



**The United States of America's
Compliance with the International Covenant on Civil and Political Rights
Suggested List of Issues Prior to Reporting Relating to Asylum, Immigration Enforcement
and Detention, and Human Trafficking**

Submitted by The Advocates for Human Rights
a non-governmental organization in special consultative status with ECOSOC since 1996

**125th Session of the Human Rights Committee
4–29 March 2018**

Submitted January 2019

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. Since 2007, The Advocates has worked to document both sex and labor trafficking in the state of Minnesota and develop statewide protocols to provide protection and services for victims. The Advocates is committed to ensuring protection for refugees around the world and provides legal services to more than 800 asylum seekers and youth survivors of labor trafficking in the Upper Midwest region of the United States. Through the National Asylum Help Line, The Advocates has also provided referrals for legal services throughout the United States to more than 1500 Central American women upon their release from family detention.

The United States fails to uphold its obligations under the International Covenant on Civil and Political Rights

1. The United States' immigration system, while generous in many respects, is riddled with systemic failures to protect human rights and meet obligations under the International Covenant on Civil and Political Rights (ICCPR). Since the Human Rights Committee's last review, the U.S. government has expanded efforts to arrest and deport migrants. The Committee's examination of the U.S. occurs at a time when the Trump administration has unilaterally implemented major policy changes with the express purpose of separating families to deter asylum seekers, excluding non-citizens on the basis of religion and national origin, and limiting the right to access asylum protection.
2. The ICCPR recognizes that non-citizens in the United States have the right to freedom from discrimination (Article 2), as well as the right not to be arbitrarily deprived of life (Article 6) and the right not to be subjected to torture or inhuman or degrading treatment or punishment (Article 7). Pursuant to Article 9, non-citizens have the right to liberty and security of person, freedom from arbitrary and inhumane detention, and are entitled to prompt review of their detention. All persons deprived of liberty, regardless of nationality, should be treated with humanity and inherent dignity (Article 10). Non-citizens in the United States also have the right to equal protection (Article 26), as well as due process and fair deportation procedures, including international standards on proportionality (Article 13).¹

I. The U.S. government ignores its *non-refoulement* obligations and routinely bars, turns away, or returns individuals who are at risk of persecution or torture in their home countries.

3. In its 2014 Concluding Observations, the Committee recommended that the U.S. Government "strictly apply the absolute prohibition against *refoulement* under articles 6 and 7 of the Covenant."²
4. **The United States' continued and growing reliance on expedited administrative removal procedures and streamlined criminal prosecution programs put individuals at risk of being returned to countries where they reasonably believe they will be in danger of torture or persecution.** These summary procedures bypass a hearing in front of an immigration judge, afford little opportunity to consult with legal counsel, and risk depriving individuals of notice of potential refugee protection. Summary removal procedures include

¹ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976; see also U.N. Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Addendum: United States of America*, ¶ 12, U.N. Doc. A/HRC/7/12/Add.2 (Mar. 5, 2008) (prepared by Special Rapporteur Jorge Bustamante) (The Human Rights Committee has interpreted the phrase "lawfully in the territory" to include non-citizens who wish to challenge the validity of the deportation order against them. The Committee has clarified: ". . . if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13." and further: "An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one").

² Human Rights Committee, Concluding Observations on the fourth periodic report of the United States of America, 23 Apr. 2014, UN Doc. CCPR/C/USA/CO/4, ¶ 13.

expedited removal of “arriving aliens” including asylum seekers,³ reinstatement of prior removal orders,⁴ expedited removal of persons convicted of aggravated felonies,⁵ and stipulated removal, which typically is negotiated between a detained individual and an Immigration Customs Enforcement (ICE) Enforcement and Removal Officer without affording access to counsel.⁶ Of particular concern is the United States’ continued use of expedited removal and fast-track removal dockets for unaccompanied children and families with children from Central America who are seeking asylum.

5. In addition, the Streamline initiative (created in 2005 as Operation Streamline to criminally prosecute people who illegally enter the United States in certain geographic regions along the U.S.-Mexico border) allows for criminal prosecution, conviction, and sentencing prior to being afforded an opportunity to seek protection in violation of U.S. obligations under the Covenant. Under Streamline, asylum-seekers may be criminally charged, convicted, and sentenced for illegal entry or illegal re-entry prior to being afforded the right to seek asylum or protection from torture, even though the illegal entry or re-entry is a direct result of their flight. In May 2016, the U.S. Department of Homeland Security (DHS), Office of Inspector General, reported concerns that inconsistent protection of Refugee Convention rights under the Streamline initiative violated U.S. international obligations.⁷
6. **“Zero Tolerance” Policy and Directives to Deter Asylum Seekers at the Mexico-U.S. Border.** In the most recent expansion of U.S. immigration enforcement, former Attorney General Jeff Sessions announced in May 2018 that the Trump administration was instituting a “Zero Tolerance” policy for illegal entry along the Southwest border of the United States. In an effort to deter potential asylum seekers, under this “Zero Tolerance” policy, the Department of Homeland Security (DHS) was instructed to criminally prosecute all undocumented individuals who cross the border: everyone caught, including those traveling with children, would be prosecuted by the Department of Justice (DOJ), and children would

³ INA §235(b). In FY 2013, ICE deported about 101,000 people through the expedited removal process, according to the American Immigration Council at <http://immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states>.

⁴ INA §241(a)(5). In FY 2013, ICE deported 159,634 individuals based on a reinstated removal order, according to the American Immigration Council, which describes reinstatement as applying to noncitizens who return illegally to the United States after having previously been deported, at <http://immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states>.

⁵ INA §238(b) (permitting noncitizens who have not been admitted as lawful permanent residence to the United States and who have been convicted of any of a wide array of crimes defined by INA §101(a)(42) as “aggravated felonies” to be removed without a hearing).

⁶ INA §240(d). Persons who are formally charged and placed in removal proceedings before an immigration judge can give up their right to a hearing and agree to being deported by stipulating to the removal charges against them. These agreements are reviewed on paper by an immigration judge, but no hearing is held to determine eligibility for protection under the Refugee Convention or the Convention Against Torture. According to analysis by the American Immigration Council, the vast majority of stipulated removal orders are entered against noncitizens in detention who have little access to legal counsel or information about their Convention rights and who are subject to inherently coercive conditions when agreeing to be deported without a hearing. See <http://immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states>

⁷ The Advocates for Human Rights notes with approval the decision of the DHS Office of Inspector General to address Streamline’s failure to meet Convention obligations.

be separated "as required by law."⁸ Following domestic and international backlash, President Trump signed Executive Order 13841 on June 20, 2018, ending the separation of immigrant children from their families.⁹ However, the order did not address family detention or children who remain separated from their parents, including those who were deported back to their home countries without them. In addition, the Streamline/Zero Tolerance policy of criminally prosecuting asylum seekers remain intact.

7. The Trump administration has also implemented new directives specifically designed to prevent asylum seekers from entering the U.S. to apply for asylum. Human rights groups documented cases of asylum seekers being turned away from the San Ysidro (between San Diego and Tijuana) port of entry in 2016 and 2017, but turn-backs became common along the entire U.S.-Mexico border in May and June 2018 when Customs and Border Protection (CBP) officers began telling asylum seekers that the ports were "at capacity" and they would have to wait.¹⁰ Asylum seekers fleeing violence in Central America, including a large number of families with young children, were forced to camp outside for days and weeks without adequate food, water, and toilet facilities in temperatures that sometimes reached 100 degrees.¹¹ CBP officers used pepper spray and tear gas to disperse Central American migrants, including children, in incidents on November 24 and December 31, 2018.¹²
8. **Discriminatory Immigration Policies.** The Trump administration has issued a series of discriminatory executive orders and proclamations, including the "Muslim bans". By executive order in January 2017, "Muslim Ban 1.0" targeted nationals from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen and halted all refugee processing. After the Ninth Circuit Court of Appeals held that the ban should be blocked, "Muslim Ban 2.0" was issued in March 2017. Legal challenges against this version were dismissed when "Muslim Ban 3.0" was issued on September 24, 2017. This version of the ban, which the U.S. Supreme Court upheld 5-4, is in effect indefinitely for most or all nationals from Iran, Libya, North Korea, Somalia, Syria, and Yemen, as well as government officials from Venezuela and their families. "Muslim ban 4.0", issued on October 24, 2017, halted refugee processing for nationals of Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, Sudan, South Sudan, Syria, Yemen, and certain stateless individuals and placed a 90-day ban for all nationals from the targeted countries. It also allows for "extreme vetting" (enhanced screening) for all refugees. The executive order has expired.

⁴ The United States Department of Justice, "Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration" accessed Dec. 31, 2018, <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>

⁹ Executive Order 13841 of Jun 22, 2018, 83 FR 29435, 29435-29436. <https://www.federalregister.gov/documents/2018/06/25/2018-13696/affording-congress-an-opportunity-to-address-family-separation>

¹⁰ <https://www.pogo.org/investigation/2018/11/asylum-seekers-being-turned-away-no-matter-where-they-cross-the-border/>

¹¹ <https://www.pogo.org/investigation/2018/11/asylum-seekers-being-turned-away-no-matter-where-they-cross-the-border/>

¹² <https://www.washingtonexaminer.com/news/cbp-investigating-agents-use-of-tear-gas-pepper-spray-against-migrants-on-new-years-eve> and <https://www.aclu.org/news/aclu-responds-reports-cbp-using-tear-gas-against-migrants-border>

9. In addition to the Muslim bans, President Trump has used executive powers to end Temporary Protected Status (TPS) for nationals of Sudan and several other countries. The Trump administration has also drastically lowered the annual refugee admissions cap from 110,000 to 45,000 in FY18 and 30,000 in FY19. In addition, refugees are being interviewed and admitted at such a slow rate that the U.S. refugee resettlement program is currently on track to resettle far less than 50% of the annual refugee cap.
10. **Limitations on Asylum Claims on the Basis of Particular Social Group.** Former Attorney General Jeff Sessions, in a procedurally questionable decision, certified to himself the Board's decision in *Matter of A-B*¹³, and overturned the particular social group of "Guatemalan married women unable to leave their relationship" that the Board of Immigration Appeals (BIA) had previously recognized in *Matter of ARCG*. While the holding of *Matter of A-B* was limited to overturning that particular social group, the decision contained substantial dicta which some adjudicators have subsequently applied to heighten the standard for asylum. For instance, the decision opined that domestic violence survivors and gang violence survivors should "generally not be eligible for asylum", contrary to decades of precedent from the BIA and federal circuit courts requiring a case by case adjudication of asylum claims and recognizing legitimate claims for protection for survivors of persecution based on a protected ground in the context of domestic and gang violence. The decision also purports to heighten the burden of proof on asylum seekers related to the government's inability or unwillingness to control persecutors who are non-state actors, in reasoning inconsistent with statutes that distinguish between the legal standards applied to asylum seekers and applicants for protection under the Convention Against Torture (CAT). Numerous circuit courts that have reviewed the *Matter of A-B* decision have continued to recognize that survivors of domestic violence have legitimate claims for protection. Further, the DOJ was recently permanently enjoined from applying the decision in credible fear interviews for potential asylum applicants. Federal District Court Judge Sullivan held that "there is no legal basis for an effective categorical ban on domestic violence and gang-related claims."¹⁴
11. **Expansion of Bars to Asylum.** In 2018, the Board of Immigration Appeals issued two decisions which present challenges for asylum seekers who provided even minimal assistance to terrorist organizations, even under extreme duress. The BIA's decision in *Matter of A-C-M*¹⁵ affirmed that no duress exception is available to the bar to asylum for individuals who are considered to have afforded material support to a terrorist organization, and held for the first time that even extremely minimal support provided under duress will bar asylum seekers from eligibility. In so holding, the BIA denied asylum to a woman who was kidnapped by guerrillas in her native El Salvador, who forced her to undergo weapons training, and made her do the group's cooking, cleaning, and laundry while remaining its captive. This decision has been criticized by many observers as "turning Congressional intent on its head by punishing the victims of terrorism, and adds insult to injury by labeling these

¹³ 27 I&N Dec. 316 (A.G. 2018),

¹⁴ *Grace v. Whitaker*, -F Supp. 3d- (D.C. District Court, December 19, 2018), 2018 WL 6628081.

¹⁵ 27 I&N Dec. 303 (BIA 2018)

victims as terrorists themselves.”¹⁶ Given the extremely broad definitions under U.S. law of terrorist activity and terrorist organizations, this decision is likely to bar numerous asylum seekers with legitimate claims from protection.

12. In *Matter of Negusie*¹⁷, the BIA narrowed the duress exception for those who forced to punder duress by a persecutor. They found that the duress exception was too limited to be afforded to an applicant who was forcibly conscripted into the Ethiopian military, who, “as a result of his refusal to fight against fellow Ethiopians, he was incarcerated for 2 years, subjected to forced labor, beaten, and exposed to the hot sun,” and forced to work as a guard.¹⁸ On at least two occasions, he disobeyed orders and helped prisoners despite the torture he suffered.¹⁹ More recently, the Acting Attorney General certified the decision to himself and stayed application of the BIA’s prior decision pending his review. Given the pattern of decisions he has certified and statements regarding immigration, a positive outcome of his certification for individuals coerced by persecutors is not expected.
13. **Attempted Refoulement: The Advocates’ Somali 92 Deportation Cases.** On December 7, 2017, ICE attempted to deport 92 men and women to Somalia. The plane departed Louisiana for Somalia, but was grounded in Senegal where it remained on the runway for 23 hours before returning to Miami. For almost two days, the men and women sat bound and shackled in an ICE-chartered airplane.
14. People aboard the flight report truly horrifying conditions, including being beaten, deprived of medications, and forced to urinate in bottles and on themselves. Even more alarming, ICE made false statements to the U.S. news media about the treatment of the people aboard the flight and attempted to deport them before any investigation into the mistreatment could be made.
15. The Advocates and partner organizations filed a complaint in U.S. District Court in Miami asking the court to stop the deportation, provide medical care, and provide an opportunity to reopen the underlying deportation cases. The court granted a TRO in Ibrahim et al. v. Acosta et al., Case No. 17-24574-CIV-GAYLES in the Southern District of Florida.
16. The Advocates, with other non-governmental organizations and three immigration law clinics, have provided and coordinated pro bono representation for all of the men and women who wanted to pursue reopening their immigration cases. Many of the cases have been reopened and the men and women will be provided with an opportunity to present their claims for relief. Three of the individuals are not in fact nationals of Somalia and were erroneously included in the group that ICE attempted to return to Somalia.
17. Of particular concern is the practice that the government deports individuals with pending claims before immigration courts, depriving individuals of the opportunity to exhaust all of their remedies and violating non-refoulement obligations. In November 2018, DHS deported one of The Advocates’ clients, even though he had a motion to reopen his case that had been pending at the BIA for at least four months. It is unknown whether the BIA will decide the

¹⁶ See e.g. Former Immigration Judge Jeffrey Chase, *Punishing the Victims: Matter of A-C-M-*, June 9, 2018, available at <https://www.jeffreyschase.com/blog/2018/6/9/punishing-the-victims-matter-of-a-c-m->

¹⁷ 27 I&N Dec. 347 (BIA 2018),

¹⁸ *Id.* at 348.

¹⁹ *Id.*

motion on the merits or administratively close the proceedings as a result of the client's deportation.

18. **While federal regulations allow individuals to raise claims for protection from *refoulement* when they fear torture, the U.S. has failed to create an adequate legal mechanism implementing international obligations fully.** Not only are the U.S. evidentiary standards higher than those of the Convention Against Torture (CAT), The United States has implemented CAT *non-refoulement* protection as an extraordinary protection against deportation for individuals who are not eligible for asylum or other discretionary forms of relief because of criminal or other bars. It is a limited form of protection that does not allow for permanent residence or family reunification and permits removal to a third country without adequate guarantees of protection from return to the country where they fear torture.

II. Despite some positive steps to address trafficking and forced labor, the U.S. Government condones forced labor in privately operated immigration detention centers and provides insufficient protections to victims of trafficking.

19. The Committee expressed concern about “insufficient identification and investigation of cases of trafficking for labour purposes” and recommended that the government vigorously investigate allegations of trafficking in persons, prosecute and punish those responsible, and provide effective remedies to victims.²⁰
20. **Forced labor in immigration detention centers.** The Voluntary Work Program at ICE and private corporation detention centers constitutes forced or compulsory labor for thousands of detained migrants in the U.S. ICE states that the program will reduce the “negative impact of confinement” by decreasing idleness, improving morale, and ensuring “fewer disciplinary incidents.”²¹ Individuals in the Voluntary Work Program do the work necessary for the upkeep of detention centers, including cooking and cleaning, for about \$1 per day.²² This is work that would otherwise be sourced from individuals outside the detention centers, who would necessarily receive state or federal minimum wage,²³ from \$7.25 to \$12 an hour.²⁴ Private immigration detention centers operate with contracts issued by the DHS²⁵ and make millions by implementing the “Dollar-a-Day” system with detainees.²⁶

²⁰ Human Rights Committee, Concluding Observations on the fourth periodic report of the United States of America, 23 Apr. 2014, UN Doc. CCPR/C/USA/CO/4, ¶ 14.

²¹ U.S. Immigration and Customs Enforcement, *2011 Operations Manual ICE Performance-Based National Detention Standards*; 2011, Revised 2016. <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>

²² ²² Levy, Alexandra, “Fact Sheet: Human Trafficking & Forced Labor in For-Profit Detention Facilities,” The Human Trafficking Legal Center; 2018

²³ “SPLC Sues Private Prison Company That Uses Forced Labor of Detained Immigrants in Georgia to Boost Profits.” Southern Poverty Law Center, 17 Apr. 2018, www.splcenter.org/news/2018/04/17/splc-sues-private-prison-company-uses-forced-labor-detained-immigrants-georgia-boost.

²⁴ Wage and Hour Division, “Consolidated Minimum Wage Table,” United States Department of Labor; 2019

²⁵ Levy, Alexandra, “Fact Sheet: Human Trafficking & Forced Labor in For-Profit Detention Facilities,” The Human Trafficking Legal Center; 2018

²⁶ “SPLC Sues Private Prison Company That Uses Forced Labor of Detained Immigrants in Georgia to Boost Profits.” Southern Poverty Law Center, 17 Apr. 2018, www.splcenter.org/news/2018/04/17/splc-sues-private-prison-company-uses-forced-labor-detained-immigrants-georgia-boost.

21. In practice, detained individuals' work is not voluntary. To extract compliance and labor, they are threatened with solitary confinement.²⁷ Detainees are regularly charged for basic goods like food, water, and hygiene products. Without wages from the Voluntary Work Program, most detainees would not have access to these necessities. Many detainees are also forced to work in order to contact their families, as they are charged for phone cards. If they want to stop working, detainees are likely to be threatened with disciplinary action.²⁸ For some, refusal to work results in deprivation of privacy. Should a detained individual refuse to work, they can be moved from a two-person room to an open dorm with "round-the-clock lighting and frequent fights."²⁹
22. **Insufficient protections for victims of human trafficking.** For foreign national victims of trafficking, protections against detention and removal by immigration enforcement are crucial to allowing them to exit a trafficking situation. Federal law recognizes this importance by providing several avenues for victims to receive both temporary and permanent immigration status in the United States. Unfortunately, these protections are undermined by requirements for victim cooperation, strict quotas, uneven application by both federal and state law enforcement, and a disproportionate focus on the removal of suspected deportable immigrants instead of the prosecution of traffickers.³⁰
23. Both victims and prosecutors state that requiring victims to cooperate with law enforcement in order to receive immigration protections and other benefits serves to undermine both the criminal cases against the traffickers and protections for the victims. Some law enforcement officials reported to The Advocates' researchers that they believe that immigrants falsely report crimes in an attempt to gain immigration status, making them reluctant to certify that victims have cooperated with an investigation.³¹ One law enforcement official described a belief among some law enforcement agencies that immigration attorneys coach people so they can get legal status to stay in the United States.³² The link undermines victim credibility, not only limiting the ability of victims to secure immigration protections, but also reducing the number of prosecutions for labor trafficking.
24. Even when law enforcement officials or prosecutors find the victim credible, defense attorneys use victim requests for immigration status to undermine their testimony. As a result, one government agency in Minnesota changed its practice to only certifying at the completion of a case "to avoid having the defense attorney use the status request to damage the victim's credibility. We certified once or twice in advance and those cases settled [instead of going to trial]. The certification may have been part of why the prosecutor did not seek a

²⁷ Levy, Alexandra, "Fact Sheet: Human Trafficking & Forced Labor in For-Profit Detention Facilities," The Human Trafficking Legal Center; 2018

²⁸ Cole, Alexandra, "Prisoners of Profit Immigrants and Detention in Georgia, American Civil Liberties Union of Georgia; 2012

²⁹ Levy, Alexandra, "Fact Sheet: Human Trafficking & Forced Labor in For-Profit Detention Facilities," The Human Trafficking Legal Center; 2018

³⁰ The Advocates for Human Rights, *Asking the Right Questions: A Human Rights Approach to Combatting Labor Exploitation and Labor Trafficking* (2016), https://www.theadvocatesforhumanrights.org/labor_trafficking_report.

³¹ The Advocates for Human Rights, *Asking the Right Questions: A Human Rights Approach to Combatting Labor Exploitation and Labor Trafficking* (2016), https://www.theadvocatesforhumanrights.org/labor_trafficking_report.

³² The Advocates for Human Rights, *Asking the Right Questions: A Human Rights Approach to Combatting Labor Exploitation and Labor Trafficking* (2016), https://www.theadvocatesforhumanrights.org/labor_trafficking_report.

trial.”³³ While certification of victim cooperation by law enforcement at the completion of the criminal case may mitigate the problem of victim credibility at trial, this practice leaves victims without access to stable immigration status, family reunification, work authorization, and public assistance throughout the duration of the legal proceedings.

25. The federal Trafficking Victims Protection Act (TVPA) authorizes federal law enforcement officials to permit an individual’s “continued presence” in the United States if it is determined that the individual is a victim of a severe form of trafficking and a potential witness to such trafficking. The statutory purpose of the continued presence authority is to enable the prosecution of those responsible for the crime. However, The Advocates’ researchers found that federal law enforcement officials based in Minnesota request continued presence for very few victims, even in cases where it is clearly allowed under the statute.³⁴ Victims not granted continued presence must wait months or years to receive a T visa, time during which they are not protected from deportation and are limited in their ability to work or receive public benefits to address the harms they experienced as trafficking victims.
26. The TVPA created the T visa, which allows foreign victims of trafficking to remain in the United States for up to four years. Once a victim has obtained a T visa they will be able to work in the United States and have access to various government services. The T visa also provides a path to citizenship. However, this visa is only given to victims willing to “comply with any reasonable request for assistance” with criminal investigations into their perpetrators, though there are exceptions for victims under 18 and those unable to cooperate as a result of trauma. Additionally, the program is grossly underutilized. As of 2018, the U.S. government had issued less than 2,000 T visas per year over the last decade, despite the TVPA’s allotment of 5,000 visas per year.³⁵
27. The TVPA also provides important protection against deportation and work authorization through U nonimmigrant status. This status is for victims of labor exploitation that falls short of “severe forms of human trafficking” and other serious crimes. The U visa requires that an authorized official of the certifying law enforcement agency confirm that the victim was helpful, currently is being helpful, or will likely be helpful in the investigation or prosecution of the case. The U visa status is limited by a statutory cap that allows only 10,000 visas to be issued each year. Once the cap is reached, applicants are put on a waiting list to receive a visa the following year. As of October 2018, 128,079 victims and 89,999 family members had pending U visa applications.³⁶
28. **Key immigration protections for trafficking victims, such as continued presence and the U visa, require law enforcement requests or certification. Law enforcement agencies, however, do not consistently apply the law, resulting in the denial of assistance to**

³³ The Advocates for Human Rights, *Asking the Right Questions: A Human Rights Approach to Combatting Labor Exploitation and Labor Trafficking* (2016), https://www.theadvocatesforhumanrights.org/labor_trafficking_report.

³⁴ The Advocates for Human Rights, *Asking the Right Questions: A Human Rights Approach to Combatting Labor Exploitation and Labor Trafficking* (2016), https://www.theadvocatesforhumanrights.org/labor_trafficking_report

³⁵ United States Citizenship and Immigration Services, “Number of Form I-914, Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status 2008-2018,” accessed November 12, 2018 https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2018_qtr3.pdf.

³⁶ https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2018_qtr3.pdf.

eligible victims. Wide variation exists among law enforcement agencies about what cases to certify, with some agencies creating internal guidelines about which cases to certify and others refusing to certify any cases at all. For instance, one agency reported to The Advocates that they would not provide certifications to anyone with a criminal record, even though determining whether a criminal record makes an immigrant inadmissible is a complicated determination and one conducted by U.S. Citizenship and Immigration Service (USCIS) after receiving a U status application.³⁷ In another case, the agency would not provide a certification because the perpetrators had fled and so would not be prosecuted, even though a successful prosecution is not a condition for certification.³⁸ One agency required that the criminal case be closed prior to providing a certification, while another required that the case still be ongoing.³⁹

29. Protections for labor trafficking victims are only effective when victims are routinely identified by government agencies that come into contact with vulnerable populations at high risk for trafficking. A particularly high risk population is immigrants without stable, permanent legal status in the United States. Traffickers often deploy threats of arrest and deportation to keep victims trapped. These threats are effective because the agency charged with arresting and deporting people who have violated U.S. immigration laws, ICE's Enforcement and Removal Office (ERO), does not prioritize identifying trafficking victims. While the 2008 Trafficking Victims Protection Reauthorization Act requires ICE to screen some unaccompanied immigrant children for trafficking, there is no mandate or reported protocol for screening others for human trafficking before initiating removal proceedings, negotiating stipulations of removal, or reinstating removal orders, even when those individuals have been reported to ICE by an employer in potential retaliation for a labor complaint.

III. The U.S. Government continues to require mandatory detention and deportation of certain categories of immigrants without adequate due process and legal representation.

30. The Committee in 2014 expressed concern “that under certain circumstances mandatory detention of immigrants for prolonged periods of time without regard to the individual case may raise issues under article 9 of the Covenant.” The Committee also expressed concern about “the mandatory nature of the deportation of foreigners, without regard to elements such as the seriousness of crimes and misdemeanors committed, the length of lawful stay in the United States,” or other circumstances. The Committee recommended that the U.S. Government “review its policies of mandatory detention and deportation of certain categories of immigrants in order to allow for individualized decisions” and “take measures to ensure that affected persons have access to legal representation.”⁴⁰

³⁷ The Advocates for Human Rights, *Asking the Right Questions: A Human Rights Approach to Combatting Labor Exploitation and Labor Trafficking* (2016), https://www.theadvocatesforhumanrights.org/labor_trafficking_report

³⁸ The Advocates for Human Rights, *Asking the Right Questions: A Human Rights Approach to Combatting Labor Exploitation and Labor Trafficking* (2016), https://www.theadvocatesforhumanrights.org/labor_trafficking_report

³⁹ The Advocates for Human Rights, *Asking the Right Questions: A Human Rights Approach to Combatting Labor Exploitation and Labor Trafficking* (2016), https://www.theadvocatesforhumanrights.org/labor_trafficking_report

⁴⁰ Human Rights Committee, Concluding Observations on the fourth periodic report of the United States of America, 23 Apr. 2014, UN Doc. CCPR/C/USA/CO/4, ¶ 15.

31. **Since the Committee’s last review, 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,⁴¹ non-citizens convicted of certain crimes,⁴² and certain refugees awaiting adjudication of their applications for permanent residence.⁴³ These categorical detention determinations violate international norms of proportionality and non-discrimination.⁴⁴**
32. Immigration detention data released by ICE shows that, of those subject to mandatory detention in the first month of the Fiscal Year 2018, an average of 51 percent were "non-criminal" and 51 percent posed "no threat".⁴⁵ Further, excessive bail leads to prolonged detention. Under the current Trump administration, ICE officials and immigration judges are denying bond requests and setting bonds well above the \$1,500 legally required minimum.⁴⁶ This practice leads not only to lengthy detention, but also to prolonged separation of families.
33. Further, mandatory detention creates barriers to establishing eligibility for asylum. 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.⁴⁷ 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.⁴⁸
34. Following a determination of credible fear, asylum seekers 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.⁴⁹ Continued detention

⁴¹ INA § 235(b)(1)(B)(iii)(IV).

⁴² 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 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 INA § 212(a)(3)(B) or deportable under 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.

⁴³ HUMAN RIGHTS WATCH, *COSTLY AND UNFAIR: FLAWS IN US IMMIGRATION DETENTION POLICY* 8-9 (May 2010).

⁴⁴ See, e.g., Frey & Zhao, *supra* note **Error! Bookmark not defined.**, at 310-11.

³ National Immigrant Justice Center, "ICE released its most comprehensive immigration detention data yet. It's alarming." accessed Dec. 28, 2018, <https://immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet>

¹⁰ Daniel Bush, Under Trump, higher immigration bonds mean longer family separations, PBS, Jun. 28, 2018, <https://www.pbs.org/newshour/politics/under-trump-higher-immigration-bonds-mean-longer-family-separations>

⁴⁷ INA § 235(b)(1)(B)(iii)(IV).

⁴⁸ See INA § 236(c).

⁴⁹ 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*

post-credible-fear interview can be a deterrent to an individual continuing with their asylum case (see para. 46).

35. The practice of mandatory detention for asylum seekers having a credible fear of persecution creates the risk of re-traumatizing bona fide refugees.⁵⁰ Moreover, non-citizens who are detained have a more difficult time establishing their eligibility for asylum because they face hurdles to gathering evidence and seeking legal counsel.⁵¹ Asylum seekers detained in ICE custody “are significantly less likely to find a lawyer compared with those who aren’t detained”; by creating barriers to accessing legal counsel, detention decreases the chances for immigrants to gain asylum.⁵²

36. **Limitations on Judicial Discretion.** Mandatory deportation laws, automatic prosecutorial programs and streamlined immigration procedures have stripped judges of discretion to consider family ties or length of time in the U.S. in cases involving convictions for aggravated felonies,⁵³ false claims to United States citizenship,⁵⁴ illegal reentry following unlawful presence in the United States,⁵⁵ reinstatement of prior orders of removal,⁵⁶ findings by an immigration judge of a frivolous asylum claim,⁵⁷ and other reasons. In 2018, the Trump administration further limited judicial independence by imposing quotas on immigration judges which require 700 case completions per year to receive a satisfactory performance review. These quotas have been critiqued by numerous observers as detrimental to due process. The president of the National Association of Immigration Judges has stated that the quota system, favoring case completion over careful consideration of evidence and claims for protection, “compromises the integrity of the court”.⁵⁸ Former Attorney General

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).

⁵⁰ HUMAN RIGHTS FIRST, *supra* note **Error! Bookmark not defined.**, at 14-16.

⁵¹ *See id.* at 7; *see also* Frey & Zhao, *supra* note **Error! Bookmark not defined.**, at 303.

¹³ Kyle Kim, Immigrants held in remote ICE facilities struggle to find legal aid before they’re deported, Los Angeles Times, Sept. 28, 2017, <https://www.latimes.com/projects/la-na-access-to-counsel-deportation/>

⁵³ 8 U.S.C. § 1227(a)(2)(A)(iii) states that any alien who has been convicted of an “aggravated felony” as defined by 8 U.S.C. § 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 8 U.S.C. § 1228. A person convicted of an aggravated felony is barred from seeking cancellation of removal pursuant to 8 U.S.C. § 1229b(a)(3).

⁵⁴ 8 U.S.C. § 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.

⁵⁵ 8 U.S.C. § 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.

⁵⁶ 8 U.S.C. § 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.

⁵⁷ 8 U.S.C. § 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.

⁵⁸ Yeganeh Torbati, *Head of US immigration judges’ union denounces Trump quota plan*, Reuters, September 21, 2018, available at <https://www.reuters.com/article/us-usa-immigration-judges/head-of-u-s-immigration-judges-union-denounces-trump-quota-plan-idUSKCN1M12LZ>

Sessions also took several steps to limit immigration judges' ability to exercise discretion in managing their dockets, including eliminating the use of administrative closure in cases where not specifically proscribed by statute and the use of termination of removal proceedings to permit other agencies to process claims for relief.⁵⁹

37. **The United States fails to ensure that migrants in removal proceedings who fear persecution upon return to their home countries 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 Government.”⁶⁰ 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.⁶¹
38. The United States fails to provide consistent information about how to access free legal services to people in detention. For example, according to attorneys who have visited the Dilley family detention center, information about how to access pro bono legal services is spread through word of mouth.⁶² Immigrants often are unable to understand what they are told about their right to legal counsel as a result of communication problems: many of these women and children are native speakers of an indigenous language, and the information can only be provided to them in English or Spanish.⁶³ The legal jargon used provides further challenges to comprehension.⁶⁴ Additionally, while the facilities offer law libraries to the detainees, the resources in these libraries are primarily in English.⁶⁵
39. “Evidence indicates federal employees are interfering with an attorney’s ability to represent clients.”⁶⁶ Attorneys who have volunteered at the Dilley facility report that they are held to a set of seemingly arbitrary policies that are enforced sporadically, changing from officer to officer and from day to day: hand lotion and hotel soap have been confiscated, and open-toed shoes are sometimes banned.⁶⁷ When attorneys have tried to obtain the list of policies, Dilley

⁵⁹ See <https://www.justice.gov/eoir/ag-bia-decisions>

⁶⁰ 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).

⁶¹ <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1044&context=jcl>

⁶² Interview 1, Oct. 20, 2015.

⁶³ *Id.*, at 83-84, 109-110.

⁶⁴ *Id.* at 110.

⁶⁵ U.S. Commission on Civil Rights, *With Liberty And Justice For All*, Sept. 2015, [http://www.usccr.gov/pubs/Statutory Enforcement Report2015.pdf](http://www.usccr.gov/pubs/Statutory%20Enforcement%20Report2015.pdf), 102, last visited Sept. 30, 2015.; Inter-American Commission on Human Rights, *Refugees and Migrants in the United States: Families and Unaccompanied Children*, July 24, 2015, Organization of American States, <http://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>, last visited Nov. 3, 2015, ¶ 148.

⁶⁶ U.S. Commission on Civil Rights.

⁶⁷ Interview 1, Oct. 20, 2015.

officials have refused to provide it.⁶⁸ Similar practices have been reported at the Karnes facility, where attorneys were not allowed to bring office supplies into the facility.⁶⁹

40. The rural location of immigration detention centers also impedes detainees' access to legal counsel. Any progress that has been made in ensuring access to legal representation has been the result of a concerted effort of pro bono attorneys around the country who travel to these facilities, often at personal expense to provide representation to families in detention.
41. **The current administration has undermined programs intended to provide access to counsel and legal information to vulnerable individuals.** For instance, the Trafficking Victims Protection and Reauthorization Act requires that unaccompanied children (UACs) be provided access to counsel in removal proceedings to the extent practicable.⁷⁰ However, this administration has ended programs to which the DOJ previously contributed to fund legal fellowships for a limited number of attorneys nationwide to represent unaccompanied children in removal proceedings. The administration has also rolled back and challenged numerous other legal protections for unaccompanied children seeking asylum.⁷¹
42. **Provision of information about legal rights is limited and inadequate.** The U.S. Department of Justice Executive Office for Immigration Review (EOIR) funds a formal Legal Orientation Programs (LOP) at 38 U.S. detention centers to provide basic legal information and limited referrals to those detained migrants who appear before the immigration courts.⁷² While EOIR should be commended for developing the LOP program and continuing to include the program in its budget, the program does not ensure that all detained migrants in the United States receive information about their legal rights. Detained migrants subject to summary expulsion proceedings and all migrants detained by CBP fall outside the scope of this effective but limited program. In addition, the Trump administration recently attempted to suspend the LOP but resumed the program after Congressional pushback with the statement that the program “would be studied”. Phase 1 of the study appears to undermine previous studies of the LOP.⁷³

⁶⁸ Id.

⁶⁹ U.S. Commission on Civil Rights, *supra* note **Error! Bookmark not defined.**, at 114.

⁷⁰ 8 U.S.C. §1232(a)(5)(D) & (c)(5).

⁷¹ See e.g. Kids In Need of Defense, *Timeline Shows How Trump Administration is Rolling Back Protections for Immigrant Children*, July 2018, available at <https://supportkind.org/media/timeline-shows-how-trump-administration-is-rolling-back-protections-for-immigrant-children/>; Miranda Spivack, *Before family separations, Trump quietly removed protections for migrant kids*, Salon, July 6, 2018, available at https://www.salon.com/2018/07/06/before-family-separations-trump-quietly-removed-protections-for-migrant-kids_partner/

⁷² See Vera Institute of Justice, *Legal Orientation Program available at* <http://www.vera.org/project/legal-orientation-program>

⁷³ See e.g., American Immigration Council, *Legal Orientation Program Overview*, available at <https://www.americanimmigrationcouncil.org/research/legal-orientation-program-overview>

IV. The U.S. government subjects many immigrants to cruel, inhuman, and degrading conditions of detention and subjects some immigrants to prolonged solitary confinement.

43. In its 2014 Concluding Observations, the Committee expressed concern “about the continued practice of holding persons deprived of their liberty . . . in prolonged solitary confinement and about detainees being held in solitary confinement in pretrial detention.” The Committee recommended that the government “impose strict limits on the use of solitary confinement” and ensure “that persons deprived of their liberty are treated in accordance with the requirements of articles 7 and 10 of the Covenant and the Standard Minimum Rules for the Treatment of Prisoners.”⁷⁴
44. On February 27, 2018, the United States Supreme Court delivered its opinion in *Jennings v. Rodriguez*, 583 U.S. ___ (2018), holding that immigration officials are authorized to detain certain aliens in the course of immigration proceedings while they determine whether those aliens may be lawfully present in the country. The Court’s decision effectively renders hundreds of thousands of people subject to mandatory detention without an independent judicial review of custody status.
45. The United States uses prolonged, indefinite detention to coerce immigrants, refugees, and asylum seekers into giving up claims to remain in the United States and agreeing to be deported. As Warren Hilarion Joseph, a detained person cited in the amicus brief submitted in the Jennings case, stated: “The conditions were extremely uncomfortable. It was a form of intimidation so we could be forced to ‘sign out’ and be deported. We had to make a decision between that or to stay and suffer. And we were told to do this – to give up – by the corrections officers.”⁷⁵
46. **The United States also uses prolonged, indefinite detention to deter people from seeking asylum.** The United States routinely denies parole requests and holds asylum seekers in detention throughout the pendency of their asylum proceedings.⁷⁶ This concern has escalated under the current administration. The January 25, 2017, executive order “Border Security and Immigration Enforcement Improvements,” directs the Secretary of Homeland Security to “take all appropriate action and allocate all legally available resources to immediately construct, operate, control, or establish contracts to construct, operate, or control facilities to detain aliens at or near the land border with Mexico” and further directs the Secretary of Homeland Security to “immediately take all appropriate actions to ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings or their removal from the country to the extent permitted by law.”⁷⁷ The executive order further directs the Secretary of Homeland Security to take “appropriate action to ensure that parole authority . . . is exercised . . . only when an individual

⁷⁴ Human Rights Committee, Concluding Observations on the fourth periodic report of the United States of America, 23 Apr. 2014, UN Doc. CCPR/C/USA/CO/4, ¶ 20.

⁷⁵ 2017 Brief for Americans for Immigrant Justice, et al. as Amicus Curiae, p. 11, *Jennings v. Rodriguez*, 583 U.S. ___ (2018) (citing Democracy Now!, Can the U.S. Detain Immigrants Indefinitely? Supreme Court Hears Case as Trump Prepares for Office, YOUTUBE (Dec. 2, 2016), <https://www.youtube.com/watch?v=pSz2GX6QaWs&t=356s>).

⁷⁶ See, e.g. 2017 Brief for Human Rights First as Amicus Curiae, p. 16, *Jennings v. Rodriguez*, 583 U.S. ___ (2018).

⁷⁷ Exec. Order No. 13767, 82 F.R. 8793 (Jan. 30, 2017).

demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole.”⁷⁸

47. **Prolonged, indefinite detention results in harms to the people in detention and to their families and communities.** The experiences of several detained persons were detailed in an amicus curiae brief with the U.S. Supreme Court in the *Jennings* case. One detained person cited in the amicus brief, Arnold Giammarco, stated: “It was a complete nightmare. The hardest part was being away from my wife and daughter, who was two years old at the time. Watching my daughter behind a pane of glass, I still remember her crying that she wanted me to hold her, she wanted me to play with her like I used to. But I couldn’t.”⁷⁹
48. As detailed in the amicus brief, the immigrant detention system follows a penal model. The government incarcerates people in locked cells where they wear prison jumpsuits, are shackled during court appearances, and are subject to surveillance and strip searches.⁸⁰
49. **The United States engages in medical neglect of immigrants in its custody.** Delayed or denied medical care is pervasive. The amicus brief notes several examples of people such as “Mr. Joseph, a decorated combat veteran whose wartime injury to his foot flared up during his detention at Hudson County Correctional Facility in New Jersey. Mr. Joseph ultimately required surgery after years of requests for proper care went unheeded.”⁸¹
50. **Sexual assault and abuse of migrants in detention is a problem of serious concern.**⁸² Over 200 reported complaints of sexual abuse have been filed by immigrant detainees in the past five years,⁸³ which advocates believe reflect a fraction of the problem.⁸⁴ Lack of governmental transparency⁸⁵ and barriers to victim reporting make it difficult to accurately

⁷⁸ *Id.*

⁷⁹ 2017 Brief for Americans for Immigrant Justice, et al. as Amicus Curiae, p. 11, *Jennings v. Rodriguez*, 583 U.S. ___ (2018) (citing Arnold Giammarco, *After 50 Years as a Legal Immigrant, I Spent 18 Months in Immigration Detention Without a Bail Hearing*, PUB. RADIO INT’L’S THE WORLD (Nov. 30, 2016), <https://www.pri.org/stories/2016-11-30/after-50-years-legal-immigrant-i-spent-18-months-immigration-detention-without>).

⁸⁰ *See, e.g.* 2017 Brief for Americans for Immigrant Justice, et al. as Amicus Curiae, p. 16, *Jennings v. Rodriguez*, 583 U.S. ___ (2018).

⁸¹ *See, e.g.* 2017 Brief for Americans for Immigrant Justice, et al. as Amicus Curiae, p. 17, *Jennings v. Rodriguez*, 583 U.S. ___ (2018).

⁸² *See* American Civil Liberties Union, *Sexual Abuse in Immigration Detention Facilities*, <http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities> (last visited Aug. 28, 2013) (detailing findings of a Freedom of Information Act request relating to complaints of sexual abuse); *see also* Carrie Johnson, “All Things Considered: Immigration Detainees Seek Prison-Rape Protection” (Nat’l Public Radio broadcast Dec. 13, 2011), available at <http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection>.

⁸³ *See* American Civil Liberties Union website <http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities> (detailing findings of a Freedom of Information Act request relating to complaints of sexual abuse). *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>.

⁸⁴ *See, e.g.*, 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>.

⁸⁵ The Department of Homeland Security is not mandated under law to publish data on sexual violence, and has not done so. Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 2010, at 4. Available at <http://www.hrw.org/node/92630>

assess the magnitude of this problem, but human rights organizations have documented incidents of sexual assault, abuse, and harassment from across the ICE detention system.⁸⁶

51. The penal model of U.S. immigrant detention includes the use of solitary confinement.

An estimated 300 immigrants are held in solitary confinement at the 50 largest detention centers, according to The New York Times.⁸⁷ According to that report, half of those in solitary confinement were isolated for over two weeks and 1 in 9 was isolated for over two months.⁸⁸

52. The amicus brief also notes that “[s]olitary confinement is often the first response to infractions of rules that only exist in prisons and jails.” For example, 96% of all rules infractions at the Essex County Correctional Facility in Newark, New Jersey, were punished with solitary confinement during a 2-year time period, resulting in solitary confinement being used against immigrant detainees 428 times during 2013-2015.⁸⁹ One person was placed in solitary confinement for 12 days for damaging an identification wristband; another was placed in solitary confinement for 15 days for refusing to close his food port after he found worms in his meal.⁹⁰

53. Another detained person, Astrid Morataya, stated: “For the entirety of the two-and-a-half years it took to resolve her removal case...Ms. Morataya was detained at the McHenry County Jail in Woodstock, Illinois and the Kenosha County Correctional Center in Kenosha, Wisconsin. Guards treated her as an inmate, and punished her as one. She was twice placed in solitary confinement, once for having a sugar packet in her uniform that she forgot to dispose of at mealtime, and once for not being ready to leave her cell because she had begun menstruating and lagged behind her cellmates while trying to secure menstrual pads.”⁹¹

V. Suggested questions for the Government of the United States of America

54. Suggested questions relating to *non-refoulement*:

- When will Border Patrol guidance relating to individuals who express fear of persecution or return be developed and implemented? What steps will the United States take to ensure that all Border Patrol officers have received training on this guidance? Please provide specific information about how the U.S. Attorney’s Offices in jurisdictions which continue to utilize the Streamline prosecution initiative will ensure that no individual is criminally prosecuted for illegal entry or re-entry which has resulted from their flight from persecution?

⁸⁶ Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 2010, at 3. Available at <http://www.hrw.org/node/92630>

⁸⁷ Ian Urbina & Catherine Rentz, *Immigrants Held in Solitary Cells, Often for Weeks*, N.Y. TIMES (Mar. 23, 2013), <http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html>

⁸⁸ *Id.*

⁸⁹ 2017 Brief for Americans for Immigrant Justice, et al. as Amicus Curiae, p. 16, *Jennings v. Rodriguez*, 583 U.S. ___ (2018) (citing N.J. ADVOCATES FOR IMMIGRANT DETAINEES, ET AL., *ISOLATED IN ESSEX: PUNISHING IMMIGRANTS THROUGH SOLITARY CONFINEMENT* 5-6 (2016), https://www.afsc.org/sites/afsc.civicaactions.net/files/documents/Isolated%20in%20Essex%20Full%20Report%202016_1.Pdf).

⁹⁰ *Id.*

⁹¹ 2016 Brief for Americans for Immigrant Justice, et al. as Amicus Curiae, p. 8, *Jennings v. Rodriguez*, 583 U.S. ___ (2018).

- Please provide specific information about Refugee Convention Article 33 and Convention Against Torture Article 3 protection from *refoulement* is provided to all persons detained by U.S. immigration authorities, including persons detained by Customs and Border Protection in short-term detention facilities and by Immigration and Customs Enforcement in any ICE-operated, ISGA, or contract facility. Please provide specific information about how the United States ensures that everyone in short-term detention facilities is afforded information about how to seek protection from persecution and return.
- Please provide specific information about how children are informed about their rights under the Refugee Convention and the Convention Against Torture. How is age-appropriate information conveyed to ensure children understand how they can seek protection in the United States? What specific assistance is provided to children?
- What measures has the United States taken to ensure that asylum seekers detained pursuant to the Expedited Removal process have the opportunity to pursue their claims for asylum and other forms of relief?
- Please provide specific information about the training received by Border Patrol, Customs and Border Protection, and Immigration and Customs Enforcement officers regarding obligations prohibiting *refoulement* under articles 6 and 7 of the Covenant?
- Why is the U.S. government attempting to deport individuals with pending legal claims or potential refugee or other protection claims in the U.S.?
- What safeguards are being put in place to ensure that deportations are not made in error, such as in the case of some members of the Somali 92?

55. Suggested questions relating to trafficking and forced labor:

- What standards govern the Voluntary Work Program within ICE detention facilities? How does the United States ensure the work is truly voluntary?
- Why do detention facilities not abide by state and federal wage and hour laws?
- If ICE detainees do not work, are they able to afford basic necessities and the ability to contact their families? Do they face disciplinary action?
- Has the United States taken action to improve the identification of trafficking victims during a period of heightened and less discriminate enforcement of immigration law?
- Has the United States reduced the time trafficking victims spend waiting for immigration protections and other benefits?
- Has the United States verified that federal law enforcement agencies are securing for trafficking victims the full protections available under the law?

56. Suggested questions relating to detention and deportation of non-citizens:

- What measures has the United States taken to address the drastic growth in the number of non-citizens in the federal prison system who have been convicted of criminal charges for immigration offenses?

- How does the United States justify the use of privately owned prison facilities exclusively for non-citizen offenders?
- Why are the medical, rehabilitation, and education services provided in prisons holding non-citizens significantly inferior to the services in facilities holding U.S. citizens?
- Many of the immigration issues raised by the Human Rights Committee in the 2014 Concluding Observations could be fixed administratively. Why has the United States not taken steps to use administrative fixes to correct violations of its ICCPR obligations, particularly those related to immigration detention?
- Please provide specific information about how access to counsel is provided to all persons detained on civil immigration charges, including persons detained by Customs and Border Protection in short-term detention facilities and by Immigration and Customs Enforcement. What specific measures does the United States take to ensure that private prison companies do not interfere with the right to counsel for persons held in their custody?

57. Suggested questions relating to conditions of immigration detention:

- Please provide specific information on how the United States ensures that facilities which hold people in immigration custody meet standards outlined in the 2011 Operations Manual on ICE Performance-Based National Standards? Please include information about detention facilities operated by, operated under inter-governmental service agreement with, or operated under any other contract with the U.S. Department of Homeland Security (including both ICE and CBP facilities and contract facilities). Provide information about how many contracts for facilities which fail to meet standards have been terminated.
- Please provide the number of persons held in solitary confinement while detained in immigration custody, including the average number of days people were held in solitary confinement. Please include information about persons held under “administrative segregation,” “disciplinary segregation,” or other similar status.
- Please provide information about the number of reports of sexual violence which have been received from persons held in immigration custody. How many complaints have resulted in investigation, discipline, or criminal charges? Please describe the steps taken by the United States to ensure that victims provided with appropriate services for survivors of sexual assault, including certification as crime victims for purposes of U-nonimmigrant status in the United States.