SMUGGLED INTO EXILE:

Immigration and Customs Enforcement's Practice of Deporting Non-Citizens without Valid Travel Documents

The following person, to Whom It May Concern,

[Signature]

[Photo of a person]

FAMILIES for Freedom
Human smuggling is the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries laws, either clandestinely or through deception, such as the use of fraudulent documents.

United States Department of State
http://www.state.gov/m/ds/hstcenter/90434.htm
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***Names have been changed in order to protect privacy of the individuals sharing their stories***
A REPORT BY
FAMILIES FOR FREEDOM, INC.

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SUGGESTED CITATION


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This report is dedicated to people who were deported by U.S. Immigration and Customs Enforcement without valid travel documents and to people everywhere who fight for their freedom.

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Families for Freedom commissioned this report and we are grateful to Razeen, Rodrigo, Paz and Paulline!

Families for Freedom

Founded in September 2002, Families for Freedom is a New York-based multi-ethnic human rights organization by and for families facing and fighting deportation. We are current and former detainees, deportees and their loved ones. We come from dozens of countries, across continents. FFF seeks to repeal the laws that are tearing apart our homes and neighborhoods; and to build the power of immigrant communities as communities of color, to provide a guiding voice in the growing movement for immigrant rights as human rights. FFF has evolved into an organizing center against deportation. We are source of support, education, and campaigns for directly affected families and communities -- locally and nationally.

Stein Scholars, Advanced Seminar on Ethics and Public Interest Law

The Stein Scholars Program, in Fordham University School of Law,1 is a community of law students, Stein Scholars, who work in collaboration with the Public Interest Resource Center and the Stein Center. The program offers academic and service initiatives including the Advanced Seminar on Ethics and Public Interest Law. The seminar offers Stein Scholars the opportunity to work on projects different from externships and clinical work. Razeen Zaman and Rodrigo Bacus used the opportunity to work with directly impacted people by following a model of lawyering that recognized directly impacted people as experts and leaders in social change and not mere clients in pursuit of a legal solution.

1 The name of Fordham University School of Law is provided solely for purposes of identifying the program's affiliation. The views expressed in this report should not be regarded as the position of Fordham University School of Law.
KEY TERMS

ASYLUM SEEKER

An individual who is seeking resettlement to a third country as a durable solution to her refugee protection need, but has not yet received a proper determination of her refugee status.¹

CEDULA

An Ecuadorian ID used to buy items, travel, work, as well as perform other activities to fully participate in Ecuadorian life.²

DHS

Department of Homeland Security.

HONORARY CONSUL

A person to whom a national government grants limited duties and responsibilities, including diplomatic powers and authority to issue visas or travel documents.³

ICE

U.S. Immigration and Customs Enforcement (ICE), an agency under the Department of Homeland Security (DHS), enforces federal laws governing border control, customs, trade and immigration.⁴

IMMIGRATION DETAINER (ICE HOLD)

An official request from Immigration and Customs Enforcement (ICE) to a law enforcement agency asking that law enforcement agency to notify ICE before releasing a non-citizen from local custody, so that ICE can arrange to take over custody.⁵

LAISSEZ-PASSER

A type of travel document that a national government or international organization issues to facilitate the one-way travel of a person, usually for humanitarian purposes. A laissez-passer is a temporary document, often used to replace a lost or stolen passport, to allow passage. A laissez-passer, however, cannot be used as proof of nationality. In Cameroon, a laissez-passer is taken by authorities upon a person's arrival and not returned to the individual.⁶

⁶ Id.
MANDATORY DETENTION

Refers to a provision of the Immigration and Nationality Act (INA) that states that ICE must detain non-citizens with certain criminal convictions.\(^7\) Non-citizens who are subjected to mandatory detention are detained throughout the removal process without the ability to post bond.\(^8\)

NON-CITIZEN

The Immigration and Nationality Act refers to an entire population of people in the United States who are not “citizen[s] or national[s] of the United States,” as “aliens.” The term “alien” is dehumanizing and is not used in this report. Instead, the term used is “non-citizen.”

RECEIVING COUNTRIES

Countries that receive an individual who ICE has deported.

SECURE COMMUNITIES (S-COMM)

A federal immigration enforcement program that facilitated cooperation between ICE and local and state law enforcements. Under S-COMM, ICE could obtain fingerprint information of any person arrested by the police, and then send a request local or state law enforcement to detain a person based on ICE’s suspicion that the person could be deported.\(^9\)

TRAVEL DOCUMENT

A document that includes details regarding the identity of the person carrying the document. A government or an international treaty organization issues travel documents to allow the movement of individuals across international boundaries. The most common type of travel document is a passport.\(^10\)

\(^7\) 8 U.S.C. § 1226 (c).
\(^8\) See id.
\(^10\) See, e.g., Cameroonian Travel Document, supra note 15.
Noah’s Story

“[Noah] is actually not a citizen of Cameroon. Our Cameroon Ambassador in the Ivory Coast attests to this fact. I wish that I had been in possession of this knowledge at the time I was asked [by ICE] to issue this Laissez-Passer in May of 2013.”

- Dr. Charles Greene

Noah was denied asylum and had no other pathway to pursue U.S. citizenship. However, an Immigration Judge granted him withholding of removal, which means that Noah cannot legally be returned to the country of his citizenship, the country he fled from, due to fear of persecution. Ordinarily, getting a withholding of removal allows a person to stay in the United States legally, even if they cannot ultimately become a U.S. citizen.

A withholding of removal, however, did not guarantee Noah any security. Immigration and Customs Enforcement (ICE) continued to pursue Noah’s deportation, and obtained a travel document for him to Cameroon, a country to which Noah has no ties, has never been to and is not a citizen of.

How did ICE end up with a travel document to Cameroon? Dr. Charles R. Greene, III, a full-time Methodist minister in Texas who is not a Cameroonian citizen and has spent less than a month in Cameroon, issued Noah’s travel document. Dr. Greene stated in federal court that the Cameroonian embassy appointed him as an “honorary consul of Cameroon” in 1986 after the Shell Petroleum Company and Lewis Hoffacker, a former U.S. ambassador to Cameroon and Equatorial Guinea, nominated Dr. Greene for the position.

Under oath, Dr. Greene explained the difference between an honorary consul and a consulate: “According to the Vienna code,...[honorary consuls] are limited by our scope of immunity, as well as our duties.” Dr. Greene stated that because his duties are restricted to Texas, he had no authority to issue travel documents for persons from outside of the state. Dr. Greene considers his primary duty as honorary counsel to involve issuing laissez-passers to Cameroonian citizens residing in Texas, who need to return to Cameroon for pressing reasons, but who do not have travel documents.

ICE officers called Dr. Greene and asked him to issue Noah a travel document, informing him that Noah was located “to the north of here.” Dr. Greene interpreted to mean “north of here” to mean Texas State Penitentiary, located to the north of Houston, where Dr. Greene was residing. Under this assumption, Dr. Greene issued Noah a Cameroonian laissez-passer on May 21, 2013. ICE failed to inform Dr. Greene that Noah was actually detained in York County, Pennsylvania, during this time.

Dr. Greene’s travel document issue to Noah included inaccurate information about Noah. The travel document inaccurately stated that Noah was a “citizen of Cameroon,” who was born in 2013. Noah is not a citizen of Cameroon and was not born in 2013 – in fact, if he was, Dr. Greene would be issuing travel documents to deport a toddler. Dr. Greene’s travel document for Noah included a photograph of someone other than Noah.

Noah contacted many organizations to contest the validity of the travel document Dr. Greene had issued him. Families for Freedom wrote to the Cameroonian Embassy to inquire about the
validity of Dr. Greene’s travel document but did not hear back. The U.S. Department of State, Bureau of Human Rights, Democracy, and Labor also conducted an investigation of the travel document. On October 24, 2013, Joseph Bienvenu Charles Foe-Atangana, the Cameroonian Ambassador to the U.S., wrote to Dr. Greene stating, “Please be advised that [Noah] and his associates are making too much noise about this matter, claiming that [Noah] is not a citizen of Cameroon.”

Months later, Dr. Greene wrote a letter to the Cameroonian embassy stating, “[Noah] is actually not a citizen of Cameroon. Our Cameroon Ambassador in the Ivory Coast attests to this fact. I wish that I had been in possession of this knowledge at the time I was asked [by ICE] to issue this Laissez-Passer in May of 2013. [Noah] therefore is to return to the Ivory Coast.”

Dr. Greene’s rescindment of the travel document he had issued to ICE came too late. Noah had already been deported to Cameroon. His current whereabouts are unknown. If he is still in Cameroon, he is likely facing significant barriers to accessing basic rights and services, since he entered the country without valid travel documents.

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1 Letter from Dr. Charles Greene, Honorary Consul of Cameroon, to Jerry Lynch, Esq. (May 14, 2014) (on file with author).
I. INTRODUCTION

Families for Freedom is a membership-based human rights organization by current/former detainees and deportees and the people that love them. We understand our stories through a systems lens – and it is by learning one another’s stories that we are able to uncover systemic injustices. Through courageous acts of sharing our experiences, we discovered that people we love were not only being separated from us by the draconian U.S. deportation machine, but that their deportations were occurring in a manner that violates the very same policies that the machine draws its strengths from. We had always heard “rumors” of people being deported without valid travel documents or no travel documents at all. However, in a society that demands documents to acknowledge our sufferings, we knew our stories were not enough. We have lost contact with many of the members that aggressively pushed us to document and research the travel document “rumors” and we dedicate this project to them. We hope you are well, wherever you are.

Our analysis of the separation of our families is based on a human rights framework. This framework adds value to our work in two ways: First, in the principle that all people everywhere have rights and second that our rights are rooted in humanity. A human rights framework also provides space for a perspective that is not preoccupied with processes that threaten our fundamental rights such as criminalization or by conceptual structures such as borders. We are born with human rights -- these must not be denied or bestowed upon people by nations under the guise of enforcing domestic laws to only then disrupt international laws.

The deportation of a person from the United States is a process that requires international cooperation and coordination between the U.S. and receiving countries. Various laws layer the policies and practices that determine when, where and under what circumstances a person may be deported. At the heart of this process is a travel document that the U.S. government needs to secure from the receiving country. A travel document is a piece of paper that includes details regarding the identity of the person carrying the document. It is issued by a government or an international treaty organization to allow the movement of individuals across international boundaries. However, what makes this piece of paper important is not the information that it presents, but rather the liberty that is gained or lost with or without its possession. To us, a travel document is much more than a piece of paper. It is the weight that determines our freedom or imprisonment, health or harm, family unity or separation, or injustice and rights. We hope that this issue compels the U.S. government, embassies/consulates, and receiving countries to take our recommendations seriously. We also hope that the international community recognizes the humanity of those deported and promotes policies that are based on the principle that all people everywhere, regardless of immigration status and national origin, have rights.

Sincerely,

Abraham Paulos
Executive Director
Families for Freedom
A. The Issue

Families for Freedom (FFF) has encountered other stories, aside from Noah’s, where individuals have been deported without valid travel documents. This report highlights a few stories of individuals who have been deported with invalid travel documents or no travel documents at all. There are probably many more. The Immigration and Customs Enforcement (ICE) agency has deported people without valid travel documents, which violates international customary law.

A government or an international treaty organization issues travel documents to allow the movement of individuals across international boundaries. ICE’s Detention and Removal Operations Policy and Procedure Manual\(^1\) (DROPPM) explicitly states that deportation officers “must” obtain a valid travel document from the receiving country’s consulate before removing the person from the U.S. This report highlights that ICE violates its own internal policies.

People who are mandatorily detained are vulnerable to prolonged and indefinite incarceration due to ICE’s disregard of domestic and international law. Non-citizens are subjected to mandatory detention when they have been convicted of crimes that fit into particular categories designated in immigration law statutes to be “aggravated felonies” or “crimes involving moral turpitude.”\(^2\) In Zadvydas v. Davis, 533 U.S. 678 (2001), the U.S. Supreme Court created rules designed to prevent indefinite detention of non-citizens, but stopped short of holding indefinite detention unconstitutional. The Court held that a detainee should be released within six months, particularly when ICE is unable to deport the detainee within the reasonably foreseeable future. Although the Court took a strong stance against indefinite detention and created a mechanism for preventing it, it left open to debate what a reasonable length of detention is. The court’s vagueness as to what a reasonable length of detention is empowers ICE to indefinitely detained non-citizens beyond six months.

This report further shows that ICE denies individuals access to medical care and prioritizes the removal of people who have been injured in detention facilities. Mandatorily detained non-citizens depend on ICE to attend to their medical concerns, a responsibility that ICE hesitates to shoulder. This is a violation of international human rights law.\(^3\) Deporting people without valid travel documents reduces the person’s ability to access medical care upon arrival to the receiving country.

Recent changes in U.S domestic law conflicts with the U.S.’s international legal obligations. The Immigration and Nationality Act (INA) confers to the Secretary of the Department of Homeland Security (DHS) broad discretion to deport someone if ICE is unable to obtain travel documents. The U.S. has created a double standard: on the one hand, the U.S. requires valid travel documents such as passports and visas for everyone entering its borders; yet, it allows the Secretary of DHS to disregard international customary law by deporting people without valid travel documents.

People deported without valid travel documents are at immediate risk of becoming undocumented, regardless of whether they are deported to their country of citizenship or a third country. These individuals are vulnerable to abuses and are deprived of their fundamental human rights.

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2. See 8 U.S.C. 1226 (c).

3. See infra Ch. III. A.
B. Key Report Findings

1. Although ICE’s own policy requires deportation officers to obtain valid travel documents before deporting someone, ICE deports people without travel documents or with invalid travel documents, violating its own internal policy.

2. Non-citizens who are mandatorily detained are vulnerable to prolonged and indefinite incarceration, particularly when ICE is unable obtain travel documents in the “reasonably foreseeable future.”

3. Instead of treating people who have been injured in detention facilities, ICE prioritizes obtaining travel documents and opts to deport such injured persons, thereby violating international human rights law.

4. Recent interpretations in United States law conflicts with the U.S.’s international legal obligations. The Immigration and Nationality Act confers to the Secretary of Department of Homeland Security broad discretion to deport a non-citizen to any country if the U.S. is unable to obtain travel documents.

5. ICE deports people even when embassies and consulates have issued official letters stating that they are unable to issue travel documents.

6. People who have been deported without travel documents are vulnerable to abuses and deprived of accessing fundamental rights and services.
On November 7, 2005, Immigration and Customs Enforcement (ICE) gained custody of Sylvester and detained him for almost a decade while ICE tried to obtain travel documents from the Kenyan government.

In the mid-1990s, Sylvester owned a bicycle repair shop in Jera, Kenya. The bicycle repair shop also operated as a political hub, where controversial issues were discussed. Sylvester often openly criticized the government, advocated for women's rights, and distributed leaflets on behalf of a women's rights group. The police arrested Sylvester multiple times and held him for weeks at a time, during which he was beaten and ordered to stop criticizing the government and associating with journalists. The police killed a detainee in his presence and warned that they would kill him if he reported what he had seen. They further planted Sylvester's fingerprints on a gun and threatened to submit it as evidence against him if he said anything about the murder.

In 1998, Sylvester fled from Kenya. He arrived to the United States on a student visa to attend college. As a coping mechanism to deal with the trauma he had endured in Kenya, Sylvester began gambling and abusing drugs. In 2003, he was arrested and subsequently convicted for second-degree robbery. A judge sentenced him to three years, but Sylvester served 26 months at the Chuckawalla Valley State Prison in California, after he was granted an earlier release date. On November 7, 2005, Immigration and Customs Enforcement (ICE) gained custody of Sylvester and detained him for almost a decade while ICE tried to obtain travel documents from the Kenyan government.

Sylvester fought against his deportation to Kenya by filing for asylum, withholding of removal, and relief under the Convention Against Torture (CAT). He argued that he would likely be tortured if he was sent back to Kenya. In 2006, an immigration judge issued a decision rejecting Sylvester's requests for relief. The Bureau of Immigration Appeals (BIA) upheld the Judge's decision, stating that Sylvester had failed to show that his fear of returning to Kenya was related to Kenyan police corruption.

ICE then began its process of retrieving travel documents from the Kenyan government. Sylvester, terrified of returning to Kenya because he feared persecution and torture, requested to be sent to any other country but Kenya. For the next nine years, he contacted other countries, such as Canada and Spain, to accept his asylum application.

In 2014, the Ninth Circuit reviewed Sylvester's case and held that the BIA neglected to "justify its rejection of certain evidence." The Ninth Circuit ruled that Sylvester could receive a bond hearing in front of an immigration judge. This time, the immigration judge who presided over Sylvester's case, granted Sylvester a $1,500 bond. In March 2015, after twelve years of incarceration, Sylvester
A travel document, such as a passport or visa, is issued by a government or international treaty organization to allow the movement of individuals across international boundaries. Immigration Customs and Enforcement (ICE) is responsible for enforcing immigration laws and deporting people deemed to be removable from the United States. ICE’s Detention and Removal Operations Policy and Procedure Manual (DROPPM) explicitly states that deportation officers “must” obtain a valid travel document from the receiving country’s consulate before removing the person from the U.S. To ensure that individuals are deported to countries where they have recognized status, and that they have proof of citizenship upon arrival, deportation officers must obtain travel documents from the receiving country before removing anyone. Typically, ICE officers provide officials at the consulate or embassy of the receiving country with information that confirms the person’s identity. The consular official uses that information to corroborate the person’s citizenship status, for example, by checking against a national identity database. Once, identity and citizenship have been verified, embassy and consular officials issue travel documents so that the person can be deported and legally admitted into the receiving country.

To determine whether a travel document can be obtained, ICE must consider a receiving country’s willingness and ability to accept the detainee. DROPPM states that ICE Headquarters Custody Determination Unit (HQCDU) must consider all of the facts of the case, including an evaluation of whether the non-citizen made efforts to comply with the order of removal, ICE’s history and previous records of removing immigrants to the country in question, and calculated prospects that the travel document will be obtained in a timely manner.

DHS has categorized the nations of the world into three categories: “cooperative” – Mexico and Central American nations; “uncooperative,” meaning that these countries are often unable to issue travel documents – this includes China, Cuba, Haiti, India, Laos and Pakistan; and “difficult” – this includes most African nations. The individuals profiled in this report are mostly from “difficult” nations. ICE prolonged their detentions by stating that their travel documents were forthcoming.

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A. ICE’s Policy On Detention During the Process of Obtaining Travel Documents

A travel document, such as a passport or visa, is issued by a government or international treaty organization to allow the movement of individuals across international boundaries. Immigration Customs and Enforcement (ICE) is responsible for enforcing immigration laws and deporting people deemed to be removable from the United States. ICE’s Detention and Removal Operations Policy and Procedure Manual (DROPPM) explicitly states that deportation officers “must” obtain a valid travel document from the receiving country’s consulate before removing the person from the U.S. To ensure that individuals are deported to countries where they have recognized status, and that they have proof of citizenship upon arrival, deportation officers must obtain travel documents from the receiving country before removing anyone. Typically, ICE officers provide officials at the consulate or embassy of the receiving country with information that confirms the person’s identity. The consular official uses that information to corroborate the person’s citizenship status, for example, by checking against a national identity database. Once, identity and citizenship have been verified, embassy and consular officials issue travel documents so that the person can be deported and legally admitted into the receiving country.

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1 See, e.g., Cameroonian Travel Document, supra note 6.
2 DROPPM, supra note 14.
3 DROPPM, supra note 14.
4 Id.
In June 2001, the U.S. Supreme Court ruled in *Zadvydas v. Davis*\(^6\) that an immigrant with a final order of deportation should not be detained longer than six months. To justify continued detention, current laws require ICE to establish that it can either obtain a passport or other travel documents in the “reasonably foreseeable future,” or certify that the detainee meets stringent criteria to show that she is not a danger to society or the national interest.\(^7\) ICE is responsible for complying with the Court’s ruling.\(^8\)

**B. U.S. Law Requires That ICE Release Detainees After Six Months When Travel Documents Have Not Been Obtained**

Persons in mandatory detention are vulnerable to prolonged indefinite detention. Non-citizens are subject to mandatory detention when they have been convicted of crimes that fit into particular categories designated in immigration law statutes to be “aggravated felonies” or “crimes involving moral turpitude.”\(^9\) Non-citizens who are subjected to mandatory detention are detained throughout the removal process without the ability to post bond. In *Zadvydas v. Davis*,\(^10\) the U.S. Supreme Court created parameters for the length of detention, which was designed to prevent indefinite detention of non-citizens. The Court, however, stopped short of holding indefinite detention to be unconstitutional.

The Court held that after a non-citizen receives her final removal order, ICE has 90 days and up to six months to try and obtain travel documents. This period is called the removal period. After the removal period ends, the Court employs a burden shifting approach: “Once the [non-citizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must respond with evidence sufficient to rebut that showing.”\(^11\) The Court further added that, “as the period of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.”\(^12\)

To provide safeguards against indefinite detention, ICE must conduct custody reviews regularly after 90 days. After conducting an extensive audit in 2007, the Office of Inspector General (OIG) found that ICE field offices do not follow protocol in a uniform and consistent manner. The OIG investigated seven field offices and documented that four of the offices routinely sent foreign consulates nothing more than passport photographs and incomplete DHS forms, thus violating consulate requirements for issuing travel documents. The OIG also found that non-citizens in detention are often labeled as “failing to comply” and removed from the custody review process, without sufficient justification.

The Court in *Zadvydas v. Davis* also specified that indefinite detention is only permissible in the following instances: 1) the detainee has a highly contagious disease that endangers public safety; 2) release would result in serious adverse foreign policy consequences; 3) the detainee is a terrorism threat; and 4) the detainee is “specially dangerous.”\(^13\) If the removal period expires, the government cannot rebut the presumption that removal is unlikely in the reasonably foreseeable future. At this point, because indefinite detention is

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7. *Id.* at 699-700.
11. *Id.* at 701.
12. *Id.*
impermissible, ICE is required to allow the detainee to leave detention and return to her family/community on supervised release. Although the Court took a strong stance against indefinite detention and created a mechanism for preventing it, it left open to debate what a reasonable length of detention is.

Because *Zadvydas v. Davis* does not specify what the maximum length of a removal period is, the potential for prolonged detention is high. ICE frequently takes advantage of this vagueness by constantly extending detention periods. ICE may extend the removal period if the person 1) fails or refuses to timely apply in good faith for travel or other necessary documents, or 2) conspires or acts to prevent removal. Finally, non-citizens may be detained for longer than the designated “removal period” if they are found to be 1) inadmissible, 2) deportable because of fraud, security related grounds, or any criminal offense, or are 3) determined by the Secretary of DHS to be “a risk to the community or unlikely to comply with the order of removal.” These broad categories do not take into account an embassy or consulate’s inability to issue travel documents. ICE routinely prolongs detention by claiming that travel documents are forthcoming in the ‘reasonably foreseeable future’ without justification.

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14 Zadvydas, 533 U.S. at 700.
III. ICE PRIORITIZES DEPORTATIONS OF THOSE INJURED IN ITS CUSTODY

Abdul’s Story

ICE took Abdul, a Somali immigrant, into custody on April 21, 2012. On August 13, 2012, ICE Travel Document Unit began the process of obtaining a travel document for Abdul. It was unsuccessful in obtaining a travel document because Somalia did not have an embassy in the United States. Although Somalia re-opened its embassy in the U.S. on July 14, 2014, after a twenty-three year diplomatic absence in Washington D.C., Somalia had no embassy in the U.S. during the time ICE had sought to obtain a travel document for Abdul.

The Transitional Federal Government was represented in the United States through its Permanent Mission to the United Nations. On February 27, 2013, Dr. Elmi Ahmed Dualeh, the Permanent Representative of the Federal Republic of Somalia, issued a letter on behalf of Abdul, stating that due to the overthrow of the Military Regime in Somalia in 1991, most of Somalia’s civil records were destroyed. Therefore, it was impossible for the Permanent Mission of the Somali Republic to issue a travel document for Abdul because any personal records for a Somali citizen could not be recovered.1 Additionally, Dr. Dualeh noted that Somalia performs no consular services in the United States, such as issuing travel documents or facilitating repatriation procedures.2

On January 23, 2013, Abdul slipped on a puddle of water inside Etowah Detention Center. Abdul fell on his knees and suffered severe pain. He was supplied with an ice pack and some ibuprofen tablets, which were insufficient to relieve his pain. As his condition worsened, Abdul notified his deportation officer multiple times of his deteriorating condition. Eventually, Abdul’s persistence led ICE to approve an outside consultation for Abdul at Gadsden Orthopaedic Associates (“Gadsden”). After performing an x-ray, doctors diagnosed Abdul with severe degenerative joint disease and recommended that he undergo total knee replacement surgery.

At first, ICE routinely transported Abdul to Gadsden to see doctors. During his visits, doctors would inject him with a medication called Euflexxa, used to relieve osteoarthritis, because ICE had not approved his knee replacement surgery yet. After Abdul’s third visit to Gadsden, ICE started to wait long periods before taking Abdul to Gadsden to receive his injections. As his visits to Gadsden became less frequent, Abdul’s condition worsened.

On September 4, 2013, Abdul filed a grievance stating that, although his condition had deteriorated so much that he could no longer stand for

2 Id.
more than five minutes, ICE had not yet approved the recommended knee surgery. Deputy Dillard of Etowah Detention Center responded that ICE – not the facility itself – had denied the surgical procedure. On September 13, 2013, the Department of Homeland Security (DHS) formally denied Abdul’s request for knee replacement surgery.

As soon as ICE informed Abdul that it would not grant his request, Abdul contacted Families for Freedom (FFF) for help. FFF pressured ICE Field Director, Brian Acuna, to either release Abdul from Etowah detention center or transport him to the hospital for the surgery. Acuna neither released Abdul, nor did he authorize the operation. Instead, Acuna continued to try to obtain a travel document from the Somali authorities to deport Abdul. Hearing this, FFF contacted the Permanent Mission to the United Nations, who again confirmed that the Somali government could not issue travel documents. Several weeks later, Abdul was transferred to a detention center in Louisiana. ICE told Abdul that they had obtained valid travel documents from Somali ‘officials’ and were going to deport him.

ICE deported Abdul to Somalia on October 20, 2013. At the time ICE deported Abdul, it had not provided him with the medical treatment that doctors had deemed necessary – a knee replacement surgery. Abdul’s whereabouts are currently unknown.
When a person is detained over six months and has a serious medical condition, the length of detention becomes a critical factor that determines whether that person can access adequate health care. ICE has an obligation under international law to release persons with medical conditions from detention. ICE should not continue to detain a person in need of medical attention, particularly when it receives information from a consulate that it is unable to issue travel documents in the “reasonably foreseeable future.”

ICE published the Performance-Based National Detention Standards 2011 (“PBNDS 2011”), a set of detention standards to improve conditions in immigration detentions. PBNDS 2011 sets guidelines for ICE on providing adequate medical care to detainees in its facilities. Among the standards it sets forth are the following:

- Detainees shall be able to request health services on a daily basis and shall receive timely follow up.
- A detainee who is determined to require health care beyond facility resources shall be transferred in a timely manner to an appropriate facility.
- Twenty-four hour emergency medical and mental health services shall be available to all detainees.
- Detainees with chronic conditions shall receive care and treatment as needed, that includes monitoring of medications, diagnostic testing, and chronic care clinics.
- Prescriptions and medications shall be ordered, dispensed, and administered in a timely manner and as prescribed by a licensed healthcare professional.

A 2015 report by the U.S. Commission on Civil rights states, “While it is clear that PBNDS 2011 provides written policy standards for providing adequate medical care to detainees, the Commission questions whether ICE completely complies with these standards.” The report details cases in which ICE’s denial of basic medical care led to severe consequences for detainees, including death. For instance, ICE failed to provide medical attention to a man who experienced a nosebleed while on a hunger strike at GEO Northwest Detention Center. The man stated that due to not receiving any medical treatment, he almost drowned in his own blood while sleeping. In another case, a detainee at a GEO facility in Adelanto, California, displayed warning signs of ill health three weeks before his death. Medical staff, however, did not treat him. The man died three days after a hospital had admitted him and diagnosed him with cancer.

ICE frequently denies detainees access to medical care. A 2009 report by the Office of Inspector General at the Department of Homeland Security found that the reporting process for issuing a medical complaint in detention centers is inefficient and severely delays the provision of medical services. The 2009 OIG report,
however, does not investigate the extent to which ICE denies medical care services to detainees it is actively attempting to deport.8

All persons detained, especially those who need medical attention, deserve to be treated humanely. Congress affirmed its commitment to uphold the humanity and dignity of detained persons when it enacted the Detainee Treatment Act of 2005, which prohibits cruel, inhumane, or degrading treatment or punishment of persons under the custody or control of the United States.9 The United States has set up a domestic framework providing some protections for detained people.10 However, many have criticized the Supreme Court for setting a standard of “deliberate indifference”11 which relinquishes much of a state’s duty to care for a detainee’s health.12 The Supreme Court has not affirmatively ruled on the protection of persons under the Detainee Treatment Act of 2005.13 Some agencies consider the Federal Tort Claims Act to be an avenue to assert such protections.14

ICE’s neglect of the medical conditions of detained persons, as demonstrated in Abdul’s case, violates international norms on proper detainee treatment. In 1982, the United Nations expressed that inadequate healthcare can amount to inhumane treatment.15 The U.N. High Commissioner for Human Rights created guidelines, which include a state’s duty to provide detainees with physical and mental treatment, including regular medical exams.16

The International Convention on Civil and Political Rights (ICCPR) provides that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”17 Deficient medical care treatment also constitutes a violation of Article 5 of the American Convention on Human Rights.18 The Inter-American Court on Human Rights held in García-Asto and Ramírez-Rojas v. Peru that “the State has the duty to provide detainees with regular medical examinations, assistance, and adequate treatment whenever required.”19 It further held that “the injuries, pain or physical damage suffered by persons while deprived of their liberty may constitute a form of cruel treatment or punishment when, due to the detention conditions, there is a detriment of the physical, mental or moral integrity...”20 By enacting the Detainee Treatment Act of 2005 and the Federal Torts Claims Act, the United States has expressed its opinio juris21 on providing adequate health care for people it detains. Despite enacting the Detainee Treatment Act of 2005 and the Federal Torts Claims Act, however, the United States has failed to provide adequate medical treatment to detainees.

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8 Denial of medical care is measured by the percentage of Treatment Authorization Requests that are denied. See id. at 2.
9 Id.
10 A similar protection exists under the Eighth Amendment of the U.S. Constitution against “cruel and unusual punishment” and under the Fifth Amendment against “conditions that amount to punishment without due process of law.” Id. at 234.
11 Deliberate indifference is defined as “a failure to act where prison officials have knowledge of a substantial risk of serious harm to inmate health or safety.” Crayton v. Quarterman, 2009 U.S. Dist. LEXIS 103709 (N.D. Tex. 2009).
12 See, e.g., Zivec, supra note 37, at 234.
13 Id. at 235.
15 Zivec, supra note 37, at 233.
16 Id.
20 Id. at ¶ 223.
21 The sense or belief that the State is bound or obligation to an international customary norm. Wex Definition, Cornell University Law School, https://www.law.cornell.edu/wex/opinio_juris_international_law.
MARLON, A BRAZILIAN CITIZEN, is a resident of the state of Georgia. On March 9, 2012, while detained in North Georgia Detention Center, he notified ICE agents of a toothache. Three days later, he underwent surgery to extract the aching tooth. Immediately after the surgery, Marlon experienced droopiness in his eye and lost complete muscle control over one side of his face. After notifying ICE agents about the new symptoms he was experiencing, ICE scheduled a medical appointment for Marlon. The doctor who examined Marlon wrote that he was suffering from Bell’s palsy. 1The doctor noted that the Bell’s palsy was likely caused by exposure to epinephrine in the local anesthetic during the tooth extraction. Despite this diagnosis and without seeing an immigration judge, Marlon was ordered deported on March 19, 2012.

On September 19, 2013, the Brazilian Ministry of External Relations and the Brazilian Consulate in Atlanta informed Lesley Company, Liaison for South American Nations at DHS, that they would not issue travel documents for Marlon. Instead of complying with the requirements in Zadvydas v. Davis2 to release a person in immigration detention when procuring their travel documents is no longer “reasonably foreseeable,” ICE continued to issue Marlon non-compliance warnings. It notified Marlon that he should not instruct the Brazilian consulate to not issue travel documents. Marlon, in fact, had not requested the Brazilian consulate to decline issuing travel documents. The Brazilian embassy decided to not issue him travel documents based on its internal policy.

Marlon is currently detained in an ICE facility in Louisiana. ICE continues to try to deport him, and his health condition remains unattended.


IV. ICE’S PRACTICE OF DEPORTING PEOPLE WITHOUT VALID TRAVEL DOCUMENTS VIOLATES INTERNATIONAL LAW

Clive Wilson migrated to the United States from Jamaica as a legal permanent resident on May 28, 1972. On March 24, 1989, Clive was convicted with three acquaintances, after he pled guilty to weapons possession and sale of drugs. Although Clive was unsure about taking a plea, his acquaintances persuaded him to plead guilty. Despite having an alibi of working at a racetrack in New Jersey during the time of the act, Clive decided to plead guilty, believing that it would lower his sentence. During the trial, one of Clive’s co-defendants stated that Clive was not there with them, but his attorney interrupted the co-defendant and continued entering a guilty plea. Clive’s counsel, a real estate lawyer, did not advise him that pleading guilty would result in mandatory detention, which would deprive him of the constitutional protection recognized in Padilla v. Kentucky.¹

After pleading guilty, Clive served 90 days in prison and five years in probation. On November 9, 2005, ICE apprehended Clive and detained him until he was deported on November 29, 2012. For seven years, ICE transferred Clive to various detention centers without ever letting his family know where he was being transferred. ICE continued to detain Clive although it could not obtain travel documents for him and eventually deported him without obtaining travel documents.

Prior to Clive’s deportation to Jamaica, a Jamaican consular officer had informed Clive that because Clive had a pending court case in the Eleventh Circuit, the Jamaican embassy would not issue him a travel document. In fact, Jamaica’s general policy is to decline issuing travel documents for all detained person who have pending cases in U.S. court.² ICE ignored Jamaica’s policy and deported Clive to Jamaica on November 29, 2012, without travel documents.

1 559 U.S. 356 (2010).

2 Telephone Interview with Clive Wilson (Feb. 5, 2015) (notes on file with author).
A. International Law Require Respect of Sovereignty

The United States requires a travel document for everyone entering the country. Under international norms of sovereignty and reciprocity, it must also respect other nations' document requirements. The Montevideo Convention on the Rights and Duties of States (Montevideo Convention) defines a state as a legal person of international law with four characteristics: 1) a permanent population, 2) a defined territory, 3) a government, and 4) a capacity to enter into relations with other nations.1 U.S. federal courts have used the Montevideo Convention's principles to decide cases.2

Stemming from the definition of a state is the concept of “sovereignty” and other duties and rights to which a state is entitled.3 Sovereignty refers to a nation's lawful control over its territory. Each nation has the ability to determine who enters and remains in its territory. Borders are the places where right of entry is granted or refused, depending on the documents a person presents. Article four of the Montevideo Convention provides that “[s]tates are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise...”4 Each nation is equal in international law; no matter how large or small the nation is. Article eight of the Montevideo Convention further states that, “[N]o state has the right to intervene in the internal or external affairs of another.”5

The United States has committed itself to the Montevideo Convention's norms that grant each nation the authority to control its territory and border, without interference from other nations. Since the United States has consistently affirmed that “[t]he power of Congress over the admission of [people] and their right to remain is necessarily very broad, touching as it does basic aspects of national sovereignty...,”6 it reciprocally should respect this principle when applied to other nations, regardless of those nations' ability to enforce it. Under international norms, if the United States requires a travel document to enter the U.S., it must also respect receiving countries travel document requirements.

B. Recent Changes in United States Law is at Odds With International Commitments

The Immigration Act of 1917 held that U.S. domestic law observes international norms by requiring the government to obtain travel documents before deporting a non-citizen. However, in 2004, a shift in the Supreme Court's interpretation of a section [8 U.S.C. § 1231 (b)(2)(E)] in the Immigration Act of 1917 has put U.S domestic law at odds with U.S.’s international legal obligations. ICE’s current DROPPM instructs ICE Field Office Directors that they “must secure travel documents before removing a [non-citizen] from the United States.”7 Although ICE policy explicitly requires ICE to obtain travel documents before deporting an

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5 Id. at art. 8.
7 DROPPM, supra note 14
individual, the Secretary of DHS has been granted the authority to remove a non-citizen with broad discretion under the new interpretation of section 8 U.S.C. § 1231 (b)(2)(E) in Jama v. Immigration and Customs Enforcement, 543 U.S. 335 (2005). As a result, US domestic law is in conflict with international legal obligations and should be realigned to require the government to obtain travel documents before deporting a non-citizen.

Jama is the Supreme Court case that recently shifted U.S. compliance with international norms on travel documents to a more narrow interpretation of section 8 U.S.C. § 1231 (b)(2)(E) than previous interpretations. U.S law provides a three-step process for determining the country to which a person can be deported: 1) it allows a person to choose which country to be removed to, subject to certain limitations; 2) if the person cannot be deported to the country in step one for any reason, the Secretary of DHS is able to select “a country of which the [non-citizen] is a subject, national, or citizen…”; 3) if the person cannot be deported to the country in step two, the INA provides the Secretary of DHS with seven different options of nations to which the person may be deported.

The third step of this three-step process usually has been interpreted in a manner that requires travel documents to deport a non-citizen. During the original passage of the Immigration Act of 1917, Congress debated this provision and settled it to mean that the receiving country had to provide travel documents in all three steps before the U.S. could deport a person to the receiving country. When Congress consolidated its immigration laws in 1952, it did not change the Immigration Act of 1917’s settled definitions. Even ten years later, Judge Learned Hand, who sat on the Second Circuit, reaffirmed Congress’ settled interpretation and stated that all three steps of the deportation process require that the U.S. wait for travel documents from the receiving country before deporting anyone.

The Supreme Court in Jama disregarded international norms that require travel documents. Specifically, the Court held that the options in section 8 U.S.C. § 1231(b)(2)(E) did not require the U.S. to wait for travel documents when deporting people in the third step. As a consequence, the Supreme Court allowed ICE to deport Mr. Jama to Somalia without travel documents, in violation of international norms.

As a result of Jama, the United States’ immigration law on travel documents is in flux. International norms of reciprocity and principles of sovereignty require that nations must obtain a valid travel document from the receiving country, prior to removal. The current domestic U.S. legal framework ignores those obligations. Moreover, ICE’s policy requires ICE to obtain travel documents before it can deport anyone. The inconsistency in the U.S. domestic framework results in a questionable infringement of sovereignty on the receiving country. If a nation does not accept a person but ICE decides to deport them regardless, it is unclear how ICE can legally carry out its decision. As Justice Souter explains in his dissent in Jama, the current interpretation under Jama leads to dangerous consequences that this report highlights: “even though a government has actually refused acceptance of a removable person… the person could be airdropped surreptitiously into that same country.” Without more attention being placed on the issue of ICE’s deportations without valid travel documents, more people could be deported this way.

8 Id.
14 Id. at 163.
15 Id. at 164.
16 See id. at 346-48.
17 See id. at 352.
V. EMBASSIES BEWARE: ICE DEPORTATION OFFICERS CIRCUMVENT EMBASSY POLICY

John’s Story

In January 2013, the Philadelphia Police Department arrested John, a Cameroonian citizen and long-time Philadelphia resident, on a local charge. Although the local charges were immediately dropped, the Philadelphia Police Department did not release John. Due to Secure Communities (S-COMM), a federal immigration enforcement program that facilitated cooperation between ICE and local police, Immigration Customs and Enforcement (ICE) picked up John from the local jail and took him to an immigration detention facility in York, Pennsylvania. Although John had no criminal conviction, he was mandatorily detained without the ability to post bond.

In 2005, an immigration judge denied John’s asylum claim and issued his deportation order. Although the judge allowed John to arrange his own travel to Cameroon, John was extremely afraid of returning to the country and remained in the United States. ICE deems anyone who does not leave when ordered deported to be a “fugitive.” Most ICE fugitives are considered flight risks and as a result are subject to mandatory detention if apprehended. ICE discovered that John was a “fugitive” and put him on the fast track to deportation. All ICE needed was a travel document from the Cameroonian embassy to deport him.

John’s deportation officer, Mistyann Schram, attempted to obtain travel documents from the Cameroonian Embassy. Officer Schram noted that in her two and a half years of working as a deportation officer, she had only received twenty travel documents out of the 150 she requested from the Cameroonian embassy. Officer Schram called the Cameroonian Embassy in Washington D.C. and left voice messages but did not get an immediate response. She then decided not to send John’s paperwork to the embassy.

On three separate occasions (March 7, 2013, May 6, 2013, and August 12, 2013), ICE attempted to remove John from the U.S. During each instance, ICE drove John to Washington Dulles airport.

1 In a memo titled “National Fugitive Operations Program: Priorities, Goals, and Expectations,” former ICE Director, Josh Morton, wrote, “It is the clear policy of this agency that final orders of removal should be enforced and those who knowingly disobey or evade a final order of removal should be apprehended and removed.”

2 http://www.ice.gov/news/releases/new-ice-program-gives-non-criminal-fugitive-aliens-opportunity-avoid-arrest-and
Because embassies bear major diplomatic responsibilities to maintain state relations, consulates are tasked with the daily responsibility of protecting and serving their nationals who are residing abroad. These responsibilities include issuing passports and other official documents, looking after nationals who have been detained or arrested, and assisting nationals during emergencies. ICE’s current modus operandi, as demonstrated in this report, involves circumventing embassies and ignoring consulate policies. For these reasons, we recommend the following steps to embassies to strengthen consular involvement during various stages of the detention and deportation process.

A. **Recommendations to Protect Your Nationals**

Because embassies bear major diplomatic responsibilities to maintain state relations, consulates are tasked with the daily responsibility of protecting and serving their nationals who are residing abroad. These responsibilities include issuing passports and other official documents, looking after nationals who have been detained or arrested, and assisting nationals during emergencies. ICE’s current modus operandi, as demonstrated in this report, involves circumventing embassies and ignoring consulate policies. For these reasons, we recommend the following steps to embassies to strengthen consular involvement during various stages of the detention and deportation process.

1. Establish a memorandum of understanding (MOU) with the United States regarding detention of your nationals.

   A. Take actions to prevent detention of nationals
      i. Require local, state and federal officers to inform nationals of their right to contact their consulate
      ii. Inform nationals about that the ability to post bond.

   B. Take actions to protect nationals who are detained

   In January 2015, after he was taken to a detention center in Miami, John decided he was tired of fighting. He boarded a charter flight bound for West Africa. A police officer who met the plane when it landed in Cameroon took John to a holding cell, where he waited for five hours. The police officer only released him after John phoned a relative in the city and paid the officer a bribe. John is in Cameroon and is struggling to secure official identification documents.
i. Require local, state and federal officers to inform nationals of their right to contact their consulate
ii. Require ICE to notify you when your national is detained
iii. Provide resources (legal and otherwise) to assist detained nationals
   a. Provide information on what is needed for travel documents, national identification cards, and other documents to be issued
iv. Require ICE to notify you upon transfer of your national from one detention center to another
v. Intervene and advocate for your national to receive adequate medical care while detained
vi. Advocate for release of nationals requiring greater medical care
vii. Intervene and advocate to prevent the indefinite detention of your national

C. Establish a memorandum of understanding (MOU) with the United States regarding deportation of your nationals
   i. Conduct in-person interviews prior to issuing travel documents
   ii. Verify identity and citizenship before issuing travel documents
   iii. Ensure that deportation is not premature i.e. the national does not have open court case in the US legal system
      a. Ensure that the individual has exhausted all legal and judicial remedies
      b. Ensure that the individual does not have outstanding medical concerns
   iv. Require ICE to have travel documents before deportation
      a. Require ICE to give your nationals copies of travel documents so that their identity can be verified
      b. Provide ICE with a checklist that includes everything you would like them to provide or verify in order to receive travel documents.

D. Remain vigilant to ensure that individuals admitted to your country have valid travel documents
   i. Check travel documents upon entry and reserve the right to determine admissibility of deported individuals
   ii. Investigate cases where nationals or non-nationals appear at ports of entry and claim to have been deported by ICE or otherwise seem confused about their travel documents.

E. Hold the U.S. accountable through MOUs, legal mechanisms, international agreements and policies.
Carlos arrived in the United States as a young boy on March 23, 1972. He migrated with his family, as lawful permanent residents. He lived in Brooklyn for thirty years before moving to Queens. Due to several drug convictions in the 1990’s, an immigration judge issued Carlos a deportation order in 2001. Because Carlos grew up in the U.S. and had no connection to Ecuador, he decided to stay in the country he considered to be home. In 2009, ICE apprehended Carlos at his home and placed him in mandatory detention. Determined to obtain his travel document in good faith, Carlos asked his family to speak with the Ecuadorian consulate in New York.

On August 21, 2013, Carlos received a letter from the consulate general of Ecuador in Atlanta, Georgia, which explained that the consulate could not find any documents confirming his Ecuadorian nationality. The Ecuadorian consulate explained that the only person named Carlos Flores that it could find in its records was born on August 17, 1905 – approximately 67 years before Carlos was born. As a result, the consulate was unable to issue a travel document.

ICE officers took matters into their own hands. On October 10, 2014, ICE officers deported Carlos using a sheet of paper, which looked like a copy of the ID page of a passport. When Carlos arrived in Guayaquil, Ecuador, the Ecuadorian officials confiscated the sheet of paper and told him that it was a false travel document. At that point, Carlos had no identity documents and only six dollars in his pocket.

Desperate to have some form of official ID, Carlos visited the Department of Registry regularly to acquire identity documents. The Registry, however, could not find his birth certificate. As a result, Carlos became undocumented and for five and a half months in Ecuador, with no official form of ID. As an undocumented man in Ecuador, Carlos’ freedom of movement was restricted. Without an official ID, he could not purchase food or water for himself, and could not work. After more than five months of living in this manner, Carlos was somehow able to obtain a cedula, an Ecuadorian ID that is utilized to receive services from the government. His freedom, however, was precarious because the cedula would be difficult to replace if lost. Moreover, because the cedula does not count as a travel document, Carlos is not able to migrate to any other country.

The United States is Carlos’ home. ICE deported him to Ecuador without a valid travel document. Carlos has a fifteen year old daughter and a thirty-five year old son in the United States and is depressed about being separated from them. Ecuadorian society is foreign to Carlos. Although Carlos understands some Spanish, he is not fluent in Spanish and is more comfortable speaking in English. He finds it difficult to reintegrate and has stated that not knowing Spanish fluently limits his social mobility. Carlos hopes that the U.S. government realizes that he was sent to Ecuador without a valid document and helps him return to his family in the U.S.
VI. RECOMMENDATIONS

1. The Office of Inspector General should follow up on its 2007 audit “ICE’s Compliance With Detention Limits for Aliens With a Final Order of Removal From the United States.” The audit should focus on the procedure that ICE officers use to obtain travel documents. It should investigate and publicize any cases of people that are deported without travel documents.

2. ICE should adhere to the Supreme Court’s rules limiting ICE’s ability to prolong detention as set forth in *Zadvydas v. Davis*, particularly for detainees who have:
   a. urgent medical needs;
   b. been detained for over six months; and/or
   c. for whom the relevant consulate/embassy is unable to issue travel documents.

3. U.S.C. § 1231 (b)(2)(E) should be challenged so that a receiving country’s sovereignty is respected and the provision becomes in line with U.S. international obligations.

4. Embassies and Consulates should make sure that ICE is honoring and not circumventing official letters and communications regarding travel documents, especially when the embassy or consulate is unable to issue travel documents.

5. Receiving countries should make sure that all persons deported by ICE have valid travel documents, and if not, receiving countries should return the person to the U.S.