

Comments of "necessity and urgency" on the unconstitutionality of DNU 366/2025, which reformed Migration Law 25,871

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Part I. Analysis of the "grounds" of DNU 366/2025

This document aims to share a series of arguments and reflections that demonstrate the unconstitutional, arbitrary, and anti-democratic character of Decree of Necessity and Urgency (DNU) No. 366/2025. Through this decree, the Argentine government reformed Migration Law No. 25,871, as well as certain aspects of the Citizenship Law No. 346, the Higher Education Law No. 26,206, and the National Education Law No. 24,521.

In particular, this first part of the document is aimed at analyzing the introductory section of the DNU, where the arguments that would justify the legislative reform should have been introduced — both formally, in doing so through a decree, and in terms of its content. The second part therefore addresses the articles that, through the DNU, are incorporated into the migration law, and which, from that point on, distort the objectives of that law (and therefore of the Constitution) and violate various basic rights and guarantees that the constitutional norm and the international treaties ratified by the Argentine State recognize for all persons (inhabitants) of the country.

Therefore, the comments in this first part refer to the section of the DNU in which the government supposedly condensed the alleged grounds that would legitimize this initiative and that would explain — on the basis of the rules of the rule of law — each of the changes. As explained throughout the comments presented after each paragraph — or set of paragraphs — of the DNU's preamble, the central obligation of this type of measure — demonstrating the necessity and urgency of the Decree, and the legitimacy and legality of its content — is categorically unmet.

From this follows the unquestionable unconstitutionality and arbitrariness of the reform carried out by the Executive Branch, and the pressing need to set it aside through the competent branches of government. That is, first, by the National Congress, duly and promptly assuming its constitutional functions. And then — insofar as the foregoing does not happen — by the Judiciary, in its function of reviewing the constitutionality of the actions of the other branches and as guarantor of the rights of all inhabitants that are arbitrarily violated by this Decree.

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To facilitate the line of argument of this document in relation to what is established in the DNU, the comments are presented following each paragraph of the Decree. The text of the DNU is in black, and the comments presented here are in red. *(In this translation, the original decree text appears as blockquotes, and the author's comments appear in bold-labeled paragraphs.)*

Decree 366/2025

DNU-2025-366-APN-PTE — Provisions. City of Buenos Aires, 05/28/2025

HAVING SEEN File No. EX-2025-50247728-APN-DNM#JGM, Laws Nos. 346 and its amendments, 24,521 and its amendments, 25,871 and its amendments, and 26,206 and its amendments, and

WHEREAS:

That according to what is set forth in the Preamble of the NATIONAL CONSTITUTION, it was enacted, among other reasons, to "secure the blessings of liberty, for ourselves, for our posterity, and for all men of the world who wish to dwell on Argentine soil."

That through Article 20 of the Fundamental Law it is established that "Foreigners enjoy within the territory of the Nation all the civil rights of citizens; they may exercise their industry, trade, and profession; own real property, buy and sell it; navigate the rivers and coasts; freely practice their religion; make wills and marry in accordance with the laws."

That the same provision also states that foreigners "are not obliged to accept citizenship, nor to pay forced extraordinary contributions. They obtain naturalization by residing two continuous years in the Nation; but the authority may shorten this term in favor of one who requests it, alleging and proving services rendered to the Republic."

Comment: If, in addition to paying taxes like every inhabitant (plus the migratory fees for each procedure), they also have to pay for (higher) education and health services, wouldn't that amount to a forced extraordinary contribution, violating the principle of equal treatment and universal, free access to those services?

That the constitutional provisions regarding the rights of foreigners in the country and the promotion of immigration arise, principally, from the influence of Juan

Bautista Alberdi, who articulated the tenets of his "Bases and Starting Points for the Political Organization of the Argentine Republic" under the premise "to govern is to populate."

That one of the main objectives pursued by our framers when enacting the NATIONAL CONSTITUTION was to promote immigration in order to populate the national territory and enrich its culture.

Comment: This is an explicitly racist argument, indefensible in current times and within the framework of a decree that tends to single out certain migrants as the opposite, and to favor others based solely on the criterion of financial investment.

That this was also reflected in Article 25 of the Fundamental Law, which provides that "The Federal Government shall promote European immigration; and shall not restrict, limit, or tax in any way the entry into Argentine territory of foreigners who come with the aim of tilling the soil, improving industries, and introducing and teaching the sciences and the arts," and by Articles 75, section 18, and 125.

That, regarding citizenship and nationality, current Article 75, section 12 of the Supreme Law establishes that Congress shall "Enact... general laws for the whole Nation on naturalization and citizenship, subject to the principle of natural citizenship and citizenship by option in favor of Argentina..."

That, according to the constitutional distribution of powers, it is the NATIONAL LEGISLATIVE BRANCH which, under ordinary circumstances, is responsible for setting migration policy, while the NATIONAL EXECUTIVE BRANCH is responsible for its implementation.

Comment: We are in ordinary circumstances; economic and social problems have not ceased to show a certain regularity and stability in the country. And specifically in migration matters, the reality of the last decade is among the most stable in the country's history, including a clear and gradual decline in immigration (both regular and irregular).

That this responsibility of the Administration arises from the EXECUTIVE BRANCH's duty to attend to public interests such as security, public health, and the population's various needs, in a manner harmonized with the possibility of incorporating immigrants into Argentine society without generating imbalances.

Comments. a) On "security": there are no statistics or any change in them (in more than 20 years) indicating a security problem (much less one that would justify a reform by DNU) associated with immigration. b) On "public health": what would be today's problem between immigration and public health? This is a whimsical claim with no relation whatsoever to reality in Argentina, and far from constituting any kind of risk warranting a reform by DNU. c) On "imbalances": there are no statistics or other evidence showing that immigration today generates imbalances.

That, as with every purpose of the NATIONAL STATE, the execution of migration policy must be carried out with special consideration for the common good of Argentines.

Comment: The common good of Argentines and of the immigrants who inhabit the country, insofar as the constitutional framework — based, among others, on the aforementioned Alberdi — recognizes the right to general welfare, the common good, and all constitutional rights, to all inhabitants.

That migration regulation is a matter proper to each country, to the point that, as the SUPREME COURT OF JUSTICE OF THE NATION has held, it is an accepted principle in international law that "every sovereign nation has, as a power inherent to its sovereignty and essential to its own preservation, the power to prohibit the entry of foreigners into its territory or to admit them in the cases and under the conditions it freely deems fit to prescribe" (Fallos: 164:344).

Comment: This ruling dates from 1932, in a case that debated the application of the infamously nefarious Residence Law, approved in 1902 with the express purpose of justifying "the expulsion of migrants without prior trial." In that ruling, two Supreme Court justices dissented and noted that this law established a permanent state of siege for immigrants, stripping them of basic rights and procedural guarantees that the Constitution recognizes for every inhabitant. Since 1932, not only was Law 4,144 repealed, but the Constitution was reformed (reaffirming equal rights), multiple human rights treaties with constitutional status were recognized, many other laws recognizing the same rights for every inhabitant were passed, and moreover the circumstances of that unconstitutional law from 123 years ago bear no relation whatsoever to current circumstances.

That the promotion of immigration and the recognition of broad rights for foreigners in our country became the foundation of the policies pursued by various governments from the last third of the 19th century through the early decades of the 20th century.

That based on the pillars laid down in our Constitution, and thanks to the policies implemented in that era, between 1880 and 1914 more than FOUR MILLION (4,000,000) foreigners arrived in the ARGENTINE REPUBLIC, influencing both the country's economic development and the transformation of its demographic dynamics.

Comment: This data omits the very high percentage of migrants who, in those years, returned to their countries of origin (around 40%). This in itself once again evidences the flimsiness of the data included in the DNU.

That our culture was enriched by the influence of this migratory phenomenon, and the country became an intercultural hub that promoted progress and shaped a proudly plural and heterogeneous citizenry.

That the current migration regime is governed mainly by Migration Law No. 25,871, enacted in 2003, and its amendments. Through it, admission, entry, permanence, and departure of persons in the country are regulated.

That the regulation established by that law promotes immigration to such an extent that it recognizes numerous rights to those who entered or remained irregularly in the national territory, and, in specific cases, equates their rights with those of persons who live legally in the country.

Comment: Immigration is not "promoted" through the recognition of rights. There is ample evidence in Argentina and around the world showing that the factors that push migration are the determining ones, not what the law of the destination country does or does not say. That is why in Argentina the most notable growth in migration in recent decades (the last two decades of the 20th century) coincides with a clearly restrictive law — 22,439 — passed in 1981 by the last military dictatorship, in force until 2003. Under the current law, statistics show that not only was there no notable growth in immigration, but on the contrary, current data shows how immigration — including from several countries in the region — has decreased moderately or substantially, depending on the case, reaching the lowest percentage of immigrants in the country's history.

That, in this regard, Article 7 of the aforementioned law establishes that "In no case shall the irregular migratory status of a foreigner prevent his or her admission as a student in an educational institution, whether public or private; national, provincial, or municipal; primary, secondary, tertiary, or university-level. The authorities of educational institutions shall provide guidance and advice regarding the procedures for regularizing migratory status."

That, with respect to access to the public health system, Article 8 of the law provides that "In no case may access to the right to health, social assistance, or health care be denied or restricted to any foreigner who requires it, regardless of migratory status."

Comment on the two preceding paragraphs: This is so not only because these are rights held by all persons without any discrimination, but also because it is not reasonable for an administrative status to justify depriving someone of these essential rights (any more than it would be for a person who commits a serious crime). If an Argentine commits a very serious crime, they do not lose the right to health or education. Why would an administrative infraction or irregularity justify it? It should be added that the DNU also restricts these rights for migrants holding various categories of regular residence.

That, likewise, from the aforementioned laws it follows that, while migration regulation distinguishes between different residence categories in the country, these are not relevant with regard to access to health and education, among other rights.

Comment: Exactly, because this is precisely the standard of protection for these rights based on the international treaties that form part of the Argentine Constitution. This criterion is essential to enable inhabitants who are part of our society to exercise those rights and, through them, contribute to the country's social, cultural, and economic growth, as well as to achieve the basic objectives of public health policy.

That, on the other hand, with regard to regulating impediments to entry and remaining in the country, Article 29 of the migration law establishes as grounds:

"a) The submission to the authority of materially or ideologically false or altered national or foreign documentation... b) Having been prohibited from entering... c) Having been convicted or serving a sentence, in Argentina or abroad, or having a record for arms trafficking, human trafficking, drug trafficking, or money laundering or investments in illicit activities, or a crime that under Argentine law carries a custodial sentence of THREE (3) years or more," among others.

That Article 62 of that law regulates the cases in which the Enforcement Authority must proceed to cancel a foreigner's residence, and their subsequent expulsion. Among them, it applies when "in order to obtain a migratory benefit or Argentine citizenship, a simulated act or transaction was carried out, or was entered into in fraud of the law or with a defect of consent, or falsified or ideologically false documentation was submitted," and when "the resident had been judicially convicted in the Republic for a willful crime carrying a custodial sentence of more than five (5) years, or has a repeat record of committing crimes."

That, likewise, the migration law provides for an administrative procedure with various administrative and judicial remedies.

Comment: These are the same remedies established by National Administrative Procedure Law No. 19,549 for any decision of an administrative agency affecting the rights of any person residing in the country, within the framework of an administrative process whose decision may impact their rights. These criteria are also aimed at providing transparency and consistency to the actions of administrative agencies, and through them, at legitimizing those actions provided they are carried out in accordance with applicable laws and other regulations, and respect the rights recognized for all persons.

That, in this regard, when a decision is issued by the NATIONAL MIGRATION DIRECTORATE, a decentralized agency operating within the scope of the DEPUTY CABINET CHIEF'S OFFICE FOR THE INTERIOR of the CABINET CHIEF'S OFFICE, the legislature established the possibility, for the affected foreigner, of filing, in the administrative venue, a motion for reconsideration, a hierarchical appeal, and an appeal to a higher authority [*recurso de alzada*], and, in the judicial venue, a direct appeal before the court of first instance with jurisdiction.

That, together with this, and in order to safeguard the right to due process of all immigrants, the law provided for various guarantees such as access to free legal assistance and to translators, when necessary.

Comment: After this paragraph, the DNU moves on to another topic without explaining what the problem (legal or otherwise) would be with respecting the general rules on challenging administrative acts, the right to due process, access to justice, etc. Would the multiplicity of remedies — meant to protect the person subject to administrative action and to legitimize the authority's decisions — be a problem in itself? These are basic tools in a representative system, for the proper and legitimate functioning of the public administration, protecting citizens (including nationals and migrants) whom public services are meant to serve. Why for migration matters and not for others? What would justify different treatment?

That migration regulations must be analyzed together with Law No. 346, which regulates who is considered Argentine under the national legal system, and under what conditions citizenship of our country may be obtained.

Comment: What is the relationship between Law 346 and what is established in Law 25,871? In what sense is migration promoted by one or the other? What does this paragraph mean? Is there a necessity and urgency to reform both laws? What data and grounds are offered for that? The comments presented throughout this document categorically demonstrate the unconstitutionality and the utter argumentative emptiness of these amendments.

That the manner in which citizenship is granted, and the various circumstances under which it may be obtained, affect migratory flows.

That from the aforementioned law arise various circumstances not provided for in the NATIONAL CONSTITUTION that allow one to obtain Argentine citizenship.

That, ultimately, the current legal framework evidences the legislature's clear intention to promote immigration, in line with what our framers intended, using specific means and tools that, in the view of the NATIONAL LEGISLATIVE BRANCH, were suited to local needs at the time Law No. 25,871 was enacted, that is, more than TWENTY-ONE (21) years ago.

Comment: The current situation is very similar to that of 2004 in migration matters. While there are some important differences, they should lead to strengthening current migration policy, rather than amending it in the direction taken by the DNU. For example, the number of migrants coming to the country has been gradually decreasing (with respect to certain countries in the region) or sharply decreasing (in others, such as migration from Chile). Likewise, the percentage of migrants in an irregular situation is significantly lower than it was then, precisely thanks to the application of the current law. If we consider the factors that led (during the two decades that Law 22,439 was in force) to that law's problems, there is a strong possibility that the DNU will bring about those same problems: namely, an increase in irregularity — and therefore in conditions of precariousness and vulnerability to exploitation and other abuses — a reduction in migrants with formal employment, and therefore a deterioration in living conditions.

That, however, migratory movements today unfold in a global scenario entirely different from that of previous years, presenting new political, economic, cultural, and social challenges.

Comment: What is the relationship between a global scenario and Argentine reality, in particular to justify an urgent reform that would not be addressed by the Legislative Branch?

That due to various factors, such as the development of new forms of mobility and technological progress, societies today are strongly interconnected, and cultural exchange occurs at an exponentially faster and more dynamic pace than could have been imagined years ago.

Comment: This should lead to strengthening the current migration regulation and policy, recognizing these positive aspects of mobility and their structural nature, rather than a biased approach, riddled with prejudice, aimed at imposing obstacles that will not work (the "global scenario" is full of evidence about the negative impact of this kind of reform).

That, likewise, due to the political and social crises suffered by various countries, migratory movements are triggered with greater frequency than in previous times, which has led our country to experience a massive influx of migrants.

Comment: According to statistics, considering the main crises that have led to mass migration globally or regionally in recent years, the impact on migration to Argentina has been considerably low, even much lower than in numerous countries in the region (the data on Venezuelan, Haitian, or other migration is unequivocally clear about the very low impact on Argentina).

That these extraordinary migratory flows add to the large number of persons ordinarily received by the ARGENTINE REPUBLIC.

Comment: This is in no way reflected in the statistics. The number of migrants in Argentina has not stopped decreasing in recent years, the percentage of migrants in the country is the lowest in its history, and there is no situation of any kind suggesting or giving reason to presume a massive presence or arrival of migrants in the country.

That, in analyzing the described phenomena, one must take into account the enormous extent of our borders and the deficient control mechanisms at unauthorized crossing points, which have allowed the constant illegal entry of foreigners.

Comments: If this were indeed a problem, the issue — and the action of the competent authorities — would not lie in reforming the law but in strengthening those mechanisms. This is so regardless of the impossibility of controlling thousands of kilometers of borders, the evidence on the low number of migrants arriving in the country — much less irregularly — and other key aspects that the DNU omits, along with its vague and rhetorical preamble paragraphs.

That the Enforcement Authority likewise does not have, under the current regulations, adequate means to ensure the correct execution of the migration law.

Comment: Same comment as the previous one: reforming the law is not necessary for this; if it is necessary to take measures for its correct application, that is a separate matter.

That the situation of irregular migratory status in our country is also a phenomenon requiring urgent measures, even after the implementation of special regularization programs such as the "Special Migratory Regularization Regime for Natives of the Bolivarian Republic of Venezuela," approved by NATIONAL MIGRATION DIRECTORATE Disposition No. 388 of September 5, 2024.

Comment: Regularization mechanisms are already contemplated in the current law. A reasonable, accessible, inclusive application, without excessive costs, among other things, would facilitate migratory regularity for all migrants residing in the country. This is how it was largely done during much of the time the law has been in force since 2004, especially when the State strengthened its efforts to reach the population in need, inform people about procedures, and facilitate the initiation and successful completion of procedures, among other actions.

If migrants remained in an irregular situation, for whom would the risk or urgency be? In what sense? Where would the harm or risk requiring urgent attention lie? No aspect relating to migratory irregularity requires "urgent measures," unless it refers to the need to reinforce the practical protection of these persons and guarantee their rights — among others, the right to work. However, the DNU proposes the opposite: cutting their rights, leaving them in a situation of inequality and vulnerability to risks such as labor exploitation or others.

That, however, and despite the fact that this National Government has used every tool available to it to promote the regularization of the immigrants' situation, the effort made has proven insufficient, given that the current legal framework fails to discourage the irregular entry or presence of foreigners in the country.

Comment: There is no evidence whatsoever proving that the migration law encourages irregular entry or presence. On the contrary, there is ample evidence of how the previous law directly or indirectly promoted these outcomes, and how the current law has significantly contributed to reducing them.

That, likewise, in very recent times a new risk has emerged, derived from the deportation policy being carried out by the Government of the UNITED STATES OF AMERICA.

That from that country more than ONE MILLION TWO HUNDRED AND FIFTY THOUSAND (1,250,000) migrant nationals of American countries have been deported, of which more than ONE HUNDRED AND THIRTY-EIGHT THOUSAND (138,000) are citizens of South American countries.

That, according to statements by that country's head of state, the figure will grow substantially.

That the extreme ease that currently exists to enter and remain in the national territory, as well as to use health and education services free of charge, make it foreseeable that a significant proportion of those deported may settle or attempt to settle in our territory, which would have an impact on the economy and on essential public services.

Comments on the preceding four paragraphs: These paragraphs amount to mere speculation, entirely unsupported by reality. It is a hypothesis — closer to a fable — with no basis whatsoever in any migratory precedent in the region in recent decades, with no current evidence of any kind (real, political, discursive, etc.), and which, under no circumstances,

could serve as grounds for a decree of necessity and urgency that reforms multiple key aspects of the law and violates constitutional rights.

There is absolutely no connection between deportations from the US (which did not begin in 2025, but have affected hundreds of thousands of people every year for decades) and migration to Argentina. And there is not even an indication that this would have any effect on migration into the country (which, as noted in another comment, has not stopped decreasing in recent years). Moreover, the DNU refers to things that "could" be "foreseen," that it is "likely," and other vague references that have no support whatsoever and that show an overwhelming lack of understanding of migration realities in the region.

That the aforementioned phenomenon represents an unavoidable warning sign for the ARGENTINE REPUBLIC.

Comment: Why? What indicators, data, or arguments regarding mobility — current or over recent decades — support this claim? The only "unavoidable sign" is that this sentence is utterly disconnected from reality, and is therefore a device to manufacture a nonexistent danger with the aim of trying to validate this reform, which is unconstitutional both in form — due to the absolute absence of the necessity and urgency invoked to bypass the legislative process required by the Constitution — and in substance, because of the constitutional rights it violates.

That given their status as deportees, these would be migrants with a record of illegal entry into another country, so it is reasonable to assume that their entry into our territory would not be legitimate, but rather irregular.

Comment: This is a mere general statement lacking not only arguments, but the existing evidence and grounds indicate the opposite. Migratory irregularity is in no way linked to a person's will not to comply with entry and residence regulations, since irregularity primarily affects the migrant. That suspicion, if applied in the criminal sphere, would be entirely unacceptable and would violate the presumption of innocence.

That, moreover, any uncontrolled mass entry of immigrants into the country could pose a threat to national public security by jeopardizing the capacity for migration control and leading to a saturation of administrative mechanisms.

Comment: In Argentina there is no data evidencing or forecasting, now or in the future, an uncontrolled entry of immigrants, much less in a number that could pose a threat to public security. This is a generic statement that is not only questionable (the relationship between the entry of X number of migrants and a security threat) but also has no connection whatsoever to Argentine reality or to any estimates regarding the near or more distant future. Moreover, the country's statistics — currently and in recent years — are far removed from any such situation. There is no indicator pointing in that direction.

That a mass entry of foreigners would bring with it a serious impact on the provision of essential services provided by the NATIONAL STATE and the provincial and municipal states.

Comment: In Argentina there is no mass entry of foreigners, nor any indicator or sign suggesting such a situation. On the contrary, official data indicates the opposite trend, that is, a gradual reduction in the number of people migrating to the country.

That migratory flows without proper control tend to give rise to situations of extreme vulnerability for the migrants themselves, who, absent an adequate legal and support framework, may become victims of labor or sexual exploitation, or fall into circuits of marginality that increase crime rates in the country.

Comment: This is true, particularly the first part (irregularity and vulnerability), but Argentina is in no way in a context of "uncontrolled migratory flows." However, it is the DNU itself that will lead to an increase in the levels of vulnerability of persons wishing to enter the country or who already reside here and who are affected by the restriction of rights established by the reform, and other initiatives that, both in Argentina — under the previous law — and in many other countries, have contributed to creating irregularity and deepening the vulnerability of migrants.

That to the above-described panorama must be added the risk posed by organizations recently registered in the PUBLIC REGISTRY OF PERSONS AND ENTITIES LINKED TO ACTS OF TERRORISM AND ITS FINANCING (RePET), such as the Tren de Aragua (BOLIVARIAN REPUBLIC OF VENEZUELA) and the Mapuche Ancestral Resistance, which is affiliated with the Chilean organization Coordinadora Arauco Malleco.

Comment: Several issues arise here: a) regarding the Tren de Aragua, regardless of differing opinions on the matter, it has no connection whatsoever with migration to Argentina. A brief conversation with people and institutions working on these issues (international, academic, or otherwise) would suffice to confirm that this rhetorical link is entirely unfounded. Much less can it be used as an argument to try to justify the reform of the migration law, and far less to do so through a DNU.

The RAM (Mapuche Ancestral Resistance) is a political creation of certain Argentine governments, and, in any case — that is, regardless of anyone's opinion or the State's opinion on the matter — it has absolutely no relation to migration. Promoting a regulatory reform — and by DNU — for the entire migrant population by invoking this issue would be equivalent, for example, to promoting by decree the amendment of the labor contract law based on estimates of the impact of weather phenomena, or changing the rental law based on traffic accident statistics, or other associations with the same level of incoherence and arbitrariness.

That, therefore, the entry of certain immigrants, given the activity they engage in, could have a negative effect on the life of our society.

Comment: Conjectures about what "could" happen, linking geographically and politically distant realities, do not in any way validate changing a national law, much less through a DNU. Between, on one hand, the use of a DNU to reform the law, and on the other, referring to supposed hypotheses of something that "could" occur, that is "presumed" to be "likely,"

and similar terms found in the Decree, there is an insurmountable contradiction. This reaffirms the unconstitutional invalidity of the tool used to reform a law.

That, ultimately, unregulated and insufficiently controlled immigration represents a risk both to Argentine citizens and to migrants.

Comment: Up to this point, the DNU has demonstrated no risk to the population arising from immigration. It is a merely declarative statement, unsupported by any evidence. In Argentina, the migration law includes control and regulation mechanisms, and there is no evidence of any problem that even approaches a context of lack of control or a similar situation.

That, in that context, it becomes necessary to implement mechanisms that strengthen the NATIONAL STATE's capacity to efficiently manage migratory flows, improve border control, and ensure that the arrival of foreigners contributes to the general welfare and does not compromise the security or social stability of the Nation.

That the legal regime, enacted in 2003, does not fit the needs and current state of the situation, which exposes our country to various dangers and negative consequences.

Comment: This paragraph is a rhetorical construction from start to finish, one that flatly contradicts the reality of migration in Argentina since 2003. On the contrary, there is a great deal of evidence showing how the current law was adapted to the country's migratory reality and contributed to achieving various goals (e.g., significantly reducing migratory irregularity, increasing formal employment and social inclusion, preventing exclusion and marginalization, etc.). Reports from public institutions, international organizations, and academic institutions have amply documented these positive effects of the law's application since 2004.

Likewise, the current reality of migration in the country confirms, on one hand, that the tools available under the legislation help address possible challenges, if applied properly. And on the other, that even though there are criteria in the law that could facilitate the entry and regular residence of migrants, particularly from countries in the region, official statistics show a progressive decline in the number of migrants coming to the country. This is due to factors linked to the country's socioeconomic situation, including the precarization of working conditions, currency devaluation, and, among others, difficulties in sending remittances to family members, independent of the rights recognized by the law.

That it should be noted that in the last TWENTY (20) years, ONE MILLION SIX HUNDRED AND SEVENTY-THREE THOUSAND (1,673,000) persons were registered as subject to proceedings resulting in expulsions, orders to leave the country, or other measures that would determine their irregular migratory status.

Comment: Besides the need to check and validate this data, it is impossible for this to refer to a number of people. According to the 2022 National Census (with data updated to 2024), just over 1.9 million foreign-born people live in the country. If that figure were true, more than 80% of the foreign population would have arrived in recent years, would be in an irregular situation, and would have received an order to leave the country. The figure collapses under

its own weight, and demands far more transparency and explanation from migration authorities.

That, however, of the total number of these persons, TWO HUNDRED AND TWENTY-EIGHT THOUSAND FIVE HUNDRED AND NINETY-ONE (228,591) immigrants show an entry as their last recorded movement, which allows for the presumption that they have not left the country and remain irregularly within it; while ONE HUNDRED AND SEVENTY-THREE THOUSAND SIX HUNDRED AND TWENTY-TWO (173,622) show no recorded movement at all, which likewise leads to the conclusion that they are irregularly present in the country.

Comment: These statistics require in-depth analysis. Each decision may refer, on one or more occasions, to the same person; many of these people may have left the country years ago, given the informality that has historically characterized many border crossings in the country and region. This kind of data is not derived from simple arithmetic anywhere, whether in Argentina or elsewhere in the world. These are mere hypotheses. To this must be added the bureaucratic, financial, and other obstacles that the DNM has increasingly imposed since 2016 onward — denounced by many people and organizations — hindering migrants living in the country from processing and completing their residence applications.

That, in this regard, more than TWENTY-FOUR PERCENT (24%) of immigrants whose stay in the country was declared irregular over the last TWENTY (20) years remain in the country.

Comment: Same comment as the previous one. The number of decisions likely does not correspond to the number of people, nor does it in any way reflect who remains in this situation, nor the reasons for their being in an irregular status.

That, moreover, since the start of this administration, in the AUTONOMOUS CITY OF BUENOS AIRES, more than FOUR THOUSAND FOUR HUNDRED (4,400) foreigners have been detained, of whom SIXTY PERCENT (60%) were in an irregular migratory situation or held tourist status.

Comment: Where does this data come from? What is the source? What administration is this referring to? Detained for what reason? This paragraph appears to be fabricated from beginning to end, especially since no concrete data is provided, no necessary detail is added to make it understandable, nor are the sources that would support it provided, as should be the case when this data is invoked to justify a law reform affecting basic rights of part of the population.

That, for this reason, it is necessary to urgently reform the aforementioned Law No. 25,871 in order to establish an adequate legal framework that allows the protection of the rights of Argentine citizens and of those immigrants who enter Argentine territory legally, ensuring migratory regularity and public security.

Comment: Nothing stated so far justifies reforming the law, much less on an urgent basis.

That, in that regard, it is essential to establish clear criteria to define the conditions of regular entry and stay in our country, and to provide the necessary

guarantees for the effective enjoyment of the rights held in our territory by those who legitimately settle here.

Comment: However, the reforms proposed further on establish restrictions, rather than guarantees, on the effective enjoyment of rights by various categories of migrants who settle in our country (regularly/legitimately; this regardless of the need to properly understand what leads to migratory irregularity, and the rights that these persons must enjoy).

That this will make it possible to move towards the regularization of immigrants in our Nation who are in an irregular situation.

Comment: The proposals in this reform are aimed at restricting, obstructing, or denying regularization, leading to a regressive stage that disregards the best and most effective practices implemented under the current law, and which will result in an increase in migratory irregularity and all the negative effects (for the person, the family, the community, and the State) that follow from it.

That it is essential to modify the minimum requirements for accessing the various residence categories in the country and to precisely define which rights correspond to each of them.

Comment: No grounds whatsoever have been presented for this alleged need, much less for its "essential" nature.

That, specifically, it is appropriate that the granting of permanent residence be examined with greater rigor in each case, avoiding it being granted to persons who could pose a risk to the country.

Comment: Up to this point, the DNU had made no reference to the residence categories of people living in the country — temporary, permanent residence — nor to what the eventual issues might be (much less, what the urgent problems requiring attention might be). Therefore, no argument whatsoever is presented to justify this supposed need for greater rigor in granting permanent residence.

That the amendment being promoted will help discourage "birth tourism," one of the most recurrent forms of abuse of the migration law in recent years, carried out for the sole purpose of making the child an Argentine national, thereby allowing the parents to obtain permanent residence and, eventually, citizenship enabling them to obtain an Argentine passport.

Comment: This issue is mentioned without providing any data regarding it, its impact, the harm caused, or any other aspect related to this claim. Much less is it explained how this relates to most of the reforms included in this DNU.

That, for this purpose, it is also necessary to establish that those requesting permanent residence must prove they have sufficient means to support themselves in our Nation and have no criminal record.

That, in any case, family reunification, an essential principle recognized by migration regulations, international treaties, and the case law of our SUPREME COURT OF JUSTICE OF THE NATION, will be guaranteed in all cases.

Comment: After 22 years of Law 25,871 being in force, a reform is proposed that directly disregards the fact that the original wording of the law is incorrect. In the cases relating to those articles, the right at stake is not "family reunification," but the human right to family life, and within it, to the protection of family unity and against family separation (Article 9 of the Convention on the Rights of the Child, CRC). This is not merely a formal oversight; it later manifests in the maintenance of the discretionary "waiver" logic of the DNM in these cases, when the obligation to protect the right to family life has constitutional status by virtue of the CRC and other treaties of equal status.

That, as follows from Articles 29 and 62 of Law No. 25,871 and its amendments, numerous crimes punishable by custodial sentences do not constitute impediments to entering our territory or remaining in it.

That this means that persons who have committed crimes, whether within or outside our country, may live in this Nation without any obstacle, which endangers the security of all Argentine citizens and other foreigners who live in or pass through the country.

Comments on the two preceding paragraphs: This could only apply to the less serious crimes under criminal law. Therefore, the objective, or rather the legal grounds, for this distinction made by the law was mainly rooted in respect for the so-called principle of proportionality.

This principle explains why, in a rule-of-law state, the State responds more harshly (with an impediment to entry/residence, or expulsion) in response to prohibited conduct of a certain magnitude, especially regarding the harm caused by each act. This is how the punitive power held by a State operates, which must be used — in addition to respecting all procedural and substantive rules, that is, respecting all rights and guarantees — proportionately to the seriousness of each act being sanctioned. One can imagine what would happen if, in the criminal sphere, the same sanctions were applied regardless of the seriousness of the crime.

That, therefore, it is appropriate to toughen the circumstances contemplated by Articles 29 and 62, in order to guarantee public order and the security of those who, respecting basic rules of coexistence, inhabit our territory.

Comment: Up to this point the DNU presents no data regarding a reality evidencing a situation of danger or harm relating to alleged activities linked to migration that affect public order, security, or peaceful coexistence. Why then reform the law, if no risk or problem justifying it is presented?

The relationship between this lack of arguments and the impossibility of identifying the reasons for the reform becomes considerably more troubling when the government has done so through a decree of necessity and urgency. If there were any argument — which the DNU does not mention, much less explain — the legislative arena would be the place to analyze

and weigh it alongside other considerations of various kinds. This is without prejudice to the fact that a democratic government should consult with different social and political actors on an initiative of this nature — not only before it is approved but even before it is publicly presented as an initiative.

That our highest court has recognized the unquestionable right of the NATIONAL STATE to regulate and condition the admission of foreigners in the manner and to the extent required, in accordance with constitutional precepts, by the common good in each circumstance, clarifying that this is not incompatible with the guarantees of individual rights enshrined in the Supreme Law (Fallos: 171:310; 183:373; 200:99, among others).

Comment: Any policy is a priori legitimate to the extent that it respects the Constitution and individual rights. The problem here is that this is not respected, either in form (by proposing a legislative reform by decree without any grounds), or in substance (by violating numerous individual rights and guarantees of constitutional rank).

That, however, the greater rigor being promoted will in no case go against the principle of family reunification, so that the rights of minors who may be affected by possible cancellations of residence and impediments to entry into the country will be preserved.

Comments: a) On "family reunification": This concerns the human right to family life, which in the migration context is realized in practice through the principle of family unity by means of protection against separation, or the facilitation of reunification. As noted in another comment, this is an original error of the law, and proof of its ongoing violation by the DNM — through various authorities that pushed for reforms (DNU 70/2017 and this DNU), or courts, including the Supreme Court, as we point out with Ignacio Odriozola in a publication — is the failure to recognize that family reunification differs from the principle of family unity (and non-separation), and that both are modalities or components of the human right to family life.

b) On "minors": it should say "children." The term "menores" [minors, in the old paternalistic sense] fell out of use following the adoption of the Convention on the Rights of the Child in 1989, and the childhood and adolescence laws that each country — such as Argentina — subsequently enacted.

c) Despite what is mentioned regarding this application not going against the aforementioned principle, the articles and spirit of this DNU will do nothing but aggravate the unconstitutional interpretation that the National Migration Directorate and various courts — including the Supreme Court — have been applying regarding the situation of children separated from their parents through expulsion measures. The aforementioned publication explains in detail this serious situation, which particularly affects children — in most cases, of Argentine nationality.

That it is essential to more clearly establish when rejection at the border of foreigners is warranted, in order to limit irregular entries as much as possible.

Comment: Migratory irregularity has decreased dramatically over the last 20 years, under the application of the migration law that the DNU is reforming. The remaining cases of

irregular entry are due to the State's own deficiencies of various kinds, such as: a) border closures during COVID, without accounting for humanitarian cases, persecution, etc. (the right to asylum); b) arbitrary actions at the border; c) failure to implement an entry mechanism for processing "Mercosur" residence based on Art. 23.I of the migration law (which recognizes the right of South American migrants to reside, but whose application the States have not translated into a coherent "Mercosur entry permit"), etc.

That it is necessary to specify the consequences of the rejections referred to in the preceding recital, cancellations of residence, and expulsions from the country, in order to prevent the reentry of those who were not allowed to enter the territory or were forced to leave it.

Comment: These are issues that may differ greatly from case to case, and whose handling does not necessarily result in "preventing reentry." This is a generic phrase that omits and disregards many basic aspects of migration (including entry and stay, or reentry), and even more so, how restrictions like those proposed impact these aspects (generally, generating more migratory irregularity).

That, likewise, it is appropriate to establish that entry may in no case take place through a location not authorized by the migration authority for that purpose. This will represent an unquestionable advance in immigration control and will prevent foreigners from illegally entering through our borders.

Comment: No advance is identified. Entry through authorized crossing points is already in the legislation. It always has been. The issue does not lie there, but rather in the extent to which the legislation, the entry criteria, and the reality of mobility at the borders are coherent. In Argentina, the more restrictive regulations (such as Law 22,439, 1981–2003) resulted in a significant increase in irregular entry and presence. The current legislation — up until this DNU — reduced and dramatically reversed that trend. This is despite implementation shortcomings, in particular the lack of a regular entry permit for processing residence based on the Mercosur agreement incorporated into the migration law in its Article 23.I.

That it is also necessary to require, upon entry into the country, a sworn statement in which the foreigner states the reasons for their intent to enter the national territory and commits not to depart from them.

Comment: It would be important to finally incorporate the criterion of entry through Mercosur residence, in line with the current law and Mercosur-level treaties. South American nationals have the right to obtain a 2-year residence permit, and thereafter, permanent residence. Therefore, since they can reside based on their nationality, it is reasonable for them to be able to enter the country precisely to exercise that right.

That, for effective and correct implementation of the reform promoted by this decree, it is appropriate to provide the NATIONAL MIGRATION DIRECTORATE, a decentralized agency operating within the scope of the DEPUTY CABINET CHIEF'S OFFICE FOR THE INTERIOR of the CABINET CHIEF'S OFFICE, with the necessary tools to sufficiently control the legality of foreigners' presence in the territory.

That the amendments being promoted are aimed at ensuring that regularity and compliance with the minimum requirements for entering and remaining in the country are not mere declarations, but are effectively respected by those who choose to enter and remain in our territory.

That it is also appropriate to specify foreigners' obligations regarding the establishment of their domicile, and their duty to report any change and update thereof, and to incorporate the requirement to report an electronic domicile.

That the foregoing will allow for greater effectiveness in administrative and judicial processes, and will provide greater protection for the right to a defense of foreigners who have entered the country.

That, moreover, it is necessary to define the institute of preventive detention in order to ensure that expulsions can be carried out and that, during the appeals process for measures ordering the cancellation of residence or declaring a foreigner's presence irregular, that person does not flee or evade justice.

Comment: This issue is introduced without explaining at all what the current problem is with processing expulsion proceedings without in any way restricting migrants' right to personal liberty. What changes or new and urgent circumstances would justify proposing changes that lead to a restriction of liberty — specifically, detention — of migrants in the context of migratory proceedings?

That this does not mean turning the institute of preventive detention into a means of depriving an immigrant of liberty, contrary to the instrumental purpose of the measure. On the contrary, the aim is to guarantee compliance with an eventual expulsion, with strict respect for constitutional guarantees.

Comment: This is a euphemistic phrase that contradicts basic legal norms and principles. Detention or deprivation of liberty is thoroughly addressed in international norms and standards, and this kind of measure fits squarely within those categories.

That, likewise, it is necessary to modify the administrative procedure through which migration decisions are challenged.

Comment: Why? What is the problem with the existing procedure? A DNU must clearly demonstrate what those problems are and why addressing them requires an urgent regulatory reform that cannot be achieved through the legislative process established by the Constitution.

That the regulation provides for various avenues of appeal and extended time limits which, far from constituting a guarantee for citizens, have turned the procedure into a lengthy and unnecessary requirement that prevents the effective implementation of migration regulation.

Comment: What is the evidence for this? Who should be held responsible for these alleged difficulties? How do these alleged problems differ from those that may exist in other

administrative procedures? What would be the reason to change the rules in this case and not in others?

That, due to the nature of the matter and the situations covered by the procedure regulated by Migration Law No. 25,871 and its amendments, it is necessary to implement greater speed.

That the slowness of the processes leads to extreme and undesired consequences for everyone involved.

Comment: Is that due to the law or to shortcomings of the competent authorities? Should greater speed be achieved by strengthening the work of the agencies involved, or by cutting rights and guarantees recognized by law for every person in an administrative proceeding?

That, for the same reasons, with respect to the judicial venue, it is proposed that the direct appeal be filed before the Court of Appeals of the relevant jurisdiction, rather than before the Courts of First Instance that previously had jurisdiction.

Comment: Administrative Procedure Law (19,549) recognizes for every person the right to judicially challenge administrative acts affecting their rights, before courts of first instance, and the resulting appeals to higher instances. That right includes the right to a reasonable time frame for doing so and the right to challenge those decisions before various judicial instances. What would justify excluding migration proceedings from these rights? What would be the exceptional criteria that would deprive foreign nationals of their right to challenge State decisions affecting their rights, on equal terms as any other person affected by the decisions of authorities?

That the amendment being promoted does not diminish the affected parties' right to a defense, but rather, on the contrary, tends to provide them with more effective procedural tools to guarantee their rights and respect for a reasonable time frame.

Comment: This is false, since the DNU eliminates remedies recognized by law (both migration law and administrative procedure law) and legal remedies available to persons (shortening appeal deadlines and establishing other restrictions).

That, moreover, special emphasis should be placed on another of the main sectors affected by abusive migration practices: Argentina's public health system.

Comment: This sentence is entirely disconnected from reality and presents no argument (official statistics or otherwise) supporting it.

That due to the problems exhibited by health policies in some neighboring countries, it has become a common practice for citizens of those States to come to the ARGENTINE REPUBLIC with the sole purpose of accessing the public health system free of charge.

Comments: a) A serious and responsible analysis should explain these "problems" and their eventual impact on Argentina; b) This sentence is 100% discursive construction. If this reality

exists, it is essential to document and explain it. And from there, its handling is not a matter of migration policy, but of joint treatment by the States regarding health care, regional cooperation, the resources each State contributes to guarantee universal health care, etc.

That, on repeated occasions, this reaches such an extreme that immigrants enter Argentine territory, go directly to health facilities, and, once they have received the care sought, immediately return to their country of origin.

Comment: In addition to what was noted in the previous comment, this issue requires concrete data and, with it, coordinated proposals between Argentina and other States. In any case, this issue is separate from, and goes beyond, Argentina's policy on the treatment of migrants residing in the country.

That, likewise, a sustained increase has been recorded in foreign nationals entering the ARGENTINE REPUBLIC solely to access highly complex health services free of charge.

Comment: This is not substantiated; existing statistics disprove it, and, again, this is a separate debate requiring a different kind of treatment.

That another example of the abuse of rights that these phenomena entail is that of foreigners who enter the country and process their temporary residence not motivated by an intent to settle here, but in order to receive health care, often of long duration and potentially involving high costs for the jurisdictions involved.

Comment: Referring to "abuse of rights" is arbitrary, unjust, and biased. In addition, it disregards the multiplicity of factors driving migration, and leaves out the fact that migrants, like other inhabitants, also contribute to the health system, both locally and nationally.

That this influx of migrants driven by such objectives has generated an increase in the demand for care that health institutions must handle, affecting the quality of their service due to the obligation involved in allocating human and material resources to the care of these migrants.

That the proliferation of the conduct described above has profoundly affected the sustainability of our health system.

Comment: Once again, it must be noted that no data supports claims of this kind. This is an assertion with no argument of any sort.

That, in budgetary terms, according to the MINISTRY OF HEALTH, in 2024 consultations by immigrants in national hospitals involved an approximate expenditure of FORTY-TWO BILLION PESOS (\$42,000,000,000); while hospital discharges of foreigners during that period cost SEVENTY-TWO BILLION PESOS (\$72,000,000,000).

That, likewise, the aforementioned hospital discharges of foreigners constituted TEN POINT FIFTY-EIGHT PERCENT (10.58%) of the total discharges recorded.

Comments: This data, without much other information to complement it, is easily manipulated. What is missing, among other things: a) how much do immigrants contribute to public revenue in general, and to the health system in particular?; b) what does this DNU consider an "immigrant"?; c) what is the total cost of consultations at these same hospitals for the entire population of the country?; d) what is meant by hospital discharges?

That another consequence is suffered in the area of transplants. While our Nation has developed solid infrastructure in this respect, other countries in the region have notable deficits, which motivates foreign patients to seek solutions in our territory, without adequate mechanisms for subsequent clinical follow-up, traceability, or biovigilance, essential for the patient's survival.

Comment: This reference makes no sense in the DNU, for two reasons: first, because the decree's articles later make no reference to the topic at all. Second, because prior INCUCAI provisions already establish discriminatory conditions for migrants residing in the country who need to be added to the organ transplant waiting list (this unequal treatment does not apply to organ donation — there, no distinction whatsoever is made based on the type of temporary or permanent residence of migrants, even if their residence is irregular and they lack a national ID card).

That free access to Argentina's health system by migrants who have no interest in settling and developing in the country is not a beneficial practice for our society, nor does it find shelter in our Fundamental Law.

Comment: The reform affects free and equal access for various categories of migrants who reside in the country (whether regular or irregular). Many of them have been settled — many for numerous years — in Argentina, are part of society, work, have families, etc.

The issue of so-called "health tourism," by people who only come to receive care in hospitals and then return to their country of residence, is not a "migration" matter, that is, one concerning people who come to settle and/or reside in the country. In its case, once that phenomenon has been documented (rather than a rhetorical invocation as the DNU does, and as is often done in the media), a possible solution would lie in bilateral and regional agreements that, alongside the priority guarantee of the right to health and life of all persons residing in countries in the region, could establish mechanisms of reciprocal arrangements between States providing certain health services and other resources that can be provided by others with different capacities in that field.

That the NATIONAL CONSTITUTION does not shelter the conduct of those foreigners who access essential services to the detriment of the services provided to the inhabitants of this country, funded exclusively by the contributions the latter pay.

Comment: Regarding people who do not live in the country, see the comment on the previous paragraph. Moreover, this statement contradicts the reform imposed by the DNU, which affects access to essential services by various categories of migrants who reside in Argentina and contribute to those same services through their contributions. Migrants living in the country under the categories of temporary resident, "precarious residence" — awaiting a decision by the National Migration Directorate — or those in an irregular migratory situation

— in practically all cases, due to conditions of vulnerability — pay various taxes every day, including VAT, and contribute to public revenue through other means, for example, by generating wealth and contributing to different areas of the labor market. These categories of migrants are in no way excluded from the tax burdens borne by other inhabitants, and yet the DNU excludes them from free access to health and education rights.

That, therefore, it is appropriate to allow public health facilities to charge for services provided to those foreigners who do not permanently live in this Nation, but rather establish themselves in it temporarily.

Comment: "Temporary" is the category attributed to tourists. Migrants who have settled in the country are those in the "precarious," "temporary," "irregular," and "permanent" categories. The DNU violates the right to health on equal terms with any other inhabitant across all these categories, with the exception of "permanent."

That, however, for humanitarian reasons, health care must continue to be provided in emergency situations to those foreigners who entered the country irregularly or who do not hold permanent residence.

Comments: Two important issues arise from this aspect of the DNU. On one hand, this omits the situation of persons with regular residence in the "precarious" and "temporary" categories. Among these are, together with others who have migrated to and settled in the country, persons who have applied for asylum before the National Commission for Refugees (CONARE, who receive precarious residence while their application is processed), and those who have already been recognized as refugees (and receive an ID card as temporary residents).

The vast majority — if not all — of persons who have fled countries with armed conflicts or various forms of persecution and violence are not only in a situation where access to health care is essential (for example, mental health services), but also are in a state of vulnerability that makes it very difficult to bear the material costs that health services will incur following this unconstitutional and discriminatory reform. Migrants settled in the country who do not yet hold regular residence, or who have been unable to renew residence they once held, are in an equally vulnerable position.

On the other hand, it must be stressed that access to emergency health services is part of the human right to health and life. It is not a concession granted by the State for humanitarian reasons, but a legal obligation established by the National Constitution and the international human rights treaties ratified by Argentina and which hold equal constitutional status.

That the measure being promoted will benefit Argentine citizens as a whole, insofar as it will help decompress public health services and improve the health system's budgetary situation.

Comment: It is important to point out — based on evidence from countries that have implemented these regressive reforms excluding migrants from various health services, with the exception of emergency services — that these measures do not benefit the rest of the population in any way. On the contrary, exclusion from access to health services such as

primary care, preventive care, and ongoing care (non-emergency), not only directly violates migrants' right to health. It also affects the rest of the population in multiple ways, such as:

- a) increasing rates of contagion of various diseases that were circulating and could not be prevented or cured. This can affect the family group, neighbors, coworkers, and, in the case of children, classmates, or other passengers on public transport, among others;
- b) resulting in a higher prevalence of diseases that health policy seeks to eradicate or reduce as much as possible;
- c) making it more difficult for migrants to attend their workplaces due to a health problem that could not be prevented and/or treated in time by the relevant services;
- d) increasing demand on emergency services because people could not access primary or preventive care, and therefore their lives are at risk from serious but preventable diseases;
- e) multiplying the economic resources needed for emergency care compared to those that could have been used had equal access to preventive treatments been guaranteed (among others, vaccines, early cancer detection screenings — for example, cervical or colon cancer — detection of certain infections, reproductive health services — e.g., pregnancy monitoring — etc.).

That, ultimately, it is necessary to implement this measure in order to ensure that public health facilities can cover their expenses, preventing excessive demand for health services by foreigners from leading to a collapse of the system that would affect Argentine inhabitants.

Comment: The "inhabitants" of the country are not only Argentines, but also migrants. Moreover, linking the use of health services by migrants to an alleged "collapse" of the health system not only lacks any evidentiary basis in reality, but also contributes to stigmatizing migrants who are as much a part of Argentine society as those born here, amounting to an unquestionable expression of xenophobic character. This kind of language tends to fuel mistreatment or similar behavior in health services, and affects coexistence in societies that, like Argentina's, are made up of people born within its territory and those who arrived from other countries and settled there. Moreover, as explained in the comments on the previous paragraph, what could actually affect inhabitants (both Argentine and foreign) is precisely the exclusion of various categories of migrants living in the country from the health system.

That, likewise, it is essential to require foreigners entering the national territory to declare that they hold health insurance in order to cover their medical expenses in the country through it, which will help achieve correct implementation of the measure and ensure greater efficiency in the provision of health services.

Comment: Regulating the entry conditions of tourists is not a migration matter, that is, one relating to the entry and residence of persons migrating to the country with the intention of remaining there. Regulating it through this law contributes to conflating separate issues, resulting in a narrative that once again wrongly and baselessly links migration with structural

problems that the public health system may have — a consequence of its underfunding, among other reasons.

That, in this way, a legal reform will be advanced that coherently articulates the principles of equity of rights, sustainability of the health system, and protection of the rights of the Nation's inhabitants.

Comment: The DNU contradicts this claim, by establishing unequal and inequitable conditions for exercising the right to health, to the detriment of various categories of inhabitants of the country who also contribute to the health system, which in turn — as explained above — will affect public health policies, including their costs.

That a situation similar to that presented in the public health system occurs in public university education.

Comment: The only similarity is that the DNU establishes discriminatory provisions in both cases.

That for years an influx has been observed of foreigners entering the country and processing their residence for the sole purpose of studying, free of charge, undergraduate degree programs at public universities in the ARGENTINE REPUBLIC, because in their countries of origin university institutions are fee-based and have high costs, or have very limited spots for tuition-free access.

Comments: People migrate for various reasons, which may include — along with others — an interest in or expectation of continuing an education already begun in their countries of origin (in many cases, including undergraduate studies started before migrating). Claiming that everyone comes solely for this reason and because of the fee-based nature of higher education in their home countries is a mere rhetorical claim, unsupported by data. There is a wide range of motivations leading migrants to pursue an undergraduate or graduate degree.

Moreover, it should be added that many migrants residing in the country, after completing secondary school, access higher education through the same path as Argentine inhabitants. That is, "they did not migrate to study," but rather decided to study in the country in which they live.

Furthermore, it is very important to point out that the entry of young migrants into a country for the purpose of pursuing higher studies (undergraduate or graduate) is a positive phenomenon for the destination country. Numerous studies from different countries are conclusive that this represents an indicator of development and growth for the receiving country, benefiting from the personal, family, and state investment in education made in the countries of origin. This results in multiple positive impacts on the economy and a great number of areas of the labor market and social, economic, cultural, and scientific development, among others.

In this regard, the Argentine State itself, through the Ministry of Human Capital, recognizes this aspect. Indeed, it has promoted the Campus Argentina Global initiative, which promotes and supports the international exchange of university students

(<https://www.argentina.gob.ar/capital-humano/educacion/campusargentinaglobal>). The program's website lists dozens of programs (several of them publicly funded) that award various kinds of scholarships (including housing expenses in various cases) to people from different countries and regions to pursue undergraduate or graduate studies in Argentina (<https://www.argentina.gob.ar/capitalhumano/educacion/campusargentinaglobal/becas-argentina>).

That the number of foreign students at state university institutions has increased dramatically in recent years. In this regard, it grew from THIRTY-FIVE THOUSAND TWO HUNDRED AND TWO (35,202) foreign students in 2015 to EIGHTY-TWO THOUSAND SEVEN HUNDRED AND NINETY-SEVEN (82,797) in 2023, growth of more than ONE HUNDRED AND THIRTY-FIVE PERCENT (135%); while, during the same period, at private university institutions, the increase was FIFTY-EIGHT PERCENT (58%).

Comment: As noted above, this is a positive phenomenon for the receiving country, which is why it is explicitly promoted by the Argentine State through multiple initiatives, including financial support. It is therefore entirely inappropriate to refer to this data as "dramatic."

That, according to available data, in 2023 the UNIVERSITY OF BUENOS AIRES had THREE HUNDRED AND TWENTY-SIX THOUSAND FOUR HUNDRED AND TWENTY-ONE (326,421) undergraduate students, including THIRTY-EIGHT THOUSAND ONE HUNDRED AND EIGHTY-FIVE (38,185) foreign students.

Comments: This data does not reflect the full picture of statistics on higher education in Argentina at all. It is therefore a statistical excerpt that distorts the reality regulated by the DNU, affecting people, rights, and circumstances that complement those relating to the University of Buenos Aires.

First, statistics for the entire university student body across the country are omitted. That is, all public and private universities (including undergraduate and graduate programs), needed to understand the reality of university-level higher education with due accuracy — especially when reforming a law that restricts such an important right.

According to the 2023 Statistical Yearbook published by the Ministry of Human Capital, there are 2,011,498 undergraduate students at state universities (<https://www.argentina.gob.ar/educacion/universidades/informacion/publicaciones/anuarios>). Of these, 82,797 are foreigners. That is, 4.1% of the entire undergraduate population at state universities. That figure is slightly lower than the percentage of migrants in the country (4.2%). This underrepresentation is even greater considering that the migrant population is proportionally larger than the Argentine population in the age bracket that accesses university education.

Regarding state graduate-level university education (that is, fee-based), of a total of 134,505 people, 12,296 are students of other nationalities. That is, in the fee-based sphere of public university education, foreign nationals represent 9.1%. Therefore, proportionally to population figures, foreign nationals are over-represented by 120% relative to the 4.2% shown in the latest National Census.

Regarding private university education, out of a total of 555,753 undergraduate students, 26,092 are foreign nationals. In graduate programs, of a total of 40,081, the number of foreign nationals is 5,404. That is, in this fee-based area of higher university education, non-Argentine students represent 4.7% and 13.4% respectively. That is, they are once again over-represented in the sectors where studies are fee-based.

Another very important piece of data omitted by the DNU concerns official statistics on non-university-level higher education (SNU, Ministry of Human Capital, <https://data.educacion.gob.ar/nivel/superior>). In this area, there are 986,958 students in Argentina at this educational level. Of these, only 14,556 (1.5%) are foreigners. It is essential to bear in mind that the reform made by this DNU to the migration law (Art. 7), the higher education law (Art. 2 bis), and the national education law (Art. 143) also excludes this educational level from the right to free higher education on equal terms. This is so even though migrant inhabitants are underrepresented by 200% relative to the Argentine population (in relation to the 4.2% of migrants relative to the total population).

In conclusion, the data is compelling: in the areas of free higher education, migrants access it proportionally less than Argentines do. This gap increases (now, dramatically) in non-university higher education. On the other hand, in all state graduate-level and private — that is, fee-based — spheres, foreign students make a slightly or significantly greater contribution than the Argentine population.

That, in the period analyzed, the institution's total approximate expenditure was TWO HUNDRED AND FIFTY-FIVE BILLION EIGHT HUNDRED AND THIRTY-NINE MILLION SEVEN HUNDRED AND FIFTY-EIGHT THOUSAND ONE HUNDRED AND TWENTY-ONE PESOS (\$255,839,758,121), resulting in a cost per student of approximately SEVEN HUNDRED AND EIGHTY-THREE THOUSAND SEVEN HUNDRED AND SEVENTY-TWO PESOS (\$783,772), at 2023 values.

Comments: This statement presents many problems and omissions, which make this paragraph unquestionably irrelevant as an argument for restricting the right to higher education.

a) First, the comments made regarding the previous paragraph should be reiterated. From this it follows that these figures on UBA's expenses (beyond the need to corroborate them, given the distortion of statistics presented by this decree) indicate nothing about the reality of resident foreign nationals who are students at higher education levels;

b) It would be necessary to examine the "conclusions" drawn from this data. For example, to what extent should all University spending be measured as a cost proportionally attributable to students?

c) Regardless of the above points, the alleged cost per student indicates nothing about any negative impact resulting from migrants exercising the right to education. With this data, the government would appear to be suggesting that such expenditures were some kind of gift, handout, or humanitarian concession by the Argentine State to migrants residing in the country who wish to pursue higher education. That claim is utterly mistaken, for the following reasons:

d) It is essential to point out that — contrary to common xenophobic tropes, implicitly reproduced in the DNU and explicitly in statements by national authorities — migrants residing in the country, regardless of their years and type of residence, contribute daily to the public revenue necessary to sustain public education. Every inhabitant pays taxes in multiple ways, and that includes young people and migrant families living in the country. Housing rent, food consumption, transportation payments, wealth generated by part-time or full-time employment (and the taxes associated with formal employment, self-employment tax regimes, etc.), leisure and tourism activities, among many other forms, are only some examples.

e) To this must be added all the taxes paid by the entire migrant population residing — under any migration category — in Argentina. If we consider the underrepresentation in public university and non-university higher education, and the overrepresentation in other areas (public graduate programs, private education), it can be concluded, based on official statistics, that migrants living in the country proportionally contribute more than Argentine inhabitants to public revenue.

f) For all these reasons, the figures on expenditures mentioned are not only cut off relative to the total number of higher-education students, and disregard how the tax system works, but therefore describe reality by half: indeed, they conceal all the accounting that should be done to show all the revenue generated directly and indirectly by migrants residing in the country, including students.

g) To this must be added, as noted earlier, that at the same time the government presents these gross omissions and distortions — in its interpretation — of statistical data, it promotes public programs such as scholarships and other assistance to cover various expenses — for example, housing — for university students from other countries.

That, likewise, it should be noted that the number of foreign students stands out in careers that require costly human, technological, and infrastructural resources for their development. By way of example, the case of medical degrees at state-run universities may be cited, where, in 2023, more than TWENTY-FIVE PERCENT (25%) of students were foreigners.

Comments: Again, the data presented is characterized by serious omissions, such as the following:

a) the total number of undergraduate students in "health sciences" (medicine and others) at public universities amounts to 388,598. 10.9%, that is, 42,539, are foreign residents. In the private sphere, non-Argentine students amount to 13.7% of the total (13,334 out of 97,624).

b) At the graduate level, migrant students in health sciences reach 17.3% (4,726 out of 28,530), and at private universities, it reaches 20% (1,925 out of a total of 9,609).

c) From this data one can once again deduce the significant overrepresentation of foreign nationals in all fee-based sectors of higher education, in majors within the Health Sciences area. In some cases, this exceeds 300 or 400% relative to the percentage of migrants in the total population.

d) While, unlike the total figure for university students, in the case of these undergraduate programs at public universities, the number of foreign students reaches 10%, it is necessary to add other essential data. This is of the utmost importance for fully understanding this reality, even from the "economistic" perspective that follows the (biased, mistaken, deficient, and distorted) line of argument of the DNU.

a. According to the Ministry of Human Capital, as of 2024, of the total number of registered health-team professionals (435,318 people), 15.6% (68,000 professionals) are foreigners. That is, migrant workers (after completing undergraduate and/or graduate studies in the country or in their countries of origin) represent an extremely significant percentage of professionals in the Argentine health system. Their contributions to the system do not end with their tax contributions as residents of the country, but multiply through their own participation as professional providers of the system (doctors, nurses, etc.).

b. The same conclusions follow from data on people undergoing medical residencies (that is, who work for years at health centers). Between 2018 and 2024, of 73,669 people, 20.2% (14,289 people) were foreign residents — in the country and in the health system. (Ministry of Human Capital, Monitoring for the Analysis and Planning of Residency Actions.)

c. Ultimately, beyond the multiple tax contributions that migrants disproportionately make to the university system, it is important to bear in mind their contribution to the health protection of all the country's inhabitants through their significant participation at all levels of the Argentine health workforce.

That the existence of agencies and intermediaries abroad has been detected, offering their services to manage the procedures necessary for students to settle in the country, in many cases falsely claiming, through misleading advertising, agreements or cooperation arrangements with academic institutions.

Comment: What would be the relationship between the alleged existence of these agencies and the right of every inhabitant to higher education on equal terms? In any case, a majority percentage of migrants who study at a University have residence in the country based on articles of the migration law and international treaties — such as the MERCOSUR Residence Agreement — that is, independent of their status as students.

That, by Article 75, section 19 of the Supreme Law, the NATIONAL CONGRESS is charged with "Enacting organizational and basic laws on education... that guarantee the principles of tuition-free and equitable public state education and the autonomy and self-governance of national universities."

That, in keeping with this constitutional mandate, the first paragraph of Article 2 bis of Higher Education Law No. 24,521 and its amendments establishes that "Undergraduate studies at state-run higher education institutions are free of charge and entail a prohibition on imposing any type of levy, fee, tax, tariff, or charge, direct or indirect, on them."

That the aforementioned rule is consistent with Article 7 of Migration Law No. 25,871, which guarantees that "In no case shall the irregular migratory status of

a foreigner prevent his or her admission as a student in an educational institution."

That the current regime leads to the absurdity of guaranteeing free access to public universities for immigrants who have entered or remain in Argentine territory irregularly.

Comment on the preceding four paragraphs: Indeed, as the first three paragraphs explain, by constitutional mandate every person living in the country has the right to access higher education free of charge, and the migration and higher education laws reaffirm this principle of equality and expressly prohibit any discrimination or unfavorable treatment based on nationality, type of residence, or migratory status. The government's only "argument" (sic) for violating these constitutional and legislative provisions would seem to be that it finds it "absurd," because these people would be in an irregular migratory situation (which represents a mere administrative status, causing no harm, no victims, or other negative impacts).

That is, a subjective opinion, evidently ideological in character, seeks to place itself above the principle of equality and non-discrimination, which is the backbone of the international human rights law system built by States since 1948. The National Constitution, the treaties ratified by Argentina — of equal status — and the migration and higher education laws enacted accordingly, are being discarded by the government. This is an explicit disregard for the constitutional framework, through a DNU that, as rhetorically as it is ignorantly, invokes Juan Bautista Alberdi in order to deny rights to immigrants who, regardless of the type of formal residence they hold, live, work, and pay taxes in the country.

It should be added that the DNU, by restricting the right to higher education recognized in the Constitution and the aforementioned laws, affects not only those who would be in an irregular migratory situation, but also migrants with regular residence in various categories, such as precarious and temporary. To this must be added that, beyond what is established in the migration law, those enrolling in university studies must submit — upon enrollment or within a formally brief period — the national ID card proving their residence in the country. The Argentine government surely knows — and in any case, has an obligation to know — that university institution regulations establish these conditions. That is, there are no university students in an irregular migratory situation.

Consequently, these paragraphs are, in effect, a confession that proves the unconstitutionality of this restriction on the right to higher education. If the "absurdity" is migratory irregularity, and beyond the true absurdity of attempting to violate the National Constitution based on a blinkered opinion opposed to the principle of equality, what would be the argument for violating Art. 75.19 of the Constitution and the migration and higher education laws, regarding those who hold regular residence under various categories other than permanent? The answer is simple: there is no argument whatsoever; it is an unconstitutional reform.

That the seriousness of the aforementioned circumstance is apparent when one considers the large number of irregular immigrants found in the national territory.

Comment: This is, simply, a lie. There is not, in Argentina, a "large number of irregular immigrants." Precisely the current law, reformed by this unconstitutional DNU, is one of the main reasons for the (here too) "dramatic" decline in migrants living in the country in an irregular migratory status. It was the previous law (22,439, in force from 1981 to 2003) and its application by the DNM that were the main factors leading to the (yes, dramatic) increase in migratory irregularity, which would gradually be resolved through the application of Law 25,871 from 2004 onward.

There is no data or evidence whatsoever indicating that there is currently a large number of migrants in that situation. To illustrate the carelessness with which the government tries to present a nonexistent reality, it is enough to note that the press release issued on May 14, 2025 — accompanying the presidential spokesperson's announcement of the imminent migration reform — mentioned that over the last twenty years 1,700,000 people entered the country irregularly. Considering that, according to the National Census (data as of 2024), there are 1.9 million foreign nationals residing in the country, the outright falsity of the figure included in the statement is undeniable. If it were true, that would mean that in 2005 there were fewer than 200,000 foreign nationals in Argentina, which would imply the nonexistence of 90% of the migrant population that — as official statistics show — resided in the country at that time.

It is unacceptable — legally, politically, and morally — to attempt to reform a national law, violating rights, with statements so blatantly disconnected from reality and existing official data. It is an absolute affront to society's common sense, to basic aspects of the republican system, democracy, and the rule of law that has prevailed in our country for more than 40 years.

That the principle of free tuition for university studies enshrined in our legal system seeks to ensure that those who live in our territory can access quality education, regardless of their socioeconomic situation.

That, as noted, Article 75, section 19 of the NATIONAL CONSTITUTION establishes not only the principle of free public education, but also, together with it, the principle of equity.

That it is inherent to equity and reasonableness that those who come to our country solely to pursue university studies contribute to the National University System through payment of a fee, especially considering that they have not had to bear a tax burden similar to that of Argentine citizens and permanent resident immigrants.

Comments: In the comments on other paragraphs, it was demonstrated precisely — on one hand — that migrants contribute like any other inhabitant to the public revenue that funds the higher education system. It was shown with statistics that they do so proportionally more than inhabitants of Argentine nationality. Therefore, in the opposite sense of that statement, it is migrants who bear disproportionate burdens or contributions relative to the rest of the population.

How does it differ whether people hold permanent or, for example, temporary residence? Is the tax burden different? Are those who hold an ID card as temporary residents for years

exempt from VAT, from the simplified tax regime, or other tax burdens? The answers are a resounding no. So, what kind of equity are these paragraphs referring to? To what extent would equity be the legal or moral basis for promoting unequal treatment between inhabitants of the same country, between people who contribute to the public revenue used for services aimed at guaranteeing rights to the entire population? If equity is intrinsically linked to social injustices — a concept expressly abhorred by the government — how would excluding certain inhabitants of the country from education — often people in vulnerable situations — be a logical path toward equity? Nothing could be further from the truth, especially when it is attempted on the basis of biased, distorted, and incomplete data, as well as subjective opinions wielded to expressly evade constitutional obligations.

It is — another — "absurdity" that "reasonableness" is also invoked. Basic legal knowledge would lead one to understand that "reasonableness" and its opposite, "arbitrariness," are key to applying the principle of non-discrimination. Every single comment made so far, regarding the preceding paragraphs of the DNU, leads to the inescapable conclusion that this distinction in the right to education in no way survives the so-called "reasonableness test," and is therefore arbitrary and unconstitutional.

That the regime being promoted highlights a rule as basic as it is overlooked: the fact that the legal system establishes that our higher education system is public does not mean that no one should bear the costs of funding it.

Comment: This statement is as astonishing as it is legally irrelevant. As already demonstrated, Argentine and foreign inhabitants contribute to the revenue that sustains public services such as education. Moreover, people who have come to reside in Argentina from other countries contribute disproportionately more to the higher education system, taking into account official statistics in all relevant areas.

That, on the contrary, the education system, like the health system, being public, is financed by each and every inhabitant of this Nation who contributes to the tax system through payment of their tax obligations.

Comment: Exactly, by "each and every inhabitant," that is, regardless of nationality and type of residence.

Likewise, it is important to stress that the exercise of rights recognized for every person (in international treaties) or every inhabitant (National Constitution) is independent of tax behavior. If that were not so, would people who have evaded tax obligations, for example, through capital flight to undeclared tax havens, or through undeclared assets in violation of their respective tax obligations, have to be excluded from these rights?

That it is publicly and notoriously known that sectors linked to education have organized public demonstrations demanding greater resources for universities.

Comment: Precisely because the problems of underfunding in higher education have nothing to do with migrants — on the contrary, as already explained — but rather stem from political decisions implemented by different Argentine governments. Specifically, by the very government promoting this unconstitutional reform, which seeks to present the migrant

population as the scapegoat for decisions that are severely affecting the state higher education system.

That, in light of the foregoing, it is necessary to implement a measure that, without jeopardizing fiscal balance, allows national universities to cover their expenses and ensure the proper functioning of the education service.

Comment: This reform has no bearing whatsoever on fiscal balance, and even less will it generate a fiscal benefit. While the DNU's supposed intent is to collect some revenue — in both education and health matters — this, if it occurred, would in no way translate into any economic or fiscal improvement. In this regard, it should be noted first that these "charges" would constitute the imposition of a double tax burden on the migrant population, and therefore discriminatory treatment, both of which are prohibited by the National Constitution. Furthermore, as already noted, this reform will bring various harms to the living conditions of migrant persons and families — and from there, to other people and social, labor, and other sectors.

With respect to education, it should be noted that the potential imposition of tuition fees for undergraduate programs at state universities would reduce the number of migrant students living in the country or intending to (it has already been noted that the State itself encourages, promotes, and financially supports the entry of students from other countries). This would reduce the percentage of inhabitants who access higher education, an outcome that would benefit no society, now or ever. To claim otherwise is to categorically disregard the function of education in general, and of higher education in particular. It is alarming that the National State itself is proposing such an "absurdity" (yes, applicable here too).

Therefore, it is clear that the proper functioning of the education service will not be achieved through this reform, but rather by addressing the real problems existing in this area. That is, by fulfilling what universities, students, and the general population have been systematically demanding from the Argentine State.

That, likewise, the policy to be urgently implemented for this purpose should not be a temporary measure, but a means to cover university expenses in the short and long term.

Comment: Indeed, there are urgencies in higher education, but they have nothing to do with migration. The reform the government should have — and still should — implement without delay is in that area, as has been massively demanded on numerous occasions in the last year, including through laws that were formally vetoed by the Executive Branch. Nothing about this change will improve higher education; on the contrary, as argued with (real and complete) data, legal grounds, evidencing fallacies, contradictions, and distortions in this DNU, and explaining multiple aspects of the negative impact of this reform on various public policies.

That authorizing the charging of university education fees to foreigners who do not hold permanent residence will allow national universities to sustainably cover part of their expenses, in a manner equitable toward Argentine citizens.

That this measure will also enable better use of public resources which, rather than being allocated to fund the education and health of foreigners who do not plan to remain in our territory once they have completed their studies, would be used to improve the lives of taxpayers.

Comments on the two preceding paragraphs: a) To claim that charging migrant students residing in the country will improve universities, education funding, and the proper use of public resources is simply an insult to intelligence and to any data relating to the education system, migration policy, the tax model, among others; b) an equitable model, in line with the Constitution and the objectives of education policy, is one that guarantees rights and opportunities on equal terms to all inhabitants, Argentine and foreign;

c) this charge, as already noted, amounts to a double tax burden. Or will the government propose a reform to exempt from VAT and all tax burdens those inhabitants with precarious, temporary residence, or who do not yet hold regular residence?

d) All of these people are also taxpayers, but in these cases the DNU will worsen their living conditions, without that in any way improving the conditions of other inhabitants.

e) what data does the government have on migrant students who "do not plan to remain in our territory once they have completed their studies"? Are there statistics, estimates, or at least predictions or forecasts regarding students' intentions upon finishing their studies? In any case, again, every day spent in Argentine territory by resident students studying at university, they contribute through taxes to its funding.

That this is especially important considering that the ARGENTINE REPUBLIC is undergoing a process of economic stabilization, following the crises suffered in previous years.

Comment: It has already been explained in detail how this reform does not in any way contribute to increasing public revenue. On the contrary, as noted with respect to health, it could result in a "dramatic" increase in the resources needed as a consequence of the health exclusion of various categories of migrants who are inhabitants/residents of the country.

That, however, the charging of fees for health and education services must safeguard the rights of those foreigners who live in our territory with the aim of establishing a life plan there.

Comment: This statement directly contradicts the reform made by the DNU, which excludes — on equal terms — numerous foreign nationals who live in our territory and have established a life plan there from access to health and education services.

That, to them, the NATIONAL CONSTITUTION places them on an absolutely equal footing with Argentine citizens with respect to civil rights.

That, in this regard, those foreigners who hold permanent residence will be able to access university education and the public health system under the same conditions as nationals.

Comment: These statements continue to disregard the different residence categories of the country's inhabitants, who are likewise included in the equal footing established by the National Constitution. At no point does the Constitution refer to which residence category is or is not entitled to such equality. This is a mere discursive and political construction made by this DNU precisely with the aim of disregarding and failing to comply with that constitutional mandate.

That, finally, it is imperative to proceed with a modernization of Citizenship Law No. 346 in order to strengthen standards of security, efficiency, and transparency in naturalization citizenship applications, as well as a better use of existing resources in the various spheres of the NATIONAL STATE.

Comment: As will be seen from here on, the DNU provides no data or argument regarding the "imperative" nature of, much less through a DNU, reforming Law No. 346. It is a clear outrage against the basic rules of the rule of law and the republican principle of separation of powers to attempt to reform a national law by presidential decree with such a total absence of any kind of argument.

That, unlike over 150 years ago, when the aforementioned law was enacted, access to nationality and, consequently, to the Argentine passport, involves multiple security aspects that must be addressed, whether due to internal matters or commitments assumed by the ARGENTINE REPUBLIC internationally.

Comment: The only security-related issue connecting this DNU to access to nationality is the risk expressly created by the decree itself, by creating a system of "sale of Argentine citizenship." With the sole requirement of paying a certain sum of money, this system could result in a genuine security problem, attracting "investments" — in exchange for Argentine nationality — that could be a vehicle for various forms of crime (such as money laundering, corruption, etc.). In this regard, among many other reports and evidence on the matter, it is recommended to read the report on the "Misuse of Citizenship and Residency by Investment," published by FATF and the OECD.

That the global mobility enjoyed by Argentine citizens is currently an invaluable asset held by few countries in the world. In this regard, whoever holds an Argentine passport can enter more than ONE HUNDRED AND SEVENTY (170) countries without a visa.

That, for this reason, it is necessary to modify the circumstances under which Argentine citizenship can be obtained, in order to improve security measures and prevent any risk of its abusive use.

Comment: These paragraphs are striking, since the reform, on one hand, creates obstacles to accessing nationality for people who live in the country, who are a daily part of the economy, the labor market, culture, and every other aspect of our society. And on the other, it promotes a program to grant citizenship in exchange for money to people who are not even required to have spent a single day residing in the country.

That, otherwise, abuses will continue to be recorded that result in a concrete impact on the interests of Argentine citizens, due to the loss of value of their citizenship relative to other nations.

Comment: No evidence or data whatsoever is presented regarding these alleged "abuses." Data is not even provided on how many people residing in our country have applied for nationality, what some of the challenges might be, or any other relevant aspect.

On the contrary, the "citizenship for sale" system created by the DNU could promote a wide range of abuses, both to benefit from the aforementioned "invaluable asset" and to evade criminal liability for various crimes that this reform could facilitate.

That, for the purposes indicated, it is essential that the NATIONAL MIGRATION DIRECTORATE, a decentralized agency operating within the scope of the DEPUTY CABINET CHIEF'S OFFICE FOR THE INTERIOR of the CABINET CHIEF'S OFFICE, be responsible for granting citizenship, since it will be able to properly verify the appropriateness of the grant in each specific case.

That it is entirely unreasonable for an administrative procedure such as the granting of citizenship to remain within the jurisdiction of the JUDICIAL BRANCH OF THE NATION, which entails allocating resources that could be used to fulfill that Branch's specific functions.

That this amendment will result in greater efficiency, security, and transparency in migration procedures, as the applicant's entire history will be unified within a single agency, reducing discretion in decisions and facilitating access to citizenship processing.

Comments on the three preceding paragraphs: the transfer of this procedure from the judicial branch to the executive branch would not, a priori, indicate an advance in terms of security, efficiency, and transparency. The DNU provides not a single piece of data or argument on the matter; it merely makes an assertion.

In this regard, it is important to note — at least to promote a serious and responsible debate on this amendment — that the National Migration Directorate is an institution that has, at various points in recent decades, faced numerous challenges regarding transparency, corruption, and discretion turned into arbitrariness. Reports of corrupt collusion between officials and a network of intermediaries are just some examples of illicit and arbitrary activities during various administrations that have run the DNM.

Without prejudice to the problems that could be attributed to the Judicial Branch — some serious and structural — the DNU makes not the slightest effort to justify this change. Based on the aforementioned precedents, and alongside the concern over the possible effects of the "citizenship for sale" program, it would not be far-fetched to suspect possible increases in situations of corruption and discretion, resulting in genuine harm to the citizenship system (rather than the supposed problem that the DNU presents — and does not explain — regarding the current system for granting Argentine nationality to people who have resided in the country for several or many years).

That, moreover, it is necessary to clearly establish when a foreigner's residence in the country is understood to have been continuous, and, consequently, when that person is entitled to apply for Argentine citizenship.

That it is appropriate to limit the cases in which citizenship may be granted without the applicant proving residence in the country, in order not to allow this power to be used for political purposes.

That, under the circumstances described in the preceding recital, it is appropriate to ensure access to citizenship for those who make a significant investment in the country.

Comment on the three preceding paragraphs: The DNU's double standard on citizenship: new restrictions for people who live in the country and contribute to it in multiple ways (taxes, work, etc.). On the other hand, exemption from requirements for people who do not live in the country, in exchange for a sum of money.

That, likewise, it is appropriate to grant the MINISTRY OF ECONOMY the power to determine, using objective criteria, when an investment in the country qualifies, due to its significance, for access to citizenship.

That this measure will incentivize investment and job creation in our country, ultimately benefiting all Argentines, and will help the growth and reconstruction of this great Nation.

Comment: Under the guise of a supposed interest in preserving Argentine citizenship, the DNU puts it up for sale. By stripping it of all political, social, cultural, and historical value, this reform turns Argentine nationality into a mere commodity subject to commercial transaction.

That, given the particular characteristics of this measure being promoted, it is appropriate to create a specialized agency for the exclusive purpose of evaluating citizenship applications based on the making of a significant investment in the ARGENTINE REPUBLIC.

Comment: In a DNU that cuts rights of the country's inhabitants under the "argument" of an eventual — but nonexistent — reduction in public spending, a new state agency is created — in a context of the closure of multiple agencies that carried out important work in various areas — for the system of buying and selling Argentine citizenship.

That this measure will foster investment in our Nation and promote openness and integration with the world, together with the other policies implemented by the National Government to achieve those goals.

That the regulation of access to citizenship directly impacts the greater or lesser freedom Argentines have to engage with the rest of the world, so it must be safeguarded in the best possible way.

Comment: For Argentines and for those persons who purchase nationality, regardless of whether those people had any prior connection to the country — not even having lived a single day within its territory.

That, in conclusion, the migration situation, both internal and external, has resulted in a clear risk for all inhabitants, which requires urgently making use of all the tools our constitutional system provides in order to remedy the situation.

Comment: The conclusion could not be more emphatic: there is no risk whatsoever to the country's inhabitants connected to "the migration situation." The DNU fails to present any argument, of any kind, in this regard.

That the ARGENTINE REPUBLIC has always been and will continue to be a Nation open to immigration, which does not mean that it must reach the unreasonable extreme of having to neglect the people who inhabit our soil.

Comment: On the contrary, the DNU expressly neglects many people who inhabit our soil, by excluding them from basic services that are rights recognized for all inhabitants.

That the risks arising from inadequate migration regulation are serious and affect all Argentines.

That one need only look at the current situation of irregular immigrants in our country, who, in a context of illegality, benefit from the rights recognized to them in our Nation, at the expense of the country's inhabitants.

Comment: It is impossible to "look at" that situation, since the DNU says or provides nothing on the matter. On the contrary, it disregards the fact that the reality is the opposite, and precisely thanks to the application of Law 25,871, which the DNU comes to tear apart based on prejudice, distortion of data, and a stigmatizing, criminalizing, and exclusionary approach.

That the current global context reveals a new risk for Argentine society which, if its migration regulation is not urgently updated, will suffer the impact of the crises affecting other States.

Comments: Between prophecy and futurology, and proposing to reform a law by a Decree of Necessity and Urgency, there is an insurmountable contradiction.

That the exceptional nature of the situation described makes it impossible to follow the ordinary procedures set forth in the NATIONAL CONSTITUTION for the enactment of laws.

Comment: It has been thoroughly demonstrated through these comments that the DNU did not present a single piece of evidence of the supposed existence of an "exceptional circumstance" making it impossible to comply with the National Constitution.

This DNU, its very existence and its content — from beginning to end — represent an absolute disregard for the rule of law in force in our country (violating various constitutional norms), for the republican principle of separation of powers (failing to fulfill the duty to resort to the legislative arena), and for the democratic system (by reforming a law — of this importance — in an autocratic, quasi-monarchical manner, without any social or political dialogue whatsoever).

Part II. Analysis of the articles of the DNU that reform the migration law

This section aims to complete the arguments and reflections made in Part I of these comments on DNU 366/2025, which, in an unconstitutional, arbitrary, and anti-democratic manner, reformed Migration Law No. 25,871, as well as certain aspects of Citizenship Law No. 346, Higher Education Law No. 26,206 (*sic* — see *note below*), and National Education Law No. 24,521. In this second part we will analyze how many other laws — not mentioned in the DNU — have also been affected (and therefore tacitly reformed), constituting an extensive list of "collateral regulatory damage."

The first part of the comments focused on analyzing the recitals of the DNU, aiming to demonstrate, paragraph by paragraph, the absolute absence of grounds validating this reform, much less through an Executive Branch decree. This second part is dedicated to examining each of the DNU's articles, in order to analyze and explain all the legal aspects of the unconstitutionality of these provisions, based on the various constitutional rights they violate, the discriminatory and arbitrary criteria they include, and the absence of any element of reasonableness that might allow them to be recognized as legitimate regulations of the exercise of human rights recognized for all inhabitants of the country by the National Constitution and international treaties of equal status.

As in the previous document, and to facilitate the line of argument of this document in relation to what is established by the DNU, the comments are presented following each paragraph of the Decree. The text of the DNU is in black, and the comments presented here are in red.

DNU 366/2025, operative section

Therefore, THE PRESIDENT OF THE ARGENTINE NATION, WITH THE GENERAL AGREEMENT OF MINISTERS, DECREES:

TITLE I

AMENDMENT TO MIGRATION LAW No. 25,871 AND ITS AMENDMENTS

ARTICLE 1. — Article 6 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 6. — The State, in all its jurisdictions, shall ensure equal access for immigrants to the same conditions of protection, shelter, and rights enjoyed by nationals, in accordance with the rights and obligations corresponding to each

migratory category, particularly with respect to social services, public goods, health, education, justice, labor, employment, and social security."

Comments:

This amendment is unconstitutional. The rights mentioned are rights guaranteed to every inhabitant by the National Constitution (Arts. 16, 20), as well as by international treaties of equal status (Art. 75.22), such as the International Covenant on Civil and Political Rights (regarding the right to justice), the International Covenant on Economic, Social and Cultural Rights (social services, health, education, labor, employment, and social security), and the Convention on the Rights of the Child (social services, health, education, social security, employment — of working age).

These are human rights held by every person; a State cannot — much less by decree — decide which human right (that is, held by every person) will correspond to each migrant depending on the migratory category they hold (precarious, temporary, permanent, irregular). Under that logic, another DNU could establish new conditions for recognizing these rights based on, for example, the province in which they reside, the self-employment tax category in which the person is registered, or which soccer club they support.

These rights cannot be regulated based on a person's migratory category. For example, how could it be justified that a person can bring a claim before the courts and enjoy the same standing as any other person, depending on whether their ID card says "temporary" or "permanent"? If they were in the process of applying for residence before the DNM — and thus holding regular "precarious" residence — why could their access to justice be restricted? Nor would this be justified in the case of a person residing in the country but who does not yet hold an Argentine ID card. That administrative irregularity cannot exclude a person from the justice system.

Regarding employment, Article 16 of the Constitution establishes equality in access to employment on the basis of suitability. The DNU, arbitrarily, adds another factor — the type of residence held by a migrant living in the country regularly.

In legal terms, evaluating a clause suspected of violating the principle of non-discrimination requires analyzing to what extent it would be reasonable to establish distinctions or preferences with respect to the conditions of exercising those rights (justice, employment). In terms of a public policy regulating the justice system and the right to access it, what objective would be achieved by treating people living in the country differently based on their type of residence? What benefits or positive results would follow from establishing different conditions for exercising that right? If there were any positive result directly derived from that unequal treatment, could it be achieved without resorting to such a distinction? These are the kinds of questions that must be asked to determine whether a provision of a law (or a decree or other regulation) establishes a reasonable and necessary difference in treatment or, on the contrary, unreasonable, arbitrary, and therefore unconstitutional discrimination.

The same analysis must be applied to employment. Restricting the right to work based on a migrant's type of (regular) residence in the country — what legitimate objective would this pursue, in order to be considered reasonable and non-discriminatory? The application of the current migration law — and even the previous one from the last military dictatorship, in

force until 2003 — always allowed people to work from the day they held any type of regular residence, that is, precarious residence. The effects of this policy are thoroughly documented in terms of promoting labor market insertion, facilitating access to formal employment, and preventing or reducing the risks of labor informality and its effects — precariousness, exploitation, and other abuses. Therefore, changing this policy and establishing restrictions on the right to work depending on the type of regular residence held, what legitimate objective would this serve?

The recitals — which have been exhaustively analyzed in the first part of these "comments of necessity and urgency" — say absolutely nothing about these rights — nor about social security and public goods. Where, then, would the grounds for amending Article 6 come from? And what factors would justify this reform being made through a DNU? It is absolutely null and void to discriminatorily restrict the exercise of constitutional rights protected by treaties of equal status, without dedicating a single line of the decree's recitals to explaining what the grounds for such an amendment would be. By doing so through a Decree, bypassing the legislative process required by the Constitution, that nullity is scandalously absolute and unconstitutional.

Finally, it should be added that, with respect to the rights to employment, justice, social security, and public goods, the DNU does not even define what the amendment would consist of. It merely arbitrarily determines that equal treatment will depend on the migrant's category. Eventually, if the DNU is not repealed or declared unconstitutional, as it should be — by Congress and the courts respectively — one will have to wait for the implementing decree to find out whether new discriminatory provisions are included. Regarding the rights to education and health, the unconstitutionality of the reform is analyzed in the following paragraphs.

ARTICLE 2. — Article 7 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 7. — Foreigners shall have the right, even if their migratory status is irregular, to be admitted as students in an initial, primary, or secondary educational institution, whether public or private, national, provincial, or municipal, and their migratory status may not be grounds for any discrimination. The authorities of educational institutions shall provide guidance and advice regarding the procedures for regularizing migratory status."

Comments:

¹ These comments can be found at:

https://www.linkedin.com/posts/pablo-cerianicernadas544985300_comentarios-urgentes-y-necesarios-sobre-el-activity-

The DNU removes from Article 7 the principle of equality in access to free education, specifically with respect to tertiary and university levels. This amendment violates the following articles of the Constitution: equality before the law (16), equality between national and foreign inhabitants and the prohibition on forced contributions (20), the right to education guaranteed by international treaties of constitutional status (75.22), and the principles of

tuition-free access and equity in access to state public education, including university education (75.19).

The right to higher education is recognized in the Universal Declaration of Human Rights (with constitutional status) on the basis of the principle of equality for all persons (Article 26.1). Likewise, Article 13.c of the International Covenant on Economic, Social and Cultural Rights (also of constitutional status) recognizes this right on the basis of equality and accessibility for every person.

In this way, the DNU excludes from free tertiary and university education migrants in various residence categories, particularly those holding "precarious residence" and "temporary residence." It should be noted that people can remain in these categories for many years, always being inhabitants with regular residence in the country. It should also be added that these categories include people who have migrated to the country and are asylum seekers (precarious residence) or have already been recognized as refugees (temporary residence). That is, without even naming this reality, the DNU also alters the regulations governing the rights of migrants in these situations (Law 26,165 on refugee protection — which, incidentally, was also arbitrarily and unconstitutionally reformed through DNU 924/2024). In this way, people who fled armed conflicts and various forms of persecution, with the aim of seeking protection in Argentina and integrating into its society, find themselves excluded from equal access to the various academic offerings of public higher education.

Beyond the evident contradiction between the DNU and constitutional rights, it is appropriate to examine whether the restriction on this right has any element of reasonableness and legitimacy. Since this right is guaranteed by the Constitution to every inhabitant on equal terms, what arguments would there be for setting aside this constitutional criterion and establishing distinctions based on the type of residence held by the person? In the comments on the first part of the DNU, I analyzed the lack of substance in the statements made in the decree's recitals, as well as the crude distortion of statistics it presents on each area of higher education in the country (through a selective excerpt that is drastically different from the complete official data on the presence of foreign resident students in all tertiary and university education in Argentina).

Likewise, a comment should be made regarding the "equity" invoked in the DNU's recitals to contradict the equality in the free access to higher education required by the Constitution. In the Decree, equity is invoked in an attempt to validate unequal conditions in the exercise of this right. Indeed, contradicting the basic meaning of the principle of equity, the DNU invokes the difference (between nationals and migrants) to propose unequal treatment that will act as a factor of exclusion.

It cannot in any way be accepted that one (equity) be invoked to deny the other (equality), as it would grossly pervert the meaning and goals pursued by each of those principles. And it does so, as explained in detail in the first part of these comments, through mere assertions that lack any support, particularly through an entirely mistaken analysis of the tax system — claiming that immigrants do not pay taxes like any other inhabitant, as a key contribution to public education at any level. This is without prejudice to the fact that equity, in regulating the exercise of a right, in no way refers to whether a person pays more or fewer taxes, but rather — as noted — to the objective of ensuring equality.¹

¹ It suffices to read any of the many reports by UNESCO and other specialized institutions on the meaning and purpose of equity in access to education and in education policies, to note the absurdity of the argument invoked in the DNU to justify the unequal treatment it imposes.

The inequality in tertiary and university education imposed by the DNU will likely reduce the number of foreign inhabitants who can effectively access these educational levels. This directly contradicts the true meaning of the "Principle of Equity." Indeed, this principle stresses the importance of taking differences into account, precisely in order to guarantee equal opportunity, and not the opposite. Equity, inclusion, and equality are complementary principles that reinforce one another.

The complementary and coherent interpretation between equality and equity is reinforced by what is established in the Constitution, which sets them out as criteria for guaranteeing free public education at all levels (Art. 75.19). In this regard, and again applying the "reasonableness test" required by the principle of non-discrimination, various aspects of the constitutional text and other laws convincingly demonstrate the unreasonable — and therefore arbitrary and discriminatory — nature of the amendment made to Article 7 of the migration law.

Article 75, section 19, before establishing free higher education on the basis of equality and equity, enshrines the objectives of "providing what is conducive to human development, to economic progress with social justice, to the productivity of the national economy, to job creation, to the professional training of workers, to defending the value of currency, to research and to scientific and technological development, its dissemination and use... [and] Providing for the harmonious growth of the Nation and the settlement of its territory." The guarantee of equality in education is undoubtedly consistent with these objectives, and, on the contrary, unequal treatment and consequent exclusion from education go in exactly the opposite direction.

The same conclusions follow from reading other parts of the Constitution: Art. 75.23 refers to "legislating and promoting affirmative action measures that guarantee real equality of opportunity and treatment, and the full enjoyment and exercise of the rights recognized by this Constitution and by the international human rights treaties in force..." And the following section (75.18) establishes the objective of "providing what is conducive to the prosperity of the country... and to the progress of enlightenment, by enacting general and university instruction plans, and promoting... immigration."

Continuing with the analysis of the public policies affected by the amendment to Article 7 of the migration law, in order to determine whether the restriction on the right to education is reasonable and legitimate, or arbitrary and discriminatory, it is worth bearing in mind the following aspects, both in migration and education matters.

The equality set out in 2003 in the migration law was, in turn, in line not only with constitutional precepts but also with other initiatives in migration policy and migrant integration that the Argentine State continued to reaffirm from that point until the present. The MERCOSUR Residence Agreement, signed in 2002 and approved by Law No. 25,903 (2004), establishes in Article 9 that "Nationals of the Parties and their families who have obtained residence [including temporary and permanent] under the terms of this Agreement

shall enjoy the same civil, social, cultural, and economic rights and freedoms as nationals of the receiving country."

Countless declarations and other commitments by the Argentine State over the past 20 years have repeatedly reaffirmed the importance of guaranteeing, on equal terms, migrants' right to education as a key element of inclusion and integration. As a recent example, it is worth highlighting the "South American Migration Plan Toward Integration 2035,"² adopted at the 22nd South American Conference on Migration (Bogotá, December 2024) by the States of the region, including Argentina.

² South American Migration Plan Toward Integration 2035. 22nd South American Conference on Migration. "Toward migration governance that promotes integration, development, and guarantees the rights and dignity of migrants," December 5, 2024. Available at https://www.csmigraciones.org/sites/default/files/2024-12/Plan%20Suramericano%20de%20Migraciones%20hacia%20la%20Integraci%C3%B3n%202035%20CSM_1.pdf.

There, Argentina committed to "Facilitate the integration of migrants," through "Portability of rights," including "facilitating access to social protection and security systems, housing, health, education." In this regard, the States referred "to the social inclusion of migrants and the importance of ensuring access to education, health, employment, decent housing conditions, and justice under the same conditions as nationals in the host country, regardless of their origin, nationality, or administrative migratory status." Finally, they committed to "Strengthen South American identity through universal access to education, free academic mobility, and cultural exchange."

The recognition of migrants' right to higher education, on equal terms, and its importance, is also reflected in education regulations. In the first part of the analysis of the DNU, I introduced several aspects and data on the importance the Argentine State itself places on access to higher education by students from other countries. I refer readers to that document to avoid repeating them here. To this must be added the regulatory elements governing education in Argentina.

Higher Education Law No. 24,521, also reformed by DNU 366/2025, establishes in Article 2 that the responsibility of the National State — and the provinces and CABA — is to "Guarantee equal opportunity and conditions in access, retention, graduation, and completion in the different alternatives and educational trajectories at this level" (emphasis mine). That is, one basic element of the State's responsibility is precisely to ensure equal conditions of access to higher education.

Likewise, National Education Law No. 26,206 — also affected by the DNU — provides in Article 1 that its purpose is to regulate "the exercise of the right to teach and learn enshrined in Article 14 of the National Constitution and the international treaties incorporated into it, in accordance with the powers conferred on the Honorable National Congress in Article 75, sections 17, 18, and 19." Article 4 reaffirms the State's responsibility to "provide comprehensive, ongoing, quality education for all inhabitants of the Nation, guaranteeing equality, tuition-free access, and equity in the exercise of this right, with the participation of social organizations and families." Article 11 includes among the aims and objectives of

national education policy "ensuring quality education with equal opportunity... ensuring conditions of equality, respecting differences among persons without allowing gender-based or any other type of discrimination [and] Guaranteeing everyone access to, and the conditions for remaining in and completing, the different levels of the education system, ensuring the free provision of state-run services, at all levels and modalities."

The law is unequivocal about the scope of the right to education at all levels, for every inhabitant of the country, under conditions of equality, including free tuition. The mere assertions of the DNU — more befitting a social media post than a legitimate, responsible, and serious exercise of State functions — do not constitute the slightest argument that could pass a reasonableness test justifying unequal treatment that contradicts every precept of the Constitution, various national laws, and international commitments assumed by the Argentine State. To validate this course of action would be to ignore every principle of legal interpretation, disregard elementary aspects of the process for developing regulations to guide public policy, and erase from the root the rules on regulatory hierarchy stemming from the National Constitution and international treaties.

Finally, some specific comments should be made on non-university higher education. The reform to Article 7 also eliminated, as noted, equal conditions in tertiary education. In the DNU's recitals, the Executive Branch did not take the trouble to explain — even in a single line — why this change restricting equal access to the right to education at this educational level would be justified. This omission alone should invalidate this aspect of the reform. It is unacceptable for a law to be reformed by DNU, restricting a fundamental human right, without including a single reason for that amendment. This arbitrariness is compounded — as in the other cases — when we examine what is established by the regulations governing the right to study at this level of higher education.

As with the refugee law — as explained above — the Technical-Professional Education Law No. 26,058 (2005) is among the "collateral regulatory damage" of DNU 366/2025, as it has been amended without any effort being made to acknowledge or justify that change. In Article 3, this law defines technical-professional education as "a right of every inhabitant of the Argentine Nation." Once again, education is a universal right recognized for all persons living in the country, with no distinction based on residence category.

The exclusion or distinction imposed by the DNU on this right is patently discriminatory, and its unreasonableness is reaffirmed upon reading the objectives of the technical-professional education law. Article 4 establishes that this education "promotes in people the learning of capacities, knowledge, abilities, skills, values, and attitudes related to professional performance and professionalism criteria appropriate to the socio-productive context." Articles 6 and 7 include among its purposes: "Foster increasing levels of equity, quality, efficiency, and effectiveness of Technical-Professional Education, as a key element of strategies for social inclusion, development, and socioeconomic growth of the country and its regions, technological innovation, and the promotion of teaching work" (...) "Contribute to the comprehensive development of male and female students, and provide conditions for their personal, occupational, and community growth (...) Develop systematic training processes that link study and work, research and production, theoretical-practical integration in training, civic education, general humanistic training, and training related to specific occupational fields. d) Develop professionalization trajectories that guarantee students access to a base

of professional capacities and knowledge enabling their entry into the world of work, as well as continued lifelong learning."

An analysis of each of these provisions, together with others included in this law, allows one to conclude that establishing unequal conditions for access to tertiary education expressly and unequivocally contradicts the objectives of this regulation and the principles that should govern the conditions for exercising this right. The reasonableness test is thoroughly failed; that is, the amendment to Article 7 is arbitrary and unconstitutional.

ARTICLE 3. — Article 8 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 8. — In cases of emergency, access to social assistance or health care may not be denied or restricted to any foreigner who requires it, regardless of migratory status.

Foreign permanent residents may access the public health system on equal terms with Argentine citizens.

Outside the circumstances established in the preceding paragraphs, health facilities administered by the NATIONAL STATE shall provide medical treatment or routine health care only upon presentation of health insurance or prior payment for the service, in accordance with the conditions established by the MINISTRY OF HEALTH."

Comments: As with the right to education, this amendment, which violates the right to health, contradicts multiple constitutional provisions guaranteeing that right and other related rights — such as the right to life — to all inhabitants of the country.

The right to health is guaranteed to every person under the jurisdiction of each State, without any discrimination, in various human rights treaties with constitutional status (Art. 75.22). Among them, Article 12 of the International Covenant on Economic, Social and Cultural Rights, Article 25 of the Universal Declaration of Human Rights, Article 24 of the Convention on the Rights of the Child, and, among others, Article 10 of the Protocol of San Salvador.

Article 8 of the migration law approved in 2003 established the prohibition on denying or restricting "in no case, access to the right to health, social assistance, or health care to any foreigner who requires it, regardless of migratory status." The DNU, on the contrary, restricts these rights only to migrants who hold permanent residence, thereby excluding all other people residing in the country under other residence categories.

That is, people who live, work, and study (including children) in Argentina, and who came to the country years — or few years — ago for different reasons, for example, having applied for asylum and been recognized as refugees, are left out of the universal health system, at least until they reach permanent residence status. Their equal access — free access, among others — with the rest of the country's inhabitants is suspended by decree until they eventually, at some undetermined future time, manage to obtain that type of residence — which may never happen, since the requirements to access that category are also being reformed. In the case of asylum seekers and refugees (who do not yet have the years

required to obtain permanent residence), this health exclusion expressly violates Article 51 of Law 26,165.

The exclusion of various categories of migrants from equal access to all health services — except in emergencies, which will be discussed further below — is a measure contrary to every one of the most elementary aspects of the human right to health. It also, as will be explained, runs counter to all central objectives of public health policy, and may therefore generate numerous setbacks and serious problems in the indicators and outcomes of those policies.

Regarding the elements that make up the right to health, it is worth citing the articles of the main international treaties in this area (both, it bears repeating, of constitutional status).

Through Article 12 of the ICESCR, States recognized every person's right to "the enjoyment of the highest attainable standard of physical and mental health," and, specifically, to adopt measures to ensure that right, including: the reduction of stillbirth rates and infant mortality, and healthy child development; the prevention and treatment of epidemic, endemic, occupational, and other diseases, and the fight against them; and the creation of conditions to assure medical service and medical attention to all in case of sickness.

Likewise, in Article 10 of the Protocol of San Salvador, States committed, to make this right effective, to guarantee: primary health care, understood as essential health assistance made available to all individuals and families in the community; the extension of the benefits of health services to all individuals subject to the State's jurisdiction; total immunization against major infectious diseases; and the prevention and treatment of endemic, occupational, and other diseases.

That is, the right to health, on one hand, is guaranteed to all persons under the jurisdiction of each State — such as Argentina — to every individual in the community (the residence category being clearly irrelevant to this end). On the other hand, this includes all health services, particularly primary and preventive services. And finally, this guarantee of universal access to all health services is inextricably linked to ensuring public health objectives — disease prevention, reduced morbidity, etc.

These three dimensions — universality, accessibility, goals — are reaffirmed in each and every health law currently in force in Argentina, which — it should be added — join the list of "collateral regulatory damage" of DNU 366/2025.

The health exclusion imposed by the DNU affects the Vaccine-Preventable Disease Control Law No. 27,491 (2019). This law, in Article 7, provides that the vaccines in the National Vaccination Schedule "are mandatory for all inhabitants of the country," with vaccination being "a preventive and highly effective public health strategy" (Art. 2). The law also establishes that vaccination is a "social good, subject to the following principles: a) Free provision of vaccines and access to vaccination services, with social equity at all stages of life." It is beyond dispute that every aspect of this law is affected by DNU 366/2025, as it removes part of the population from free vaccine access, disregarding its character as a social good and the fundamental importance of universal access.

Meanwhile, the purpose of Law 26,657 on the Right to Protection of Mental Health is "the right to protection of the mental health of all persons, and the full enjoyment of the human rights of persons with mental disabilities found within the national territory, as recognized in international human rights instruments of constitutional status" (Art. 1). This universal scope is also reflected in Article 2 of the Humanized Childbirth Law No. 25,929 (2004), as well as in the Sexual and Reproductive Health Law No. 25,673 (2002), which creates the National Program for Sexual Health and Responsible Procreation.

Article 3 provides that this program "is aimed at the population in general, without any discrimination."

Examining the objectives of this law also reveals the unreasonable — and therefore arbitrary and discriminatory — nature of the health exclusion imposed by the DNU. Among the objectives of the program are: achieving for the population the highest attainable level of sexual health and responsible procreation so it can make decisions free from discrimination, coercion, or violence; reducing maternal-infant morbidity and mortality; preventing unwanted pregnancies; promoting adolescent sexual health; and contributing to the prevention and early detection of sexually transmitted diseases, HIV/AIDS, and genital and breast diseases (Art. 2). The discrimination generated by the DNU could seriously undermine each of these goals, resulting in the opposite effects, with all the implications this may have for public health, living conditions of the population, and even public spending for care of the emergency cases that could result from these exclusions.

Along this same line of analysis, it is worth focusing on the impact of this health exclusion on children and adolescents. The Comprehensive Protection of the Rights of Children and Adolescents Law No. 26,061 establishes in Article 28 the principle of equality and non-discrimination for access to all rights, including health. According to Article 14, "children and adolescents have the right to comprehensive health care, to receive necessary medical assistance, and to access on equal terms the services and actions of prevention, promotion, information, protection, early diagnosis, timely treatment, and recovery of health."

For its part, the Convention on the Rights of the Child (also of constitutional status) provides (Art. 24) that States must "strive to ensure that no child is deprived of his or her right of access to such health care services. (...) and, in particular, shall take appropriate measures to: a) Diminish infant and child mortality; b) Ensure the provision of necessary medical assistance and health care to all children, with emphasis on the development of primary health care; c) Combat disease and malnutrition within the framework of primary health care (...) d) Ensure appropriate pre-natal and post-natal health care for mothers; (...)."

From these legal obligations it follows not only that the Argentine State is obligated to guarantee this right to every child, but also the importance of primary health care services to ensure this right and meet health and child welfare goals. The health exclusion imposed by the DNU particularly affects these aspects, by denying universality and restricting access to this kind of core health care services for the population in general, and children and adolescents in particular.

Migrant children and adolescents, regardless of their migratory category, cannot in any way be excluded or restricted from access to these services. Reaffirming this standard, in Joint General Comment No. 23 of the Committee on the Rights of the Child and No. 4 of the

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2017), the Committees stressed the following: "All migrant children should have the same access to health care as nationals, regardless of their migration status. This includes all health services, whether preventive or curative, and mental, physical, or psychosocial care provided in social or health care institutions" (para. 55).

The exclusionary, arbitrary, and discriminatory character of the DNU regarding access to health, in seeking to grant a kind of preferential treatment to Argentine-nationality inhabitants (under the mistaken argument that only they pay taxes), can even lead to absurd situations. For example, while migrant adults (with temporary residence, or another non-permanent status) will not be able to enjoy health services on equal terms, their children born in the country (Argentines) will be able to. It is not hard to see why this could also affect the rights of these "Argentine" children. The Committees mentioned above therefore stressed that these services must also be ensured for all migrants (para. 58).

DNU 366/2025 says nothing about its impact on all health laws, the rights they guarantee, and the fundamental social goals they seek to achieve. As highlighted in the first part of these comments, the decree's recitals are limited to presenting distorted and manipulated data, together with phrases or slogans more suited to a social media comment than serving as serious arguments to justify a legislative reform (by decree) that can have a profound and severe short- and long-term impact, affecting not only migrants and their families, but all of society and core aspects of public health policy, including its financial dimension.

The latter is linked to what is established in the DNU regarding "in cases of emergency, access to social assistance or health care may not be denied or restricted to any foreigner who requires it, regardless of migratory status." Limiting equal health care to various categories of migrants living in the country to emergency services only reveals a profound misunderstanding of public health policy, including its economic dimension, which is meant to sustain the services aimed at guaranteeing the right to health and, thereby, meeting the objectives of those policies.

Indeed, excluding primary care, prevention, and disease treatment services can severely affect the development of diseases that could have been prevented — at practically negligible cost in most cases. If those diseases, in turn, have modes of transmission and contagion, the effects on other people — and on the health system — multiply. This is without considering the multiple dimensions — for example, attending work, school, etc. — that could be affected by the transmission or increase of various diseases, mild or serious. All of this, in turn, could have a serious impact on emergency services, with a consequent increase in the expenses required to ensure treatment of those cases.

This kind of analysis is part of the serious and responsible assessment a State should carry out when evaluating a regulatory framework that could impact the exercise of a right such as health — by all or part of the population. This is the basic, unavoidable assessment for properly examining whether we are facing reasonable or arbitrary measures. In this case, the conclusion is emphatic: the health exclusion imposed by DNU 366/2025 is categorically discriminatory, and does not pass, even in the slightest, the reasonableness test that must be applied based on the rules of the rule of law and the regulations — especially of constitutional rank — that make it up.

Finally, given that in the DNU's recitals the Executive Branch also invokes the concept of equity in an attempt to justify the health exclusion, it is worth referring back to what was said about the true meaning of the principle of equity in discussing the right to education.

ARTICLE 4. — Article 20 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 20. — Foreigners shall be admitted to enter and remain in the country under the categories of 'permanent residents,' 'temporary residents,' or 'transitory residents.'

The NATIONAL MIGRATION DIRECTORATE shall determine the feasibility of changing the category or subcategory under which foreigners were originally admitted.

Once the corresponding procedure has begun and until it is resolved, the Enforcement Authority may grant an authorization for 'precarious residence,' which shall be revoked by that authority when the reasons that were taken into account for its granting no longer apply. Its validity shall be for up to NINETY (90) consecutive days, and it may be renewed by reasoned decision of the aforementioned migration authority.

The residence referred to in the preceding paragraph shall authorize its holders to remain, leave, enter, work, and study during its period of validity within the national territory.

The extension and renewal of 'precarious residence' does not create a right to a favorable decision on the admission requested, nor does it constitute valid residence for the purposes of establishing rootedness [*arraigo*], necessary to obtain permanent residence, or to acquire nationality by naturalization."

The changes to this article are as follows: 1) it adds the power of the DNM to accept or reject a change of category; 2) it halves the validity period of precarious residence (from 180 to 90 days); 3) it establishes that time spent under precarious residence does not count toward establishing rootedness or acquiring nationality.

Comment on point 1: Over the last four decades, the possibility — or lack thereof — of changing category (e.g., from transitory to temporary, from irregular to regular in any category) has played a central role in the decrease or increase of the number of people in an irregular migratory situation.

During the de facto Law No. 22,439 (1981–2003), that change was subject to the discretionary decision of the DNM, a power that was used with a restrictive, selective criterion and, in numerous cases, through irregular — if not outright corrupt — practices, in collusion with certain intermediaries. This resulted in a substantial increase in the number of people in an irregular migratory situation, faced with the impossibility of covering costs, meeting unreasonable requirements, or as a result of arbitrary or unreasonably restrictive decisions. It did not reduce immigration; it only increased irregularity.

On the contrary, since the passage of Migration Law 25,871 (2003–2025), and regardless of differences between the various administrations running the DNM, facilitating category changes and reducing the discretion of the migration authority contributed — together with the application of other provisions of the law, also affected by the DNU — to a dramatic reduction in the number of inhabitants in an irregular migratory situation. It did not increase migration; it only decreased irregularity.

Category change is and has been — in Argentina and many other countries — one of the main forms of "regular pathways," that is, mechanisms that facilitate access to regularization or the continuity of regular residence, thereby preventing a transition to, or continuation in, irregular status. Within the framework of the Global Compact for Safe, Orderly and Regular Migration, the Argentine State has committed to promoting and facilitating regular migration pathways, including migratory regularization. Likewise, within the framework of the South American Conference on Migration and other regional processes, Argentina assumed a commitment to facilitate migratory regularization, as a key tool of migration policy.³

³ See, among others, IOM (2025). Human mobility regulations of the States of the region in light of the principles, objectives, and plans adopted at the South American Conference on Migration. Available at <https://publications.iom.int/books/las-normativas-de-movilidad-humana-de-losestados-de-la-region-laluz-de-los-principios>.

Despite this evidence and the State's multiple commitments in this area, the changes introduced by the DNU appear to follow the logic in force under the Videla-era law. This article, together with others discussed below, could contribute to the start of a regressive period characterized by an increase in migratory irregularity, arbitrary administrative decisions due to improper use of the discretion granted, or even an increase in corrupt practices through that same discretion. To this must be added the legal uncertainty that could be generated by changes in priorities and approaches that each DNM administration might make in exercising this discretionary power.

Comment on point 2: Likewise, during the period the migration law imposed by the last military dictatorship was in force, the validity period for precarious residence was 90 days. The DNM in turn required the payment of a fee for its quarterly renewal. Both aspects also contributed to the increase in migratory irregularity. Periodic renewals and the expenses each one required — together with DNM delays in resolving residence applications — meant that many people could not continue and complete these procedures, leaving them in an irregular situation.

In 2003, upon recognizing the harm generated by these administrative practices — including those mentioned in point 1 — reference was made to a "state factory of migratory irregularity." That is, irregularity as a consequence of DNM's actions, and not due to a person's unwillingness, much less any intention to evade the law (the DNU once again introduces this mistaken, stigmatizing, and criminalizing view of migratory irregularity).

The DNU's requirement for quarterly renewal, as well as fees that could be imposed for each renewal — which, for now, are not being imposed — could contribute, on one hand, to once again starting a process of generating migratory irregularity. On the other, a greater need for

third-party assistance could once again give rise to forms of abuse and deception against migrants, as well as corrupt practices.

Comment on point 3: Precarious residence is a regular category that a person holds while their residence application is being processed by the National Migration Directorate. This is a person living in the country in a regular manner. There is no identified reason why this time of residence — during which the person lives, works, studies, or engages in other activities like any other inhabitant — should be disregarded, as though it did not exist.

To this must be added that, due to bureaucratic issues or administrative inefficiency, this period may extend for several months or even longer than a year or more. Why, then, should the Administration's delay be used to affect the conditions and duration of a person's residence in the country, and the various rights whose access depends on the length of residence? Likewise, it is worth asking what legitimate interest would be protected by disregarding — through a fiction created by Decree — that period of regular residence. To what extent would society and the State benefit or be protected by slowing down the process of a person's rootedness and integration in the country? Especially considering what was noted regarding restrictions on health and education, when that dilution of rootedness would prolong the exclusion from basic rights. Could the explanation lie in the mistaken interpretation — as explained — that cutting those rights would be not only legitimate and non-discriminatory, but also beneficial to the country and society, as well as a reduction in public spending?

The same applies regarding the denial of that period for purposes of meeting the time required to apply for Argentine citizenship (nationality). In this regard, it is worth recalling what the Supreme Court held in the *Ni I-Sing* case (2009): "[T]here are no elements allowing one to conclude that the categories established under the migration law are determinative in configuring residence as a fundamental requirement for obtaining citizenship by naturalization." Finally, it is very striking that the DNU, on one hand, disregards this period of regular residence for purposes of applying for citizenship. And on the other, as we will see further on and as explained in the first part of these comments, creates a system of "citizenship for sale" (formally called "citizenship by investment") that will grant Argentine citizenship to people who have not spent a single day residing in the country previously.

ARTICLE 5. — Article 22 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 22. — Any foreigner who, with the intent of settling permanently in the country, obtains admission in that capacity from the NATIONAL MIGRATION DIRECTORATE, shall be deemed a 'permanent resident.'

When processing the residence application, the applicant must prove that he or she has sufficient financial means to support himself or herself in the country, and has no criminal record that could motivate rejection of the application, all in accordance with the conditions established by regulation.

Children of native-born, naturalized, or by-option Argentine parents who were born abroad shall be recognized as permanent residents. The authorities shall allow their free entry into and stay within the territory."

a) Comments on the changes for obtaining permanent residence:

Until the DNU, in practice, but also based on the provisions of Article 22 of Implementing Decree No. 616/2010 of the Migration Law, the transition from temporary to permanent residence was made based on the length-of-stay criterion and the associated concept of rootedness. Specifically, after 2 years for people from MERCOSUR (or Associate) countries, and 3 years for everyone else.

Legally, it is important to note that this article remains in force — since the Regulation is not automatically repealed by amending law articles, at least until the regulation is amended or unless the law article expressly contradicts it, which is not the case here. If the DNM were to interpret it as no longer in force, or if a new regulation eliminated those references to the time period for accessing permanent residence, when could permanent residence be accessed? From what point could a person apply for it? This gap should reinforce the argument for maintaining the criterion established in the Regulation approved in 2010. To this end, it is important to stress that the transition to permanent residence after 2 years of residence is recognized under the Mercosur Residence Agreement, ratified by Argentina.

Beyond this question of time periods, other problems lie in the additions made by the DNU. In particular, the requirement to prove sufficient financial means to acquire permanent residence. Here, a criterion linked to living conditions is introduced, whereby a person who has already lived in the country for several years could be excluded from regular residence. Argentina is a country with periodic crises caused by the policies implemented by various governments — particularly, the very same one that has approved DNU 366/2025. The Argentine State has failed to comply with basic legal human rights obligations, especially economic and social rights (work, working conditions, among others). Structural aspects and political decisions have determined, for decades, that a significant percentage of the population is deprived of adequate living conditions, including access to decent, stable employment.

Migrants not only bear no responsibility whatsoever for this, but on the contrary, find themselves — in their capacity as inhabitants, that is, as members of Argentine society — among the population affected. To this must be added, as thoroughly demonstrated by evidence on immigration in the country — or anywhere else — that "subsequent irregularity"⁴ is a factor contributing to generating or increasing conditions of vulnerability — including a reduction in "sufficient financial means." Therefore, access to a residence permit, its renewal, and its stability (through permanent or long-term residence) are essential to preventing or minimizing those effects as much as possible.

⁴ "Subsequent irregularity" refers to the situation of a migrant who, holding regular residence, subsequently falls into an irregular migratory status. In practically all cases, this is due to political decisions, either through regulations or decisions by the migration authority or related bodies. An example is the present case, in which a regulatory reform can be the determining factor causing people to fall into an irregular migratory situation, by being unable to meet requirements incorporated by that reform.

For these reasons, the requirement included in this article will provide no solution whatsoever in cases where resident migrants are in a socioeconomically vulnerable

situation. On the contrary, it could, on one hand, deepen that vulnerability, and on the other, generate a series of negative consequences impacting various public policies (employment, social inclusion, among many others).

At this point it is also worth cautioning about how this reform — if actually implemented and without considering the criterion established in Implementing Decree 616/2010 — could affect people the Argentine State has recognized as refugees under Law 26,165. Article 22.e) of the regulation expressly includes refugees among the categories eligible for permanent residence with the mere passage of time, based on their country of origin as noted above (2 years Mercosur, 3 years for others).

It is worth asking: could socioeconomic status result in the migratory irregularity of refugees? If so, to the effects already discussed one must add the violation of Article 52 of Law 26,165, and consequently, a violation of commitments assumed by the Argentine State through the 1951 Geneva Convention and the action plans adopted under the Cartagena Process.

In the case of refugees, mention should also be made of the requirement incorporated regarding the absence of a criminal record for obtaining permanent residence. What would happen if that record is precisely linked to the persecution in the country of origin suffered by the person recognized as a refugee? This, again, would entail a violation of legal obligations regarding refugee protection.

Finally, in all cases, it is important to link these new requirements to the restrictions on the rights to health and education discussed above. Indeed, if these requirements result in migratory irregularity, or even in an extension of the temporary residence category, this will result in the continuation of health exclusion, as well as the impossibility of pursuing tertiary or university studies on equal terms. In a viciously circular way, this could deepen the conditions of vulnerability that would be taken into account to prevent access to permanent residence.

b) Comments on "family reunification" (sic):

A first comment on this issue concerns the continued misuse of the concept of "family reunification." In this regard, I will address this in the following point, relating to Article 6 of the DNU. Therefore, this comment refers exclusively to the change made by the decree with respect to family ties that provide access to permanent residence.

The DNU recognizes the right to acquire permanent residence for "the children of Argentines... born abroad." The original wording of the migration law also considered as permanent residents the "spouse, children, and parents" of persons of Argentine nationality (regardless of place of birth). Therefore, the DNU not only removes the criterion of being the spouse and parent of Argentines, but also that of children born in the country. In the next point we will see that these people would instead obtain temporary residence.

A first comment on this amendment would note the superfluous nature of examining what the grounds might be for introducing this reform through a DNU. This is because it is absurdly evident that none exist. In fact, in the decree's recitals no effort was even made to try to argue why this change was "necessary" and "urgent," which alone would be enough to establish its absolute nullity.

Second, precisely given this argumentative void, one might ask about the reasons that would justify this change, or the objectives the Decree would seek to achieve. While the DNU automatically grants permanent residence to the child — of an Argentine — born abroad (beyond having a right to nationality), it denies that residence category to the father or mother of a child of Argentine nationality, or to the child whose father or mother is Argentine. Thus, the DNU introduces a priority based on *jus sanguinis*, but, strangely, only for cases of persons born abroad. That criterion does not apply to that same tie (filiation) in the case of persons residing in the country, even though what is precisely being regulated is the resident status of the person living in the country.

With this preference, and beyond the fact that we are discussing residence and not nationality, Argentina incorporates a criterion that is as regressive as it is nineteenth-century and paradoxical. Regressive, because of the exclusion of various direct ties recognized under the law. Nineteenth-century, because it prioritizes lineage as many countries did back then. And paradoxical, because that prioritization is selectively based on the criterion traditionally used by European countries (Italy, for example), instead of the one Argentina has implemented practically since its origin as a Nation-State: that is, recognizing rights associated with ties based on both *jus sanguinis* and *jus solis*.

The effects of this distinction introduced by the DNU are multiple, including the violation of various basic rights — among them, obviously, the right to family life, as well as the rights of children. To analyze this impact more clearly, it is more appropriate to do so in the comments on the following article — given their complementarity.

ARTICLE 6. — Section ñ) is incorporated into Article 23 of Migration Law No. 25,871 and its amendments as follows:

"ñ) Family reunification: being the spouse, parent, or unmarried child under EIGHTEEN (18) years of age not emancipated, or an older child with a disability, of a native-born, naturalized, or by-option Argentine; or being the spouse, parent, or unmarried child under EIGHTEEN (18) years of age not emancipated, or an older child with a disability, of a permanent or temporary resident, with authorization to remain in the country for a maximum period of THREE (3) years or for the period of time authorized for their temporary resident relative, renewable, with multiple entries and exits. In granting this, the migration authority shall take into account the scope of the right to family reunification established by Article 10 of this law."

a) Comment on temporary residence for family reasons:

The DNU replaces permanent residence with temporary residence of up to 3 years, renewable, for spouses, parents, or minor children of persons of Argentine nationality. This establishes a system for granting temporary residence that is as confusing as it is troubling.

Confusing, because it is difficult to understand how this article will coherently combine with the previous one, that is, with the regulation of the conditions for accessing permanent residence. We noted there that, legally, the 2- and 3-year temporary residence criterion (Art. 22, Decree 616/2010) would remain in force for now. Therefore, in the case of nationals of Mercosur States with any of these family ties to an Argentine person, they should in no case

need more than 2 years to obtain permanent residence. Otherwise, we would have the absurd situation of parents, spouses, or children of Argentines needing more time in temporary residence than people who lack those ties.

This regulatory confusion would not be resolved by an opposing interpretation, that is, considering that the Regulation has been repealed — or eliminating it in a future regulation. That is, removing the time-based — rootedness — criterion for obtaining permanent residence. If that were the case, we would be facing an unreasonable and inexplicable logic that would yield no positive result in any dimension, and this reform would result in the violation of rights and many other harmful effects. In this regard, one should ask: What legitimate objective would be achieved by requiring direct relatives of Argentine citizens to periodically renew their temporary residence? What benefits would this bring to migration policy, Argentine society — which includes those relatives of "temporary" residents — or to public policies in other areas?

If, due to an interpretation — of the time periods or requirements for obtaining permanent residence — people with temporary residence were unable to access it, we would face 2 possible scenarios, both negative: the first, the extension — for an uncertain period — of the temporary residence category. Although this circumstance would be harmful for any migrant — even more so, given the restrictions on rights based on migratory category created by the DNU — it is especially serious — and unreasonable — when it impacts the right to family life, given its noxiously multiplying effect on many other rights. One only has to imagine the impact on the living conditions of children — for example, of Argentine nationality, by birth in the country — whose parents are excluded from health services and equal access to higher education, or between spouses (one Argentine or a permanent resident, the other not). For these and many other similar situations, what would be the positive and reasonable contribution of the DNU? Following the mistaken and biased logic of the decree's recitals, would people of Argentine nationality — such as the children in this last example — actually benefit from these corollaries of these regulatory amendments?

The same conclusion is reached in the second scenario, that is, if the person fails to renew their temporary residence and falls into an irregular status. In this case, however, the consequences are even more harmful. If the person — spouse, child, or parent of an Argentine person — were to fall into an irregular migratory situation, in order to analyze the reasonableness of these measures, it is essential to ask some questions: What measures would the National Migration Directorate adopt? Would it expel these people, based on the change made to Art. 25 of the law? What legally protected interests would be served by such a response, separating parents from their children, or spouses from each other? And what would be achieved by making it more difficult to renew residence or access permanent residence based on the right to family life?

Just to think of a few practical cases — among many possible ones — would expelling the parent improve the living conditions and comprehensive development of their children? Would it help them fulfill their protection, care, and development responsibilities under the Convention on the Rights of the Child? Applicable international standards are clear on this point: the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, in their authoritative guidelines on this matter, stated:

"The separation of the family unit through the expulsion of one or both parents based on a breach of immigration laws related to entry or stay is disproportionate, as the sacrifice inherent in the restriction of family life and the impact on the child's life and development is not outweighed by the advantages obtained by forcing a parent to leave the territory because of a breach of immigration rules. Migrant children and their families must also be protected in cases in which expulsions constitute arbitrary interference with the right to family and private life. The Committees recommend that States facilitate avenues for the regularization of migrants in an irregular situation who reside with their children..." (Joint General Comment No. 4 CMW and No. 23 CRC, para. 29)

b) Comment on the concept of "family reunification":

Beyond the countless procedural and substantive aspects that make DNU 366/2025 unmistakably unconstitutional, a reform to the migration law could have been an opportunity to correct a major error in the original wording of Law 25,871. I refer to the incorrect references to the right to "family reunification" (Articles 10 and 29) when the law, in reality, is regulating the human right to family life (which includes, in certain circumstances, the right to family reunification). Indeed, international treaties recognize the right of every person to protection of family life. In particular, the Convention on the Rights of the Child specifies — as specific elements of that right — the child's right to not be separated from their parents (Art. 9) and the right to family reunification (Art. 10).

Why is making this clarification important? Precisely because in cases where the right to family life is at stake, it is essential, and legally mandatory, to apply the rules that recognize it, together with the interpretive principles for its application, and the international standards developed on the matter by the competent bodies.

The right to comprehensive protection of family life is expressly recognized in the National Constitution (Article 14 bis) and in international human rights treaties of equal status (Article 10 of the International Covenant on Economic, Social and Cultural Rights, Articles 17.1 and 19 of the American Convention on Human Rights, Article 23 of the International Covenant on Civil and Political Rights). Its protection is also among the central objectives of the Migration Law itself, which in Article 3 establishes that: "The objectives of this law are: [...] d) To guarantee the exercise of the right to family reunification (...)," from which it follows that the State cannot and must not enact measures or take actions that violate this protection. In a regressive fashion in recent years, and particularly through the changes introduced by DNU 366/2025 to Art. 29 — and, as we will see later, Articles 62 and 63 — the regulation of the "waiver" is clearly unconstitutional.

Unfortunately, this original error in the law was drastically compounded by a literal, restrictive, and therefore unconstitutional interpretation, both by the National Migration Directorate and — even more seriously — by the Supreme Court of Justice itself. In an article analyzing this issue in detail, we explain the illegitimate conduct of the country's highest court, in literally applying this mistaken wording, without even considering how the right at stake is protected by various clauses of constitutional status. The Convention on the Rights of the Child and central international standards for analyzing these cases, including

the limits on the DNM's powers based on the right to family life, have been ignored as if they did not exist, thereby flagrantly failing to comply with these legal obligations.

Indeed, the fact that this aspect was not addressed when reforming the law is an indicator of the ignorance — and therefore contempt — for the rights at stake in the realm of migration policy. Hence the DNU not only maintained the mistaken name for the right at issue, but also worsened its lack of protection through the amendments it introduced. This is confirmed for at least two reasons: first, by eliminating various family ties from the categories for accessing permanent residence. In this way, as already noted in the previous point, the DNU disregards the inexhaustible amount and diversity of evidence on the relationship between regular (and time-stable) residence and the protection of family life, and many other interdependent rights, including the right of children and adolescents to protection and comprehensive development.

Second, as explained in more detail further below, when analyzing the changes to Articles 29 and 62 of the migration law, "family reunification" (sic) was formally made subject to administrative discretion as a priority criterion. That is, as a mere matter that could exceptionally and restrictively be taken into account by an administrative authority in the context of decisions denying residence or ordering expulsion from the country, rather than as a human right whose respect, protection, and guarantee is a constitutional duty.

ARTICLE 7. — Article 25 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 25. — A foreigner admitted as a 'temporary resident' or 'transitory resident' may remain in the national territory for the authorized period of residence, with due extensions, and must leave the country upon expiration of that period. In case of noncompliance, Article 61 of this law shall apply."

Comments:

This amendment only introduces the last line, that is, the transition to the notice to regularize under threat of expulsion in Article 61. Notwithstanding this, it is worth commenting on Article 25, which treats two completely different types of residence with the same criterion. Although the law refers to it as a residence category, "transitory" status is not technically that of a person residing in the country. There is no intention to do so, hence its application, almost exclusively — although there are more situations — to tourists visiting the country for a certain period of time.

It is true that, in various situations, a person entering as a tourist may later decide to reside in the country, hence the importance of facilitating a category change, so that this situation does not result in an increase in migratory irregularity. That is why reference has already been made to the compelling evidence from recent decades of Argentine migration policy, on category change as a key tool for preventing irregularity.

On the other hand, in the case of "temporary residence," we are already dealing with an immigrant in its most appropriate technical sense, and in constitutional terms (and Supreme Court case law), an inhabitant present in Argentine territory with the intent of remaining in the country. Therefore, with respect to this category, it would be important for its application

to be coherently complemented by what has been noted regarding the need to facilitate the transition from temporary to permanent residence.

Otherwise, what would become permanent, contradictorily, is temporary status. The restrictive and unreasonable approach of the DNU would indicate, from a combined reading of Articles 22, 23, and 25, that permanent residence would be accessed, on one hand, by children born abroad (of Argentine parents) and by other people based on criteria that remain unknown and subject to requirements of financial means and no criminal record. This would leave out a large number of people who have lived in the country for various years, including direct relatives of Argentine citizens. In this case, this would lead to the negative effects already noted: irregularity and its implications, or a long-lasting temporary status which, due to the DNU — at least until it is declared unconstitutional — deprives them of basic rights such as health and education. In this way, one of the most effective aspects of migration policy in recent decades would be reversed and perverted, moving — inversely — into a new stage characterized by problems created by the regulations themselves, affected by an unconstitutional decree that disregards reality and is anti-democratic.

ARTICLE 8. — Article 29 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 29. — The following shall constitute grounds impeding the entry and presence of foreigners in the national territory:

- a) submission to the authority of materially or ideologically false or altered national or foreign documentation; or failure to disclose the existence of criminal records, convictions, or judicial summons; or having engaged in a simulated act or transaction, or one entered into in fraud of the law or with a defect of consent, for the purpose of obtaining a migratory benefit; or failure to present a document proving an actual job offer, when entry is sought for that reason;
- b) having a prohibition on entry, by virtue of a prohibition order, until such measure has been revoked or the period imposed has elapsed;
- c) having been convicted or having a record, in the ARGENTINE REPUBLIC or abroad, for crimes that under Argentine law carry a custodial sentence of THREE (3) years or more, regardless of the manner of enforcement;
- d) having been convicted, in the ARGENTINE REPUBLIC or abroad, for crimes that under Argentine law carry a custodial sentence of less than THREE (3) years, regardless of the manner of enforcement;
- e) having been caught in flagrante delicto for a publicly actionable crime that could give rise to a suspended trial or an alternative measure;
- f) having incurred in or participated in governmental acts or other acts constituting genocide, war crimes, acts of terrorism, or crimes against humanity, and any other act subject to prosecution by the INTERNATIONAL CRIMINAL COURT;

g) having incurred in or participated in terrorist activities, in activities promoting violence or ideas contrary to the democratic system, or belonging or having belonged to organizations nationally or internationally recognized as accused of acts subject to prosecution by the International Criminal Court or by Law No. 23,077;

h) having been convicted, in the ARGENTINE REPUBLIC or abroad, for having promoted or facilitated, for profit, the illegal entry, presence, or exit of foreigners in Argentine territory, or having participated in promoting or facilitating such;

i) having entered or attempted to enter the national territory evading migration controls, or through an unauthorized location or at an unauthorized time;

j) having distorted the reasons for entry or admission into the country, or when there are well-founded reasons leading to the conclusion that the authorization for entry or presence granted was motivated by engaging in activities different from those invoked at the time, whether lawful or not;

k) having left Argentine territory in compliance with a finally granted extradition;

l) failure to comply with the migratory regularization requirements imposed by this law.

For the purposes of this article, "conviction" shall mean any judgment of conviction, whether or not final, and "record" shall mean an order of criminal prosecution at the close of the preparatory criminal investigation with a request for referral to trial, referral to trial, or any equivalent procedural act.

The Judicial Branches and Public Prosecutor's Offices shall notify the NATIONAL MIGRATION DIRECTORATE of every order of prosecution, closure of the preparatory criminal investigation with a request for referral to trial, or equivalent procedural act, and any conviction for a criminal offense issued against a foreigner, within FIVE (5) business days of its issuance, even if not final.

Exceptionally, for duly substantiated and well-founded reasons based on humanitarian grounds, family reunification, or when the rights of minors are seriously affected, the NATIONAL MIGRATION DIRECTORATE may admit into the country foreigners covered by the impediments provided in this article.

The migration authority may in no case admit into the country a foreigner who has been convicted or has a record for the commission of a willful crime against life, sexual integrity, or public powers and the constitutional order.

When, under the terms of the preceding paragraph, the right to family reunification is invoked, the cohabitation, and the emotional and economic interest, of the family group must be reliably proven. The mere disruption of family relationships as a consequence of legitimate inadmission or expulsion shall not be sufficient to consider the right to family reunification affected. The

granting of the exceptional waiver must be duly substantiated on the basis of a restrictive interpretation of the reasons authorizing it."

Comments: The comments on this article focus on the following amendments introduced by the DNU: a) the inclusion, as grounds for impediment and expulsion, of convictions for crimes carrying sentences of less than 3 years (section d); b) the inclusion of "in flagrante delicto crime" (section e) and the broad scope of the concept of "conviction" introduced, including non-final convictions, orders of prosecution, referral/committal to trial, etc.; c) the fallacy of the reform as an improvement in citizen security; d) "family reunification" interpreted as an exceptional measure to waive expulsion; and the requirements imposed for that.

a) The violation of the principle of proportionality

The principle of proportionality is a cornerstone of the State's role as a social and political organization, particularly in the legitimate use of the State's sanctioning power by the competent authorities. Through the inclusion of section d, the DNU shatters those foundational elements of the rule of law's own legitimacy and the basic rules for its interpretation and application. It is not only illegitimate and unconstitutional to attempt to apply the same sanction to radically different types of conduct, but also absurd.

For example, through this notification, the State would respond with equal severity to radically different types of conduct. Indeed, on one hand, the denial of residence and expulsion from the country could be based on acts constituting genocide, war crimes, crimes against humanity, and acts of terrorism. That is, the most heinous conduct, which can cause the deaths of thousands or millions of people. On the other, conduct punishable under the Criminal Code by days or months in prison, such as: opening someone else's mail without permission (Art. 153); lowering the price of goods through false news (Art. 300); disrupting a meeting with insults toward the speaker (Art. 160); or dueling without injuring one's opponent (Art. 89). This equating — in the State's sanctioning response — of such radically dissimilar conduct shatters, as we noted, the foundations that legitimize a State's power to punish certain acts.

This equating is even more disconcerting and unreasonable when one observes that the same sanction is imposed for administrative infractions or irregularities, such as irregular entry (section i), distorting the conditions of residence without committing unlawful acts (section j), or failing to meet regularization requirements (section l). The response to these administrative situations — which, in many cases, result from factors unrelated to any intent to commit an infraction — with the same measure the State applies to people who have committed the most heinous crimes.

It is absolutely essential, in analyzing this issue, that migratory irregularity or similar situations are "acts" or "conditions" that generate no victim or harm whatsoever. This is central, since the principle of proportionality is intrinsically linked precisely to the State's response to conduct based on its seriousness, in particular the harm caused to the various legal interests protected by regulations.

Along with legitimizing the State's sanctioning power, the principle of proportionality has a complementary and essential facet: the adequate protection of the rights at stake in each

case. In this regard, interference with a person's rights through a sanction to be imposed by a competent administrative or judicial authority must be formally, materially, and reasonably related to the conduct being sanctioned. This is precisely why the equating made by the DNU is thoroughly disproportionate, and therefore unreasonable, arbitrary, and in violation of basic rights.

In this regard, it is important to consider the multiplicity of rights that may be at stake in cases of denial of residence and expulsion. The right to asylum, family life, children's rights, labor rights, housing, health, or other social and economic rights tend to be among those affected by these measures. Hence the proportionality of the State's response is an essential, unavoidable criterion. The DNU eliminates this key approach for distinguishing each situation and, on that basis, determining the measures to adopt — for example, prioritizing facilitating regularization, rather than a punitive response that disproportionately affects the basic rights of a person or a family.

b) Violation of the presumption of innocence

New section e) and the paragraph following section l) of Article 29 of the migration law also pervert basic principles of law concerning the legitimate exercise of State power and its duty to protect the rights and guarantees at stake through the measures it implements.

One principle directly affected is the presumption of innocence. Indeed, the DNU allows the expulsion of persons related to alleged criminal conduct, but without carrying out the judicial procedures required by the Constitution, treaties, and other domestic regulations to determine a person's criminal responsibility. In particular, expulsion based on "in flagrante delicto" situations or an order of prosecution would not meet the basic requirements for a State to impose a sanction in response to individual responsibility for an act judged and sanctioned through the appropriate legal channels, with due procedural guarantees and by the authorities competent to do so.

Respect for the presumption of innocence, through procedures that comply with due process guarantees, also serves as a criterion legitimizing State action. Otherwise, the exercise of sanctioning power easily becomes arbitrary, lacking essential elements to validate imposing a penalty on a person. The boundaries between legality and legitimacy, on one hand, and arbitrariness and abuse of power, on the other, become blurred.

Moreover, it is important to note that these amendments are introduced under a purported concern for citizen security supposedly linked in some way to immigration. In the first part of these comments on the DNU, it was explained — with data and other grounds — that this connection does not exist, and that there is no problem justifying the inclusion of this kind of change. Much less one to be addressed through a reform by decree.

c) An ineffective and/or counterproductive reform in matters of citizen security and victim protection

To this lack of justification, as well as to the principles violated by these changes, it is worth adding some reflections on the fallacy of these reforms as tools for improving various aspects of citizen security. The possibility of expelling a person from the country without certainty about their responsibility for a crime not only affects the presumption of innocence

and the rights affected by the decision. It can also lead to multiple problems for a serious and responsible crime prevention and punishment policy, as well as victim protection.

By way of example, expelling a person as a presumed perpetrator of a crime could result in impunity for other people who committed the crime in question. Or even if the expelled person were guilty, expulsion following the order of prosecution would be tantamount to that person facing no criminal consequences, that is, impunity. Likewise, an expulsion without prior investigation and trial would surely represent a lost opportunity to determine all responsibilities that might lie behind the crime. This is particularly important for situations involving international organized crime, such as drug trafficking or human trafficking networks, among others.

In the same vein, it is appropriate to analyze to what extent victims' rights would be taken into account, or on the contrary, harmed, by introducing expulsion in these cases. This is closely linked to anti-migrant narrative strategies and the use of migrants as scapegoats, particularly when presented as a problem or security threat. In that context, this kind of measure — near-immediate expulsion — is presented as a solution, when it is nothing of the sort. On the contrary, these decisions could leave victims — Argentine or foreign — of these crimes unprotected. The right to justice and reparation for harm, consequently, would be nullified once the person presumed responsible has been expelled from the country.

d) Violation of the right to family life and the rights of children and adolescents

The DNU provides that, in cases of "family reunification" (sic) "or when the rights of a minor are seriously affected," the Migration Directorate could "exceptionally" not apply the impediment or expulsion criteria. Several critical comments are necessary regarding this amendment, as it perverts basic norms, principles, and standards relating to the right to family life and the rights of children and adolescents.

As a starting point, it is essential to recall that States, in practically all human rights treaties they have promoted, signed, and ratified since the mid-20th century, have stressed that the family is a central element of every society, and that States have a duty to adopt measures to protect it, in order to guarantee the right to family life, as well as to refrain from arbitrarily interfering with the enjoyment of that right. This resounding recognition of this right makes no distinction whatsoever based on nationality or migratory status.

Beyond this special protection of the right to family life, as with any other right, various circumstances — among them, migratory status — should be taken into account to adapt regulations, policies, and practices to ensure the fulfillment of this right. And not the opposite, that is, considering these circumstances in order to violate it or establish different conditions of exercise resulting in the impossibility of enjoying it. However, this latter is exactly what the DNU does. Indeed, the amendments introduced to the law are based on a flatly mistaken and illegitimate premise: indeed, one reads into it a position in which the family life of migrants (including families of migrants and nationals) is something the State could decide to protect on an entirely discretionary basis, or worse still, an exception to a general rule that would validate the restriction or denial of that right.

As we develop at greater length in an article analyzing the Supreme Court of Justice's decisions in cases of migrant expulsion that could lead to family separation, including the

separation of parents and children, the protection of children's right not to be separated from their parents cannot be an "exceptional" measure — quite the opposite. For the sake of brevity, we refer to that piece, which explains in detail the unconstitutional character of the reverse interpretation that privileges migration control powers over constitutional and international obligations to respect the rights at stake. Reversing a foundational principle of the Convention on the Rights of the Child, the Supreme Court, like the DNU, applies a kind of best interest "to" the child, rather than the best interest "of" the child. That is why it is essential to recall the applicable standard: the "primacy of children's rights in the context of international migration,"⁵ that is, its priority character within the framework of migration policies and practices. Guaranteeing children's rights is a primary duty with respect to the objectives of a migration policy.

⁵ Joint General Comment No. 3 of the Committee on the Rights of Migrants and their Families, and No. 22 of the Committee on the Rights of the Child, on general principles relating to the human rights of children in the context of international migration (2017), para. 13.

Considering protection of family life to be an exceptional and discretionary measure constitutes, in itself, a breach of constitutional obligations to protect this right, and specifically the right of every child not to be separated from their parents — except when such separation is in the child's best interest. In this regard, it is key to correctly name the right at stake, as explained above, as a starting point for asserting that it is not in any way admissible to establish that it will only be taken into account exceptionally. This mistaken — or, more precisely, unconstitutional — approach is compounded by the following paragraphs included in this article by the DNU.

The DNU excludes application of this "exceptional" (sic) measure in cases of expulsions for crimes against life, sexual integrity, public powers, and the constitutional order. In this regard, it should be said that one thing is the appropriate criminal sanction for such crimes, and another is the protection of family life — of the person and their relatives — thereafter. There may be countless circumstances to evaluate in each situation by the competent administrative and judicial authorities. Hence, an absolute prohibition is not a reasonable and legitimate response, since each case must be examined.

Now, returning to the prohibition on establishing that protecting a right is an exceptional measure, the final paragraph of this article deepens this unconstitutional approach, by setting certain requirements for invoking that exceptionality. On one hand, requirements such as cohabitation, economic, and emotional interest are included. Then, it is noted that "the mere disruption of family relationships as a consequence of legitimate inadmission or expulsion" is not sufficient grounds for applying the waiver — it should say, for respecting the rights affected. This inverts the legal rules at stake: if expulsion could arbitrarily affect the right to family life, then it is not a "legitimate" measure. This demonstrates the violation of Article 3.a of the migration law itself, which requires compliance with obligations arising from international human rights treaties. When the DNM must assess, for example, applying an expulsion measure, considering the impact of that measure on the person's rights — such as the right to family life — is a constitutional obligation, not a discretionary and exceptional exercise. Such assessment is unavoidable in determining whether the decision would be "legitimate."

In the same vein, the reference to this being an "exceptional waiver" that must be "duly substantiated" and applied through a "restrictive interpretation of the reasons" invoked, entirely perverts the principles and international standards for making decisions that could impact human rights. Indeed, in a 180-degree turn from the rules to be followed — which establish that guaranteeing and protecting the right must be the priority and applied broadly — restrictions on rights, on the contrary, must be applied restrictively. This is a mandatory corollary of the pro persona (or pro homine) principle stemming from all international human rights treaties and the principles and standards of their application. States have known for decades that these are the standards to be respected.

Finally, and without prejudice to the foregoing, it is important to clarify that, since the beginning of this paragraph refers to "the terms of the preceding paragraph," a literal interpretation would indicate that it refers only to cases involving the four types of crime expressly mentioned.

ARTICLE 9. — Article 34 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 34. — Entry into and departure from the national territory of persons shall be carried out exclusively through the locations authorized by the NATIONAL MIGRATION DIRECTORATE, whether land, river, sea, or air locations, at which time they shall be subject to the corresponding migration control.

In order to enter the national territory, foreigners requesting admission under any of the migratory categories provided under current regulations must submit a sworn statement in which they state the purpose of their entry, that they hold health insurance to cover their medical needs, and any other conditions established by regulation."

Comments:

First, this article has removed a paragraph that was as key as it was legally mandatory, as it established that for humanitarian reasons entry into the territory could be authorized, as well as "in fulfillment of commitments undertaken by Argentina." This clause was specifically aimed at fundamental legal obligations arising from international treaties, such as the Geneva Convention on the Status of Refugees. By removing this "safeguard" clause, it directly contradicts what is established in Law 26,165 on refugee protection. In any case, a proper interpretation of the conflict between these regulations, in line with international obligations of a higher hierarchy than both laws, must favor protecting the human right to asylum, refraining from denying entry into the territory.

Also, based on the standards the State must respect, what is provided in other international instruments, such as the Convention on the Rights of the Child,⁶ the Protocols on human trafficking victim protection, among others. All of this, without prejudice to recalling that, despite the DNU, the migration law still formally recognizes the human right to migrate (Art. 4), which must be guaranteed based on the principles of equality and universality.

⁶ The Committee on the Rights of the Child and the Committee on the Protection of the Rights of Migrant Workers and Members of Their Families have noted that States may not deny entry to children based on migration issues. Any measure that could result in return or transfer to other countries must result from an assessment of the child's best interest (Joint General Comments Nos. 3–4 CMW and 22–23 CRC, 2017).

Moreover, the DNU introduces a new paragraph requiring health insurance for entry into the country. The main problem with this requirement is its application to all migratory categories. This contradicts the regulations in force in Argentina regarding access to the public health system based on the principles of equality and free access. Hence, such a requirement — applied by various countries to "tourists" — cannot be extended to people who will be residents of the country. This is without prejudice to the unconstitutionality of the amendment to Article 8 of the law, already explained in detail. In any case, it should be noted that among the DNU's transitional clauses, it establishes that this sworn statement will be "required once its implementation is regulated."

ARTICLE 10. — Article 35 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 35. — The NATIONAL MIGRATION DIRECTORATE shall proceed with the immediate rejection at the border and shall prevent entry into the national territory of every foreigner:

- a) who attempts to enter with identity documentation that does not meet the conditions provided under current legislation, provided this is not a case of reentry motivated by rejection by a third country;
- b) who states that their reason for entry falls under the tourist category, insofar as the migration authority determines that it does not fall within the provisions of Article 24, section a) of this law;
- c) regarding whom there is a well-founded suspicion that the actual intent motivating entry differs from that stated when obtaining a visa or presenting themselves for migration control;
- d) whose irregular entry is noticed at the time it occurs or immediately thereafter;
- e) who falls under any of the impediments provided by Article 29 of this law;
- f) when there are situations constituting a critical public health or national security emergency, provided the emergency has been declared through specific regulatory provisions.

Rejections based on the impediments established by Article 29 carry an implicit prohibition on reentry into the country for a term of no less than FIVE (5) years, graduated according to the seriousness of the grounds motivating it.

In all cases, the transporting company shall be notified of its obligation to return the rejected foreigner to their place of origin, on the same means of transport on

which they arrived or, if that is not possible, another means, within the peremptory period set for that purpose, with the costs to be borne by the company.

If necessary, in cases of extreme seriousness, to preserve the health and physical integrity of the foreigner, the migration authority may retain their documentation and grant them a provisional stay authorization. This authorization shall allow the person to remain within the territory of the ARGENTINE REPUBLIC, but shall not constitute admission under any of the categories defined by this law.

The migration authority shall take all necessary precautions to prevent the foreigner from evading the departure order.

Decisions adopted by virtue of rejecting a foreigner's entry into the country shall be appealable exclusively from abroad, through a petition submitted to Argentine diplomatic missions."

Comments:

As with the preceding article, this one omits express mention of legal obligations arising from international treaties — that is, of a hierarchy superior to the law. In particular, based on the Geneva Convention and other treaties recognizing the principle of non-refoulement, which is also expressly recognized under Law 26,165 (Articles 2, 29, 39, and 40). The Migration Law's implementing decree (No. 616/2010), in regulating Article 35, expressly establishes that Articles 39 and 40 of the refugee protection law must be observed. Based on these regulations, the new wording of Article 35 could not be invoked to fail to comply with these obligations, although the omission of these safeguards raises serious concern about the effects this could have.

At the same time, an implicit reference to what the DNM has traditionally termed a "false tourist" is added to this article (section b). This originates in DNM Disposition No. 1089/85, approved under the migration law passed by the last military dictatorship. In 2014, Disposition No. 4362/2014 reinstates this rejection-at-the-border criterion. One of the most serious flaws in incorporating a clause that grants broad discretion to the DNM is its application to people who are in a position to access the residence categories regulated by the migration law.

Since 2003 onward (when the law included the scope of the Mercosur Residence Agreement — Art. 23.I), the State has failed to take a key subsequent step, aimed at harmonizing entry criteria with residence criteria. I refer particularly to the absence of a permit formally linked to the "Mercosur" residence category. Its absence, together with an erroneous and inadequate application of the "false tourist" provisions, has contributed to obstacles and difficulties for the regular entry of nationals of countries in the region who expressly state their intent to settle in the country under that migratory category.

The changes added to Articles 34 and 35 could deepen this problem, and, together with other amendments discussed here, increase migratory irregularity and all the negative

effects that flow from it — including with respect to access to residence, restrictions on basic rights, expulsion, family separation, among others.

ARTICLE 11. — Article 37 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 37. — A foreigner who enters the ARGENTINE REPUBLIC through an unauthorized location or evading any form of migration control shall be liable to expulsion from the territory under the terms and conditions of this law.

When the migration authority confirms, in a situation of flagrante delicto, the irregular entry of a foreigner into Argentine territory, it shall proceed with the rejection at the border in accordance with Article 35 of this law.

A situation of flagrante delicto shall be deemed to exist, for the purposes of this law, when illegal entry is detected at the time it occurs or immediately thereafter, or when the person is pursued by law enforcement, or when the person shows signs reliably suggesting they have just carried out the entry and have not yet reached their final destination in the country."

Comments:

The DNU incorporates the last two paragraphs into Art. 37. Regarding the first, it is worth reiterating what was noted about the duty to comply with all legal obligations regarding non-refoulement, the right to asylum, protection of children, human trafficking, and others arising from human rights treaties and international humanitarian law.

In the second, the reference to cases in which a person "shows signs suggesting" they have just entered the country (together with the reference "immediately thereafter" added to Art. 35) presents at least two problems. On one hand, the vagueness of these references and the arbitrariness this could give rise to in practice. What would these "signs" be? How would they "suggest" that the person entered irregularly? Who would determine this? What geographic scope would this have? How would "immediacy" be defined? On the other hand, the practical implementation of this interception and return measure could constitute what is known as "hot returns" [*devoluciones en caliente*], that is, measures violating international law.⁷

⁷ In this regard, see the Report of the UN Special Rapporteur on the Human Rights of Migrants, dedicated to "hot returns" (2021) as practices contrary to States' legal obligations.

ARTICLE 12. — Article 53 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 53. — A foreigner who resides irregularly in the country, or who resides regularly but has not been authorized [to work] by the migration authority, may not work or engage in remunerated or profit-making activities, whether on his or her own account or on behalf of another, whether in an employment relationship or independently.

A foreigner's presence in the territory of the ARGENTINE REPUBLIC shall be deemed irregular if the foreigner:

- a) does not hold residence granted under the terms of this law;
- b) entered without submitting to migration entry control, or through an unauthorized location or at an unauthorized time;
- c) remains in the national territory after the authorized period of stay has expired;
- d) has distorted the conditions that motivated the granting of their residence, or, while within the authorized period of stay, engages in activities for which they are not authorized under their migratory category;
- e) remains in the country despite meeting any of the circumstances authorizing expulsion."

Comments:

In the first paragraph, the DNU introduces the situation of a person who "resides regularly but has not been authorized [to work] by the migration authority." It is unclear which migratory category this clause would refer to, since every regular migratory category authorizes people to work — Articles 20, 51, and 52 — (except transitory status, which, as already noted, is not technically a type of residence).

Nor is the inclusion of the remaining paragraphs of this article understood. This is because they deal with defining migratory irregularity, but the article (and this section of the law — Title IV, Chapter I) deals with the topic of migrants' employment and lodging.

ARTICLE 13. — Article 53 bis is incorporated into Migration Law No. 25,871 and its amendments as follows:

"ARTICLE 53 bis. — For purposes of controlling the legality of foreigners' presence in Argentine territory, the NATIONAL MIGRATION DIRECTORATE shall have the following powers:

- a) to require foreigners to prove their identity and migratory status;
- b) to organize and conduct inspection and oversight operations aimed at verifying compliance by employers and lodging providers with their obligations regarding the foreign population residing in the country;
- c) to request from the person in charge of the location being inspected the submission of the books, records, and documentation relating to staff and foreign guests required by current regulations. If they are not available at the time of inspection, the person shall be given notice to present such documents within a peremptory period not exceeding FIVE (5) business days. Likewise, the migration authority may order the seizure of necessary evidentiary

documentation for a period not exceeding THREE (3) business days, after which it must be returned to the person from whom it was taken;

d) to request judicial authorization in cases of opposition by the owner or person in charge of the location or means to be inspected, when it is not a place open to the public;

e) to request the assistance of law enforcement when circumstances warrant it or make it necessary for the better fulfillment of control functions;

f) to organize and conduct inspection and oversight operations aimed at confirming the existence of the migratory grounds claimed by the foreigner before the competent authority; and

g) to request preventive detention of the foreigner from the competent judicial authority."

Comments:

This entirely new article contradicts the spirit that characterizes Law 25,871, by introducing a security-oriented approach to the administrative matter of migratory regularity or irregularity. Through this article, the DNM and law enforcement agencies acting as "auxiliary migration police" are given powers to conduct migration control operations in various public and private settings. This is a criminalizing approach that links migratory irregularity with citizen security issues. These measures encourage or reinforce — especially with the use of law enforcement — a social imaginary of suspicion toward migrants (xenophobia). Section f) is particularly concerning, since it would give the DNM and its auxiliary police a kind of blank check to conduct "inspection and oversight operations," moving closer to the logic of the Videla law (22,439) than to the current migration law.

This kind of measure establishes a logic of social control over migrants, resulting in multiple negative effects thoroughly documented in the countries that have implemented them. Among these consequences, one may cite, by way of example, abusive lodging conditions, employer violations, labor exploitation, gender-based violence — including sexual violence — etc. All of these, under the threat of reporting the worker's migratory status, which has a particular impact in contexts where the State incorporates this approach and applies it through this kind of operation. The use of racial profiling by law enforcement — under the pretext of exercising migration control powers — is also a corollary of this approach to migratory irregularity. These practices tend to impact not only migrants — and particularly those of certain nationalities — but also nationals, based on various forms of racism.

This approach is, on one hand, a drastic shift from the criterion that has mostly been used since Law 25,871 was enacted. In particular, considering the provisions of Article 17, which establishes the State's duty to provide "what is conducive to the adoption and implementation of measures aimed at regularizing the migratory status of foreigners." That is, faced with irregularity, measures to facilitate regularization, not inspection or control as an expression of an approach of suspicion. It also differs substantially from the practical approach applied by the State for many years: I refer to territorial-outreach "operations" for documentation and migratory regularization. This refers to the presence of migration

authorities in different locations, but not to control the population but to facilitate their access to regular residence.

These practices are coherently associated with what is established in the law (Articles 4 and 17, among others), as well as with numerous statements by the Argentine State over more than 20 years in various global and regional processes.⁸

⁸ See, among others, IOM (2025). Human mobility regulations of the States of the region in light of the principles, objectives, and plans adopted at the South American Conference on Migration. Available at <https://publications.iom.int/books/las-normativas-de-movilidad-humana-de-losestados-de-la-region-laluz-de-los-principios>.

I refer to recognizing irregularity as a condition of vulnerability to be resolved, rather than an infraction to be controlled, detected, and sanctioned, and, on the other, to regularization as a central tool of migration policy, leading to multiple positive effects. In this same sense, and in practical terms, the implementation of the migration law from 2004 onward is the best example of how migratory irregularity can be effectively remedied through this kind of approach. On the contrary, the application of the previous law, until 2003, with its control-and-security approach, together with obstacles to regularization, not only contributed to a considerable increase in migratory irregularity, but also to abuses — for example, labor exploitation — against migrants in an irregular migratory situation.

ARTICLE 14. — Article 54 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 54. — Foreigners must:

a) report their actual domicile in the ARGENTINE REPUBLIC upon entry into the national territory, when initiating residence procedures, or in records drawn up in the context of presence-control inspections;

b) establish a domicile for all legal purposes, at which all notifications shall be valid. Likewise, the domicile reported to the NATIONAL REGISTRY OF PERSONS (RENAPER) or reported before judicial authorities shall be considered the established domicile; and

c) report an electronic domicile which, in all cases, shall have full legal validity and effect and shall produce the effects of the actual and established domicile, and at which electronic notifications made there shall be valid and binding. It shall be the responsibility of the interested party, their legal representative, or attorney-in-fact to access the electronic domicile in order to become aware of the notifications sent there.

Falsehood in the declaration or proof of domicile, for the sole purpose of obtaining a migratory benefit, shall result in a declaration of irregularity or denial of the residence application, or its cancellation, with the consequent expulsion, in accordance with section a) of Article 29 and section a) of Article 62 of this law.

Notifications shall be delivered to the electronic domicile or, failing that, to the last established domicile appearing in the administrative record.

Any change of domicile must be reported by the immigrant in the file in which admission was granted or residence was authorized, within THREE (3) business days of it occurring.

If the numbering of the established domicile, or the building or structure in which it was established, disappears in whole or in part, the immigrant must report a new one in the file in which admission was granted or residence was authorized within THREE (3) business days thereafter."

Comments:

This article replaces one that generally provided for migrants to keep their domicile information updated with the DNM. All the paragraphs incorporated also indicate a logic of suspicion, and therefore of ongoing social control over migrants, who are characterized as prone to falsehood, deception, concealment, or flight. Again, this refers back to what was noted regarding the preceding article, about which approaches prevent/reduce irregularity and promote regularity — and therefore, the provision of information to the migration authority.

It is important to read and interpret these amendments together with those — already discussed — that could make it harder to access regular residence, or to renew it. We would be facing a scenario much closer to that existing under the migration law passed during the last military dictatorship. That is, the State generating irregularity and then promoting mechanisms to control and sanction that administrative status, which, in turn, build a stigmatizing view of migrants.

ARTICLE 15. — Article 61 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 61. — Upon confirming the irregular presence of a foreigner in the country, and taking into account circumstances such as the foreigner's profession, family ties to Argentine nationals, the length of stay proven, and other personal and social conditions, the NATIONAL MIGRATION DIRECTORATE may give notice to regularize their situation within the peremptory period it sets for that purpose, under threat of ordering their expulsion. Once this period has elapsed without the person having regularized their situation, the NATIONAL MIGRATION DIRECTORATE shall order their expulsion with suspensive effect and shall become a party before the Judge or Court with jurisdiction over the matter, for purposes of judicial review of the administrative decision to expel."

Comment: the only change in this article is the replacement of the term "shall give notice" with "may give notice." This small amendment can bring serious consequences, by reversing the priority approach established by the migration law, based on Articles 4 and 17, among others. This is because it removes the mandatory nature and replaces it with a mere possibility — subject to the DNM's discretion — of the key, priority step of regularization as

the first solution or response to migratory irregularity. In this way, that discretion could give rise to a logic centered on expulsion, once again reinforcing the control-and-sanction approach.

ARTICLE 16. — Article 62 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 62. — The NATIONAL MIGRATION DIRECTORATE, without prejudice to any judicial actions that may be brought, shall cancel any residence it has granted, regardless of its age, category, or grounds for admission, and shall order the subsequent expulsion, when the resident:

- a) with the intent of obtaining a migratory benefit or Argentine citizenship, engaged in a simulated act or transaction, or one entered into in fraud of the law or with a defect of consent; submitted materially or ideologically false or altered documentation; or failed to disclose the existence of criminal records, convictions, or judicial summons;
- b) has been convicted, in the ARGENTINE REPUBLIC or abroad, for a willful crime carrying a custodial sentence, regardless of the manner of enforcement;
- c) has been convicted, in the ARGENTINE REPUBLIC or abroad, for promoting or facilitating, for profit, the illegal entry, presence, or exit of foreigners in the national territory;
- d) has left Argentine territory in compliance with a finally granted extradition;
- e) after being granted permanent or temporary residence, has remained outside the national territory for a period equal to or greater than ONE (1) year, or SIX (6) months in the case of temporary residence, unless the absence was due to the exercise of an Argentine public function or arose from activities, studies, or research that, in the judgment of the NATIONAL MIGRATION DIRECTORATE, could be of interest or benefit to the ARGENTINE REPUBLIC, or was expressly authorized by the migration authority, which may be requested through Argentine consular authorities;
- f) has distorted the reasons that motivated the granting of residence, or when the activity in the country was subsidized, in whole or in part, directly or indirectly, by the NATIONAL STATE, and the conditions expressly established for the subsidy are not met or are violated;
- g) falls under any of the circumstances provided by sections f) and g) of Article 29 of this law, in the ARGENTINE REPUBLIC or abroad;

Exceptionally, for duly substantiated reasons based on humanitarian grounds or family reunification, the migration authority may waive the cancellation of residence and subsequent expulsion.

The migration authority may in no case grant the waiver referred to in the preceding paragraph when the foreigner in question has been convicted of a

willful crime against life, sexual integrity, or public powers and the constitutional order.

For purposes of assessing whether the requested waiver is warranted, special consideration shall be given to the period of uninterrupted presence within Argentine territory.

When, under the terms of the preceding paragraph, the right to family reunification is invoked, the cohabitation, and the emotional and economic interest, of the family group must be reliably proven. The mere disruption of family relationships as a consequence of legitimate cancellation of residence and expulsion order shall not be sufficient grounds to consider the right to family reunification affected.

Cancellations of residence must be immediately communicated to the NATIONAL REGISTRY OF PERSONS (RENAPER), a decentralized agency operating within the scope of the DEPUTY CABINET CHIEF'S OFFICE FOR THE INTERIOR of the CABINET CHIEF'S OFFICE, the NATIONAL SOCIAL SECURITY ADMINISTRATION (ANSES), a decentralized agency operating within the scope of the DEPUTY SECRETARIAT OF SOCIAL SECURITY of the SECRETARIAT OF LABOR, EMPLOYMENT AND SOCIAL SECURITY of the MINISTRY OF HUMAN CAPITAL, the NATIONAL RECIDIVISM REGISTRY of the MINISTRY OF JUSTICE, and the judges with jurisdiction over electoral matters according to jurisdiction.

The Judicial Branches and Public Prosecutor's Offices shall notify the NATIONAL MIGRATION DIRECTORATE of every final order of prosecution, closure of the preparatory criminal investigation with a request for referral to trial, or equivalent procedural act, and any conviction for a criminal offense issued against a foreign resident, within FIVE (5) business days of its issuance."

Comments:

New section b) provides for the cancellation of residence for any willful crime carrying a custodial sentence, with no distinction whatsoever regarding the type of crime involved. In this regard, for the sake of brevity, we refer to what was explained in analyzing Article 29, regarding the violation of the principle of proportionality, a cornerstone principle of the rule of law that, on one hand, legitimizes the State's use of sanctioning power, and on the other, protects people — and their rights — from an abusive, authoritarian, and illegitimate exercise of that power, as occurs in this case.

It is clear that the State's sanctioning response cannot be the same for both the lightest and the most serious crimes under criminal law. If this is the conclusion for cases involving impediments to entry and residence (Art. 29), it is even more so for deciding whether to cancel the residence of a person who has lived in the country for years. In most cases, numerous rights that such a measure could affect will be at stake, and which must therefore be weighed against the legitimate interests at play.

The threat of residence cancellation and eventual expulsion for any type of crime can serve as a form of social control or disciplining. For example, in situations involving the exercise of rights such as peaceful protest, assembly, and petition to authorities, where law enforcement agencies intervene and this results in forms of institutional violence — as has occurred countless times in the country — an accusation and eventual conviction for resisting arrest could result in cancellation of residence and expulsion from the country.

Cancellation of residence due to temporary absence from the country

Another change introduced by the DNU to this article is the reduction of the period of absence from the country for ordering cancellation of residence — from 2 to 1 year for permanent residents, and from 1 year to 6 months for temporary residents. This provision can become arbitrary in many situations in which — for work, study, family, or other reasons — a person who has lived in the country for some, or many, years is absent for that period. Countless cases could be imagined to demonstrate how these changes could cause many problems for people who reside stably in the country, as well as for their relatives. By way of example, if we consider the unreasonable amendments to the criteria for permanent residence based on family ties, a father or mother of Argentine children could lose their residence by being absent for 6 months (even if they did so together with their children).

Violation of the right to family life and the rights of children and adolescents

Another restrictive and clearly unconstitutional reform relates to the "waiver" for family unity reasons. The original Article 62 stated that "The Ministry of the Interior shall waive compliance with the cancellation provided under this article when the foreigner is the parent, child, or spouse of an Argentine, unless there is a duly substantiated decision by the migration authority to the contrary. Likewise, this waiver may be granted taking into account the length of legal presence immediately preceding the occurrence of any of the grounds provided in sections a) to d) of this article, which may not be less than two (2) years, taking into account the personal and social circumstances of the beneficiary."

With a clearly opposite approach, the new wording states that, exceptionally, for humanitarian reasons or family reunification (sic), this cancellation and subsequent expulsion could be waived. In these cases, the DNU requires, as in Art. 29, reliable proof of cohabitation, and of the emotional and economic interest of the family group, since "mere disruption of family relationships shall not be sufficient grounds to consider the right affected."

In this regard, and for brevity, we refer to all the arguments developed in analyzing the reform to Article 29 of the law. There, as here, the unconstitutionality of this amendment is patent, as is the resounding disregard for the constitutional and international protection of the human right to family life. Again, the name of the right at issue continues to be expressly disregarded, reflecting the mistaken and arbitrary nature of the approach incorporated into the law: that is, a perspective that prioritizes an administrative power over the obligation to guarantee a constitutional right — which, in turn, in each case, is key to ensuring other rights of equal status.

Along with the arguments developed when highlighting the unconstitutional amendment to Article 29, an additional comment is warranted. Strikingly and worryingly, unlike what is

noted in Art. 29 in regulating the "waiver" for impediment to residence and expulsion, based on family ties, Article 62 includes no reference whatsoever to children's rights. That is, the State claims the right to cancel the residence of a person who has lived — for several, many, even decades — in the country, potentially severely impacting practically all of a child's rights, and this is entirely omitted when regulating this sanctioning power.

Of course, this omission would in no way permit the DNM to adopt such a measure without considering the rights of children who could be affected — nor for that decision to be validated by the Judicial Branch. This includes numerous rights that would be violated, all of constitutional status as enshrined in the Convention on the Rights of the Child: the right for the child's best interest to be a primary consideration (Art. 3), the right to development (Art. 6), the right not to be separated from one's parents (Art. 9), the protection of family life (Art. 16), and the facilitation of parents' ability to ensure the upbringing and development of their children (Art. 18), among others that, depending on each case — and the tie to the father or mother — could be seriously affected.

ARTICLE 17. — Article 63 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 63. — In all cases provided under this law:

- a) cancellation of residence based on a circumstance provided in sections a), b), c), d), and g) of Article 62 of this law entails expulsion from the national territory;
- b) cancellation of residence under section e) of Article 62 entails notice to regularize migratory status or an order to leave the country within the period set, taking into account the factual and personal circumstances of the person concerned;
- c) cancellation of residence under section f) of Article 62 entails an order to leave the country within the period set, or expulsion from the national territory, taking into account the factual and personal circumstances of the person concerned;
- d) expulsion from the national territory carries with it, in cases based on participation in or commission of a willful crime, a permanent prohibition on reentry;
- e) expulsion not based on the commission of a crime carries with it a prohibition on reentry for a minimum of FIVE (5) years, graduated according to the seriousness of the grounds motivating it.

The prohibition on reentry may be waived by the NATIONAL MIGRATION DIRECTORATE, except in cases in which the foreigner has been convicted of a willful crime against life, sexual integrity, or public powers and the constitutional order."

Comments:

A very concerning aspect of this amendment is the permanent nature of the reentry prohibition in some cases, particularly when the cancellation of residence and expulsion is based on the commission of a willful crime. In this regard, the first issue is that, once again, the principle of proportionality is entirely disregarded. That is, the State is imposing a new sanction — or restriction on the exercise of a right — regardless of the seriousness of the conduct committed by the person. The sanction is the same whether it involves the lightest or the most serious willful crime under the Criminal Code.

This flagrant — and unconstitutional — disregard for the principle of proportionality becomes even more evident when one takes into account — as must always be done, without exception — the rights that may be at stake in each case. Basic rules governing the State's sanctioning power require these to be included in the balance of interests that may conflict when exercising these powers. The elementary foundations of a democratic rule of law are undermined if this exercise does not play a central role in determining which sanctions should apply in each case — and which should not.

Bearing in mind what is established in Art. 62 regarding the exceptional, restrictive, and discretionary character of the family-based "waiver" (with no distinction based on seriousness), the disregard for the principle of proportionality is even more serious, since it is not only about weighing the rights of the person whose residence would be canceled, and who — along with expulsion — would be barred from ever returning to the country. Indeed, there are also the rights of their relatives, including children, that is, persons entitled to special protection. The child's best interest, in the words of the Committee on the Rights of the Child, is not just one interest among others, but a primary one that must prevail over others.⁹

⁹ Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (2013). See in particular paragraphs 6, 12, 36, 37, 38, and 40.

The prohibition on reentry for a minimum of five (5) years in cases of residence cancellation and expulsion for reasons other than the commission of a crime could also constitute clearly disproportionate, and therefore arbitrary, measures. Again, the rights at stake — among them, protection of family life — will be seriously violated in most, if not all, cases in which a reentry prohibition of five or more years is imposed.

With this kind of restriction, and many others analyzed in this article or with respect to Articles 29 and 62, as well as the amendments to the permanent residence regime (new requirements, greater discretion, less legal certainty regarding applicable criteria, denial of first-generation family ties, etc.), some questions as fundamental as they are unavoidable arise:

What does the human right to migrate consist of, which, according to Article 4 of the migration law, must be guaranteed by the State on the basis of the principles of universality and equality? What value, scope, and mode of exercise would the right to migrate have, if the State holds nearly absolute discretion to regulate entry, presence, and forced departure, with virtually no rights affected by such State action being taken into account?

Already in 2004, as soon as the migration law was enacted, upon recognizing the importance of recognizing migration as a human right, it was noted that it would be key from that point forward to give substance to that recognition. That is, to progressively give content to this right, particularly by defining the changes that would have to be made to enable this right to migrate to be effectively exercised.¹⁰ In this regard, it is worth looking at the rulings of the Constitutional Court of Ecuador.¹¹ There, the tribunal develops in detail — that is, seriously and as it should be — the content and scope of the human right to migrate, recognized in its Constitution (2008) and Organic Law on Human Mobility (2017).

¹⁰ Ceriani Cernadas, Pablo (2004), "Nueva Ley, un paso hacia una concepción distinta de la migración," in Giustiniani, Rubén (comp.), *Migración: un derecho humano*, Ed. Prometeo, 2004. ¹¹ See, among others, the following rulings of the Constitutional Court of Ecuador: Constitutional Court, Rulings 159-11-JH/19, 335-13-JP/20, and No. 2120-19-JP/2.

Unfortunately, despite the fact that Ecuadorian regulations followed the example of Argentine Migration Law No. 25,871, this development of the right to migrate did not take place in Argentina. Some measures, directly or indirectly, constituted practices that could be identified as elements of that right (particularly in certain migratory categories and regarding regularization). Other steps repeatedly requested by civil society were never taken — such as the creation of Mercosur entry permits, in line with Art. 23.I, or the self-employed worker category, and facilitating regularization for people from non-Mercosur countries, based on Art. 17. Worse still, decisions like DNU 70/2017 went in the opposite direction, hence its repeal as unconstitutional.

Despite being the first country in the world to recognize the human right to migrate in its legislation, the Argentine State remains seriously in debt regarding its effective realization. Neither the Executive nor the Judicial Branch adopted explicit measures to give it content and effective protection. In the first case, an opportunity lost was Implementing Decree 616/2010, in failing to regulate Article 4. Even more so, in the regressive and unconstitutional DNUs of 2017 and 2025. In the case of the judiciary, while there is not even a precedent in which a court has analyzed the human right to migrate, multiple decisions — including from the Supreme Court — have legitimized practices that run directly counter to this right.

DNU 366/2025 completely empties out the human right to migrate. With the restrictions imposed by the aforementioned articles, the dramatic expansion of administrative discretion, and the explicit disregard for the rights at stake, any minimal essence of the right to migrate that the law formally still obligates the State to guarantee disappears. Addressing the unconstitutionality of this decree, both in the legislative arena and by the courts, would be a good opportunity to settle the debt owed to the human right to migrate.

ARTICLE 18. — Article 69 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 69. — When a foreigner is in the process of applying for residence and is accused or under criminal prosecution in a case whose resolution could determine any of the legal impediments to residing in Argentine territory, the Enforcement Authority shall suspend the administrative proceedings until that

judicial matter is resolved, and shall grant the foreigner an authorization for 'precarious residence.'

Likewise, an authorization for 'precarious residence' may be granted to foreigners who are prevented from leaving the country by judicial order, who are undergoing criminal proceedings while free in the country, or with respect to whom the judiciary has expressed an interest in their remaining."

Comments:

This new version of Article 69 is also concerning, as it violates constitutional rights and guarantees, and could determine the restriction of other rights, based on the amendments the DNU made to other articles. On one hand, by suspending the processing of a residence application based on a mere criminal accusation, it determines that rights will be affected by a judicial decision that does not establish any criminal responsibility of the person, once again violating the principle of the presumption of innocence. On the other hand, it should be recalled that new Article 20 establishes that time spent under precarious residence will not count toward rootedness. Hence a person whose criminal proceedings last years — which is normal, given the delays in judicial proceedings — and who is later cleared of the proceedings or found innocent, could be gravely harmed.

Likewise, considering the rights that depend on holding a temporary or permanent residence permit, this suspension of the process — which could be prolonged for years — could severely impact the living conditions of a person and their family group. This is particularly serious given that Articles 7 and 8 — unconstitutionally — have excluded people with precarious — and temporary — residence from equal rights to education and health.

ARTICLE 19. — Article 70 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 70. — When the expulsion of a foreigner has become final and there is no retention order issued ex officio by the judiciary, the NATIONAL MIGRATION DIRECTORATE shall request the competent judicial authority to order retention, through a reasoned decision. The measure shall have the sole purpose of enforcing the expulsion.

Exceptionally, when there are grounds of public security, national defense, or public health, the NATIONAL MIGRATION DIRECTORATE may request retention from the competent judicial authority even when the expulsion order is not final or has not been consented to.

Once retention has occurred, and if the foreigner alleges, as a new matter, being the parent, child, or spouse of a native-born Argentine, provided the marriage took place prior to the event that gave rise to the decision and the tie is compatible with the waiver provisions in Articles 29 and 62 of this law, the NATIONAL MIGRATION DIRECTORATE may suspend enforcement of the retention measure and shall proceed to verify the alleged fact within a period of up to FORTY-EIGHT (48) business hours.

With a favorable evaluation of the waiver by the NATIONAL MIGRATION DIRECTORATE, the foreigner shall immediately be released, and must regularize their migratory status within the period set by the migration authority for that purpose. Likewise, the agency shall request the competent judicial authority to suspend the retention order previously issued, whether it had been requested or issued ex officio.

In all other cases, retention and expulsion shall be carried out immediately.

When the foreigner is serving a sentence and the judiciary has not ordered banishment, the NATIONAL MIGRATION DIRECTORATE must request the retention measure immediately, and the competent judge must issue it prior to the person's release.

If the Enforcement Authority must request the retention measure on non-business days or hours, it must do so before the federal judge with criminal jurisdiction. Once retention is granted, the criminal judge shall forward the record to the competent judge, within a period not exceeding FORTY-EIGHT (48) business hours, for continuation of the proceedings.

In all cases, the period of retention may not exceed what is strictly necessary and reasonable to carry out the foreigner's expulsion. The maximum period shall be THIRTY (30) consecutive days, extendable once for the same term. If expulsion cannot be carried out, the NATIONAL MIGRATION DIRECTORATE shall proceed as provided by Article 71 of this law.

Once retention has been ordered, the NATIONAL MIGRATION DIRECTORATE shall immediately notify the intervening court, both the original court and the one on duty, of the measure adopted."

Comments:

As a general comment, it should be noted that, since the DNU amends the migration law — although unconstitutionally, as there is not a single argument proving its necessity and urgency to bypass the parliamentary process — at the very least it could have incorporated the international standards on migration-related deprivation of liberty,¹² which have been developed after the law was enacted in 2003. These standards establish that migration detention may only be applied as an absolutely exceptional measure of last resort, for the shortest possible time, and with all due process guarantees. They also establish that its application is prohibited — without exception — in the case of children, families, and many other categories of people in certain situations of vulnerability. In line with the restrictive and regressive objective of the DNU, these changes were not made. On the contrary, it moved in the opposite direction of these standards.

¹² Among others, those established in General Comments No. 4 (on children in the context of migration) and No. 5 (on the right to liberty and protection against arbitrary detention) of the Committee on the Rights of Migrant Workers and Members of Their Families, from 2017 and 2021 respectively.

A first amendment is introduced in the first paragraph, by referring to "retention ordered ex officio by the judiciary." It is unclear what this refers to, since the judiciary could only issue this kind of measure at the DNM's request, within the framework of an expulsion proceeding and once that sanction has become final and consented to.

A second change centers on family ties as a criterion for suspending the deprivation-of-liberty measure and eventually overturning the expulsion and facilitating regularization. In this regard, while the previous version of Art. 70 ordered the person's immediate release and the initiation of a summary regularization procedure, the DNU establishes, first, that the DNM "may" suspend the detention measure. Then, it provides that, before ordering release, the DNM will assess, within 48 hours, whether the tie is compatible with the requirements established for the waiver in Articles 29 and 62, something difficult to fulfill within that period. This is without prejudice to the wording of the article being confusing, since it is not clear whether it applies only to "spouses" or also to children and parents.

The DNU then adds that "in all other cases, retention and expulsion shall be carried out immediately." Here, it is omitted — although also in the other cases — that the deprivation-of-liberty measure restricts a fundamental right, and therefore that the person must be able to exercise the rights and guarantees existing in legislation regarding this kind of measure.

Another amendment lies in extending the periods of migration detention, doubling to 30 days the 15 days set by Decree 616/2010, extendable for another 30 days. Once again, this contradicts the international standards on the matter, which call for reducing these periods to the minimum possible.

Finally, it is worth returning to what was noted in the first part of these comments, since it is here that the DNU's mistaken approach materializes. There I questioned the statement claiming that "this does not mean turning the institute of preventive retention into a means of depriving an immigrant of liberty [but rather] guaranteeing compliance with an eventual expulsion, with strict respect for constitutional guarantees." However, these measures are unquestionably forms of deprivation of liberty (whether called "retention" or anything else). Their euphemistic naming, as happens in these cases, goes hand in hand with the absence of basic due process guarantees, despite the mere reference to that effect in the DNU's recitals.

ARTICLE 20. — Article 71 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 71. — When a foreigner's expulsion cannot be carried out within a reasonable time period, the NATIONAL MIGRATION DIRECTORATE may order their release. To do so, it must set a real or personal bond, depending on the case and the foreigner's means and the grounds for the expulsion order. In that case, the NATIONAL MIGRATION DIRECTORATE must require periodic appearance by the foreigner, as determined by regulation.

Provisional release must be immediately reported to the competent federal judge, detailing thoroughly the reasons that prevented the expulsion for which the retention was ordered."

Comments:

The reference to a "reasonable time period" is confusing, since the previous article expressly sets time limits. It would therefore only make sense if aimed at applying that "reasonableness" in line with the standards, that is, that in practice this measure — which, I stress, should be exceptional and a last resort — is applied for the shortest possible time, as far removed as possible from the maximum 30 or 60 days set.

The inclusion in this article of non-custodial measures — bond, periodic appearance — runs counter to the international standards Argentina must respect. Indeed, since this is an exceptional, last-resort measure, the general rule is that the person should face no restriction on their liberty whatsoever. Then, if deemed necessary — in a specific case — one of these measures — bond, etc. — should be used. And only in the last resort, through a duly substantiated decision, should the exceptional measure of deprivation of liberty be used.

To close the comment on this article, and in case the reasons and the importance of these standards are not clear enough: we are talking about depriving a person of liberty for an administrative reason, that is, we are not dealing with detention as a sanction imposed for criminal responsibility for an act deemed a crime and of the seriousness required under criminal law.

ARTICLE 21. — Article 74 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 74. — Against decisions of the NATIONAL MIGRATION DIRECTORATE that are final or that entirely prevent the processing of the interested party's claim or request, and against interlocutory decisions of a purely procedural nature that harm subjective rights or a legitimate interest, review shall proceed in the administrative and judicial venues, when:

- a) A foreigner's admission or presence is denied;
- b) A permanent, temporary, or transitory residence authorization is canceled;
- c) A foreigner is ordered to leave the country or their expulsion is ordered;
- d) The application of fines and bonds, or their enforcement, is decided.

Administrative review of acts issued by the National Director of Migration shall not proceed, in accordance with the last paragraph of Article 75 of this law."

ARTICLE 22. — Article 75 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 75. — A hierarchical appeal may be filed against administrative acts resolving the matters listed in the preceding article, including those issued by delegated authority. That appeal must be filed in writing before the authority that issued the challenged act, within FIFTEEN (15) business days of notification,

and shall be forwarded ex officio within FIVE (5) days to the National Director of Migration.

The interested party may request to review the file, submitting a reliable request to the Enforcement Authority. From submission of the request to review the file, the deadline for filing the appeal shall be suspended, once only, for a term extending until FIVE (5) business days after notification of the act granting the review. The file shall be made available to the interested party at the agency's front desk, within TWENTY-FOUR (24) business hours after the review request is made.

Acts issued by the National Director of Migration, under the terms of Article 74 of this law, shall exhaust the administrative venue, and the corresponding judicial appeal shall proceed."

ARTICLE 23. — Article 76 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 76. — Once the administrative venue is exhausted, the judicial appeal may be filed within FIFTEEN (15) judicial business days from notification of the act exhausting the administrative instance."

ARTICLE 24. — Article 77 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 77. — The judicial appeal must be filed before the National Court of Appeals in Federal Administrative Litigation or the Federal Courts of Appeals with jurisdiction in the provinces. The appeal must be filed with legal representation, in writing, and substantiated. Documentary evidence must be attached, and all other evidence deemed appropriate must be offered, whose relevance and admissibility shall be assessed by the court in accordance with the criteria set out in Article 364 of the CODE OF CIVIL AND COMMERCIAL PROCEDURE OF THE NATION.

Once the filing has been submitted, the intervening court, prior to any other proceeding, shall give notice to the Prosecutor for a term of FIVE (5) business days to render an opinion on whether the case may proceed. Once the Prosecutor's opinion has been received, notice shall be given to the NATIONAL MIGRATION DIRECTORATE for a term of FIVE (5) business days.

Once that notice has been answered, the intervening Court of Appeals shall issue its decision within FIVE (5) business days.

If the appeal does not meet the requirements established under this article and those corresponding to the court before which it is filed, it must be rejected without further proceedings."

Comments on Articles 21, 22, 23, and 24 of the DNU, reforming Articles 74 to 77 of the migration law:

Until the DNU's unconstitutional reform, the law — following in detail the provisions of the Administrative Procedure Law and its regulation — recognized the following remedies:

- Motion for reconsideration before the authority issuing the decision, with an implicit hierarchical appeal in the alternative, when the decision was issued by an authority delegated within the DNM
- Hierarchical appeal, to be decided by the DNM's Director
- Appeal to a higher authority [*recurso de alzada*], to be decided by the Ministry of the Interior
- Judicial review of administrative acts, with two instances: first instance in the federal administrative litigation courts, or a second instance through appeal before the competent Federal Court of Appeals

The DNU introduces drastic changes to this appeals regime, eliminating essential guarantees, both administrative and judicial. As we will see, they establish an exceptional process, in the sense of creating an Exception regime to the Rule of Law applicable to any person in the rest of the administrative procedures.

First, it should be noted that the rules set out in the first two articles — administrative remedies — resemble more of a labyrinth than clear and precise legal technique, as the wording is thoroughly confusing. The previous articles clearly followed the same steps set out in the Administrative Procedure Law and its implementing decree. The new ones, by contrast, require careful analysis to try to understand what the meager and illegitimate appeals system provided for people affected by DNM decisions actually consists of — decisions that can seriously impact basic rights.

In any case, this confusion lies in the true legal problem — better said, the unconstitutionality — of these articles: I refer first to the elimination of various avenues of appeal recognized under current legislation, including in treaties of constitutional status. The DNU restricts and eliminates remedies — administrative and judicial — for challenging DNM decisions, even though these remedies are recognized for every person whose rights are affected by acts issued by a public administrative agency. The changes, specifically, are the following:

- The motion for review (Art. 74) and the hierarchical appeal (Art. 75) may only be filed if the decision is not signed by the DNM Director;

That is, in cases in which the DNM's senior authority intervenes — the law does not regulate when this could or should occur — the review motion recognized in Article 100 of the Regulation on Administrative Procedures (RLPA, as amended by Decree 695/2024) is lost. We will see below that Article 79 also eliminates — in all cases — the hierarchical appeal that was recognized in the migration law, and remains in force in Articles 88 to 92 of the RLPA, as well as the motion for reconsideration (Arts. 84–88 RLPA).

- If the decision is signed by the Director, the administrative venue is exhausted, thereby eliminating two remedies: the motion for reconsideration (before the DNM), and the appeal to a higher authority [*recurso de alzada*] (elimination expressly reaffirmed in new Article 79).

Therefore, in this latter case, the migrant is entirely excluded from the administrative appeals regime. The decision cannot be challenged before any administrative body, neither before the DNM itself nor before the Ministry of the Interior (or another competent body, in the event of changes to nomenclature or institutional structure). The appeal to a higher authority was provided under Articles 79 to 81 of the law, and remains recognized under Articles 94 to 97 of the Regulation on Administrative Procedures. This circumstance violates absolutely basic aspects of people's rights vis-à-vis the public administration, which have guided administrative procedures — at the very least — since 1972 with the enactment of Law 19,549.

- Elimination of a judicial instance

Through new Article 77, migrants are deprived of a judicial instance. This violates the guarantee of double instance, a procedural tool of constitutional status, based on Article 8.2.h of the American Convention on Human Rights — which enshrines the right to have a judicial decision reviewed by a higher judge or court.

- Reduction of the time limits for administrative and judicial appeals

The general time limits established by administrative procedure legislation are: 30 days to file administrative appeals (Art. 23.d, Law 19,549) and 180 days for judicial review (Art. 25 of the same law). The migration law, in its original version, established a 30-day period for the motion for reconsideration, 15 days for the hierarchical appeal, and 30 days for judicial review. Now, following the amendments introduced by the DNU, the time limits are 15 days for the administrative appeal (in the only case the law allows it) and another 15 days for judicial review. That is, an appeals regime is established that is not only stripped of important remedies but also involves derisory time limits compared to the general rules in force for all administrative procedures.

- Setting derisory time limits for the resolution of the judicial appeal

Article 77 establishes that both the Prosecutor and the Court of Appeals must render their opinion and decide, respectively, within 5 days. Considering the multiple rights that could be at stake in each case — especially given the imminence of an expulsion decision — these time limits make it practically impossible to properly substantiate the case, including a proper analysis of the evidence, and even less to guarantee the person's right to be duly heard by the court.

In this regard, for example, if there were children and other people in the case whose rights would be affected, that time limit nullifies any possibility of the court hearing them. It should be noted that children's right to be heard in procedures and decisions affecting their rights is not a discretionary option. It is an obligation the State must guarantee, without exception, including in judicial proceedings. In the context of migration, international standards are entirely clear about the obligation to ensure that right, and others, when analyzing an expulsion that could result in the child being separated from their parents. In particular, the UN Committees have stated the following:

"States parties should adopt all appropriate measures to fully promote and facilitate children's participation, including through providing children with the

opportunity to be heard in any administrative or judicial procedure related to their case or that of their families (...) States parties should adopt all appropriate measures to guarantee the right of children to be heard in immigration proceedings involving their parents, particularly when the decision may affect the rights of children, such as the right not to be separated from their parents, except when separation is in the child's best interest."¹³

¹³ Joint General Comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, 2017, paras. 37 and 38.

As a conclusion to this section, one can affirm that the DNU, through these 4 articles, severely restricts the constitutional guarantees that protect people's rights against possible mistaken or arbitrary action by the DNM. In this way, on one hand, an approach of opacity and discretion in migration policy is reinstated — characteristic of previous decades, under the Videla law. On the other, a logic of exception for migration proceedings is deepened, wrongly and unconstitutionally presupposing that this subject matter would enable the State to bypass constitutional rules protecting the rights and guarantees of all persons in every instance in which the decisions of authorities impact rights.

There is no basis whatsoever in the Constitution and international treaties for any kind of exception based on the type of public policy involved, allowing restrictions on access to justice and procedural guarantees. What grounds would there be for this unequal treatment? That the people were born in another country? That migration policy relates to borders between States, where its sovereign nature is particularly manifested? Undoubtedly, these — or similar — issues are not valid reasons for evading basic elements of the rule of law such as due process guarantees. This conclusion, which has been valid since the origin of the Argentine constitutional framework based on Articles 16 and 18, is absolutely beyond question since the ratification of international human rights treaties, and even more so since their constitutional status was granted in 1994.

Likewise, these illegitimate distinctions also reveal a profound ignorance — if not disregard — for the rights that may be at stake when residence is canceled and/or an expulsion order is issued. As already developed elsewhere in these comments, such cases — depending on the circumstances of each one — can impact a wide range of rights, including the right to asylum — and therefore, to life and protection against torture — the protection of family life, children's rights (to family, to development, etc.), the right to work, to housing, to health — physical and mental — to social security, or to education, among others.

ARTICLE 25. — Article 78 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 78. — In cases where the expulsion measure is appealed under the terms of Articles 76 and 77 of this law, and no preventive retention order has been issued, the NATIONAL MIGRATION DIRECTORATE may, at any stage of the proceeding, request retention as provided by Article 70 of this law from the intervening court.

There shall be no need to initiate a separate judicial retention proceeding outside the judicial appeal process established under this regime."

Comments:

First, this provision contradicts the criteria established in Article 70 as amended by the same DNU. There, it establishes as a general rule that migration detention could be ordered once the expulsion measure is final and consented to. Here, by contrast, it establishes that the DNM may request such deprivation-of-liberty measure at any stage of the judicial proceeding, without invoking the exceptional grounds included in Article 70 for not following that general rule. This amounts to a kind of "preventive migration detention" unsupported by any requirement whatsoever justifying it (this without prejudice to the fact that, as already explained, Article 70 also fails to respect the international standards the Argentine State must comply with in this area).

The second paragraph is equally serious and contrary to basic constitutional rights and guarantees, deepening the aforementioned "exception" regime. In this way, the DNU seeks, on one hand, for a deprivation-of-liberty order not to have its own specific judicial file, compounding the lack of protection created by Article 70 in regulating migration detention without any mention of the procedural guarantees that must be ensured in these cases. On the other, by providing that detention follows the same "appeal process" as expulsion, it also denies double instance review of a measure depriving a person of liberty, in a flatly arbitrary and unconstitutional manner. And in the same vein, it establishes that within 5 days the Court of Appeals must decide on every kind of motion, evidence analysis, and other matters relating to the expulsion, but also to the detention order. This is something absolutely impossible, which will only result in emptying out the right to justice, judicial protection, and due process guarantees.

ARTICLE 26. — Article 79 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 79. — No appeal to a higher administrative authority [*recurso de alzada*] shall proceed against final acts issued by the NATIONAL MIGRATION DIRECTORATE. Nor shall a motion for reconsideration proceed against acts issued by subordinate bodies operating within that agency."

ARTICLE 27. — Article 80 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 80. — Choosing the judicial venue shall forfeit the administrative one."

Comments:

These changes reaffirm what was noted with respect to Articles 74 to 77, that is, the elimination of administrative remedies held by every person, under the general regime protecting people from public administration decisions, creating an arbitrary and unconstitutional Exception regime. We refer to the arguments set out in analyzing those articles.

ARTICLE 28. — Article 86 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 86. — Foreigners found in the national territory who prove they lack financial means shall have the right to free legal assistance in those administrative and judicial proceedings ordering their return to their country of origin or their expulsion from the ARGENTINE REPUBLIC. In addition, they shall have the right to the assistance of an interpreter if they do not understand or speak the official language."

Comment:

The DNU incorporates the requirement to "prove" the lack of resources in order to access free legal assistance. This change enables administrative discretion regarding the proof of these circumstances, which tends — in addition — to create obstacles excluding people from this right, precisely due to the vulnerable situations they may find themselves in. With this amendment, the DNU could jeopardize one of the most effective, innovative, and exemplary institutional practices created under Law 25,871, through the role of the Office of the National Public Defender, replicated by other countries in the region — such as Brazil.

The DNU also removes the last, but important, sentence of the original Article 86, which established that "Any regulations issued under this law shall safeguard the exercise of the Constitutional Right to a defense."

ARTICLE 29. — Article 89 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 89. — The judicial appeal provided under Articles 76 and 77 of this law, as well as the resulting intervention and decision of the competent judicial body handling it, shall be limited to reviewing the legality, due process, and reasonableness of the act being challenged."

ARTICLE 30. — Article 92 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 92. — Against decisions ordering a sanction, fine, or bond, the hierarchical appeal provided under Article 75, or the judicial appeal provided under Articles 76 and 77, shall proceed."

Comment:

While the hierarchical appeal is maintained, without exception, for decisions affecting property rights, it is restricted or denied in cases where many other human rights of constitutional status are at stake.

ARTICLE 31. — Article 98 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 98. — The National Courts of First Instance in Federal Administrative Litigation, or the Federal Courts in the interior of the country, shall have

jurisdiction over the matters provided under Title V of this law, until a specific court dedicated to migration matters is created."

ARTICLE 32. — Article 114 of Migration Law No. 25,871 and its amendments is replaced by the following:

"ARTICLE 114. — The Auxiliary Migration Police shall be composed of the ARGENTINE NAVAL PREFECTURE, the NATIONAL GENDARMERIE, the AIRPORT SECURITY POLICE, and the ARGENTINE FEDERAL POLICE, which shall, in that capacity, be required to provide the NATIONAL MIGRATION DIRECTORATE with the cooperation it requests."

ARTICLE 33. — Article 123 bis is incorporated into Migration Law No. 25,871 and its amendments as follows:

"ARTICLE 123 bis. — The sworn statement referred to in Article 34 of this law shall be required once its implementation is regulated."

ARTICLE 34. — Articles 81, 84, and 110 of Migration Law No. 25,871 and its amendments are repealed.

TITLE II

AMENDMENTS TO HIGHER EDUCATION LAW No. 24,521 AND ITS AMENDMENTS, AND TO NATIONAL EDUCATION LAW No. 26,206 AND ITS AMENDMENTS

ARTICLE 35. — Article 2 bis of Higher Education Law No. 24,521 and its amendments is replaced by the following:

"ARTICLE 2 bis. — Undergraduate studies at state-run higher education institutions shall be free of charge for all native-born or by-option Argentine citizens, and for any foreigner holding permanent residence in the country. This free provision entails the prohibition on establishing any type of levy, fee, tax, tariff, or charge, direct or indirect, on such studies.

State-run higher education institutions may establish payments for education services for those not included in the preceding paragraph, in accordance with the terms of section c) of Article 59 of this law.

Notwithstanding this, those who do not hold permanent residence in the country may be recipients of scholarships in cases where this is provided for by the applicable bylaws or by agreements entered into between state-run higher education institutions and other states, institutions, or public or private national and international organizations."

ARTICLE 36. — Article 143 of National Education Law No. 26,206 and its amendments is replaced by the following:

"ARTICLE 143. — The NATIONAL STATE, the Provinces, and the AUTONOMOUS CITY OF BUENOS AIRES shall guarantee migrants without a National Identity Document (D.N.I.) access to, and conditions for remaining in, the initial, primary, and secondary levels of the education system, through the presentation of documents issued by their country of origin, in accordance with Article 7 of Migration Law No. 25,871 and its amendments."

Comments on the amendments to the Higher Education Law and the National Education Law.

For brevity, we refer to what was discussed earlier regarding Article 7 of Law 25,871, and what was analyzed regarding the right to higher education, in the first part of this document.

TITLE III

AMENDMENT TO CITIZENSHIP LAW No. 346 AND ITS AMENDMENTS

ARTICLE 37. — Article 2 of Citizenship Law No. 346 and its amendments is replaced by the following:

"ARTICLE 2. — The following are citizens by naturalization:

1. Foreigners over EIGHTEEN (18) years of age who prove they have continuously and legally resided in the ARGENTINE REPUBLIC for the TWO (2) years preceding the application, and who declare their wish to become citizens before the NATIONAL MIGRATION DIRECTORATE, a decentralized agency operating within the scope of the DEPUTY CABINET CHIEF'S OFFICE FOR THE INTERIOR of the CABINET CHIEF'S OFFICE.

A foreigner shall be understood to have resided continuously in the country if he or she remained within the territory throughout the entire period referred to in the preceding paragraph, without having left the country.

2. Foreigners who prove before the NATIONAL MIGRATION DIRECTORATE, regardless of their length of residence, that they have made a significant investment in the country."

See the comments made on the reform to Law 346.

ARTICLE 38. — Article 2 bis is incorporated into Citizenship Law No. 346 and its amendments as follows:

"ARTICLE 2 bis. — For purposes of section 2 of Article 2 of this law, the MINISTRY OF ECONOMY shall establish which investments shall be considered significant, and may establish specific investment projects for that purpose."

ARTICLE 39. — Article 6 of Citizenship Law No. 346 and its amendments is replaced by the following:

"ARTICLE 6. — Foreigners who have met the conditions set out in the preceding articles shall obtain a certificate of naturalization, to be granted by the NATIONAL MIGRATION DIRECTORATE, a decentralized agency operating within the scope of the DEPUTY CABINET CHIEF'S OFFICE FOR THE INTERIOR of the CABINET CHIEF'S OFFICE.

For this purpose, the NATIONAL MIGRATION DIRECTORATE shall coordinate the necessary actions with the NATIONAL REGISTRY OF PERSONS (RENAPER), a decentralized agency operating within the scope of the aforementioned DEPUTY CABINET CHIEF'S OFFICE FOR THE INTERIOR of the CABINET CHIEF'S OFFICE, so that the latter receives the information regarding the citizenship certificates granted and issues the corresponding National Identity Document."

ARTICLE 40. — Article 6 bis is incorporated into Citizenship Law No. 346 and its amendments as follows:

"ARTICLE 6 bis. — The CITIZENSHIP-BY-INVESTMENT PROGRAM AGENCY is hereby created as a decentralized agency operating within the scope of the MINISTRY OF ECONOMY, whose purpose shall be to design, manage, and oversee citizenship-by-investment programs.

The management of the CITIZENSHIP-BY-INVESTMENT PROGRAM AGENCY shall be entrusted to ONE (1) Executive Director, with the rank and status of Deputy Secretary, appointed by the NATIONAL EXECUTIVE BRANCH."

ARTICLE 41. — Article 6 ter is incorporated into Citizenship Law No. 346 and its amendments as follows:

"ARTICLE 6 ter. — The CITIZENSHIP-BY-INVESTMENT PROGRAM AGENCY shall have the following powers:

1. To implement citizenship-by-investment programs, aimed at attracting foreign capital investment in the country, and, in general, encouraging direct foreign investment.
2. To publish annually the investments received through citizenship-by-investment programs.

3. To take part in dissemination campaigns for citizenship-by-investment program policies.
4. To hire, when necessary, qualified staff for the promotion or design of citizenship-by-investment programs.
5. To receive applications for citizenship-by-investment and request reports from the NATIONAL MIGRATION DIRECTORATE, the FINANCIAL INFORMATION UNIT (UIF), and all other public agencies, private entities, or individuals corresponding to each application.
6. To evaluate applications for citizenship-by-investment.
7. To submit a reasoned report recommending the approval or rejection of the application to the NATIONAL MIGRATION DIRECTORATE.
8. To issue any rules deemed necessary for its operation."

ARTICLE 42. — Article 6 quater is incorporated into Citizenship Law No. 346 and its amendments as follows:

"ARTICLE 6 quater. — The Executive Director of the CITIZENSHIP-BY-INVESTMENT PROGRAM AGENCY shall be responsible for the organization, direction, and administration of the Agency. In particular, the Director shall have the following duties and powers:

- a) To exercise the legal representation of the agency.
- b) To exercise general management of the agency and handle economic, financial, and property matters, accounting, and human resources administration.
- c) To propose to the NATIONAL EXECUTIVE BRANCH the organizational structure.
- d) To approve the agency's internal operating regulations.
- e) To promote and manage the acquisition of resources and funds for fulfilling the agency's objectives.
- f) To accept inheritances, bequests, and donations.
- g) To prepare and publish the agency's Annual Report.
- h) To enter into contracts and agreements, within its area of competence, with state, provincial, Autonomous City of Buenos Aires, and municipal agencies, as well as with public and private international organizations and companies.

- i) To design citizenship-by-investment programs aimed at attracting foreign capital.
- j) To participate in implementing actions aimed at increasing the attraction of foreign investment.
- k) To take part in evaluating citizenship-by-investment applications, ensuring that procedures and requirements are met efficiently and in accordance with current regulations.
- l) To participate in formulating and implementing dissemination policies for citizenship-by-investment programs.
- m) To take part in determining the investments required to apply citizenship-by-investment programs.
- n) All other necessary powers relating to the exercise of managing and representing the CITIZENSHIP-BY-INVESTMENT PROGRAM AGENCY."

ARTICLE 43. — Articles 3, 4, 5, and 11 of Citizenship Law No. 346 and its amendments are repealed.

TITLE IV

TRANSITIONAL PROVISIONS

ARTICLE 44. — Residence-granting procedures that were initiated prior to the entry into force of this decree shall continue their processing and shall be reviewed under the legal framework in force at the time they began.

Contrary to what is established in this article, various judicial rulings issued since the DNU's approval — in expulsion cases — are applying the restrictive criteria set by this reform to proceedings that had begun previously. While this article refers to "residence procedures," this is evidently a related matter governed by the same legal principles, so it is very concerning that some courts are going even beyond the — arbitrary — restrictions of the DNU itself.

ARTICLE 45. — Citizenship-granting procedures that were initiated prior to the entry into force of this decree shall continue their processing before the court in which they are being heard, and shall be reviewed under the grounds in force at the time such process began.

TITLE V

FINAL PROVISIONS

ARTICLE 46. — The expenses incurred in creating and operating the CITIZENSHIP-BY-INVESTMENT PROGRAM AGENCY shall be covered by the appropriations assigned under the General National Administration Budget to Jurisdiction 50 – MINISTRY OF ECONOMY.

In an administration characterized by drastic cuts in public spending, especially in policies and programs aimed at guaranteeing rights (health, education, social security, housing, disability, the elderly, etc.), including the closure of ministries and other institutions (such as INADI), it is striking that appropriations are being allocated to create a new agency with the mandate to "sell" Argentine nationality.

ARTICLE 47. — This decree shall enter into force on the day of its publication in the OFFICIAL BULLETIN.

ARTICLE 48. — Notice shall be given to the STANDING BICAMERAL COMMISSION of the NATIONAL CONGRESS.

Since the DNU's approval, various social and academic institutions have repeatedly sent messages to the president and members of the Standing Bicameral Commission, calling on them to urgently review and reject the DNU. However, the presidency did not respond to that request and the Commission did not take up the decree at all. As a stark and tragic indicator of the setback in migrants' rights in Argentina, a law passed unanimously by both Houses of the National Congress in late 2003 is being reformed twenty-two years later by a presidential decree, without any reaction whatsoever from the majority of political parties that approved, supported, or even promoted that law at the time.

ARTICLE 49. — This shall be communicated, published, sent to the NATIONAL OFFICIAL REGISTRY, and filed.

MILEI — Guillermo Francos — Gerardo Werthein — Luis Petri — Luis Andrés Caputo — Mariano Cúneo Libarona — Patricia Bullrich — Mario Iván Lugones — Sandra Pettovello — Federico Adolfo Sturzenegger

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Conclusion

In summary, and in a few words, it is possible to state that DNU 366/2025 is the most restrictive, unconstitutional, and anti-democratic migration "regulation" in the history of the Argentine Republic, for the following reasons:

- It was approved circumventing the procedures the Constitution establishes for reforming laws, through a process carried out behind the backs of society and the political sectors represented in the National Congress;
- To attempt to justify this "exceptional" rule, distorted statistics, nonexistent realities, stigmatization, absurd and unverifiable hypotheses about the future, phrases lifted

from social media, and a vision of migration in the country steeped in ignorance and prejudice were invoked;

- It violates an extensive list of laws, articles of the Constitution, and international human rights treaties of constitutional status;
- The discriminatory provisions on the rights to education and health constitute restrictions that were not even present under the "Videla law" (Migration Law 22,439);
- Regarding expulsion and the removal of procedural rights and guarantees, the DNU goes further, in multiple respects, than the tragically infamous Residence Law 4,144 (1902);
- The periods of administrative detention are increased, a regressive measure with no justification whatsoever and no similar regulatory precedent;
- The unconstitutional restrictions on the right to family life and family unity, as well as the right of children not to be separated from their parents, have no legislative precedent;
- By law, the migratory irregularity of people who hold legal residence in the country is being deliberately promoted, driving social exclusion and all the problems that stem from that situation.