



United States' Compliance with the International Covenant on Civil and Political Rights

Violations of the Rights of Refugees, Asylum Seekers and Other Non-citizens

110th Session of the United Nations Human Rights Committee
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The Advocates for Human Rights provides this update, as of February 7, 2014, to our submission made in 2013 for the 109th Session of the United Nations Human Rights Committee. The information in this submission is excerpted from *Detention of Migrants in the United States: Report to the Working Group on Arbitrary Detention*, a report prepared by The Advocates for Human Rights and Detention Watch Network and submitted to the United Nations Working Group on Arbitrary Detention on January 20, 2014. The full report can be accessed at http://www.theadvocatesforhumanrights.org/uploads/migrant_detention_in_the_us_-_ahr_dwn_-_january_2014.pdf.

Issue 19: Concerns with U.S. Government's Response to the Committee's List of Issues

Issue 19 (a) requests clarification on whether mandatory detention of immigrants who lack identification documents or are charged with the commission of crimes will be eliminated, how the U.S. ensures that each decision to detain a non-citizen is made after an assessment of the functional need for detention, and steps taken to ensure judicial oversight over decisions to detain such immigrants.

1. **Mandatory Detention Quota:** In January 2014, Congress reached a \$1.1 trillion spending deal, known as the omnibus. The bill provides over \$5 billion in funding for ICE and nearly \$2.8 billion for ICE detention and removal operations. The bill includes a mandate that ICE fulfill an arbitrary quota and detain a minimum of 34,000 migrants each day.¹
2. **Operation Streamline:** Streamlined immigration procedures (most notably Operation Streamline, which began in 2005) have stripped judges of discretion in mandatory detention cases. The *en masse* procedures courts use in implementing Operation Streamline have been held as deficient under the Federal Rules of Criminal Procedure.²
3. **Lack of Judicial Authority to Release:** There are documented cases of individuals held in detention for years because an immigration judge does not have the authority to order release. For example, Muhammed Azam Hussain was held pursuant to mandatory detention laws for three years.³ During that time, he lost three teeth due to gum disease linked to the poor nutrition and lack of real toothbrushes in the detention facility.⁴ The Division of Immigrant Health Services would not pay for the dentist-recommended periodontal surgery to address his underlying gum disease.⁵ Instead, the agency continued to order repeated extraction of Mr. Hussain's teeth as a short-term measure.⁶

Issue 19(b) requests clarification on whether immigrants detained on criminal charges are promptly informed of the charges against them and brought before a judicial authority, and are given access to legal counsel and legal assistance.

4. **Lack of Access to Legal Counsel:** The New York Immigration Representation Study noted that “A striking percentage of detained and nondetained immigrants appearing before the New York Immigration Courts do not have representation. The greatest area of need for indigent removal defense is, however, for detained individuals. In New York City: Sixty percent of detained immigrants do not have counsel by the time their cases are completed.”⁷
5. Many facilities require legal aid organizations to register in order to receive calls from detainees, as well as maintaining an account with funds to cover the cost of the calls.⁸ When individuals are transferred between facilities, they may end up at a facility where the legal aid organization they worked with is not listed to receive calls and the individual may not have funds to pay for a call.⁹
6. Frequent transfers between detention centers further undermine access to counsel and to fair deportation proceedings. According to the New York Immigrant Representation Study, “ICE transfers almost two-thirds (64%) of those detained in New York to far-off detention centers (most frequently to Louisiana, Pennsylvania, and Texas), where they face the greatest obstacles to obtaining counsel. Individuals who are transferred elsewhere and who remain detained outside of New York are unrepresented 79% of the time.”¹⁰ In one instance, Dave Pierre, an Antiguan immigrant, was held in ICE detention for over 3 years and transferred to 7 different immigration detention facilities across the United States in 25 days.¹¹

Issue 19(c) requests clarification regarding which steps are taken to ensure that immigrants, in particular those with children and unaccompanied alien children, are not held in jails or jail-like detention facilities.

7. **Conditions of Detention:** In 2013, the Detention Watch Network (DWN) conducted a second assessment of the ten worst detention facilities in the country, along with a number of additional detention centers, through its own teams, letters from and interviews with detained individuals, and with information from legal service providers and advocates working inside detention facilities.¹² DWN issued an updated report, finding that “the current state of the immigration detention system [] continues to be plagued by deaths and suicides, subpar medical and mental health care, inedible food, and arbitrary restrictions on visitation and access to legal resources.”¹³ DWN contacted ICE regarding its findings; as of late January, 2014, ICE has failed to respond.
8. Since 2003, 141 immigrants have died in detention.¹⁴ In 2013 alone, 9 individuals died in immigration detention; three of the deaths were suicides.¹⁵ Highly publicized and tragic cases illustrate a systemic disregard for the rights to necessary medical care in detention, humane conditions of detention, and treatment respecting basic human dignity. Shocking reports of the United States’ failure to screen for illness and failure to provide care to ill or injured persons in its custody abound.¹⁶
9. For example, the serious lack of mental health care in detention has led to suicide, such as in the case of **Tiombe Carlos**. Ms. Carlos was diagnosed with paranoid schizophrenia at the age of 15. In 2011, Physicians for Human Rights confirmed the diagnosis while Ms. Carlos was in detention and recommended intense medical treatment and that she be released into the care of her family.¹⁷ In 2012, she underwent a psychological evaluation that would have determined her continued detention.¹⁸ The findings of that evaluation were not received until 11 months after it was conducted.¹⁹ Her attorney and family persistently called on ICE

to release her, yet ICE kept Ms. Carlos in detention, which her attorney described as “horrific, punitive, and inhumane.”²⁰ ICE was well aware of her medical needs as documented in letters of appeal from her attorney and had ample authority to exercise discretion to release her.²¹ In October 2013, Ms. Carlos committed suicide after nearly three years in detention. She was 35 years old.²² Since Ms. Carlos’s death in October 2013, Detention Watch Network, the National Immigrant Justice Center, and Families for Freedom, a New York-based organization that has been working with Ms. Carlos’s family, have repeatedly requested information from ICE regarding the circumstances of Ms. Carlos’s suicide, her mental health treatment, and why she was not released into the care of her family.²³ They have yet to receive responses that adequately address these questions.

10. Reports of poor food quality and limited amount of food are common.²⁴ Detention Watch Network received reports of maggot- and worm-infested food, water that tastes like urine, small portions and lengthy times between meals, and expired food and drink.²⁵ Moreover, religious and medical dietary restriction are not frequently followed, leading individuals with the option of eating what is served – which either violates their faith or aggravates their health – or going without food.²⁶
11. Use of solitary confinement is, sometimes for prolonged periods of time, is permitted and routine. In 2012, 300 people on average were held in solitary confinement in detention, 11 percent of whom had mental health issues.²⁷ A father of three told Detention Watch Network that he was put into solitary confinement after he went on hunger strike to protest the injustice of his incarceration. After he developed gastrointestinal bleeding the jail staff told him he would not be released from solitary and that he would be denied medical care unless he agreed to end his hunger strike.²⁸
12. Of particular concern is the practice of placing transgender immigrants in solitary confinement. Transgender individuals may be placed into “administrative segregation” without any individualized assessment or may face administrative segregation after being attacked or expressing fear for personal safety.²⁹ One transgender woman, Ana Luisa,³⁰ was placed in administrative segregation after being assaulted by a male detainee in a bias attack. Ana Luisa, rather than her assailant, was placed in solitary confinement after this attack, further victimizing her.
13. Many detained immigrants interviewed by Detention Watch Network indicated that they must repeatedly demand health services before they are seen. Immigrants in detention have waited anywhere from three days to five months after putting in a request for an appointment with medical staff. As one detained immigrant put it, “people have to be very sick or almost to the point of passing out to get prompt attention.”
14. Immigrants have been provided with Gatorade or common painkillers, such as aspirin or Tylenol, to allegedly treat many health issues. For example, one immigrant with a protruding bump on his finger and a laceration stretching along his entire arm was provided only with Tylenol by the medical staff. Another detained immigrant was provided with common allergy medication after complaining of a throat ache, but was told to consider removing his tonsils when he left the detention center. The allergy medicine did not relieve his throat pain.
15. While United States’ federal law, known as the Prison Rape Elimination Act (PREA), is in effect, recently proposed rules which would exempt immigration detention facilities from PREA have raised serious concerns. Despite Congressional intent of the 2003 Prison Rape Elimination Act to apply to all types of confinement, including confinement of immigrants in

immigration detention, the rules proposed by Attorney General Eric Holder in June 2011 explicitly stated that they would not be applied to immigration detention. Ongoing advocacy around this issue has pushed for inclusion of all immigration detention in the Department of Justice's final rules, which have been finalized but not yet released.³¹

16. Conditions of detention for migrants, including minor children, detained by Customs and Border Protection in short-term custody facilities (which hold people for up to 72 hours) are of urgent concern. Of particular concern is the practice reported in 2013 of holding detained immigrants in refrigerated or very cold cells.³²

17. **Family Unity:** ICE enforcement practices resulting in detention, particularly cooperation with local law enforcement, have undermined family unity. For example, a 34-year-old Ecuadoran woman named Maria who has lived in Minneapolis, Minnesota, for almost a decade was pulled over by a state police officer as she drove her daughter to school one morning. The Minnesota Department of Public Safety has signed a 287(g) agreement with ICE, and when Maria rolled down her window, the officer asked her for her papers. Because she is undocumented, she had no driver's license, so the officer arrested her. Before taking her to the station, the police officer said that she could call someone to pick up the girl, but Maria told the officer that she had no family in the area. When the officer told her that the only other option was to call CPS, Maria called her elderly landlady who agreed to take the girl. Maria was soon detained by ICE and moved over 1000 miles away to the Hutto women's detention center in Texas. A few days later, Maria's former boyfriend, who was the girl's father and who had abused Maria for years, arrived at the caregiver's house and took his daughter away.³³

Changes to the Legislative and Policy Framework of U.S. Immigration Law

18. **Recent Changes to Material Support for Terrorism Bar:** On February 5, 2014, the U.S. government expanded exemptions available to individuals who meet all other requirements for immigration relief and who pose no threat to the security of the United States but are blocked from refugee, asylum or other immigration status based on the "material support to terrorist organizations" bar. Specifically, the rules exempt individuals from the bar who provided "limited material support" to an undesignated terrorist organization when the support was insignificant, or involved certain routine commercial or social transactions or humanitarian assistance, or was provided under substantial pressure.³⁴

¹ See House of Representatives Chairman Hal Rogers summary of the omnibus, available at http://appropriations.house.gov/uploadedfiles/01.13.14_fy_2014_omnibus_-_homeland_security_-_summary.pdf; Senate Chairwoman Barbara Mikulski summary of the omnibus, available at <http://www.appropriations.senate.gov/news.cfm?method=news.view&id=5aa8e660-f52e-4074-945f-9618eb963ae9>; see also Bill Text & Joint Explanatory Statement, available at <http://rules.house.gov/bill/113/hr-3547-sa>.

² See *United States v. Arqueta-Ramos*, 730 F.3d 1133 (9th Cir. Ariz. 2013) ("HOLDINGS: [1]-Where defendant pleaded guilty during an "Operation Streamline" proceeding to violating 8 U.S.C.S. § 1325(a)(1) by illegally entering the U.S., the plea proceeding violated Fed. R. Crim. P. 11(b)(1); although the district court did not err by advising defendants of their rights en masse, it erred by not questioning defendant individually to ensure that she understood her rights; [2]-The error was not harmless because the government did not prove that defendant would have pleaded guilty even without the Rule 11 error; defendant did not explicitly state that she understood her rights, the charges against her, or the consequences of pleading guilty."). See also *United States v. Roblero-Solis*, 588 F.3d 692 (9th Cir. 2009).

³ Geoffrey Heeren, *Pulling Teeth: The State of Mandatory Immigration Detention*, 45 HARV. C.R.-C.L. L. REV. 601, 601-02 (2010), available at <http://harvardcrcl.org/wp-content/uploads/2009/06/601-6341.pdf>

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings – New York Immigrant Representation Study*, Dec. 2011, at 3. Available at [http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS_Report\(1\).pdf](http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS_Report(1).pdf).

⁸ National Immigrant Justice Center, *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court*, Sept. 2010, at 9. Available at http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023_0.pdf.

⁹ National Immigrant Justice Center, *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court*, Sept. 2010, at 8. Available at http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023_0.pdf.

¹⁰ *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings – New York Immigrant Representation Study*, Dec. 2011, at 3. Available at [http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS_Report\(1\).pdf](http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS_Report(1).pdf).

¹¹ Democracy Now, Exclusive: Dave Pierre on Surviving 1,144 Days Locked Up Inside the Failed U.S. Immigration System, Nov. 13, 2013, available at http://www.democracynow.org/2013/11/13/exclusive_dave_pierre_on_surviving_1?autostart=true.

¹² Detention Watch Network, *Expose & Close: One Year Later*, November 2013, at 2, available at www.detentionwatchnetwork.org/ExposeandClose2013.

¹³ *Id.*

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ Nina Bernstein, *Hong Kong Emigrant's Death Attracts Scrutiny of U.S. Detention System*, N.Y. Times, Aug. 13, 2008 (reporting that “[i]n April, [Hui Lui] Ng began complaining of excruciating back pain. By mid-July, he could no longer walk or stand. And last Wednesday, two days after his 34th birthday, he died in the custody of Immigration and Customs Enforcement in a Rhode Island hospital, his spine fractured and his body riddled with cancer that had gone undiagnosed and untreated for months.”). See also Katherine Fennelly and Kathleen Moccio, U of Minn. Hubert H. Humphrey Inst. Of Pub. Affairs, “Attorneys’ Perspectives on the Rights of Detained Immigrants in Minnesota,” (Nov. 2009).

¹⁷ Families for Freedom, Press Release, Oct. 31, 2013, available at <http://familiesforfreedom.org/news/releases/families-freedom-demands-independent-investigation-detainee-suicide-york-detention>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Correspondence regarding these requests are on file with the author.

²⁴ See, e.g., Georgia Detention Watch, Report on the December 2008 Humanitarian Visit to the Stewart Detention Center, at 5-6. Available at http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf; letter from IRATE & First Friends to the author summarizing key complaints received by volunteers during their visits with people detained in New Jersey, Jan. 26, 2012, on file with author.

²⁵ Detention Watch Network, *Expose & Close: One Year Later*, at 8.

²⁶ *Id.*

²⁷ Urbina, Ian and Catherine Rentz, “Immigrants Held In Solitary Confinement,” *New York Times*, 23 March 2013, available at <http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html>.

²⁸ Detention Watch Network, *Expose & Close: One Year Later*, at 10.

²⁹ Immigration Law & the Transgender Client 90 (Victoria Neilson ed., 2008).

³⁰ Immigration Equality, a national organization that advocates for the rights of gay, lesbian, bisexual, transgender, and HIV positive immigrants, has either conducted an intake with these individuals or directly represented them in their immigration cases.

³¹ See, e.g., Women’s Refugee Commission, “Docket No. OAG-131; AG Order No. 3244-2011 National Standards to Prevent, Detect, and Respond to Prison Rape,” Apr. 4, 2011, (commenting on proposed regulations on implementation of the Prison Rape Elimination Act which would exclude immigrant detention facilities), available at <http://womensrefugeecommission.org/programs/detention/1142-national-standards-to->

[prevent-detect-and-respond-to-prison-rape](#). See also Carrie Johnson, “Immigration Detainees Seek Prison-Rape Protection,” Nat’l Public Radio, Dec. 13, 2011, available at <http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection>, Michelle Brane, “It’s Time to Protect Women and Children in Immigration Detention From Rape,” available at http://www.huffingtonpost.com/michelle-bran/women-ice-rape_b_1130756.html.

³² See “Immigrants Held in Border Deep Freezers,” at <http://www.thedailybeast.com/articles/2013/11/19/immigrants-held-in-border-deep-freezers.html>.

³³ Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Nov. 2011, at 35-36. Available at www.arg.org.

³⁴ See Notice of Determination, 8 U.S.C. 1182(d)(3)(B)(i) at <https://www.federalregister.gov/articles/2014/02/05/2014-02357/exercise-of-authority-under-section-212d3bi-of-the-immigration-and-nationality-act>