

September 18, 2023

The Honorable Brian A. Nichols
Assistant Secretary of State
Bureau of Western Hemisphere Affairs
U.S. Department of State

Assistant Secretary Nichols,

The Dominican Republic has violated the right to due process and human rights of a U.S. Legal Permanent Resident, Donald Guerrero Ortiz. In recent weeks, the public debate on the Dominican Republic's preventive detention crisis has reached a critical juncture. This past week, Mr. Guerrero's preventive prison sentence was reviewed and upheld yet again under false pretenses and baseless accusations. I urge the State Department to take immediate action to prevent the continued weaponization of the law against a political opponent, and the threat it poses to democracy and the rule of law.

Mr. Guerrero, a former Finance Minister of the Dominican Republic and a Legal Permanent Resident of the United States with business interests in the U.S. that employ over 700 Americans, has been unlawfully detained without charge by the Dominican government since March 2023.

The treatment of Mr. Guerrero throughout this process and his continued unlawful imprisonment by the Dominican government violates the Dominican Constitution; the Organization of American States' Inter-American Convention on Human Rights; and the United Nations' Nelson Mandela Rules. While judges, civil rights organizations, and members of both major political parties have condemned the Dominican Republic's use of preventive detention, the Dominican government continues to defend its use.

The arbitrary deprivation of liberty, denial of basic discovery rights, political gamesmanship on trial dates, and the use of state-sponsored spyware in Mr. Guerrero's case demonstrate the need for U.S. involvement to ensure he has the ability to defend himself from the government's baseless accusations.

Illegal Migratory Alert

Three year investigation and preventive imprisonment of Mr. Guerrero without charge has been riddled with irregularities and violations of the law from the start. This began shortly after he left office in 2020, when an illegal "migratory alert" was issued by Yeni Berenice Reynoso, Director of Prosecution, Public Ministry.

The issue of the migratory alert is an encapsulation of the irregularity in Mr. Guerrero's case. Article 13 of the United Nations Universal Declaration of Human Rights protects the freedom of movement within and outside one's country.¹ Migratory alerts are also illegal under Dominican law, according to the

¹ Article 13, "Universal Declaration of Human Rights," [United Nations](#).

protections listed in Articles 46 and 222 of the Dominican Constitution. In June 2021, Attorney General Miriam Germán Brito reiterated that “migration alerts” are illegal in the Dominican Republic.²

Ms. Berenice Reynoso has repeatedly denied issuing a migratory alert, including before the court as recently as April 3, 2023. Yet a written request from the Attorney General to Director General of Immigration on April 5, 2021, stated:

“We request the provisional lifting of a migratory alert issued against Donald Guerrero-Ortiz, Dominican, holder of the Identity and Electoral ID No. 001-0094852-0, imposed on November 22, 2020, upon request of Prosecutor Yeni Berenice Reynoso, director of the Department for the Prosecution of Administrative Corruption of the Attorney General's Office.”

Following this migratory alert, Mr. Guerrero was interrogated by Ms. Berenice Reynoso over fourteen times in a short period, producing weeks of headlines in the Dominican media and continuing Mr. Guerrero’s trial in the court of public opinion. Despite this illegal migratory alert and extraordinary prosecutorial behavior under the guise of an “investigation,” in every interaction with the Public Ministry, Mr. Guerrero has been cooperative and more than forthcoming.

Fake “Audit Report”

After more than a year of being identified in the media as a central figure in an investigation without producing the case file to support the government’s claims, Mr. Guerrero’s reputation continues to be smeared by Ms. Berenice Reynoso. In August 2022, she cited an unspecified “audit report” to obtain a sweeping subpoena for financial information from 209 individuals linked to the government of former President Danilo Medina and the 2020 presidential campaign of Dominican Liberation Party (PLD) candidate Gonzalo Castillo.³

While the subpoena was leaked to the media, the agency named in the “audit report” claimed Ms. Berenice Reynoso’s investigation was operating on a fraudulent basis. The targets of the subpoena argued the audit was fake and pursued legal challenges over it in court.

In March 2023, the legal challenge of the “audit report” against Ms. Berenice Reynoso’s office went to oral arguments before an independent court. One day later, Ms. Berenice Reynoso arrested Mr. Guerrero and 18 other figures in the political opposition without charge under a “coercive measure”, who then placed Guerrero under preventive detention without charge for 18 months, relying on the fraudulent “audit report.”

Illegal Detention and Withholding of Case Files

The laws of the Dominican Republic say that preventive detention without charge can only be used under two legal justifications: 1) A demonstrable flight risk; or 2) Evidence the individual has obstructed an investigation or intends to do so. Ms. Berenice Reynoso has provided no evidence of either in obtaining his 18-month imprisonment.

² Wander Santana, “Miriam Germán admite alertas migratorias son ilegales,” [Diario Libre](#), June 28, 2021.

³ “Jueza Kenya Romero autoriza la PEPCA obtener información financiera en investigación a Donald Guerrero,” [ExtraDigital](#), August 22, 2022

The Dominican Republic has long abused the practice of preventive detention. In 1999, the Organization of American States' Inter-American Commission on Human Rights (IAHRC) strongly condemned the Dominican Republic's use of preventive detention for infringing on due process rights, as well as "prolonged detention cases" which violates "the right of presumption of innocence guaranteed by Article 8(2)" of the American Convention on Human Rights.⁴

In 2022, the State Department's embassy in Santo Domingo identified the dangerous human rights situation in its annual Human Rights report, which states that the length of pretrial detentions often "equaled or exceeded the maximum sentence for the alleged crime, with some detentions reportedly lasting years."⁵

Public Ministry Defends Preventive Detention

Civil rights groups, political figures, and independent judges have all affirmed the preventive detention crisis in the Dominican Republic. Milton Ray Guevara, President of the Constitutional Court declared preventive detention is a "real problem, which has increased over the years."⁶ Luis Henry Molina, President of the Supreme Court of Justice in the Dominican Republic, described the humanitarian situation that exists in the DR's prisons as "alarming" and a "constant concern for the Judiciary, as it should be for the entire state and society in general."⁷ The leaders of the Dominican Republic's two highest courts agree that this is a desperate situation.

Yet according to the Dominican government, there is no crisis and nothing to see. I am sure your office is aware of the letter that House Foreign Affairs Committee Chairman Michael McCaul sent to Secretary Blinken last month, which asked for clarity on the number of Americans and LPRs currently held in preventive detention.⁸ Although the letter made no mention of Mr. Guerrero, President Abinader downplayed the preventive detention crisis and claimed that any concerns raised are a result of "lobbying efforts."⁹

At the same time, Ms. Berenice Reynoso and Wilson Camacho with the Special Prosecutor's Office for Administrative Corruption (PEPCA) took to social media to continue the government's spin. On the social media platform X, Ms. Berenice Reynoso posted a thread downplaying the severity of the problem.¹⁰ Ms. Berenice Reynoso's comments came two days after Mr. Camacho posted his own thread, where he stated that there is "manipulation, demagoguery, speculation and myths about preventive detention" in the Dominican Republic.¹¹

⁴ "Chapter VI: The Right to Personal Liberty," [Organization of American States](#), October 7, 1999.

⁵ "Dominican Republic 2022 Human Rights Report," [U.S. Embassy in the Dominican Republic](#), 2022.

⁶ "Ray Guevara afirma crisis de la prisión preventiva se ha incrementado en los últimos años," [Listin Diario](#)

⁷ "Presidente SCJ destaca importancia del informe de la DP sobre problemas carcelarios," [La Verdad](#), 4/25/2023.

⁸ "EXCLUSIVE: GOP Rep Slams Biden Admin For Not Knowing How Many Americans Are Preventively Jailed In Dominican Republic," [The Daily Caller](#), August 27, 2023.

⁹ "Abinader elogia relación con EEUU; dice hay cabildeos para denunciar 'crisis' prisión preventiva en RD," [CDN](#), August 30, 2023.

¹⁰ "@YeniBerenice," [X.com](#), August 31, 2023.

¹¹ "@WilsonCamachoP," [X.com](#), August 29, 2023.

This coordinated response calls into question the independence of Ms. Berenice Reynoso from political motives in how she is performing her duties and speaks to the ongoing debate in the Dominican Republic about the politicization of the Public Ministry.¹² This pattern of behavior has been ubiquitous throughout PEPCA's baseless harassment of Mr. Guerrero.

In March 2022, Mr. Guerrero's legal team petitioned the office of Ms. Berenice Reynoso for access to his case file so that he could respond to the case the government was building against him. Despite a direct order from her superior, Attorney General Miriam Germán Brito, Ms. Berenice Reynoso has refused to provide this case file. As is the case with the migratory alerts, she continues to defy the law and the chief legal officer of the Dominican Republic. The government maintains that a 2,000 page "measure of coercion" document filled against Mr. Guerrero serves as the "equivalent of an indictment."¹³ Yet Mr. Guerrero's legal team has been repeatedly denied access to the contents of the so-called case file behind the accusations.

In August, a court hearing to determine whether Mr. Guerrero's legal team could finally see the government's evidence against him was rescheduled at the last minute to October, due to "weather concerns." By forcing Mr. Guerrero to argue for his freedom without granting him the ability to see the case file that justifies his detainment is a confounding legal paradox that continues the pattern of delaying and denying him basic legal guarantees.

The assault on basic liberties and extrajudicial behavior is to be expected from the Dominican government. According to Amnesty International, the Dominican government is a known user of Pegasus spyware to target "journalists and human rights defenders."¹⁴ In December 2022, three months before his arrest, Mr. Guerrero received a notification from Apple that his iPhone "has been targeted by state-sponsored attackers" trying to "remotely compromise" his mobile device with spying software. In August 2023, Mr. Guerrero's legal counsel reported that he had also received this notification from Apple.¹⁵

The political gamesmanship around Mr. Guerrero's basic due process rights, from access to the evidence against him or freedom from arbitrary imprisonment is part of a pattern of using preventive detention as a means of coercive intimidation against targets of an investigation who insist on mounting a legal defense.

Furthermore, the notification by Apple that Mr. Guerrero's legal counsel is the target of "state-sponsored attackers" attempting to install spying software on his mobile phone is an alarming escalation. This is not the behavior of a democratic government. Arresting opponents, denying them the ability to defend themselves, and using tools like spyware to illegally surveil their defense is anti-democratic.

Sadly, we've seen this playbook used against political opponents before. In 2020, Roger Noriega, a former Under Secretary of State for the Western Hemisphere and U.S. Ambassador to the OAS, slammed the use of detention without charge used against former Colombian president Álvaro Uribe, writing, "The mundane procedural nature of the indictment against the former president and his

¹² "Yván Lorenzo: en RD no existe el Ministerio Público independiente," [Hoy](#), August 31, 2023.

¹³ "Impugning DR Anti-Corruption Efforts is an Affront to Justice," [Real Clear Politics](#), August 29, 2023.

¹⁴ "Dominican Republic: Pegasus spyware discovered on prominent journalist's phone," [Amnesty International](#), May 2, 2023.

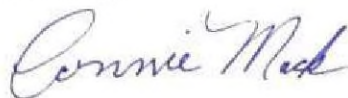
¹⁵ "Secretario Jurídico del PLD denuncia intento de hackeo," [Diario Libre](#), August 29, 2023.

detention without formal charges are more signs of a political witch hunt than a judicial process.¹⁶ Ambassador Noriega is right, and the Dominican government should take these words under consideration.

The latest argument to keep Mr. Guerrero in jail: The hiring of me, a former U.S. Congressman, for claims that my engagement on his behalf in Washington is “destabilizing” the country and undermining the justice system. These tactics are those of regional bad actors that we have fought for so long to oppose. Criminalizing Mr. Guerrero’s right to retain representation is not the behavior we should expect from a country the Biden administration has called a “democratic bright spot.”

The Bureau of Western Hemisphere Affairs regularly stands up for those whose human rights are violated by governments throughout Latin America and the Caribbean, especially American citizens, Legal Permanent Residents and their family members. This investigation has gone on for over three years and there’s no end in sight while Mr. Guerrero sits in jail without access to the government’s case against him. We urge the State Department, under the leadership of Secretary Blinken, to do the same in the Dominican Republic to ensure Mr. Guerrero’s basic rights of due process are not further infringed upon.

Sincerely,



Honorable Connie Mack

cc:

Ms. Katharine M. R. Beamer
Director
Bureau of Western Hemisphere Affairs,
Office of Caribbean Affairs
U.S. Department of State

Hon. Isiah Parnell
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¹⁶ “Can Álvaro Uribe obtain justice in the country he saved?” [El Tiempo](#), August 11, 2020.