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Who Belongs? Citizenship and Statelessness in the Dominican Republic

ERNESTO SAGÁS* AND EDIBERTO ROMÁN**

In 2008, Juliana Deguis, a Dominican of Haitian descent, went to the local state office to get her official ID card. To her surprise, the clerks refused to issue her an ID card alleging that her Dominican birth certificate was invalid and that she was instead a Haitian national. The state officers proceeded to seize Deguis's birth certificate, effectively leaving her undocumented. She sought redress through the courts, and her case led to a landmark legal decision that radically redefined Dominican citizenship, and left over 200,000 Haitian Dominicans in legal limbo as former citizens of the Dominican Republic. Since 2013, an estimated 70,000 to over 100,000 Haitian migrants and their children have left for Haiti under fear of deportation and harassment from Dominican authorities. Statelessness and a general disregard for their rights seem to characterize their plight, a situation exacerbated by calls from Dominican ultranationalist groups to rid the country of Haitians. As Deguis soberly put it: "I'm nobody in my own country."¹

The definition of citizen has been debated since the very creation of the nation-state. Citizenship nonetheless is widely considered the most important legal status because it is "the right to have rights."² In fact, the right to citizenship—as a human right—is enshrined in international conventions by the United Nations and other international bodies.³ Citizenship status, therefore, theoretically determines the rights available to an individual under the jurisdiction of his or her country, as well as their place in the country's political community.⁴ U.S. Supreme Court Chief Justice Earl Warren, described citizenship as "that status, which alone, assures [one] the full enjoyment of the precious rights conferred by our Constitution."⁵ Justice Louis Brandeis once recognized its importance by declaring that the loss of citizenship was equivalent to the loss of everything that "makes life worth living."⁶ Meanwhile, Chief

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** Ediberto Román is a Professor of Law and Director of Immigration and Citizenship Initiatives at Florida International University College of Law. As with all my work, I dedicate this and all my work to my five children: my inspiration and reason why I write to give voice to the voiceless. I also want to thank my brilliant research assistant, Ms. Anigladys Mesa for her support, and to my colleague and friend Ernesto Sagás for his incredible contribution to this and related advocacy efforts. © 2016, Ernesto Sagás and Ediberto Román.

1. Rachel Nolan, *Letter from the Dominican Republic*, HARPER'S MAGAZINE, 38-47 (2015).

2. Ediberto Román, *The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism*, 26 FL. ST. L. REV. 1 (1998) (citing Hannah Arendt).

3. See, e.g., *United Nations Universal Declaration of Human Rights*, <https://perma.cc/HKT7-5G33> (last visited Nov. 9, 2016).

4. See, e.g., Kiyoko Kamio Knapp, *The Rhetoric of Exclusion: The Art of Drawing a Line Between Aliens and Citizens*, 10 GEO. IMMIGR. L.J. 401, 412 (1996) ("Historically, the privilege of participating in the democratic decision-making process has constituted the essence of citizenship.").

5. See *Perez v. Brownell*, 356 U.S. 44, 78 (1958) (Warren, C.J., dissenting) (stating that voting in a foreign election does not constitute a "voluntary abandonment of citizenship").

6. See *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922).

Justice William Rehnquist stated: “In constitutionally defining who is a citizen of the United States, Congress obviously thought it was something, and something important. Citizenship meant something, a status in a society and relationship with a society that is continuing and is more basic than mere presence or residence.”⁷ Citizenship, therefore, involves more than the right “to go to the seat of government.” It also includes “the sense of permanent inclusion in [a country’s] political community in a non-subordinate condition, in contrast to the position of aliens.”⁸ The label “citizen” is “applicable only to a person who is endowed with full political rights and civil rights in the body politic of the state.”⁹ Thus, citizenship signifies an individual’s “full membership” in a political community where the idea of equality is supposed to prevail.¹⁰ To acknowledge citizenship is to formally confer “belonging” to the country where he or she is a citizen.¹¹ Such a notion of citizenship encourages the creation of a bond or sense of social inclusion between the members of a political community.¹²

At the other end of the spectrum is statelessness, which is defined in Article 1 of the United Nations 1954 Convention relating to the Status of Stateless Persons as “a person who is not considered as a national by any State under the operation of its law.”¹³ The 1954 Convention was designed to ensure that stateless people enjoy a minimum set of human rights.¹⁴ The 1954 Convention established minimum standards of treatment for stateless people in respect to a number of rights. These include—but are not limited to—the right to education, employment and housing. Importantly, the 1954 Convention also guarantees stateless people a right to identity, travel documents and administrative assistance.¹⁵ The 1961 United Nations Convention on Statelessness sought to reduce statelessness over time. The convention also sets out the very limited situations in which states can deprive a person of his or her nationality, even if this would leave an individual stateless.¹⁶

Despite these international pronouncements intended to limit and eventually end statelessness, millions of the world’s people are stateless. They are the most vulnerable people in the world. As the United Nations Refugee Agency head António

7. *Sugarman v. Dougall*, 413 U.S. 634, 652 (1973) (Rehnquist, J., dissenting).

8. José A. Cabranes, *Citizenship and the American* 5 n.12 (1979) (emphasis added); accord Siegfried Wiessner, *Blessed Be the Ties That Bind: The Nexus Between Nationality and Territory*, 56 MISS. L.J. 447, 448-49 (1986) (“The relationship theory [of citizenship] views nationality as a legal bond between an individual and his home state that encompasses, by necessity, specific rights and duties.”).

9. Green Haywood Hackworth, *DIGEST OF INTERNATIONAL LAW* 1 (1942) (emphasis added).

10. See generally Kenneth L. Karst, *Why Equality Matters*, 17 GA. L. REV. 245 (1983) (arguing that America’s moral ideal of equality has not always been apparent in practice but remains, nonetheless, essential to American rhetoric).

11. Jonathon C. Drimmer, *The Nephews of Uncle Sam: The History, Evolution, and the Application of Birthright Citizenship in the United States*, 9 GEO. IMMIGR. L.J. 667, 700 (2000).

12. See *id.*

13. *What is Statelessness*, UNITED NATIONS COMMITTEE ON HUMAN RIGHTS, <https://perma.cc/V8QA-QC66> (last visited Nov. 9, 2016).

14. *UN Conventions on Statelessness*, THE U.N. REFUGEE AGENCY, <https://perma.cc/AB3X-DY48> (last visited Nov. 9, 2016).

15. See *id.*

16. See *id.*

Guterres recently noted: “Statelessness makes people feel like their very existence is a crime.”¹⁷ A person who is stateless will be seen as and treated as a foreigner by every country in the world.¹⁸ Therefore, they can be jailed with little or no reason, deported only to potentially face similar abuse, elsewhere, and typically have few if any individuals fighting for their rights.¹⁹ This phenomenon has also been described as “de jure statelessness.”²⁰

THE DOMINICAN CASE—INCLUSION FOR SOME ABROAD, BUT STATELESSNESS FOR OTHERS AT HOME

In the case of the Dominican Republic, citizenship—by extension—the definition of who belongs in the polity has been radically redefined in the last two decades. Presently, a clear paradox has emerged: Dominican citizenship has become more inclusive for some but more exclusive for others.²¹ Externally, the state has taken great strides to incorporate the Dominican diaspora by extending dual citizenship and legislative representation to the thousands of Dominicans residing abroad. Internally, Dominican citizenship is being narrowly (re)defined to exclude thousands of Haitian Dominicans, while popular narratives portray them as long-term permanent “aliens” with no bona fide claim to *dominicanidad* (Dominicanness).²² As a result, thousands of Haitian Dominicans have been rendered stateless in their own country. Furthermore, this paradox gives rise to unequal treatment under the law and socio-cultural otherness, anchored in historical views regarding race, ethnicity, national identity, and belonging. The current legal conceptions of Dominican citizenship reflect widespread cultural practices and historical trends, in which Haitians have historically been portrayed as racialized “others,” whereas “pure stock” Dominicans carry their *dominicanidad* (Dominicanness) with them, regardless of where they go.²³

We argue that these legal distinctions are nonsensical, inherently discriminatory, undermine the rule of law in the Dominican Republic, and erode hard-won democratic gains in civil rights matters. This article examines the latest changes in the (re)definition of citizenship in the Dominican Republic by looking at changes in immigration policies, laws, constitutional modifications, and court decisions. Moreover, our analysis is anchored in a historical examination of unofficial practices and state policies regarding Dominican émigrés and Haitian migrants—as well as their

17. Ediberto Román, *Statelessness in the Dominican Republic*, AL JAZEERA ENGLISH (Nov. 24, 2014), <https://perma.cc/HYC7-4UPD>.

18. *See id.*

19. *What is Statelessness*, THE INTERNATIONAL OBSERVATORY ON STATELESSNESS, <https://perma.cc/ET22-P4FJ> (last visited Nov. 9, 2016).

20. *See id.*

21. Dominican law differentiates between nationality and citizenship. The term nationality essentially means someone with a claim to a Dominican birth certificate. For general purposes the ability to claim a birth certificate suggests in Western societies the ability to claim citizenship. *See, e.g.*, CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA, tit. I, sec 1. and sec. 2, GACETA OFICIAL NO. 4108, JUNIO 25, 1929 [hereinafter CONSTITUCIÓN 1929] (Section 1 covers Dominican nationality and Section 2 covers citizenship).

22. *See generally*, Ernesto Sagás, *Race and Politics in the Dominican Republic* (2000).

23. *See id.*

descendants—in the twentieth century. We dissect and interpret Dominican laws, and weigh their socio-political consequences, in order to provide a more nuanced and broader interpretation that goes beyond the legal analysis. In the conclusion, we reassess the impact of the new definition of Dominican citizenship and provide recommendations to safeguard the rights of those affected by these changes.

The Incorporation of the Dominican Diaspora

For decades after mass emigration to the United States began in earnest in the 1960s, few voices in the Dominican Republic lobbied for the rights of Dominicans living abroad. Many had left for political reasons after the 1965 civil war, and the right-wing semi-authoritarian administrations of Joaquín Balaguer (1966-1978) saw no incentive to reward likely opponents of the regime. Even the name commonly used to refer to Dominican émigrés reflected disconnect from the nation: *dominicanos ausentes* (absent Dominicans). On the other hand, the name also implied that they remained Dominican. Many retained their Dominican citizenship, even living in the United States. For decades, the Trujillo dictatorship (1930-1961) forbade Dominicans from renouncing their citizenship though naturalization in a foreign country,²⁴ a measure aimed at the regime's political exiles. For Trujillo, all Dominicans were his subjects, regardless of where they lived or for how long they had lived there. As the country transitioned into an electoral democracy after 1978, the nature of emigration changed. The regional economic crisis of the 1980s (also known as "The Lost Decade"), the restructuring of the Dominican economy, and bouts of inflation and currency devaluation led to a mass exodus of Dominicans. Several hundred thousand Dominicans left in the 1980s and 1990s, and the remittances that they sent home increasingly became an integral component of the Dominican economy.²⁵ Economic clout eventually led to political leverage. A new generation of Dominican Americans began making it in American and Dominican societies in business, politics, and the professions, and began to exert their influence in favor of the émigré community.²⁶ By the early 1990s, their lobbying was catching the attention of the political opposition in the Dominican Republic, bent on trying to unseat Balaguer, who had made a political comeback during the troubled 1980s and was serving his third consecutive term.²⁷

The contested 1994 elections proved to be the turning point. Balaguer's victory by a slim margin was tarnished by accusations of massive fraud and voter disenfranchise-

24. República Dominicana, Constitución de la República Dominicana, 1, 303 (1934).

25. Dominican Republic, Latin American Economic Outlook 2010, THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (2009), <https://perma.cc/6DRZ-A6U4>.

26. Perhaps the most famous *dominicano ausente* is former president Leonel Fernández, who as a young child migrated with his family to New York City, where he finished high school before returning to the Dominican Republic.

27. ERNESTO SAGÁS, FROM AUSENTES TO DUAL NATIONALS: THE INCORPORATION OF TRANSMIGRANTS INTO DOMINICAN POLITICS, IN DOMINICAN MIGRATION: TRANSNATIONAL PERSPECTIVES 57 (University Press of Florida, 2004).

ment, as documented by international observers.²⁸ A widespread coalition made up of political parties, businesses, and influential individuals—questioned Balaguer's legitimacy and challenged his victory in the polls.²⁹ The political impasse was solved through a "gentlemen's agreement" that shortened Balaguer's term to two years and banned consecutive presidential reelection—changes enshrined in a new constitution.³⁰ The new constitution also incorporated long-standing demands by émigrés, thanks to the opposition parties who saw them as an influential component of Dominican society. The 1994 Constitution granted Dominicans the right to dual citizenship (i.e., the right to naturalize in a foreign country while retaining Dominican citizenship and all political rights in the homeland) and overseas voting in presidential elections.³¹

Moreover, their children born overseas could opt for Dominican citizenship upon turning eighteen.³² Even the discourse changed: the émigré community became known as the "Dominican diaspora," a term first adopted by Dominican American academics that reflected both the size of the Dominican community overseas, as well as its lingering ties to the homeland. The use of the term "diaspora" recognized the conditions—both political and economic—that forced the hand of thousands of Dominicans and led to their emigration.³³ Now, the *ausentes* were recast as loyal Dominican citizens pushed out of the country by unfortunate circumstances that were beyond their control. They were victims of a semi-authoritarian regime followed by corrupt, incompetent administrations, and a globalized economic system that exploited the middle and lower classes, preventing them from earning a decent living on their own land. On top of that, Dominicans living overseas toiled for long hours in a foreign land to send home the remittances that now were such an important component of the Dominican economy. The loyalty of overseas Dominicans to the homeland—as well as their *dominicanidad*—was now beyond reproach.³⁴

The dual citizenship clause of the 1994 Dominican Constitution was a godsend for many Dominicans, who for years had vacillated about whether or not to become U.S. citizens.³⁵ Aware of the potential electoral impact of naturalized Dominicans in U.S. politics, President Leonel Fernández went on Spanish-language television in the

28. *OAS warns of tension in Dominican Republic*, UNITED PRESS INTERNATIONAL (Aug. 3, 1994) <https://perma.cc/5ADA-YHZH>.

29. Jonathan Hartlyn, *Crisis-Ridden Elections (Again) in the Dominican Republic: Neopatrimonialism, Presidentialism, and Weak Electoral Oversight*, 36 JOURNAL OF INTERAMERICAN STUDIES AND WORLD AFFAIRS 91 (1994).

30. República Dominicana, Constitución de la República Dominicana 1 GACETA OFICIAL NO. 9890, 35 (1994).

31. See *id.* at 10.

32. See *id.* at 9.

33. SILVIO TORRES-SAILLANT, EL RETORNO DE LAS YOLAS (La Trinitaria 1999).

34. A view not shared by right-wing nationalists, who saw Dominicans living overseas as a foreign, Americanizing influence that would ultimately destroy "traditional" Dominican culture and values. See e.g., Manuel Núñez, *El ocaso de la nación dominicana* (Editora Alfa y Omega, 1990).

35. Ernesto Sagás, *FROM AUSENTES TO DUAL NATIONALS: THE INCORPORATION OF THE TRASNMIGRANTS INTO DOMINICAN POLITICS*, DOMINICAN MIGRATION: TRANSNATIONAL PERSPECTIVES, 57 (University Press of Florida, 2004).

New York metro area in 1996 and urged his compatriots to become naturalized U.S. citizens and participate in the institutions of American society.³⁶ He simultaneously reassured them that their Dominican citizenship and political rights were protected by the new constitution.³⁷ In his speech, Fernández also reinforced the view that Dominicans residing overseas were an integral part of the nation and they were always welcome back home. Suffering for years from a limiting insular perspective, the Dominican nation now extended globally.³⁸

Overseas, voting in Dominican elections was a more complicated issue. Legislation detailing voting procedures had to be approved and logistical challenges had to be overcome. The 2004 elections were the first that included votes from Dominicans residing in the United States (including Puerto Rico), Canada, Spain, and Venezuela. The process was fraught with difficulties, such as lack of funding and scant interest.³⁹ Since 2004, the numbers of Dominicans participating in overseas elections has grown, as well as the number of foreign countries in which voting now takes place. In addition, in 2010, Dominican émigrés were granted the right to elect seven *diputados* (legislators) to the Lower House of the Dominican Congress.⁴⁰ These legislators—first elected in 2012—represent three overseas electoral districts: Canada and most of the United States (three seats), Florida and the Caribbean (two seats), and Europe (two seats)—the top regions of overseas settlement for the Dominican diaspora.⁴¹

THE DENATIONALIZATION OF DOMINICANS OF HAITIAN DESCENT

Whereas the Dominican diaspora is considered an integral part of the nation nowadays, the case of the formal exclusion and denationalization of Haitian Dominicans presents a very different and complicated story. Relations between Haiti and the Dominican Republic are characterized by a mixed record. Relations improved dramatically between the two nations in the twentieth century, as the countries enjoyed an extended period of peace with many Haitians migrating to the Dominican Republic, due to the latter's economic growth.

The island, currently shared by the two countries, was originally divided between the Spanish colony of Santo Domingo to the east, and the French plantation colony of Saint-Domingue to the west. In 1791, the slaves in Saint-Domingue rebelled, eventually gaining their independence in a bloody and protracted struggle that resulted in the founding of the Republic of Haiti in 1804.⁴² The Haitian army invaded

36. *See id.*

37. *See id.*

38. *See id.* 61.

39. Ernesto Sagás, *The 2004 Presidential Election in the Dominican Republic*, 24 ELECTORAL STUDIES 156 (2005).

40. República Dominicana, *Constitución de la República Dominicana*, 1 GACETA OFICIAL 10561, 32 (2010).

41. *See id.*

42. *See* Edward Paulino, *Anti-Haitianism, Historical Memory, and the Potential for Genocidal Violence in the Dominican Republic*, 1 GENOCIDE STUDIES AND PREVENTION 265, 269 (2006).

Santo Domingo in 1801, briefly unifying the island under Haitian rule.⁴³ With the help of the French, Spain eventually retook its former colony until 1822, when Haiti once again gained control over the entire island and proceeded to govern it for 22 years.⁴⁴ The Dominican Republic declared its independence from Haiti in 1844, but due to internal conflicts and divisions, the nation voluntarily returned to Spanish rule in 1861 under the dictatorship of Pedro Santana. Santana's brutal authoritarian⁴⁵ regime led Dominicans to declare their independence for a second time in 1865, this time with the help of Haiti.⁴⁶ While relationships between the two nations gradually improved, Haitian rule remained a sore spot in the Dominican collective consciousness.⁴⁷ Haitians are often vilified in Dominican historical texts that portray them as foreign oppressors that forced Dominicans to seek their independence by military means, and later tried to re-conquer them by invading Dominican soil repeatedly.⁴⁸ Though diplomatic relations at the elite level are usually cordial, both peoples have held on to historical grudges and mutual distrust arising from Haitian occupation and the Dominican independence struggle in the nineteenth century.

The expansion of the sugar industry in the Dominican Republic during the twentieth century sparked an economically driven flow of Haitian rural laborers to the sugar fields of the Dominican Republic. Haitians became the cheap, reliable labor force that the industry needed.⁴⁹ Decades of labor migration created popular stereotypes of Haitians as poor peons willing to work for terribly low wages while living in appalling conditions in *bateyes*⁵⁰ on the edge of sugar plantations. Thousands of Haitians and their Dominican-born descendants toiled in Dominican sugar plantations, relegated to the back-breaking job of cutting and hauling cane. The working and living conditions of Haitian migrants placed them into an underclass; easily scapegoated and blamed for numerous social ills by Dominican public opinion. Poor, black, and foreign, Haitians became the target of choice in Dominican society.

Haitians are further racialized as the "other" in Dominican society by *antihaitianismo* ideology.⁵¹ *Antihaitianismo* portrays Haitians as radically different from Dominicans—culturally, racially, and in terms of their character. This ideology evolved from colonial times to a state-sponsored ideology during the dictatorship of General Rafael Trujillo (1930-1961), whose regime massacred thousands of Haitians during an ethnic cleansing campaign in 1937. Even after the collapse of the Trujillo dictatorship, *antihaitianismo* has continued to play a major role in the way Dominicans see

43. See *id.*

44. See *id.*

45. See *id.*

46. See PATRICK J. GAVIGAN, NATIONAL COALITION FOR HAITIAN RIGHTS, BEYOND THE BATEYES 6 (1996).

47. See Edward Paulino, *Anti-Haitianism, Historical Memory, and the Potential for Genocidal Violence in the Dominican Republic*, 1 GENOCIDE STUDIES AND PREVENTION 265, 269 (2006).

48. JOSÉ RAMÓN ESTELLA, HISTORIA GRÁFICA DE LA REPÚBLICA DOMINICANA (1944).

49. SAMUEL MARTÍNEZ, PERIPHERAL MIGRANTS: HAITIANS AND DOMINICAN SUGAR PLANTATIONS 35 (1995).

50. *Bateyes* are barrack-like dwellings that house plantation workers and their families in the Dominican Republic. Many lack electricity and running water.

51. See generally, Sagás, *supra* note 22.

all things Haitian. Dominicans are Christians; Haitians are voodoo worshippers. Dominicans follow the traditions of the Western World; Haitians follow the traditions of Africa. Dominicans are racially mixed (but culturally European) *indios*; Haitians are black Africans in the Americas. The Dominican Republic is a progressive nation; Haiti is a failed state. These stereotypes run deep in Dominican society and color not only the perception of Dominicans towards Haitians, but also towards the latter's descendants. Haitians are portrayed as incompatible with the values and goals of the Dominican people, and are to be avoided and rejected as pernicious to the national interest.⁵²

As such, Haitians are the ultimate aliens in Dominican society: undesired, racialized "others" incapable of assimilating. This perception has historically been extended to their children too. Haitian Dominicans remain "Haitian" in the eyes of Dominican society regardless of how well they speak the language or navigate the culture—unlike other immigrant groups that have quickly assimilated into Dominican society. For some Dominicans, Haitian Dominicans remain Haitians because of their "Haitian blood." This popular belief flies in the face of decades of *jus soli* laws that granted Dominican citizenship to all individuals born on Dominican territory "regardless of the nationality of their parents."⁵³ These laws have failed to shape public perception. Dominicans of Haitian ancestry are still seen as suspicious outsiders and not full-fledged Dominicans.⁵⁴

For decades, Haitians in the Dominican Republic have been subjected to arbitrary detentions, deportations, and violations of human rights. Collusion between the governments of Haiti and the Dominican Republic kept the flow of cheap labor flowing into the sugar plantations of the East, giving rise to a lucrative business in human trafficking and in the smuggling of all sorts of goods along the porous Haitian Dominican border.⁵⁵ Haitian workers were imported when labor demand was high, and rounded up and deported when no longer needed. Haitian authorities were paid to supply contract workers to the sugar plantations, while military and civilian authorities in the Dominican Republic extorted money from migrant workers under threat of deportation. Up until the 1980's, authoritarian and semi-authoritarian administrations in both countries maintained this status quo, but the overthrow of the dictatorship of Jean-Claude Duvalier in 1986 brought political instability to Haiti and an end to the supply of contract labor. Afterwards, Haitian labor migration to the Dominican Republic followed the established patterns of decades before, but in an ad hoc fashion bolstered by a deteriorating political and economic situation in Haiti.⁵⁶

52. *See id.*

53. *See* República Dominicana, Constitución de la República Dominicana, 446, 447 (1865).

54. *See* Ernesto Sagás, *Black—But Not Haitian: Color, Class, and Ethnicity in the Dominican Republic*, In *Comparative Perspectives on Afro-Latin America* (University Press of Florida, 2012).

55. Bridget Wooding, *Shaking Up the Grounds for Human Trafficking on Hispaniola*, *Diversities*, 2011, vol. 13, no. 1, pp. 67-81, UNESCO.

56. SAMUEL MARTÍNEZ, *PERIPHERAL MIGRANTS: HAITIANS AND DOMINICAN SUGAR PLANTATIONS* (University of Tennessee Press, 1995).

The exploitation and mistreatment of Haitians and Dominicans of Haitian descent is exemplified by Decree 233-91, which was delivered by Dominican President Joaquín Balaguer on June 13, 1991. This decree ordered the forced “repatriation” of “foreign [agricultural] workers” under sixteen and over sixty years of age.⁵⁷ The government claimed to be helping Haitian workers who were too young or too old to be working in the fields to return to Haiti.⁵⁸ Some of those repatriated children had been forcefully recruited to work in sugar plantations, and thus their return to Haiti was justifiable, but the decree was also used to justify the deportation of elderly Haitians who had resided in the Dominican Republic for much of their lives.⁵⁹ Many of these individuals had strong ties to the country and had no desire to return to Haiti.⁶⁰ Additionally, they received no due process protections as guaranteed under Immigration Law No. 95-39.⁶¹

During the 1990s, the Dominican government used Decree 233-91 to deport Haitians of all ages and occupations.⁶² They rounded up individuals between the ages of sixteen and sixty who “looked” Haitian.⁶³ Many of those deported were not agricultural workers, but because the government implemented no procedural safeguards, both undocumented Haitians and documented Haitian Dominicans were deported.⁶⁴ The Inter-American Commission of Human Rights began to conduct formal fact-finding visits to the country in the early 1990s, and found that human rights were violated. The commission reported:

Since its 1991 visit to the Dominican Republic, demanded by the situation of human rights violations of persons of Haitian descent in the country, mainly in the form of immigration operations and collective deportations, the Inter-American Commission observed that in many cases the persons deported were born in Dominican soil, which under the Constitution and the laws enforced at the time of birth would have entitled them to Dominican Nationality. Thus, for more than two decades now, the IACHR has been monitoring the situation of Dominicans of Haitian descent who, throughout various measures taken by Dominican authorities, have been denied their right to Dominican nationality and other related rights.⁶⁵

57. Decreto No. 233-91, junio 13, 1991, GACETA OFICIAL No. 9810.

58. BRIDGET WOODING & RICHARD MOSELEY-WILLIAMS, CATHOLIC INSTITUTE FOR INTERNATIONAL RELATIONS, INMIGRANTES HAITIANOS Y DOMINICANOS DE ASCENDENCIA HAITIANA EN LA REPÚBLICA DOMINICANA 41–42 (2004).

59. AMERICAS WATCH & NATIONAL COALITION FOR HAITIAN REFUGEES, A TROUBLED YEAR: HAITIANS IN THE DOMINICAN REPUBLIC 8 (1992).

60. *See id.*

61. Ley No. 95-39, abril 14, 1939, GACETA OFICIAL No. 5299 [hereinafter Ley No. 95-39]; Reglamento No. 279, mayo 12, 1939, *as amended*, GACETA OFICIAL No. 5313.

62. *See id.*

63. *See id.* at 8.

64. *See id.*

65. INTER-AMERICAN COMMISSION OF HUMAN RIGHTS, DOMINICAN REPUBLIC COUNTRY REPORT, SITUATION OF HUMAN RIGHTS IN THE DOMINICAN REPUBLIC, DECEMBER 31, 2015, <https://perma.cc/DSA7-X9VJ>.

Despite purported internal efforts to curb arbitrary deportations, the Dominican government continued these practices. The Inter-American Commission intervened multiple times to no avail. The Dominican government, using a form of international law exceptionalism, claimed its sovereign right to continue with these expulsions.⁶⁶ In the early 1990s, the Haitian and Dominican governments established a joint commission to address these concerns.⁶⁷ The commission established a series of agreements to regularize deportations in compliance with Dominican law, but Dominican authorities often ignored these agreements. Undeterred, the Dominican government continued with the mass deportations of Haitians.⁶⁸

In the late 1990s, these wrongful deportation practices were challenged at the Inter-American Court of Human Rights (IACHR) in the *Yean and Bosico* case.⁶⁹ Dilcia Yean and Violeta Bosico were two young girls who had been denied birth certificates despite having Dominican mothers.⁷⁰ The petitioners successfully argued that they had been discriminatorily denied their right to a nationality because of their Haitian heritage. In its 2005 judgment, the court found that the Dominican Republic was misapplying the “in transit” exception to nationality provided in the Dominican constitution, and was violating its obligations to prevent statelessness and to respect the right to a nationality.⁷¹ The court further held that the “in transit” exception needed to respect a reasonable, temporal limit, and that the exception could not be applied in a way that created statelessness.⁷²

While the Inter-American case was proceeding in 2004, a new Dominican immigration law (hereinafter Ley 285-04) defined temporary workers as “non-residents,” which specifically targeted workers in the sugar industry.⁷³ After the expiration of their contracts, the presence of these workers was deemed illegal and they were subject to deportation by the Dominican authorities.⁷⁴ Moreover, for these workers (and Haitian border residents) to be able to request permanent residency in the Dominican Republic, they were now required to leave the Dominican Republic and apply in their country of origin. These provisions—though ostensibly directed towards all foreigners living in the Dominican Republic—would serve to further drive thousands of Haitian immigrants and their Dominican-born children into the shad-

66. INTER-AMERICAN COMMISSION OF HUMAN RIGHTS, DOMINICAN REPUBLIC COUNTRY REPORT §2(b) (1991); INTER-AMERICAN COMMISSION OF HUMAN RIGHTS, DOMINICAN REPUBLIC COUNTRY REPORT ¶¶325-334 (1999).

67. *See id.*

68. INTERNATIONAL HUMAN RIGHTS LAW CLINIC AT BOALT HALL SCHOOL OF LAW, UNWELCOME GUESTS 1–2 (2002).

69. Case of the Girls Yean and Bosico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 86 (Sept. 8, 2005).

70. *See id.*

71. *See id.*

72. *See id.*

73. República Dominicana, Ley General de Migración No. 285-04, GACETA OFICIAL 10291, 5, 21-22 (2004).

74. Juan Bolívar Díaz, *La nueva ley de Migración: un híbrido cargado de contradicciones*, Hoy (July 2, 2005); *see also*, República Dominicana: *Vidas en tránsito: la difícil situación de la población migrante haitiana y de la población dominicana de ascendencia haitiana* 27 AMNESTY INTERNATIONAL (March 21, 2007).

ows. After decades of living in the country, many Haitians had moved on to other jobs in the Dominican economy, raised families, and became part of the country's social fabric. While their presence in Dominican territory had always been on shaky legal grounds, many had established firm roots in the Dominican Republic, often severing ties with Haiti and deciding to stay in the Dominican Republic permanently. Moreover, their children born in the Dominican Republic were Dominican citizens under the *jus soli* provision of the constitution, and culturally Dominican by their upbringing. For the children of those Haitians that headed back to Haiti it was a move to a foreign country and to an unknown culture. The new law also made it more difficult for Haitian Dominican children with undocumented parents to obtain legal documents, including birth certificates and national ID cards.⁷⁵ This legal hurdle was added on top of the informal practice by Dominican authorities of denying birth certificates or other legal documents to the children of Haitian migrants.⁷⁶ Law 285-04 was challenged in court, but ratified by the Dominican Supreme Court of Justice, which paid particular attention to the "in transit" nature of Haitian immigrants in the Dominican Republic. This occurred despite the Dominican Constitution granting citizenship to anyone born in the Dominican Republic, with the exception of children born to foreigners "in transit" since 1929. Haitian Dominicans born in the Dominican Republic have been inappropriately placed into this "in transit" category⁷⁷ severely hampering their social mobility because it prevents them from obtaining the legal documents required to enroll in school and work legally.

Much to the chagrin of Dominican Republic officials, the Inter-American Court of Human Rights decided in favor of the girls in the *Yean and Bosico* case in 2005. The Inter-American Court—in a unanimous decision—ruled that the Dominican government had violated the rights of the girls as well as hemispheric treaties regarding citizenship rights.⁷⁸ The case made international headlines because the Dominican Republic refused to recognize the Court's decision—even though it had previously issued birth certificates to the girls in 2001 in an attempt to settle the case.⁷⁹

Thus, the Dominican government previously failed in its attempt to use the same interpretation of the "in transit" language in the 2005 *Yean and Bosico* decision of the Inter-American Court of Human Rights. The *Yean and Bosico* court rejected any suggestion that generations of Haitian immigrants were somehow "in transit" for nearly a century.⁸⁰ Tragically, instead of following the sound and logical conclusions of the 2005 IACHR decision, the Dominican government continued to push its

75. *Id.*

76. Case of the Girls *Yean and Bosico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 86 (Sept. 8, 2005).

77. CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA, tit. I, sec 1. and sec. 2, GACETA OFICIAL NO. 4108, JUNIO 25, 1929 [hereinafter CONSTITUCIÓN 1929]. <https://perma.cc/YG53-GVLH>.

78. Corte Interamericana de Derechos Humanos, *Caso de las Niñas Yean y Bosico vs. República Dominicana* 1, 89 (2005). <https://perma.cc/7TUK-ESUH>.

79. See *id.*

80. Case of the Girls *Yean and Bosico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 86 (Sept. 8, 2005).

interpretation, and enacted a new constitution in 2010 that created the Constitutional Court. This court in 2013 wrote the aforementioned illogical, unsound, and constitutionally-perverted decision. To add insult to injury, the Dominican government now takes the position that it is not bound by the determination of the 2005 IACHR *Yean and Bosico* decision.⁸¹

In response, in 2010, a new Dominican constitution reaffirmed the tenuous legal situation of Haitian Dominicans by establishing that the children of those “in transit or that reside illegally in Dominican territory” were not citizens of the Dominican Republic.⁸² It is important to note here that prior to the 2010 constitutional changes, the relevant constitution concerning citizenship was the 1929 constitution, which specifically recognized *Jus Solis*, or birthright citizenship, except for those that were “in transit”. The 2010 constitution sadly left no doubt about where Haitian Dominicans were standing by defining most Haitian laborers as effectively “in transit” and thus nullifying their children’s citizenship. The inclusion of this clause in the 2010 constitution was a political concession to conservative forces whose support was needed to pass the new constitution through Congress. This newly implemented constitutional clause is inconsistent with prior practice in the country. For instance, between 1950 and 1990, the Dominican government formally recognized a number of children of Haitian descent as Dominican nationals.⁸³ As a result, from 1950-1990, several generations of Haitian migrants and their children were able to acquire Dominican nationality.⁸⁴ However, even this effort was applied inconsistently—some children of migrants were recognized as Dominican, but others were denied Dominican citizenship.⁸⁵ Moreover, during this period, authorities liberally used the “in transit” exception to deny the children of migrants their nationality.⁸⁶ Dominican human rights organizations reported several cases where migrants were unable to register their children’s birth, including instances where one parent was Dominican.⁸⁷ Moreover, Dominican authorities often imposed additional identification requirements on Haitian parents—or parents perceived to be Haitian.⁸⁸

In 2013, a new court created by the 2010 constitution, the Dominican Constitutional Tribunal (equivalent to the U.S. Supreme Court and empowered to interpret

81. See, e.g., *Vinicio Castillo dice carta de adhesión de RD con CIDH es inconstitucional*, HOY (Jan. 20, 2013), <https://perma.cc/5D5L-9PX3> (arguing that though the Dominican government has accepted the jurisdiction of the Inter-American Court of Human Rights, the National Congress has not ratified the acceptance of competence).

82. República Dominicana, Constitución de la República Dominicana, 1, GACETA OFICIAL 10561, 9 (2010).

83. OPEN SOCIETY INSTITUTE, DOMINICANS OF HAITIAN DESCENT AND THE COMPROMISED RIGHT TO NATIONALITY 5 (2010).

84. The government allowed temporary migrants to use their working permits to register their children as Dominican nationals. *Id.* at 5; AMNESTY INTERNATIONAL, A LIFE IN TRANSIT 14 (2007).

85. The government allowed temporary migrants to use their working permits to register their children as Dominican nationals. *Id.* at 5; AMNESTY INTERNATIONAL, A LIFE IN TRANSIT 14 (2007).

86. OPEN SOCIETY INSTITUTE, DOMINICANS OF HAITIAN DESCENT AND THE COMPROMISED RIGHT TO NATIONALITY 5 (2010).

87. See Perez, *supra* note 4; INTER-AMERICAN COMMISSION OF HUMAN RIGHTS, DOMINICAN REPUBLIC COUNTRY REPORT ¶¶325-334 (1999).

88. See *id.* DOMINICAN REPUBLIC COUNTRY REPORT.

the country's constitution), took on the issue of defining Dominican citizenship. Sadly, the new high court took the anti-Haitian movement a step further in its decision regarding a Haitian Dominican woman (Juliana Deguis Pierre) who tried to get her national ID card.⁸⁹ Even though she was born in the Dominican Republic and had a Dominican birth certificate, she was denied an ID card by the electoral authorities, who then confiscated her birth certificate alleging that she was Haitian.⁹⁰ Juliana Deguis Pierre took her case to court, but the Constitutional Court decided against her, holding that "even though she was born in the national territory, she is the daughter of foreign nationals in transit, which stripped her of the right to Dominican nationality."⁹¹ The 11-2 decision of the Constitutional Court found that the citizenship provision of the 1929 Dominican Constitution, which recognizes as a citizen anyone born in the country, does not apply to the children of parents who were not "legal residents" at the time of their birth, on the basis that their parents were "in transit."⁹² As a result of the 2013 decision, every Dominican of Haitian descent no longer possessed Dominican nationality.

The Constitutional Court thus used the "in transit" exception in Dominican nationality law as the basis to retroactively revoke the citizenship of hundreds of thousands of Haitian Dominicans, effectively rendering them stateless in the country they considered home—the Dominican Republic.⁹³ The decision upheld the application of this exception to all children of non-resident immigrants, including undocumented immigrants and temporary lawful workers.⁹⁴ Furthermore, the Constitutional Court held that any claim to nationality on the part of such children born after 1929 was subject to review—even in cases where the individuals had received a birth certificate, or some other document granting them Dominican nationality.⁹⁵ Hence, the Court instructed the Dominican government to review all nationality claims dating back to 1929, and to implement a plan for "regularizing" the status of all those denied of nationality by the ruling.⁹⁶

The Constitutional Court further held that these children and subsequent generations born on Dominican soil were excluded from the citizenship guarantee provided by the constitution. The order effectively stripped citizenship rights from the descendants of Haitian migrants who had been settled in the Dominican Republic since the early 1900s. Remarkably, the court made this ruling despite the fact that the constitu-

89. Tribunal Constitucional de la República Dominicana, septiembre 23, 2013, Sentencia No. 168-13.

90. *See id.*

91. Tribunal Constitucional de la República Dominicana 2013, 98.

92. *See id.* at 99.

93. Tribunal Constitucional de la República Dominicana, septiembre 23, 2013, Sentencia No. 168-13; *see also* CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA, tit. I, sec. 1. and sec. 2, GACETA OFICIAL NO. 4108, JUNIO 25, 1929 [hereinafter CONSTITUCIÓN 1929].

94. Press Release, Amnesty International, Dominican Republic must retract ruling that could leave thousands stateless (Oct. 18, 2013); *Dominican Republic Strips Haitians of Citizenship*, AMERICAS QUARTERLY ONLINE (Sept. 27, 2013), <https://perma.cc/5FUG-58MF>.

95. TRIBUNAL CONSTITUCIONAL DE LA REPÚBLICA DOMINICANA 98 (2013).

96. Press Release, Amnesty International, Dominican Republic must retract ruling that could leave thousands stateless (Oct. 18, 2013); *Dominican Republic Strips Haitians of Citizenship*, AMERICAS QUARTERLY ONLINE (Sept. 27, 2013), <https://perma.cc/9LCQ-9VVN>.

tion considered anyone who enjoyed Dominican citizenship prior to 2010 as Dominican.⁹⁷ More importantly, the relevant constitution for the nearly one hundred year period that the Constitutional Court found its ruling to apply retrospectively to was the 1929 Constitution, and that constitution was the relevant constitution for the period from 1929 until the date of the constitutional court decision in 2013. What is significant is that the 1929 Constitution specifically recognized *jus solis*, or birthright citizenship, as a basis for Dominican citizenship.⁹⁸ Despite the force and logic of the text of the relevant 1929 constitutional provision, the Constitutional Court found that generations of Dominicans of Haitian descent were “in transit” for nearly a century—nothing short of an illogical conclusion. As a result of the Constitutional Court decision, the vast majority of these individuals have been left stateless.

The Dominican Constitutional Court also ruled that all children of immigrants residing illegally on Dominican territory (i.e., in transit) since 1929 were not Dominican citizens—even if they had been issued birth certificates by the Dominican authorities.⁹⁹ In a dissenting opinion among the thirteen constitutional magistrates,¹⁰⁰ Magistrate Katia M. Jiménez Martínez pointed out that this decision violated—among other things—the basic legal principle of nonretroactivity of law that is enshrined in the Dominican constitution.¹⁰¹ The Court’s majority decision blatantly violated the principle of non-retroactivity by stripping several generations of Haitian Dominicans of their Dominican citizenship after issuing them Dominican birth certificates.¹⁰² Even the grandchildren and great-grandchildren of Haitians immigrants could potentially be rendered stateless by this retroactive decision if their ancestors were not Dominican nationals under the terms of the ruling. In fact, the only way a Dominican of Haitian descent could potentially avoid this fate is by having at least one non-Haitian Dominican ancestor in her/his family tree and relying on *jus sanguinis*.¹⁰³

The social implications of this legal decision could not be clearer. Though the new laws and judicial decisions apply to all foreigners, it is obvious that the only “problematic” aliens in the Dominican Republic are Dominicans of Haitian decent. In the Dominican Republic, a “Haitian” remains a Haitian, regardless of how many generations have elapsed since her/his family’s arrival.¹⁰⁴ In spite of the eighty-four years and four generations that separate the 1929 laws from the 2013 decision, Haitian

97. República Dominicana, Constitución de la República Dominicana, 1, GACETA OFICIAL 10561, 9 (2010).

98. See, e.g., CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA, tit. I, sec 1. and sec. 2, GACETA OFICIAL NO. 4108, (1999).

99. Tribunal Constitucional de la República Dominicana 2013, 99-100.

100. See *id.* at 99.

101. See *id.* at 112-115.

102. Roque Planas & Julia Craven, *Thousands Woke Up At Risk Of Deportation In The Dominican Republic. Almost All Of Them Are Black*, THE WORLD POST (Jun. 18, 2015), <https://perma.cc/8HUU-4YRH>.

103. *Id.*

104. Press Release, Amnesty International, Dominican Republic must retract ruling that could leave thousands stateless (Oct. 18, 2013); *Dominican Republic Strips Haitians of Citizenship*, AMERICAS QUARTERLY ONLINE (Sept. 27, 2013), <https://perma.cc/9LCQ-9VVN>.

Dominicans—by virtue of their ancestors' origin—are still treated as unwelcomed foreigners.¹⁰⁵

A 2015 report by the Inter-American Commission of Human Rights confirms both the arbitrariness and lack of principle associated with the Constitutional Court's decision when it observed:

Through judgment TC/0168/13, the Constitutional Court retroactively changed the interpretation of “foreigners in transit” in the constitutions in effect from 1929-2010, which established that category as a restriction to the acquisition of the right to nationality by *jus soli*. The court stated that “foreigners in transit” refers to those individuals who do not have legal domicile in the Dominican Republic because they lack a residency permit. The Court applied this interpretation retroactively, arbitrarily depriving tens of thousands of people, mostly descendants of Haitian migrants, of their Dominican nationality.¹⁰⁶

The vast majority of these newly undocumented former Dominican citizens are dark-skinned people of Haitian descent. In a country where the poor typically have a very difficult time obtaining birth certificates because of costs and bureaucratic hurdles, the decision effectively singled out poor Dominican-born children whose ancestors have resided in the country for several generations.¹⁰⁷

The above decision sadly highlights a racial animus present in the Dominican Republic, which is reflected in the incongruous—but common—expressions “*la cédula es dominicana, pero tú eres haitiano*” (the identity card is Dominican, but you're Haitian¹⁰⁸) and “*soy dominicano de pura cepa*” (I am a Dominican of pure stock¹⁰⁹). Both reflect the conflicting and contradictory way in which outsider status versus the privilege of the citizen is habitually defined in the Dominican Republic. Dominicans of Haitian descent are still routinely denied their civil rights, despite the text of the country's governing constitution, which, up until the 2013 Constitutional Court decision, made them citizens of the Dominican Republic. Thousands now live in a legal limbo, rendered stateless in their own country. On the other hand, hundreds of thousands of Dominicans and their descendants that reside overseas are seen as a diasporic community that still retains significant ties to the homeland. Since the 1990s, their rights have expanded and they have become an important component of an increasingly transnational, globalized Dominican nation. In this legal-cultural dual-standard, Dominicans who left the country—and their children—are Domini-

105. Chiara Liguori, *Dominican Republic: Stateless people are no-rights people*, (Febr. 5, 2014), <https://perma.cc/UZ9Q-RTWF>.

106. *Dominican Republic Country Report, Situation Of Human Rights In The Dominican Republic*, INTER-AMERICAN COMMISSION OF HUMAN RIGHTS (Dec. 31, 2015), <https://perma.cc/C9CL-JJE5>.

107. Ediberto Román, *Statelessness in the Dominican Republic*, AL JAZEERA, (Nov. 24, 2014), <https://perma.cc/JF6W-2HKK>.

108. Carlos Dore Cabral, *The expression stems from encounters between Haitian Dominicans and the Dominican authorities, in which the former are often deprived of their identity documents under the pretense regardless of what their documents say; Los dominicanos de origen haitiano y la segregación social en la República Dominicana* 57 ESTUDIOS SOCIALES 20(68), 62 (1987).

109. The expression implies someone with deep ancestral roots in the Dominican Republic and a strong sense of Dominican cultural identity.

cans, but Dominicans of Haitian descent and Haitians that reside in it—and their children—are not.

EVEN THE DOMINICAN ARGUMENT IS INTERNALLY INDEFENSIBLE

Giving the Dominican government the benefit of the doubt and seriously considering the incongruous argument that for nearly a century Haitian migrants and their children were somehow “in transit,” still does not provide any legal basis for the country’s position. Indeed, the history of the “in transit” language conflicts with the illogical arguments that Dominicans of Haitian descent were somehow in transit for nearly a century. The “in transit” exception in Dominican jurisprudence dates back to Dominican constitutions of the early twentieth century—the 1929 constitution. However, the “in transit” language (the only exception to the Dominican *jus solis* means of attaining citizenship) was not explicitly defined until recently. Nevertheless, two statutes and their respective regulations defined and implemented Dominican immigration and nationality law since the 1930s. Immigration Law No. 95-39, and its corresponding regulation, Immigration Regulation No. 279-39, were passed in 1939 and were in force until the early 2000s. Immigration Law No. 285-04 replaced the 1939 law in 2004, but the new law was not fully implemented until Immigration Regulation No. 631-11 was enacted in 2011.¹¹⁰

Law No. 95-39 and Regulation No. 279-39, the first immigration reform measures passed after the 1929 constitution, did not provide a clear definition of the “in transit” exception. Law No. 95-39 and Regulation No. 279-39 divided up migrants to the Dominican Republic as either “non-immigrants” or “immigrants.”¹¹¹ Non-immigrants were migrants that fell into one of four sub-categories: (1) visitors conducting business, studying, or on a recreational trip; (2) people “transiting,” also known as being “in transit” through the Dominican Republic to another country; (3) foreigners employed on navy or air force bases or vessels; and (4) temporary workers and their families.¹¹² For the purposes of nationality, Article 10(c) of Law No. 95-39 simply stated that “people born in the Dominican Republic are considered nationals of the Dominican Republic, regardless of whether they are also nationals of other countries.”¹¹³ Regulation No. 279-39 was modified in 1947 to define “transitory” migrants (*transeúntes*).¹¹⁴ Transitory migrants corresponded to the second sub-

110. See *id.* Perez, *supra* note 34.

111. See *id.*

112. Ley No. 95-39, abril 14, 1939, GACETA OFICIAL NO. 5299 [hereinafter Ley No. 95-39]; Reglamento No. 279, mayo 12, 1939, *as amended*, GACETA OFICIAL NO. 5313; Each of these sub-categories was further regulated according to a series of conditions explained in detail in Regulation No. 279-39. Regulation No. 279-39 defined various conditions and lengths of stay for each of these types of non-immigrants. Meanwhile, Law. No. 95-39 and Regulation No. 279-39 also defined an immigrant as “foreigners admitted to the [Dominican] Republic,” unless they were part of one of the four sub-categories above. Immigrants could reside indefinitely in the Dominican Republic, subject to certain residency requirements.

113. CESTO PEREZ, IN TRANSIT PROVISION UNDER THE DOMINICAN CONSTITUTION (unpublished manuscript).

114. See *id.*

category of non-immigrants identified above. They were defined as individuals in the country with the “main purpose” of traveling towards another country.¹¹⁵

While the above analysis concerning the history of the “in transit” exception to Dominican *jus solis* citizenship fails to establish a definitive answer as to its interpretation, the 1929 constitution as well as the subsequent 1939 law and regulation do strongly suggest that the “in transit” clause had nothing to do with the undocumented.¹¹⁶ This is so because both the pertinent constitutional text, that of the 1929 Dominican Constitution, specifically provided for *jus solis* citizenship (only excluding those in transit), and perhaps most telling, the 1939 regulation associated with the “in transit” language, had nothing to do with undocumented immigrants, or immigrants of any kind for that matter. As mentioned just above, the very first regulation interpreting this language from the 1929 constitution, the 1939 regulation, provided the first explanation for those that were “in transit”—it applied to those individuals traveling through the Dominican Republic to get to another land.¹¹⁷ Specifically, the regulation in question (Reg. No. 279-39) provided: “transiting, also known as being “in transit” through the Dominican Republic to another country . . .”¹¹⁸ In addition, the 1939 Regulation in Art. 10, specifically provided that “people born in the Dominican Republic are considered nationals of the Dominican Republic, regardless of whether they are also nationals of other countries.”¹¹⁹ Moreover, this regulation was modified in 1947 and that modification defined “transitory” migrants (*transeúntes*)” as individuals in the country with the “main purpose” of traveling towards another country.¹²⁰ Thus, the pertinent regulations on the understanding of the “in transit” exception to *jus solis* citizenship, which the 1929 Dominican Constitution specifically recognized, provided that the “in transit” language dealt with individuals traveling through the country, and not at all with immigrants in the country. Moreover, a regulation enacted a decade after the 1929 constitution that contained the “in transit” exception confirmed that the language was intended to address travelers passing through the country.¹²¹

115. *See id.*

116. Ley No. 95-39, abril 14, 1939, GACETA OFICIAL NO. 5299 [hereinafter Ley No. 95-39]; Reglamento No. 279, mayo 12, 1939, *as amended*, GACETA OFICIAL NO. 5313; Each of these sub-categories was further regulated according to a series of conditions explained in detail in Regulation No. 279-39. Regulation No. 279-39 defined various conditions and lengths of stay for each of these types of non-immigrants. Meanwhile, Law. No. 95-39 and Regulation No. 279-39 also defined an immigrant as “foreigners admitted to the [Dominican] Republic,” unless they were part of one of the four sub-categories above. Immigrants could reside indefinitely in the Dominican Republic, subject to certain residency requirements.

117. *Id.*

118. *See* Text of, Ley No. 95-39 (abril 14, 1939), GACETA OFICIAL NO. 5299 [hereinafter Ley No. 95-39]; Reglamento No. 279, mayo 12, 1939, *as amended*, GACETA OFICIAL NO. 5313.

119. *See id.*

120. *See id.*

121. Ley No. 95-39, abril 14, 1939, GACETA OFICIAL NO. 5299 [hereinafter Ley No. 95-39]; Reglamento No. 279, mayo 12, 1939, *as amended*, GACETA OFICIAL NO. 5313; Each of these sub-categories was further regulated according to a series of conditions explained in detail in Regulation No. 279-39. Regulation No. 279-39 defined various conditions and lengths of stay for each of these types of non-immigrants. Meanwhile, Law. No. 95-39 and Regulation No. 279-39 also defined an immigrant as “foreigners admitted to the

The only debate concerning the language came from the uneven application of these regulations due in all likelihood to anti-Haitian prejudice and its long history in the Dominican Republic. The theory above concerning the “in transit” exception to Dominican citizenship is far from novel, albeit it is far more exhaustive than ever addressed previously. In 2015, the Foreign Policy Institute report came to a similar conclusion, concerning the “in transit” language, stating:

“The process of de-nationalization is rooted in the misinterpretation of [a person’s] irregular migratory status as being “in transit.” The origins of the legal definition of “in transit,” according to a 1939 Dominican immigration law, refers to people with plans to proceed to a third country and, thus, whose stay in the Dominican Republic was not to exceed ten days. Based on this definition, the term “in transit” does not apply to most Haitian migrants in the Dominican Republic. Historically, neither Migration Ruling 279, which described for the record the laws from 1939, nor the Dominican Constitution attempted to characterize the status of migrant workers—who are mainly of Haitian ancestry—as “in transit,”¹²²

To try to frame the children of Haitians immigrants as not citizens of the Dominican Republic based on a liberal interpretation of the “in transit” clause, as the Dominican Government has effectively done, makes no logical sense. The only reason why it has been repeatedly invoked by Dominican nationalists is because there has been no other clear legal way to strip the descendants of Haitian migrants of their citizenship rights acquired via *jus solis*. Back in 1929, and for several decades thereafter, the presence of Haitian immigrants in the Dominican Republic was marginal. They were mostly contained to sugar plantations and were not seen as a demographic threat. However, as the forces of globalization began displacing Dominicans to the United States and other countries, and more Haitians started arriving in Dominican cities and taking over jobs that Dominicans had traditionally done (e.g., construction), right-wing elements began sounding the alarm of a Haitian takeover of the Dominican Republic.¹²³ Anti-Haitian xenophobia struck a chord in the Dominican psyche, and it reached center stage in national politics during the 1980s and 1990s, when conservative forces—led by right-wing President Joaquín Balaguer—made it a recurring campaign issue. Its most high-profile victim was opposition presidential candidate José F. Peña Gómez, a black politician who was accused of being of Haitian descent and of harboring secret designs of a Haitian takeover. The anti-Haitian political mudslinging reached a crescendo during the 1994 presidential elections, when Balaguer (who was white) presented himself as the “Dominican” candidate, and campaign advertisements and political cartoons portraying Peña Gómez as a Haitian fifth columnist could be seen everywhere.¹²⁴ If not even a popular, powerful figure like Peña Gómez was spared, then it seems like no black Dominican

[Dominican] Republic,” unless they were part of one of the four sub-categories above. Immigrants could reside indefinitely in the Dominican Republic, subject to certain residency requirements.

122. Natalia Cote-Muñoz & Verónica Alma Rosario, *Human Rights Under Threat: Denationalization and Dominicans of Haitian Ancestry*, SAIS REVIEW OF INTERNATIONAL AFFAIRS, <https://perma.cc/GG2H-SBM8>.

123. See Núñez, *supra* note 34.

124. See Sagás, *supra* note 22.

was beyond suspicion—and poor, black Haitian Dominicans did not stand a chance.¹²⁵ Their fate was being decided by forces beyond their control.

Dominican Response to International Pressure

After the decision of its Constitutional Court, the Dominican Republic faced considerable condemnation from various international organizations, including IACHR, CARICOM and the OAS.¹²⁶ Facing international pressure, Dominican President Danilo Medina promised to craft a humanitarian solution. In 2014, Medina's administration attempted to mitigate the high court ruling with a naturalization law aimed at recognizing the citizenship claims of those affected by the 2013 decision. The Dominican government (with more than a touch of irony) passed a "naturalization" law applicable to its former citizens. This political act perhaps highlights the absurdity of the 2013 decision that left hundreds of thousands in a stateless status. The compromise solution for the new immigrant/former citizens, known at Law 169-14, distinguished between two groups of now stateless residents: Group A consisted of people who formerly had documents like passports, birth certificates or ID cards, but found them revoked at some point over the last decade or so as the citizenship laws changed; and individuals in Group B that were born in the country, but never obtained crucial documents needed to prove their citizenship.¹²⁷

The 2014 Naturalization Law offered at first blush a simple solution: the government would recognize the nationality of those already registered with the state as Dominicans, and issue any additional documents necessary to fully exercise their citizenship rights. For those not yet registered, the government would first establish a registration process and then issue the requisite documents for those entitled to citizenship.

However, despite a promising legal framework, Human Rights Watch found that the law was so flawed that it undermined the so-called naturalization process that it had created.¹²⁸ These practices continue to arbitrarily deprive individuals of their right to Dominican nationality and citizenship-related rights. Despite the shortcomings of the proposed solution and its failure to regularize the former citizens, the Dominican government scheduled to begin expelling those who were denationalized in September 2015.¹²⁹

125. *See id.* at 125

126. *OAS urges D.R. to restore nationality to Haitian descendants*, FOX NEWS LATINO (Feb. 9, 2016), <https://perma.cc/49K9-SSM6>; *see also*, *Caricom Appeals To Dominican Republic To Halt Expulsions*, CARIBBEAN COMMUNITY SECRETARIAT (Jun. 19, 2015), <https://perma.cc/FT7N-S9F2>; CARICOM again warns Dominican Republic on 'stateless' Haitians, Dominican Today, March 12, 2014, available at <https://perma.cc/D4U8-EBJF>; *OAS Urges Dominican Republic to Restore Nationality to Haitian Descendants*, Latin American Herald Tribune, March 3, 2016, available at <https://perma.cc/3ATQ-5ADY>.

127. Roque Planas & Julia Craven, *Thousands Woke Up At Risk Of Deportation In The Dominican Republic. Almost All Of Them Are Black*, THE WORLD POST (Jun. 18, 2015) <https://perma.cc/W2P5-7PBX>; *see also*, *OAS urges D.R. to restore nationality to Haitian descendants*, FOX NEWS LATINO, (Feb. 9, 2016), <https://perma.cc/2XDD-B5G2>; *see also* *Caricom Appeals To Dominican Republic To Halt Expulsions*, CARIBBEAN COMMUNITY SECRETARIAT (Jun. 19, 2015), <https://perma.cc/JF2T-GVFP>.

128. *Id.*

129. *Id.*

In the international arena, the Inter-American Court of Human Rights (IACHR) in 2014, condemned the decision of the Dominican Constitutional Court.¹³⁰ Importantly, the IACHR criticized Law 169-14's scheme for Group B as illegal and contrary to a number of international conventions, and creating statelessness.¹³¹ Following the scathing rebuke by the IACHR, the Dominican Republic dismissed the authority of the IACHR over the Dominican Republic, concluding that the IACHR decision was "out of season, biased and inappropriate."¹³² As a result of the above actions by the Dominican executive and judicial branches, the previous Dominican citizens of Haitian descent in one, or at most two, strokes of a pen were stripped of their citizenship. Even when international courts and influential international bodies condemned the country's acts, the latter merely used a form of exceptionalism and declared that neither international courts nor international organizations had the authority to dictate internal immigration matters. The sophistry of the Dominican government with labels—i.e., calling former citizens immigrants—occurred despite the plain language of its constitution and consistent international rebuke.

SOCIO-POLITICAL CONSEQUENCES

Creating an Other that should have been historically recognized as part of the collective "we" is highly problematic in any polity, yet the Dominican Republic restricted citizenship as it applies to the descendants of Haitian immigrants while also expanding its notion of citizenship to those living abroad because it has served the country's interests. This paradox and duality highlight the fluidity of those in power in creating a threatening Other, and at the same time the ease with which that same power group can morph its laws and constructs to decide which people are worthy of acceptance.

As an Open Society Foundation report observed, the consequence of hatemongering, scapegoating, and the permanent creating of the Other in the Dominican Republic has led to the calamity of statelessness.¹³³ Stateless persons are in a position of

130. See Press Release, OAS (November 14, 2014), available at <https://perma.cc/Z4VE-ZYCV>.

131. See . Roque Planas & Julia Craven, *Thousands Woke Up At Risk Of Deportation In The Dominican Republic. Almost All Of Them Are Black*, THE WORLD POST (Jun. 18, 2015) <https://perma.cc/8CKX-5PWR>; see also, *OAS urges D.R. to restore nationality to Haitian descendants*, FOX NEWS LATINO, (Feb. 9, 2016), <https://perma.cc/AEB4-T72W>; see also *Caricom Appeals To Dominican Republic To Halt Expulsions*, CARIBBEAN COMMUNITY SECRETARIAT (Jun. 19, 2015), http://www.caricom.org/jsp/pressreleases/press_releases_2015/pres97_15.jsp.

132. See Press Release, OAS (November 12, 2014), available at <https://perma.cc/E7W3-6KMR>; See also Amnesty International Report, *Dominican Republic: Reaction to Court ruling shows shocking disregard for international law* (October 24, 2014); available at <https://perma.cc/Q9V6-BVV7>.

133. See Liliana Gamboa & Laura Bingham, *Dominican Republic: How Statelessness Threatens Women and Families*, OPEN SOCIETY FOUNDATIONS (Oct. 13, 2013), <https://perma.cc/W6CV-YDSS>; see also Jonathon M. Katz, *In Exile, Deportations and violence have driven tens of thousands of people of Haitian descent from their homes in the Dominican Republic—while the world is silent*, N.Y. TIMES (Jan. 16, 2016), http://www.nytimes.com/2016/01/17/magazine/haitians-in-exile-in-the-dominican-republic.html?ref=collection%2Fsectioncollection%2Fmagazine&action=click&contentCollection=magazine®ion=rank&module=package&version=highlights&contentPlacement=1&pgtype=sect&_r=0.

permanent vulnerability. Denied access to birth certificates, passports, or other identification documents, stateless persons become, in effect, “non-persons” with no claim on governments who ignore their existence and refuse to protect their most basic rights. They are systematically denied access to the full range of public goods and services essential to a decent existence, from freedom of movement and police protection, to healthcare, education, housing, and employment. Stateless populations are condemned to a cycle of poverty that is passed from generation to generation.¹³⁴ Amnesty International has found that more than 250,000 Dominicans of Haitian descent are now stateless as a result of the 2013 Constitutional Court decision and face the potential of eventual deportation.¹³⁵ More recently, a *New York Times* story observed: “Dominican immigration officials showed off the new buses and ‘reception centers’ that would be used to process those who would be expelled.”¹³⁶ In a country with a history of sporadic violence against its Haitian minority—there are at least a few lynchings documented every year—these reports took on an ominous cast.¹³⁷ Moreover, the IACHR, the international body that for decades has warned of the abuses and continued violations of rights of Dominicans of Haitian descent, concluded in 2015:

Over the course of the years, a number of practices on the part of private citizens, as well as practices, laws, policies and judicial decisions advanced by various state authorities, generated and consolidated a situation of structural discrimination against Haitian migrants that has become so deeply engrained that it now also applies to their descendants born in the Dominican Republic. The Commission observes that the victims of the various forms of discrimination against persons of Haitian descent in the Dominican Republic can be classified into two main groups: a) Haitian migrants; and b) descendants of Haitian migrants born in the Dominican Republic.¹³⁸

CONCLUSION

Words matter. The word “citizen” is amongst the very most important of labels. Citizen is in the same category of love; to love is the motivation for this article. Indeed, motivated by our love for our voiceless brothers and sisters, we have attempted to apply facts, accurate portrayals of legal developments, and logic, with a goal to lead to change in the injustice of statelessness. As the age-old adage reminds us, hate can breed fear, and fear can breed violence. In the Dominican Republic, we are witnessing the impact of anti-immigrant rhetoric and redefinition of citizenship that, even if mislabeled, can lead—and has led—to widespread statelessness for a

134. See Liliana Gamboa & Laura Bingham, *supra* note 134.

135. Chiara Liguori, *Dominican Republic: Stateless people are no-rights people*, AMNESTY INTERNATIONAL (Feb. 5, 2014), <https://www.amnesty.org/en/latest/campaigns/2014/02/dominican-republic-stateless-people-are-no-rights-people/>.

136. See Katz, *supra* note 134.

137. See *id.*

138. INTER-AMERICAN COMMISSION OF HUMAN RIGHTS, DOMINICAN REPUBLIC COUNTRY REPORT, SITUATION OF HUMAN RIGHTS IN THE DOMINICAN REPUBLIC, (Dec. 31, 2015), [HTTP://WWW.OAS.ORG/EN/IACHR/REPORTS/PDFS/DOMINICANREPUBLIC-2015.PDF](http://www.oas.org/en/iachr/reports/pdfs/DOMINICANREPUBLIC-2015.PDF).

targeted minority. Statelessness, in turn, is the creation of a status whereby one has no rights and all are completely exposed to any and all wrongful acts. In the case of Dominicans of Haitian descent, and their Haitian Dominican descendants, they have been historically stereotyped as undesirable aliens, routinely denied their rights, and summarily deported when they have become problematic. The newest changes to Dominican laws are but the latest iteration of long-standing trends in Dominican law and politics. Haitians have been—and continue to be—deliberately targeted by ultra-nationalist, xenophobic groups in the Dominican Republic. Some of these groups wield significant political influence and their anti-Haitian agenda has become state policy in the last two decades. We argue that this trend, as injuring as it is to Haitian immigrants and their descendants, ultimately undermines the rule of law for all Dominicans, regardless of their race or background. Rights are not based on our actions, behavior, or character. Rights are inherent to our human condition. To deny the most basic of rights (that of citizenship) to Dominicans of Haitian descent is to deny them their humanity, and, in doing so, the Dominican Republic chips away at the rights of all its citizens. There can be no minority group in a democracy whose rights are lesser than those of the majority. Minority rights are a cornerstone of democracy, and the Dominican government is not serving its people well by failing to protect those rights. As Thomas Jefferson said, “All . . . will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect and to violate would be oppression.”¹³⁹

To extend citizenship rights to some individuals while denying them to others is patently unjust, and violates basic standards of human rights. Haitian Dominicans are full-fledged citizens of the Dominican Republic and should be recognized as such—not only legally, but socially as well. They are as Dominican as the thousands of Dominican émigrés—and their children—that live abroad permanently, yet Dominican law and society seek to exclude the former while reaching out to the latter. This unfair double standard should be eliminated—for the benefit of all Dominicans.

139. Thomas Jefferson, First Inaugural Address, *The Papers of Thomas Jefferson*, Volume 33: 17 February to 30 April 1801, 148 (Princeton University Press, 2006).