

New Detention Report to Be Presented by Special Rapporteur on Human Rights of Migrants

U.S. Immigration Detention System Falls Far Short of Human Rights Standards, Should be Reformed

On June 21, 2012 the newly appointed Special Rapporteur on the human rights of migrants Francoise Crépeau will present his first [report](#) to the Human Rights Council. The report focuses on the detention of migrants and alternatives to detention – areas of escalating concern globally as states continue to detain migrants and asylum seekers in ways that are inconsistent with human rights law and standards. The report’s recommendations provide a guide for states to use in reforming their migration detention policies. For the United States, which has set such a poor example for the rest of the world, the report makes clear that key elements of its immigration detention system – including mandatory detention, lack of prompt court review of detention, the use of jails and jail-like facilities – fall far short of human rights law and standards.

In its October 2011 report [Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review](#), Human Rights First documented many of the ways in which the U.S. immigration detention system is inconsistent with human rights law and standards. Despite a commitment by the U.S. Secretary of Homeland Security Janet Napolitano and Immigration and Customs Enforcement (ICE) Assistant Secretary John Morton to transform the U.S. immigration detention system away from its reliance on jail-like facilities, the overwhelming majority of the nearly 400,000 migrants detained in the United States each year are still held in actual jails or jail-like facilities where, for example, they wear prison uniforms and are regularly denied contact visits with their families. The United States also [refused to adjust its regulations](#) to provide immigration court review of decisions to detain arriving asylum seekers and other immigrants – despite a petition from U.S. groups [requests made by Human Rights First](#) and other groups in connection with the review of U.S. human rights compliance through the Universal Periodic Review process.

Moreover, despite the fact that alternatives to detention are much more cost effective than detention (\$110 a day per person less than detention, as noted in [Jails and Jumpsuits](#)), ICE’s requested budget for detention in fiscal year 2012 was over \$2 billion – 28 times its requested budget for alternatives to detention. The United States does not have a nationwide system of alternatives to detention that would ensure that any migrant who is identified for potential detention is first assessed for an appropriate alternative to detention prior to the use of detention.

Many of the specific recommendations to states that are detailed in the Special Rapporteur’s [report](#) are directly relevant to the U.S. migrant detention system, including:

- **Case-by-case rather than mandatory detention**
The report confirms that detention for immigration purposes should never be mandatory or automatic; instead, the decision to detain “must be made on a case-by-case basis.”
- **Consider alternatives to detention first**
Governments have “an obligation to establish a presumption in favor of liberty in national law, first consider alternative non-custodial measures, proceed to an individual assessment and choose the least intrusive or restrictive measure.” The report, which provides concrete examples and a detailed discussion of detention alternatives, stresses that “[a]lternatives to detention should have a human rights-based approach, be established by law, be non-discriminatory and be subject to judicial review and independent monitoring and evaluation.” The Special Rapporteur also reminds governments that “alternatives to detention should not become alternatives to unconditional release” and notes that “[s]ome non-custodial measures may be so restrictive, either by themselves or in combination with other measures, that they amount to alternative forms of detention, instead of alternatives to detention.”
- **Automatic, Regular and Judicial Review**

The report confirms that states should provide “automatic, regular and judicial review of detention in each individual case.” All migrants deprived of their liberty should “be entitled to bring proceedings before a court, so that the court can decide on the lawfulness of the detention.”

- **No prison-like conditions, prison uniforms, lack of contact visitation**

When in administrative detention, migrants should be placed in a public establishment specifically intended for that purpose and “should not be subject to prison-like conditions and environments, such as prison uniforms, highly restricted movement, lack of outdoor recreation and lack of contact visitation.” The report’s recommendations confirm that states should “allow[] administrative detainees to wear their own clothing” as well as the right to communicate with relatives and friends and to have access to religious advisers.

The Special Rapporteur’s report calls on states to “review their legislation and policies on detention of migrants, ensuring that national laws are harmonized with international human rights norms that prohibit arbitrary detention and inhumane treatment.”

U.S. officials – including those who are charged with ensuring U.S. compliance with human rights law and standards – should closely review the Special Rapporteur’s report in these and other areas, and take steps to truly overhaul the U.S. detention system. These steps should include:

- **Reform** laws, policies and procedures so that asylum seekers and migrants are only detained after case by case individualized assessments of the necessity and proportionality of detention, considering release options and alternatives to detention first and eliminating mandatory detention approaches;
- **Implement** effective nationwide programs of alternatives to detention (as alternatives to detention not merely as an additional tool for supervising non-detained populations) that include individualized case assessment, individualized case management and referrals, legal advice, access to adequate accommodations, information about rights and duties and consequences of non-compliance, and humane and respectful treatment;
- **Revise** laws and policies to provide prompt and independent court review of decisions to detain refugees, asylum seekers and migrants held in administrative detention; and
- **Ensure**, in those cases in which asylum seekers and migrants are detained (after individualized assessments with a consideration of release/alternative options and court review) – that asylum seekers and other immigration detainees are not held in jails or jail-like facilities; rather they should only be held in facilities with conditions and environments appropriate for immigration detention where they can wear their own clothing, have contact visits with family, and where their movement is not highly restricted. U.S. detention standards should require these and other conditions appropriate for immigration detention.

The United States - and other states - should use the presentation of the Special Rapporteur’s report on detention at the Human Rights Council on Thursday June 21 as an opportunity to closely examine the compliance - and non-compliance – of current migration detention policies and practices with international human rights standards, and to commit – or recommit – to reform.

To learn more about the ways in which U.S. detention policies and practices are inconsistent with U.S. human rights commitments, read [Human Rights First’s January/February 2012 submission to the Special Rapporteur on Human Rights of Migrants](#) and [Human Rights First’s Submission](#) relating to the review of U.S. human rights compliance in connection with the Universal Periodic Review process and for a comprehensive set of recommendations for reforming the U.S. immigration detention system, read [Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review](#).