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February 2, 2011

Dr. Santiago A. Canton
Executive Secretary
Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington, D.C. 20006

RE: Request for a General Hearing on Extrajudicial Medical Repatriation of Immigrants from the United States

Dear Secretary Canton,

On behalf of the Seton Hall University School of Law Center for Social Justice ("CSJ") and our collaborating organizations, we respectfully request a general hearing before the Inter-American Commission on Human Rights ("Commission") during the 141st period of sessions in order to bring the U.S. practice of forced or coerced medical repatriation and its various human rights implications to the Commission's attention.[1]

[1] The CSJ collaborated with Border Action Network of Arizona ("BAN"), New York Lawyers for the Public Interest ("NYLPI"), and the Law Offices of Chavez & De León, P.A. in Miami, Florida in gathering the information and data for this request. The CSJ has a long history of advocating for the rights of immigrants, through its Immigrants' Rights/ International Human Rights Clinic and International Human Rights/Rule of Law Initiative. CSJ's work in these areas has included: litigation in federal court on behalf of immigrants targeted by Immigration and Customs Enforcement raids, human rights reporting on issues impacting immigrants in New Jersey, including racial profiling and wage theft facing day laborers, know-your-rights outreach programs, and individual representation of immigrants in removal proceedings and in federal courts. CSJ reports and litigation highlights are available on the CSJ website at http://law.shu.edu/ProgramsCenters/PublicIntGovServ/CSJ/Making-a-Difference-Cases.cfm. In April 2010, CSJ and NYLPI submitted a report on the human rights implications of the US practice of medical repatriations to the United Nations Human Rights Committee as part of the Human Rights Committee Universal Periodic Review of U.S. compliance with international human rights norms, which was also submitted to U.S. government officials. The report can be accessed online at http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/SHUSL_SetonHallUniversitySchool.pdf and as part of the OCHR Submission, available at http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/A_HRC_WG.6_9_USA_3.pd. In the summer of 2010, law student Kimberly Krone conducted a fact-finding mission to Guatemala to document the practice of medical repatriation, in conjunction with law student Jennifer Scott, and supervised by attorney Anjana Malhotra, practitioner in residence in CSJ's International Human Rights/Rule of Law Project. BAN works with immigrant and border communities in Arizona to ensure that their rights are respected through community organizing, litigation,

Summary of the Problem, Human Rights Implications and State Accountability

As set forth below, U.S. hospitals (both public and private) are directly engaging in medical repatriations of seriously ill or injured immigrants without their consent or with coerced consent. Such repatriations, which are known to and tolerated by the U.S., are tantamount to extrajudicial deportations and violate a host of guaranteed human rights, including the right to a fair trial and due process, the right to life, liberty and personal security, the right to equality before the law, the right to protection of the family, and the right to preservation of health and well-being.[2]

Pursuant to the Inter-American Court of Human Rights decision in *Velásquez Rodríguez*, States have "a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation."[3] Here, the U.S. government is responsible for the human rights violations associated with forced or coerced medical repatriations because it has failed to act with the due diligence required to protect the rights of those subject to medical repatriation by hospitals.[4] Specifically, as set forth more fully below, by failing to enact laws and policies that sufficiently protect these patients' rights, by inadequately enforcing those laws that do exist, and by failing to provide adequate remedies to victims of this egregious practice, the United States has created an environment in which medical repatriations occur with impunity. The United States is therefore responsible for serious violations of the rights established in the American Declaration on the Rights and Duties of Man (hereinafter the "Declaration") and the American Convention on Human Rights (hereinafter the "Convention").

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and advocacy. Over the past year, the Health Justice (HJ) Program at NYLPI has worked closely with a number of other organizations to form a state-wide rapid response team, consisting of health and immigration law experts, social workers, health care providers, and advocates, to assist immigrants who are at risk of medical deportation. The HJ Program has also recently collaborated with organizations across the country to raise awareness of medical deportation on a national level. John de Leon, Esq., with the Law Offices of Chavez & De Leon, P.A., represents the Consulates General of Guatemala throughout the United States and the Foreign Ministry of Guatemala's program Global Justice ("Justicia Global") as well as the Consulate General of Mexico in Miami. John De Leon is also President of the Greater Miami Chapter of the American Civil Liberties Union and on the Board of Directors of the Florida Immigrant Advocacy Center. His law partner, Fernando Chavez, is the eldest son of the late labor leader Cesar E. Chavez.

[2] For an overview of medical repatriation, see Lori A. Nessel, *The Practice of Medical Repatriation: The Privatization of Immigration Enforcement and Denial of Human Rights*, 55 WAYNE L. REV. 1725, 1727 (2009).

[3] Velásquez Rodríguez v. Honduras, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 4, ¶ 174 (July 29, 1988).

[4] "An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention." *Id.* at ¶ 172.

Scope of the Problem of Forced or Coerced Medical Repatriations

As reported in the *New York Times*, "extrajudicial repatriations take place in the shadows" making it impossible to know "exactly how many patients are unwillingly deported by U.S. hospitals."[5] However, CSJ faculty and students have gathered more than sufficient evidence to establish that the United States is in widespread and systematic violation of the human rights obligations it has under the Declaration. CSJ faculty and students have conducted research demonstrating that forced or coerced medical repatriations occur with alarming frequency throughout much of the United States. For example, there have been documented cases of patients being unwillingly repatriated from hospitals in New York,[6] Michigan,[7] New Jersey,[8] Maryland,[9] Arizona,[10] Illinois,[11] and Florida[12] to Mexico, Guatemala, El Salvador and other countries. Overall, the CSJ, NYLPI, BAN, and Law Offices of Chavez & De León, P.A. have been able to document more than 100 cases of extrajudicial forced or coerced medical repatriation in the United States.[13]

The stories of just a few individuals who have been subject to medical repatriation demonstrate the human rights implications of this practice:

- A federally-funded public hospital in Arizona repatriated a 19 year-old woman, who had lived in the U.S. since she was one-year old, to a hospital in Mexico. Even though the hospital assured the family that she was stable enough for transfer, she died less than 24 hours later. According to the medical records, the young woman, who had suffered a gunshot wound to the head, arrived in poor condition with infected surgical suture wounds on her skull and abdomen. Her primary cause of death was listed as septic shock (when an overwhelming infection and sepsis leads to life-threatening low blood pressure).[14] The hospital repeatedly pressured the victim's family to sign a discharge

[5] *Id*.
[6] Nisha Agarwal & Liane Aronchick, *A Matter of Life and Death: Advocates in New York Respond to Medical Repatriation*, 46 HARV. C.R.-C.L. L. REV. (forthcoming 2011).
[7] Case of Jose G., documented by the CSJ.
[8] Case of Enrique L., documented by the CSJ.
[9] Case of Manuel L., documented by the CSJ.
[10] Case of Antonio de Jesús Torres, *see* Deborah Sontag, *Deported in a Coma, Saved Back in U.S.*, N.Y. TIMES, Nov. 8, 2008, *available at* http://www.nytimes.com/2008/11/09/us/09deport.html.
[11] Case of Orlando Lopez, *see* Colleen Mastony, *For Patient, Time Runs Out*, CHI. TRIB., Nov. 9, 2005, *available at* http://articles.chicagotribune.com/2005-11-09/news/0511090305_1_nursing-long-term-care-patient.
[12] Case of Jimenez. *See* Nessel, *supra* note 2, at 1725.
[13] *See, e.g.*, Seton Hall University School of Law Center for Social Justice and New York Lawyers for the Public Interest, *Submission to the United Nations Human Rights Council as Part of its Universal Periodic Review Regarding the Extrajudicial Involuntary Deportations of Immigrant Patients by U.S. Hospitals*, ¶ 5, Ninth Session of the Working Group on the UPR, Human Rights Council, *available at* http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/SHUSL_SetonHallUniversitySchool.pdf.
[14] Dr. Jorge Issac Cardoza Amador, the treating doctor at the hospital in Mexico, stated that she arrived in "malas condiciones generales" [generally bad condition], "con…herida quirúrgica suturada en cráneo con bordes necróticos con salida de material seropurulento" [with a sutured surgical skull wound with necrotic (dead tissue) borders and seropurulent (a mixture of serum and pus) drainage]. These medical records will be available at the briefing phase in addition to other supporting materials.

order, eventually telling them that this patient would be removed whether they signed the discharge or not.

- A hospital in Nevada transported a patient, who had been hit by a car and had severe spinal injuries, to Guatemala against his family's wishes and without arranging for transfer to another medical facility. An air ambulance took him to the Guatemala City airport, where the patient's family met him on the tarmac and then transported him via taxi cab to a local hospital. He died shortly after his return.[15]

- Antonio Torres, a 19 year-old U.S. lawful permanent resident in Arizona, was critically injured in a car accident. Notwithstanding that Antonio was comatose and had a severe infection, the hospital insisted on repatriating him to Mexico because he had not been a lawful permanent resident for long enough to qualify for Medicaid funding in Arizona. Due to differences in state funding schemes, Antonio's parents were able to bring their son back for treatment in California. Antonio returned from Mexico comatose and with potentially fatal septic shock, but within 18 days after being admitted to the California hospital, Antonio emerged from his coma, was transferred to a rehabilitation center and ultimately discharged to his lawful permanent resident family in the U.S.[16]

- In the well-publicized case of Luis Alberto Jiménez, an illegal immigrant who worked as a gardener suffered devastating brain damage and other physical injuries as a result of being hit by a drunk driver.[17] After receiving treatment at a hospital in Florida, the hospital sought a court order to repatriate him back to Guatemala.[18] Although Mr. Jiménez's guardian was challenging the order in court, the hospital forcibly transferred him to the national hospital in Guatemala. Because the hospital in Guatemala was unable to provide him the care he needed, he was quickly discharged to the care of his elderly mother and now lives with her in a one-room hilltop house in a remote village, where he is bed-ridden and suffers from frequent seizures.[19]

All these cases show that forced or coerced medical repatriations are occurring across the United States in violation of the U.S.'s human rights and domestic law obligations.

Forced or Coerced Medical Repatriations Violate Guaranteed Human Rights

Medical repatriation implicates multiple human rights protected by the Charter of the Organization of American States and reflected in the Declaration and the Convention. The Declaration constitutes a source of international obligations for the United States and other OAS

[15] Case of Alberto D., documented by the CSJ.
[16] *See* Nessel, *supra* note 2, at 1752-53 (citing Deborah Sontag, *supra* note 10, at 5).
[17] *See* Deborah Sontag, *Immigrants Facing Deportation by U.S. Hospitals*, N.Y. TIMES, Aug. 3, 2008, *available at* http://www.nytimes.com/2008/08/03/us/03deport.html. *See also* Montejo v. Martin Mem'l Med. Ctr., Inc., 874 So. 2d 654 (Fla. Dist. Ct. App. 2004).
[18] Sontag, *supra* note 17.
[19] *Id.*

Member States, regardless of whether the States are also parties to the Declaration.[20] The actions and inactions of the United States have led to the violation of the following rights established in the Declaration:

1. The Right to a Fair Trial and Due Process. (Declaration, Articles II, XVIII, XXV, and XXVI)

When hospitals in the US involuntarily transfer immigrants to their native countries, the hospitals are effectively engaging in extrajudicial deportations that are in flagrant violation of the right to a fair trial and due process established in the Declaration. Article XXV states that "[n]o person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law." Under domestic immigration law and pursuant to international human rights obligations, immigrants in the United States are entitled to due process in removal proceedings including, a hearing before an immigration judge[21] at which the government carries 'the burden of establishing by clear and convincing evidence that…the alien is deportable;'[22] notice of the right to appeal the decision;[23] an opportunity to move the immigration judge to reconsider;[24] an opportunity to seek discretionary relief of removal;[25] and an opportunity to obtain habeas review of the decision not to consider waiver of deportation.[26] Deportation is the exclusive and sole responsibility of the federal government under U.S. law which states that, "[a deportation] proceeding under [the Immigration and Naturalization Act] shall be the sole and exclusive procedure for determining whether an alien may be…removed from the United States."[27] The Inter-American Court has observed that "the due process of law guarantee must be observed in the administrative process and in any other procedure whose decisions may affect the rights of persons."[28] By failing to provide due process to hospitalized immigrants and allowing them to be deported extrajudicially, the United States government is acting in contravention of its own laws and its human rights obligations as an Organization of American States Member State.

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[20] *See* Advisory Opinion OC-10/89 "Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights," 1989 Inter-Am. Ct. H.R. (ser. A) No. 10, paras 35-45 (July 14, 1989); *Gonzales v. United States*, Petition No. 1490-05, Inter-Am. C.H.R., Report No. 52/07, OEA/Ser.L./V/II.128, doc. 19 ¶56 (2007) (finding that the Declaration "constitut[es] a source of legal obligation for OAS member states, including in particular those states that are not parties to the American Convention").

[21] 8 U.S.C. §1229a(1) (2006).

[22] *Id*. §1229a(c)(3)(A).

[23] *Id*. §1229a(c)(5).

[24] *Id*. §1229a(c)(6).

[25] *Id*. §1229a(c)(4).

[26] *See* INS v. St. Cyr, 533 U.S. 289, 314 (2001). For a discussion of the due process rights of immigrants in removal proceedings, *see* Kit Johnson, *Patients Without Borders: Extralegal Deportation by Hospitals*, 78 U. CIN. L. REV. 657, 680 (2009).

[27] 8 U.S.C.S. §1229a(a)(3) (2010) ("[A] proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be... removed from the United States").

[28] Case of Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Inter-Am. Ct. H.R., (ser. C) No. 146, ¶ 82 (March 29, 2006).

2. The Right to Life, Liberty and Personal Security (Declaration, Article I)

When hospitals in the U.S. forcibly repatriate immigrants, such actions violate the immigrant patients' rights to liberty and personal security. For example, in several cases, immigrants with severe injuries such as head and spinal injuries and paralysis were repatriated by hospitals in several U.S. states either without consent (and despite objections from family members and community advocates) or subject to coercion and pressure by hospital staff.[29] When patients are transferred to inadequate facilities or merely dropped off without transfer to another facility,[30] and subsequently die due to lack of vital care, they are effectively deprived of their right to life. In addition, Article I does not just encompass protection from death, but also speaks to the right to live a dignified life. The Inter-American Court has announced that the right "includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it."[31]

3. The Right to Protection of the Family (Declaration, Article VI)

In cases where patients are unable to consent or make informed decisions about their own health care due to mental and/or physical incapacitation or age, their family members are often called upon to provide such consent. When hospitals in the U.S. repatriate incapacitated or under-age immigrants in contravention of the family's wishes, the practice of medical repatriation violates the patient's and family's right to protection of the family.

The U.S. also fails to respect the rights to protection of the family when it allows hospitals to engage in coerced medical repatriations that separate family members and undermine family unity. These violations are dramatically illustrated by the closing of the Grady Dialysis Center in Atlanta, Georgia, where long-time residents of the United States were coerced into separating from immediate family in the U.S. and repatriating to Mexico in hopes of receiving life-sustaining dialysis.[32]

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[29] For example, in the case of Enrique L., (documented by CSJ) hospital representatives misrepresented a patient's condition in order to obtain consent of family members in Guatemala. In the case of Luis Jimenez, *see* Sontag, *supra* note 17, notwithstanding the Court's order that the hospital respond to the guardian's opposition to the repatriation order, the hospital acted immediately to repatriate an immigrant with severe brain trauma to a hospital that could not provide appropriate treatment ; Case of Antonio de Jesús Torres, *see* Sontag, *supra* note 10 (parents of a 19 year old lawful permanent resident in a coma were pressured into consenting to their son's repatriation to Mexico).

[30] Case of Alberto D., documented by the CSJ.

[31] Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala, Judgment, Inter. Am. Ct. H.R., (ser. C) No. 63, ¶ 144 (Nov. 19, 1999).

[32] *See* Nessel, *supra* note 2, at 1741 (recounting the story of a ten year-resident of the U.S. that agreed to be transferred to Mexico along with her ten year-old US citizen son, but leaving behind her husband of fifteen years and their fourteen year old son, who remained behind to earn money for her dialysis treatments). *See also* Request to the IACHR for Precautionary Measures and January 29, 2010 order of the IACHR granting precautionary measures, *available at* http://www.cidh.oas.org/medidas/2010.eng.htm.

4. The Right to Preservation of Health and Well-Being (Declaration, Article XI)

Forced or coerced medical repatriations violate the right to health by denying access to adequate healthcare within the United States and forcibly transporting ill or injured immigrants to facilities in other countries that cannot provide the required care. As stated by the American Medical Association ("AMA") Council on Ethical and Judicial Affairs ("CEJA"), "[p]hysicians should not discharge a patient to an environment in which the patient's health could reasonably be expected to deteriorate simply because of inadequate resources at the intended destination."[33] As CEJA concluded, "millions of legal and illegal noncitizen immigrants are potentially at risk of being unsafely discharged across U.S. borders."[34] Article XI of the Declaration establishes that "every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resource". This right is available to all persons, without regard to their immigration status in a country. Consequently, the State's tolerance of these medical repatriations clearly constitutes a violation of this precept.[35]

5. The Rights to Equality Before the Law (Declaration, Article II)

Forced or coerced medical repatriations violate the right to equality before the law because immigrants are being denied their rights to life, and preservation of health, based solely on their immigration and economic status. Only seriously ill or injured immigrants without the means to pay their own healthcare costs are victims of these risky transfers to overseas facilities, which jeopardize their health and well-being. Significantly, the Statute of the Inter-American Commission on Human Rights, Article 20(a), obligates the Commission "to pay particular attention to the observance of the human rights referred to in Article…II…of the American Declaration of the Rights and Duties of Man."[36] The United States, by not treating these patients equally and allowing distinctions among patients because of nationality and economic factors, is acting in contravention of Article II.[37]

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[33] American Medical Association, Council on Ethical and Judicial Affairs, "Physician Responsibilities for Safe Patient Discharge from Health Care Facilities," 2 CEJA Report 2-I-10 (2010).

[34] *Id.*

[35] *See, e.g.,* Andrea Mortlock, Case 12.543, Inter-Am. Comm'n H.R., Report No 63/08, ¶ 94 (July 25, 2008) (holding the United States accountable under the Declaration when it "knowingly sen[t] Ms. Mortlock to Jamaica with the knowledge of her current health care regime and the country's sub-standard access to similar health for those with HIV/AIDS would violate Ms. Mortlock's rights, and would constitute a *de facto* sentence to protracted suffering and unnecessarily premature death.").

[36] Statute of the Inter-American Commission on Human Rights, O.A.S. Res. 447 (IX-0/79), O.A.S. Off. Rec. OEA/Ser.P/IX.0.2/80, Vol. 1 at 88, Annual Report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/11.50 doc.13 rev. 1 at 10 (1980), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 93 (1992).

[37] The Inter-American Court has stressed the vulnerable situation of migrants who are subject to ethnic prejudices, xenophobia and racism, which makes it difficult for them to integrate into society and leads to their human rights being violated with impunity and denial of access to public resources. Juridical Conditions and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶¶ 113, 112 (Sept. 17,

State Accountability for Forced or Coerced Medical Repatriations

The U.S. government must be held accountable because it has failed to meet the requirement of due diligence under *Velásquez Rodríguez*. The United States has enacted a health care regime that violates even the most basic protections for immigrants under international human rights law. Specifically, the U.S. provides inadequate funding, places harsh restrictions on states and hospitals that treat immigrants, and fails to properly monitor international discharges, resulting in an unregulated and underfunded grey zone that fosters nonconsensual medical repatriations. [38] For example, while the U.S. requires federally-funded hospitals to provide emergency medical treatment to all patients regardless of their immigration status,[39] federal law only allows for reimbursement of certain types of emergency care for undocumented immigrants.[40] Moreover, once patients are provided with critical care and stabilized, in most jurisdictions, there is no federal reimbursement available for non-emergency treatment of undocumented patients.[41] The United States' failure to provide adequate funding for the serious health care needs of undocumented and many lawful permanent resident immigrants[42] has resulted in a gap in human rights protection and an environment in which some hospitals are acting unilaterally, or in concert with private transport companies, to repatriate immigrants. This constitutes a violation of the individuals' rights to due process and in many cases, to life, for which the United States must be held accountable.

Further, the U.S. has failed to adequately mandate reporting for hospitals engaged in international discharges[43] or to provide appropriate remedies for victims of this egregious

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2003). The UN General Assembly in its resolution on "Protection of Migrants" referred to "the manifestations of violence, racism, xenophobia and other forms of discrimination and inhuman and degrading treatment against migrants, especially women and children, in different parts of the world." United Nations General Assembly, Resolution A/RES/54/166 on "Protection of Migrants" (Feb. 24, 2000). The resolution also stressed "the situation of vulnerability in which migrants frequently find themselves, owing, *inter alia*, to their absence from their State of origin and to the difficulties they encounter because of differences of language, custom and culture, as well as the economic and social difficulties and obstacles for the return to their States of origin of migrants who are non-documented or in an irregular situation." *Id.*

[38] Currently, no federal or state laws directly address this issue. Joseph Wolpin, *Medical Repatriation of Alien Patients*, 37 J.L. MED. & ETHICS 152, 152 (2009).

[39] *See* Emergency Medical Treatment and Active Labor Act (EMTALA) at 42 U.S.C.S. § 1395dd (2010).

[40] *See* 42 U.S.C.S. § 1396b(v)(2) (2010).

[41] 42 U.S.C.S. §§ 1320b-7(a)(1), (d), (f). A legislative overhaul of the United States healthcare system in 2010 did not provide opportunities for government-funded healthcare for undocumented immigrants. *See* Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010). Undocumented immigrants are also generally not eligible for state-funded Medicaid coverage except when such services are necessary for the treatment of an emergency medical condition and the individual otherwise meets the eligibility requirements for Medicaid. 42 U.S.C.S. § 1396 b(v).

[42] Lawful Permanent Residents are ineligible for Medicaid coverage for five years after obtaining lawful permanent residency. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA or "1996 Welfare Act"), Pub. L. No. 104-193, 110 Stat. 2105 (1996).

[43] Hospitals, as a condition of participation in Medicare, are required to develop discharge plans that ensure patients receive the appropriate post-hospital care that meets their needs. 42 C.F.R. § 482.43(d). *See also* 42 U.S.C.S. § 1395dd(c). However, the U.S. Department of Health of Human Services, which is responsible for overseeing hospitals' compliance with discharge rules, does not require hospitals to maintain uniform records on patient discharges and transfers or report whether patients consent to their discharges or transfers to another facility.

practice. Under federal law, the only remedy available to individuals who suffer personal harm as a result of a hospital's violation of the law is to commence a civil action against the hospital to obtain those damages available for personal injury under the law of the State in which the hospital is located.[44] However, filing a personal injury suit is nearly impossible for most patients who have been extrajudicially deported because of their inability to re-enter the country to obtain counsel and access the experts needed to prepare a successful case.[45] In addition, for the families of deceased victims like the 19-year-old girl who died after a medical repatriation to Mexico,[46] a civil suit is no consolation, especially when the situation could have been prevented in the first place.

Finally, the U.S. government is responsible for forced or coerced medical repatriations because it is aware of the ongoing practice and is turning a blind eye to it.[47] A State is responsible for the actions of private parties when a violation of an individual's rights occurs "with the support or acquiescence of the government, or when the State has allowed the act to take place without taking measures to prevent it or punish those responsible."[48] Here, the Department of Homeland Security's Division of Immigration and Customs Enforcement has urged its officers to exercise their discretion not to initiate removal proceedings when "the existence of extreme disease or impairment…makes …removal highly unlikely."[49] However, Consulates report that U.S. government officials from the Department of Homeland Security, and even members of Congress, have pressured them to release the travel documents that are required for repatriation of patients who have not consented to their transfer and who, upon further investigation, were not stable enough for transfer.[50] Consequently, in what constitutes a clear violation of the Declaration, the U.S. government is acquiescing to the practice and ignoring its legal responsibility to protect the health and due process rights of immigrants. Under international human rights law, the United States has an obligation to affirmatively protect the human rights of *all individuals* within its national territory,[51] regardless of their immigration status.[52]

Jennifer M. Smith, *Screen, Stabilize, and Ship: EMTALA, U.S. Hospitals, and Undocumented Immigrants (International Patient Dumping)*, 10. HOUS. J. HEALTH L. & POL'Y 309, 346-47 (2010).

[44] 42 U.S.C.S. § 1395dd(d)(2)(A). *See also* Smith, *supra* note 41, at 325.

[45] This point is reinforced by the fact that there is only one known legal challenge to medical repatriation. *See Montejo.*, 874 So. 2d at 657.

[46] *See supra* p. 3.

[47] A recent *New York Times* article quoted Kelly Nantel, a spokeswoman for ICE, as saying that ICE "does not get involved in repatriations undertaken by hospitals." Sontag, *supra* note 10, at A1.

[48] Velásquez Rodriguez, *supra* note 3, at ¶ 173.

[49] The U.S. Immigration and Customs Enforcement ("ICE") urges its agents in the Office of Detention and Removal Operation (DRO) to use their "favorable" prosecutorial discretion when "the existence of extreme disease or impairment…makes detention problematic and/or removal highly unlikely." U.S. Immigration and Customs Enforcement Memorandum by Director John P. Torres, dated December 11, 2006.

[50] Interview with John de Leon, Esq. with the Law Offices of Chavez & De Leon, P.A.

[51] Juridical Conditions and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶¶ 113, 112 (Sept. 17, 2003).

[52] *See* Theodor Meron, HUMAN RIGHTS AND HUMANITARIAN NORMS AND CUSTOMARY INTERNATIONAL LAW 139 (1989) (discussing the obligation of states to effectively protect human rights). The obligation of effectiveness is made explicit in the American Convention on Human Rights arts. 1 & 2, Nov. 22, 1969.

Timing and Specifics of Hearing Request

We respectfully request 60 minutes for the hearing and also request that the Commission invite the United States to participate. During our presentation, representatives from the CSJ will provide an overview of the issue and our findings on the occurrences and human rights implications of Medical Repatriation. We plan to demonstrate the dire effects of the practice through the presentation of several illustrative case studies and hope to incorporate testimony from the family of a victim of medical repatriation. Finally, we will request that the Commission, including the Rapporteur on Migrant Workers and Their Families, examine this issue in greater depth and provide recommendations to Member States on how they can fulfill their human rights obligations, particularly as established in the American Declaration and the American Convention

Thank you for your kind consideration of this request. Please do not hesitate to contact us if you have questions or require any additional information pertaining to this hearing request.

Sincerely,

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