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

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

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I. Reporting Organization

The Advocates for Human Rights ("The Advocates") is a volunteer-based nongovernmental 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, including direct representation of asylum seekers, to promote human rights in the United States and around the world and holds Special Consultative status with the United Nations Economic and Social Council. Mark Girouard and the law firm of Nilan Johnson Lewis PA contributed to this submission.

II. Introduction and Issue Summary

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). 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 subjected to 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. Non-citizens in the United States also have the right to due process and fair deportation procedures, including international standards on proportionality (Article 13).[1]

The U.S. imposes 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 arriving asylum seekers,[2] others in expedited removal, or persons convicted of a criminal offense.[3] Further, the practice of mandatory detention for asylum seekers having a credible fear of persecution[4] risks the re-traumatization of *bona fide* refugees who are already in a psychologically delicate state.

The United States also mandatorily deports people without consideration of the unique circumstances of the individuals in myriad cases. That lack of discretion excludes consideration of family ties and other individualized circumstances. In addition, the United States increasingly relies on streamlined immigration procedures which fail to guarantee non-citizens' rights to due process, access to counsel, presentation of their case before a judge, and other fundamental safeguards of fairness.[5] Finally, aggressive use of automatic prosecutorial programs belies the right to an individualized, case-by-case assessment of the need to detain and criminally prosecute. Operation Streamline, begun in 2005, has criminalized illegal entry and stripped judges of discretion in immigration cases.[6] For the past three consecutive years, immigration cases made up the largest category of federal convictions.[7]

The United States' immigrant detention system has evolved without regard for international human rights standards. To accommodate the increasing number of non-citizen detainees, the federal government operates its own facilities and contracts with state and local governments and with private prison companies to provide bed space for at least 34,000 detained immigrants each day. Private prison corporations provide beds in facilities exclusively for aliens convicted of nonviolent immigration offenses.[8] In violation of the right to humane conditions of detention, these facilities in many cases fail to provide access to adequate physical and mental medical care, fresh air, access to family and legal counsel, and rehabilitation and educational services.[9] Non-citizens who are detained also have a more difficult time defending their cases or establishing their eligibility for asylum because they face difficulty of gathering evidence and accessing legal assistance.[10]

The Human Rights Committee's examination of the U.S. occurs at a time when Congress is considering major changes in U.S. immigration policy. The government should take steps to ensure that changes to U.S. immigration law will in fact fulfill the human rights obligations without distinction to all individuals the US, specifically with regard to ICCPR Articles 8, 9, 10, 13, 22, 26, and 27.

III. Issue 19: Concerns with U.S. Government 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.

In its response to Issue 19(a), the U.S. offers that its system of mandatory detention has been upheld under the U.S. Constitution and further explains that, when an alien is not subject to mandatory detention, immigration judges have broad discretion in determining whether to continue the alien's detention or to release the alien on bond. (¶98, US Response)

These explanations minimize the extent of the application of mandatory detention provisions and fail to address the lack of fundamental due process guarantees during mandatory detention. U.S. law imposes mandatory detention without an individualized custody determination by a court in a broad category of cases, including for arriving asylum seekers,[11] non-citizens convicted of certain crimes,[12] and certain refugees awaiting adjudication of their applications for permanent residence.[13] These categorical detention determinations violate international norms of proportionality and non-discrimination.[14]

In addition, the United States fails to explain that recent federal appropriations laws mandate that 34,000 immigration detention beds be filled each day, regardless of whether each particular alien is either detained subject to the mandatory detention provisions of INA § 236(c) or whether they have been found to be a risk of flight or a danger to the community.[15]

Further, the US response fails to address how 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.[16] 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.[17]

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 (Immigration and Customs Enforcement or ICE) denies parole, the asylum seeker is prevented by regulation from having an immigration judge assess the need for continued custody.[18] While the U.S. revised its parole guidelines for asylum seekers effective January 2010, ICE has not yet put these guidelines into regulations.[19]

The practice of mandatory detention for asylum seekers having a credible fear of persecution creates the risk of re-traumatizing bona fide refugees.[20] 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.[21]

The Risk Classification Assessment (RCA) tool referenced by the U.S. (¶99, U.S. Response) was adopted by ICE in 2010. It is an important step towards securing the release of non-citizens who do not need to be detained. But because it is used only at the time of transfer to ICE custody, it does not apply to the many immigrants who are detained through ICE surrogates (e.g. local police officers who have contractual agreements with ICE) and held for days while waiting to be picked up by ICE officials.[22]

Mandatory detention laws enacted in 1996 have contributed to the skyrocketing growth in the use of detention as an immigration enforcement tool.[23] While the government response refers to Immigration Judges' discretion to determine continued detention when an alien is not subject to mandatory detention (¶99, US Response), it is important to point out that ICE itself has authority to make determinations about detention and release in many cases. Studies have found that ICE routinely fails to exercise discretion to release detained non-citizens not subject to mandatory detention laws.[24]

Further, mandatory deportation laws, automatic prosecutorial programs and streamlined immigration procedures (most notably Operation Streamline, which began in 2005) have stripped judges of discretion in. cases involving convictions for aggravated felonies,[25] false claims to United States citizenship,[26] illegal reentry following unlawful presence in the United States,[27] reinstatement of prior orders of removal,[28] findings by an immigration judge of a frivolous asylum claim,[29] and other reasons.

The U.S states that there "are limits on the duration of immigration detention" but refers only to conditional release after the entry of a final order of removal (¶100, US Response). The Zadvydas ruling was indeed important to avoid indefinite detention of non-citizens with final removal orders who could not be deported to their country of origin. However, Zadvydas only applies to detention *after* there has been a final order of removal. In practice, there is no limit to the duration of immigration detention before and during immigration removal proceedings. Many non-citizens languish in detention for months or years.[30]

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.

In response to this question, the government states that non-citizens detained in the U.S. pending criminal charges or prosecution have the same constitutional rights as U.S. citizens who are detained pending criminal charges or prosecution, and goes on to add that DHS immigration detention is civil in nature, and that DHS does not detain aliens for the purpose of criminal charges or prosecution other than for the short time of the initial arrest. (¶ 101, U.S. Response)

This response fails to acknowledge that a vast and growing number of people detained on civil immigration status violations are being held in jails, prisons, and secure detention centers around the U.S. Nor does it address the inappropriateness of detention in jail-like conditions of people held on civil violations, or the fact that conditions of detention in these facilities fail to adhere to international standards.

The U.S. immigration detention system is an enormous and growing operation that has become a cornerstone of immigration enforcement in the United States. The Department of Homeland Security (DHS) reports that in 2011, 642,000 foreign nationals were apprehended; approximately 429,000 foreign nationals were detained by ICE (more than double the number of 209,000 detained by ICE in 2001[31]); 392,000 foreign nationals were removed from the U.S.; and 476,000 foreign nationals were returned to their home countries without a removal order.[32]

Detention is widely used by Immigration and Customs Enforcement (ICE) for persons apprehended on suspicion of civil immigration status violations in the U.S. interior,[33] and by Customs and Border Protection (CBP) for persons apprehended at or within 100 miles of U.S. borders with Mexico or Canada or at ports of entry.[34] People detained on civil immigration status violations are held in hundreds of jails, prisons, and secure detention centers around the U.S.,[35] operated variously by ICE, state and local governments, and private prison corporations.[36] In addition, people apprehended by CBP are often detained in short-term custody facilities.

The number of beds available for detention in ICE custody nearly doubled between 2004 and 2011, from 18,000 beds to 33,400.[37] Reports indicate that nearly half of ICE's average daily population of detainees is housed in privately-operated detention centers.[38]

The private prison industry has played a significant role in the growth of ICE's detention budgets by advocating for the expansion of immigration enforcement and detention policies at the federal and state levels. The main contractors involved in the explosive growth of the immigration detention system have been involved in heavy lobbying at the federal level[39].

CBP, which has a separate command structure from ICE, has remained largely outside the scope of the limited progress that has been made toward securing oversight of conditions for individuals in ICE custody. CBP is a large and growing security apparatus.[40] CBP coordinates border security operations closely with the U.S. Department of Defense and other federal agencies, using myriad defense technologies and strategies that have resulted in a militarized U.S.-Mexico border.[41] U.S. National Guard troops have also been deployed to monitor the Southwest border.[42]

In addition to ICE and CBP, state and local law enforcement agencies detain thousands of individuals each year under ICE "detainers." Detainers are requests by ICE to a law enforcement agency to detain the named individual for up to 48 hours in order to provide ICE an opportunity to determine the person's immigration status. While law enforcement agencies are under no obligation to honor these requests, detainers routinely result in extended detention of people suspected of being non-citizens in the U.S.[43]

In spite of the dramatic costs associated with the expanding U.S. immigration detention system, the U.S. has failed to adequately fund or use community-based alternatives to detention, despite findings that alternatives to detention cost significantly less[44] and "yield 93% to 99% appearance rates before the immigration courts."[45]

Lack of Access to Legal Counsel: While U.S. law provides that non-citizens in removal proceedings have "the privilege of being represented," legal representation must be "at no expense to the Government."[46] The U.S.'s failure to ensure that all non-citizens have access to legal representation during their deportation hearings, and by extension, to fair proceedings, violates ICCPR article 13.

According to a report by the American Bar Association, there is "strong evidence that representation affects the outcome of immigration proceedings."[47] Between 2000 and 2010, the number of removal proceedings initiated per year in immigration courts increased nearly 50%. During that same period, the representation rate of respondents in removal proceedings has remained relatively constant, and low. Correspondingly, the actual number of unrepresented respondents has virtually doubled.[48] The lack of representation is particularly acute for detained individuals.[49] One report estimates that approximately 84% of immigration detainees nationwide were unrepresented in their removal proceedings.[50]

As of 2010, a majority of detainees were held at facilities that were grossly underserved by legal service organizations; approximately 28% of detainees were held at facilities where there was no access to a free legal service provider.[51] Geographic isolation compounds the inability of people

in detention to access legal assistance. DHS and ICE regularly detain asylum seekers and other immigrants in areas that are not near the immigration courts, U.S. asylum offices, or pro bono legal resources.[52] The staff time and travel costs for legal service providers create a significant barrier to them reaching and providing access to legal counsel for individuals detained in geographically remote areas.[53]

Even the provision of information about legal rights is limited; as of 2010, approximately 25% of all ICE detainees were held at facilities where they received no information about their legal rights from attorneys or legal services providers.[54] Further compounding these issues is limited access to phone calls to attorneys. As of 2010, 78% of the facilities holding immigrants prohibited private calls between attorneys and clients.[55]

Detention further undermines individuals' ability to raise defenses to deportation that may be available to them, as well as individuals' will and ability to pursue appeals.[56] Faced with the prospect of indefinite detention pending the outcome of removal hearings, detainees often agree—without access to an attorney or an appearance before an immigration judge—to "stipulated removal orders," through which they accept an order of deportation in exchange for the promise of release from detention. A September 2011 report found that over 160,000 people have been deported under these stipulated removal orders over the past decade.[57]

The U.S. immigration system also lacks procedural safeguards for detainees with mental disabilities who face the possibility of deportation.[58] As of 2010, approximately 15% of the total immigrant population in detention was comprised of individuals with mental disabilities, [59] and [i]mmigration courts have no substantive or operative guidance for how they should achieve fair hearings for people with mental disabilities.[60] One report noted the many cases in which the government attorney prosecuting the case did not inform the immigration judge when a non-citizen facing deportation had a diagnosed or suspected mental disability—even when one had been previously adjudged by a criminal court.[61] In other cases, government attorneys refused or neglected to perform competency evaluations and to supply information from evaluations to the court—even when the court ordered them to do so.[62] As a result, legal permanent residents and asylum seekers with a lawful basis for remaining in the U.S. may have been unfairly deported because their mental disabilities made it impossible for them to effectively present their claims in court.[63]

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.

In response to question 19(c), the U.S. notes DHS's commitment to developing and implementing policies and procedures that take into account the best interests of children and provide age-appropriate care and services for children in its custody. The response also states that, in enforcement and removal operations, ICE seeks to maintain family unity wherever

possible. The response does not address what steps are taken to ensure that immigrants are not held in jails or jail-like detention facilities.

Conditions of Detention: Virtually all individuals in ICE custody are held in correctional facilities that are prison- or jail-like settings. Reliance by the U.S. government on a penal model of detention is inappropriate for individuals detained on alleged civil status violations. Further, the conditions of detention In the U.S. fail to adhere to guarantees in ICCPR articles 10(1) and 10(2)(a).[64]

Although the U.S. has adopted detention standards for ICE-contracted facilities, these standards are not legally enforceable. In addition, there are significant deficiencies in monitoring and oversight, little transparency, and although ICE rates contracted facilities on the standards, it imposes no penalties or other consequences for non-compliance.[65]

Individuals detained on allegations of civil immigration status violations routinely are commingled with individuals convicted in the general criminal justice system, endangering their safety.[66] Because of the penal nature of the facilities, detainees routinely are subject to degrading conditions.[67] ICE detainees wear prison uniforms, are regularly shackled during transport and in their hearings,[68] are held behind barbed wire,[69] and may be locked in their cells up to 18 hours each day.[70] Immigrants in detention may also be held for prolonged periods of time without access to the outdoors.[71] Reports of poor food quality and limited amount of food are also common.[72]

Detainees often face barriers to communicating with their family, counsel, or other support systems.[73] Depending upon where they are detained, they may not be permitted contact visits with family.[74]

Administrative and disciplinary segregation, both used in ICE detention facilities, mirror punitive forms of solitary confinement imposed in the penal context.[75] Detainees are confined alone in tiny cells for up to twenty-three hours a day;[76] phone privileges, access to legal counsel, and recreational time are often restricted or completely denied.[77] Freedom of movement can be so severely limited that even trips to the bathroom may require shackles and a staff escort.

Between 2003 and December 2011, ICE reported 127 deaths of non-citizens in their custody.[78] Reports abound of failures to screen for illness, failure to provide care to ill or injured persons, and other failures to guarantee necessary medical care for detainees subject to ICE's authority.[79] A March 2011 report by DHS's Office of Inspector General found that while the ICE Health Services Corps serves as medical authority for ICE, deficiencies call into question the effectiveness of care, particularly regarding provision of mental health care.[80] Relatedly, appropriate psychological and medical services for torture survivors are universally unavailable.[81]

Medical and mental health issues are exacerbated by the lengthy and indefinite periods of detention endemic in the immigration detention system. Many people in ICE custody are held in county jails or other facilities designed for short-term stays by people in pre-trial criminal custody. These facilities lack the screening, protocols, personnel, and facilities to deal with long-term immigrant detainees is ICE custody.[82]

Sexual abuse of migrants in detention is another problem of serious concern.[83] Women make up 9% of the immigration detention population.[84] Some of these women are victims of trafficking, survivors of sexual assault and domestic violence, pregnant women, and nursing mothers.[85] Lack of governmental transparency,[86]as well as obstacles and disincentives to victim reporting, make it difficult to accurately 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.[87] And frequent transfers of people between detention centers increase the likelihood that sexual abuse will remain unaddressed.[88]

Conditions of detention of non-citizens by CBP, particularly near the U.S.-Mexico border, are of urgent concern. CBP apprehension and detention policies and practices lack transparency and accountability at both the local and federal levels. Non-citizens including minor children, apprehended by CBP often are detained in short-term custody facilities which hold detainees for less than 72 hours.[89] Interviews conducted between 2008 and 2011 with nearly 13,000 people who had been in Border Patrol custody reveal patterns of disregard for the most basic human rights of detainees, including:

- Denial of food and water or insufficient food and water.
- Physical abuse including of teens and children.
- Denial of necessary medical treatment.
- Inhumane processing center conditions including overcrowding, unsanitary conditions, extreme cold, and extreme heat.[90]

Family Unity: In violation of ICCPR article 23 and article 17, the U.S. immigrant detention system contravenes the U.S.'s obligations to protection family unity. Family unity cannot be considered as a factor in mandatory detention cases, and the U.S. routinely fails to consider family unity when making discretionary detention decisions. Transfer of detainees to facilities far from family members increased sharply over the last decade.[91]

Further, a growing number and proportion of deportees are parents. In the first six months of 2011, the U.S. government removed more than 46,000 mothers and fathers of U.S.-citizen children. These deportations shatter families and endanger the children left behind.[92] CBP practices also violate obligations to ensure family unity. Based on interviews with former CBP detainees, on report documents that CBP removed 869 family members separately, including 17 children and 41 teens."[93]

ICE does not protect families at the time of apprehension. ICE and arresting police officers often refuse to allow parents to make arrangements for their children. Once detained, ICE denies parents access to programs required to complete Child Protection Services (CPS) case plans, and due to the isolation of detention centers and ICE's refusal to transport detainees to hearings, parents can neither communicate with/visit their children nor participate in juvenile court proceedings. Child welfare caseworkers and attorneys struggle to locate and maintain contact with detained parents,[94] especially as they are transferred between facilities.

Parents detained in ICE facilities may sometimes be involved in complicated child custody disputes. These parents, however, are unable to participate—either telephonically, by video, or in person—in family court hearings and therefore are unable to fight for their parental rights.[95]

In addition to obstructing participation in ongoing child protection or custody cases, ICE detention itself too often forms the basis of child protection claims, resulting in placement of children in foster care and even termination of parental rights as a result of the parents' immigration detention or deportation.[96]

IV. SUGGESTED QUESTIONS

1. What measures has the U.S. 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?

2. Has the government taken steps to halt or modify Operation Streamline?

3. How does the U.S. justify the use of privately owned prison facilities exclusively for non-citizen offenders?

4. 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?

5. What measures has the U.S. taken to ensure that asylum seekers detained pursuant to the Expedited Removal process have the opportunity to pursue their claims of asylum and other forms of relief?

6. Many of the immigration issues raised by the Human Rights Committee in the List of Issues could be fixed administratively. Why has the U.S. government not taken steps to use administrative fixes to correct violations of its ICCPR obligations, particularly those related to immigration detention?

V. SUGGESTED RECOMMENDATIONS

1. The U.S. government should halt the practice of prosecuting in the criminal justice system aliens charged with immigration offenses such as unlawful entry or re-entry.

2. To address the dramatic increase in the number of immigration offenders in the federal criminal justice system, the U.S. must stop policies and procedures such as Operation Streamline.

3. DHS should terminate the 287(g) program and all other federal immigration enforcement programs that rely on state and local criminal justice systems, including the Secure Communities Initiative and the Criminal Alien Program.

4. The U.S. should immediately implement enforceable, rights-respecting detention standards in all facilities detaining non-citizens, including short-term facilities and privately contracted prisons. Any such detention standards should ensure humane treatment, including access to adequate physical and mental medical care, fresh air, access to family and legal counsel, and rehabilitation and educational services.

5. The U.S. should cease the practice of detaining asylum seekers and should explore community-based alternatives to detention. Until that time, the U.S. must ensure that asylum seekers are not inhibited by their detention from pursuing claims of asylum.

6. Screening using the RCA tool should be done by all officers at the time of apprehension, and preferably by a neutral third party.

7. The US should use administrative fixes whenever possible to address violations of the ICCPR protections for non-citizens, in particular with regards to mandatory detention and mandatory removal provisions.

Appendix

The Legislative and Policy Framework of U.S. Immigration Law

In the U.S., Congress holds the authority to make laws that govern admission, protection, and removal of non-citizens. Federal immigration law must be understood in the context of the U.S.'s tripartite system of government. Executive branch agencies, including the Department of Homeland Security (DHS), Department of Justice, and Department of State, promulgate regulations that implement U.S. immigration law. Public and internal policy guidance spells out how the U.S. immigration system operates in practice. Federal courts also play a role in providing a final review of individual decisions made by administrative courts in removal proceedings.

Federal immigration law in the U.S. is based on the Immigration and Nationality Act of 1952 (INA).[97] In 1965, the INA was amended to set a permanent annual level of immigration divided into categories for family-related immigrants, employment-based immigrants, and diversity immigrants. Refugees were excluded from these numerical limits. The Refugee Act of 1980 defines the U.S. laws relating to refugees.[98]

In 1986, Congress enacted the Immigration Reform and Control Act (IRCA) to toughen sanctions against employers who hire undocumented persons and limit immigrants' access to federally-funded welfare benefits.[99]

The Immigration Act of 1990 substantially expanded the "aggravated felony" category of deportable crimes.[100]

In 1996, the Antiterrorism and Effective Death Penalty Act[101] and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)[102] added additional crimes to the aggravated felony ground for deportation and reduced the term of imprisonment threshold requirement for deportability to one year,[103] dramatically increasing the number of people subject to prolonged or indefinite detention.

The IIRIRA also created a new "expedited removal" system for arriving aliens without proper documentation for admission,[104] which has resulted in the routine detention of arriving asylum seekers and the summary expulsion of 123,000 people in 2011 alone.[105]

The USA PATRIOT Act of 2001,[106] passed just weeks after the 9/11 terrorist attacks, and the REAL ID Act of 2005,[107] expanded the class of individuals who are inadmissible to the U.S. for having provided "material support" to terrorism.

The Department of Homeland Security was created in 2003 as part of federal agency reform following the 9/11 terrorist attacks, shifting immigration enforcement into the realm of anti-terrorism policy. The Immigration and Naturalization Service (INS) was replaced with three different agencies within DHS: U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE). Federal law gives the DHS, through both ICE and CBP, the authority to apprehend and detain aliens.[108]

State and local governments in the U.S. have historically played a very limited role in immigration enforcement. In the last decade, however, the federal government has attempted to expand responsibility for enforcing civil immigration laws to state and local police through formal DHS programs, such as the 287(g) program, the Criminal Alien Program (CAP), and Secure Communities,[109] as well as through informal cooperation between immigration authorities and public safety officials. This delegation of authority to the state and local level has led directly to an increase in discriminatory racial profiling and the placement of immigrants in detention under procedures and in conditions that do not meet the U.S.'s international obligations.

For example, during the booking process, Secure Communities allows the fingerprints of arrestees to be automatically checked against DHS's civil immigration databases in addition to the Federal Bureau of Investigation's (FBI) criminal databases. This practice incentivizes racial profiling and pretextual arrests by state and local police, who know that when they arrest an individual, that individual's immigration status will be checked when he or she is fingerprinted.[110] Latinos are disproportionately targeted by the program.[111] ICE's own data demonstrate that, for example, between the program's inception in March 2008 and June 2010, 79% of the people deported due to Secure Communities were non-criminals or were picked up for lower-level offenses, such as traffic violations.[112]

Individual states, notably Arizona and Alabama, have enacted immigrant enforcement laws that impact the human rights of non-citizens. In some cases, other states have enacted laws that, while facially neutral, primarily target undocumented migrants. These laws lead to more arrests and detentions of people suspected of civil immigration status violations, including U.S. citizens who are suspected of such violations based primarily on race or national origin.

Findings of United Nations Human Rights Mechanisms on U.S. Immigration Issues

In the 2006 review of the United States' compliance with the ICCPR, the Committee noted the following in the **Concluding observations of the Human Rights Committee** (Consideration of Article 40 report submitted by the United States at the 87th Session (2006)):

> a. The Committee welcomed the promulgation of the National Detention Standards in 2000, establishing minimum standards for detention facilities holding Department of Homeland Security detainees, and encouraged the State party to adopt all measures necessary for their effective enforcement (¶ 8)
>
> b. The Committee expressed concern that the Patriot Act and the 2005 REAL ID Act of 2005 may bar from asylum and withholding of removal any person who has provided "material support" to a "terrorist organization", whether voluntarily or under duress. It regrets having received no response on this matter from the State party. (article 7) The State party should ensure that the "material support to terrorist organisations" bar is not applied to those who acted under duress (¶ 17)
>
> c. The Committee also noted the United States' failure to report sufficient information on measures being considered in relation to the reportedly nine million undocumented

migrants in the United States, as well as the " increased level of militarization on the southwest border with Mexico." (¶ 27)

The Special Rapporteur on the human rights of migrants made numerous recommendations related to the treatment of non-citizens (see Report of the Special Rapporteur on the human rights of migrants, mission to the United States (2008)), including the following regarding specific issues:

Right to fair deportation and detention procedures, right to liberty of person:

a. The Special Rapporteur stated that "United States deportation policies violate the right to fair deportation procedures, including in cases in which the lawful presence of the migrant in question is in dispute, as established under article 13 of the ICCPR" (¶ 10). The Special Rapporteur also noted that non-citizens should be able to challenge the validity of the deportation order against them (¶ 15)
b. The Special Rapporteur found that, "[T]he United States detention and deportation system for migrants lacks the kinds of safeguards that prevent certain deportation decisions and the detention of certain immigrants from being arbitrary within the meaning of the ICCPR." (¶ 24)
c. Further, "The policy of mandatory detention [for aliens convicted of certain offenses] also strips immigration judges of the authority to determine during a full and fair hearing whether or not an individual presents a danger or a flight risk." (¶ 37)

Restrictions **on relief for refugee convicted of crimes:**The Special Rapporteur found that forms of relief for refugees are per se unavailable to non-citizens with aggravated felonies or with convictions that the Attorney General deems particularly serious, stating in his report that, "United States restrictions on relief for refugees convicted of crimes violate the Convention and the Protocol relating to the Status of Refugees." (¶ 20)

Detention:

a. The Special Rapporteur found that migrants in detention in the United States include asylum-seekers, torture survivors, and victims of human trafficking. . "Asylum-seekers granted refugee status, spend an average of 10 months in detention, with the longest period in one case being three and a half years." (¶ 30) .The Special Rapporteur stated that, "Detention is emotionally and financially devastating. . ." (¶ 31)
b. Regarding conditions of detention, the Special Rapporteur stated, "The conditions and terms of detention [for migrants detained by immigration officials] are often prison-like: freedom of movement is restricted and detainees wear prison uniforms and are kept in a punitive setting. Many detainees are held in jails instead of detention centers . . . [a]s a result, the majority of non-criminal immigrants are held in jails where they are mixed in with the prison's criminal population." (¶ 28)

During the Universal Periodic Review of the United States, numerous Human Rights Council delegates made recommendations[113](see Report of the Working Group on the Universal Periodic Review, United States of America (2011). Most relevant to this submission were the following:

a. Attempt to restrain any state initiative which approaches immigration issues in a repressive way toward the migrant community (Guatemala) (¶92.79); Spare no efforts to constantly evaluate the enforcement of the immigration federal legislation, with a vision of promoting and protecting human rights (Guatemala) (¶92.80); Ensure that detention centers for migrants and the treatment they receive meet the basic conditions and universal human rights law (Guatemala) (¶92. 164); Ensure that migrants in detention, subject to a process of expulsion are entitled to counsel, a fair trial and fully understand their rights, even in their own language (Guatemala) (¶92.185);

b. Ensure the right to habeas corpus in all cases of detention (Austria) (¶92.186);

c. Incarcerate immigrants only exceptionally (Switzerland); Investigate carefully each case of immigrants' incarceration; and Adapt the detention conditions of immigrants in line with international human rights law (Switzerland) (¶92.182-184);

d. Reconsider alternatives to the detention of migrants (Brazil) (¶92.212).

The United States accepted the following recommendations in the Report of the Working Group (see also United States views on conclusions and/or recommendations in the Report of the Working Group (Addendum)

a. The United States is committed to improving its immigration system and protections for migrants (¶ 73);
b. The United States established that each arriving alien with a credible fear of persecution or torture would be considered for release, and those who established their identity would not be detained pending completion of their immigration proceedings (¶ 74);
c. For detained aliens, the United States recognizes the need to improve conditions of confinement, medical care, and the ability to exercise their human rights (¶ 74).

[1] International Covenant on Civil and Political Rights (ICCPR), opened for signature Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976). See also UNHRC, Report of the Special Rapporteur on the Human Rights of Migrants, ¶ 12, U.N. Doc. A/HRC/7/12/Add.2, (Mar. 5, 2008) (prepared by Jorge Bustamante, Mission to the United States of America) (noting that 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] INA § 235(b)(1)(B)(iii)(IV).

[3] INA § 236(c) outlines authority for the detention of criminal aliens. INA § 236(e) provides that the decision regarding the application of INA § 236 shall not be subject to review and that no court may set aside any actin or decision by the attorney general regarding the detention ore release of any alien.

[4] HUMAN RIGHTS FIRST, U.S. DETENTION OF ASYLUM SEEKERS: SEEKING PROTECTION, FINDING PRISON 14-16 (2009), *available at* http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf.

[5] These programs include stipulated orders of removal. Stipulated orders are essentially plea agreements negotiated directly between the detained alien and the detaining officer, without access to counsel, in which the alien admits to deportability, waives all rights to a hearing on any defenses to deportation, and agrees to be removed from the United States. While ICE and EOIR do not release statistics on the number of stipulated removals, an estimated 100,000 stipulated removal orders were issued between 2004 and 2008 according to the Migration Policy Institute (Migration Policy Institute, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Jan. 2013, available at http://www.migrationpolicy.org/pubs/enforcementpillars.pdf).

[6] Operation Streamline was implemented in 2005 and orders criminal charges for every person crossing the border illegally. The policy strips judges of discretion in deciding immigration cases and has resulted in a staggering increase in non-citizens detained for immigration offenses in the Untied States. *See*, *e.g*, ACLU, "Operation Streamline Fact Sheet" (July 21, 2009), *available at* http://www.immigrationforum.org/images/uploads/OperationStreamlineFactsheet.pdf.

[7] *See* United States Sentencing Commission, "2011 Annual Report," at 37, *available at* http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2011/2011_Annual_Report_Chap5.pdf ("Illegal re-entry into the United States was the most commonly filed federal charge last year").

[8] The Huffington Post, *Private Prisons: Immigration Convictions in Record Numbers fueling Corporate Profits* (Sept. 27, 2012), *available at* http://www.huffingtonpost.com/2012/09/27/private-prisons-immigration_n_1917636.html.

[9] *See* Justice Strategies, *Privately Operated Federal Prisons for Immigrants: Expensive. Unsafe. Unnecessary*, *available at* http://www.justicestrategies.org/sites/default/files/publications/Privately%20Operated%20Federal%20Prisons%20for%20Immigrants%209-13-12%20FNL.pdf.

[10] *See* HUMAN RIGHTS FIRST, U.S. DETENTION OF ASYLUM SEEKERS: SEEKING PROTECTION, FINDING PRISON (2009) at 7, *available at* http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf. *See also* Barbara A. Frey and X. Kevin Zhao, "The Criminalization of Immigration and the International Norm of Non-Discrimination: Deportation and Detention in U.S. Immigration Law," XXIX Law and Inequality: A Journal of Theory and Practice 2, Summer 2011, at 303.

[11] INA § 235(b)(1)(B)(iii)(IV).

[12] 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.

[13] Human Rights Watch, Costly and Unfair: Flaws in US Immigration Detention Policy, May 2010, at 8-9.

[14] See, e.g., Barbara A. Frey and X. Kevin Zhao, "The Criminalization of Immigration and the International Norm of Non-Discrimination: Deportation and Detention in U.S. Immigration Law," XXIX Law and Inequality: A Journal of Theory and Practice 2, Summer 2011, at 310-11.
[15] See Department of Homeland Security Appropriations Act, 2010, Pub. L. 111-83, 123 Stat. 2142, 2149 (October 28, 2009), www.gpo.gov/fdsys/pkg/PLAW-111publ83/pdf/PLAW-111publ83.pdf (requiring 33,400 beds per day). Similar language was included in the Consolidated Appropriations Act of 2012, increasing the number to 34,000.
[16] INA § 235(b)(1)(B)(iii)(IV).
[17] See INA § 236(c).
[18] See HUMAN RIGHTS FIRST, RENEWING U.S. COMMITMENT TO REFUGEE PROTECTION: RECOMMENDATIONS FOR REFORM ON THE 30TH ANNIVERSARY OF THE REFUGEE ACT (Mar. 2010) at 10 (noting that while Immigration Judges can review ICE's custody decisions for other immigrant detainees, they are precluded under regulatory language from reviewing the detention of "arriving aliens," a group that includes asylum seekers who arrive at airports and other U.S. entry points under regulations located primarily at 8 C.F.R. § 1003.19 and § 212.5, as well as § 208.30 and § 235.3). See also U.S. Comm'n on Int'l Religious Freedom, ICE Parole Guideline is an Important First Step to Fix Flawed Treatment of Asylum Seekers in the United States (Dec. 23, 2009) (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), available at http://www.uscirf.gov/index.php?option=com_content&task=view&id=2891&Itemid=126.
[19] U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, News Release: ICE issues new procedures for asylum seekers as part of ongoing detention reform initiatives (Dec. 16, 2009), available at http://www.ice.gov/pi/nr/0912/091216washington.htm.
[20] HUMAN RIGHTS FIRST, U.S. DETENTION OF ASYLUM SEEKERS: SEEKING PROTECTION, FINDING PRISON 14-16 (2009), *available at* http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf.
[21] *See* HUMAN RIGHTS FIRST, U.S. DETENTION OF ASYLUM SEEKERS: SEEKING PROTECTION, FINDING PRISON (2009) at 7, *available at* http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf. *See also* Barbara A. Frey and X. Kevin Zhao, "The Criminalization of Immigration and the International Norm of Non-Discrimination: Deportation and Detention in U.S. Immigration Law," XXIX Law and Inequality: A Journal of Theory and Practice 2, Summer 2011, at 303.
[22] *See* Women's Refugee Commission, Detention Reform *available at* http://womensrefugeecommission.org/programs/detention/detention-reform/our-work-on-detention-reform?highlight=YTo2OntpOjA7czo0OiJyaXNrIjtpOjE7czoxMDoiYXNzZXNzbWVudCI7aToyO3M6NDoidG9vbCI7aTozO3M6MTU6InJpc2sgYXNzZXNzbWVudCI7aTo0O3M6MjA6InJpc2sgYXNzZXNzbWVudCB0b29sIjtpOjU7czoxNToiYXNzZXNzbWVudCB0b29sIjt9
[23] Detention Watch Network, Grassroots Leadership, Inc., and Sarah V. Carswell, "The Influence of the Private Prison Industry in Immigrant Detention," available at http://www.detentionwatchnetwork.org/privateprisons.
[24] See, e.g. Report to the American Bar Ass'n, Reforming the Immigration System, Executive Summary, Feb. 2010, at p. ES-25, *available at* http://www.americanbar.org/content/dam/aba/migrated/media/nosearch/immigration_reform_executive_summary_012510.authcheckdam.pdf.
[25] 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).
[26] 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.
[27] 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.
[28] 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.

[29] 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.
[30] Dr. Dora Schriro, U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations* (Oct. 6, 2010). Dr. Dora Schriro reported in 2010 that while on average an alien is detained 30 days, the length of detention varies appreciably between those pursuing voluntary removals and those seeking relief. Dr, Schriro reported that about 2,100 aliens each year are detained for a year or more.
[31] Nat'l Immigration Forum, The Math of Immigrant Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies, at 2. Available at http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf.
[32] U.S. Dept. of Homeland Security, Office of Immigration Statistics, Policy Directorate, "Annual Report," June 2011, available at http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf.
[33] This detention is authorized by INA §§236, 236A, and 241.
[34] Detention at ports of entry or within 100 miles of the borders is authorized by INA §235 and 8 CFR §235.3.
[35] See NAT'L IMMIGR. L. CTR., ACLU OF S. CAL., AND HOLLAND & KNIGHT, A BROKEN SYSTEM: CONFIDENTIAL REPORTS REVEAL FAILURES IN U.S. IMMIGRANT DETENTION CENTERS 4 (2009) [hereinafter A BROKEN SYSTEM].
[36] See e.g., DETENTION WATCH NETWORK, ABOUT THE U.S. DETENTION AND DEPORTATION SYSTEM, available at www.detentionwatchnetwork.org/aboutdetention.
[37] Nat'l Immigration Forum, The Math of Immigrant Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies, at 2. Available at http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf.
[38] Detention Watch Network, Grassroots Leadership, Inc., and Sarah V. Carswell, "The Influence of the Private Prison Industry in Immigrant Detention," available at http://www.detentionwatchnetwork.org/privateprisons.
[39] Detention Watch Network, Grassroots Leadership, Inc., and Sarah V. Carswell, "The Influence of the Private Prison Industry in Immigrant Detention," available at http://www.detentionwatchnetwork.org/privateprisons.
[40] U.S. Dept. of Homeland Security, "FY2012 Budget in Brief," at 66. Available at http://www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf. The Department of Homeland Security noted in 2012 that: "CBP has dedicated unprecedented manpower, technology and infrastructure to the Southwest border. The Border Patrol is better staffed now than at any time in its 86-year history having doubled the number of agents from 10,000 in FY 2004 to more than 20,500 in FY 2010. In addition to the Border Patrol, CBP's workforce of more than 58,000 employees also includes more than 2,300 agriculture specialists and 20,600 CBP officers at ports of entry."
[41] See Testimony of Mark S. Borkowski, Ass't Com'r, Office of Technology Innovation and Acquisition, U.S. Customs and Border Protection, and Paul Benda, Chief of Staff and Director Homeland Security Advanced Research Projects Agency, Science & Technology Directorate, and Michael Tangora Deputy Assistant Commandant for Acquisition, U.S. Coast Guard, before the House Committee on Homeland Security Subcommittee on Border and Maritime Security; release date: Nov. 15, 2011, available at http://www.dhs.gov/ynews/testimony/20111115-borkowski-benda-tangora-house-maritime-security.shtm (noting that'[m]any of the systems DHS currently uses for surveillance and situational awareness along the border come directly from DoD development and heritage" including the Predator Drone - MQ-9; Blackhawk - UH-60; Orion P-3; KingAir – Beechcraft; Mobile Surveillance System (MSS); Agent Portable Sensor System (APSS); Remote Video Surveillance System (legacy system); Unattended Ground Sensors (Monitron, McQ Omnisense); Night Vision Camera (FLIR Night Ranger); SBInet Block 1 Laser Illuminator; and SBInet Block 1 Radar
[42] Nat'l Immigration Forum, National Guard Deployments to the Southwest Border, Dec. 2011. Available at http://www.immigrationforum.org/images/uploads/2011/National_Guard-Border_Fact_Sheet-2011.pdf.
[43] Immigration Policy Center, "Immigration Detainers: A Comprehensive Look," available at http://immigrationpolicy.org/just-facts/immigration-detainers-comprehensive-look.
[44] ACLU of Georgia and Georgia Detention Watch, "Securely Insecure: The Real Costs, Consequences, and Human Face of Immigration Detention," available at http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/1.14.11_Fact%20Sheet%20FINAL_0.pdf.
[45] ACLU of Georgia and Georgia Detention Watch, "Securely Insecure: The Real Costs, Consequences, and Human Face of Immigration Detention," available at http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/1.14.11_Fact%20Sheet%20FINAL_0.pdf

[46] INA § 292. See also, American Bar Ass'n, Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases, Feb. 2010, at 40. Available at http://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/coi_complete_full_report.authcheckdam.pdf (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).

[47] American Bar Ass'n, Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases, Feb. 2010, at 40. Available at http://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/coi_complete_full_report.authcheckdam.pdf. 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.

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

[49] 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.

[50] American Bar Ass'n, Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases, Feb. 2010, at 40. Available at http://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/coi_complete_full_report.authcheckdam.pdf

[51] 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 7. Available at http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20R EPORT%202010%2009%2023_0.pdf.

[52] Human Rights First, U.S. Detention of Asylum Seekers, p. 55-62.

[53] 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 7. Available at http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20R EPORT%202010%2009%2023_0.pdf.

[54] 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 7. Available at http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20R EPORT%202010%2009%2023_0.pdf.

[55] 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 8-9. Available at http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20R EPORT%202010%2009%2023_0.pdf.

[56] See, e.g., Georgia Detention Watch, Report on the December 2008 Humanitarian Visit to the Stewart Detention Center, at 6 (reporting that in a visit on Feb. 21, 2009, "Julio" claimed that he had been detained for approximately three months and during that time had been unable to secure counsel for his deportation case. He told the volunteer that he had decided that it was "easier to give up" and had signed a stipulated order of removal). Available at http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf.

[57] Jennifer Lee Koh, Jayashri Srikantiah, and Karen C. Tumlin, Deportation Without Due Process, Sept. 2011, available at http://www.stanford.edu/group/irc/Deportation_Without_Due_Process_2011.pdf.

[58] American Civil Liberities Union and Human Rights Watch, Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System, July 2010, at 2. Available at http://www.aclu.org/files/assets/usdeportation0710_0.pdf.

[59] American Civil Liberities Union and Human Rights Watch, Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System, July 2010, at 3. Available at http://www.aclu.org/files/assets/usdeportation0710_0.pdf.

[60] American Civil Liberities Union and Human Rights Watch, Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System, July 2010, at 5. Available at http://www.aclu.org/files/assets/usdeportation0710_0.pdf.
[61] American Civil Liberities Union and Human Rights Watch, Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System, July 2010, at 6. Available at http://www.aclu.org/files/assets/usdeportation0710_0.pdf.
[62] American Civil Liberities Union and Human Rights Watch, Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System, July 2010, at 6-7. Available at http://www.aclu.org/files/assets/usdeportation0710_0.pdf.
[63] American Civil Liberities Union and Human Rights Watch, Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System, July 2010, at 4. Available at http://www.aclu.org/files/assets/usdeportation0710_0.pdf.
[64]ICCPR, *supra* note 1, art. 10(1) (guaranteeing that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person); id. art. 10(2)(a) (providing that accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons).
[65] Brittney Nystrom, Senior Legal Advisor, National Immigration Forum, Written Testimony before U.S. House of Representatives, House Homeland Security Committee, Border, Maritime, and Global Counterterrorism Subcommittee, "Moving Toward More Effective Immigration Detention Management," Dec. 10, 2009, available at http://chsdemocrats.house.gov/SiteDocuments/20091210105703-50708.PDF.
[66] A client of The Advocates for Human Rights seeking asylum from Ethiopia and being treated for depression and Post-Traumatic Stress Disorder, was detained for over one year in the Ramsey County Adult Detention Center in St. Paul, Minnesota, following her asylum hearing in front of an immigration judge. While detained, she never saw the outdoors and was co-mingled with the general convicted population because the facility with which ICE contracts lacks the facilities.
[67] See e.g., American Civil Liberties Union of Georgia, Letter to the Inter-American Commission on Human Rights, "Submission re. Racial Profiling in Gwinnett and Cobb Counties, Georgia, and Conditions of Detention at Stewart and Irwin County Detention Center," Mar. 28, 2011. at 5 (reporting that detainees were given dirty underwear at the Irwin County Detention Center). Available at http://www.acluga.org/ACLUofGeorgia-submissiontoIACHR.pdf.
[68] The Advocates for Human Rights regularly represents people detained in Minnesota and has observed that people routinely remained shackled when appearing before the Immigration Judge.
[69] See Human Rights Advocates, Submission to the Human Rights Council, 11th Session, Agenda Item 3: Rights of Migrants.
[70] Visit by The Advocates for Human Rights to Ramsey County Adult Detention Center, 2011 (notes on file with author).
[71] County jails, designed for short periods of detention, do not necessarily have outdoor recreation facilities. The Ramsey County Adult Detention Center in St. Paul, Minnesota, for example, has no outdoor recreation access. People in detention have very limited access to a small room with window near the high ceilings which can be opened to let fresh air into the room.
[72] 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.
[73] See, e.g., 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).
[74] County jails holding immigrant detainees in Minnesota have "video visits" with family members, where detainees see and speak with their family members via closed circuit television.
[75] See, e.g., Georgia Detention Watch, Report on the December 2008 Humanitarian Visit to the Stewart Detention Center, at 6. Available at http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf.
[76] Immigration Equality, Conditions of Detention, http://www.immigrationequality.org/issues/detention/conditions-of-detention/ (last visited Jan. 27, 2012).
[77] Clement Lee, Legal Fellow, Immigration Equality, Addresss at the New York City Council Hearing (Dec. 13, 2011) (transcript availabe at http://www.scribd.com/doc/75669146/Testimony-on-LGBT-Detention-Issues).
[78] Immigration and Customs Enforcement, List of Detainee Deaths Since October 2003, available at

http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf
[79] 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, [Hiu 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). Women's Refugee Commission, Migrant Women and Children at Risk: In Custody in Arizona, Oct. 2010, at 5.
[80] U.S. Dept. of Homeland Security, Office of Inspector General, "Management of Mental Health Cases in Immigrant Detention," at 1. Available at http://www.oig.dhs.gov/assets/Mgmt/OIG_11-62_Mar11.pdf. See also, Nat'l Immigration Forum, The Math of Immigrant Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies, at 5. Available at http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf.
[81] See Dana Priest & Amy Goldstein, Caught Without Care, THE WASH. POST, May 13, 2008 (reporting that suicide is the most common cause of death among detained immigrants with 15 of 83 deaths since 2003 the result of suicide and stating, "No one in the Division of Immigration Health Services (DIHS), the agency responsible for detainee medical care, has a firm grip on the number of mentally ill among the 33,000 detainees held on any given day, records show. But in confidential memos, officials estimate that about 15 percent -- about 4,500 -- are mentally ill, a number that is much higher than the public ICE estimate. The numbers are rising fast, memos reveal, as state mental institutions and prisons transfer more people into immigration detention"). See also PHYSICIANS FOR HUMAN RIGHTS, BELLEVUE/NYU CENTER FOR SURVIVORS OF TORTURE, FROM PERSECUTION TO PRISON: THE HEALTH CONSEQUENCES OF DETENTION FOR ASYLUM SEEKERS (2003), available at http://physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf.
[82] See Detention Watch Network, "Tracking ICE Enforcement," at http://www.detentionwatchnetwork.org/node/2382.
[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] Human Rights Watch, Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention, Aug. 2010, at 3. Available at http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[85] Human Rights Watch, Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention, Aug. 2010, at 3. Available at http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[86]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, Aug. 2010, at 4. Available at http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[87] Human Rights Watch, Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention, Aug. 2010, at 3. Available at http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[88] Human Rights Watch, Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention, Aug. 2010, at 19. Available at http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[89] 8 U.S.C. § 236; 8 C.F.R. § 236.1; CBP Directive No. 3340-030A (Mar. 9, 2004), available at http://foia.cbp.gov/streamingWord.asp?i=10.
[90] No More Deaths, Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody, 2011, at 5. Available at www.cultureofcruelty.org.
[91] TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, HUGE INCREASE IN TRANSFERS OF ICE DETAINEES (2009), available at http://trac.syr.edu/immigration/reports/220/ (finding that the number of detainees that ICE has transferred each year has grown much more rapidly than the already surging population held in custody by the agency, with over 50% of detainees transferred at least once and nearly 25% of detainees transferred multiple times while detained).
[92] Applied Research Center, Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System, Nov. 2011, at 5. Available at www.arg.org.
[93] No More Deaths, Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody, 2011, at 5. Available at www.cultureofcruelty.org.

[94] Applied Research Center, Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System, Nov. 2011, at 8. Available at www.arg.org.
[95] Women's Refugee Commission, Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention, Dec. 2010, available at www.womensrefugeecommission.org.
[96] Applied Research Center, Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System, Nov. 2011, at 6. Available at www.arg.org.
[97] The INA of 1952 also created the Immigration and Naturalization Service (INS), the federal agency responsible for administering immigration law and policy until the creation of the Department of Homeland Security in 2003. See Immigration and Nationality Act, 8 U.S.C. § 1187 (2006).
[98] The term "refugee" means "any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." INA § 101(a)(42).
[99] [ADD CITE]
[100] See INA § 101(a)(43). See also The Anti-Drug Abuse Act of 1988, Pub. L. 100-690, subtitle J, 102 Stat. 4181 (Nov. 18, 1988) (creating a separate ground of deportation for serious crimes such as murder, drug trafficking or illegal trafficking of firearms or destructive devices), Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1999) (substantially expanding the category of aggravated felony).
[101] Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).
[102] Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).
[103] See INA § 101(a)(43).
[104] INA § 235.
[105] U.S. Dept. of Homeland Security, Office of Immigration Statistics, Policy Directorate, "Annual Report," September 2012, available at http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf.
[106] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism
(USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).
[107] Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Div. B, Pub. L. No. 109-13 (2005).
[108] Immigration and Nationality Act (INA)§232 (Detention of Aliens for Physical and Mental Examination), §235 (Inspection by Immigration Officers; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing); §236 (Apprehension and Detention of Aliens; §236A (Mandatory Detention of Suspected Terrorists; Habeas Corpus; Judicial Review), and §241 (Detention of Aliens Ordered Removed) and by corresponding federal regulations.
[109] Local enforcement of immigration laws has resulted in problems with racial discrimination and profiling. See generally U.S. DEPT. OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL, THE PERFORMANCE OF 287(G)
AGREEMENTS (Mar. 2010); ACLU OF N.C. LEGAL FOUND. AND IMMIGR. AND HUM. RIGHTS POL'Y CLINIC AT THE U. OF N.C. AT CHAPEL HILL, THE POLICIES AND POLITICS OF LOCAL IMMIGRATION ENFORCEMENT LAWS, 287(G) PROGRAM IN NORTH CAROLINA, (Feb. 2009), available at http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf; GOV'T ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, IMMIGRATION ENFORCEMENT: BETTER CONTROLS NEEDED OVER PROGRAM AUTHORIZING STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS (Jan. 2009), available at http://www.gao.gov/new.items/d09109.pdf; TREVOR GARDNER II & AARTI KOHLI, THE CHIEF JUSTICE EARL WARREN INST. ON RACE, ETHNICITY & DIVERSITY AT THE U.C. BERKELEY L. SCH., THE C.A.P. EFFECT: RACIAL PROFILING IN THE ICE CRIMINAL ALIEN PROGRAM, (Sept. 2009), available at http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf.
[110] See American Civil Liberties Union of Georgia, Letter to the Inter-American Commission on Human Rights, "Submission re. Racial Profiling in Gwinnett and Cobb Counties, Georgia, and Conditions of Detention at Stewart and Irwin County Detention Center," Mar. 28, 2011. Available at http://www.acluga.org/ACLUofGeorgia-submissiontoIACHR.pdf.

[111] Aarti Kohli, Peter L. Markowitz and Lisa Chavez, Secure Communities by the Numbers: An Analysis of Demographics and Due Process, The Chief Justice Earl Warren Institute on Law and Social Policy, October 2011, available at http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

[112] Immigration and Customs Enforcement, Secure Communities, IDENT/IAFIS Interoperability, Monthly Statistics through June 30, 2010, prepared on July 9, 2010, ICE FOIA 10-2674.000080 - ICE FOIA 10-2674.000079, at ICE FOIA 10-2674.000086.

[113] Eliminate discrimination against migrants and religious and ethnic minorities and ensure equal opportunity for enjoyment of their economic, social and cultural rights (Bangladesh) (¶92.99); Reconsider restrictions on undocumented migrants' access to publicly supported healthcare (Brazil) (¶92.211); End violence and discrimination against migrants (Cuba) (¶92.207); Increase its efforts to eliminated alleged brutality and use of excessive force by law enforcement officials against, inter alia, Latino and African American persons and undocumented migrants, and to ensure that relevant allegations are investigated and that perpetrators are prosecuted (Cyprus) (¶92.144); Protect the human rights of migrants, regardless of their migratory status (Ecuador) (¶92.210); Prohibit, prevent and punish the use of lethal force in carrying out immigration control activities (Mexico) (¶92.208); Guarantee the prohibition of use of cruelty and excessive or fatal force by law enforcement officials against people of Latin American or African origin as well as illegal migrants and to investigate such cases of excessive use of force (Sudan) (¶92.209); Avoid the criminalization of migrants and ensure the end of police brutality, through human rights training and awareness-raising campaigns, especially to eliminate stereotypes and guarantee that the incidents of excessive use of force be investigated and the perpetrators prosecuted (Uruguay) (¶92.105); Adopt a fair immigration policy, and cease xenophobia, racism and intolerance to ethnic, religious and migrant minorities (Bolivarian Republic of Venezuela) (¶ 92.82); Make further efforts in order to eliminate all forms of discrimination and the abuse of authority by police officers against migrants and foreigners, especially the community of Vietnamese origin people in the United States (Viet Nam) (¶ 92.104).