



The United States of America's Compliance with the Convention on the Elimination of All Forms of Racial Discrimination

Suggested List of Themes Report Relating to Immigration

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates provides pro bono legal services to people seeking asylum and protection from other harms, survivors of trafficking, unaccompanied minors, and people in immigration detention. The Advocates routinely trains lawyers on immigration representation and advocate at all levels for changes to immigration, detention and trafficking law and policies that ensure the protection of human rights.

EXECUTIVE SUMMARY

1. Despite welcome changes in immigration policy since 2020, U.S. immigration law continues to allow detention, expulsion and denial of protection. Due to entangling of criminal and immigration systems, U.S. immigration law disproportionately impacts racial minorities. U.S. policy changes on priorities for removal and detention made some important improvements; however, racial minorities represented a disproportionate number that remained subject to immigration bars and mandatory detention for extensive criminal grounds.
2. Other actions raised concerns of racial discrimination in the implementation of laws. For example, Cameroonian migrants were forced to advocate for months before being granted Temporary Protected Status, while the government moved to provide the same protections sua sponte just weeks after Ukrainians were forced to flee. Photos and reports of Haitian migrants being forcibly prevented from entry by U.S. Border Patrol Agents reflect concerns of discriminatory treatment of asylum seekers and those seeking protection. And, our reports found that Black and Brown noncitizens were disproportionately detained, given higher bond amounts to get release, and obtained fewer wins in immigration court proceedings as compared to white noncitizens.
3. U.S. immigration proceedings and policies raise human rights concerns across all races, but appear to disproportionately impact on BIPOC communities. As the committee noted in 2014, militarization of the border and immigration enforcement operations remained a concern. Detention for administrative immigration violations resulted in due process violations and arbitrary detention concerns. Immigration court proceedings lack crucial due process protections such as government-appointed counsel and independent judges.
4. U.S. immigration policy also resulted in vulnerabilities to trafficking in persons, and the government failed to provide adequate protections for victims.

The United States of America fails to uphold its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

I. Immigrants (Concluding Observations paragraph 8 and 18)

5. In its 2014 Concluding Observations, the Committee noted with concern the “increasingly militarized approach to immigration law enforcement, leading to the excessive and lethal use of force by the CBP personnel”¹ The Committee was also concerned about racial profiling by law enforcement, mandatory detention, and “deportation of undocumented immigrants without adequate access to justice.”²

¹ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of American*, adopted by the Committee at its 2317th session (26 August 2014), U.N. Doc CERD/C/USA/CO/7-9, ¶ 18.

² Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of American*, adopted by the Committee at its 2317th session (26 August 2014), U.N. Doc CERD/C/USA/CO/7-9, ¶ 18. The Committee also expressed concern about the practice of racial profiling of racial or ethnic minorities by law enforcement officials, including border enforcement officials in ¶ 8.

6. In its 2021 State Party Report, the U.S. noted a range of executive orders and policies enacted after the election of President Biden, including Executive Order 13993, Revision of Civil Immigration Enforcement Policies and Priorities, and a Department-wide memorandum, Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities.³
7. While these were welcome changes, serious problems remain with U.S. immigration policies that must be addressed to comply with obligations under CERD.

Racial Discrimination in Immigration Policies

8. U.S. immigration policies have a disproportionate impact on racial minorities within non-citizen communities. In part, this is due to other racially discriminatory actions such as racial profiling that place BIPOC communities in criminal proceedings that result in immigration consequences.⁴ In other areas, such as expedited removal and immigration proceedings not related to criminal issues, the same discriminatory outcomes have been observed.⁵
9. Black migrants receive disparate treatment—being blocked from access the U.S., experiencing higher rates of detention and solitary confinement, receiving higher bond amounts, and ultimately losing their cases requesting protection at higher rates. For example, in October 2021, US Customs and Border Protection (CBP) agents were photographed physically beating back Haitian migrants on the Mexico-U.S. border in order to prevent them from entering the U.S. to obtain asylum.⁶ By contrast, the U.S. recently opened special lanes for Ukrainians seeking safety at the Mexico-U.S. border.⁷ The U.S. has promised to investigate and punish those responsible for beating the Haitian migrants, but has not attempted to resolve overarching, systemic racism that accounts for the disparate treatment received by Haitians and other Black migrants at the border.
10. Cameroonians waited months for approval of Temporary Protected Status (TPS) to allow them to stay y in the U.S. instead of returning to violent armed conflict in Cameroon. Similarly, TPS designation on the basis of violent armed conflict or climate change has been slow for countries such as Ethiopia and Mauritania. By contrast, the U.S. designated TPS for Ukrainians

³ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (2 June 2021), U.N. Doc. CERD/C/USA/10-12, ¶ 17.

⁴ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT 14 n.52 (2021) <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> (citing Frase, R. & Roberts, J. V. (2019). *Paying for the past: The case against prior record sentencing enhancements*. Oxford University Press).

⁵ See, e.g. *The inquiry into border agents on horseback continues. Critics see “broken” system*, MPR News, Nov. 6, 2021, <https://www.npr.org/2021/11/06/1052786254/border-patrol-agents-horseback-investigation-haitian-immigrants>.

⁶ *The inquiry into border agents on horseback continues. Critics see “broken” system*, MPR News, Nov. 6, 2021, <https://www.npr.org/2021/11/06/1052786254/border-patrol-agents-horseback-investigation-haitian-immigrants>.

⁷ Kate Morrissey and Alexandra Mendoza, *CBP begins rapid processing of Ukrainians at PedWest border crossing*, The San Diego Union Tribune, Apr. 6, 2022, <https://www.sandiegouniontribune.com/news/border-baja-california/story/2022-04-06/cbp-ukrainians-pedwest>.

shortly after the Russian invasion. The disparate treatment raises concerns about discrimination.⁸

11. Black non-citizens also face higher rates of detention and deportation than other immigrant populations. A study from 2021 found that Black detainees in Immigration and Customs Enforcement (ICE) custody were more likely to have lengthy detentions and were six times more likely to be sent to solitary confinement⁹. The Advocates' Immigration Court Observers have identified that immigration judges also set bonds higher for Black migrants as compared to other races.¹⁰

Detention

12. The Committee condemned mandatory detention of immigrants in its 2014 Concluding Observations. The State Party report states that non-citizens are provided an opportunity to request bond and that “if an ICE officer denies bond (or sets a bond the non-citizen considers too high), a non-citizen may ask an Immigration Judge for a redetermination of the custody decision, per 8 U.S.C. § 1226. The non-citizen or ICE may also appeal the Immigration Judge’s custody redetermination to the Board of Immigration Appeals.”¹¹
13. The U.S. has continued to impose mandatory detention without discretion to release or to place on bond or other supervised release conditions and without access to an individualized custody determination by a court in an overly broad array of cases, including for arriving asylum seekers,¹² non-citizens convicted of certain crimes,¹³ and certain refugees awaiting adjudication of their applications for permanent residence.¹⁴ These categorical detention determinations violate international norms of proportionality and non-discrimination.¹⁵

⁸ Rebecca Beitsch, *Critics decry double standard on migrants amid Ukraine crisis*, The Hill, March 31, 2022, <https://thehill.com/policy/national-security/600440-critics-decry-double-standard-on-refugees-amid-ukraine-crisis/>

⁹ Black Alliance for Just Immigration and NYU School of Law Immigrant Rights Clinic, *The State of Black Immigrants* by Juliana Morgan-Trostle, Kexin Zheng, and Carl Lipscombe, (2022), <https://www.immigrationresearch.org/system/files/sobi-fullreport-jan22.pdf>; see also Spencer Woodman, *U.S. isolates detained immigrants from majority, black countries at high rate, study finds*, International Consortium of Investigative Journalists, Apr. 21, 2020, <https://www.icij.org/investigations/solitary-voices/u-s-isolates-detained-immigrants-from-majority-black-countries-at-high-rate-study-finds/>.

¹⁰ The Advocates for Human Rights, *Bearing Witness in the Moment: Report from the Immigration Court Observation Project*, (Minneapolis, Minnesota: 2020), <https://www.theadvocatesforhumanrights.org/res/byid/8597>.

¹¹ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (2 June 2021), U.N. Doc. CERD/C/USA/10-12, ¶ 88.

¹² Immigration and Nationality Act (INA) § 235(b)(1)(B)(iii)(IV).

¹³ Section 236(c) of the INA mandates detention of any alien who is inadmissible by reason of having committed any offense covered in § 212(a)(2); is deportable by reason of having committed any offense covered in INA § 273(a)(2)(A)(ii), (A)(iii), (B), (C), or (D); is deportable under Immigration and Nationality Act (INA) § 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least 1 year; or is inadmissible under Immigration and Nationality Act (INA) § 212(a)(3)(B) or deportable under Immigration and Nationality Act (INA) § 237(a)(4)(B) when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

¹⁴ Human Rights Watch, *Costly and Unfair: Flaws in the US Immigration Detention Policy* (May 2010), 8-9. Also available at: <https://www.hrw.org/report/2010/05/06/costly-and-unfair/flaws-us-immigration-detention-policy>.

¹⁵ Frey & Zhao, *supra* note ix, 310-11.

14. Even when the law does not mandate detention, the U.S. government routinely denies bond. Individuals charged with domestic violence, driving while under the influence, and various non-violent crimes are held without bond or have bonds set so high as to not be able to access release.¹⁶ In addition, the law is applied such that a person may only request bond once unless their case materially changes as determined by the immigration judge.¹⁷ In practice, the U.S. immigration system allows arbitrary detention for long period, with some remaining in detention for years.¹⁸
15. Excessive bond amounts lead to prolonged and arbitrary detention for those not subject to mandatory detention laws. ICE officials and immigration judges deny bond requests and sett bonds well above the \$1,500 required minimum.¹⁹ The Advocates' court observers at the Immigration Court in Bloomington, MN report that bonds are routinely set much higher, with the minimum bond amount usually set at \$5000.²⁰ National data for the first part of FY 2018 shows median bond amounts across the country ranging from \$5000 to \$15,000.²¹ This practice leads not only to lengthy detention, but also to prolonged separation of families.
16. Furter, U.S. law fails to meet the Mandela Rules for minimum standards of treatment in detention, allowing for individuals with mental health concerns and trauma to remain detained, prolonged solitary confinement, improper facilities for transgender people²², and numerous reports of inadequate medical care, religious freedom, access to outdoor space, access to legal libraries and calling to family, and abuse²³. Moreover, reports indicate some detainees are victims of forced labor, with private detention centers paying \$1/day to some detainees for menial labor.²⁴ During the COVID-19 pandemic, The Advocates documented that individuals with underlying health conditions were detained without protocols.²⁵

Due process and legal representation in immigration proceedings

¹⁶ Court Observer Observations March 2020-October 2021.

¹⁷ 8 CFR § 1003.19(e)

¹⁸ Shalini Bhargava Ray, *Justices Will Revisit Whether Certain Noncitizens in Lengthy Detention Are Entitled to Bond Hearings*, SCOTUSblog, Jan. 10, 2022, <https://www.scotusblog.com/2022/01/justices-will-revisit-whether-certain-noncitizens-in-lengthy-detention-are-entitled-to-bond-hearings/>.

¹⁹ Daniel Bush, *Under Trump, higher immigration bonds mean longer family separations*, PBS NewsHour, accessed Jun. 28, 2018, Available online at:

<https://www.pbs.org/newshour/politics/under-trump-higher-immigration-bonds-mean-longer-family-separations>

²⁰ Information on file with The Advocates for Human Rights, Sept. 26, 2019.

²¹ Transactional Records Access Clearinghouse, "ICE Focus Shifts Away from Detaining Serious Criminals," 2nd July 2019, Accessed October 1st, 2019, <https://trac.syr.edu/immigration/reports/519/>

²² Sam Levin, *A Trans Woman Detained by ICE for Two Years Is Fighting for Freedom: 'I've Been Forgotten'*, The Guardian, June 9, 2021, <https://www.theguardian.com/us-news/2021/jun/09/a-trans-woman-detained-by-ice-for-two-years-is-fighting-for-freedom-ive-been-forgotten>.

²³ National Immigration Project of the National Lawyers Guild, *Report: Abuse, Neglect Common at Immigration Detention Centers in the South*, https://www.nationalimmigrationproject.org/pr/2016_21Nov_pr-shad-rpt.html.

²⁴ Martin Kaste, *Detainees Who Earned Just \$1 a Day Are Owed \$17 Million in Back Pay, A Jury Says*, MPR News, Oct. 29, 2021, www.npr.org/2021/10/29/1050520220-detainees-who-earned-just-1-a-day-are-owed-17-million-in-back-pay-a-jury-orders&usg=AOvVaw2guUgLrorQONBQ6H1t-a6P.

²⁵ The Advocates for Human Rights, James H Binger Center for New Americans, and Minnesota Immigrant Health Alliance, *Immigration, Detention, and COVID-19 in Minnesota: Illuminating Human Rights Concerns in Minnesota Jails*, (Minneapolis, Minnesota: March 2021), https://www.theadvocatesforhumanrights.org/Res/ice_detention_covid-19_and_mn_jails_final%205.pdf.

17. In its 2014 Concluding Observations, the Committee noted with concern deportation of undocumented immigrants without adequate access to justice and called on the U.S. to ensure that the rights of non-citizens are guaranteed in law and practice by, inter alia, ...”Undertaking thorough and individualized assessment for decisions concerning detention and deportation and guaranteeing access to legal representation in all immigration-related matters.”²⁶
18. The State Party Report indicates that: “As a general matter, when a non-citizen is placed in removal proceedings before an immigration court, the U.S. government is required to provide that non-citizen fair access to contest removability. This may include the ability to apply for any form of relief or protection for which the non-citizen may be eligible, including asylum, withholding of removal, and protection from removal under regulations implementing U.S. obligations under the Convention Against Torture.”²⁷
19. The U.S. State Party notes that “Pursuant to EO 14012, DOS, DHS, and DOJ are developing plans to remove barriers that impede access to immigration benefits and fair, efficient adjudications of those benefits, and to identify and make recommendations regarding whether to rescind any actions that fail to promote access to the legal immigration system.”²⁸. The State Party also indicates that it has “taken steps to modernize its legal immigration system and its humanitarian components, such as improving services for applicants, reducing burdens on employers, and modernizing the information technology infrastructure underlying the visa processing system. . .” and identifies various programs, such as Legal Access Initiative, aimed at addressing some of the due process concerns related to lack of counsel and complexity of proceedings.²⁹
20. These plans and programs, while a welcome change from overtly discriminatory and anti-immigrant policies, fail to address the structural deficiencies of the system that allow for sweeping violations. Programs, such as LOP and provisions of counsel for certain individuals are pilot programs that are limited to certain jurisdictions based on limited funding.³⁰ Even where those programs operate, they lack resources to adequately ensure people in complex proceedings obtain sufficient due process and are additionally hamstrung by other unaddressed due process concerns. Immigration policies left to the good will and political desire of administrations to address barriers to due process will never fully address these concerns.
21. We welcome the efforts of the U.S. to begin processing people who were forced to “remain in Mexico” while their asylum claims were adjudicated under the Migrant Protection Protocols”

²⁶ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, adopted by the Committee at its 2317th session (26 August 2014), U.N. Doc CERD/C/USA/CO/7-9, ¶ 18 (b).

²⁷ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (2 June 2021), U.N. Doc. CERD/C/USA/10-12, ¶ 84.

²⁸ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (2 June 2021), U.N. Doc. CERD/C/USA/10-12, ¶ 86.

²⁹ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (2 June 2021), U.N. Doc. CERD/C/USA/10-12, ¶ 89.

³⁰ American Immigration Council, "Legal Orientation Program Overview," Sept. 6, 2018, <https://www.americanimmigrationcouncil.org/research/legal-orientation-program-overview>.

and finally, after three harmful years, ending the Title 42 expulsions under the guise of public health. Though, we recognize that asylum seekers remain at risk of Title 42 expulsions due to proposed congressional legislation.³¹

22. Arriving asylum seekers in expedited removal proceedings are subject to mandatory detention and may not be released while awaiting their initial “credible fear” review to determine whether they may apply for asylum before an immigration judge.³² Individuals subject to mandatory detention are not entitled to a bond hearing before an immigration judge or to independent review of their custody determination by a court while awaiting a credible fear review.³³
23. Following a determination of credible fear, asylum seekers who are “arriving aliens” – such as those attempting to come into the United States at a port-of-entry – may be released on parole pending their asylum hearings before an immigration judge or while on appeal, but if the detaining authority (ICE) denies parole, the asylum seeker is prevented by regulation from having an immigration judge assess the need for continued custody.³⁴
24. In expedited removal, however, a non-citizen is provided minimal opportunity to present their claim for protection and the system is rife with reported issues of undue influence to abandon claims, failures of interpretation, and lack of counsel to protect due process rights.³⁵ Expedited removal proceedings allow the government to process noncitizens for removal without providing access to a judge. The U.S. Department of Homeland Security recently issued a new regulation that proposes to change the way in which people apply for asylum in expedited removal proceedings.³⁶ While the regulation contains some positive changes, the overarching legal framework of expedited removal must be changed in order to allow adequate protections.
25. The United States fails to ensure that migrants in removal proceedings have access to counsel, a fair trial and fully understand their rights. Migrants in detention, including children and families, lack access to counsel. U.S. law provides that migrants in removal proceedings have “the privilege of being represented,” but representation must be “at no expense to the

³¹ Press Release, Arizona Senator Mark Kelly, Kelly, Sinema, Bipartisan Group of Senators Introduce Bill Delaying End of Title 42, Ensuring Coordination and Communication with Arizona Border Communities (Apr. 7, 2022), <https://www.kelly.senate.gov/press-releases/kelly-sinema-bipartisan-group-of-senators-introduce-bill-delaying-end-of-title-42-ensuring-coordination-and-communication-with-arizona-border-communities/>

³² Immigration and Nationality Act (INA) § 235(b)(1)(B)(iii)(IV).

³³ Immigration and Nationality Act (INA) § 236(c).

³⁴ See Human Rights First, *Renewing U.S. Commitment to Refugee Protection: Recommendations for Reform on the 30th Anniversary of the Refugee Act 10* (Mar. 2010). (Noting that while Immigration Judges can review ICE’s custody decisions for other immigrant detainees, they are precluded under regulatory language from reviewing the detention of “arriving aliens,” a group that includes asylum seekers who arrive at airports and other U.S. entry points under regulations located primarily at 8 C.F.R. § 1003.19 and § 212.5, as well as § 208.30 and § 235.3); *see also* U.S. Comm’n on Int’l Religious Freedom, *ICE Parole Guideline is an Important First Step to Fix Flawed Treatment of Asylum Seekers in the United States* (Dec. 23, 2009), *available at* http://www.uscirf.gov/index.php?option=com_content&task=view&id=2891&Itemid=126. (Noting low rates of release on parole and citing that New Orleans released only 0.5 percent of asylum seekers, New Jersey less than four percent, and New York eight percent following a finding of credible fear).

³⁵ American Immigration Council. “A Primer on Expedited Removal,” Jul. 22, 2019, <https://www.americanimmigrationcouncil.org/research/primer-expedited-removal>.

³⁶ *Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*, 87 FR 18078, available online at <https://www.federalregister.gov/documents/2022/03/29/2022-06148/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat>.

Government.”³⁷ Representation of detained migrants in removal proceedings, insofar as it is available, is provided by NGOs. Only an estimated 14% of detained migrants receive legal representation.³⁸

26. The Biden Administration’s recent request for FY23 funding to pilot a project to provide legal representation to vulnerable persons in proceedings is a positive development, but Congress must make this a priority and the U.S. government must take steps to ensure government-paid counsel is accessible for all by expanding this pilot.
27. Mandatory deportation laws, automatic prosecutorial programs and streamlined immigration procedures have stripped immigration judges of discretion to consider family ties or length of time in the U.S. in cases involving convictions for aggravated felonies,³⁹ false claims to United States citizenship,⁴⁰ illegal reentry following unlawful presence in the United States,⁴¹ reinstatement of prior orders of removal,⁴² findings by an immigration judge of a frivolous asylum claim,⁴³ and other reasons. U.S. law also provides only narrow avenues for appeal, compounding these harms.⁴⁴ While the recent introduction in U.S. Congress of the Real Courts, Rule of Law Act, which would create independent courts to process immigration matters, is welcome, it has yet to be passed into law.

Trafficking

28. As the Committee noted in its Concluding Observations, failures in U.S. immigration policies result in trafficking, particularly among racial and ethnic minorities such as Latinos. Our

³⁷ INA § 292. See also, American Bar Association, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, Feb. 2010, at 40, (Noting that while courts may apply a case-by-case approach to determining whether the assistance of counsel would be necessary to provide fundamental fairness, under the United States Constitution’s Fifth Amendment due process guarantee, appointment of counsel has been denied in every published case).

³⁸ Helen Eisner, *Disabled, Defenseless, and Still Deportable: Why Deportation Without Representation Undermines Due Process Rights of Mentally Disabled Immigrants*, 14:2 *Journal of Constitutional Law* 511, 511-536 (Dec. 2011) <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1044&context=jcl>.

³⁹ Deportable Aliens, 8, United States Code, § 1227(a)(2)(A)(iii) states that any alien who has been convicted of an “aggravated felony” as defined by Deportable Aliens, 8, United States Code, § 1101(a)(43) is deportable. Aliens who are unlawfully present in the United States and are convicted of an aggravated felony are deportable subject to expedited proceedings, without a hearing before an immigration judge, pursuant to Deportable Aliens, 8, United States Code, § 1228. A person convicted of an aggravated felony is barred from seeking cancellation of removal pursuant to 8 U.S.C. § 1229b(a)(3).

⁴⁰ Deportable Aliens, 8, United States Code, § 1227(a)(3)(D) states that any alien who falsely claimed U.S. citizenship is deportable. No waiver of inadmissibility is available for false claims to United States citizenship, effectively rendering individuals unable to qualify for cancellation of removal.

⁴¹ Deportable Aliens, 8, United States Code, § 1182(a)(9)(C)(i)(I) renders permanently inadmissible an individual who is present in the United States for more than 1 year, subsequently departs the United States, and attempts to or does reenter the United States without being admitted.

⁴² Deportable Aliens, 8, United States Code, § 1231(a)(5) provides that if the attorney general finds that an alien has illegally reentered the United States after having been removed or departed voluntarily under an order of removal, the original order shall be reinstated and is not subject to reopening.

⁴³ Deportable Aliens, 8, United States Code, 1158(d)(5) states that if the attorney general finds that an applicant for asylum has made a frivolous asylum application, the alien shall be permanently ineligible for any immigration benefits in the United States.

⁴⁴ American Immigration Council, *Judicial Review Provisions of the REAL ID Act: Practice Advisory* by the Legal Action Center (Washington, D.C., 2005). Also available at https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/realid6705.pdf.

experience has reflected the Committee's observations that "workers entering the State party under the H-2B work visa programme are at high risk of becoming victims of trafficking and/or forced labour, and that some children from racial and ethnic minorities, particularly Hispanic/Latino children, are employed in the agriculture industry and may face harsh and dangerous conditions."⁴⁵

29. The State Party has reported that "The Blue Campaign, DHS's unified voice to combat human trafficking, has produced human trafficking training and awareness materials ..."⁴⁶ While these training and policy efforts around awareness of trafficking are important, the effectiveness of resources for victims and the likelihood of prosecution remain dependent on the opinion of the agent. Over the prior years, this resulted in agencies failing to investigate and provide benefits to trafficking victims that did not fit the agent's paradigm. This had a disproportionate effect on non-white noncitizens against whom agents had biases and who were more likely to be in the criminal justice system due to racial profiling and overpolicing of racial minorities.

II. Suggested questions relating to immigration

30. The Advocates respectfully recommends that the Committee pose the following questions to the United States:

- Please explain the use of border enforcement policies against BIPOC migrants, particularly in abuse of Haitians, delay of TPS for Cameroonians, and failure to grant parole programs for Afghans despite quite different approaches to other racial groups, including Ukrainians.
- How is the U.S. addressing observations and data that show black migrants are disproportionately detained and denied immigration benefits in immigration proceedings as compared to migrants of other races?
- Can the U.S. explain reports of arbitrary detention, particularly during COVID-19, despite changed policy on enforcement priorities?
- What is the U.S. doing to address systemic failures of due process in removal proceedings?
- What legislation is in place to ensure all people facing immigration proceedings are provided with adequate counsel?
- What is the U.S. doing to ensure protections for victims of trafficking are not denied due to race or national origin?
- What is the U.S. doing to address the fact that noncitizen victims of trafficking suffer double discrimination as they are disproportionately impacted by the criminal justice

⁴⁵ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, adopted by the Committee at its 2317th session (26 August 2014), U.N. Doc CERD/C/USA/CO/7-9, ¶ 18.

⁴⁶ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention*, due in 2017, (2 June 2021), U.N. Doc. CERD/C/USA/10-12, ¶ 90.

system and racial profiling while also receiving discriminatory treatment by immigration authorities that may lead them to fail to recognize victims and provide protections?