



Via Email to the

Secretariate of the Human Rights Committee

ICCPR LIST OF ISSUES SUBMISSION

January 14, 2019

I. “Prolonged Detention, Enhanced Interrogation Tactics, Cruel and Degrading Treatment, Torture and Coerced Removal of Foreign Nationals by U.S. Customs and Border Protection (CBP) at Airports”

II. Reporting Organization(s):

- The National Lawyers Guild – SF Bay Area is dedicated to the principle that human and civil rights are more sacred than property rights. It seeks to unite lawyers, law students, legal workers and jailhouse lawyers to function as an effective socio-political force to defend communities, social justice movements, grassroots organizations and activists organizing for those rights.

III. Issue Summary:

The issues we would like addressed are as follows:

- i. CBP’s use of prolonged detention of foreign nationals in secondary inspection at U.S. airports and other ports of entry;
- ii. CBP’s use of enhanced interrogation tactics, including strip searches and excessively cold temperature regulation of detained foreign nationals in secondary inspection at U.S. airports and other ports of entry;
- iii. CBP’s use of [militarized weaponry](#) during secondary inspection, including as part of its [Tactical Terrorism Response Teams \(TTRTs\)](#);

- iv. CBP's denial of access to religiously appropriate food for foreign nationals in secondary inspection;
- v. CBP's use of racial and religious profiling in secondary inspection, particularly against Muslim foreign nationals;
- vi. CBP's use of coercion and duress to obtain consent of foreign nationals to surrender their request for admission to the United States.

IV. ICCPR Legal Framework and Concluding Observations:

The relevant ICCPR articles are as follows:

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either

individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Article 19

1. Everyone shall have the right to hold opinions without interference.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The relevant concluding observations of the ICCPR 4th periodic review of the United States in 2014 are as follows:

The State party should ensure that all cases of unlawful killing, torture or other ill-treatment, unlawful detention or enforced disappearance are effectively, independently and impartially investigated, that perpetrators, including , in particular, persons in positions of command, are prosecuted and sanctioned, and that victims are provided with effective remedies. The responsibility of those who provided legal pretexts for manifestly illegal behavior should also be established. The State party should also consider the full incorporation of the doctrine of “ command responsibility ” in its criminal law and declassify and make public the report of the Senate Special Committee on Intelligence into the CIA secret detention programme. **However, the concluding observation that the U.S. should ensure an independent and impartial investigation of torture, unlawful detention and ill-treatment was made in the context of CIA operations, not CBP operations at ports of entry, including airports.*

Excessive use of force by law enforcement officials

The Committee is concerned about the still high number of fatal shootings by certain police forces, including, for instance, in Chicago, and reports of excessive use of force by certain law enforcement officers, including the deadly use of tasers, which has a disparate impact on African Americans, and use of lethal force by Customs and Border Protection (CBP) officers at the United States-Mexico border (arts. 2, 6, 7 and 26). **However, there was no mention of excessive force used by CBP at other U.S. ports of entry, including airports.*

Legislation prohibiting torture

While noting that acts of torture may be prosecuted in a variety of ways at both the federal and state levels, the Committee is concerned about the lack of comprehensive legislation criminalizing all forms of torture, including mental torture, committed within the territory of the State party. The Committee is also concerned about the inability of torture victims to claim compensation from the State party and its officials due to the application of broad doctrines of legal privilege and immunity (arts. 2 and 7).

The State party should enact legislation to explicitly prohibit torture, including mental torture, wherever committed, and ensure that the law provides for penalties commensurate with the gravity of such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons. The State party should ensure the availability of compensation to victims of torture.

Immigrants

The Committee is concerned that under certain circumstances mandatory detention of immigrants for prolonged periods of time without regard to the individual case may raise issues under article 9 of the Covenant. It is also concerned about the mandatory nature of the deportation of foreigners, without regard to elements such as the seriousness of crimes and misdemeanors committed, the length of lawful stay in the United States, health status, family ties and the fate of spouses and children staying behind, or the humanitarian situation in the country of destination. Finally, the Committee expresses concern about the exclusion of millions of undocumented immigrants and their children from coverage under the Affordable Care Act and the limited coverage of undocumented immigrants and immigrants residing lawfully in the United States for less than five years by Medicare and Children Health Insurance, all resulting in difficulties for immigrants in accessing adequate health care (arts. 7, 9, 13, 17, 24 and 26).

The Committee recommends that the State party 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 .

The U.S. government did not address CBP abuses in any of their 2015 responses to the committee's 2006 and 2014 concluding observations.

V. Current U.S. Government Policy or Practise

Since January 1, 2017, the United States has seen an increasing militarization of CBP not only at the U.S./Mexico border, but also at its ports of entry, including airports. This is part and parcel of the Administration's executive orders on border security and enforcement of immigration laws in the interior, which place all non-citizens at risk of arbitrary profiling, arrest, detention, interrogation and other cruel, inhuman and degrading treatment. The Department of Homeland Security released information in May 2017 indicating that it is using TTRTs at domestic and international airports, with little oversight or regulation. This together with an increasingly militarized CBP force has produced alarming results including the coerced removal of unknown numbers of foreign nationals for specious reasons. It has also led to an increased frequency of prolonged detention, enhanced interrogation and other markers of counter-terrorism efforts that have proved hugely destructive to communities in the United States, including but not limited to Arab, Middle Eastern, Muslim and South Asian (AMEMSA) individuals.

VI. Human Rights Committee General Comments

GC No. 35. Article 9 Liberty and Security of Person states in relevant part:

An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances. Aside from judicially imposed sentences for a fixed period of time, the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention.

The term "arrest" refers to any apprehension of a person that commences a deprivation of liberty, and the term "detention" refers to the deprivation of liberty that begins with the arrest and continues in time from apprehension until release. Arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law. When an additional deprivation of liberty is imposed on a person already in custody, such as detention on unrelated criminal charges, the commencement of that deprivation of liberty also amounts to an arrest.

VII. Recommended Questions:

- Is CBP using TTRTs at San Francisco International Airport and other airports in the San Francisco Bay Area?
- Does CBP use prolonged detention and enhanced interrogation tactics in secondary inspection to coerce foreign nationals to surrender their request for admission to the United States?
- Does CBP have a pattern and practice of using racial and religious profiling of foreign nationals in secondary inspection seeking admission to the United States?

VIII. **Suggested Recommendations**

- Immediate suspension of employing TTRTs at all United States ports of entry;
- Immediate suspension of enhanced interrogation tactics by CBP at ports of entry;
and
- Limitations on duration of detention of foreign nationals in secondary inspection.