

REPORT ON THE DETENTION OF WOMEN SEEKING ASYLUM IN THE UNITED STATES

The U.S. immigration detention system is undergoing a fundamental and nearly unprecedented transformation, while at the same time, the number of people in detention has steadily been increasing for one population in particular: those seeking protection at the southern border, many of whom are women.

It is not illegal to enter the U.S. to seek asylum. Nevertheless, both the Obama administration in its final years and the subsequent Trump Administration have fundamentally shifted the narrative of the appropriate response to those seeking protection at U.S. borders. While publicly focusing on the apprehension and deportation of immigrants who pose a threat to public safety, both administrations in practice cast a much broader net that includes, in many cases, the most vulnerable and those seeking protection.

By November 2016, the U.S. immigration detention system had ballooned, going from 34,000 beds to 42,000 beds. The Trump Administration has requested funding for more than 51,000 detention beds for Fiscal Year 2018. Alarmed at the increase in the detention of women seeking asylum, the Women's Refugee Commission (WRC) in 2016 and 2017 sought to document the conditions of detention, treatment, and obstacles to a fair asylum process that women in detention face. We visited seven detention facilities across four states including: Texas, California, Arizona, and New Mexico, spoke with numerous local service providers and advocates, analyzed government data, and interviewed nearly 150 women who were in need of protection but were instead detained, many for months.

KEY FINDINGS

- As of April 2016, a greater proportion of those in detention are women than ever before, and the number of women and girls seeking asylum while in detention has dramatically grown.
- U.S. detention practices preclude meaningful due process and access to justice. Women struggled to obtain lawyers and legal information, and at key stages of their case lacked adequate interpreters to express their claim. Court and asylum processes regularly occur only via telephone or video and are unpredictable given transfers and language access issues.
- Detention practices – both treatment and conditions – ignore the needs of women and impede access to protection. Medical care and mental health care is often insufficient or denied. Women have virtually no privacy even when using toilets or showers and feel humiliated at having to wear used underwear. At one facility, a woman reported not having enough sanitary napkins and feeling forced to choose between buying pads or calling her children.
- Arbitrary high bond and no-release policies kept and continue to keep asylum seekers detained and protection denied. The need to fill beds for political or financial reasons often seems to supersede any actual concern over public safety risk. What were erratic and challenging release policies appear to have become even stricter or nonexistent under the Trump Administration.
- Family separation violates family unity and undermines access to protection. Detained mothers had no way of locating or reuniting with their separated spouses or children, and the separation they experienced was traumatic.

KEY RECOMMENDATIONS

The U.S. government, regardless of the administration, should need no further evidence that detention and deterrence efforts are not and never will be appropriate for those who are fleeing for their lives. Key recommendations are outlined below.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) SHOULD:

- End the detention of women seeking protection who pose no risk to public security. Individuals with serious medical or mental health conditions, including pregnant women, other vulnerable populations such as those who identify as LGBTI, and women who are primary caregivers should be released or, where no community ties exist, placed into the least restrictive alternative to detention program.
- Rather than eliminate current detention standards, ICE should ensure that the most recent 2011 Performance Based National Detention Standards (PBNDS) and all requirements of the Prison Rape Elimination Act (PREA) are implemented across all ICE detention facilities.
- Regularly re-assess custody decisions for detained asylum-seeking women and other populations using consistent individualized assessment mechanisms that take into account an individual's circumstances, risk factors, and options for release. Individuals seeking asylum should not be treated as a default threat to public safety or a flight risk.

U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) SHOULD:

- Ensure appropriate screening by Customs and Border Protection (CBP) officials at ports of entry or for those apprehended by U.S. Border Patrol. CBP officials must process anyone requesting protection accordingly, ensuring that all questions are asked appropriately.
- Issue written guidance and implement policies ensuring that family members arriving together are subject to a presumption of liberty and should not be unnecessarily or intentionally separated.

- Implement the November 2016 report recommendations of its own Homeland Security Advisory Committee, along with its dissent that a majority of the committee approved, and move away from a reliance on county jails and privately run facilities, thereby reducing the profit motive in the immigration detention system.
- Ensure that the DHS Offices of Civil Rights and Civil Liberties (CRCL) and Office of Inspector General (OIG) regularly assess and review ICE detention practices, with annual OIG inspections of ICE facilities, and that ICE is held accountable for demonstrating compliance with their recommendations.

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR) AND U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) SHOULD:

- Expand Legal Orientation Programs to all existing and future detention facilities and expand access to counsel for all immigration detainees regardless of ability to pay.
- Facilitate in-person asylum screenings and immigration court hearings with access to appropriate interpretation. Asylum and immigration court proceedings should be timely but not rushed and take into consideration access to counsel.

CONGRESS SHOULD:

- Resist calls to increase detention spending and instead direct the agency to use alternatives to detention in place of detention only when needed to mitigate a demonstrated flight risk.
- Use Congressional authority to require transparency and oversight of ICE detention practices, policies, and facilities.