

# IMMIGRATION DETENTION

## and the Rights of Migrants



### Migrants in Detention Have a Right to:

#### **FREEDOM FROM ARBITRARY DETENTION:**

The right to a judicial review of the decision to detain, detention only in accordance with the law, and freedom from unduly lengthy detention.<sup>1</sup>

#### **DUE PROCESS:**

The right to be informed of the reasons for detention, to prompt judicial review, to legal counsel, and to consular assistance.<sup>2</sup>

#### **HUMANE CONDITIONS OF DETENTION:**

The right to be treated with humanity and respect while in detention, freedom from cruel, inhumane, or degrading treatment, and the right to be housed separately from convicted persons.<sup>3</sup>

#### **HEALTH CARE:**

The right to medical care and treatment whenever necessary, especially care that is urgently required for the preservation of life or the avoidance of irreparable harm to health.<sup>4</sup>

#### **FAMILY UNITY:**

The right to maintain contact with family members while detained.<sup>5</sup>

### **WHAT IS IMMIGRATION DETENTION?**

U.S. law gives federal immigration authorities broad power to arrest and detain people who are attempting to enter or are suspected of being in the U.S. without authorization. Today, the exercise of that power has resulted in the detention of nearly 400,000 people every year in the United States in over 350 prisons, jails, and private detention centers around the country.<sup>6</sup> Immigration violations are civil status violations, not crimes. The purpose of immigration detention is to ensure that people appear at their hearings or for removal, not to punish them. Though detainees are presumed to have either entered the U.S. or stayed in the U.S. without legal permission, anyone may end up in detention while their case is being heard, including legal residents and U.S. citizens.

### **WHAT ARE THE RIGHTS OF IMMIGRANTS IN DETENTION?**

International human rights apply to all human beings at all times, regardless of immigration status. Certain rights are especially important to people in detention, such as the right to due process, the right to humane conditions of detention, freedom from arbitrary arrest, the right to health, and the right to family.

The rights of non-citizen detainees are protected by international treaties, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Migrants are especially vulnerable to human rights abuses, so two treaties provide them with specific protections: the Convention relating to the Status of Refugees and the Convention on the Protection of the Rights of All Migrant Workers and Their Families. The UN has also created a Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which provide minimum standards for the treatment of people in detention.

### **DOES U.S. LAW RECOGNIZE THE RIGHTS OF DETAINEES?**

The U.S. Constitution guarantees certain rights to non-citizen detainees, including the right to due process, freedom from arbitrary arrest, and freedom from cruel and inhumane treatment. Other U.S. laws, such as the Immigration and Nationality Act and Department of Homeland Security regulations, set standards for the apprehension and detention of non-citizens, treatment of immigration detainees, and judicial review.

The U.S. government has also ratified treaties protecting the rights of non-citizen detainees, including the ICCPR and the Refugee Convention. By ratifying these treaties, the U.S. has made a legally binding commitment to uphold these human rights for all people in the United States.

### **IS THE U.S. FULFILLING THE RIGHTS OF DETAINEES?**

Isolated from friends and family and without easy access to legal redress, detainees are especially susceptible to having their rights ignored. More aggressive immigration enforcement combined with more punitive laws have overwhelmed the immigration detention system. The result is an alarmingly inadequate immigration detention system that habitually fails to meet international standards or to comply with domestic law.

#### **Freedom from Arbitrary Detention**

The U.S. criminal justice system provides detained individuals with the opportunity to challenge their detention before a court, but this right to judicial review is denied to individuals in immigration detention. U.S. law imposes mandatory detention with an individual hearing before an immigration judge in a broad category of cases, including asylum seekers and non-citizens convicted of certain crimes. Of the 31,075 people detained on September 1st, 2009, sixty-six percent were subject to mandatory detention and not entitled to a judicial review.<sup>7</sup> Lack of review means that many people who could be released, either because they are not a flight risk or the case against them is weak, instead spend substantial time in detention.

Lack of custody reviews contribute to not only unnecessary but unduly prolonged detention. Although Immigration and Customs Enforcement (ICE) reported that in 2007 the average length of detention was 37 days, immigrants and asylum seekers may be detained for months or even years as they go through immigration procedures.<sup>8</sup> For asylum seekers, the average length of detention is 10 months with a range reaching up to 3.5 years.<sup>9</sup> Although U.S. law requires periodic custody reviews of long-term detainees, in



practice detainees are not consistently informed of the reviews and are unable to submit evidence in support of their release.<sup>10</sup>

### Due Process

The U.S. fails to provide due process for detainees. Once detained, immigration detainees are regularly held without explanation of the charges against them and without gaining timely access or access at all to a review before an immigration judge.<sup>11</sup> In 2009, over 30,000 people were deported without any appearance before an immigration judge.<sup>12</sup>

The right to legal counsel is fundamental to ensuring due process. While U.S. law states that persons in immigration proceedings have the privilege of being represented, it should be at no expense to the government.<sup>13</sup> Since many immigrants are unable to afford a lawyer, they rely on legal aid organizations. However, more than a quarter of detention facilities are in locations without any low-cost or free legal aid organizations to assist detainees.<sup>14</sup> Even when detainees can find a lawyer, frequent transfers and restrictions on telephone calls limit their communications and ability to build a successful case.<sup>15</sup> As a result of financial and geographic barriers, the vast majority of people in immigration detention - 84% - are unrepresented and have to navigate the complex immigration system unaided.<sup>16</sup>

### Humane Conditions of Detention

The U.S. lacks mandatory standards for immigration detention facilities, and as a result, migrants are frequently denied their right to humane conditions of detention. Virtually all immigrant detainees are held in prison-like settings, wear prison uniforms, are regularly shackled during transport and in their hearings, and are mingled with convicted people. Immigrants in detention may be held for prolonged periods of time without access to the outdoors.<sup>17</sup> Temporary holding facilities are even worse, with some holding cells essentially large cages in the desert, while in other cases, migrants are held on buses with inadequate food, water, and medical care.<sup>18</sup>

### Basic Health Care

Medical care for persons in U.S. immigration detention is grossly inadequate. Flawed medical judgments, neglectful guards, ill-trained technicians, poor record keeping, lost medical files and staff shortages all contribute to unnecessary suffering and avoidable deaths.<sup>19</sup> Between 2003 and 2009, ICE has reported over 90 deaths of detainees in their custody,<sup>20</sup> of which 30 were found to be “questionable deaths” in which the actions of the medical staff may have contributed to the deaths.<sup>21</sup> Many immigration detainees are pregnant, ill, or elderly and require special care that is delayed or not given. For example, women in detention are routinely denied access to standard gynecological care and struggle to obtain basic supplies for menstruation.<sup>22</sup> Patients with life threatening illnesses such as HIV/AIDS and cancer are denied medicine and medical treatment.<sup>23</sup> Immigration detainees with mental health issues often receive little if any medical treatment while in custody. Asylum-seekers, torture survivors, and victims of human trafficking are placed in conditions with no regard for the risks detention poses to their mental health and with no access to mental health services.<sup>24</sup> In many cases, detention causes mental health issues to worsen and many detainees destabilize while in custody.

### Family Unity

By relying on immigration detention instead of alternatives that allow families to remain together, the U.S. separates family members unnecessarily for weeks, months, or even years. Once an individual is detained, frequent transfers and detention center policies make keeping in contact with family members overwhelmingly difficult. Between 2006 and 2008, ICE conducted over 700,000 immigrant detainee transfers, sometimes to facilities in remote locations or other states, making family visits extremely difficult if not impossible.<sup>25</sup> ICE does not inform family members about transfers, leaving relatives to discover that the detainee has been moved and their new location after the fact.<sup>26</sup> The age and relationship of the family members being separated has no impact on transfer decisions; mothers and fathers are often sent hundreds of miles away from their minor children.<sup>27</sup> Even when families are nearby, detention centers often make it difficult for families to visit detainees, limiting hours or modes of transportation, restricting contact such as hugs and kisses, and prohibiting minors from visiting at all.<sup>28</sup>

## BOUBACAR BAH'S STORY

The human cost of an immigration detention system without oversight or limits is readily apparent in stories like that of Boubacar Bah.<sup>29</sup> Mr. Bah arrived to the U.S. in 1998 and worked in New York as a tailor to support his family in Guinea. In 2006, he was arrested by the ICE for overstaying his tourist visa. In early 2007, while in detention, he fell and fractured his skull. Rather than providing him with medical assistance, detention guards placed him in solitary confinement where he spent 14 hours. By the time Mr. Bah was taken to the hospital, it was too late. He was suffering from a fractured skull and brain hemorrhages. Mr. Bah spent months in a coma before dying in May 2007. In 2008, an investigation by the New York Times revealed that ICE officers had tried to cover up Mr. Bah's story, even considering deporting the dying man back to Guinea to avoid bad publicity.<sup>30</sup>

### Immigration Detention At a Glance

In 2009, the U.S. government detained **383,000 immigrants**, a record high number.<sup>31</sup>

Since 2003, Immigration and Customs Enforcement (ICE) has detained more than **1.5 million people**.<sup>32</sup>

The annual taxpayer cost for holding immigration detainees totals more than **\$1.7 billion**.<sup>33</sup>

Detainees are held in approximately **350 detention centers** around the United States, including public and private prisons and local jails.<sup>34</sup>

**More than 90 people** have died in ICE custody since 2003.<sup>35</sup>

People granted asylum spend an average of **10 months** in detention waiting for their case to be heard.<sup>36</sup>

## ENDNOTES: Immigration Detention and the Rights of Migrants



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