



# General Assembly

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## Human Rights Council

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Universal Periodic Review

### **Written statement\* submitted by the Advocates for Human Rights, a non-governmental organization a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2011]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Recommendations to the US related to the rights of migrants, refugees, and asylum seekers**

The Advocates for Human Rights (“The Advocates”) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. With contributions from Detention Watch Network, Midwest Coalition for Human Rights, National Immigration Forum, and Human Rights First, The Advocates drafted a submission on the rights of migrants, refugees and asylum seekers for the US Human Rights Network joint report for the UPR of the United States. Approximately 100 organizations and individuals from around the country endorsed the submission.

The United States’ immigration system, while generous in many ways, is riddled with systemic failures to protect human rights, including the rights to due process and fair deportation procedures, freedom from arbitrary and inhumane detention, protections from refoulement for refugees, freedom from discrimination, and family unity. Some violations result from the statutory framework itself, which others are a matter of administrative policy or agency practice.

During the UPR of the United States in November 2010, many Human Rights Council delegates (including Belairs, Brazil, Guatemala, Mexico, and Switzerland) raised issues that were highlighted in The Advocates’ submission.

We welcome the recent efforts of the United States to begin to correct some of the most egregious violations. We also welcome the November 9, 2010, Response of the United States to Recommendations of the United Nations Human Rights Council with respect to immigration and the commitment to address concerns about detention, discrimination, racial and ethnic profiling, and advancing federal immigration reform as an alternative to piecemeal state and local measures.

We recommend the following to address violations of freedom from arbitrary and inhumane detention, protection of refugees, due process, and family unity.

### **Recommendations regarding detention of non-citizens**

The United States should:

- Reform the immigrant detention system to end reliance on detention as a cornerstone of immigration enforcement policy.
- End arbitrary detention (particularly for asylum seekers and non-citizens convicted of crimes) by providing individualized custody hearings for all detainees and ensure that all those who must be detained are held in non-penal facilities and afforded humane treatment which recognizes their inherent dignity.
- Immediately implement enforceable rights-respecting detention standards to ensure accountability and oversight.
- Ensure that all immigrant detention sites, including short-term facilities, adhere to legally enforceable detention standards, particularly as they relate to access to medical care, food and water, fresh air, and access to family and legal counsel.

**Legislative recommendations:**

- The United States should repeal 8 USC 1225(b)(1)(B)(IV) mandating detention of arriving asylum seekers and should enact legislation that is consistent with its obligations under the 1951 Refugee Convention.
- The United States should repeal 8 USC 1226(c) mandating detention and should instead provide for an individualized custody determination that accords with international due process standards.
- The United States should enact legislation providing for enforceable standards of detention for all persons detained by the Department of Homeland Security, including those held in short-term facilities, contract facilities, private prisons, and federally-run facilities.

**Administrative recommendations:**

- Immigration and Customs Enforcement detention policy should presume release of every individual encountered, and decisions to detain should be justified by the agency. The presumption should not be to detain, with the burden on the individual to prove eligibility for release.
- Immigration and Customs Enforcement should immediately develop community-based alternatives to detention for the purpose of continuing custody of those individuals who currently are subject to 8 USC 1225(b)(1)(B)(IV) (arriving asylum seekers) and 8 USC 1226(c) (persons with criminal convictions) where there the person does not pose a danger to the community. In no case should alternatives to detention be used to expand the capacity of the United States to detain more individuals in jails, prisons, or detention centers.
- The United States should continue to facilitate productive channels of communication between the Department of Homeland Security and non-governmental organizations.

**Recommendations related to protection of refugees****The United States should:**

- Eliminate the arbitrary one-year filing deadline for filing asylum claims, which has in practice penalized *bona fide* refugees.
- Re-examine the greatly expanded “aggravated felony” definition, which has resulted in offenses that fall far outside the category of “particularly serious crimes” being considered bars to non-refoulement in violation of the Refugee Convention.
- Narrow the definitions of and provide exceptions for “material support” of “terrorist activities,” which have resulted in the *refoulement* of refugees and seriously undermined the United States’ compliance with its obligations under the Refugee Convention and the ICCPR.

**Legislative recommendations:**

- Repeal 8 USC 1158(2)(B) which requires that applicants for asylum demonstrate by clear and convincing evidence that they have applied for asylum within one year of arrival in the United States.
- Repeal 8 USC 1182(a)(3)(B)(vi)(III) which defines a “terrorist organization” as a group of two or more individuals, whether organized or not, which engages in terrorist activity defined in the Immigration and Nationality Act.

- Amend the overly broad definition of “terrorist activity” at 8 USC 1182(a)(3)(B)(iii) so that it includes only the use of violence for the purpose of intimidation or coercion and so that it no longer applies to use of armed force that would not be unlawful under international humanitarian law.

Administrative recommendations:

- Streamline the waiver process by delegating waiver authority to the Attorney General to allow for waiver decisions to be made by the immigration court.
- Ensure that the terrorism bars are not applied to involuntary conduct, conduct committed by children, or to insignificant contributions of goods or services or to contributions which bear no logical connection to the furtherance of terrorist activity.
- Ensure that the Tier III definition is not applied to groups which have stopped using violence, that the group was actually engaged in violence during the period in which the asylum applicant is alleged to have provided support, and that a larger group is not defined as a Tier III organization because of the actions of a subset of its members.

### **Recommendations related to immigration reform**

The United States should undertake systemic reform to address current violations of the ICCPR’s obligations to protect due process and family unity.

- End automatic criminal prosecution for border crossers and other procedures which fail to protect non-citizens’ rights to due process, access to counsel, presentation of a case before a judge, and other fundamental safeguards of fairness.
- Ensure that any immigration enforcement programs, whether at the federal, state, or municipal level, do not intentionally or unintentionally encourage racial discrimination.
- End mandatory deportation without discretion to consider family ties.
- Eliminate bars to permanent residence for people who illegally enter or are unlawfully present which violate obligations to respect the unity of the family.
- Resume operation of family-based refugee resettlement.
- Address the extraordinarily long backlogs for family-based immigrant visas.

Legislative recommendations:

- Recognizing that the regular procedural safeguards against racial, religious, and national origin discrimination that exist in the United States’ criminal justice system are absent in civil removal hearings, the United States should enact legislation to protect non-citizens and those whose appearance may lead to their identification as non-citizens from unlawful arrest, detention, and deportation.
- The United States should amend 8 USC 1229b to provide that the Attorney General has the discretion to cancel the removal of any individual where removal would result in hardship to the individual’s US citizen or permanent resident spouse, parent, or child.
- The United States should amend 8 USC 1255 to allow for adjustment of status of persons who illegally entered the United States and who are otherwise eligible for adjustment upon payment of a penalty fee.

- The United States should amend 8 USC 1151(c) to provide a sufficient worldwide level of family-sponsored immigrants to reduce the backlogs in family-based immigrant visa availability.

Administrative recommendations:

- The United States should immediately end Operation Streamline and similar programs that restrict criminal prosecutorial discretion.
- The United States should ensure that all immigration enforcement efforts at the federal, state, or municipal levels are subject to regular oversight to prevent racial, religious, and national origin discrimination.
- The United States should reopen refugee resettlement under the P-3 family unity category and should ensure that refugee resettlement policies do not presume fraud in cases where DNA does not match.

We welcome the United States' current efforts through both the UPR and other processes to engage civil society in discussions to bring the immigration system into compliance with the United States' human rights obligations. We look forward to continuing to work with the United States to implement the Human Rights Council recommendations.

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