

United States –UN Working Group on Arbitrary Detention – Detention of Migrants –Jan. 2014

The Advocates for Human Rights and Detention Watch Network submitted a report on arbitrary detention in the United States. It reviews the United States' immigration system which heavily relies on detention and the prevalence of racial discrimination, mass incarceration, and the criminalization of migration.

The United States' scope of involvement in immigration has expanded since the USA PATRIOT Act of 2001. The Department of Homeland Security (DHS) was created shortly after in 2003. Currently, the Department of Justice (DOJ) and DHS are responsible for immigration enforcement and the adjudication of immigration cases. Local and state police have been working in tandem after policies such as the 287 (g) program, the Criminal Alien Program (CAP), and Secure Communities.

The report highlights the human rights granted by the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, specifically the right to liberty and security of person, freedom from arbitrary arrest or detention, and prompt review of their detention by an independent court. Although The Working Group on Arbitrary Detention recognizes that deprivation of liberty must be used as a last resort and only in exceptional cases for the shortest possible time, Immigration and Customs Enforcement (ICE) for people consistently apprehend people on suspicion of civil immigration status violations in the U.S. interior. Customs and Border Protection (CBP) also regularly apprehends people at or within 100 miles of the United States' borders with Mexico or Canada or at ports of entry.

The private prison industry has played a significant role in the growth of these budgets by advocating for the expansion of immigration detention and enforcement policies at the federal and state levels. The drastic expansion of mandatory detention laws in 1996 contributed to the skyrocketing growth of detention as an immigration enforcement tool. ICE increasingly relies on detention as the only way to guarantee appearance for hearings despite the availability of alternatives to detention.

These conditions are aggravated by federal appropriation laws that mandate a set number of immigration detention beds to be filled, and the use of ICE "detainers" which allow law enforcement agencies to detain an individual for up to 48 hours (excluding Saturdays, Sundays, and holidays) in order to provide ICE an opportunity to determine the person's immigration status. Under the Operation Streamline program, migrants who have been deported and get caught re-entering the country are prosecuted with felony charges with a maximum sentence of 20 years.

The United States' detention system lacks three critical elements which are necessary to meet its obligation under international human rights law; an individualized assessment and process to challenge all custody decisions, robust case management tailored to individual needs, and access to legal and support services. This failure has resulted in the arbitrary detention of thousands of migrants in violation of ICCPR articles 9(1) and 9(4).

Some of the national policy recommendations made by this report are:

- The U.S. government should decrease the overall number of detention beds, eliminate the arbitrary detention bed quota requiring the detention of 34,000 immigrants each day, and significantly reduce reliance on detention of migrants.

- The United States should repeal mandatory detention laws, which prohibit individual assessment and review of the need for detention, and engage in a serious consideration and commitment to the expansion of community-based alternatives to detention, including for those individuals currently subject to mandatory detention.
- The United States must take concrete steps to bring the U.S. into compliance with its obligations under international human rights law, which prohibits arbitrary detention by ensuring that all persons deprived of their liberty, including all persons detained under immigration laws, have prompt access to review of their custody status by an independent judicial authority.
- The U.S. government must allow for independent oversight of detention facilities and immigration enforcement practices and institute enforceable mechanisms for accountability.
- The United States must end its use of solitary confinement.