

# **United States' Immigration Detention System Contravenes Its Obligations Under the International Covenant on Civil and Political Rights (ICCPR)**

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Submission from Project South, University of Pennsylvania Law School Transnational Legal Clinic, and  
University of Texas at Austin Immigration Clinic  
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## **I. Reporting Organizations**

1. Project South is a social justice organization devoted to movement building and movement support in the US and the Global South. Project South is actively working on documenting detention conditions in immigration detention centers in the US South and is also involved in impact litigation against privately-operated detention centers. Project South is also involved in Congressional and UN advocacy in an attempt to shine a light on the abusive conditions in immigration detention centers.
2. University of Pennsylvania Law School Transnational Legal Clinic provides pro bono legal services to individuals and families seeking humanitarian forms of immigration relief, while also engaging in partnership with human and immigrant rights organizations, community groups, and individuals, in promoting respect for and promotion of international human rights norms within systems of immigration regulation and enforcement throughout the United States and globally.
3. The Immigration Clinic at the University of Texas School of Law serves vulnerable low-income immigrants from around the world before the immigration and federal courts and the Department of Homeland Security (DHS). The Clinic also engages in national and international human rights advocacy and collaboration with other organizations to further the protection of migrants' rights in the United States.

## **II. Issue Summary**

4. The United States immigration detention system violates several human rights standards set forth in the International Covenant on Civil and Political Rights (ICCPR), particularly the right to freedom from cruel, unusual, or degrading treatment or punishment, right to freedom from medical or scientific experimentation without consent, right to liberty and security of person, and the right not to be arbitrarily deprived of life.
5. As of August 2023, U.S. Immigration and Customs Enforcement (ICE) detains over 30,000 people each day.<sup>i</sup> Although the Biden administration ended border-exclusion programs, such as Title 42, it has replaced them by expanding the immigration detention system after a temporary reduction in detention during the COVID pandemic.<sup>ii</sup> 90% of people detained by ICE are held in privately-owned or operated facilities and are subject to egregious and ongoing abuses.<sup>iii</sup> The government does not appoint counsel in immigration proceedings, even for those in detention, and access to counsel for detained immigrants is extremely limited.<sup>iv</sup>
6. Mandatory automatic detention of entire categories of migrants remains commonplace and has in fact expanded under new legal interpretations. Migrants with certain criminal convictions have no opportunity for review of their detention even where they present no risk.<sup>v</sup> Most asylum seekers arriving at the border are also automatically detained without any opportunity for review

of an ICE decision to detain. Previously, almost all asylum seekers apprehended at the border were detained until their asylum screening interview known as a credible fear interview (CFI), but many could seek review of their detention if they passed the credible fear interview. Now, in Texas and most parts of the country where detention of asylum seekers is carried out, the law is interpreted to preclude any review of detention even after a favorable credible fear interview.<sup>vi</sup> As a result, asylum seekers often remain detained for months or years without review despite a lack of governmental showing of flight risk or danger to the community.

7. In addition to the expansion of immigration detention, the United States has deployed broad use of invasive electronic monitoring (ankle monitors and phone apps), which deprives migrants of liberty, privacy, and family rights.<sup>vii</sup> Such monitoring takes place without any individualized determination of need. ICE has recently established a program known as FERM (Family Expedited Removal Management) that deploys both ankle monitors and phone app monitoring for asylum seeking families with children arriving at the border.<sup>viii</sup>
8. The United States has also failed to challenge and end the detention of migrants by state entities that have pursued criminal prosecutions based on race and immigration status, particularly through the state of Texas' Operation Lone Star program.<sup>ix</sup>
9. Human rights violations carried out at Irwin County Detention Center (ICDC) in Ocilla, Georgia and Stewart Detention Center (Stewart) in Lumpkin, Georgia exemplify the harms of the U.S. immigrant detention system. ICDC is owned and operated by the private, for-profit corporation LaSalle Corrections, while Stewart is owned and operated by the private, for-profit prison corporation CoreCivic.
10. For years, detained immigrants at ICDC reported human rights abuses including lack of medical and mental health care and unsanitary living conditions.<sup>x</sup> These conditions only worsened during the Covid-19 pandemic.<sup>xi</sup> ICDC medical exam rooms were dirty, dusty, and "in need of cleaning."<sup>xii</sup> In 2020, Ms. Dawn Wooten, a licensed practical nurse then-employed by ICDC, and interviews with detained immigrants revealed non-consensual gynecological procedures were being carried out on women detained at the ICDC, along with other forms of medical abuse and neglect from poor treatment to fabricating medical records.<sup>xiii</sup>
11. The United States government was aware of this abuse as early as 2013, but failed to take any corrective or remedial measures to safeguard the rights of immigrants detained at ICDC. Instead, government officials retaliated against women who spoke out, taking steps to silence them, including: deporting them or attempting to do so; physically assaulting them; threatening to put them in solitary confinement; transferring them to other units to separate them from other protesters; rationing or threatening to ration water for women on hunger strike; delaying delivery of prescription medications; denying them access to the law library and their own medical records; destroying records of the abuse; and obstructing congressional investigations.<sup>xiv</sup>
12. In May 2023, DHS announced its plan to terminate its contract with ICDC and either transferred or released women held there by the end of September 2021.<sup>xv</sup> However, it simultaneously expanded detention capacity at Stewart, despite its well-documented history of abuse and rights violations.<sup>xvi</sup> Within a year of women being held at Stewart, multiple reports surfaced of sexual assault perpetrated against migrant women by a male nurse employed at the detention center.<sup>xvii</sup>
13. These abuses are not unique to ICDC or Stewart but are endemic to the system of privatized immigrant detention. These abuses arose in an environment where medical neglect, mistreatment, and other rights violations have persisted for more than a decade, with full knowledge of the United States government.<sup>xviii</sup>
14. In January 2022, the United States Senate Permanent Subcommittee on Investigations published a report, following 18 months of investigation, which confirmed ICE failed to ensure adequate oversight of off-site medical providers contracted for the treatment of people held in its custody, and when put on notice of medical neglect and abuse, failed to take the corrective measures required to guard against such abuses, and to ensure adequate medical care at ICDC.<sup>xix</sup> DHS Office of Inspector General (OIG) also published a report, following its own investigation into

alleged abuses at ICDC, which found medical policies and procedures inadequate.<sup>xx</sup> Despite this evidence, the U.S. Government has failed to provide redress to the women or other immigrants who endured abuses at ICDC and Stewart or to the families of immigrants who died while in ICE custody.<sup>xxi</sup>

### **III. Human Rights Committee Questions, Concluding Observations From 2014 Review, and the United States' Fifth Periodic Report**

15. In Concluding Observations issued after the United States' last review in 2014, the Human Rights Committee recommended that the United States "review its policies of mandatory detention and deportation of certain categories of immigrants in order to allow for individualized decisions; take measures to ensure that affected persons have access to legal representation; and identify ways to facilitate access to adequate health care, including reproductive health-care services, by undocumented immigrants and immigrants and their families who have been residing lawfully in the United States for less than five years."
16. In its Fourth Periodic report to the Human Rights Committee, the United States government stated that the DHS OIG actively investigates conditions in immigration detention facilities, often based on unannounced visits. ICE concurred with the OIG's recommendation and took corrective action to address the issues. On September 28, 2020, the OIG closed the recommendation in response to receiving documentation from ICE that showed that all four facilities had completed the corrective actions. But as detailed above, the abuses have persisted alongside a lack of transparency and accountability in the oversight ICE provides over the detention centers and jails across the country.

### **IV. Recommendations from Other UN Human Rights Bodies**

17. During the 2020 Universal Periodic Review of the United States by the Human Rights Council, six States recommended to the United States that it take steps to protect the rights of migrants.<sup>xxii</sup> Further, eight States recommended that the United States end or make changes to the immigration detention system.<sup>xxiii</sup> Six States specifically called for detention to comply with human rights obligations.<sup>xxiv</sup>
18. In Concluding Observations issued at the end of the United States' last review by the Committee on the Elimination of Racial Discrimination, the Committee recommended that the United States "[e]nd mandatory detention and ensure due process for all detained non-citizens, without discrimination, including access to legal counsel." The Committee further recommended the United States take steps to prevent excessive use of force by ICE officers, hold accountable those responsible for abuse, and provide remedies for victims and their families.<sup>xxv</sup>
19. The UN Special Rapporteur on the Human Rights of Migrants and eight additional UN Special Procedures with relevant mandates reiterated their concerns regarding immigration detention and alleged human rights abuses, particularly in the Irwin County Detention Center. The group called on the United States to create adequate conditions in detention centers and exercise adequate oversight of private prison corporations.<sup>xxvi</sup>

### **V. Recommended Questions**

20. What measures are you taking to respect, protect and ensure the rights of all persons within the immigration detention centers consistent with human rights obligations? What steps are you taking to ensure individualized determinations of necessity before detention?
21. What steps are you taking to provide redress to the women and other immigrants who endure abuses while held in ICE custody, including at Irwin County Detention Center and Stewart Detention Center?

22. What steps are you taking to provide redress to the family members of immigrants who died in ICE custody?
23. With regard to women subjected to non-consensual gynecological procedures:
  - i. How are you planning to ensure accountability for all persons involved, from the medical personnel who carried out the procedures to those with oversight over the contracting of the medical personnel?
  - ii. What steps are being taken to ensure them the legal status necessary to participate freely in investigations and to pursue their claims? What steps are being taken to facilitate the lawful return of those women deported in the immediate aftermath of raising complaints about their treatment while at ICDC?
24. What measures are you taking to assess persons' physical and mental health and to ensure the immediate release of those for whom ongoing detention imperils their health, particularly when confronted by the deaths of those from medical neglect and suicide of those held in your custody, as well as the well-documented long-term deleterious physical and mental health consequences of detention?

## **VI. Suggested Recommendations**

25. For those women and other individuals subjected to rights violations while under the custody of ICE, ensure access to justice for all those subjected to deprivations of their personal integrity and security, including:
  - i. Measures to hold fully accountable all those responsible, including those within the DHS hierarchy who failed to take affirmative measures to protect those held within its custody;
  - ii. A full and transparent investigation into retaliatory actions taken against detained immigrants who have bravely asserted their rights, and surveillance of advocates and advocacy organizations who have stood alongside the immigrants to seek recognition of the rights of detained immigrants in Georgia, and ensuring the rights of human rights defenders seeking access to justice from within and outside the barbed wire fences of immigration detention centers across the United States; and,
  - iii. Full and complete redress and reparations for those whose rights were violated.
26. Take measures to protect the human rights of all persons the United States subjects to immigration enforcement, particularly the rights to freedom from cruel, unusual, or degrading treatment or punishment, right to freedom from medical or scientific experimentation without consent, and right to liberty and security of person, by taking steps to end immigration detention and electronic monitoring as a means of deterrence or enforcement, especially categorical or mandatory deprivation of liberty.
27. Terminate all contracts with privately owned or operated detention centers and the use of intergovernmental service agreements with local governments by DOJ and DHS for the processing and detention of individuals subject to its custody, which perpetuates a system of profit over rights, and seeks to distance the United States from its ultimate accountability for violations committed against persons deprived of liberty by order of the United States government; and,
28. In the interim, ensure transparency, oversight, and accountability within existing systems of detention; ensure meaningful access to the right to health, the right to due process, the right to freedom from forced labor, the right to access asylum, the right to freedom of expression, the right to freedom of association, the right to non-discrimination, and the right to freedom from retaliation

for exercising the aforementioned rights, for all persons subject to its custody, as well as the right to free expression for human rights defenders in Georgia and across the United States.

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<sup>i</sup> TRAC Immigration, ICE Detainees, [https://trac.syr.edu/immigration/detentionstats/pop\\_agen\\_table.html](https://trac.syr.edu/immigration/detentionstats/pop_agen_table.html).

<sup>ii</sup> See White House: Biden/Harris Administration Announces New Border Enforcement Actions, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/05/fact-sheet-biden-harris-administration-announces-new-border-enforcement-actions/>.

<sup>iii</sup> Eunice Cho, “Unchecked Growth: Private Prison Corporations and Immigration Detention, Three Years Into the Biden Administration,” ACLU, Aug. 7, 2023, <https://www.aclu.org/news/immigrants-rights/unchecked-growth-private-prison-corporations-and-immigration-detention-three-years-into-the-biden-administration#:~:text=unless%20labeled%20optional-,Unchecked%20Growth%3A%20Private%20Prison%20Corporations%20and%20Immigration%20Detention%2C%20Three%20Years,revenues%20from%20immigrant%20detention%20soar>.

<sup>iv</sup> “No Fighting Chance: ICE’s Denial of Access to Counsel in U.S. Immigration Detention Centers”, ACLU, 2022, [https://www.aclu.org/sites/default/files/field\\_document/no\\_fighting\\_chance\\_aclu\\_research\\_report.pdf](https://www.aclu.org/sites/default/files/field_document/no_fighting_chance_aclu_research_report.pdf).

<sup>v</sup> 8 U.S.C. 236(c); *Demore v. Kim*, 538 US 510 (2003).

<sup>vi</sup> See *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018); *ICE v. Padilla*, 141 S.Ct. 1041 (2021).

<sup>vii</sup> “Immigration Detention Quick Facts,” TRAC, Aug. 26, 2023 (almost 300,000 immigrants subjected to monitoring), <https://trac.syr.edu/immigration/quickfacts/>.

<sup>viii</sup> “ICE Announces New Process for Placing Families in Expedited Removal,” ICE, May 10, 2023, <https://www.ice.gov/news/releases/ice-announces-new-process-placing-family-units-expedited-removal>.

<sup>ix</sup> Complaint Filed with the Department of Justice, Dec. 15, 2021, [https://www.aclutx.org/sites/default/files/field\\_documents/ols\\_trespass\\_arrest\\_title\\_vi\\_complaint.pdf](https://www.aclutx.org/sites/default/files/field_documents/ols_trespass_arrest_title_vi_complaint.pdf).

<sup>x</sup> “Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers,” Penn State Center for Immigrants’ Rights Clinic (May 2017), [https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned\\_Justice\\_Report-1.pdf](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf).

<sup>xi</sup> Complaint Re: Lack of Medical Care, Unsafe Work Practices, and Absence of Adequate Protection Against COVID-19 for Detained Immigrants and Employees Alike at the Irwin County Detention Center, filed Sept. 14, 2020, <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>.

<sup>xii</sup> Office of Detention Oversight Compliance Inspection, Enforcement and Removal Operations ERO Atlanta Field Office Irwin County Detention Center Ocilla, Georgia 31772, March 7-9, 2017, <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2017IrwinCountyGA.pdf>.

<sup>xiii</sup> Complaint Re: Lack of Medical Care, Unsafe Work Practices, and Absence of Adequate Protection Against COVID-19 for Detained Immigrants and Employees Alike at the Irwin County Detention Center, filed Sept. 14, 2020, <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>; See e.g., Deliberate Indifference: Records Show ICE’s Systemic Failures at Georgia Detention Facility at the Center of Gynecological Abuse Investigations, Crew, Project South & National Immigration Project Of The National Lawyer’s Guild (June 2021), <https://projectsouth.org/wp-content/uploads/2021/06/ICE-ICDC-Report.pdf>.

<sup>xiv</sup> Consolidated Amended Petition for Writ of Habeas Corpus and Class Action Complaint for Declaratory and Injunctive Relief and for Damages, *Oldaker v. Giles*, No. 7:20-cv-00224, (M.D. Ga. Dec. 21, 2020); See also “Oldaker v. Giles,” National Immigration Project, last updated April 5, 2023, <https://nippnl.org/work/litigation/oldaker-v-giles>.

<sup>xv</sup> U.S. Department of Homeland Security Press Release, ICE to Close Two Detention Centers (May 20, 2021), <https://www.dhs.gov/news/2021/05/20/ice-close-two-detention-centers>.

<sup>xvi</sup> Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers, Penn State Center for Immigrants’ Rights Clinic (May 2017), [https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned\\_Justice\\_Report-1.pdf](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf).

<sup>xvii</sup> Complaint Re: Sexual assault of detained immigrants by a nurse at Stewart Detention Center, a U.S. Department of Homeland Security immigration detention facility operated by CoreCivic, filed July 12, 2022, <https://projectsouth.org/wp-content/uploads/2016/04/REDACTED-Stewart-Nurse-Complaint-7.12.20221-1.pdf>; “Four women are accusing a nurse at an ICE detention center of sexual assault,” CNN, July 15, 2022, <https://www.cnn.com/2022/07/14/us/ice-stewart-detention-center-nurse-assault-allegations/index.html>; “Fifth Migrant Woman Alleges Sexual Assault Against Nurse at ICE Jail,” The Intercept, July 18, 2022, <https://theintercept.com/2022/07/18/ice-sexual-assault-nurse-stewart-corecivic/>.

<sup>xviii</sup> See Mizue Aizeki, Ghita Schwarz, Jane Shim, and Samah Sisay. “Cruel by Design: Voices of Resistance from Immigration Detention.” Immigrant Defense Project and the Center for Constitutional Rights (February 2022) <https://www.immigrantdefenseproject.org/wp-content/uploads/Cruel-By-Design-IDP-CCR-Feb-2022.pdf>.

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<sup>xix</sup> “Medical Mistreatment of Women in ICE Detention,” United States Senate Permanent Subcommittee on Investigations (Nov. 2022), <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/2022-11-15%20PSI%20Staff%20Report%20-%20Medical%20Mistreatment%20of%20Women%20in%20ICE%20Detention.pdf>.

<sup>xx</sup> DHS Office of Inspector General, “Medical Processes and Communication Protocols Need Improvement at Irwin County Detention Center” (Jan. 2, 2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-01/OIG-22-14-Jan22.pdf>.

<sup>xxi</sup> *See* Wendy Dowe, “The Traumas of Irwin Continue to Haunt Me”: Non-Consensual Surgery Survivor Seeks Restitution, Calls to Shut Down Detention Center, *MS. MAGAZINE* (Dec. 9, 2021), <https://msmagazine.com/2021/12/09/immigrants-ice-detention-center-georgia-irwin-women-reparations-sexual-violence/>; *See also*, Priyanka Bhatt, “Survivors of Medical Abuse at ICE Jail in Georgia Are Still Waiting for Justice,” *TRUTHOUT* (Oct. 16, 2021), <https://truthout.org/articles/survivors-of-medical-abuse-at-ice-jail-in-georgia-are-still-waiting-for-justice/>.

<sup>xxii</sup> El Salvador, Myanmar, Egypt, Turkey, Bolivarian Republic of Venezuela, and Thailand. *See* Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/46/15 (Dec. 15, 2020) ¶ 26, *available at* <https://www.ohchr.org/en/hr-bodies/upr/us-index> [hereinafter Report of the Working Group].

<sup>xxiii</sup> Norway, Peru, Zambia, China, Cuba, Fiji, Ghana, and Mexico. *See* Report of the Working Group.

<sup>xxiv</sup> Norway, Zambia, China, Fiji, Ghana, and Mexico. *See* Report of the Working Group.

<sup>xxv</sup> Concluding observations on the combined tenth to twelfth reports of the United States of America, Committee on the Elimination of Racial Discrimination, CERD/C/USA/CO/10-12 (Sept. 21, 2022) ¶ 23, *available at* <https://www.ohchr.org/en/documents/concluding-observations/cerdcusaco10-12-concluding-observations-combined-tenth-twelfth>.

<sup>xxvi</sup> Communication from UN Special Rapporteur on the Human Rights of Migrants and Eight Additional UN Special Procedures with relevant mandates to the U.S., as follow up to the above urgent communication (Jan. 15, 2021), *available at* <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25835>.