migrant community and that violates its rights by applying racial profiling, criminalizing undocumented immigration and violating the human and civil rights of persons" (Guatemala); "Revoke the national system to register the entry and exit of citizens of 25 countries from the Middle-East, South Asia and North Africa, and eliminate racial and other forms of profiling and stereotyping of Arabs, Muslims and South Asians as recommended by CERD" (Sudan); and "Avoid the criminalization of migrants and ensure the end of police brutality, through human rights training and awareness-raising campaigns, especially to eliminate stereotypes and guarantee that the incidents of excessive use of force be investigated and the perpetrators prosecuted" (Uruguay). The only recommendation related to racial profiling that the United States rejected was Ecuador's to "repeal and do not enforce discriminatory and racial laws such as Law SB 1070 of the State of Arizona," which is not within the power of the federal government. Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States, Jan. 4, 2011, UN Doc. A/HRC/16/11, ¶ 92.

⁴ One advocate reported the case of an individual who was parked on the wrong side of the street while jump-starting a friend's car. The police stopped, asked him for identification, and when he presented a Mexican *matricula consular*, they arrested him. He was booked into jail, interviewed by ICE under the Criminal Alien Program, and placed in deportation proceedings. The individual had no criminal history and no criminal charges were brought against him (Interview 121).

⁵ Minn. Rules 7410.0410 (2013) (as amended by 28 SR 314, Sept. 15, 2003).

⁶ In numerous cases, individuals were arrested following traffic stops for failure to carry a driver's license or proof of insurance and booked into local jails. Once in jail, they were interviewed by Immigration and Customs Enforcement (ICE) officers seeking to obtain admissions of unlawful presence in the United States. ICE then issues a detainer request, asking local law enforcement to hold the immigrant until they can be transferred into federal custody. Once in federal custody, they were deported.

⁷ In the criminal justice system, searches and seizures can be challenged and evidence, including testimony, may be suppressed if found to have been obtained in violation of law.

5. Muslim individuals and people from predominantly Muslim countries reported additional scrutiny and delays, especially when entering the United States.⁸ Advocates report that most complaints about discrimination from Muslim immigrants pertain to harassment at airports.⁹
6. The U.S. legal system does not ensure protection against discrimination at the border. Non-citizens interrogated at the border are not allowed to call anyone and have no right to counsel.¹⁰ Prohibitions against random and arbitrary stops and searches¹¹ and against racial profiling¹² do not apply to the border, including airport ports-of-entry. Mechanisms exist to review complaints about civil rights abuses at the border,¹³ but attorneys report that although complaints do receive a response, the resolution is not always satisfactory.¹⁴

Recommendations

- Discourage racial profiling by both local law enforcement and immigration enforcement by reviewing the constitutionality of stops and creating enforceable internal procedures against profiling when detaining immigrants for immigration law violations.
- Provide an effective remedy in cases where individuals are stopped as a result of racial profiling by local, state, or federal officials.
- Provide legal counsel to individuals in secondary inspection at the border so that they can be informed of their rights.

⁸ One individual said, “Any Muslim who travels to Muslim countries will get stopped at the Minneapolis airport. They will be directed into secondary questioning. The agency claims it is random, but everyone in the room is Muslim” (Interview 127); *see also* Interview 18; Interview 7.

⁹ Interview 127.

¹⁰ 8 C.F.R. §292.5 (No right to representation when seeking admission to the United States); 19 C.F.R. §162.6 (CBP Search Authority); 19 U.S.C. §1487 (Customs Duty Title).

¹¹ Customs and Border Protection (CBP) officials have the right to detain and search any person or item at a port of entry (19 C.F.R. § 162.6; *Carroll v. United States*, 267 U.S. 132, 154 (1925); *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985), government interest in preventing entry of unwanted persons and effects is at its zenith at the international border; *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975), citing the important governmental interest in preventing illegal entry).

¹² The Department of Homeland Security (DHS), of which CBP is a part, notes that their policy is to “prohibit the consideration of race or ethnicity in our investigation, screening, and enforcement activities in all but the most exceptional instances.” However, an exception is noted allowing for consideration of nationality in “antiterrorism, immigration, or customs activities in which nationality is expressly relevant to the administration or enforcement of a statute, regulations, or executive order, or in individualized discretionary use of nationality as a screening, investigation or enforcement factor” (Secretary Napolitano, “Memorandum for Component Heads: The Department of Homeland Security’s Commitment to Nondiscriminatory Law Enforcement and Screening Activities,” April 26, 2013. http://www.dhs.gov/sites/default/files/publications/secretary-memo-race-neutrality-2013_0.pdf).

¹³ The DHS Office of Civil Rights and Civil Liberties reviews and assesses complaints about civil rights abuses and profiling based on race, ethnicity, and religion (6 U.S.C. § 345; 42 U.S.C. § 2000ee-1; Department of Homeland Security, “File a Civil Rights Complaint,” <http://www.dhs.gov/file-civil-rights-complaint>). Travelers can also submit complaints using the DHS Traveler Redress Inquiry Program (TRIP) online system (U.S. Department of Homeland Security, “DHS Traveler Redress Inquiry Program (DHS TRIP),” <https://www.dhs.gov/dhs-trip>).

¹⁴ Interview 188.

b. Due Process

7. The United States fully supported Austria’s recommendation to “take appropriate legislative and practical measures to prevent racial bias in the criminal justice system.”¹⁵ However, the federal government has taken no steps since 2010 to address one source of racial discrimination in the criminal justice system: the disproportionate impact of criminal convictions on noncitizens.
8. Noncitizens can be deported from the United States if they are convicted of certain crimes,¹⁶ including crimes that may only be misdemeanors in state courts.¹⁷ Immigration judges consider only immigration law during deportation proceedings, and are barred from considering the facts underlying a criminal conviction or claims that the noncitizen did not understand the terms of a plea agreement.¹⁸ In 2010, the U.S. Supreme Court recognized that noncitizen criminal defendants must be informed whether their guilty pleas will carry a risk of deportation, an often complex legal assessment.¹⁹
9. Minnesota does not provide sufficient resources to comply with this ruling. Most criminal defendants in Minnesota qualify for free legal representation.²⁰ Given the constraints of the public defender system,²¹ attorneys often have only a quick conversation of ten minutes or

¹⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States, Jan. 4, 2011, UN Doc. A/HRC/16/11, ¶ 92.96.

¹⁶ The massive overhaul of immigration laws in 1996 expanded the types of criminal convictions which can lead to deportation (Illegal Immigration Reform and Immigrant Responsibility Act, Public Law Number 104-208, 2006).

¹⁷ Certain criminal offenses that are misdemeanors under Minnesota law, such as a violation of a protection order (Minn. Stat. §518b.01 subd. 14(b)), are considered deportable offenses under immigration law (8 U.S.C. §1227(a)(2)(E)(ii)). Determining whether a criminal offense is deportable can be complicated, requiring a detailed review of the criminal law statute and the immigration law statute.

¹⁸ One criminal defense attorney described a case where a client narrowly avoided deportation. The client had been a permanent resident for years and his entire family had become U.S. citizens. The attorney says, “He was drunk and went into a convenience store where he grabbed a beer and drank it. As a result, he was charged with theft. Because it was such a small crime, he did not qualify for a public defender and he represented himself.” The client ended up in immigration custody, facing deportation because he had been convicted of two “crimes involving moral turpitude.” The attorney was ultimately able to get the conviction reversed. She recalls, “The judge was shocked that a theft of \$1.28 (the cost of the beer) could lead to deportation” (Interview 112).

¹⁹ *Padilla v. Kentucky*, 559 U.S. 356 (2010), 368–369.

²⁰ Scott Russell, “Public Defenders: A Weakened But Indispensable Link,” *Bench & Bar of Minnesota*, Feb. 2009, http://www2.mnbar.org/benchandbar/2009/feb09/public_defenders.html. This representation is provided through the public defender system, which is administered by the Board of Public Defense (State of Minnesota Board of Public Defense, “About Us,” <http://www.pubdef.state.mn.us/aboutus>).

²¹ A 2010 report showed that Minnesota public defenders carried average caseloads in excess of 700 cases per year, much higher than the recommended average of 400 cases per year (Office of the Legislative Auditor, State of Minnesota, *Report: Public Defender System*, (Feb. 2010), xi, <http://www.auditor.leg.state.mn.us/ped/pedrep/pubdef.pdf>).

less with a client, which is inadequate to fully advise noncitizen defendants of the immigration consequences of a conviction or guilty plea.²²

10. The United States refused to accept the entirety of Guatemala’s recommendation that migrants in detention have access to counsel,²³ stating: “a migrant in removal proceedings in immigration court enjoys the right to counsel at his/her own expense.”²⁴ The Advocates found that to the lack of guaranteed access to counsel impedes immigrants’ ability to protect themselves from the serious consequences of deportation.

11. In 2012, only fifty-six percent of individuals nationwide had legal representation in immigration court, where a common outcome is deportation.²⁵ Compounding the problem, federal funding restrictions prohibit the majority of legal services organizations from representing undocumented immigrants.²⁶

Recommendations

- Use all available tools to ensure that states and the federal government are meeting their obligations to inform noncitizen criminal defendants of the immigration consequences of guilty pleas and convictions.
- Allow immigration judges greater discretion to consider the underlying facts and circumstances of deportable criminal offenses in granting relief from deportation.
- Adopt the pre-1996 definitions of crimes that qualify as deportable offenses under the law to minimize the possibility that noncitizens will suffer disproportionate consequences for minor criminal convictions.
- Provide free legal counsel for people facing the threat of deportation, especially for vulnerable groups such as children and persons with mental disabilities or illnesses.
- Remove funding restrictions on legal aid money to enable all immigrants to qualify for all free legal services.

²² Office of the Legislative Auditor, State of Minnesota, *Evaluation Report: Public Defender System* (February 2010), 36, <http://www.auditor.leg.state.mn.us/ped/pedrep/pubdef.pdf>.

²³ “Ensure that migrants in detention, subject to a process of expulsion are entitled to counsel, a fair trial and fully understand their rights, even in their own language” (Guatemala). Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States, Jan. 4, 2011, UN Doc. A/HRC/16/11, ¶ 92.185.

²⁴ Addendum, para. 16.

²⁵ Executive Office for Immigration Review, *FY2012 Statistical Year Book*, Feb. 2013, A1 (Statistics are for the United States as a whole; they are not broken out by state or jurisdiction).

²⁶ 8 C.F.R. §§1626.1 – 1626.2. The vast majority of funding for legal services in Minnesota is tied to the federal Legal Services Corporation, which prohibits providing legal representation to undocumented immigrants in almost all situations (Minn. Stat. §480.242; 42 U.S.C. §2996 et seq). The free legal services list for the Immigration Court that sits in Minnesota lists only three providers in the state. Only one of the three agencies has a satellite office outside the main metropolitan area, although all three provide service to immigrants statewide.

c. Security of person

12. The United States supported Moldova’s recommendation to “foster measures in relation to migrant women and foreign adopted children that are exposed to domestic violence.”²⁷ Despite this support, advocates reported barriers to safety for battered refugee and immigrant women.²⁸
13. The Victims of Trafficking and Violence Protection Act of 2000 amended federal law by creating the U-visa program, which sought to bring undocumented crime victims out of the shadows by eliminating the fear of deportation.²⁹ Implementation of the program has been uneven. Advocates reported that crime victims face significant hurdles in seeking protection from deportation.³⁰ Advocates often must explain U-visa regulations and the certification process to local law enforcement.³¹ Advocates noted that some certifiers appear to approach U-visa certification requests “looking for reasons not to sign.”³² Advocates also report that undocumented people who call police increasingly face suspicion that they are making false reports to gain immigration status under the U-visa program.³³

Recommendations

- Federal, state, and local law enforcement agencies should establish clear points of contact for U-visa certification. All law enforcement and justice system personnel should receive training on the U-visa certification’s purpose and requirements on a regular basis.

²⁷ Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States, Jan. 4, 2011, UN Doc. A/HRC/16/11, ¶ 92.165.

²⁸ The Advocates for Human Rights documented barriers to access to safety for battered refugee and immigrant women in its 2004 report, *The Government Response to Domestic Violence Against Refugee and Immigrant Women in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report*.

²⁹ Designed to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes... committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States,” the U-visa classification facilitates “the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status” (Victims of Violence and Trafficking Prevention Act of 2000, Public Law No. 106-386, 114 Stat. 1464, 2000).

³⁰ Correspondence 1; Correspondence 6.

³¹ Correspondence 1; Correspondence 6.

³² Correspondence 8. One law enforcement agency reported that because Congress only makes 10,000 U-visas available each year, the local law enforcement agency felt an obligation to certify only cases they felt were “real” or “deserving” cases, rather than all cases which qualify for certification (Interview 76).

³³ Notes on file with the author.

d. Racial Discrimination

14. The United States supported, in full or in part, all of the recommendations to combat racial discrimination.³⁴ However, immigrants and refugees in Minnesota lack adequate and effective remedies for claims of discrimination. People reported to The Advocates that noncitizens do not seek recourse because they fear deportation if they report the discrimination or because they had been, in fact, deported and therefore could not pursue the remedy.
15. The legal structure for addressing discrimination requires an individual to bring a legal claim for a remedy. An adjudicator noted that his agency sees a comparatively lower number of complaints from immigrants than it would expect, based on overall complaints.³⁵ He speculated that immigrants fear deportation, and so do not bring complaints forward.³⁶ Moreover, over the past 15 years, resources to enforce discrimination claims have decreased, resulting in longer waits for resolution and fewer resources to investigate violations.³⁷ Many immigrants are unaware of their rights, particularly to be free from discrimination.³⁸ Additionally, people who have been deported are unable to seek redress; absent from the United States, they typically cannot bring a claim in U.S. courts.

Recommendations

- Increase resources devoted to education and outreach so that individuals, especially immigrants, are aware of their rights and remedies under anti-discrimination laws.
- Develop a clearer path and a centralized point of contact for filing a discrimination claim, so that victims of discrimination can easily seek a remedy.
- Make it possible for individuals to file discrimination complaints from outside the United States so that deportation is not a bar to a remedy.

³⁴ The U.S. accepted in full the following recommendations: “Take administrative and legal measures against perpetrators of racially motivated acts, targeting migrants and minority communities” (Bangladesh); “Adopt effective measures and an anti-discrimination Act to address racial problems” (Ghana); “Adopt a comprehensive national work-plan to combat racial discrimination” (Qatar); and “Continue its intense efforts to undertake all necessary measures to ensure fair and equal treatment of all persons, without regard to sex, race, religion, colour, creed, sexual orientation, gender identity or disability, and encourage further steps in this regard” (Israel). The U.S. accepted in part the following recommendations: “Review, reform and adequate its federal and state laws, in consultation with civil society, to comply with the protection of the right to nondiscrimination established by the Convention on the Elimination of all Forms of Racial Discrimination, especially in the areas of employment, housing, health, education and justice” (Plurinational State of Bolivia); “End the discrimination against persons of African descent” (Cuba); and “End violence and discrimination against migrants” (Cuba). The U.S. rejected China’s recommendation to “modify the definition of the discrimination in the law to bring it in line with the ICERD and other international standards” because it holds that U.S. law is already in compliance with CERD. Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States, Jan. 4, 2011, UN Doc. A/HRC/16/11, ¶ 92.

³⁵ Interview 125.

³⁶ Ibid.

³⁷ Interview 101; Interview 125.

³⁸ Interview 118; Interview 119; Interview 139; Interview 146.

- Increase the resources devoted to independent investigations of discrimination, especially disparate impact discrimination, to overcome the limitations of relying on individual cases.

e. Racial Discrimination in Education

16. The United States supported in full a recommendation to promote equal “educational opportunities” and supported, in part, recommendations to end racial discrimination and inequalities in education.³⁹ Yet, immigrant students in Minnesota continue to experience institutional and direct discrimination based on race, ethnicity, religion, and national origin.
17. Disparities in academic outcomes⁴⁰ reveal the fact that all students do not receive an equal education.⁴¹ Many immigrant students attend “high-poverty, low-performing schools” due to increasing segregation.⁴² Minnesota’s anti-segregation rule⁴³ requires proof of intent to

³⁹ The U.S. accepted in full the following recommendation: “Promote equal socio-economic as well as educational opportunities for all both in law and in fact, regardless of their ethnicity, race, religion, national origin, gender or disability” (Thailand). The U.S. accepted in part the following recommendations: “Review, reform and adequate its federal and state laws, in consultation with civil society, to comply with the protection of the right to nondiscrimination established by the Convention on the Elimination of all Forms of Racial Discrimination, especially in the areas of ... education” (Plurinational State of Bolivia); “Take legislative and administrative measures to address a wide range of racial discrimination and inequalities in ... education” (Democratic People’s Republic of Korea); and “End all forms of racial discrimination in terms of... education” (Libyan Arab Jamahiriya). Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States, Jan. 4, 2011, UN Doc. A/HRC/16/11, ¶ 92.

⁴⁰ The rate of fourth grade reading proficiency for Black and Hispanic children is approximately half that of their white peers. Black, Hispanic, and EL students graduate at a rate of 57, 58, and 59 percent respectively, while white students graduate at a rate of 85 percent. Source: Data from Minnesota Department of Education, “Minnesota Report Card,” <http://rc.education.state.mn.us/>.

English learners (ELs) experience the lowest proficiencies in reading, math, and science. Source: Wilder Research, Minnesota Compass, “High School Students Graduating on Time by Racial and Ethnic Group: Minnesota, 2003–2013,” <http://www.mncompass.org/education/high-school-graduation#1-6085-d>; Wilder Research, Minnesota Compass, “High School Students Graduating on Time by Special Population: Minnesota, 2003–2013,” <http://www.mncompass.org/education/high-school-graduation#1-6088-d>.

⁴¹ In Minnesota’s major metropolitan area, “elementary students of color” are “more than thirty times as likely as white students to find themselves in very high poverty schools.” Source: University of Minnesota Law School, Institute on Race & Poverty, “A Comprehensive Strategy to Integrate Twin Cities Schools and Neighborhoods,” by Myron Orfield, Thomas Luce, Baris Gumus-Dawes, Geneva Finn, and Eric Myott (July 2009), 3, <https://www.law.umn.edu/uploads/ec/fd/ecfdc6101486f404170847f46b03a083/1-Comprehensive-Strategy-to-Integrate-Twin-Cities-Schools-and-Neighborhoods.pdf>.

⁴² Margaret C. Hobday, Geneva Finn, and Myron Orfield, “A Missed Opportunity: Minnesota’s Failed Experiment with Choice-Based Integration,” 35 William Mitchell Law Review, 936, 940 (2009).

According to a 2012 report, Minnesota saw an increase in school segregation between 2000-2010. Source: University of Minnesota Law School, Institute on Metropolitan Opportunity, “Open Enrollment and Racial Segregation in the Twin Cities: 2000 – 2010,” (Dec 2012),

<http://www.law.umn.edu/uploads/30/c7/30c7d1fd89a6b132c81b36b37a79e9e1/Open-Enrollment-and-Racial-Segregation-Final.pdf>.

Other areas of the United States have also seen decreased student achievement in minority schools. Source: Stephen B. Billings, David J. Deming, and Jonah E. Rockoff, National Bureau of Economic Research Working Paper No. 18487, “School Segregation, Educational Attainment and Crime: Evidence from the End of Busing in Charlotte-Mecklenburg,” (Cambridge, Massachusetts: National Bureau of Economic Research, Oct. 2012),

segregate and exempts charter schools.⁴⁴ In focusing its laws on intentional state-sponsored segregation, Minnesota follows U.S. Supreme Court precedent that ignores or dismisses the problem of *de facto* segregation.⁴⁵

18. Many immigrant students face additional barriers, such as lack of staff diversity, a curriculum that does not reflect them, unequal access to higher education, and inadequate English Learner services. Immigrant family engagement was reportedly limited due to perceptions of being unwelcome,⁴⁶ a range of communication issues linked to language and culture,⁴⁷ and a lack of resources that facilitated parent involvement.⁴⁸
19. Immigrant students are also subject to higher rates of bullying based on race, ethnicity, national origin, and religious affiliation.⁴⁹ Minnesota recently adopted a new, stronger state law on bullying,⁵⁰ which advocates intend to monitor to ensure a safe learning environment for all students.
20. Students of color, including some immigrant and refugee students, are disproportionately affected by punitive and exclusionary school discipline policies in response to non-violent acts. This can lead to school disengagement, dropout, and contact with the juvenile and criminal justice systems.⁵¹

<http://www.nber.org/papers/w18487>.

⁴³ Minn. Rules 3535.0110, subp. 9 (The rule defines “segregation” as “the intentional act or acts by a school district that has the discriminatory purpose of causing a student to attend or not attend particular programs or schools within the district on the basis of the student’s race and that causes a concentration of protected students at a particular school.”)

⁴⁴ Charter schools are publicly funded schools that are run independently by community groups or institutions under the terms of a charter and are increasingly popular in Minnesota.

⁴⁵ See, for example, *Brown v. Board of Education*, 347 U.S. 483 (1954); *Millikin v. Bradley*, 418 U.S. 717 (1974); and *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).

⁴⁶ A leader in the African immigrant community in Minnesota summarized the sentiment by stating: “Parents are not welcomed in the schools. This keeps them from being involved in the way they should” (Conversation 21).

⁴⁷ Issues included differences in preferred methods and varying styles of communication, as well as in expectations for family involvement in a child’s education.

⁴⁸ These barriers were felt most acutely by families experiencing poverty and not having significant formal educational experiences or English fluency. They revolved around access to technology, lack of translated materials, or constraints around parent/guardian employment, transportation, or childcare.

⁴⁹ The 2013 Minnesota Student Survey revealed that race, ethnicity, and national origin (one category) and religion (another category) are two of the primary reasons students are bullied. Source: Minnesota Department of Health, 2013 Minnesota Student Survey Statewide Tables, Table 7 (2013), 7,

<http://www.health.state.mn.us/divs/chs/mss/statewidetables/statetablesbygender13.pdf>.

⁵⁰ Minn. Stat. § 121A.031 (2013).

⁵¹ See, for example: Ivory A. Toldson, Tyne McGee and Brianna P. Lemmons, “Reducing Suspension Among Academically Disengaged Black Males,” http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/copy3_of_dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-2013school-to-prison-pipeline/toldson-reducing-suspension-crr-conf-2013.pdf. Multiple community members and interviewees in Minnesota flagged the problem of disparate rates of discipline among certain racial or ethnic groups (Conversation 6; Conversation 9; Interview 87; Interview 152; Interview 154; Interview 157; Interview 177).

21. The educational system is not well equipped to meet the needs of refugee students, particularly older students who have missed several years of education and those requiring mental health services.⁵²
22. Undocumented students and families face the fear of deportation and face additional challenges around documentation.⁵³

Recommendations

- Change funding structures so that all schools are reasonably equal in quality and resources.
- Evaluate root causes of institutional racism and commit to solutions that involve affected populations.
- Create statewide integration plans that require inter-district cooperation to include all public schools, and include charter schools in state-level anti-segregation rules.
- Conduct audits of the effects of discipline policies with input from affected student populations and create plans to bring policies into alignment with federal guidance.⁵⁴
- Improve and implement state laws regarding bullying to ensure safety and security for every child.
- Create a plan that meets the educational and mental health needs of all refugee students.
- Provide clear guidance to all schools that staff members are prohibited from asking about immigration status and encourage schools to review identification-related policies.⁵⁵

f. Workers' Rights

23. The United States supported, in full or in part, both recommendations it received regarding the labor rights of migrants.⁵⁶ However, advocates and service providers offered many

⁵² A cultural liaison remarked, “Kids are placed by age here, and I think that’s wrong. Some kid with a second-grade education who was in a refugee camp until age 14 is placed in high school. That kid will probably drop out” (Interview 130).

In Minnesota, there is a severe lack of mental health professionals and guidance counselors available to immigrant and refugee youth, particularly therapists or pediatric psychiatrists who are from different cultural backgrounds or who understand the unique challenges of some of these students.

⁵³ Fear of deportation may prevent children from speaking up and asking for help and can lead to decreased student achievement associated with changing schools when families must move frequently.

⁵⁴ U.S. Department of Education, “Guiding Principles: A Resource Guide for Improving School Climate and Discipline” (Jan. 2014), <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

⁵⁵ Specifically, The Advocates recommends that schools issue photo IDs so that undocumented students have some form of identification; ensure parent volunteer forms do not ask for social security numbers, which are not required to run background checks; and hire more social workers and train other staff so that undocumented students are receiving appropriate referrals.

⁵⁶ The U.S. accepted in full the following recommendation: “Recognize the right to association as established by ILO, for migrant, agricultural workers and domestic workers” (Plurinational State of Bolivia). The U.S. accepted in part the following recommendation: “Take the necessary measures in favor of the right to work and fair conditions

reports of poor treatment and workplace violations against a wide variety of immigrants, primarily in unskilled labor positions. By far the most egregious reports related to the treatment of undocumented workers. Organizations and attorneys who work with or assist immigrants reported unscrupulous employers taking advantage of undocumented immigrants' fear of deportation by engaging in various levels of exploitation—from low wages and wage theft,⁵⁷ to physical and sexual assault,⁵⁸ to outright imprisonment.⁵⁹

24. Even when deportation is not a threat, immigrant workers are still vulnerable to exploitation. A community organizer reported that many immigrants and refugees with whom he interacts do not know about their rights and are afraid to lose their jobs if they complain of unfair treatment.⁶⁰
25. Immigrants and service providers also reported a wide variety of perceived employment discrimination. While some individuals and organizations reported outright refusal to hire, differential treatment, or employment termination on account of race, religion, national origin, or citizenship, others reported that discrimination, or perceived discrimination, was a result of language and cultural barriers.
26. Mechanisms are available,⁶¹ but immigrants who experience discrimination often do not complain, either because they are unaware of their rights under the law, because it is easier to

of work so that workers belonging to minorities, in particular women and undocumented migrant workers, do not become victims of discriminatory treatment and abuse in the work place and enjoy the full protection of the labour legislation, regardless of their migratory status” (Guatemala). Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States, Jan. 4, 2011, UN Doc. A/HRC/16/11, ¶ 92.

⁵⁷ One community organizer described a restaurant in which people were working twelve hours, seven days a week, but were paid a fixed bimonthly paycheck that worked out to \$4 an hour. “Workers were threatened with a frying pan and a knife,” he said. “In addition, at one maintenance company, workers had to work seven days a week but to avoid overtime pay they were forced to punch in as a ghost employee on the seventh day and get paid in cash” (Interview 107).

⁵⁸ One community organizer reported an instance in which a supervisor at one of the largest hog farms in Minnesota physically assaulted an immigrant worker. The worker had gone to the supervisor to ask why his employment had been terminated. In response, the supervisor punched the worker, knocking him to the ground (Interview 91).

⁵⁹ “People get locked in overnight while working at some big-box retailers,” said one community organizer (Interview 94). Another organizer gave an example of false imprisonment at a large dairy. The employer has a dormitory on the farm where workers live. The workers are not allowed to go into town more than two at a time (Interview 91).

⁶⁰ Interview 113.

⁶¹ State, federal, and international law prohibit discrimination in employment. Agencies including the federal Equal Employment Opportunity Commission, the Minnesota Department of Human Rights, municipal civil rights enforcement agencies in Minneapolis and Saint Paul, and various federal offices including the U.S. Department of Justice Civil Rights Division’s Office of Special Counsel for Immigration-Related Unfair Employment Practices, protect against prohibited discrimination.

leave the employer than to pursue a complaint, or, for undocumented workers, because fear of deportation keeps them silent.⁶²

27. The United States fully supported Venezuela’s recommendation “to prevent the slavery of agricultural workers, in particular children and women.”⁶³ A 2005 Minnesota law prohibits labor trafficking,⁶⁴ but no cases have ever been prosecuted under that law.⁶⁵ The U.S. Attorney’s Office for the District of Minnesota has prosecuted a small number of labor trafficking cases.⁶⁶

28. People interviewed agreed that the benefits of seeking redress from exploitative conditions often are outweighed by fear of deportation.⁶⁷ Enforcement mechanisms do not adequately account for the risk of deportation the employee faces when weighing the possibility of seeking assistance and bringing a case.⁶⁸

⁶² Interview 125. “Employers go after immigration status in discovery even though the law is really clear that it is irrelevant and even though presumably the employer had checked the employee’s immigration status, in a deliberate effort to scare the plaintiffs” (Interview 188).

⁶³ Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States, Jan. 4, 2011, UN Doc. A/HRC/16/11, ¶ 92.193.

⁶⁴ Federal and state laws criminalize human trafficking (18 U.S.C. § 1591(a) (2012); MN Stat. 609.321, subd. 7a (2012)). Federal law enforcement agencies including the U.S. Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security investigate human trafficking cases (U.S. Department of Homeland Security, “Human Trafficking,” <http://www.dhs.gov/topic/human-trafficking>, (accessed Mar. 20, 2014)). Minnesota’s eighty-seven county attorneys are charged with enforcing state laws prohibiting human trafficking, slavery, forced labor, and sex trafficking (Minn. Stat. §§609.281 - 609.284, 609.321-609.322 (2013)).

⁶⁵ Minnesota Office of Justice Programs and Minnesota Statistical Analysis Center, *Human Trafficking in Minnesota: A Report to the Minnesota Legislature*, (Sept. 2010), <https://dps.mn.gov/divisions/ojp/forms-documents/documents/2010%20human%20trafficking%20report-%20final.pdf>, p. 5-6 (indicating that there was one charge brought under Minn. Stat. 609.282 in 2006, but to date no convictions). As of March 2014, a search of Minnesota filings indicates that one case, *Nugra v. Lewis*, 27-CV-14-32, District Court, Hennepin County (Filed: Jan. 2, 2014) (complaint available at 2014 WL 30190), involving both sex and labor trafficking has been filed in Minnesota courts.

⁶⁶ *United States v. Chappell*, CRIM09-139 JNE/JJK, 2010 WL 1131474 (D. Minn. Jan. 12, 2010) report and recommendation adopted, CRIM09-139 JNE/JJK, 2010 WL 1131473 (D. Minn. Mar. 22, 2010); *United States v. Rivera-Miranda*, CRIM.07-166(2)JNE/AJB, 2009 WL 605812 (D. Minn. Mar. 9, 2009). One attorney described a case involving an undocumented worker who was employed by a small Minnesota landscaper. The employer variously failed to pay him, pay him on time, or pay overtime. The housing the employer provided for workers was a retrofitted barn with limited access to water. The worker had trouble getting food because he depended on the employer for transportation to town to buy groceries. The employer became increasingly threatening, displaying guns and threatening to beat him up if he continued to demand the wages he was owed. After the employer found out that the worker was stopped by the police while driving and told the police where he was living, the employer threatened to kill the employee. Federal immigration officials determined that the worker was a victim of labor trafficking and issued a T-visa protecting him from deportation and permitting him to work lawfully in the United States (Interview 140).

⁶⁷ Interview 125; Interview 133.

⁶⁸ Interview 140.

Recommendations

- Increase resources devoted to education and outreach so that individuals, especially immigrants, are aware of their rights and remedies under labor laws.
- Increase resources devoted to enforcement of workplace exploitation, including resources for training, investigation, and prosecution under state and federal laws.
- Ensure that victims of exploitative employment practices are protected from retaliation and deportation when they come forward.
- Federal, state, and local agencies charged with enforcing labor and anti-discrimination laws should ensure that victims of serious cases of discrimination, exploitation, and trafficking can be identified and certified for immigrant visas for crime victims.

g. Economic, Social, and Cultural Rights

29. The United States supported, in full or in part, almost all recommendations to expand its efforts to guarantee basic economic rights such as food, health, and housing.⁶⁹ Despite this endorsement, immigrants and refugees in Minnesota do not receive necessary support, primarily because public assistance programs exclude certain people from consideration, regardless of need. Indeed, the United States reaffirmed its commitment to an exclusionary public benefits system in the last UPR by rejecting a recommendation to allow undocumented immigrants to access publicly supported health care and by clarifying that a guarantee of “basic services” to undocumented migrants encompassed only things such as primary education and emergency health care that are already provided to them.⁷⁰

⁶⁹ The U.S. accepted in full the following recommendations: “Promote equal socio-economic as well as educational opportunities for all both in law and in fact, regardless of their ethnicity, race, religion, national origin, gender or disability” (Thailand); “That further measures be taken in the areas of economic and social rights for women and minorities, including providing equal access to decent work and reducing the number of homeless people” (Norway); “Ensure the realization of the rights to food and health of all who live in its territory” (Cuba); “Expand its social protection coverage” (Brazil); “Continue its efforts in the domain of access to housing, vital for the realization of several other rights, in order to meet the needs for adequate housing at an affordable price for all segments of the American society” (Morocco); and “Protect the human rights of migrants, regardless of their migratory status” (Ecuador). The U.S. accepted in part the following recommendations: “Take legislative and administrative measures to address a wide range of racial discrimination and inequalities in housing, employment and education” (Democratic People’s Republic of Korea); “Eliminate discrimination against migrants and religious and ethnic minorities and ensure equal opportunity for enjoyment of their economic, social and cultural rights” (Bangladesh); and “End all forms of racial discrimination in terms of housing, education, health care, social security and labor” (Libyan Arab Jamahiriya). Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States, Jan. 4, 2011, UN Doc. A/HRC/16/11, ¶ 92.

⁷⁰ The U.S. rejected Brazil’s recommendation to “reconsider restrictions on undocumented migrants’ access to publicly supported healthcare” and limited its commitment to Uruguay’s recommendation to “make greater efforts to guarantee the access of migrants to basic services, regardless of their migratory status.” Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States, Jan. 4, 2011, UN Doc. A/HRC/16/11, ¶ 92.

30. Eligibility for most public benefits hinges on immigration status,⁷¹ and confusing and complex rules lead to denial of benefits to qualified immigrants or family members. Some immigrants fear accessing the system at all due to their immigration status⁷² or the fear of being labeled a “public charge.” Finally, the categorical exclusion of undocumented immigrants from almost all public benefits violates their basic human rights.
31. Stagnant rates of public benefits keep benefit recipients in poverty and unable to meet their basic needs. The Minnesota Family Investment Program (the state version of the federal Temporary Assistance to Needy Families program) rates were set in 1986 and have not increased since that time. As a result, recipients of food and cash assistance live well below federal poverty guidelines.⁷³

Recommendations

- Federal law should eliminate the requirement that a family sponsor’s income be included in public benefits eligibility determinations.

⁷¹ The access and use of public assistance benefits by newcomers to the United States is determined by federal eligibility rules combined with state and local rules and policies. Federal rules governing public assistance benefits fall in two categories: pre- and post-1996, when Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), commonly known as welfare reform. Before PRWORA, legal immigrants enjoyed eligibility to public benefits similar to U.S. citizens. PRWORA categorized immigrants as “qualified” or “nonqualified” to determine their eligibility for benefits. That same year, Congress passed a new immigration law requiring that people immigrating through family-based petitions demonstrate that they are not likely to become public charges by submitting a legally binding affidavit of support from a sponsor. These laws combined to exclude most legally residing low-income immigrants from public benefit support. For those who remain eligible for benefits, participation rates have declined. The worst impact was on citizen children in families with mixed immigration status, where parents who are not eligible for benefits did not access benefits for their children who are eligible (U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Overview of Immigrants’ Eligibility for SNAP, TANF, Medicaid, and CHIP* (Mar. 2012), <http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Eligibility/ib.shtml>; U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Barriers to Immigrants’ Access to Health and Human Services Programs*, Krista M. Pereira, Robert Crosnoe, Karina Fortuny, Juan Manuel Pedroza, Kjersti Ulvestad, Christina Weiland, and Hirokazu Yoshikawa (May 2012), <http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Barriers/rb.shtml>; Tanya Broder and Jonathan Blazer, *Overview of Immigrant Eligibility for Federal Programs*, National Immigration Law Center, (Oct. 2011), <http://www.nilc.org/overview-immeligfedprograms.html>; Karina Fortuny and Ajay Chaudry, *A Comprehensive Review of Immigrant Access to Health and Human Services*, Urban Institute (Jun. 2011), <http://www.urban.org/UploadedPDF/412425-Immigrant-Access-to-Health-and-Human-Services.pdf>).

⁷² The fear is not unjustified. An advocate remembered the case of a woman in her 70s whose public benefits application triggered a response from Immigration and Customs Enforcement (ICE): “Previously the woman had a Temporary Protection from Deportation status. Over time, her status had expired and she had neglected to renew it, ending up with an Order for Deportation. Due to her severe health issues, she started the process of applying for Medical Assistance, so she could obtain medical care. However, verification of her immigration status by the public benefits worker revealed the Order of Deportation, at which point she was reported to ICE. Sometime later, ICE agents went to her house under the guise of helping her complete her Medical Assistance application and took the woman into custody. She ended up spending one month in jail and was eventually deported” (Interview 184).

⁷³ MFIP rates provide just \$437 for a household of two, \$532 for a household of three, and \$621 for a household of four (Laura Melnick, *Eligibility for Cash Assistance Programs*, Southern Minnesota Regional Legal Services, Inc., (Oct. 2013), http://www.mfsrc.org/Conferences_files/2013_handouts/MAXIS_HANDOUT.pdf).

- The public charge ground for exclusion should not apply when it would prevent family reunification.
- Public benefits assistance should be accessible to all those who are not able to meet their basic needs in order to comply with international human rights standards.
- Congress should increase funding for public assistance grants and adjust them to meet the current costs of basic needs.

h. Cultural Tolerance

32. The United States supported, fully or in part, both recommendations to foster a climate of cultural and religious tolerance.⁷⁴ Despite this support, immigrants in Minnesota reported serious limitations on religious practices, especially restrictions on the construction of mosques and Islamic schools.

33. In several communities around Minnesota, proposed mosques or Islamic centers have triggered community opposition and contentious hearings.⁷⁵ The Department of Justice is suing one Minnesota town that denied a permit for an Islamic Center alleging that they violated the Religious Land Use and Institutionalized Persons Act.⁷⁶

Recommendations

- Fully enforce the Religious Land Use and Institutionalized Persons Act to prevent land use decisions that limit the religious practices of Muslim immigrants and other religious groups.

⁷⁴ The U.S. accepted in full the following recommendation: “Continue to create an enabling climate for religious and cultural tolerance and understanding at the grass roots level” (Indonesia). The U.S. accepted in part the following recommendation: “Devise specific programs aimed at countering growing Islamophobic and xenophobic trends in society” (Egypt). Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States, Jan. 4, 2011, UN Doc. A/HRC/16/11, ¶ 92.

⁷⁵ According to one school official, “approximately two years ago, Somalis established an East African mosque. They attempted to buy a building from the school district and I was ready to sell, but reluctance in [the community] to live next to a mosque [prevented it]. There was no problem when I sold to a Latino church” (Interview 73).

⁷⁶ Shannon Prather and Randy Furst, *Feds sue city of St. Anthony over rejection of Islamic center*, Aug. 27, 2014, Minneapolis Star Tribune, <http://www.startribune.com/local/north/272899591.html>. The Religious Land Use and Institutionalized Persons Act imposes a very high standard on governments when land use decisions such as zoning impose a “substantial burden” on the practice of a person’s religion. Governments must show a “compelling governmental interest” for such a decision and that the decision is the least restrictive means of achieving their goal. Even a neutral statute that does not on its face discriminate against religious institutions may not be allowed under the Act if it imposes a burden on the exercise of religious freedom without a compelling reason. (42 U.S.C. §2000cc; Vermont Natural Resources Board, “Religious Land Use and Institutionalized Persons Act,” (accessed Mar. 21, 2014), <http://www.nrb.state.vt.us/lup/publications/manual/RLUIPA.pdf>).