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“U.S.-Dominican Republic Relations: Bolstering Economic Growth and Energy
Independence”
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Chairman Salmon, Ranking Member Sires, and members of the Subcommittee on the Western Hemisphere, thank you for the opportunity to appear before you today to share critical information impacting United States policy towards the Dominican Republic, especially US investment in the economic growth of the country. I commend the Committee for holding this important and timely hearing.

In 2013 a total of US \$11.5 billion in goods were traded between the US and the Dominican Republic, of which \$2.9 billion was U.S. goods trade surplus. The geographic vicinity and strong historical links between the two countries make them natural partners for economic and development growth. However, while my colleagues have spoken on the tremendous opportunity for further US investment in the Dominican Republic, I wish to focus my comments today on some of the underlying challenges that must be taken into account by governments and the private sector alike in order to ensure that investment and economic growth benefit those who are most in need.

It is in the interest of both the US and the Dominican Republic to promote a healthy business climate to ensure the greatest possible returns on investment, which in turn requires that citizens of the Dominican Republic have the opportunity to reach their full potential and become productive members of the work force. On that note, I would like to discuss some of the foundational factors necessary for economic growth in the Dominican Republic.

The US must be aware of the different variables that have a bearing on market opportunities in the Dominican Republic, such as poverty and social inequality, both in order to shape its investment strategy and to ensure that an economic partnership with the Dominican Republic is aligned with the US interests and principles.

A human rights-based approach to development leads to better and more sustainable outcomes. There is growing recognition among donor countries, institutions, and the private sector that human rights violations and social exclusion negatively impact economic development and investment. When people are denied their rights—or are systematically left out of economic opportunities—it often results in social instability that can have widespread economic consequences. Thus, protecting, respecting, and fulfilling human rights is a vital step toward economic development.

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In order for international trade and foreign investment to lead to economic growth, the US needs to guard against its investments becoming unproductive in countries where citizens are denied their basic rights. US policies must reflect an understanding that human rights are important foundations for economic development. Markets function most efficiently when rights and responsibilities are established and respected by economic actors. Protecting human rights is thus not only a moral and legal imperative – it makes good business sense.

Human rights in the Dominican Republic

The Dominican Republic, like most countries, has several human rights issues that require closer examination and urgent attention, including but not limited to high levels of police brutality, violence against women and children, sexual exploitation and trafficking in persons, and restrictions to freedom of expression.

Indeed, according to estimates from the Office of the Prosecutor General homicides by the police forces accounted for 12 per cent of violent deaths annually, and there are widespread allegations of arbitrary arrests and torture in prisons. However, fear to denounce, as well as lack of proper statistics and investigations on these allegations, prevents having a more precise sense of the dimensions of this problem.

Violence against women and girls is a serious concern in the Dominican Republic. Legislative measures have been taken to address this problem but are coming short in their implementation to effectively protect women from violence. Measures taken to invest in the economic growth of the Dominican Republic should incorporate a gender perspective. Among Caribbean nations, the Dominican Republic also has the highest levels of the trafficking in persons as a source, transit, and destination for persons subjected to sex trafficking and forced labor. It has been reported that over tens of thousands of Dominican women are currently victims of trafficking throughout the world. Studies continue to show that lack of economic opportunity is a root cause of trafficking for forced labor and forced prostitution. From Bangladesh to Boston, investment in the economic independence of women has been shown to reduce levels of gender-based-violence and trafficking, as well as to raise entire families out of poverty.

Additionally, protection of freedom of expression in the Dominican Republic remains weak. Over the last years, journalists have faced incidents of aggression, threats and intimidation that still need to be properly investigated and those responsible punished. Defamation is still a criminal offense and the offender may be subject to a prison sentence. Given the role that freedom of expression and access to information play as safeguards against corruption, ensuring that both are fully respected cannot be overlooked.

In most instances lack of economic growth is both a consequence as well as a cause of these serious human rights concerns, and must surely be taken into account in any US policy toward the Dominican Republic, especially policy that involves investment in the country.

The massive, arbitrary deprivation of citizenship threatens the economic security of hundreds-of-thousands of Dominican citizens

However, I would like to concentrate the remainder of my time before the Subcommittee, on one of the most pressing human rights situations in the Dominican Republic today – one that may present the greatest threat to any US investment in the economic growth of the country – namely, the stripping of hundreds of thousands of Dominican nationals of their citizenship.

As a result of a decision by the Dominican Constitutional Court last September (TC-168-13), these individuals who were considered citizens under the law are now viewed as foreigners. In some families up to four generations of Dominican citizens are now forced to report to the government as foreigners.

For your reference, had the US Supreme Court handed down a decision similar to the Dominican Constitutional Court, *millions* of US citizens born in this country since the Great Depression would have been retroactively stripped of their citizenship—converted into undocumented immigrants in the eyes of your government. Undoubtedly many in this room would be directly affected by such an unconscionable ruling as entire families, from senior citizens to their children, grandchildren, and in some cases great-grandchildren, would be stripped of their citizenship.

As a result of the Constitutional Court’s decision, these Dominican citizens—who were born in the Dominican Republic, had been recognized as citizens, and had lived their whole lives as such—were suddenly prevented from engaging in economic activities such as working in the formal sector, opening a bank account, or paying into retirement or social security funds. Many of these Dominicans have also been prevented from attending university, which of course drastically limits their economic opportunities. On its most recent visit to the Dominican Republic, the RFK Center spoke to young adults who had been at the top of their high school classes and had planned to work in fields such as accounting, tourism, and international business. However, due to the retroactive deprivation of their nationality, they were ineligible for college or formal-sector jobs, so these bright would-be professionals were relegated to low-wage informal work such as selling food on the street. Thousands of Dominicans are now in similar positions, finding themselves unable to work in the formal sector or earn sufficient wages to actively participate in the market economy.

If these pressing human rights issues violations are not addressed, the Dominican Republic risks losing out on the great potential of its diverse human capital, and the US risks that its investments in and aid to the Dominican Republic may go to waste.

Before moving on, however, I must note that there has been a great confusion around this issue, as it has been intentionally framed as an immigration debate instead of what it really is: the total denial of the rights of Dominican *citizens* – not immigrants. While the majority of Dominicans citizens who are affected by TC-168-13 are of Haitian ancestry or descent, they are not Haitian nationals. As stated earlier they were all born and raised in the Dominican Republic, and, in fact, without recognition of their Dominican citizenship, they are now considered stateless under international law. As well, while many of the same laws and policies promulgated by the Dominican government also affect immigrants living in the country and merit their own lengthy discussion with respect to their distinct role in economic growth – my comments today focus on the exclusion of Dominican citizens from the formal economy of the Dominican

Republic and the violation of the rights of those Dominican citizens that will undoubtedly have significant effects on any measures to bolster economic growth.

The international community needs to hold the Dominican Republic accountable for its human rights and treaty obligations under international law.

Juliana Deguis Pierre was born in 1984 in Los Jovillos, Dominican Republic, 72 miles (116 kilometers) west of Santo Domingo. Under the country's constitutional recognition of birthright citizenship, Deguis—the daughter of two undocumented Haitian immigrants working in the sugar cane fields—was issued a birth certificate and was recognized as a Dominican national in the government's civil registry. Now 29 years old, she has never traveled outside her native country. She speaks fluent Spanish and hardly any Creole.

In 2008, Deguis visited a Junta Central Electoral (Central Electoral Board—JCE) office to request a voter identification card. The officers confiscated her birth certificate on the grounds she had two Haitian last names. The Constitutional Court of the Dominican Republic denied Deguis' appeal of the decision, with a ruling (TC-168-13) on September 23, 2013 that she was wrongly registered as Dominican at birth.

With its ruling, the Constitutional Court, in effect, retroactively overturned citizenship norms that had been in effect from 1929 to 2010. A constitutional provision that excluded anyone born to foreigners “in transit” from claiming citizenship by birth was extended to anyone born to undocumented residents of the Dominican Republic.

The Court then commanded the JCE to produce a list of “foreigners” in a similar position as Deguis under the Court's new interpretation, and register them as foreigners, thereby stripping thousands of Dominican citizens of foreign descent—primarily the sons and daughters of undocumented Haitian migrant workers—of their Dominican nationality.

The Court then ordered the government to regularize all “foreigners living illegally in the country,” by officially changing their legal status from nationals to foreigners.

Apart from the injustice inflicted upon thousands of people, the Constitutional Court's decision flew in the face of the Dominican Republic's international human rights obligations, namely the prohibitions against racial discrimination and the arbitrary deprivation of nationality.

The Dominican government's argument has been that the ruling and ensuing legislation—the Naturalization Law (169-14)— would regularize the status of undocumented migrants in an attempt to provide them a pathway to citizenship and participation in formal sectors of society. In the process, the Dominican government has essentially converted Dominican citizens into migrants who now need to be “regularized.”

In response to domestic and international pressure the government first adopted the *Plan Nacional de Regularización de Extranjeros* (National Regulation Plan for Foreigners) in

November 2013. The plan creates an expedited process by which “foreigners residing irregularly in the Dominican Republic” could gain residency status. While the law was billed as a humanitarian solution to the situation created by decision 168-13, it only offers a practical solution for Deguis and a handful of others, leaving roughly 90 percent of those affected by the ruling stateless.

This decision and the policies that have followed, though, are not isolated events. They are another example of a pattern of discrimination against Dominicans of Haitian descent and Haitians in general. The novelty is that, in this case, the country’s highest court has put its stamp of approval on a long list of xenophobic government regulations propagated over the last decade.

People are massively affected by decision 168-13.

There are three main groups affected by the Constitutional Court’s decision. The first category comprises individuals like Deguis who were born in the Dominican Republic between 1929 and 2007 to undocumented foreign-born parents, were registered with the JCE, and were issued birth certificates recognizing their Dominican citizenship.

According to the JCE’s initial audit of the civil registry, there are 24,392 individuals who were arbitrarily and discriminatorily deprived of their Dominican nationality. The Law passed in May appears to rectify the situation of individuals in this group, by granting them citizenship as foreigners. But it fails to recognize their national birthright, only regranteeing them nationality because the government once mistakenly gave them birth certificates.

That group is the only one helped by the Naturalization Law. There’s a second group that includes individuals born in the Dominican Republic to undocumented foreigners between 2007 and 2010—prior to a 2010 constitutional amendment—who have been incorrectly registered as foreigners. According to the JCE, there are approximately 21,449 individuals in this group, the majority of whom are Dominicans of Haitian descent who will continue to be arbitrarily and discriminatorily deprived of their right to nationality. The Naturalization Law expressly excludes this group from the benefits of its special regime, forcing them to self-report to the Regularization Plan as foreigners.

Last are the individuals that comprise the third group, born between 1929 and 2010 in the Dominican Republic to undocumented foreign parents and undocumented Dominicans who have yet to be registered by the JCE. For example, while Deguis was registered at birth and falls into the first category, her four children have yet to be registered by the JCE. It is common for Dominicans of all backgrounds not to be registered, particularly in more rural areas, but discriminatory policies and broad discretion by local civil registry officials have also prevented tens of thousands of Dominicans of Haitian descent from registering as well.

The government has yet to release any estimates of how many people in this third category will be affected by the Constitutional Court ruling. In its decision, the Court states that the National Regularization Plan “will benefit the lives of hundreds of thousands of foreigners.” A 2013 survey conducted by the United Nations Population Fund (UNFPA) estimated that

approximately 244,151 Dominicans born to undocumented foreign parents currently reside in the Dominican Republic.

Based on existing information and the immense discretion still afforded to local civil registry officials to thwart individual's access to documents, it is impossible to identify the exact number of individuals affected by the Constitutional Court decision. However, the Office of the United Nations Commissioner for Refugees (UNHCR) has estimated that more than 200,000 are left stateless by the decision.

The Dominican Constitutional Court's decision is contrary to international law.

In its September ruling, the Constitutional Court explicitly acknowledged that its new-found interpretation of the concept "in transit" in Article 11 of the Dominican Constitution conflicted with the Inter-American Court of Human Rights (IACHR) decision in the *Yean and Bosico Children v. Dominican Republic* case of 2005.

In *Yean and Bosico*, the Inter-American Court held that the Dominican government's attempt to expand the interpretation of the term "in transit" was incorrect, and that "to consider that a person is in transit, irrespective of the classification used, the state must respect a reasonable temporal limit and understand that a foreigner who develops connections in a state cannot be equated to a person in transit."

That decision is binding on the Dominican Republic. Non-compliance is a violation of the government's ratification of the American Convention on Human Rights (ACHR) in 1978. Ignoring this precedent, the Constitutional Court held that Deguis should not have been granted citizenship at birth and ordered the nullification of her birth certificate.

The retroactive application of the Court's decision to Deguis and thousands more represents an arbitrary deprivation of the right to nationality in violation of Article 20 of the ACHR, Article 15 of the Universal Declaration of Human Rights, and Article 24(3), together with Articles 2 and 26, of the International Covenant on Civil and Political Rights (ICCPR).

In a context of decades of discrimination against Haitians and those of Haitian descent, the Court's decision perpetuates this discrimination by claiming that nationality "implies the existence of a set of historical, linguistic, racial and geopolitical features"—also in violation of Articles 1(1) and 24 of the ACHR and Articles 2 and 26 of the ICCPR.

The decision deprives Dominicans of Haitian descent basic rights such as voting, participation in government and freedom of movement, and also imperils a number of social, economic and cultural rights: the right to health, to social security, to work, and the right to education.

These are blatant violations of accepted international legal commitments and treaties signed by the Dominican Republic, ranging from the 1961 Convention on the Reduction of Statelessness which it signed—but did not ratify—as the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Dominican government claims that its hands were (and still are) tied because it had to comply with the decision of the court.

Dominican government officials claim that whether they like it or not the “ruling handed down by the Constitutional Court is binding on the three branches of government” and that President Medina must implement the Court’s decision. However, under international law and the international obligations of human rights treaties ratified by the Dominican Republic, the government is not bound by a judicial ruling that violates binding commitments already signed by the state.

Under the Vienna Convention on the Laws of Treaties, a state may not invoke the provisions of its internal law as justification for its failure to perform a treaty. In other words, the government may still—at any point—step in to stop the widespread rights violations caused by an internationally illegal decision.

The National Regularization Plan and Naturalization Law fail to adequately address the citizenship crisis caused by this ruling.

The Naturalization Law adopted by the government in May has been billed as a “humanitarian” solution to the citizenship crisis created by the Constitutional Court’s ruling. Admittedly, the law presents a practical solution for Deguis and the first category of the 24,392 individuals affected by ruling. Unfortunately the law excludes both the second and third groups of individuals. In effect, this means that hundreds of thousands of individuals are prevented from accessing the solution presented by Naturalization Law.

The arbitrariness of the government’s solution is highlighted by families where half of their children received birth certificates, like Deguis, while their younger siblings are discriminatorily denied such documents at birth. Despite being born and raised Dominican by the same parents in the same community, a brother could now be forced to report to the authorities as a foreigner (or face expulsion), while his sister’s citizenship is recognized.

Thus, while the National Regularization Plan promulgated by the president in an executive order last November is supposed to address the anomalies pinpointed by the Constitutional Court and regularize the status of undocumented foreigners, for many, it makes their situation even more precarious.

Under the plan, Dominicans born to foreign parents and who were never issued documents are now required to self-report as “foreigners illegally residing in the country” by May, 2015 (18 months after the plan came into force) or face deportation. Should these individuals successfully obtain temporary or permanent residency under the plan, and remain in good standing with the government for two years, they would then be eligible to apply for naturalized citizenship.

But those are both gigantic “ifs.” First of all, those with a criminal record could summarily be denied access, and everyone’s fate will now rest in the hands of the same JCE officials responsible for a long, sordid history of discriminatorily denying them documents in the first place.

Additionally, should the government eventually grant naturalized citizenship to Dominicans it has deprived of birthright citizenship, it would create a category of second-class citizens without the same rights as Dominicans citizens by birth.

Recommendations

As political theorist Hannah Arendt once said, the right to nationality is so fundamental, that it can be described as “the right to have rights.”

Should the Dominican government follow through on its plans to create a whole generation of second-class citizens of Haitian descent it will only worsen the engrained social prejudice and systemic discrimination in the country for years. Dominicans who refuse to self-report as foreigners will be excluded from the formal economy.

What’s more, these Dominican citizens could face deportation. The region could see a flood of migrants, refugees, asylum seekers, and stateless persons – many of whom, faced with uncertain status and exclusion in the Dominican Republic, will undoubtedly choose to a migration pattern through the deadly and perilous Mona Passage in the hopes of a brighter future.

That is to say, that if left unaddressed, the repercussions of these policies will be felt around the world, for years to come. In order to ensure effective and wise investments to bolster economic growth in the Dominican Republic, the United States should utilize all tools at its disposal to help resolve the massive deprivation of citizenship faced by hundreds of thousands of Dominicans. To this end I submit the following recommendations for this committee to consider:

- **The US government should continue to encourage the Dominican government, at all levels, to implement new measures that ensure no Dominican citizen is stripped of their right to nationality or forced to report as a foreigner in the process.**
 - The Subcommittee on Western Hemisphere should act to revive, review, and pass H.Res.443 condemning the Dominican Constitutional Courts decision and encouraging the US Ambassador to the OAS to seek a multilateral solution to the crisis in the Dominican Republic.
- **The US government should leverage their involvement in all multilateral institutions to ensure no Dominican citizen is stripped of their right to nationality or forced to report as a foreigner in the process.**
 - As envisioned by H.Res.443, the US government should seek a multilateral solution to the crisis in the Dominican Republic – in particular

by publicly supporting the work of the Inter-American Commission on Human Rights to prevent the arbitrary deprivation of nationality.

- The US government should support the efforts of CARICOM in their efforts to ensure the nationality rights of Dominicans of Haitian and other foreign descent.
- Leverage US government participation in international financial institutions (including the Inter-American Development Bank and World Bank) to ensure that citizens stripped of their nationality will have full access to development initiatives and foreign investment.
- **The US government should continue to leverage trade relations and encourage private sector investment to secure nationality rights.**
 - Encourage the US Department of Labor to engage the Dominican Republic under the framework of the Central American Free Trade Agreement (CAFTA) to ensure respect of nationality rights.
 - Use the US government's convening ability to encourage private sector colleagues to make the business case for the protection of nationality rights in the Dominican Republic.