

**SUBMISSION OF THE REFUGEE AND IMMIGRANT CENTER FOR
EDUCATION AND LEGAL SERVICES TO THE CALL OF THE UN
SPECIAL RAPPORTEUR ON THE RIGHTS OF MIGRANTS ON THE
ISSUES OF FREEDOM OF EXPRESSION**

(27 January 2020)

The Refugee and Immigrant Center for Education and Legal Services (“RAICES”) respectfully submits these comments to the United Nations Special Rapporteur on the human rights of migrants, Mr. Felipe González Morales, in response to his call for information relevant to his thematic report on the right to freedom of association of migrants that is scheduled to be submitted to the 44th Regular Session of the Human Rights Council in June 2020.

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RAICES envisions a compassionate society where all people have the right to migrate and human rights are guaranteed, it defends the rights of immigrants and refugees, empowers individuals, families and communities, and advocates for liberty and justice. As a 501(c)(3) legal services agency based in San Antonio, Texas, RAICES serves tens of thousands of noncitizens per year in direct immigration legal services, social services, advocacy, community engagement, and refugee resettlement. In 2017, RAICES closed 51,000 immigration cases free of charge. With ten offices throughout Texas, more than 200 staff members, and thousands of active volunteers, RAICES is one of the largest legal service providers for low-income immigrants, asylum seekers, and refugees in the country.

For many years, RAICES has provided legal services to adult and children detained by Immigration and Customs Enforcement (“ICE”) in Texas. Most of these adults and children were, apprehended by and/or held in the custody of Customs and Border Protection (“CBP”). Each year RAICES provides legal representation, information, education, and post-release assistance to tens of thousands of noncitizens adults and children throughout the United States. Additionally, since 2014, RAICES has coordinated the Karnes *Pro Bono* Project to provide legal services to families detained in ICE custody at the Karnes County Residential Center (“Karnes”) in Karnes City, Texas. The Karnes *Pro Bono* Project is a nationwide pro bono effort to provide universal legal services and representation to all men, women, and children detained at Karnes.

Since 2014, RAICES staff, volunteers, and pro bono attorneys have provided free legal services to over 15,000 families detained at Karnes.

I. INTERFERENCE WITH THE FREEDOM OF EXPRESSION OF MIGRANTS

RAICES has direct experience with clients who have suffered retaliation due to their exercise of their human right to freedom of expression. The most striking example interference with the right of freedom of expression of migrants occurred on 15 and 16 August 2018 at the Karnes. Thirteen detained families, each consisting of adult men and minor sons, who had been previously separated when they entered the United States, and were re-separated in an apparent effort to prevent their enquires about their cases and their lawful actions such a petitions to the authorities, speaking to their lawyers, and undertaking short hunger strikes in protest of ICE's failure to release them. While at one point the U.S. government claims these families were involved in an effort to escape, this suggestions has not been supported by any facts and seems to lack any credibility. Instead there is significant evidence that the private contractor running the prison, The GEO Group, Inc., perhaps in concert with the Immigration and Customs Enforcement ("ICE") authorities, re-separated these thirteen families as a punishment or retaliation for their having exercised their freedom of expression and GEO did so in an inhuman manner, telling both the children and their parents that they would never see each other again. For example, the parents were handcuffed and taken away under armed guard from their children from different sites within Karnes. In some cases, the parents were pulled out of meetings with their lawyers and their lawyers were prevented from speaking with them. This matter is the subject of ongoing litigation.

More generally, the United States government has targeted migrants when they speak up in defense of migrants' human rights. A well-known case is that of Ravi Ragbir Trinidadian, an immigrant himself and a migrants' rights activist, who ICE attempted to deport in 2018. His deportation was ultimately blocked by a Court of Appeals,¹ but many other migrants who have advocate for their rights and the rights of migrants in general are not so lucky. Because of the lack of transparency of many removals or deportations, we may never know how many

¹ *Ragbir v. Homan*, 923 F.3d 53 (2nd Cir., April 25, 2019).

noncitizens were removed as retaliation for their speech or activities in defense of human rights.

A coalition of universities and migrant rights bodies has reported that at least 17 migrants have been targeted because they were human rights defenders advocating for the right of migrants.² The International Center for Non-Profit Law reported in December 2018 that 20 migrants who are human rights defenders had been detained or deported. And the *Washington Post* estimated that many of these activists were deported.³

II. INTERFERENCES WITH THE FREEDOM OF EXPRESSION OF JOURNALISTS COVERING THE PLIGHT OF MIGRANTS

The current U.S. government administration has launched what appears to be an attack on journalists covering its activities at the U.S. border, particularly the U.S.-Mexico border. This appears to be an off-shoot of attacks on the press by the U.S. President.⁴ Not only are legitimate journalists targeted for harassment at border crossings, propagandists employed by government agencies have disseminated biased and often wrong news in an attempt to de-legitimize independent journalists.⁵ The U.S. Press Freedom Tracker reported that since it began tracking the harassment of journalist at the Southern border of the United States in 2017, it has witnessed “ten journalists [who] have been stopped for secondary screening” while covering migrant issues.⁶

The intimidation of journalists prevents information about the treatment of migrants, including the abuse of their human rights, from being made public and contributes to the continued abused of the human rights of migrants.

² University of Washington School of Law, International Human Rights Clinic, University of Notre Dame, International Human Rights Advocacy Seminar, University of Washington Center for Human Rights, New York University Immigration Clinic, NWDC (Northwest Detention Center) Resistance, National Immigration Project of the National Lawyers Guild (NIPNLG), “Migrant Justice Surveil, Target & Deport: Defenders Under Attack: Submission for the Inter-American Commission on Human Rights Hearing: Situation of Human Rights Defenders of Migrants in the United States,” at https://docs.google.com/document/d/1sycRLrcH2mQ_TpNlra4-nN9-RV656xYJVe3IRA-ryfk/edit (accessed 22 January 2020).

³ Maria Sacchetti and David Weigel, “ICE has detained or deported prominent immigration activists,” *Washington Post* (Jan. 19, 2018 at 7:04 p.m. CST) at <https://www.washingtonpost.com/powerpost/ice-has-detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-11e7-a46b-a3614530bd87story.html> (accessed 25 January 2020).

⁴ James Risen, “Trump’s Attacks on the Press Fuel Harassment of Journalists at the Border,” at <https://theintercept.com/2019/10/08/cbp-trump-journalists/> (accessed 22 January 2020).

⁵ *Id.*

⁶ See <https://pressfreedomtracker.us/border-stop/>.

III. INTERFERENCES WITH THE FREEDOM OF EXPRESSION OF LEGAL REPRESENTATIVES OF MIGRANTS AND MIGRANT RIGHTS ACTIVISTS AND OTHERS DEFENDING MIGRANTS' HUMAN RIGHTS

The legal representatives of migrants are not able to fully participate in either the asylum interviews or in proceedings in immigration (administrative) courts. Despite having the professional obligation to represent a client vigorously and despite the fact that the United States judicial system is adversarial, the legal representatives of migrants (both lawyers and accredited representatives) are often prevented from playing a role in the proceedings that take place before asylum officers or before immigration judges. Lawyers are often told they cannot speak in these proceedings and are denied adequate time to prepare for the proceedings.

In one case, an immigration judge walked out of the courtroom repeatedly when a lawyer continued to speak on behalf of his client, because his client was not given the opportunity to present her case.⁷ In another instance, a lawyer was told that he could not speak with his client or add anything to the interview proceedings before an asylum officer.⁸

On a larger scale, legal services organizations, including RAICES are denied general access to migrants to provide them information about their rights or the processes to which they are subject. For example, at Karnes RAICES relies on the goodwill of the private prison operator, The GEO Group, Inc., to provide detained migrants with information about free legal services that are available to them. Although ICE claims this information is posted for migrants, when RAICES lawyers participated in a 'Flores visit' to Karnes no material was posted explaining to migrants that they can get free legal representation.⁹ The GEO employees had stated that such materials were posted for all the detained migrants to view.¹⁰

The case of Ravi Ragbir and the other human rights defenders working to protect migrants'

⁷ Notes on these observations are on file at RAICES.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

rights who are mentioned in Part I above is also an example of human rights defenders being targeted because of their defense of migrant rights.

The U.S. government has even tried to ‘gag’ its own immigration officials who have spoken out about abuses within the immigration system. Recently, the U.S. government’s Department of Justice took legal steps through its Federal Labor Relations Authority to eliminate the rights of federal immigration judges to be represented by a union.¹¹ This not only interferes with the independence of immigration judges, but it also prevents them from having a body to speak on their behalf on issues such as government interference with the independence and integrity of the immigration process.¹²

In July 2019, the Department of Homeland Security, through its ICE officials effectively banned migrants from using a Hotline setup to provide them information on their rights, including their right to legal representation.¹³ The Hotline had been operating since 2013, when the NGO Freedom for Immigrants (“FFI”) created this free and confidential service that it called the National Immigration Detention Hotline (the “Hotline”). It could be used by persons in immigration detention to report abuse and resources and received 600 and 14,500 calls per month from persons in immigration detention. Without this service detained migrants’ access to information is severely limited.

IV. CONCLUSION

The current U.S. administration has taken, and continues to take, steps that interfere with the human right to freedom of expression of migrants as well as the human rights defenders who stand up for migrants’ rights in the United States. The serious and far-reaching interferences with the human right to freedom of expression violates the United States international legal obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR)

¹¹ International Federation of Professional & Technical Engineers, “Trump Administration Seeks to Silence Federal Immigration Judges’ Union DOJ Files Legal Documents to End the Labor Rights of Judges Retribution for Speaking Out and Exposing Problems in the Courts Judges Make Bipartisan Appeal Asking Congress to Create an Independent Court Free from Political Influence,” Press Release of 12 August 2019 at <http://www.ifpte.org/news/details/Trump-Administration-Seeks-to-Silence-Federal-Immigration-Judges-Union> (accessed 11 January 2020).

¹² See, for example, “Grievance Pursuant to Article 8 of the Collective Bargaining Agreement Between EOIR and NAIJ of Immigration Judge Steven A. Morley” at <https://www.aila.org/infonet/naij-grievance-redress-removal> (8 August 2018) (this is a grievance filed by a member of the National Association of Immigration Judges (NAIJ) seeking redress for the unwarranted removal of cases from the docket of a Philadelphia-based judge, Immigration Judge Steven A. Morley. NAIJ represents approximately 350 federal immigration judges nationwide).

¹³ *Freedom for Migrants v. Department of Homeland Security, et al.*, Case No. 2:19-cv-10424 (10 December 2019).

a treaty that has been ratified by the United States. Moreover, at the time of ratification the United States made an overly broad reservation that is contrary to the object and purpose of the treaty that prevents individuals under the jurisdiction of the United States from invoking the ICCPR. While other State Parties and the Human Rights Committee itself has pointed out that this reservation is invalid and cannot be invoked against other State Parties, the United States applies it in its domestic legal system to prevent individuals from claiming their rights, including the right to freedom of expression in domestic courts.

RAICES' urges the Special Rapporteur to arrange a visit to the United States to meet government officials as well as migrants and groups that advocate for migrants' rights, especially at the United States-Mexico border and in the Southwest United States. RAICES would welcome the opportunity to assist in arranging such a visit, although we understand that it must be done through and with the cooperation of the UN Member State.

RAICES welcomes the upcoming report of the Special Rapporteur and the opportunity to continue to work with him on this and future reports.

Respectfully submitted,

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