

# **United States of America**

**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**

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**Summary:** United States laws and policies that severely restrict immigrant eligibility for publicly supported health care have resulted in hospitals engaging in extrajudicial medical repatriations of seriously ill or injured indigent immigrant patients to countries lacking adequate medical care. This practice violates the United States' (U.S.) obligations under the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, the Convention on the Elimination of all forms of Racial Discrimination, the United Nations Convention on the Rights of Persons with Disabilities, as well as the United States Constitution.

## I. INTRODUCTION

1. This submission focuses on extrajudicial medical repatriations, or the practice of hospitals privately deporting immigrant patients. Even though U.S. law requires that hospitals have “appropriate discharge plans” for all patients who are likely to suffer adverse health consequences upon discharge,<sup>1</sup> regardless of immigration status, before releasing them, discharge plans for immigrants have often amounted to little more than contracts with private companies to remove patients to countries that lack appropriate treatment facilities. These extrajudicial deportations occur often without consent of the patient or their guardian and outside any government oversight. Hospitals, government agencies and NGOs have reported more than 100 such extrajudicial removals resulting in serious, adverse health consequences and even death. With approximately 25 million immigrants restricted from non-emergency federal health care coverage,<sup>2</sup> extrajudicial medical repatriations require serious attention to protect immigrants’ rights under U.S. and international law.
2. The seriousness of this problem is illustrated by the case of Luis Alberto Jiménez. In February of 2000, Mr. Jiménez, an undocumented immigrant in Florida, suffered devastating brain damage and other physical injuries as a result of a car crash caused by a drunk driver.<sup>3</sup> Mr. Jimenez was rushed to Martin Memorial Medical Center, where he received care for four months before being transferred to a nursing home in June of 2000.<sup>4</sup> By January of 2001, Mr. Jiménez’s health had drastically deteriorated and he was readmitted to Martin Memorial and stabilized.<sup>5</sup> Due to his undocumented status, however, Mr. Jiménez was unable to qualify for federal funding for the long-term rehabilitative care he required. Unable to discharge Mr. Jimenez to an appropriate U.S. facility, the hospital sought a court order authorizing it to repatriate him to Guatemala.<sup>6</sup> Although Mr. Jimenez's guardian was contesting the lower court order, the hospital nonetheless contracted with a private company to lease an air ambulance and forcibly repatriate him to Guatemala.<sup>7</sup> The national hospital in Guatemala, however, was unable to provide the care Mr. Jimenez required and discharged him to his elderly mother’s hill-top one-room house in the remote Cuchumatán Mountains where he remains bed-ridden, frequently suffering from seizures, and not within easy access of emergency care.<sup>8</sup>
3. The U.S.’s failure to (a) enforce federal requirements for medical discharges; (b) adopt measures prohibiting hospitals from engaging in deportations (a responsibility reserved for the federal government); and (c) provide immigrants access to health benefits,<sup>9</sup> has resulted in a growing number of extrajudicial medical repatriations. These acts and omissions place the U.S. in violation of the rights of due process and liberty, the right to life and health of all persons

regardless of their immigration status, and the right of all persons to be free of discrimination, as protected by U.S. and international law.

4. We recommend the swift implementation of reforms by the U.S. government to end the unlawful practice of private deportations by hospitals and to bring the U.S. into compliance with its human rights obligations.

## **II. BACKGROUND AND FRAMEWORK FOR PROTECTION OF MIGRANTS' RIGHTS**

### **A. Medical Repatriations: Scope of the Problem**

5. There have been more than 100 documented extrajudicial medical repatriations in the U.S.<sup>10</sup> However, no reliable data exists on exactly how many patients are unwillingly deported by U.S. hospitals because these extrajudicial repatriations take place in the shadows and there are no federal or state agencies monitoring medical repatriations as they occur. In fact, the United States Department of Health and Human Services (HHS) Office of Inspector General has reported only one case of a hospital being sanctioned for privately deporting a patient to Mexico.<sup>11</sup> Following are some known examples of medical repatriations:

- Two forced medical repatriations in New York in 2009.<sup>12</sup>
- Five incidents of medical repatriation or attempted medical repatriation in New Jersey.<sup>13</sup>
- St. Joseph's Hospital in Phoenix repatriates about 96 patients a year.<sup>14</sup>
- In 2009, Atlanta's Grady Hospital repatriated 10 to 13 dialysis patients to Mexico, four of whom died after their transfer.<sup>15</sup>
- Tucson's University Medical Center repatriates an average of two to three undocumented patients a month.<sup>16</sup>
- Hospitals in Chicago reportedly repatriated ten patients since 2007.<sup>17</sup>
- Broward General Medical Center in Florida has repatriated six to eight patients.<sup>18</sup>
- In 2007, a Texas hospital failed to stabilize a patient before sending her to a hospital in Mexico.<sup>19</sup>

### **B. United States Constitutional and Legislative Framework**

#### **1. Immigration Law**

6. The power to regulate admission, exclusion, and deportation lies exclusively with the federal government.<sup>20</sup> Congress has delegated to the Secretary of Homeland Security and the United States Attorney General the exclusive authority to deport persons.<sup>21</sup> Because Congress has set forth the procedure by which a person is to be deported, state legislatures, courts and private actors such as hospitals have no legal authority to repatriate people against their will and are completely preempted from altering that mandate.<sup>22</sup>
7. Additionally, immigrants subject to removal have a right to due process and fair deportation hearings.<sup>23</sup> These rights afford immigrants the opportunity to apply for various remedies from deportation.<sup>24</sup>

## 2. Health Law:

8. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 restricts publicly supported health care for lawfully admitted immigrants within five years of their arrival.<sup>25</sup> Undocumented immigrants have severely limited access to Medicaid and the State Children's Health Insurance Program (SCHIP).<sup>26</sup> Moreover, as undocumented immigrants are disproportionately represented in the low-wage workforce, they generally do not receive health insurance through their employers and often cannot afford to pay for health insurance.<sup>27</sup> Further, the 2010 Patient Protection and Affordable Care Act (PPACA) prohibits undocumented immigrants from participating in the new health insurance exchanges.<sup>28</sup> As a result, there is no domestic framework to ensure long term access to health care for undocumented immigrants.
9. Pursuant to the Emergency Medical Treatment and Leave Act (EMTALA), all hospitals receiving federal Medicare are required to provide emergency care to all patients, regardless of immigration status or ability to pay.<sup>29</sup> EMTALA, however, only requires hospitals to stabilize an emergency medical condition and ensure that the transfer will not cause any further deterioration in the patient's condition.<sup>30</sup> Hospitals in violation of EMTALA are subject to penalties, including civil monetary penalties, and license revocation.<sup>31</sup> However, studies have shown that while patient dumping has increased, HHS enforcement of EMTALA violations has been "lax."<sup>32</sup>
10. The Federal Medicare statute requires that hospitals provide discharge planning by evaluating patients' post-discharge needs and make "*appropriate* arrangements for post-hospital care ... before discharge" for all patients who may suffer adverse consequences upon discharge.<sup>33</sup> If a hospital chooses to transfer a patient to another facility, it must comply with the Centers for Medicaid and Medicare Services Conditions of Participation relating to patient discharges, which defines "appropriate" facility to mean a facility that can meet the patient's medical needs.<sup>34</sup> Hospitals are also required to continually review whether discharge plans are responsive to patients' discharge needs following discharge.<sup>35</sup>

## III. Promotion and Protection of Human Rights

### A. Violations of International Human Rights Norms

11. Medical repatriations violate several international human rights obligations:<sup>36</sup>
  - Universal Declaration of Human Rights ("UDHR"): Arts. 2 and 7 (right to non-discrimination), Art. 3 (right to life), Art. 8 (right to an effective remedy), Art. 10 (right to a hearing), and Art. 25 (right to health).<sup>37</sup>
  - International Covenant on Civil and Political Rights ("ICCPR"), (ratified by the U.S.): Arts. 2, 26 (right to non discrimination), Art. 6 (right to life), Art. 13 (due process in expulsion proceedings), Art. 17 (right to privacy).<sup>38</sup>
  - International Convention on the Elimination of all forms of Racial Discrimination ("ICERD") (ratified by the U.S.): Arts. 1, 2 and 5.<sup>39</sup>
  - United Nations Convention on the Rights of Persons with Disabilities ("UN Disabilities Convention") (signed by the U.S.): Art. 11 (mandating state parties to take "all necessary

measures to ensure the protection and safety of persons with disabilities in situations of risk, including...humanitarian emergencies”), Art. 10 (right to life); Art. 14 (right to liberty and security), Art. 25 (right to health).<sup>40</sup>

### **1. Right to Liberty and Due Process**

12. Extrajudicial medical repatriations violate immigrants’ rights to Due Process and judicial protection because the deportations are lacking the basic requisite safeguards guaranteed under the Fifth and the Fourteenth Amendments of the U.S. Constitution<sup>41</sup> and protected by the ICCPR and UDHR.<sup>42</sup> When hospitals deport undocumented immigrants without proceeding through immigration hearings, they circumvent the law and foreclose the right to a fair hearing by preventing access to possible domestic remedies and denying immigrants’ their right to defend themselves.

### **2. Rights against arbitrary deprivation of liberty**

13. Extrajudicial medical repatriations violate the UDHR’s guarantee to “the right to life, liberty and security of person.”<sup>43</sup> They further violate the ICCPR prohibition against arbitrary deprivation of liberty except by procedures established by law.<sup>44</sup>

### **3. Right to Life and Health Care**

14. Medical repatriations deprive undocumented persons of their right to life and health in violation of article 3 of the UDHR, as well as article 6 of the ICCPR and article 5 of ICERD, both of which are binding on the U.S and articles 10, 11 and 25 of the UN Disabilities Convention, to which the U.S. is a signatory.<sup>45</sup> Not only are patients denied access to healthcare in the U.S., they are frequently transferred to countries that cannot provide the required level of care.<sup>46</sup> Moreover, the denial and restriction of immigrants from funding for long-term health care services violates article 25 of the UDHR and article 5 of ICERD.<sup>47</sup> As one U.S. Court has held, the right to continued medical care is “implicit in the concept of ordered liberty,” such that if the government were to deny this right, “neither liberty nor justice would exist if they were sacrificed.”<sup>48</sup> Like all human rights, the right to health imposes a duty on the state to respect, protect and fulfill. The duty to respect requires the state to refrain from denying or limiting equal access to health services for all persons, including undocumented immigrants.<sup>49</sup> The duty to fulfill requires states to adopt appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of the right to health. The duty to protect requires states to take measures to prevent third parties from interfering with this right.<sup>50</sup> The U.S. is in breach of all these duties. It has created a financial and legislative system that encourages hospitals to engage in extrajudicial deportations. It has failed to adequately enforce existing laws regarding discharge plans. It has failed to implement adequate safeguards to ensure informed consent to transfers. Finally, it has failed to protect immigrants and ensure that transfers occur only to countries with capacity to provide appropriate care.

#### 4. Right to Non Discrimination

15. Extrajudicial medical repatriations deprive immigrants of their right to be free from discrimination by withholding crucial health care services to immigrants that would otherwise be available to them but for their immigration status in violation of articles 2 and 7 of the UDHR,<sup>51</sup> articles 2 and 26 of the ICCPR,<sup>52</sup> and article 5 of ICERD.<sup>53</sup> Discrimination means any distinction, exclusion or restriction made on the basis of various grounds which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms, including the right to health.<sup>54</sup> States have an obligation to both proactively prohibit and eliminate discrimination on all grounds and ensure equality to all. ICERD explicitly underscores that States must prohibit and eliminate racial discrimination and guarantee the right of everyone to public health and medical care.<sup>55</sup> Discrimination leads to marginalization of specific groups and makes these groups more vulnerable to poverty and ill-health.<sup>56</sup> The United States is in direct violation of these obligations because it affirmatively denies immigrants access to health care on the basis of immigration status.

#### IV. RECOMMENDATIONS

1. **Prohibition of Extrajudicial Repatriation:** The U.S. Department of Health and Human Services (“HHS”) should promulgate Federal health care regulations prohibiting involuntary extrajudicial deportation.
2. **Increased Enforcement and Sanctions for EMTALA violations:** HHS should adopt an active role in the investigation and prosecution of EMTALA violations by auditing hospital discharge and transfer records and initiating investigations into suspicious transfers.
3. **Enforcement of Medicare Discharge Laws:** To ensure that Hospitals are in compliance with the Medicare Discharge laws, HHS should require that before transferring any patient outside of the U.S. for post-discharge care, hospitals submit the discharge and post-assessment care plan to HHS for approval. In all international patient transfers, HHS should ensure that the receiving facility is appropriate for the patients needs and meets the federal and international standards of care.
4. **Transparency and Reporting Requirements:** HHS should impose more stringent reporting requirements that require hospitals to immediately report any adverse consequences to patients following discharge. The HHS Inspector General has recommended that “steps be taken to encourage hospitals to report suspected cases of patient dumping, including making reporting of suspected cases of dumping a condition of participating in the Medicare program,”<sup>57</sup> and recommended that hospitals be required to “clearly identify transferred patients.”<sup>58</sup>
5. **Universal Health Care:** In keeping with its obligations under international human rights law, the U.S. should provide universal health care, regardless of immigration status. In addition, Congress should repeal all restrictions on immigrants’ access to healthcare.



## Appendix – Reports Highlighting Medical Repatriation Incidents in the United States

A. Kevin Sack, *For Sick Illegal Immigrants, No Relief Back Home*, N.Y. TIMES, December 31, 2009.

B. Paul Harasim, *Sending patients home: Hospitals find paying travel costs beats giving free care*, LAS VEGAS REVIEW-JOURNAL, August 29, 2009.

C. Deborah Sontag, *Immigrants Facing Deportation by U.S. Hospitals*, N.Y. TIMES, August 3, 2008.

D. Marcus Baram, *Uninsured Immigrant Facing Forced Removal to Home Country*, ABC NEWS, May 22, 2008.

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<sup>1</sup> 42 U.S.C. § 1395dd; 42 U.S.C. § 1395x; 42 C.F.R. § 482.43.

<sup>2</sup> Randy Capps, Marc R. Rosenblum & Michael Fix, *Immigrants and Health Care Reform: What's Really at Stake*, MIGRATION POLICY INST., Oct. 2009, at 11.

<sup>3</sup> *Montejo v. Martin Mem'l Med. Ctr., Inc.*, 874 So.2d 654 (Fla. 4th DCA 2004).

<sup>4</sup> *Id.* at 656.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Montejo v. Martin Mem'l Med. Ctr., Inc.*, 935 So. 2d 1266, 1268 (Fla. 4th DCA. 2006).

<sup>8</sup> Debra Sontag, *Immigrants Facing Deportation by U.S. Hospitals*, N.Y. TIMES, August 3, 2008 at A1 [hereinafter Sontag, *Deported by U.S. Hospitals*].

<sup>9</sup> See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1601 *et seq.* (1996) [hereinafter PRWORA]. In enacting PRWORA the U.S. implemented a discriminatory regime whereby a large group of immigrants, documented and undocumented, are denied access to necessary health care.

<sup>10</sup> Sontag, *Deported by U.S. Hospitals*, *supra* note 8, at A1. In August 2008, the New York Times reported that “some 96 patients a year [are] repatriated by St. Joseph’s Hospital in Phoenix; 6 to 8 patients a year [are] flown to their homelands from Broward General Medical Center in Fort Lauderdale, Florida; 10 [have been] returned to Honduras from Chicago hospitals since early 2007.” *Id.* The article reported that the Mexican Consulate in San Diego handled 87 medical cases involving Mexican immigrants in the U.S. and 265 cases of people crossing the border in San Diego in 2007. A Mexican consulate in Phoenix reported his office had worked with area hospitals in 80 medical repatriations in 2007. Debra Sontag, *Deported in Coma, Saved Back in U.S.*, N.Y. TIMES, Nov. 8, 2008. See also Judith Graham, *Sending sick undocumented immigrants back home*, CHI. TRIB., Aug. 20, 2008, available at <http://newsblogs.chicagotribune.com/triage/2008/08/sending-sick-un.html> (last visited Apr. 16, 2010). Chicago hospitals have returned 10 patients to Honduras since 2007 and also send patients to Lithuania, Poland, Guatemala, and Mexico. Sontag, *Deported by U.S. Hospitals*.

<sup>11</sup> OFFICE OF THE INSPECTOR GEN. (OIG), DEP’T OF HEALTH & HUMAN SERVS. (HHS), THE EMERGENCY MEDICAL TREATMENT AND LABOR ACT: PATIENT DUMPING ARCHIVE, available at [http://oig.hhs.gov/fraud/enforcement/cmp/patient\\_dumping\\_archive.asp](http://oig.hhs.gov/fraud/enforcement/cmp/patient_dumping_archive.asp) (last visited Apr. 16, 2010) [hereinafter OIG ARCHIVE].

<sup>12</sup> Nisha Agarwal and Liane Aronchick, “A Matter of Life and Death: Advocates in New York Respond to Medical Repatriation,” 46 Harv. C.R.-C.L. L. Rev. Amicus \_\_\_\_ (2010) (forthcoming).

<sup>13</sup> Seton Hall Center for Social Justice (CSJ) Interviews with Caryn Maxim, advocate with Grupo Cajola, (Dec. 2009 and Apr. 2010); State of New Jersey, Department of the Public Advocate, *Undocumented Immigrants in New Jersey’s State & County Psychiatric Hospitals*, Mar. 2009; Univision Online, *Diagnóstico: Deportación’ Parte III*, Nov. 24, 2008, available at <http://www.univision.com/content/content.jhtml?cid=1747832#p> (last visited Apr. 18, 2010); Ralph Ortega, *Immigrant patient says he got care and a threat: Man, 23, allegedly feared deportation*, THE STAR LEDGER, May 17, 2006.

<sup>14</sup> Sontag, *Deported by U.S. Hospitals*, *supra* note 8; Marcus Baram, *Uninsured Immigrant Facing Forced Removal to Home Country*, ABC NEWS, May 22, 2008, available at <http://abcnews.go.com/Health/story?id=4903138&page=1>; Paul Harasim, *Sending patients home: Hospitals find paying travel costs beats giving free care*, LAS VEGAS REVIEW-JOURNAL, Aug. 29, 2009, available at <http://www.lvrj.com/news/54286002.html>.

<sup>15</sup> Kevin Sack, *For Sick Illegal Immigrants, No Relief Back Home*, N.Y. TIMES, Dec. 31, 2009; Matthew Cardinale, *US State Department Reviewing Grady Dialysis Crisis*, The Atlanta Progressive News, Feb. 18, 2010.

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<sup>16</sup> Tim Vanderpool, *Extraordinary Deportations*, TUSCON WEEKLY, Aug. 14, 2008, available at <http://www.tucsonweekly.com/tucson/extraordinary-deportations/Content?oid=1092131>.

<sup>17</sup> Sontag, *Deported by U.S. Hospitals*, *supra* note 8.

<sup>18</sup> *Id.*

<sup>19</sup> OIG ARCHIVE, *supra* note 11.

<sup>20</sup> See *DeCanas v. Bica*, 424 U.S. 351, 354 (1976).

<sup>21</sup> 8 U.S.C. § 1103(a)(1) (“The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens.”).

<sup>22</sup> See *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

<sup>23</sup> *Japanese Immigrant Case*, 189 U.S. 86, 101 (U.S. 1903) (“[I]t is not competent . . . to cause an alien who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized.”). See also U.S. CONST. AMEND. V.

<sup>24</sup> See, e.g., *United States v. Mendoza-Lopez*, 481 U.S. 828, 835 n.9, 840 (1987); *United States v. Ubaldo-Figueroa*, 364 F.3d 1042, 1047 (9th Cir. 2004); *United States v. Copeland*, 376 F.3d 61 (2d Cir. 2004).

<sup>25</sup> PRWORA, *supra* note 9, § 1613.

<sup>26</sup> *Id.*

<sup>27</sup> John Graves and Sharon Long., “Why Do People Lack Health Insurance?,” Urban Institute, May 2006. See also Cory S. Bagby, *The Nexus. Between Immigrant Eligibility and Access: An Analysis of the Economic, Social, and Linguistic Barriers to Health Care*, 17 ANNALS OF HEALTH L. 293, 294 (2008) (“Employer-based health insurance coverage is frequently unavailable to immigrants because they tend to work in low-wage jobs and in industries that do not traditionally offer health insurance to their employees. In 2003, the median annual salary for a full-time, non-citizen employee was \$23,140. Nearly 40% of this group had incomes below \$20,000 per year.”).

<sup>28</sup> See Jill Jackson and John Nolen, *Health Care Reform Bill Summary: A Look At What's in the Bill*, CBSNEWS.COM, Mar. 22, 2010, available at [http://www.cbsnews.com/8301-503544\\_162-20000846-503544.html](http://www.cbsnews.com/8301-503544_162-20000846-503544.html) (last visited April 18, 2010).

<sup>29</sup> 42 U.S.C. § 1395dd. See also Brietta R. Clark, *The Immigrant Health Care Narrative and What it Tells Us About the U.S. Health Care System*, 17 ANN. HEALTH L. 229, 238 (2008).

<sup>30</sup> 42 U.S.C. § 1395dd(c), dd(e)(3)(A); 42 C.F.R. § 482.43.

<sup>31</sup> 42 U.S.C. § 1395dd(d).

<sup>32</sup> Thomas A. Gionis, *The Intentional Tort of Patient Dumping: A New State Cause of Action to Address the Shortcomings of the Federal Emergency Medical Treatment Act (EMTALA)*, 52 Am. U. L. Rev. 173, 200 (2002). See also Office of the Inspector General, Dep't of Health and Human Services, *The Emergency Medical Treatment and Labor Act: Survey of Hospital Emergency Departments* 18 (Jan. 2001); Dana E. Schaffner, *EMTALA: All Bark and No Bite*, 2005 U. Ill. L. Rev. 1021, 1026 (2005).

<sup>33</sup> 42 U.S.C. § 1395x(ee). The requirement to have a discharge planning process is a condition of hospitals' participation in the Medicare program, but it applies to all patients at the hospital regardless of whether they are insured through Medicare or not. See 42 C.F.R. § 482.43.

<sup>34</sup> 42 C.F.R. § 482.43; 59 Fed. Reg. 64149.

<sup>35</sup> *Id.*

<sup>36</sup> The United Nations Special Rapporteur on Health has also underscored that undocumented immigrants occupy one of the most vulnerable segments of society and that states must not deny their human right to medical care. See Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, Fact Sheet No. 31 on the Right to Health [hereinafter *Right to Health*]; Comm. On Economic Social and Cultural Rights, General Comment 14, The Right to The Highest Attainable Standard of Health (Nov. 8, 2000) [hereinafter “General Comment 14”] (“States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services.”).

<sup>37</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GOAOR, 3d Sess., 1<sup>st</sup> plen. Mtg., U.N. Doc A/810 at 71 (1948) [hereinafter UDHR].

<sup>38</sup> International Convention on Civil and Political Rights G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) art. 13. [hereinafter ICCPR]. The Human Rights Committee has made clear that Article 13 applies to immigrants in deportation proceedings challenging a deportation order. Human Rights Committee General Comment No. 15 (11/04/1986): *The Position of Aliens under the Covenant* (“An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one.”).

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<sup>39</sup> International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969 [hereinafter ICERD] (It should be noted that art. 1, ¶ 2 specifically permits a party to differentiate between citizens and non-citizens, but with limitations). *See* Committee on the Elimination of Racial Discrimination, General Recommendation 30 at ¶ 2, Discrimination against Non-citizens (Sixty-fourth session, 2004), U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004) (noting that “Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.”).

<sup>40</sup> Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008 [hereinafter “UN Disabilities Convention”].

<sup>41</sup> *Plyer v. Doe*, 457 U.S. 202, 215 (1982) (That a person's initial entry into a State, or into the United States, was unlawful, and that he may for that reason be expelled, cannot negate the simple fact of his presence within the State's territory and thus, entitled to Due Process rights.); 42 C.F.R. § 482.43(c)(1),(3) (4), 42 C.F.R. § 482.21(b)(2).

<sup>42</sup> *See* ICCPR, *supra* note 38, arts. 10, 11, 14-16; UDHR *supra* note 37, art. 10 (“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”).

<sup>43</sup> UDHR, *supra* note 37, art. 3.

<sup>44</sup> ICCPR, *supra* note 38, art. 9, ¶ 1.

<sup>45</sup> UDHR, *supra* note 37, art. 3; ICCPR, *supra* note 38, art. 9; ICERD, *supra* note 39 art. 5; UN Disabilities Convention, *supra* note 42, arts. 10, 11 and 25.

<sup>46</sup> Dr. Steven Larson a migrants health expert described repatriation as “pretty much a death sentence in some of these cases ... I've seen patients bundled onto the plane and out of the country, and once that person is out of sight, he's out of mind.” Sontag, *Deported in Coma*. There have been a number of documented reports of individuals dying or facing serious health deterioration upon their return to their country of origin following extrajudicial hospital deportations. *See, e.g.*, Paul Harasim, *Sending patients home: Hospitals find paying travel costs beats giving free care*, LAS VEGAS REVIEW-JOURNAL, Aug. 29, 2009, available at <http://www.lvrj.com/news/54286002.html> (describing an 18 year old patient with a “highly curable form of leukemia” who died after an Arizona hospital's transfer to a Mexican hospital); OIG ARCHIVE, available at [http://oig.hhs.gov/fraud/enforcement/cmp/patient\\_dumping\\_archive.asp](http://oig.hhs.gov/fraud/enforcement/cmp/patient_dumping_archive.asp). ; Sack, *For Sick Illegal Immigrants, No Relief Back Home*.

<sup>47</sup> ICERD, *supra* note 39, art. 5; UDHR, *supra* note 37, art. 25(1) (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.”)

<sup>48</sup> *Abigail Alliance v. Von Eschenbach*, 496 F.3d 695, 711 ( D.C. Cir. 2007) (citing *Washington v. Glucksberg*, 521 U.S. 702, at 720-721).

<sup>49</sup> Comm. On Economic Social and Cultural Rights, General Comment 14, The Right to The Highest Attainable Standard of Health (Nov. 8, 2000) [hereinafter “General Comment 14”].

<sup>50</sup> *Id.*

<sup>51</sup> Equality and non-discrimination are reiterated in many provisions of the Declaration, *See*, for example, UDHR, *supra* note 37, art. 1 (“All human beings are born free and equal in dignity and rights.”), art. 6 (“everyone has the right to recognition everywhere as a person before the law.”), art. 10 (“Everyone is entitled in full equality to a fair and public hearing . . .”). The United Nations High Commissioner for Human Rights has made clear that “[s]tates must avoid different standards of treatment with regard to citizens and non-citizens that might lead to the unequal enjoyment of economic, social and cultural rights. Governments shall take progressive measures to the extent of their available resources to protect the rights of everyone—regardless of citizenship—to ... the enjoyment of the highest attainable standard of physical and mental health; and education.” The Office of the High Commissioner for Human Rights, “The Rights of Non-Citizens,” p. 25.

<sup>52</sup> ICCPR, *supra* note 38, art. 2 (noting that every party must ensure the rights in the convention “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”), art. 26 (noting that “Everyone shall have the right to recognition everywhere as a person before the law”).

<sup>53</sup> ICERD, *supra* note 39 art. 5.

<sup>54</sup> *See Rights to Health supra* note 36 at 7.

<sup>55</sup> ICERD, *supra* note 39, art. 5.

<sup>56</sup> *See generally Right to Health, supra* note 36, at 18-20.

<sup>57</sup> OFFICE OF THE INSPECTOR GEN. (OIG), DEP'T OF HEALTH & HUMAN SERVS. (HHS), “PATIENT DUMPING AFTER COBRA: U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES RESPONSE TO COMPLAINTS” (November 1988), available at: <http://oig.hhs.gov/oei/reports/oai-12-88-00831.pdf>.

