



**The Advocates for Human Rights,
a non-governmental organization in special consultative status with ECOSOC**

**Shadow Report on the Noncitizen Rights in the United States
for consideration during
the 85th Session of the Committee on the Elimination of Racial Discrimination
13-14 August 2014
Pertaining to List of Themes Paragraphs 2(a), 2(b), 2(d), 4(b), 5(a), 5(b) and 6.**

Reporting Organization

1. The Advocates for Human Rights 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, including direct representation of asylum seekers, to promote human rights in the United States and around the world, and holds Special Consultative status with the United Nations Economic and Social Council.

Introduction and Issue Summary

2. In light of the Committee's interest in "compliance with the State party's obligations under the Convention within its territory at ... State and local levels,"¹ The Advocates submits the following information, drawn from its March 2014 report, *Moving from Exclusion to Belonging: Immigrant Rights in Minnesota Today*.² This report is the result of more than 200 interviews and 25 community conversations held throughout Minnesota in the past two years. 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 compliance around the United States.
3. 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

¹ CERD/C/USA/Q/7-9, para. 1(f).

² The Advocates for Human Rights, *Moving from Exclusion to Belonging: Immigrant Rights in Minnesota Today* (March 2014), <http://www.theadvocatesforhumanrights.org/belonging>.

South America, and 19% from Africa.³ 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.⁴

4. Minnesota is also home to approximately 85,000 undocumented immigrants,⁵ 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. 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.
5. The Advocates found significant shortfalls in human rights compliance at the state level. Many policies, laws, and practices exclude immigrants and refugees from full participation and inclusion in the community, violating their human rights. Discrimination and social distance create barriers for immigrants and refugees seeking to integrate into their communities. Racial disparities in employment, education, health care, and civic engagement limit the opportunities for immigrants and refugees. Immigrants and refugees face additional barriers in realizing their human rights due to language, culture, and immigration status. In addition, the thousands of undocumented Minnesotans and their families live in constant fear of deportation, leaving them excluded from the community and vulnerable to human rights violations and abuses.

Findings related to the Committee's List of Themes

2 (a). Racial disparities at different stages of the criminal justice system, including overrepresentation of individuals belonging to racial and ethnic minorities, in particular African Americans, among persons who are arrested, charged, convicted, incarcerated and sentenced to death.

Immigration Consequences of Criminal Convictions (Article 5 (a)).

6. One source of racial discrimination in the criminal justice system is the disproportionate impact of criminal convictions on noncitizens. Any noncitizen can be deported from the United States if they are convicted of certain crimes. The massive overhaul of immigration laws in 1996 expanded the types of criminal convictions which can lead to deportation.⁶ Certain criminal offenses that

³ 2008-2012 American Community Survey 5-Year Estimates, B05006 - PLACE OF BIRTH FOR THE FOREIGN-BORN POPULATION IN THE UNITED STATES.

⁴ Migration Policy Institute, "State Immigration Data Profiles: Minnesota," (2012 Income and Poverty Table), <http://migrationpolicy.org/data/state-profiles/state/income/mn>.

⁵ 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/>.

⁶ Illegal Immigration Reform and Immigrant Responsibility Act, Public Law Number 104-208, (2006).

are misdemeanors under Minnesota law, such as a violation of a protection order,⁷ are considered deportable offenses under immigration law.⁸ Determining whether a criminal offense is deportable can be complicated, requiring a detailed review of the criminal law statute and the immigration law statute.

7. Once a noncitizen is convicted, he frequently goes directly into immigration custody and deportation proceedings. Immigration judges consider only the immigration law, and cannot look into the facts underlying a conviction or claims that the noncitizen did not understand the terms of a plea agreement.
8. In 2010, the U.S. Supreme Court recognized in *Padilla v. Kentucky* that noncitizen criminal defendants must be informed about whether their guilty pleas will carry a risk of deportation.⁹ The court acknowledged that “deportation is an integral part of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.”¹⁰
9. Minnesota does not provide sufficient resources to meet the guarantee of *Padilla v. Kentucky* that noncitizen criminal defendants should be informed of the immigration consequences of their criminal cases. The majority of criminal defendants in Minnesota qualify for free legal representation.¹¹ This representation is provided through the public defender system, which is administered by the Board of Public Defense.¹² 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.¹³ Public defenders representing noncitizens in criminal matters must consider the immigration consequences of a guilty plea or conviction in order to provide effective representation, in addition to the usual work of negotiating the best outcome on the criminal charges, but without additional resources or time. Given the constraints of the public defender system, this often means a quick conversation of ten minutes or less with a defendant, which is inadequate to fully advise noncitizen defendants.¹⁴

Questions

- Imposing immigration consequences for criminal convictions results in disproportionate outcomes from noncitizen defendants. What data does the federal government collect to track this problem? How does the government analyze and use this data to mitigate the impact on noncitizen defendants?

⁷ Minn. Stat. §518b.01 subd. 14(b).

⁸ 8 U.S.C. §1227(a)(2)(E)(ii).

⁹ *Padilla v. Kentucky*, 559 U.S. 356 (2010), 368–369.

¹⁰ *Id.* at 356.

¹¹ 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.

¹² State of Minnesota Board of Public Defense, “About Us,” <http://www.pubdef.state.mn.us/aboutus>.

¹³ 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>.

¹⁴ *Id.* at 36.

- What steps has the federal government taken to ensure that noncitizen criminal defendants in the federal court system are fully informed of the immigration consequences of guilty pleas and criminal convictions?
- What steps have been taken at the federal and state level to ensure that noncitizen criminal defendants in state court systems are fully informed of the immigration consequences of guilty pleas and criminal convictions?

Recommendations

- Collect, analyze, and publicize data on whether imposing immigration consequences for criminal convictions leads to disproportionate outcomes for noncitizens and their families given the serious impact of deportation on the right to family unity, the right to asylum, and other rights.
- Increase funding for federal public defenders offices to ensure quality representation and allow for the hiring of immigration attorneys to advise noncitizen defendants.
- Use all available tools to ensure that states are meeting their obligations towards noncitizen criminal defendants under *Padilla v. Kentucky* by providing them with accurate information about the immigration consequences of their criminal case.
- Allow immigration judges greater discretion to consider the underlying facts and circumstances of deportable criminal offenses in determining if an immigrant is deportable and 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 from criminal convictions.

2 (b). Racial and ethnic disparities in education, poverty, housing, health and exposure to crime and violence; disparate impact of gun violence on minorities and the discriminate effect of the “Stand Your Ground” laws.

Unequal Education – The Achievement Gap and Segregation (Articles 3 and 5(e)(v)).

10. Minnesota has seen marked overall gains in mathematics and modest gains in reading in the last decade.¹⁵ Indicators show many significant improvements among minority groups, as well. For example, during the same time frame, graduation rates improved for all students of color, with Hispanics’ rate increasing by 20 percentage points.¹⁶ Moreover, in 2013, “African American

¹⁵ U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, “State Profiles,” (accessed Mar. 21, 2014), <http://nces.ed.gov/nationsreportcard/states/>.

¹⁶ 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>.

students in Minnesota posted big gains in math, performing fourth-highest among all African American students in the country, compared to 22nd in 2011.”¹⁷

11. However, alarming disparities between white students and students of color persist.¹⁸ The rate of fourth grade reading proficiency for Black and Hispanic children is approximately half that of their white peers. English learners (ELs) (not a mutually exclusive category) experience the lowest proficiencies in reading, math, and science.¹⁹ 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.
12. Immigrant students are more vulnerable to experiences of racial isolation and the effects of concentrated poverty. In Minnesota, “elementary students of color in the Twin Cities metro are more than five times as likely to attend schools with high concentrations of poverty” and “more than thirty times as likely as white students to find themselves in very high poverty schools.” School segregation deprives children of a number of advantages. According to the Institute on Race and Poverty at the University of Minnesota, “Attending racially integrated schools and classrooms improves the academic achievement of minority students, whether measured by test scores, attendance rates, graduation rates, or the likelihood of attending college.”²⁰
13. Legal barriers impede Minnesota’s integration efforts. The state’s current anti-segregation law requires proof of intent to segregate²¹ and does not cover open enrollment policies. Minnesota is the only state in the United States²² that exempts charter schools from its anti-segregation rule.²³ Charter schools are publicly funded schools that are run independently by community groups or

¹⁷ State of Minnesota, Office of Governor Mark Dayton, “Minnesota Makes Significant Gains in Narrowing Achievement Gap,” Nov. 7, 2013, <http://mn.gov/governor/newsroom/pressreleasedetail.jsp?id=102-93335>.

¹⁸ U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, “Achievement Gaps,” July 2009, <http://nces.ed.gov/nationsreportcard/pdf/studies/2009455.pdf>; The Minneapolis Foundation, “2013 Community Indicators Report,” http://www.minneapolisfoundation.org/Libraries/Documents_for_Website/2013OneMinneapolisReport.sflb.ashx; Wilder Research, Minnesota Compass, “Overview,” <http://www.mncompass.org/education/overview>.

¹⁹ 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>.

²⁰ 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), 1, <https://www.law.umn.edu/uploads/ec/fd/ecfdc6101486f404170847f46b03a083/1-Comprehensive-Strategy-to-Integrate-Twin-Cities-Schools-and-Neighborhoods.pdf>.

²¹ Minn. Rules 3535.0110, subp. 9 (defining “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”).

²² The Civil Rights Project, *Equity Overlooked: Charter Schools and Civil Rights Policy*, by Erica Frankenberg and Genevieve Siegel-Hawley (Nov. 2009), 14, <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/equity-overlooked-charter-schools-and-civil-rights-policy/frankenberg-equity-overlooked-report-2009.pdf>.

²³ Minn. Rules 3535.0110, subp. 8.

institutions under the terms of a charter and are increasingly popular in Minnesota.²⁴ These policies have accelerated existing segregation among Minnesota schools.

14. The U.S. Supreme Court has established that desegregation efforts are not required in the absence of de jure segregation.²⁵ Voluntary integration is allowed, but not required for de facto segregation.²⁶ One study found that “[p]ublic school segregation, after dramatically improving in the era of civil rights enforcement (1968-90), has significantly eroded. Blacks are now almost as racially isolated from whites as they were at the time of the passage of the 1964 Civil Rights Act. For Latino students, segregation is worse than ever. Like housing segregation, school segregation is most pronounced in the Northeast and Midwest.”²⁷

Questions

- What laws, policies, or accountability measures exist at the national level to address de facto segregation in U.S. schools?
- What accountability measures exist nationally to identify and address schools and systems operating as exemptions from state-level anti-segregation laws (e.g., charter schools in Minnesota)?
- What funding structures perpetuate disparities in quality of education in U.S. schools and what is being done to amend such structures?
- What is the national government doing to raise awareness about root causes of educational disparities and potential solutions?
- What data collection and accountability measures exist to ensure all English Learners (ELs) receive a quality education?

Recommendations

- Require desegregation in cases of both de jure and de facto segregation, applicable to all schools with public funding, and provide technical and legal support to states and districts for implementation.
- Provide more funding for education and address disparities in school quality.
- As part of a “national strategy or a plan of action,”²⁸ hold public forums to discuss root causes of disparities, such as segregation, funding structures, and institutional racism.
- Increase accountability measures to ensure that ELs receive the supports they need to succeed.
- Require a State Board of Education in each state, comprised of neutral experts in the field of education, to conduct research and make policy recommendations.

²⁴ Mila Koumpilova, “St. Paul, Minneapolis charter schools continue growth,” *Pioneer Press*, December 11, 2013, http://www.twincities.com/localnews/ci_24704310/st-paul-minneapolis-charter-schools-continue-growth.

²⁵ *Milliken v. Bradley*, 418 U.S. 717 (1974).

²⁶ *Parents Involved v. Seattle*, 551 U.S. 701 (2007).

²⁷ University of Minnesota Law School, Institute on Metropolitan Opportunity, *America’s Racially Diverse Suburbs: Opportunities and Challenges*, by Myron Orfield and Thomas Luce (July 2012), 4.

²⁸ CERD/C/USA/7-9), #6(a).

Unequal Education – School Discipline Policies (Article 5 (3)(v)).

15. Punitive and exclusionary school discipline policies are another source of discriminatory treatment in schools. Such policies result in suspension, expulsion, and transfer to the juvenile justice system in response to non-violent acts committed in schools by minors. These policies lead students to drop out of school and fuel the “school-to-prison pipeline” – a phrase used to describe the phenomenon of high percentages of students belonging to racial and ethnic minority groups ending up in the juvenile (and then criminal) justice system.
16. Students of color, including some immigrant and refugee students, are disproportionately affected by such policies.²⁹ Multiple community members and interviewees identified disparate rates of discipline among racial and ethnic groups such as African-Americans and Latinos as a serious problem.³⁰
17. While juvenile delinquency adjudications generally do not make a person deportable (i.e. put a legal immigration status in jeopardy),³¹ contact with the juvenile justice system can result in an undocumented child being turned over to Immigration and Customs Enforcement for deportation.³²
18. In January 2014, the Departments of Education and Justice released new guiding principles for schools to try to curb the problem of punitive and discriminatory discipline policies.³³ While helpful, the principles are not legally binding and the federal government does not provide financial incentives to encourage their adoption.
19. Minnesota law stipulates that, in consultation with a range of stakeholders, each school board must adopt a discipline policy, to include “minimum consequences”³⁴ and “procedures for removal of a student from a class,”³⁵ and that this policy should be reviewed annually.³⁶ The discipline policy³⁷ is to include “procedures determined appropriate for encouraging early

²⁹ 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-201cschool-to-prison-pipeline/toldson-reducing-suspension-ccrr-conf-2013.pdf.

³⁰ Conversation 6; Conversation 9; Interview 87; Interview 152; Interview 154; Interview 157; Interview 177.

³¹ Conviction for immigration purposes is defined at 8 U.S.C. § 1101(a)(48). It does not include delinquency adjudication.

³² Interview 124.

³³ 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>.

³⁴ Minn. Stat. § 121A.61, subd. 3(n) (2013).

³⁵ Id. subd. 3(d).

³⁶ Id. § 121A.65.

³⁷ The law also provides alternatives to suspension, allowing administrative discretion to allow a parent to attend school with the student or have the pupil attend school on a Saturday, supervised by the principal or “the principal’s designee.” Minn. Stat. § 121A.575 (2013). It is worth noting the absence of requisite student learning in the statute, as well as the permission to allow a child to be left alone with a single adult in a school setting for an entire day without stipulating a background check and other parameters, leaving minors vulnerable to abuse.

detection of behavioral problems.”³⁸ Referrals are a crucial part of a “focus on prevention” as called for by the federal guiding principles because they provide an opportunity to connect students with resources to address emotional and behavioral needs. However, current policy limits referrals to chemical abuse issues³⁹ and special education⁴⁰ and provides no mechanism for students to receive other preventative services, such as assessments and other mental health resources.

Questions

- What accountability mechanisms exist for schools and districts with disparate impact discipline policies?

Recommendations

- Require states to adopt school discipline policies in accordance with *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* from the Departments of Education and Justice.
- Significantly increase funding for mental health professionals in schools to encourage prevention and alternative methods of handling emotional and behavioral issues.

Housing Discrimination (Articles 3 and 5 (e)(iii)).

20. Immigrants in Minnesota reported instances of discrimination by some landlords, realtors, and mortgage lenders that violated their right to housing. Though both federal and state laws prohibit rental discrimination, immigrants often do not report these incidents to the authorities.
21. Minnesota and federal laws offer protection against discrimination in housing. Under Minnesota law, landlords cannot legally refuse to sell, rent, or lease housing to potential tenants, or have different rental terms, on the basis of race, color, creed, religion, national origin, sex, marital status, sexual orientation, disability, or reliance on public assistance.⁴¹ Similarly, a landlord cannot discriminate against tenants by refusing to provide services that have been promised in the lease on the basis of race, color, creed, religion, national origin, sex, marital status, sexual orientation, disability, or reliance on public assistance.⁴² Under federal law—in particular the Fair Housing Act—housing discrimination based on race, color, national origin, religion, sex, familial status, or disability is prohibited.⁴³ There are no laws requiring that tenants of private, unsubsidized buildings have legal status. There are city, state, and federal agencies charged with overseeing discrimination complaints, which can be adjudicated by state or federal courts.

³⁸ Minn. Stat. § 121A.61, subd. 3(j) (2013).

³⁹ Id. subd. 3(m).

⁴⁰ Id. subd. 3(k).

⁴¹ Id. § 363A.09 Subd. 1(1) (2011).

⁴² Id. § 363A.09 Subd. 1(2) (2011).

⁴³ 42 U.S.C. §§ 3601–3631 (2006); 78 Fed. Reg. 11460-01 (Feb. 15, 2013).

22. Despite strong legal protections against discrimination, immigrants in general do not report incidents of discrimination to the authorities. Common examples of housing discrimination immigrants described to the Advocates included: being shown houses only in certain parts of town that are already heavily minority, being told an apartment is rented after the landlord meets the person and sees that they are a racial or ethnic minority, and being asked for additional paperwork not demanded of citizen applicants. Immigrants have many reasons that they do not report housing law violations, including not knowing their rights and how to claim them, limited access to legal assistance, and lack of English proficiency.
23. In some cases, renters are undocumented and fear that coming forward would result in their deportation. Enforcement of anti-discrimination and other housing laws relies heavily on complaints brought by individual victims. A system that relies on individual complaints does not protect the rights of undocumented immigrants because many undocumented immigrants fear coming into contact with any authority that could report them to immigration officials.

Questions

- What legal protections do federal, state, and local governments provide so that all immigrants, both documented and undocumented, can report housing discrimination claims without fear of triggering immigration consequences?
- What kinds of outreach and education do governments at the federal, state, and local level conduct to inform documented and undocumented immigrants of their right to be free of housing discrimination?
- What resources does the federal government devote to independent investigations of housing discrimination to reduce reliance on individual complaints to combat housing discrimination?
- What resources do state governments devote to independent investigations of housing discrimination and how does the federal government assist states in increasing their capacity to conduct such independent investigations?

Recommendations

- Require that information gathered during a housing discrimination case not be shared with Immigration and Customs Enforcement.
- Expand protections from immigration enforcement currently granted to undocumented immigrants involved in a labor dispute to undocumented immigrants engaged in a housing discrimination case.
- Allow undocumented immigrants who are cooperating with a housing discrimination case to be eligible for a U-visa and increase the number of U-visas available to meet this increased need.

- Expand outreach and education efforts for immigrant populations to ensure they know their right to be free from housing discrimination and how to secure an effective remedy if they experience discrimination.
- Expand the use independent investigations of housing discrimination at the federal, state, and local level to reduce reliance on individual complaints and to better protect groups that may be reluctant to come forward with cases.

Housing Segregation (Articles 3 and 5 (e)(iii)).

24. In addition to discrimination by landlords, realtors, and lenders, government decisions on where to build affordable housing are a major contributor to segregation. Several forces lead to segregating affordable housing into low-income neighborhoods: resistance to affordable housing in higher-income neighborhoods; government zoning that restricts multi-family rental units to certain areas; and limited government funding that must be used both to preserve existing affordable housing and to develop new housing.
25. Publicly subsidized housing development is subject to the same fair housing laws as all housing. In addition, U.S. Department of Housing and Urban Development (HUD) grantees, including state and local governments, are supposed to comply with an even more exacting standard: that they affirmatively further fair housing through their programs. Though this was a requirement of the Fair Housing Act passed in 1968, HUD drafted a rule establishing what grantees must do to meet this requirement only in 2013.⁴⁴
26. The Low Income Housing Tax Credit (LIHTC) has been the main program for building affordable housing since the 1990s,⁴⁵ but despite the Fair Housing Act requirements, most housing built with LIHTC funds is located in areas with higher minority populations.⁴⁶ Each state sets the criteria by which it awards LIHTC tax credits to projects, and those criteria significantly affect the placement of subsidized housing. In Minnesota, the cities of Minneapolis and St. Paul receive a set percentage of LIHTC tax credits, despite the fact that the majority of LIHTC housing built in the two cities “were in neighborhoods with more than thirty percent minority households and virtually all of the units were in areas with predominantly non-white, high-poverty, low-performing schools.”⁴⁷ Other criteria that seem racially neutral also favor placing LIHTC housing

⁴⁴ 24 C.F.R. §§ 5, 91-92, et al.; Affirmatively Furthering Fair Housing; Proposed Rule. Federal Register citation: Affirmatively Furthering Fair Housing, 78 Fed. Reg. 43710-01 (Jul. 19, 2013).

⁴⁵ Jill Khadduri, *Creating Balance in the Locations of LIHTC Developments: The Role of Qualified Allocation Plans, Poverty & Race Research Council* (February 2013), 1, http://www.prrac.org/pdf/Balance_in_the_Locations_of_LIHTC_Developments.pdf.

⁴⁶ Lance Freeman, *Siting Affordable Housing: Location and Neighborhood Trends of Low Income Housing Tax Credit Development in the 1990s*, Center On Urban and Metropolitan Policy (March 2004), 1, http://www.brookings.edu/~media/research/files/reports/2004/4/metropolitanpolicy%20freeman/20040405_freeman.pdf.

⁴⁷ Correspondence 13.

in high poverty, segregated neighborhoods. Minnesota does not have any criteria that reward developers for building subsidized housing in an integrated or predominantly white neighborhood.⁴⁸

Questions

- What criteria does the federal government use to determine whether a municipality is affirmatively furthering fair housing?
- What consequences does the federal government impose when cities and states do not affirmatively further fair housing with their housing programs?

Recommendations

- Monitor the effectiveness of the new Affirmatively Furthering Fair Housing rule in increasing integration in government-funded housing programs.
- Provide guidance and incentives for states and localities that are not affirmatively furthering fair housing in their public housing programs to meet their legal obligations.

2 (d). Progress made, in law and in practice, to end the practice of racial profiling and surveillance by law enforcement officials.

Immigration Profiling by Local Law Enforcement (Articles 2 and 5(b)).

27. The Advocates collected numerous reports of local law enforcement officials engaged in racial profiling of immigrants, often in an attempt to discover if they were an undocumented immigrant, even though enforcement of immigration law is not the responsibility of local law enforcement.
28. Minnesota regulations require proof of lawful presence in the United States for all applicants for driver's licenses and state identification cards, effectively barring undocumented immigrants from obtaining driver's licenses.⁴⁹ Even for some refugees and immigrants who are legally present in the United States, Minnesota's restrictive driver's license rules pose a problem. A public defender said "homeless refugees often have no documents. So, they end up getting arrested because they don't have documents and can't prove their identity."⁵⁰ Asking for a driver's license, therefore, can be a method for identifying undocumented immigrants, especially when failure to produce a driver's license leads to deportation.
29. In numerous cases, individuals are 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 are interviewed by Immigration and Customs Enforcement (ICE) officers seeking to obtain admissions of unlawful

⁴⁸ Ibid.

⁴⁹ Minn. Rules 7410.0410 (2013) (as amended by 28 SR 314, Sept. 15, 2003).

⁵⁰ Interview 124.

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 are deported. The immigration courts do not consider the constitutionality of the initial stop or whether racial profiling occurred when deciding deportation cases.

30. The greatly expanded capacity to screen and obtain admissions of alienage or unlawful entry from people in Minnesota jails before any charges have been brought has left Minnesota law enforcement without an effective mechanism to detect or combat any immigration profiling that may take place. Because ICE interviews, detainer requests, and transfers often take place prior to criminal charges, no prosecutor reviews the evidence, no public defender is assigned, and no hearing before a criminal court judge takes place. Despite a probability that some of these stops are unconstitutional, immigrants are transferred to ICE before any criminal proceedings and so there is no review of the constitutionality of the initial arrest. This relationship between local and immigration enforcement bypasses the procedural safeguards against constitutional violations which exist in the criminal justice system, where searches and seizures can be challenged and where evidence, including testimony, may be suppressed if found to have been obtained in violation of law.

Questions

- What data does the federal government collect on the circumstances under which local law enforcement encounters immigrants who are subsequently transferred to immigration custody and what does the data demonstrate?
- What oversight and protection measures are in place to review whether racial profiling occurred and a stop is unconstitutional when the stop leads to immigration detention and/or deportation?
- How can someone challenge the constitutionality of a stop that leads to immigration proceedings?

Recommendations

- Document and report the circumstances under which local law enforcement encounters immigrants who are subsequently transferred to immigration custody in order to identify potentially discriminatory and unconstitutional patterns.
- Discourage racial profiling by providing a review of the constitutionality of stops by both local law enforcement and immigration enforcement when detaining immigrants for immigration law violations.
- Provide a remedy for racial profiling in violation of the Convention on the Elimination of All Forms of Racial Discrimination by ensuring the applicability of Fourth Amendment protections from unreasonable searches and seizures in immigration proceedings.

- Make it easier for individuals to file discrimination complaints from other countries and ensure jurisdiction exists for such claims so that deportation does not prevent a remedy for constitutional violations.

Profiling of Muslims at the Border (Articles 2 and 5(b)).

31. Muslims individuals and people from countries with high percentages of Muslims reported additional scrutiny and delays, especially when entering the United States.⁵¹ Advocates report that most complaints about discrimination from Muslim immigrants pertain to harassment at the airport.⁵²
32. That these violations happen at ports of entry is problematic because the U.S. legal system does not ensure protection against discrimination at the border. Noncitizens being questioned at the border are not allowed to call anyone and have no right to counsel during their interrogation.⁵³ The U.S. border, which includes airport ports-of-entry, is considered exempt from prohibitions against random and arbitrary stops and searches.⁵⁴ Customs and Border Protection (CBP) officials have the right to detain and search any person or item at a port of entry.⁵⁵ 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.”⁵⁶ 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.”⁵⁷ 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.⁵⁸

⁵¹ Interview 127; Interview 18; Interview 7.

⁵² Interview 127.

⁵³ 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).

⁵⁴ *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).

⁵⁵ 19 C.F.R. § 162.6.

⁵⁶ 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.

⁵⁷ 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.

⁵⁸ 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>. (In FY 2012, there were five complaints lodged about discrimination by CBP agents and 34 complaints were resolved in that period, according to the Civil Rights and Civil Liberties

Travelers can also submit complaints using the DHS Traveler Redress Inquiry Program (TRIP) online system.⁵⁹ Attorneys report that complaints do receive a response, though not always a satisfactory resolution.⁶⁰

Questions

- Does the federal government collect data on who is stopped for secondary screening at the border and the reasons for the stop in order to identify potentially discriminatory patterns? If so, what does the data reveal and how is the federal government using the data to protect people at the border from discriminatory treatment or profiling?
- What training is provided to agents to assess when “individualized discretionary use of nationality,” as permitted by DHS regulations, is a factor? Is the use of nationality as a screening factor extended to country of birth or restricted to current citizenship?
- How do you ensure the rights of Muslim citizens to travel freely within their own country?

Recommendations

- Collect data on who is stopped for secondary screening at the border and the reasons for their stop in order to identify potentially discriminatory patterns and to provide increased training and oversight to prevent further discrimination.
- Shorten the time and improve the waiting conditions for secondary screening, so that it is not an undue burden on those selected.
- Provide a mechanism so that people who are repeatedly stopped for secondary screening can avoid further duplicative screenings by passing a screening and background check process that meets security needs while allowing these individuals to travel more freely.
- Provide an effective remedy in cases where individuals are stopped as a result of racial profiling by border officials.
- Provide legal counsel to individuals in secondary inspection so that they can be informed of their rights.

Office Annual Report for FY 2012, http://www.dhs.gov/sites/default/files/publications/crcl-annual-report-fy-2012_4.pdf).

⁵⁹ U.S. Department of Homeland Security, “DHS Traveler Redress Inquiry Program (DHS TRIP),” <https://www.dhs.gov/dhs-trip>.

⁶⁰ Interview 188.

4 (b). Mandatory detention of immigrants for prolonged periods of time and obstacles to accessing State-sponsored legal aid, interpreters, health services, education and employment opportunities while in detention; deportation of undocumented immigrants.

Lack of Immigration Legal Aid (Article 5(a)).

33. Immigrants seek legal help for two primary types of cases: applications for immigration benefits (such as citizenship, permanent resident status, or petitions for family members), and representation in deportation hearings. All of these matters are adjudicated by federal agencies. Although the benefits application process is not a court process, the complex nature of immigration law and the high stakes often necessitate representation by people familiar with immigration law. Demand for free legal services in immigration matters exceeds the available resources. As a result, even those providers who do represent immigrants must prioritize the types of cases that they believe merit assistance, excluding many noncitizens whose issues do not fall within that scope.
34. There is particularly inadequate free representation for immigrants facing deportation. Nationally only fifty-six percent of individuals in immigration court were represented during 2012, in proceedings where a common outcome is deportation.⁶¹ Despite the high stakes of deportation, there is no right to free counsel in immigration proceedings. The statute only guarantees a right to an attorney “at no cost to the government.”⁶² Compounding the problem, the majority of legal services organizations do not represent undocumented immigrants due to federal funding restrictions prohibiting such assistance.⁶³ 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.⁶⁴ The free legal services list for the Immigration Court that sits in Minnesota lists only three providers in the state.⁶⁵ Only one of the three agencies has a satellite office outside the main metropolitan area, although all three provide service to immigrants statewide.

Questions

- What government-sponsored legal aid is available to immigrants in deportation cases to ensure they can effectively articulate claims to relief from deportation?
- What is the federal government doing to ensure that immigrants have access to legal aid in non-deportation immigration cases?

⁶¹ 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).

⁶² 8 C.F.R. §1003.16(b).

⁶³ 8 C.F.R. §§1626.1 – 1626.2.

⁶⁴ 8 C.F.R. §§1626.1-1626.11.

⁶⁵ United States Department of Justice, “Free Legal Services Providers List,” <http://www.justice.gov/eoir/probono/freelgchtMN.pdf>.

Recommendations

- Provide free legal counsel for those facing the threat of deportation, given the deprivation of rights that comes with effective exile, especially for vulnerable groups such as children and those with mental disabilities or illnesses.
- Increase the resources available for legal assistance in immigration matters.
- Remove funding restrictions tied to immigration status from legal aid money to enable all immigrants to qualify for all free legal services.

5 (a). Lack of the right to counsel for indigent persons belonging to racial, ethnic and national minorities in civil proceedings and inadequate or unavailable counsel for indigent persons belonging to racial, ethnic and national minorities in criminal proceedings.

Lack of Counsel in Civil Proceedings (Article 5(a)).

35. Minnesota immigrants and refugees face serious barriers to civil legal services, primarily because the system lacks sufficient resources to meet the need for free or low-cost legal services. Civil legal services funding is provided by the Minnesota Legislature and administered by the Legal Services Advisory Committee.⁶⁶ Eighty-five percent of this funding goes to the core legal aid programs recognized by the State of Minnesota, many of which are Legal Services Corporation (LSC) funded and therefore subject to federal funding restrictions that limit the services that can be provided to certain immigrants, primarily the undocumented.⁶⁷ This means that, for many immigrants residing in areas served by LSC programs, free legal services in matters such as housing, education, or family law may not be available.
36. Budgetary issues at both the federal and state levels have had a significant impact on civil legal services in Minnesota over the past five years.⁶⁸ While there is statewide availability of free legal services,⁶⁹ the numbers of people seeking help as well as the types of matters they need help with outstrip the available resources.⁷⁰ Minnesota civil legal service providers estimated that they were only able to provide representation to one in three eligible clients who contacted their offices during 2012.⁷¹

⁶⁶ Minn. Stat. §§480.24, 480.242.

⁶⁷ Minn. Stat. §480.242; 42 U.S.C. §2996 et seq.

⁶⁸ Brandt Williams, *Uneven cuts stressing Minn. criminal justice system*, Nov. 7, 2011, Minnesota Public Radio, <http://www.mprnews.org/story/2011/11/07/minnesota-criminal-justice-system-cuts>; Minnesota Supreme Court Legal Services Advisory Committee, *FY13 Annual Report*, (Nov. 14, 2013) http://www.mncourts.gov/Documents/0/Public/administration/LSAC_Annual_Report_FY13.pdf.

⁶⁹ Legal Services State Support, "Map of Legal Services Offices in Minnesota," <http://www.mnlegalservices.org/RTF1.cfm?pagename=NewPageName1>.

⁷⁰ Legal Services Advisory Committee, *FY13 Annual Report*, (Nov. 14, 2013), 2 http://www.mncourts.gov/Documents/0/Public/administration/LSAC_Annual_Report_FY13.pdf.

⁷¹ *Id.* at 2.

37. In addition to an overall lack of access, Minnesota’s legal services delivery system has not kept pace with cultural changes in Minnesota’s population. A recent survey of low income Minnesotans found that immigrants had lower levels of trust in civil legal services than long-term residents.⁷² That survey cited a lack of bilingual and bicultural legal services staff as one barrier to representation.⁷³

Questions

- How does the federal government provide assistance to individuals in civil cases who cannot afford legal representation and who are facing loss of a fundamental human right, such as housing, employment, or family unity?

Recommendations

- Implement a guarantee of free counsel in civil cases to ensure free legal representation for those who cannot afford it and who are facing loss of a fundamental human right, such as housing, employment, or family unity.
- Ensure people appearing *pro se* have access to information in multiple languages.
- Remove funding restrictions tied to immigration status from legal aid money to enable all immigrants to qualify for all free legal services.
- Provide training for judges, prosecutors, probation officers, and other justice system staff about immigrant groups in the United States, cross-cultural communication, and other topics as needed to ensure quality service delivery to all.

5 (b). Access to justice and recourse for victims of indirect discrimination.

38. Immigrants and refugees in Minnesota are not able to access 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 violation or because they had been, in fact, deported and therefore could not pursue the remedy.

39. 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 they would expect, based on overall complaints.⁷⁴ He speculated that immigrants fear deportation, and so do not bring complaints forward.⁷⁵ Agencies responsible for

⁷² Minnesota State Bar Association, *Overcoming Barriers that Prevent Low-Income Persons from Resolving Civil Legal Problems: A Study Prepared for the Legal Assistance to the Disadvantaged Committee of the Minnesota State Bar Association*, Hannah Lieberman Consulting LLC/John A. Tull & Associates (Sept. 2011), 18, http://www.mncourts.gov/Documents/0/Public/administration/Final_MN-CABS_Study_September_2011.pdf.

⁷³ *Id.* at 47.

⁷⁴ Interview 125.

⁷⁵ *Ibid.*

handling discrimination claims, including the Minnesota Department of Human Rights and the Equal Employment Opportunity Commission, have engaged in outreach to help encourage foreign nationals to file complaints when necessary.⁷⁶ However, resources to enforce discrimination claims have decreased over the past fifteen years, resulting in longer waits for resolution and fewer resources to investigate violations.⁷⁷ Advocates note that people do not necessarily want to endure a lengthy process to get the case resolved.⁷⁸ Many immigrants are unaware of their rights, particularly to be free from discrimination, which is another barrier to seeking remedies.⁷⁹ Additionally, people who have been deported are unable to seek redress; since they are not in the United States, they cannot bring a claim in the U.S. courts. Unfortunately, due to this confluence of factors, civil remedies for discrimination claims often are not effective for immigrants.

Questions

- What resources does the federal government devote to providing individuals with information, education, and referrals on anti-discrimination laws?
- Does the federal government aggregate and centralize the data on discrimination claims from all agencies working on discrimination issues?
- What resources does the federal government devote to independent investigations of potential discrimination?

Recommendations

- Create a central body that coordinates and analyzes data on the full range of anti-discrimination enforcement activities across all areas, such as housing, employment, voting, and education, to better understand the scope of the problem and evaluate the full impact of potentially discriminatory policies.
- 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.
- Increase the resources devoted to independent investigations of discrimination, especially disparate impact discrimination, to overcome the limitations of relying on individual cases.

⁷⁶ Ibid.

⁷⁷ Interview 101; Interview 125.

⁷⁸ Interview 101; Interview 107; Interview 125.

⁷⁹ Interview 118; Interview 119; Interview 139; Interview 146.

6. Training, education and other measures to combat prejudice and intolerance.

40. Diverse groups point to a need for increased education on others' perspectives and experiences in order to address root causes of xenophobia and racism.⁸⁰ There is still a need for a curriculum that includes accurate and thorough histories of ethnic and racial minorities in many U.S. classrooms.
41. Knowledge of human rights treaties and obligations remains very low in the United States. There is room for improvement in every sector, but is particularly critical in education, where segregation contributes so significantly to cycles of poverty and discrimination.

Questions

- What are federal and state governments doing to ensure the teaching of accurate and thorough histories of racial minorities in public schools?
- What is the federal government doing to ensure training and education on CERD for government officials and employees, including educators, as well as others serving racial and ethnic minorities?

Recommendations

- Ensure that state-level social studies standards include human rights and multicultural education, to include accurate diverse histories and contemporary issues, and ensure that the standards are being implemented.
- Provide training on CERD to all government employees, including teachers, and policymakers involved in the education sector.

⁸⁰ Conversation 12; Interview 110; Interview 119; Interview 19; Interview 6; Interview 49; Interview 162; Interview 160; Interview 157; Interview 162; Interview 150.