



Oral statement by Jennifer Turner on behalf of the American Civil Liberties Union (ACLU), a non-governmental organization in special consultative status, to the Human Rights Council 7th Session

Statement endorsed by the National Network for Immigrant and Refugee Rights, the Detention Watch Network, the U.S. Human Rights Network, the Rights Working Group, the Asian American Justice Center, and the National Immigrant Justice Center

Geneva
March 7, 2008

In conjunction with the presentation of the report on the visit to the United States by the Special Rapporteur on the human rights of migrants, Dr. Jorge Bustamante

Mr. President,

The undersigned organizations welcome the work and the report of Jorge Bustamante, the Special Rapporteur on the human rights of migrants. We urge the Human Rights Council to call for the adoption of appropriate measures to address the widespread violations of the human rights of migrants in the United States. The undersigned organizations have three areas of primary concern:

First, we are concerned about the overuse of immigration detention, arbitrary detention under mandatory detention laws, and poor conditions in immigration detention facilities.

In 2007, the U.S. Department of Homeland Security detained 322,000 migrants, including both undocumented migrants and legal permanent residents, and vulnerable groups such as asylum-seekers and children. Although held pursuant to civil immigration laws, these detainees often face conditions equivalent to those in prisons and jails, and non-penal alternatives to detention are rarely utilized. Immigrants may remain detained for months or years as they undergo proceedings to decide whether they are eligible to stay in the United States. Detention restricts immigrants' access to legal counsel and increasingly there is a lack of appeal or judicial review for many detention and deportation decisions.

A high percentage of immigrant detainees are held due to mandatory detention laws that require the detention of all immigrants charged with a ground of "inadmissibility" or "deportability," without any individualized determination that they pose a danger or flight risk justifying such detention. These grounds involve criminal offenses, including minor or first-time, non-violent offenses for which the immigrant spent no time in jail. Also subject to de facto mandatory detention are "arriving aliens," a category that includes asylum seekers placed in expedited removal proceedings and returning lawful permanent residents.

The growth in immigration detention has resulted in highly problematic conditions of confinement, such as grossly inadequate health care, physical and sexual abuse, overcrowding, discrimination, and racism. Denial of necessary medical and mental health care has resulted in avoidable deaths of migrants in immigration custody – at least 70 since the beginning of Fiscal Year 2004. Notably, the U.S. Government denied access to the Special Rapporteur to two detention facilities during his visit, despite confirmation of access.

Second, we are concerned about the expansion of immigration and border enforcement activities that violate human rights standards.

The United States has expanded existing programs to apprehend undocumented workers and others in violation of immigration laws through massive workplace and early morning actions at immigrants' homes. In these "raids," or "sweeps," U.S. Immigration and Customs Enforcement arrests immigrants without warrants and based on insubstantial evidence about immigration status, including racial profiling.

Also problematic is the U.S. Immigration and Customs Enforcement's use of local law enforcement to enforce federal immigration laws, particularly in border regions. Enforcement raids carried out pursuant to Memoranda of Understanding with state and local enforcement agencies have resulted in over 6,000 arrests. These raids raise serious human rights concerns, as agents have raided homes without search warrants, interrogated families without evidence of criminal activity, terrorized children, and targeted households on the basis of race and ethnicity.

Due to rising anti-immigrant sentiment, in the past two years, more than 30 towns and cities across the country have enacted anti-immigrant ordinances that subject immigrant residents to special legislation and selective enforcement. These ordinances impose penalties on businesses and non-profits that do business with, employ, or contract with undocumented workers, and penalize landlords who lease or rent property to undocumented immigrants.

Third, we are concerned about the deterioration of federal protection of migrant workers' rights and the legal sanctioning of discrimination against undocumented migrant workers.

Exploitation of migrant workers is a serious problem in the United States and is exacerbated by government policies that discriminate against migrant workers and fail to protect undocumented workers from employer discrimination. The industries that primarily employ immigrant workers pay low wages, maintain dangerous working conditions, and frequently violate labor and anti-discrimination laws. Moreover, domestic and agricultural laborers, most of whom are migrants, are explicitly excluded from basic worker protections including overtime compensation and minimum wage requirements under federal and state labor laws.

Discrimination against undocumented workers is perpetuated due to judicial decisions. Pursuant to the 2002 *Hoffman Plastics* U.S. Supreme Court decision and subsequent federal and state court decisions, the estimated 11.5 to 12 million undocumented migrant workers in the United States have lost anti-discrimination protection, available remedies when injured or killed on the job, overtime pay, workers' compensation, family and medical leave, and other fundamental safeguards.

We therefore call upon the U.S. government to adopt concrete measures to protect the human rights of all migrants. We also call on the U.S. government to open all immigrant detention facilities to public scrutiny, including by granting full access to the Special Rapporteur. We urge the U.S. government to ensure that all policies and laws regarding the treatment of migrants are fair, just, and humane.

Thank you, Mr. President.

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