



## I. Title

Discriminatory Practices, Lack of Due Process, and Denial of Basic Rights in U.S. Immigration Policy: Report for the International Covenant on Civil and Political Rights Periodic Review

## II. Reporting Organization(s)

T'ruah: The Rabbinic Call for Human Rights brings together 2,000 rabbis and cantors from all streams of Judaism, together with all members of the Jewish community, to act on the Jewish imperative to respect and advance the human rights of all people. Grounded in Torah and our Jewish historical experience and guided by the Universal Declaration of Human Rights, we call upon Jews to assert Jewish values by raising our voices and taking concrete steps to protect and expand human rights in North America, Israel, and the occupied Palestinian territories.

## III. Issue Summary

T'ruah is deeply concerned about a series of interrelated immigration policies that violate the ICCPR. These affect both immigrants currently in the United States and those seeking to travel to the United States, including those seeking refugee or asylum status. The administration has issued, and the Supreme Court has upheld, Executive Order 13780, known as the “Muslim ban,” banning travel from seven majority-Muslim countries. On the Mexican border, the administration has denied people the right to seek asylum, forcing them to remain in Mexico during excessive delays in even initial hearings of their “credible fear” claims. Border agents have used tear gas against peaceful marches across the border, firing into crowds including children. Proposed changes to the “public charge” rules by the Department of Homeland Security would tighten restrictions on who may receive an immigration visa, effectively implementing a “wealth test.”

Immigrants already in the United States have been subjected to a range of discriminatory and destructive new policies. The proposed public charge rules would discriminate against legal immigrants who have received non-cash government benefits for which they are eligible (including food assistance, housing assistance, and Medicaid) by barring them from becoming citizens. Immigration and Customs Enforcement has increased its targeting of undocumented immigrants, especially activists advocating on behalf of their communities. Those who are apprehended in the country without documentation have been detained and criminalized; children have furthermore been separated from their parents and detained. Conditions in detention have been unsafe, leading to the deaths of at least two children in government custody. When the administration has released detained migrants, it has done so in mass waves and without coordinating with local social service agencies, swamping their capacity to assist

and further exacerbating a humanitarian disaster. Finally, the administration has sought to rescind the existing Deferred Action for Childhood Arrivals (DACA) program, through which over 800,000 young people—brought to this country without documents when they were very young—are able to receive stays of deportation and work authorization.

#### **IV. Concluding Observations and ICCPR Legal Framework**

Current U.S. government policies and practices are in violation of articles 2, 9, 13 and 26 of the ICCPR that guarantees: the protection of rights regardless of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2); that “No one shall be subjected to arbitrary arrest or detention” (Article 9); the right of an alien to due process when a State Party attempts to expel them (Article 13); and equal protection under the law (Article 26).

The Human Rights Committee report of 2014 addresses immigrant detention in paragraph 15, and the 2006 report addresses militarization at the border in paragraph 27, an aspect of U.S. policy that has led to denial of due process, unjust imprisonment, and denial of rights.

#### **V. Current U.S. Government Policy or Practice**

Signed in 2017 and upheld by the U.S. Supreme Court in 2018, Executive Order 13780, known as the “Muslim ban,” bans travel from particular countries with high levels of Muslim citizens and so effectively closes U.S. borders to Muslims. Proposed in 2018, the “public charge” rule would establish new criteria for categorizing an individual as a “public charge” and require the government to consider in applications for lawful immigration status any non-cash benefits received. Immigrants — and their citizen children — would be punished for using government services, the rule amounting to a “wealth test” for those coming to the U.S. In 2017, the administration announced plans to phase out the DACA program, and in 2018 a federal judge ruled that the program is likely unconstitutional. The program remains in place while litigation proceeds, and DACA renewal applications must be reviewed, though new applications are not being accepted. In 2018, border agents began limiting the number of asylum seekers allowed to enter the country each day at legal points of entry, while also denying those who enter outside legal points of entry the right to seek asylum at all. The administration allowed less than 25,000 refugees to enter in 2018—half its allotted number of 45,000—and for the current fiscal year, the administration proposes a refugee cap of 30,000, by far the lowest limit in recent history.

#### **VI. Human Rights Committee General Comments**

NA

## VII. **Other UN Body Recommendations**

IACHR Expresses Deep Concern over the Deaths of Two Migrant Children in the Custody of Immigration Authorities in the United States (January 7, 2019):

[http://www.oas.org/en/iachr/media\\_center/PReleases/2019/001.asp](http://www.oas.org/en/iachr/media_center/PReleases/2019/001.asp)

On the occasion of International Migrants Day, the IACHR urges the States of the region to adopt measures to guarantee the effective enjoyment of the human rights of migrants (December 18, 2018): [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/272.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/272.asp)

## VIII. **Recommended Questions**

1. What is being done to guarantee the health and safety of asylum seekers, particularly children, in light of the recent deaths of several children in the custody of US border patrol officials?
2. What is being done to guarantee the rights of asylum seekers to due process in hearings on their cases?
3. What is being done to assure that the U.S. immigration policy is not discriminatory on the basis of religion, race, or national origin, particularly given statements by the current Chief Executive indicating an intent to do so?

## IX. **Suggested Recommendations**

1. The U.S. government should guarantee rights to basic life and health, due process, and against unjust imprisonment for all asylum seekers, refugees, and migrants--including children and those potentially affected by the public charge rule.
2. The U.S. government should reinstate the DACA program to protect its participants from unnecessary targeting by Immigration and Customs Enforcement.
3. The U.S. government should cancel the "Muslim Ban," Executive Order 13780.