

## I. Title

Human Rights Violations Against Immigrant Worker Civil, Labor, and Human Rights Defenders

(Art. 2(1) (right of non-discrimination); Art. 8 (right to be free from involuntary servitude); Art. 9 (right of protection against arbitrary arrest or detention); Art. 10 (right to be treated with dignity while detained); Art. 22 (right to free association and to form trade unions); Art. 26 (right of equal protection))

## II. Reporting Organizations

New Orleans Workers' Center for Racial Justice  
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## III. Issue Summary & Legal Framework

Immigration policy received limited attention except in the context of the “War on Terror,” in the Human Rights Committee review of the United States’ Second and Third Periodic Report. In the intervening years, the rapid expansion of federal immigration enforcement efforts has resulted in the unnecessary detention, incarceration and deportation of record numbers of immigrants.<sup>1</sup> Moreover, increased collaboration between federal immigration officials and state and local law enforcement has further marginalized immigrant communities and threatened their safety.<sup>2</sup> These developments undermine the nation’s commitment to protecting human rights within the ICCPR framework including core civil and labor rights.

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<sup>1</sup> Since 2007, each year ICE has steadily removed an increasing number of immigrants from the United States. In 2007, the agency removed 291,060 individuals. By 2011, ICE reported deporting 396,906 individuals. See ICE Total Removals, *available at* <http://www.ice.gov/doclib/about/offices/ero/pdf/ero-removals1.pdf> (last visited Nov. 25, 2012).

<sup>2</sup> See The Fourth Periodic Report of United States of America to the United Nations Committee on Human Rights concerning the International Covenant on Civil and Political Rights, ¶ 291 (2011) (hereinafter “Fourth Periodic ICCPR Report”).

During the Universal Periodic Review of the United States, the Working Group made a number of recommendations encouraging the United States to reevaluate its system of immigration enforcement to ensure that it does not violate human and civil rights.<sup>3</sup> The United States acknowledged its role as a beacon of hope and freedom for millions of immigrants seeking a better life or uniting with family – and recommitted itself to building a system of immigration enforcement that is both effective and fair.<sup>4</sup>

As the Human Rights Committee has made clear, “each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.”<sup>5</sup> The Human Rights Committee has specifically noted that the reports from States that are parties to the agreement often fail to address their obligations to migrants under the Covenant.<sup>6</sup>

The following aspects of the United States’ immigration law, policy, and practice raise issues with respect to its compliance with the ICCPR:

- (a) the use of threats of arrest, detention, and deportation by the Department of Homeland Security (“DHS”) to limit the right to freedom of association, including the right to form and join trade unions;<sup>7</sup>
- (b) the retaliatory arrest, detention, and deportation of migrants who exercise their civil and political rights through arrest, detention;<sup>8</sup>
- (c) the continued criminalization of immigrant communities;<sup>9</sup>

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<sup>3</sup> See Report of the Working Group on the Universal Periodic Review: United States, U.N. Doc. A/HRC/16/11 (Jan. 4, 2011): Rec. 92.79. Attempt to restrain any state initiative which approaches immigration issues in a repressive way towards the migrant community and that violates its rights by applying racial profiling, criminalizing undocumented immigration and violating the human and civil rights of persons (Guatemala); 92.80. Spare no efforts to constantly evaluate the enforcement of the immigration federal legislation, with a vision of promoting and protecting human rights (Guatemala); 92.82. Adopt a fair immigration policy, and cease xenophobia, racism and intolerance to ethnic, religious and migrant minorities (Bolivarian Republic of Venezuela); 92.105. 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).

<sup>4</sup> See National Report Submitted in Accordance with Paragraph 15(a) of the Annex to the Human Rights Council Resolution 5/1, United States of America, ¶¶ 92-96, U.N. Doc A/HRC/WG.6/9/USA/1 (Aug. 23, 2010).

<sup>5</sup> Gen. Comment No. 15: The position of aliens under the Covenant: (Apr. 11, 1986) ¶ 2 (hereinafter “Gen. Comment. No. 15”).

<sup>6</sup> *Id.*, ¶ 1.

<sup>7</sup> See ICCPR art. 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.”).

<sup>8</sup> See Gen. Comment No. 15, ¶ 7 (reiterating that “aliens” are entitled to equality before courts and tribunals and before the law, and they are guaranteed the right to hold and express opinions and to associate.”).

- (d) the use of unlawful racial profiling by state and local law enforcement and by federal immigration enforcement officers;<sup>10</sup>
- (e) the unlawful “over-detention” of immigrants, particularly as a result of state and local law enforcement collaboration with federal immigration enforcement;<sup>11</sup>
- (f) the lack of due process, racial profiling, unlawful detention, and other civil rights violations arising from reliance on immigration detainers;<sup>12</sup>
- (g) the conditions of detention in prisons and jails where immigrants are detained;<sup>13</sup>
- (h) the contribution of U.S. immigration policy to conditions of forced labor and involuntary servitude for migrant workers,<sup>14</sup> and to violations of their right to life.<sup>15</sup>

#### IV. Recommended Questions

- (1) In June 2011, director of Immigration and Custom Enforcement (ICE), John Morton issued two memoranda to ICE personnel on the use of discretion in immigration enforcement (the “Morton memoranda”). They direct ICE attorneys and employees to refrain from pursuing individuals with strong ties to the United States, and those “involved in non-frivolous efforts related to the protection of their civil rights and liberties.”<sup>16</sup> Instead ICE officials are to focus their efforts on persons who pose a serious threat to national security and public safety, and individuals with an “egregious record of immigration violations.”<sup>17</sup>

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<sup>9</sup> See *id.*, ¶ 7 (“Aliens have the full right to liberty and security of the person. . . . They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence.”).

<sup>10</sup> See ICCPR art. 2, 26. This issue was raised during the HRC Human Rights Committee review of the United States’ Second and Third Periodic Report. See Concluding Observations of the Human Rights Committee concerning the Second/Third Periodic Report of the United States, U.N. Doc. CCPR/C/USA/C/3/Rev. 1 (Dec. 18, 2006) ¶ 24.

<sup>11</sup> See ICCPR art. 9(1) (“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.”).

<sup>12</sup> See *id.*

<sup>13</sup> See *id.* at art. 10(1) (“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”).

<sup>14</sup> See *id.* at art. 8(3).

<sup>15</sup> See *id.* at art. 6(1).

<sup>16</sup> John Morton, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011), available at <http://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf> (last visited Dec. 14, 2012).

<sup>17</sup> John Morton, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (Jun. 17, 2011), available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf> (last visited Dec. 14, 2012).

- a. Please provide an update on the effect of these memoranda on U.S. immigration enforcement policy. How does the United States ensure uniform compliance with these directives by personnel in ICE's regional and local offices?
  - b. What kinds of training and oversight mechanisms are in place to ensure that ICE personnel properly exercise discretion under the Morton memoranda? What channels of redress are available when they do not?
- (2) The United States has created an Office of Civil Rights and Civil Liberties in the Department of Homeland Security, which is tasked with addressing complaints involving abuses of civil rights, civil liberties, and discrimination on the basis of race, ethnicity, and national origin, by employees or officials of the Department of Homeland Security, which includes the Bureau of Immigration and Customs Enforcement.<sup>18</sup>
- a. What role does DHS Office for Civil Rights and Civil Liberties play in enforcement of the protections for victims of civil rights and labor violations?
  - b. Please update the Committee as to the kind of complaints most commonly received by the CRCL and their resolution. What enforcement mechanisms does the CRCL have to end ongoing violations?
  - c. How does the United States ensure that documented and undocumented immigrants can report civil, constitutional, and human rights violations, particularly against government officials, without experiencing retaliation? How does the United States ensure that immigrants receive due process of law on claims of civil, constitutional and human rights violations made to DHS-CRCL without fear of deportation? What redress is available for persons who experience retaliatory action by DHS or its sub-agencies as a result of reporting a rights violation? What steps does DHS take to ensure they are not detained and/or deported while their claims are being investigated?
  - d. How is information gathered through investigations shared within DHS and its sub-agencies? What protections exist to ensure confidentiality for participants in the process?
- (3) The 287(g) Program authorizes local law enforcement to perform certain immigration functions traditionally done by the federal government. The Program also has been the source of numerous reported civil, constitutional, and human rights violations. The United States reports that it is engaged in a number of training efforts to ensure that this program operates in a way that is consistent with constitutional and human rights standards.<sup>19</sup>

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<sup>18</sup> See Fourth Periodic ICCPR Report, ¶ 105 (describing CRCL's efforts to reach out to communities and other immigration enforcement agencies to discuss possible violations of civil rights and civil liberties and methods for improvement). See also ¶ 106 (describing CRCL's investigative authorities).

<sup>19</sup> See Fourth Periodic ICCPR Report, ¶ 291 (describing the 287(g) program, codified at 8 U.S.C. 1357(g), which allows domestic and local law enforcement to carry out functions of immigration officers). The United States has outlined many aspects of the program that are supposed to prevent and prohibit violations of civil rights by both ICE and local law enforcement. See *id.*, ¶ 292.

- a. Please update the Committee as to the impact of these training programs on the incidence of civil and human rights violations affecting immigrant communities.
- (4) During the Universal Periodic Review of 2010, the United States addressed continuing concerns over its migrant detention practices. In its report for the Fourth Periodic Review, the United States reports the creation of the Office of Detention Oversight, which is charged with independently verifying the inspection of detention facilities, according to national detention standards.<sup>20</sup>
- a. Please update the Committee as to the success of these oversight mechanisms in improving detention conditions, particularly in private facilities. Do these Offices also play a role in redressing individual reports of problematic detention conditions? How does the United States ensure that migrants in detention can receive individual redress for civil and human rights violations, beyond merely filing complaints with oversight entities? How does the United States ensure protections from retaliation for detainees who file complaints while in custody?
  - b. Civil society groups continue to report detention conditions that are dangerous to the health and safety of detainees; over-reliance on detention of individuals including women, children, and asylum seekers; and punitive actions against detainees including the use of solitary confinement. How is the United States responding to these continuing concerns from civil society?
- (5) DHS and the Department of Labor have a Memorandum of Understanding designed to ensure that immigration and labor rights enforcement activities do not conflict.<sup>21</sup> Pursuant to this Memorandum, ICE agreed to refrain from engaging in civil worksite enforcement activities at a worksite that is under DOL investigation, and further committed to evaluating requests from employers to ensure that they are not “motivated by an improper desire to manipulate a pending labor dispute, retaliate against employees for exercising labor rights, or otherwise frustrate the enforcement of labor laws.”<sup>22</sup>
- a. Please update the Committee as to the progress in implementing the protections in this Memorandum. Specifically, please explain what training is in place at the national, regional, and local level to ensure that ICE employees and officials are aware of their obligations under the Memorandum and describe the standards by which DHS evaluates employer requests under the Memorandum. Please provide documentation as to the number of times DOL has asked for protections for workers and DHS’s response.

## V. Recommendations

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<sup>20</sup> See *id.*, ¶¶ 238, 242-245 (describing the oversight role of the CRCL and the ODO, and the creation of national detention standards).

<sup>21</sup> See Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (Dec. 7, 2011).

<sup>22</sup> *Id.* § IV(A).

- The United States should commit to full implementation of the civil, labor, and human rights provisions of the Morton memoranda:
  - The DHS should issue public guidance directing enforcement and legal personnel to properly exercise discretion in cases involving protected civil, labor, and human rights actions, and should ensure consistent and broad implementation of this policy nationwide.
  - The exercise of discretion should protect the dignity, stability, and economic security of qualifying persons. For immigrants engaged in protected civil, labor, or human rights actions, the United States should commit to (1) ending all DHS custody conditions (including but not limited to detention, ankle shackles, travel limitations, and check in requirements), (2) awarding indefinite future status (including termination of immigration cases with prejudice or indefinite stays of removal); and (3) authorizing employment.
  
- The United States should adopt proactive policies to limit harm to ongoing civil, labor, and human rights activities, for example by requiring DHS to adopt procedures that limit the destructive impact of worksite, day labor corner, and community raids.
  
- The United States should monitor and terminate agreements with local law enforcement officials who undermine civil, labor, and human rights. For example, the United States should terminate detention contracts and ICE Access programs in which local law enforcement are found to have subjected victims, witnesses, and plaintiffs to racial profiling, excessive use of force, or unlawful detention conditions. The United States should also terminate DHS programs, including 287(g) and Secure Communities, where a showing has been made that the programs cannot be implemented in a manner that complies with the human rights obligations of the United States.
  
- The United States should investigate and sanction DHS misconduct, while protecting the confidentiality and safety of victims and witnesses who come forward and report misconduct. The United States should create a streamlined process for ensuring that ICE personnel grant all appropriate discretionary relief to individuals who are participating in the DHS investigative process and create and enforce limits on how information gathered through that process is shared and used against cooperating individuals in the future.
  
- The United States should ensure that DHS operates with transparency and accountability. DHS should publically disclose information relating to implementation of the Morton memoranda, and its policy commitment to civil, labor, and human rights. This includes providing data, by region, relating to the number of cases reviewed and discretion exercised, community justice assessments performed, and funding allocations awarded for civil, labor, and human rights. DHS should prioritize Freedom of Information Act requests relating to civil, labor, and human rights claims.