

## United States Immigration Detention Profile

Profile updated: May 2016

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### INTRODUCTION

Immigration detention is at the centre of numerous heated public debates in the United States, including about the treatment of undocumented children and families, the growth of the private prison industry, the use of criminal facilities for immigration purposes, and the increasing convergence between immigration and criminal law. The country has also been criticized for its efforts to pressure and in some cases pay for the detention of migrants and asylum seekers before they reach U.S. borders.<sup>1</sup>

The size and cost of U.S. immigration detention and removal operations have spiralled since the 1990s. The number of people placed in detention annually increased from some 85,000 people in 1995 to a record 477,523 during fiscal year (FY) 2012.<sup>2</sup> While the Obama administration began instituting detention reforms in 2009, which among other things led to a reduction in the use of prisons for immigration purposes, the number of immigration detainees increased every year between 2009 and 2012.<sup>3</sup> The country has also deported record numbers of non-citizens in recent years, peaking at 438,421 “removals” in FY 2013<sup>4</sup> (in addition to nearly 180,000 “returns”<sup>5</sup>).

According to a 2014 study on the history of immigration control policies in the United States, between 1986 and 2012, the United States spent some \$187 billion on immigration enforcement. In 2012, the government spent nearly \$18 billion on enforcement, “approximately 24 percent higher than collective spending for the FBI, Drug Enforcement Administration, Secret Service, U.S. Marshals Service and Bureau of Alcohol, Tobacco,

<sup>1</sup> This issue was the subject of a 2016 lawsuit seeking details of U.S. financial aid to immigration authorities in Mexico. See Nina Lakhani, “Human rights groups sue U.S. over immigration payments to Mexico,” *The Guardian*, 12 February 2016, <http://www.theguardian.com/us-news/2016/feb/12/human-rights-group-sue-immigration-mexico>.

<sup>2</sup> Center for Migration Studies New York, *Immigration Detention: Behind the Numbers*, 13 February 2014, <http://cmsny.org/immigration-detention-behind-the-record-numbers/>. These numbers do not include people who are detained at ports of entry by U.S. Customs and Border Protection or who are arrested and imprisoned as part of criminal procedures stemming from their immigration stations.

<sup>3</sup> Migration and Refugee Services/U.S. Conference of Catholic Bishops & The Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System*, 2015.

<sup>4</sup> Pew Research Centre, *U.S. deportations of immigrants reach record high in 2013*, 2 October 2014, <http://www.pewresearch.org/fact-tank/2014/10/02/u-s-deportations-of-immigrants-reach-record-high-in-2013/>.

<sup>5</sup> “Removals” are defined as “compulsory” while “returns” refer to “inadmissible” persons who are required to leave the country but whose departure is not based on a removal order. For a look at the history of U.S. removals and returns since 1892, see Department of Homeland Security, Office of Immigration and Statistics, “Yearbook of Immigration Statistics 2013,” <https://www.dhs.gov/yearbook-immigration-statistics>.

Firearms and Explosives.”<sup>6</sup> By 2014 the annual cost of the detention portion of the immigration enforcement budget had grown to roughly \$2 billion, or approximately \$5 million a day (or \$159 per detainee/day).<sup>7</sup> The U.S. president’s FY 2017 budget request for detention beds and transportation was \$1.75 billion.

However, detention numbers have recently begun to decline.<sup>8</sup> During FY 2015, deportations (“removals”) decreased by nearly 200,000 to 235,413.<sup>9</sup> Similarly, during the first half of FY 2015, the average daily detainee population was 26,374, down from 33,000 the year before.

U.S. officials explain that these decreases reflect fewer numbers of unauthorised arrivals as well as increased efforts to target convicted criminals for removal. According to official statistics, there were 337,117 border apprehensions in 2015,<sup>10</sup> which was the lowest number since 1972.<sup>11</sup> These decreases were also reflected in declining annual detention bed mandates. As of FY 2014, U.S. Congress mandated that Immigration and Customs Enforcement (ICE) “maintain a level of not less than 34,000 detention beds at all times.” This number decreased to about 31,000 in FY 2015.<sup>12</sup>

National and international advocacy groups—including the [Detention Watch Network](#), the [Women’s Refugee Commission](#), and the [International Detention Coalition](#)—have long contended that the United States could achieve similar enforcement results at much lower costs if it decreased detention operations and ramped up “alternatives to detention.” A 2013 study by the [National Immigration Forum](#) contended, “Less wasteful and equally effective alternatives to detention exist. Estimates from the Department of Homeland Security show that the costs of these alternatives can range from 70 cents to \$17 per person per day. If only individuals convicted of serious crimes were detained and less expensive alternative methods were used to monitor the rest of the currently detained

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<sup>6</sup> Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, & Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, January 2013, <http://www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.

<sup>7</sup> National Immigration Forum, *The Math of Immigration Detention*, 22 August 2013, <http://immigrationforum.org/blog/themathofimmigrationdetention/>; see also, Robert Morgenthau, *The US Keeps 34,000 Immigrants in Detention Each Day Simply to Meet a Quota*, *The Nation*, 13 August 2014, <http://www.thenation.com/article/us-keeps-34000-immigrants-detention-each-day-simply-meet-quota/>.

<sup>8</sup> MSNBC, *Immigrant deportations decline dramatically*, 22 December 2015, <http://www.msnbc.com/msnbc/immigrant-deportations-decline>.

<sup>9</sup> U.S. Immigration and Customs Enforcement, *ICE Enforcement and Removal Operations Report: Fiscal Year 2015*, 22 December 2015, <https://www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf>.

<sup>10</sup> U.S. Immigration and Customs Enforcement, *ICE Enforcement and Removal Operations Report: Fiscal Year 2015*, 22 December 2015, <https://www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf>.

<sup>11</sup> MSNBC, *Immigrant deportations decline dramatically*, 22 December 2015, <http://www.msnbc.com/msnbc/immigrant-deportations-decline>.

<sup>12</sup> National Immigration Forum, *The Math of Immigration Detention*, 22 August 2013, <http://immigrationforum.org/blog/themathofimmigrationdetention/>.

population, taxpayers could save more than \$1.44 billion per year—almost an 80 percent reduction in annual costs.”<sup>13</sup>

## LAWS, POLICIES, PRACTICES

**History.** The first office for federal immigration control in the United States was established in 1864. However, it was not until the Immigration Act of 1882, which provided that immigration regulation was the responsibility of the federal government, that operations at the office began in earnest.<sup>14</sup> Passage of the Immigration Act as well as other restrictionist measures at the time, like the Chinese Exclusion Act, helped lead to the opening of arguably the first U.S. immigration detention centre, on Ellis Island in New York Harbour in 1892.<sup>15</sup> A sister facility was opened on Angel Island in San Francisco Bay in 1910.<sup>16</sup>

After Ellis Island closed in 1954, the practice of immigration detention appears to have largely faded. However, significant increases in Caribbean migration and refugee flows beginning in the 1970s helped spur renewed focus on detention. The modern U.S. immigration detention system began to take shape in the early 1980s, when the Reagan-era INS began systematically apprehending undocumented migrants from certain countries and opened a number of new detention centres in Puerto Rico and the U.S. mainland to cope with the resulting surge in detainees.<sup>17</sup> According to one account, “Prior to the 1980s, the INS enforced a policy of detaining only those individuals deemed likely to abscond or who posed a security risk.”<sup>18</sup>

In a key U.S. Supreme Court case from the time, *Jean v. Nelson* (1985), the court overturned a mandatory detention policy put in place in 1981 that strictly targeted Haitian nationals. A U.S. immigration law scholar told the Global Detention Project, “To a large extent once the *Jean v. Nelson* decision came down and the Reagan administration did not have the authority to detain only Haitians, the current detention system was born, i.e. detain all nationalities.”<sup>19</sup>

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<sup>13</sup> National Immigration Forum, The Math of Immigration Detention, 22 August 2013, <http://immigrationforum.org/blog/themathofimmigrationdetention/>.

<sup>14</sup> Stephanie J. Silverman, Immigration Detention in America: A History of its Expansion and a Study of its Significant, Working Paper No. 80, University of Oxford, 2010.

<sup>15</sup> Marian Smith, INS—U.S. Immigration and Naturalization Service History, U.S. Citizenship and Immigration Services, <http://www.uscitizenship.info/ins-usimmigration-insoverview.html>.

<sup>16</sup> Marian Smith, INS—U.S. Immigration and Naturalization Service History, U.S. Citizenship and Immigration Services, <http://www.uscitizenship.info/ins-usimmigration-insoverview.html>.

<sup>17</sup> Niels Frenzen, U.S. Migrant Interdiction Practices in International and Territorial Waters, in *Extraterritorial Immigration Control: Legal Challenges*, Bernard Ryan and Valsamis Mitsilegas. Martinus, editors, Nijhoff Publishers, 2010, p. 384.

<sup>18</sup> Michael Welch, *Detained: Immigration Laws and the Expanding INS Complex*, Philadelphia: Temple University Press, 2002, P. 107.

<sup>19</sup> Niels Frenzen, (USC Gould School of Law), Email correspondence with Michael Flynn (Global Detention Project), 26 March 2014.

A year after this court ruling, in 1986, the government passed the Immigration Control and Reform Act (IRCA), which combined the legalization of certain undocumented immigrants with stepped up internal enforcement and control measures. IRCA marked a significant moment in the U.S. approach to immigration by cementing enforcement of immigration restrictions as a cornerstone of U.S. policy. According to a 2005 assessment, “Overall spending on enforcement activities has ballooned from pre-IRCA levels, with appropriations growing from \$1 billion to \$4.9 billion between FY 1985 and 2002 and staffing levels increasing greatly. Resources have been concentrated heavily on border enforcement, particularly the Border Patrol. Spending for detention and removal/intelligence activities multiplied most rapidly over this period, with an increase in appropriations of over 750 percent.”<sup>20</sup>

With the adoption of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the number of non-citizens who could be placed in mandatory immigration detention significantly expanded. The INS subsequently ramped up available bed space for detainees. By 2014, DHS was mandated to ensure that there were 34,000 beds available daily for immigration detention purposes.<sup>21</sup>

**Key norms.** U.S. law governing immigration detention is provided in several acts, which are consolidated in Section 8 of the U.S. Code. In addition, there are a large number of memorandums, guidance documents, and policy statements issued by ICE and the Department of Homeland Security (DHS) that relate to immigration detention.

It has long been recognized that non-citizens, including those in the United States unlawfully, are entitled to the fundamental guarantees of the Constitution. As early as 1903, the Supreme Court ruled that a non-citizen could not be deported without an opportunity to be heard that met constitutional due process requirements, although this did not necessarily mean an opportunity for a judicial proceeding.<sup>22</sup>

Once non-citizens have entered the country, they are theoretically granted protection against deprivation of liberty without due process regardless of their immigration status.<sup>23</sup> Nevertheless, they can receive very different treatment because removal proceedings are considered “administrative,” which means that people in immigration procedures have fewer due process guarantees than people in criminal proceedings. As one expert who was consulted for this profile said, “There is no right to appointed counsel in removal proceedings and the normal rules of evidence do not apply. In addition, in recent years, between 80 and 90 percent of those removed have faced some form of expedited, streamlined, process-less removal; that is, they have either never seen the inside of an

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<sup>20</sup> Migration Policy Institute, *Immigration Enforcement Spending Since IRCA*, 2005.

<sup>21</sup> Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, & Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, January 2013, <http://www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.

<sup>22</sup> *Mathews v. Diaz*, 426 U.S. 67 (1978).

<sup>23</sup> Global Detention Project, *Immigration Detention and the Law: U.S. Policy and Legal Framework*, August 2010, <http://www.globaldetentionproject.org/content/immigration-detention-and-law-us-policy-and-legal-framework-0>.

immigration court or their cases have received only cursory review by an immigration judge after they have ‘stipulated’ to their own removal.”<sup>24</sup>

The Immigration and Nationality Act of 1952 (INA) brought into one comprehensive statute the multiple laws that previously governed immigration and naturalization in the United States.<sup>25</sup> It regulates the conditions under which non-citizens may enter the United States by providing a list of grounds of deportability and a list of exclusive grounds of inadmissibility.<sup>26</sup> The INA is formally contained in Title 8 of the United States Code, which is a compilation of all federal laws passed by Congress.<sup>27</sup>

Since the mid-1990s, many changes to United States immigration law have been introduced that represent a trend toward restricting the rights of non-citizens. These changes include the Antiterrorism and Effective Death Penalty Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).<sup>28</sup>

IIRIRA mandates the detention of a broad range “inadmissible” and removable non-citizens.<sup>29</sup> Under U.S. law, any person without immigration status may be taken into custody. Lawful permanent residents and undocumented persons with a broad array of criminal convictions or those who are believed to pose a threat to national security are subject to mandatory detention.<sup>30</sup> Non-mandatory detainees may be released if they do not “pose a danger to property or persons” and are likely to appear for immigration proceedings.”<sup>31</sup>

In 2003, the U.S. Supreme Court upheld mandatory detention for non-citizens with pending removal cases for the time necessary to complete those proceedings, which was found to be a month and a half for the majority of cases, although when non-citizens appeal a decision their time in detention typically increases.<sup>32</sup>

On the other hand, the Supreme Court has prohibited the indefinite detention of non-citizens who have been ordered removed.<sup>33</sup> However, a joint 2015 study by the [U.S.](#)

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<sup>24</sup> Donald Kerwin (Center for Migration Studies), email to Michael Flynn (Global Detention Project), 20 April 2016.

<sup>25</sup> Global Detention Project, *Immigration Detention and the Law: U.S. Policy and Legal Framework*, August 2010, <http://www.globaldetentionproject.org/content/immigration-detention-and-law-us-policy-and-legal-framework-0>.

<sup>26</sup> Stephanie J. Silverman, *Immigration Detention in America: A History of its Expansion and a Study of its Significant*, Working Paper No. 80, University of Oxford, 2010.

<sup>27</sup> Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163.

<sup>28</sup> Global Detention Project, *Immigration Detention and the Law: U.S. Policy and Legal Framework*, August 2010, <http://www.globaldetentionproject.org/content/immigration-detention-and-law-us-policy-and-legal-framework-0>.

<sup>29</sup> U.S. Conference of Catholic Bishops & The Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System*, 2015.

<sup>30</sup> 8 U.S.C. 1226 (a), (c), 1225(b).

<sup>31</sup> U.S. Conference of Catholic Bishops & The Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System*, 2015.

<sup>32</sup> *Demore v. Kim*, 538 U.S. 510 (2003).

<sup>33</sup> *Zadvydas v. INS*, 533 U.S. 678 (2001).

[Conference of Catholic Bishops](#) and the [Center for Migration Studies](#) reported that despite the Supreme Court ruling thousands of non-citizens on any given night have been detained for periods of more than six months, including after receiving a removal order.<sup>34</sup>

**Criminalisation.** The U.S. immigration enforcement system is intimately intertwined with the criminal justice system, as exemplified by the long-standing U.S. practice of using prisons to confine immigration detainees. This practice has been largely banned in most major developed nations, [particularly in Europe](#) where European Union directives provide that immigration detainees be kept in specially designed facilities separate from criminal-related prisons.<sup>35</sup> An official [ICE study published in 2009](#) heavily criticized this U.S. practice. It concluded that “the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pre-trial and sentenced felons. ICE relies primarily on correctional incarceration standards designed for pre-trial felons and on correctional principles of care, custody, and control. These standards impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population.”<sup>36</sup>

An important form of immigration criminalisation in the United States is that many immigration-status-related violations are subject to prosecution. Although non-citizens who are in detention to complete immigration or asylum-related processes are considered in administrative (or “civil”) detention, tens of thousands of people are also incarcerated for immigration-related crimes every year. Since 1996, prosecutions for re-entering the country after being deported, particularly for those previously convicted of crimes, have increased. Prosecutions for illegal entry and re-entry have risen from 4,000 in 1993 to 31,000 in 2004 and 91,000 in 2013.<sup>37</sup> These prosecutions have also been a key reason for increases in overall federal prosecutions. According to the Pew Research Center, increases “in unlawful reentry convictions alone accounts for nearly half” of the growth of federal prosecutions during the period 1992-2012.<sup>38</sup> During FY 2015, according to the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, the government charged nearly 75,000 people with immigration-related offenses.”<sup>39</sup>

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<sup>34</sup> U.S. Conference of Catholic Bishops & The Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System*, 2015.

<sup>35</sup> For details about differences in detention practices between Europe and the United States, see the joint GDP-Access Info Europe report “The Uncounted,” December 2015, <http://www.globaldetentionproject.org/publications/special-report/uncounted-detention-migrants-and-asylum-seekers-europe>.

<sup>36</sup> Dora Schriro, *Immigration Detention: Overview and Recommendations*, Immigration and Customs Enforcement, October 2009, <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

<sup>37</sup> Seth Freed Wessler, ‘This Man Will Almost Certainly Die’, *The Nation*, 28 January 2016, <http://www.thenation.com/article/privatized-immigrant-prison-deaths/>.

<sup>38</sup> Pew Research Center, *The Rise of Federal Immigration Crimes*, 18 March 2014, <http://www.pewhispanic.org/2014/03/18/the-rise-of-federal-immigration-crimes/>

<sup>39</sup> Transactional Records Access Clearinghouse, *Immigration Prosecutions for September 2015 (Fiscal Year 2015)*, [https://trac.syr.edu/cgi-secure/product/login.pl?\\_SERVICE=express9&\\_DEBUG=0&\\_PROGRAM=interp.annualreport.sas&p\\_month=dec&p\\_year=15&p\\_topic=40&p\\_agenrevgrp=&p\\_distcode=&p\\_trac\\_leadcharge=&p\\_progcatt=&p\\_stat=fil](https://trac.syr.edu/cgi-secure/product/login.pl?_SERVICE=express9&_DEBUG=0&_PROGRAM=interp.annualreport.sas&p_month=dec&p_year=15&p_topic=40&p_agenrevgrp=&p_distcode=&p_trac_leadcharge=&p_progcatt=&p_stat=fil).

Helping to boost the numbers of immigration-related prosecutions has been “Operation Streamline,” a joint DHS-DOJ program launched in 2005 that aims to deter unauthorized entry by criminally prosecuting persons entering the country without authorization, including “first-time illegal border crossers.”<sup>40</sup> The Center for Migration Studies and U.S. Conference of Catholic Bishops reported in 2015 that these prosecutions “have taken the form of summary, en masse guilty pleas, largely devoid of due process protections.”<sup>41</sup> According to [Human Rights Watch](#), “Under Operation Streamline, dozens of defendants at a time are charged, plead guilty, and ultimately convicted and sentenced of the federal misdemeanor of illegal entry, all within a matter of hours and sometimes even minutes. U.S. Customs and Border Protection (CBP) claims that the program reduces recidivism by deterring migrants from trying to enter the US illegally again.”<sup>42</sup>

The relationship between criminal and immigration enforcement was further consolidated during the Barack Obama presidency as authorities ramped up efforts to deport “criminal aliens.” A key driver of increased removals was the “Secure Communities” program, which operated during 2008-2014. Under this program, local law enforcement officials shared information with federal immigration authorities concerning non-citizens—including both lawful and unauthorized foreign residents—who were booked into jails. In addition, a hierarchy of prioritised non-citizens to be detained and deported was created.<sup>43</sup>

Secure Communities came under harsh criticism, especially as it targeted large numbers of people who had only committed minor offenses like traffic or immigration violations. Between 2011 and 2013, DHS removed more “criminal aliens” for immigration-related crimes than for any other category of crime.<sup>44</sup> An analysis of every person in immigrant detention on September 22, 2012 found that 61 percent had been convicted of a crime, but only 10 percent had been convicted of violent crimes.<sup>45</sup> Traffic and immigration offenses were among the most prevalent crimes by offense category. Arrests for minor crimes, combined with the threat of deportation pursuant to Secure Communities, created division and mistrust between police and heavily immigrant communities. In announcing the end of the program in late 2014, a DHS official acknowledged, “Its very name has become a symbol of hostility toward the enforcement of our immigration laws.”<sup>46</sup>

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<sup>40</sup> Human Rights Watch, US: Reject Mass Migrant Prosecutions, 28 July 2015, <https://www.hrw.org/news/2015/07/28/us-reject-mass-migrant-prosecutions>.

<sup>41</sup> U.S. Conference of Catholic Bishops & The Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System*, 2015.

<sup>42</sup> Human Rights Watch, US: Reject Mass Migrant Prosecutions, 28 July 2015, <https://www.hrw.org/news/2015/07/28/us-reject-mass-migrant-prosecutions>.

<sup>43</sup> Stephanie J. Silverman, *Immigration Detention in America: A History of its Expansion and a Study of its Significance*, Working Paper No. 80, University of Oxford, 2010.

<sup>44</sup> U.S. Conference of Catholic Bishops & The Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System*, 2015.

<sup>45</sup> Donald Kerwin, Piecing Together the US Immigrant Detention Puzzle One Night at a Time: An Analysis of All Persons in DHS-ICE Custody on September 22, 2012, 3 *Journal on Migration and Human Security* 4 (2015): 330-376.

<sup>46</sup> Jeb Charles Johnson (Secretary, Department of Homeland Security), Memorandum about Secure Communities, 20 November 2014, [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf).

**Children.** The immigration detention of children and families has received unprecedented attention in the United States since mid-2014 when tens of thousands of children, mainly from the Northern Triangle states of Central American, arrived at the U.S.-Mexico border, spurring a media and political outcry. According to a study by the Organisation of American States (OAS), prompting these movements of people has been “a worsening human rights situation in the principle countries of origin” and “poverty, economic and gender inequality, multi-sectorial discrimination, and high levels of violence in El Salvador, Guatemala, Honduras, and Mexico.”<sup>47</sup>

There are important differences in the treatment of unaccompanied and accompanied children arriving in the United States. “Unaccompanied alien child” is defined by law as a child who “(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”<sup>48</sup> Due to their particular vulnerability, these children receive certain protections under U.S. law. On the other hand, the law does not formally define the term “accompanied” child, but children who arrive in the United States with a parent or guardian are considered accompanied.<sup>49</sup>

Unlike families, unaccompanied children cannot be placed in expedited removal proceedings. Unaccompanied children from non-contiguous countries are placed in standard removal proceedings in immigration court, but CBP must transfer custody of them to the Office of Refugee Resettlement (ORR) of the Department of Health and Human Services within 72 hours. Unaccompanied children from contiguous countries must be screened by a CBP officer to determine if they are unable to make independent decisions,<sup>50</sup> are a victim of trafficking, or fear persecution in their home country. If none of these conditions apply, CBP will immediately send the child back to their home country through the voluntary return process.<sup>51</sup>

Although unaccompanied children may be detained, special laws require that the best interests of the child govern custody determinations and placement. Once transferred from

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<sup>47</sup> Inter-American Commission on Human Rights, *Refugees and Migrants in the United States: Families and Unaccompanied Children*, 24 July 2015, OAS/Ser.L/V/II. 155, <https://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>.

<sup>48</sup> Pub. L. 107-296, 116 Stat. 2202

<sup>49</sup> American Immigration Council, *A Guide to Children Arriving at the Border: Laws, Policies, and Responses*, 26 June 2015, <http://immigrationpolicy.org/special-reports/guide-children-arriving-border-laws-policies-and-responses>.

<sup>50</sup> Whether unaccompanied children can represent themselves in court became the subject of much notoriety in early 2016 when a federal judge argued that toddlers could learn immigration law and thus did not necessarily need legal representation during court proceedings. “I’ve taught immigration law literally to 3-year-olds and 4-year-olds,” said Jack H. Weil, a DOJ official and immigration judge. “It takes a lot of time. It takes a lot of patience. They get it. It’s not the most efficient, but it can be done.” *Washington Post*, 5 March 2016, [https://www.washingtonpost.com/world/national-security/can-a-3-year-old-represent-herself-in-immigration-court-this-judge-thinks-so/2016/03/03/5be59a32-db25-11e5-925f-1d10062cc82d\\_story.html](https://www.washingtonpost.com/world/national-security/can-a-3-year-old-represent-herself-in-immigration-court-this-judge-thinks-so/2016/03/03/5be59a32-db25-11e5-925f-1d10062cc82d_story.html).

<sup>51</sup> American Immigration Council, *A Guide to Children Arriving at the Border: Laws, Policies, and Responses*, 26 June 2015, <http://immigrationpolicy.org/special-reports/guide-children-arriving-border-laws-policies-and-responses>.



CBP, the Office of Refugee Resettlement manages the custody of unaccompanied children until they can be released to family members or other individuals or organisations. The law requires that these children be placed in the least restrictive setting in their best interests and they are generally held in a network of state-licensed, government-funded private care providers that are meant to offer education, healthcare, and case management services.<sup>52</sup>

The law allows for the detention of families and accompanied children. Although such detention is highly controversial, the practice has been expanded since 2014 in response to the large increases in families migrating to the United States and fleeing violence in Central America.<sup>53</sup>

Between October 2013 and September 2014, 68,541 unaccompanied children were apprehended at the southwestern border of the country,<sup>54</sup> prompting President Obama to describe the situation as a humanitarian crisis.<sup>55</sup> In 2014, 52,539 unaccompanied minors were detained in the country.<sup>56</sup> New detention centres have been constructed to be used as family detention centres in Texas and Pennsylvania, as discussed below in the section on “Detention Infrastructure.” These facilities are euphemistically called “family residential centres.”

With regard to unaccompanied Mexican children specifically, the Inter-American Court of Human Rights (IACHR) found that DHS had applied a presumption that the children were not in need of international protection. The IACHR reports, based on UNHCR estimates, that around 95.5 percent of Mexican children arriving alone in the country are returned without ever having the opportunity to see an immigration judge. The report also raised issues with the conditions of detention of migrant children.<sup>57</sup>

Recent court rulings and orders are relevant to the consideration of immigrant children in the United States.

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<sup>52</sup> American Immigration Council, A Guide to Children Arriving at the Border: Laws, Policies, and Responses, 26 June 2015, <http://immigrationpolicy.org/special-reports/guide-children-arriving-border-laws-policies-and-responses>.

<sup>53</sup> American Immigration Council, A Guide to Children Arriving at the Border: Laws, Policies, and Responses, 26 June 2015, <http://immigrationpolicy.org/special-reports/guide-children-arriving-border-laws-policies-and-responses>.

<sup>54</sup> U.S. Customs and Border Protection, Southwest Border Unaccompanied Alien Children Statistics FY 2016, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

<sup>55</sup> The White House, Office of the Press Secretary, Letter from the President – Efforts to Address the Humanitarian Situation in the Rio Grande Valley Areas of Our Nation’s Southwest Border, 30 June 2014, <https://www.whitehouse.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle>.

<sup>56</sup> International Organization for Migration, Dinamicas Migratorias en American Latina y el Carbibe, y entre ALC u la Union Europea, May 2015.

<sup>57</sup> Inter-American Commission on Human Rights, Refugees and Migrants in the United States: Families and Unaccompanied Children, 24 July 2015, OAS/Ser.L/V/II. 155, <https://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>.

In February 2015, the Federal District Court for the District of Columbia ordered a preliminary injunction immediately halting the government's policy of detaining mothers and children with legitimate asylum claims solely to deter others from migrating to the United States.<sup>58</sup> The judge in this case ordered immigration authorities to "consider each asylum case to determine if the migrants would present risks to public safety if they were released while their cases moved through the courts."<sup>59</sup>

Later, in August 2015, the United States District Court for the Central District of California issued a ruling ordering DHS to begin releasing immigrant children and their accompanying parents from detention.<sup>60</sup> The ruling stated that children should not be held for more than 72 hours unless they were a significant flight risk or a danger to themselves or others.<sup>61</sup>

To avoid court-ordered restrictions in the detention of children, in early 2016 the federal government reportedly asked Texas officials to license facilities used to detain immigrant families in the state as "child welfare" institutions.<sup>62</sup>

**Asylum seekers.** U.S. law distinguishes between three different types of asylum-seekers: affirmative asylum-seekers who are not in removal proceedings; defensive asylum-seekers who seek asylum in removal proceedings before an immigration judge; and asylum-seekers who enter the United States without proper documents and are subject to expedited removal. Under certain conditions, asylum seekers may be detained. This includes situations in which asylum-seekers have been denied asylum and have overstayed the expiry of their visas. In addition, an asylum-seeker claiming asylum at a U.S. port-of-entry or after entering the U.S. without proper documents will be automatically detained pending an interview to determine if they have a "credible fear" of persecution. In this situation, those deemed not to have a credible fear will be detained subject to removal from the country. Persons found to have a credible fear can be but often are not released, as they pursue their asylum claims before an immigration judge.

As of June 2015, there were nearly 500,000 asylum-seekers and resettled refugees who were residing in the country.<sup>63</sup> According to UNHCR, during 2014, there were 63,913 new

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<sup>58</sup> American Civil Liberties Union, *RILR v. Johnson*, 31 July 2015, <https://www.aclu.org/cases/rilr-v-johnson>.

<sup>59</sup> Julia Preston, Judge Orders Stop to Detention of Families at Borders, *New York Times*, 20 February 2015, [http://www.nytimes.com/2015/02/21/us/judge-orders-stop-to-detention-of-families-at-borders.html?\\_r=0](http://www.nytimes.com/2015/02/21/us/judge-orders-stop-to-detention-of-families-at-borders.html?_r=0).

<sup>60</sup> Muzaffar Chishti & Faye Hipsman, Fierce Opposition, Court Rulings Place Future Family Immigration Detention in Doubt, Migration Policy Institute, 15 September 2015, <http://www.migrationpolicy.org/article/fierce-opposition-court-rulings-place-future-family-immigration-detention-doubt>.

<sup>61</sup> Cindy Carcamo, Judge Orders Prompt Release of Immigrant Children from Detention, *Los Angeles Times*, 22 August 2015, <http://www.latimes.com/nation/la-na-family-detention-children-20150821-story.html>.

<sup>62</sup> Texas Observer, "Health Agency to Press Forward with Licensing Child Detention Centers," 12 February 2016, <https://www.texasobserver.org/detention-center-child-care-to-hhsc/>.

<sup>63</sup> U.N. High Commissioner for Refugees, United States of America profile, <http://www.unhcr.org/pages/49e492086.html>.

asylum applications made. This compares to 45,374 during 2013, 43,054 during 2012, and 38,525 during 2011.<sup>64</sup>

The GDP has been unable to locate information about the number of asylum-seekers held in detention in the United States. In its official response to a Freedom of Information Act (FOIA) request jointly lodged by the GDP and Access Info Europe in 2013, ICE officials failed to answer a question concerning statistics about asylum seekers in detention.<sup>65</sup>

**Alternatives to detention.** People who do not fall under mandatory detention provisions may be eligible for bail or conditional release. However, DHS can revoke its authorization of release as a matter of discretion at any time.<sup>66</sup>

Funding for the development and expansion of alternatives to detention (ATD) programs has steadily increased over time, with Congress appropriating \$43.6 million for such programs in 2007 and \$91 million in 2014.<sup>67</sup> In addition, ICE's plan for the years 2010-2014 identified a need to develop a cost effective ATD program that would enjoy high rates of appearances in removal proceedings.<sup>68</sup> However, advocates argue that the use of ATDs has not reduced reliance on detention and some ATD programs continue fail to comply with basic due process requirements.<sup>69</sup>

Both officials and advocates have maintained that ATD programs are more humane and less costly than detention.<sup>70</sup> In addition, ATDs have proven highly effective, resulting in an appearance rate of 99 per cent at court hearings between 2011 and 2013.<sup>71</sup> The high compliance could be related in part to the use of some highly restrictive forms of alternatives, like ankle bracelets, which international bodies like UNHCR have argued should not be considered alternatives. Critics argue that highly restrictive measures should be avoided because they stigmatize and humiliate immigrants, and, if used at all, should

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<sup>64</sup> U.N. High Commissioner for Refugees, Statistical Yearbook 2014, Statistical Annexes; U.N. High Commissioner for Refugees, Statistical Yearbook 2013, Statistical Annexes; U.N. High Commissioner for Refugees, Statistical Yearbook 2012, Statistical Annexes; U.N. High Commissioner for Refugees, Statistical Yearbook 2011, Statistical Annexes.

<sup>65</sup> Global Detention Project and Access Info Europe, "The Uncounted," December 2015, pp. 30-31, <http://www.globaldetentionproject.org/publications/special-report/uncounted-detention-migrants-and-asylum-seekers-europe>.

<sup>66</sup> 8 U.S.C. 1226(b).

<sup>67</sup> Lutheran Immigration and Refugee Service, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, <http://lirs.org/wp-content/uploads/2012/05/RPTUNLOCKINGLIBERTY.pdf>; U.S. Conference of Catholic Bishops & The Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System*, 2015.

<sup>68</sup> U.S. Immigration and Customs Enforcement, ICE Strategic Plan FY 2010-2014, [https://www.ice.gov/doclib/detention-reform/pdf/strategic\\_plan\\_2010.pdf](https://www.ice.gov/doclib/detention-reform/pdf/strategic_plan_2010.pdf).

<sup>69</sup> U.S. Immigration and Customs Enforcement, ICE Strategic Plan FY 2010-2014, [https://www.ice.gov/doclib/detention-reform/pdf/strategic\\_plan\\_2010.pdf](https://www.ice.gov/doclib/detention-reform/pdf/strategic_plan_2010.pdf).

<sup>70</sup> American Civil Liberties Union, *Alternatives to Immigration Detention: Less Costly and More Humane than Federal Lock-up*, <https://www.aclu.org/aclu-fact-sheet-alternatives-immigration-detention-atd>.

<sup>71</sup> U.S. Conference of Catholic Bishops & The Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System*, 2015.

be considered alternative “forms” of detention and be made available to mandatory detainees.<sup>72</sup>

Some scholars in the United States have expressed caution regarding the promotion of “alternatives” in the United States for fear that these programs could lead to the use of more restrictive non-custodial measures. One author notes that when ICE employs formal alternatives—including community supervision, reporting requirements, and ankle bracelets—“the agency generally initiates enrolment in these programs for individuals who have already been released from detention. As a result, the programs do not serve as a means of allowing release from detention. Instead, when ICE requires participation in such a program, it increases the level of supervision imposed rather than minimizing the restrictions.”<sup>73</sup>

While advocates of alternatives are generally careful to exclude programs like ankle bracelets from their catalogues of acceptable measures (see, for example, UNHCR’s “[Detention Guidelines](#)”), the United States has justified ramping up its use of electronic monitoring devices and other surveillance technologies by employing the alternatives label. This has led to a windfall in profits for private prison companies, who are contracted to manage these programs. According to news reports, the GEO Group, which operates more than a dozen immigration detention centres in the United States, was paid \$56 million annually “to manage ankle monitors for 10,000 immigrants, and to run telephone check-ins for 20,000 immigrants.”<sup>74</sup>

**Deaths in detention and concerns over healthcare.** A 2010 New York Times report on deaths in detention found evidence of a “culture of secrecy” and a failure to address fatal flaws at detention centres.<sup>75</sup> These issues reportedly continue to persist, with poor medical care in particular contributing to the death of immigrants in detention.<sup>76</sup>

As detention centres are subject to less stringent standards of custody, the medical treatment provided to detainees is often inadequate and staffs are generally overworked and under-qualified. The Nation magazine reported that because the financial penalties from the Bureau of Prisons for privately-run detention centres that fail to meet contractual obligations are so modest, it often costs less for the centres to pay the penalty than to meet the obligation and hire additional medical staff. The former clinical director of Big Spring Correctional Center told The Nation that his requests for detainees to be

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<sup>72</sup> U.S. Conference of Catholic Bishops & The Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System*, 2015.

<sup>73</sup> Denise Gilman, *Realizing Liberty: The Use of International Human Rights Law to Realign Immigration Detention in the United States*, 26 *Fordham Int’l L.J.* 2 (2013).

<sup>74</sup> National Public Radio, *As Asylum Seekers Swap Prison Beds For Ankle Bracelets, Same Firm Profits*, 3 December 2015, <http://www.npr.org/2015/11/13/455790454/as-asylum-seekers-swap-prison-beds-for-ankle-bracelets-same-firm-profits>.

<sup>75</sup> Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, *New York Times*, 9 January 2010, [http://www.nytimes.com/2010/01/10/us/10detain.html?\\_r=0](http://www.nytimes.com/2010/01/10/us/10detain.html?_r=0).

<sup>76</sup> American Civil Liberties Union, Detention Watch Network, & National Immigrant Justice Center, *Fatal Neglect: How ICE Ignores Deaths in Detention*, February 2016.

transferred to federal prison medical centres or local hospitals were often denied.<sup>77</sup> In addition, a joint report by the American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center found that at least four detention facilities passed their Enforcement and Removal Operations inspections despite documented misgivings and failings related to medical treatments and protocol.<sup>78</sup>

Between October 2003 and January 2010, 107 immigrants died in detention.<sup>79</sup> During the Obama administration, there have been 56 deaths of immigrants in ICE custody.<sup>80</sup> Further, between 1998 and 2014, at least seven immigrants committed suicide in the immigrant-only contract prisons described above.<sup>81</sup> While the United States government is highly secretive and non-transparent about the details surrounding immigrant deaths in detention, a review of 77 released medical case files revealed that in at least 25 of the cases the medical inadequacies of the detention centres “likely contributed to the premature death of the prisoners.”<sup>82</sup>

**Privatisation.** Ramped up deportation efforts and the criminalisation of immigration breaches have led to strains in the country’s detention and incarceration capacities since the 1990s, prompting immigration authorities and the Bureau of Prisons to increase reliance on privately run facilities, which is justified as a cost-cutting measure.<sup>83</sup>

The U.S. immigration detention infrastructure has been extensively privatised,<sup>84</sup> with 62 percent of all ICE immigration detention beds in the country as of 2015 operated by for-profit prison corporations, up from 49 percent in 2009.<sup>85</sup> These privately managed

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<sup>77</sup> Seth Freed Wessler, ‘This Man Will Almost Certainly Die’, *The Nation*, 28 January 2016, <http://www.thenation.com/article/privatized-immigrant-prison-deaths/>.

<sup>78</sup> American Civil Liberties Union, Detention Watch Network, & National Immigrant Justice Center, *Fatal Neglect: How ICE Ignores Deaths in Detention*, February 2016.

<sup>79</sup> Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, *New York Times*, 9 January 2010, [http://www.nytimes.com/2010/01/10/us/10detain.html?\\_r=0](http://www.nytimes.com/2010/01/10/us/10detain.html?_r=0).

<sup>80</sup> American Civil Liberties Union, Detention Watch Network, & National Immigrant Justice Center, *Fatal Neglect: How ICE Ignores Deaths in Detention*, February 2016.

<sup>81</sup> Seth Freed Wessler, ‘This Man Will Almost Certainly Die’, *The Nation*, 28 January 2016, <http://www.thenation.com/article/privatized-immigrant-prison-deaths/>.

<sup>82</sup> Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, *New York Times*, 9 January 2010, [http://www.nytimes.com/2010/01/10/us/10detain.html?\\_r=0](http://www.nytimes.com/2010/01/10/us/10detain.html?_r=0); Seth Freed Wessler, ‘This Man Will Almost Certainly Die’, *The Nation*, 28 January 2016, <http://www.thenation.com/article/privatized-immigrant-prison-deaths/>.

<sup>83</sup> Seth Freed Wessler, ‘This Man Will Almost Certainly Die’, *The Nation*, 28 January 2016, <http://www.thenation.com/article/privatized-immigrant-prison-deaths/>.

<sup>84</sup> An exhaustive analysis of the U.S. detention system on a single night, 22 September 2012, concluded that 67 percent of detainees were held in facilities that were owned or operated by private prison corporations, and 90 percent of the beds in the 21 largest detention facilities were administered by private prison operators. Donald Kerwin, “Piecing Together the U.S. Immigrant Detention Puzzle One Night at a Time: An Analysis of All Persons in DHS-ICE Custody on September 22, 2012,” *Journal on Migration and Human Security* 4 (2015): 330-376.

<sup>85</sup> Bethany Carson & Eleana Diaz, *Grassroots Leadership, Payoff: How Congress Ensures Private Prison Profit with an Immigrant Detention Quota*, April 2015, <http://grassrootsleadership.org/reports/payoff-how-congress-ensures-private-prison-profit-immigrant-detention-quota>.

detention facilities held 23,000 individuals as of June 2015.<sup>86</sup> Further, as of 2015, for-profit prison corporations administered nine of the country's 10 largest immigrant detention centres.<sup>87</sup> In this way, the U.S. detention infrastructure is strikingly similar to that of [Australia](#) and the [United Kingdom](#), two other English-language countries whose large-scale immigration detention centre operations are completely or nearly completely privatized.

Numerous concerns relating to the private management or ownership of immigration detention facilities have been raised in various venues. In July 2015, for instance, dozens of members of Congress signed an open letter to ICE protesting against the expansion of Adelanto detention facility, which is owned by for-profit company Geo Group, in light of allegations of medical negligence.<sup>88</sup> It was reported that in November 2015, hundreds of detainees at the Adelanto facility began a hunger strike to protest detention conditions at the centre.<sup>89</sup>

These reports follow on years of criticisms of Geo Group and other major operators, like the Corrections Corporation of America (CCA), which ran the country's first immigration detention centre, opened in the early 1980s in response to perceived needs to quickly ramp up detention capacity because of growing numbers of asylum seekers and migrants from the Caribbean.<sup>90</sup>

CCA has been repeatedly criticized for issues such as inadequate staffing, poor conditions, high turnover of employees, and falsifying business records.<sup>91</sup> In 2006, federal investigators reported that conditions at one CCA centre were so inadequate that "detainee welfare is in jeopardy."<sup>92</sup>

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<sup>86</sup> Seth Freed Wessler, 'This Man Will Almost Certainly Die', *The Nation*, 28 January 2016, <http://www.thenation.com/article/privatized-immigrant-prison-deaths/>.

<sup>87</sup> U.S. Conference of Catholic Bishops & The Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System*, 2015.

<sup>88</sup> Congressional Letter to ICE about Adelanto Conditions, 14 July 2015, <https://www.documentcloud.org/documents/2165708-adelanto-letter.html>.

<sup>89</sup> Kate Linthicum, *Hundreds Launch Hunger Strike at Immigrant Detention Center in Adelanto, Calif.*, *Los Angeles Times*, 6 November 2015, <http://www.latimes.com/local/lanow/la-me-ln-immigrant-hunger-strike-20151106-story.html>.

<sup>90</sup> T. Don Hutto cofounded with Tom Beasley and Robert Crants the Corrections Corporation of America (CCA) in 1983. In 1984, CCA opened the country's first privately run detention centre using a former hotel called the Olympic Motel. This temporary facility, which according to CCA was opened at the behest of INS, was replaced soon thereafter by the Houston Processing Center, "CCA's first design, build and manage contract from the U.S. Department of Justice for the Bureau of Immigration and Customs Enforcement (formerly the Immigration and Naturalization Service) in Texas" (CCA website, "A Quarter Century of Service to America").

<sup>91</sup> Wil S. Hylton, *The Shame of America's Family Detention Camps*, *New York Times*, 4 February 2015, <http://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html>; Scott Cohn, *Private Prison Industry Grows Despite Critics*, *NBC News*, 18 October 2011, [http://www.nbcnews.com/id/44936562/ns/business-cnbc\\_tv/t/private-prison-industry-grows-despite-critics/#.VwoZU2Mp1UQ](http://www.nbcnews.com/id/44936562/ns/business-cnbc_tv/t/private-prison-industry-grows-despite-critics/#.VwoZU2Mp1UQ).

<sup>92</sup> Wil S. Hylton, *The Shame of America's Family Detention Camps*, *New York Times*, 4 February 2015, <http://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html>.

For its part, the Geo Group, which operates 64 immigration detention facilities and prisons with 74,861 beds in the United States,<sup>93</sup> has been criticized for increasing its profits by lowering worker wages, reducing inmate access to healthcare, and ignoring safety and sanitation in its detention centres.<sup>94</sup>

Private prison companies are far from being the only benefactors in the outsourcing of services to immigration detainees. Some scholars have attempted to uncover the “micro-economies” of detention facilities, detailing the large variety of services provided by private companies and the potential impact these could have on policy-making.<sup>95</sup>

In 2012, the [Global Detention Project surveyed the websites](#) of hundreds of prisons and dedicated facilities used to hold immigration detainees to find details about which services are outsourced at these facilities. Based solely on this review of online information, the GDP was able to determine that of the hundreds of facilities that have been used in recent years to hold immigration detainees, no less than 83 explicitly mention on their websites some form of outsourcing.<sup>96</sup> In addition, of the two dozen dedicated immigration facilities, all but one report outsourcing services to private contractors. Private companies offer a range of services at detention sites, including food services, security, healthcare, among a host of other services.<sup>97</sup>

**Detention at the border.** The agency responsible for controlling the U.S. border and ports of entry is Customs and Border Protection (CBP), which is part of the Department of Homeland Security. The CBP apprehends hundreds of thousands of people annually at the southern border, most of whom are only briefly held before being deported through “expedited removal” or other summary procedures.

While there are no statutes or regulations specifically governing these CBP short-term facilities, CBP has issued internal guidance on standards for them.<sup>98</sup> Holding cells are not required to contain beds, but detainees should be provided with meals and drinking water,

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<sup>93</sup> The GEO Group, Inc., Locations, 2014, <http://www.geogroup.com/locations>.

<sup>94</sup> Jeff Ostrowski, Dogged by Complaints, Prison Operate GEO Group Keeps Growing, Palm Beach Post, 25 August 2012, <http://www.palmbeachpost.com/news/news/dogged-by-complaints-prison-operator-geo-group-kee/nRHZ8/>.

<sup>95</sup> D. Conlon & N. Hiemstra, Examining the Everyday Micro-Economies of Migrant Detention in the United States, *Geographica Helvetica* 69(5), 2014.

<sup>96</sup> Global Detention Project, A Survey of Private Contractor Involvement in U.S. Facilities Used to Confine People for Immigration-related Reasons, Global Detention Project Special Report, 9 July 2012, <http://www.globaldetentionproject.org/publications/survey-private-contractor-involvement-us-facilities-used-confine-people-immigration>.

<sup>97</sup> Global Detention Project, A Survey of Private Contractor Involvement in U.S. Facilities Used to Confine People for Immigration-related Reasons, Global Detention Project Special Report, 9 July 2012, <http://www.globaldetentionproject.org/publications/survey-private-contractor-involvement-us-facilities-used-confine-people-immigration>.

<sup>98</sup> American Immigration Council, Way Too Long: Prolonged Detention in Border Patrol Holding Cells, Government Records Show, 10 June 2015, <http://www.immigrationpolicy.org/just-facts/way-too-long-prolonged-detention-border-patrol-holding-cells-government-records-show>.

access to bathrooms, and necessary medical treatment.<sup>99</sup> A 2008 CBP memorandum provides that detainees “should not be held for more than 12 hours.”<sup>100</sup> However, CBP guidance appears to contradict this memorandum by providing that agents will make reasonable efforts to provide a shower to detainees held for longer than 72 hours.<sup>101</sup>

Despite CBP guidance, there have been reports of poor conditions at short-term detention facilities along the border. Former detainees describe extremely cold temperatures, being forced to sit and sleep on concrete surfaces for multiple days, receiving little or no access to food or water, being denied adequate medical care, and being denied communication with legal counsel or consulates.<sup>102</sup>

**Offshore detention, anti-smuggling, and “alien interdiction.”** Since the summer of 2014, when tens of thousands of children began arriving on the U.S. southern border fleeing Central American countries, there have been numerous reports about pressure and assistance from the United States to detain migrants abroad, particularly in Mexico.<sup>103</sup> In January 2016, the Mexican human rights group Centro de Derechos Humanos Fray Matias, which assists migrants and asylum seekers crossing Mexico’s southern border with Guatemala, denounced the presence of U.S. immigration officers working inside detention facilities in Mexico.<sup>104</sup> In February 2016, a coalition of Mexican and U.S. NGOs filed a lawsuit in the United States seeking details about U.S. financial aid to Mexico’s Instituto Nacional de Migración.<sup>105</sup>

U.S. efforts at extraterritorial immigration control date back many decades and have been influential in the development of similar practices in other countries, including most notably Australia, whose controversial “Pacific Solution” appears to have been inspired in part by

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<sup>99</sup> American Immigration Council, Way Too Long: Prolonged Detention in Border Patrol Holding Cells, Government Records Show, 10 June 2015, <http://www.immigrationpolicy.org/just-facts/way-too-long-prolonged-detention-border-patrol-holding-cells-government-records-show>.

<sup>100</sup> American Immigration Council, Way Too Long: Prolonged Detention in Border Patrol Holding Cells, Government Records Show, 10 June 2015, <http://www.immigrationpolicy.org/just-facts/way-too-long-prolonged-detention-border-patrol-holding-cells-government-records-show>.

<sup>101</sup> American Immigration Council, Way Too Long: Prolonged Detention in Border Patrol Holding Cells, Government Records Show, 10 June 2015, <http://www.immigrationpolicy.org/just-facts/way-too-long-prolonged-detention-border-patrol-holding-cells-government-records-show>.

<sup>102</sup> American Immigration Council, Way Too Long: Prolonged Detention in Border Patrol Holding Cells, Government Records Show, 10 June 2015, <http://www.immigrationpolicy.org/just-facts/way-too-long-prolonged-detention-border-patrol-holding-cells-government-records-show>.

<sup>103</sup> There have been concerns about possible recent U.S. involvement in other countries, including Costa Rica. See, for instance, Zach Dyer, “Deporting 600 migrants back to Africa could be expensive, and impossible,” Tico Times, 25 April 2016, <http://www.ticotimes.net/2016/04/25/costa-rica-to-deport-600-african-migrants>.

<sup>104</sup> CDH Fray Matias, “Privacion Indefinida De Libertad Y Violaciones De Derechos, Persisten En El Centro De Detencion Para Migrantes De Tapachula, Ante La Mirada Y Colaboracion De Funcionarios Estadounidenses,” 20 January 2016, [http://cdhfraymatias.org/sitio/wp-content/uploads/2016/01/COMUNICADO\\_0116.pdf](http://cdhfraymatias.org/sitio/wp-content/uploads/2016/01/COMUNICADO_0116.pdf).

<sup>105</sup> Nina Lakhani, “Human rights groups sue US over immigration payments to Mexico,” The Guardian, 12 February 2016, <http://www.theguardian.com/us-news/2016/feb/12/human-rights-group-sue-immigration-mexico>.



U.S. Caribbean interdiction practices.<sup>106</sup> In the early 1980s, President Ronald Reagan, responding to significant increases in Cubans and Haitians fleeing their countries, issued a “presidential proclamation” in which he “suspended” the “entry of undocumented aliens from the high seas” because it had become “detrimental to the interests of the United States.” He subsequently ordered the Coast Guard to board foreign vessels in international waters to determine whether passengers had documentation to enter the country.<sup>107</sup>

In the early 1990s, renewed migration and refugee flows from Haiti and Cuba spurred the United States to seek assistance from other countries to accommodate intercepted Haitians, including Jamaica, the Bahamas, the Dominican Republic, Belize, Venezuela, Honduras, and Suriname.<sup>108</sup> By early 1990s, the United States had access to a network of offshore “processing” facilities that extended from the Bahamas to Panama.<sup>109</sup> This period also saw the opening of the migrant facility in Guantanamo Bay, Cuba.<sup>110</sup>

A number of high-profile cases of “alien smuggling” in the early 1990s also led to offshore control strategies. In June 1993, President Bill Clinton issued Presidential Decision Directive-9 (PDD-9), which directed several government agencies to “take the necessary measures to preempt, interdict, and deter alien smuggling in the U.S. ... to interdict and hold smuggled aliens as far as possible from the U.S. border and to repatriate them when appropriate.”<sup>111</sup>

Various elements of this directive later became part of an INS-led initiative called “Operation Global Reach.” Global Reach, launched in 1997, entailed an unprecedented expansion of U.S. anti-smuggling and migrant interception activities. According to a 2001 Justice Department fact sheet, Global Reach was a “strategy of combating illegal immigration through emphasis on overseas deterrence.” The INS established “40 overseas offices with 150 U.S. positions to provide a permanent presence of immigration officers overseas,” “trained more than 45,000 host-country officials and airline personnel in fraudulent document detection,” and completed “special operations to test various illegal migrant deterrence methods in source and transit countries.”<sup>112</sup>

A key geographical focus of Global Reach was Latin America. In 1996, the INS District Office in Mexico City began a series of intelligence and anti-smuggling operations called

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<sup>106</sup> Australian Parliament, Bills Digest No. 62 2001-02: Border Protection (Validation and Enforcement Powers) Bill 2001, Parliamentary Library, Parliament of Australia, 2001.

<sup>107</sup> Ronald Reagan, Presidential Proclamation No. 4865, 29 September 1981.

<sup>108</sup> Christopher Mitchell, *The Political Costs of State Power*, in *The Wall Around the West*, Andreas, Peter, & Timothy Snyder, editors, Rowman & Littlefield: 2000, p. 88.

<sup>109</sup> Tara Magner, *A Less Than ‘Pacific’ Solution for Asylum Seekers in Australia*, 16 *Int’l J. of Refugee Law* 1, (2004).

<sup>110</sup> Congressional Research Service, *Cuban Migration to the United States: Policy and Trends*, CRS. 2, June 2009.

<sup>111</sup> William J. Clinton, *Alien Smuggling*, Presidential Decision Directive-9, 18 June 1993.

<sup>112</sup> U.S. Department of Justice, *INS ‘Global Reach’ Initiative Counters Rise of International Migrant Smuggling*, INS Press Release, 27 June 2001.

“Operation Disrupt,” which targeted migration and smuggling activities in the Dominican Republic, Costa Rica, Ecuador, Honduras, and Canada.<sup>113</sup> In 1997, after Disrupt activities became a part of the overall Global Reach initiative, the INS significantly broadened the scope of its offshore prevention strategies, undertaking annual multilateral interception operations with law enforcement personnel from dozens of Latin American countries. According to activists in these countries, during the operations, INS (and now DHS) agents accompanied local authorities to restaurants, hotels, border crossings, checkpoints, and airports to help identify and apprehend suspicious travelers.

In a series of yearly press statements in the late 1990s and early 2000s, the agency announced the results of each operation. In 2000, for example, the INS declared that year’s Disrupt operation, “Forerunner,” to be the “largest anti-smuggling operation ever conducted in the Western Hemisphere.” Involving agents from six Latin America countries, the operation nabbed 3,500 migrants and 38 smugglers.<sup>114</sup>

Forerunner was followed in 2001 by “Crossroads International,” which the INS again described as the “largest multinational anti-smuggling operation ever conducted in the Western Hemisphere,” this one resulting in the arrest of 75 smugglers and the interdiction of some 8,000 migrants from 39 countries. “The wide-ranging anti-smuggling operation was directed by the INS Mexico City District Office and involved . . . law enforcement officers in Columbia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Panama, and Peru,” said a press statement.<sup>115</sup>

Officials in countries participating in the U.S.-led anti-smuggling operations often received U.S. budgetary assistance to help detain and deport migrants. In 2000, the U.S. Catholic Conference of Bishops (USCCB), which had sent a delegation to Central America to study regional migration issues, issued a scathing press release decrying U.S. interdiction activities in the region as well as efforts by the United States to pay countries in the region to detain and deport unwanted third-country nationals.<sup>116</sup>

In another case, this one from 2001, a group of migrants from India who had paid thousands of dollars to be smuggled to the United States, were arrested in Mexico along with dozens of his compatriots as they approached the U.S. border.<sup>117</sup> Under pressure from the United States, Mexico deported the migrants to Guatemala, where they were placed in a squalid detention centre that received funding through the U.S. Embassy.<sup>118</sup> An

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<sup>113</sup> George Regan, Combating Illegal Immigration: A Progress Report, Testimony before the U.S. House Committee on the Judiciary, Subcommittee on Immigration and Claims, 23 April 1997.

<sup>114</sup> U.S. Department of Justice, INS and Central American Governments Disrupt Alien Smuggling Operations, INS Press Release, 17 October 2000.

<sup>115</sup> U.S. Department of Justice, Largest Multinational Alien Smuggling Operation Results in 7,898 Arrests in Latin America and Caribbean, International Cooperation of 14 Nations Called Key to Success, INS Press Release, 27 June 2001.

<sup>116</sup> U.S. Conference of Catholic Bishops, Statement on Visit to Central American Nations of Guatemala, El Salvador, Honduras, 10 November 2000.

<sup>117</sup> Miami Herald, Illegal Migrants Languish in Guatemala, 26 December 2011.

<sup>118</sup> Michael Flynn, Donde Esta La Frontera?, Bulletin of the Atomic Scientists, July/August 2002.

investigative report published at the time established that there were two detention facilities in Guatemala City that had received funding through the U.S. Embassy in Guatemala City in direct response to a request from Guatemalan authorities, who complained that anti-smuggling operations were overwhelming their capacities.<sup>119</sup>

One of the most important elements in U.S. extraterritorial efforts has been the Coast Guard, whose “national security” mandate was expanded beyond the Caribbean in the early 1990s.<sup>120</sup> Much of the Coast Guard’s efforts since then have focused on the Pacific coast of the Americas, which in the mid-2000s experienced increases in the number of Chinese and Ecuadorean smuggling vessels. Interdicted migrants have been sent to detention facilities in Guatemala City as well as one in the southern Mexican border town of Tapachula,<sup>121</sup> the same facility at which U.S. immigration officers are alleged to be present according to the 2016 release issued by the Mexican human rights group Centro de Derechos Humanos Fray Matias.<sup>122</sup>

Coast Guard interdiction efforts peaked in the mid-2000s, with interdiction numbers reaching some 10,000 per year during 2004-2005. The numbers tailed off during the final years of the Bush presidency, a trend that continued after the election of President Barack Obama. In 2011, the Coast Guard reported interdicting 2,474 migrants, followed by 2,955 in 2012, and 2,094 in 2013.<sup>123</sup>

The Obama administration has pursued other extraterritorial strategies, including promoting detention practices in other neighbouring countries in addition to Mexico. In September 2010, for example, the U.S. Embassy in the [Bahamas](#) reported that United States Northern Command co-sponsored with the embassy a tour of the Krome immigration detention centre in Florida by members of the Royal Bahamas Defence Force Commando Squadron in order “to discuss best practices in immigration facility detention management.”<sup>124</sup>

## DETENTION INFRASTRUCTURE

As the pressures to detain and remove increasingly larger numbers of non-citizens have mounted since the 1980s, U.S. immigration officials have repeatedly expanded the country’s overall detention capacity as well as the range of facilities used to keep people in

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<sup>119</sup> Michael Flynn, *Donde Esta La Frontera?*, Bulletin of the Atomic Scientists, July/August 2002.

<sup>120</sup> Anthony S. Tangemon, Testimony before the Subcommittee on Immigration and Claims, U.S. House of Representatives, 18 May 1999.

<sup>121</sup> Michael Flynn, *Donde Esta La Frontera?*, Bulletin of the Atomic Scientists, July/August 2002.

<sup>122</sup> CDH Fray Matias, “Privacion Indefinida De Libertad Y Violaciones De Derechos, Persisten En El Centro De Detencion Para Migrantes De Tapachula, Ante La Mirada Y Colaboracion De Funcionarios Estadounidenses,” 20 January 2016, [http://cdhfraymatias.org/sitio/wp-content/uploads/2016/01/COMUNICADO\\_0116.pdf](http://cdhfraymatias.org/sitio/wp-content/uploads/2016/01/COMUNICADO_0116.pdf).

<sup>123</sup> U.S. Coast Guard, Alien Migrant Interdiction, <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/currentstats.asp>.

<sup>124</sup> U.S. Embassy Nassau, Royal Bahamas Defence Force Officers Participate in Tour of Florida’s Primary Immigration Detention Center, Press Release, 11 September 2010.

detention. They have employed bed space in federal prisons, local jails, privately-run detention centres, juvenile detention centres, and family “residential” facilities, among other facilities. ICE and CBP also frequently use a large number of shorter-term holding facilities, including field offices and border facilities, to confine people for periods of time that exceed operating guidelines.

By the end of FY 2007, there were 961 sites either directly owned by or under contract with the federal government to confine or accommodate people for immigration-related reasons, according to ICE, even though the vast majority of these facilities do not appear to have been used during that fiscal year (see November 2007 “[Facility List](#)”).<sup>125</sup> According to [a separate list of sites](#) provided by ICE as part of a 2013 freedom of information request, during the three-year period 2010-2012, nearly 460 facilities were used to detain people for periods of more than two days.<sup>126</sup>

In the late 2000s, the Obama administration initiated reforms of ICE detention operations, which included recommendations provided in a ground breaking study published by ICE in 2009 titled “[Immigration Detention: Overview and Recommendations](#).” The report concluded, “With only a few exceptions, the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pre-trial and sentenced felons”<sup>127</sup> By 2015, the range of facilities had been dramatically reduced, with less than 200 facilities apparently in use at any given time and the use of some types phased out. Nevertheless, recent reports indicate that most immigration detainees continue to be held in jails or in prison-like facilities.<sup>128</sup>

As of 13 April 2016, ICE’s “[Detention Facility Locator](#)” website identified only 78 detention sites.<sup>129</sup> However, according to one expert who reviewed this profile before publication, this figure seems exceedingly low and not truly indicative of the number of facilities in use in the country at any given moment.<sup>130</sup> The reviewer pointed to a study showing that on

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<sup>125</sup> Immigration and Customs Enforcement (ICE) Freedom of Information Act Office (Catrina M. Pavlik-Kenan), Letter to Michael Flynn (Global Detention Project), 7 November 2007, [http://www.globaldetentionproject.org/sites/default/files/fileadmin/docs/US\\_Department\\_of\\_Homeland\\_Security\\_2007\\_1\\_.pdf](http://www.globaldetentionproject.org/sites/default/files/fileadmin/docs/US_Department_of_Homeland_Security_2007_1_.pdf).

<sup>126</sup> Immigration and Customs Enforcement, ERO Custody Management Division, “FY2010/2012 Count of Detainees un ICE Facilities with a Facility Length of Stay Over 2Days,” [http://www.globaldetentionproject.org/sites/default/files/foia\\_13-31381\\_fy10-fy12.xlsx](http://www.globaldetentionproject.org/sites/default/files/foia_13-31381_fy10-fy12.xlsx).

<sup>127</sup> Dora Schriro (Immigration and Customs Enforcement), Immigration Detention: Overview and Recommendations, October 2009, <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

<sup>128</sup> U.S. Conference of Catholic Bishops & The Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System*, 2015.

<sup>129</sup> U.S. Immigration and Customs Enforcement, Detention Facility Locator, last accessed on 13 April 2016.

<sup>130</sup> Donald Kerwin (Center for Migration Studies), email to Michael Flynn (Global Detention Project), 20 April 2016: “They definitely use more than 78 facilities. Perhaps these 78 always have somebody in them or (by contract) are required to always have somebody in them. ... On September 22, 2012, ICE held detainees in 189 facilities. That, we do know.” Donald Kerwin, “Piecing Together the U.S. Immigrant Detention Puzzle One Night at a Time: An Analysis of All Persons in DHS-ICE Custody on September 22, 2012,” *Journal on Migration and Human Security* 4 (2015): 330-376.

one day in September 2012, ICE had immigration detainees in no less than 189 facilities.<sup>131</sup>

Previously, DHS annual spending bills mandated that ICE “maintain a level of not less than 34,000 detention beds” at any given time.<sup>132</sup> This quota was decreased to 30,539 for FY 2015.<sup>133</sup> In March 2016, a group of 56 members of the House of Representatives submitted a letter to the Subcommittee on Homeland Security calling for an end to the detention bed quota, stating that “[r]emoving the mandate language from the appropriations bill would bring ICE in line with the best practices of law enforcement agencies.”<sup>134</sup>

**“Family reception.”** Since the arrival of tens of thousands of children from Central America beginning in mid-2014, the country has also expanded its use of family detention, which is euphemistically termed “family reception.” Currently, there are three family detention centres in the United States. The Karnes County Residential Center in Karnes, Texas, is operated by the GEO Group and has 532 beds.<sup>135</sup> The South Texas Family Residential Center in Dilley Texas is operated by CCA and contains 2,400 beds, and the Berks County Family Residential Center in Leesport, Pennsylvania is operated by ICE and has 96 beds.<sup>136</sup> The Berks County centre had its license revoked by the state of Pennsylvania on 21 February 2016, but the centre continued to operate after losing its license.<sup>137</sup>

**ICE and CBP short-term detention facilities.** ICE and CBP have frequently supplemented available detention space by using shorter-term facilities at field offices and border facilities.<sup>138</sup> There are numerous reports of people being held at these facilities for

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<sup>131</sup> Donald Kerwin, “Piecing Together the U.S. Immigrant Detention Puzzle One Night at a Time: An Analysis of All Persons in DHS-ICE Custody on September 22, 2012,” *Journal on Migration and Human Security* 4 (2015): 330-376.

<sup>132</sup> William Selway & Margaret Newkirk, Congress Mandates Private Jail Beds for 34,000 Immigrants, Bloomberg, 24 September 2013, <http://www.bloomberg.com/news/articles/2013-09-24/congress-fuels-private-jails-detaining-34-000-immigrants>.

<sup>133</sup> Esther Yu-His Lee, Homeland Security Head Insists ‘Bed Mandate’ is Not a Quota to Fill Detention Centers, Think Progress, 12 March 2014, <http://thinkprogress.org/immigration/2014/03/12/3391911/jeh-johnson-bed-mandate-quota/>.

<sup>134</sup> The Daily Outrage, Congress Members Weigh in Against Detention Bed Quota, 22 March 2016, Center for Constitutional Rights, <http://www.ccrjustice.org/home/blog/2016/03/22/congress-members-weigh-against-detention-bed-quota>.

<sup>135</sup> National Immigrant Justice Center, Background on Family Detention, January 2015, <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Background%20on%20Family%20Detention.pdf>.

<sup>136</sup> National Immigrant Justice Center, Background on Family Detention, January 2015, <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Background%20on%20Family%20Detention.pdf>.

<sup>137</sup> Immigration Impact, A Visit to Berks Family Detention Center Makes Clear Why They Lost Their License, American Immigration Council, 22 February 2016, <http://immigrationimpact.com/2016/02/22/berks-family-detention-center/>.

<sup>138</sup> Although the use of “subfield” offices for holding people for long periods of time has officially been halted, they previously were the subject of widespread attention when researchers uncovered information about nearly 200 “unlisted and unmarked subfield offices,” some located in commercial spaces and office parks.

extended periods even though they are not equipped with basic amenities and operating guidelines indicate that they are intended to hold people for only very short periods.<sup>139</sup> Despite this fact, short-term facilities are generally not included on official lists or statistics, like ICE's "Detention Facility Locator" website.

In the case of the CBP short-term facilities, internal memos and guidance on standards stipulate that holding cells are not required to contain beds and that detainees "should not be held for more than 12 hours."<sup>140</sup> Nevertheless, many people who have been detained at these facilities have denounced being forced to sit and sleep on concrete surfaces for multiple days, receiving little or no access to food or water, being denied adequate medical care, and being denied communication with legal counsel or consulates.<sup>141</sup>

Despite these complaints, CBP does not facilitate access to information about its border detention facilities. In response to a joint 2013 GDP-Access Info Europe FOIA request asking for basic information about the facilities CBP had used in recent years to hold people for periods of 48 hours or more, [a CBP FOIA officer responded](#), "We conducted a comprehensive search of files within the CBP databases for records that would be responsive to your request. Unfortunately, we were unable to locate or identify any responsive records, based upon the information you provided in your request."<sup>142</sup>

Similarly, ICE has "hold rooms" in field offices that can be used for short-term detention, as they await removal, hearings, medical treatment, or transfer to another facility. ICE's "[2011 Operations Manual ICE Performance-Based National Detention Standards](#)," adopted as part of the Obama administration's detention reforms, stipulate that "an individual may not be confined in a facility's hold room for more than 12 hours." However, according to [information ICE provided](#) as part of a 2013 freedom of information request, among the nearly 460 facilities used during the FY2010-2012 period to detain people for more than two days were some 60 sites that were coded as "hold" rooms.<sup>143</sup>

**Detention centre conditions and non-mandatory guidelines.** Numerous reports from journalists, NGOs, international watchdogs, and official oversight bodies have raised concerns about the conditions of detention in the United States.

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See Jacqueline Stevens, "Americas Secret ICE Castles," *The Nation*, 16 December 2009, <http://www.thenation.com/article/americas-secret-ice-castles/>.

<sup>139</sup> American Immigration Council, *Way Too Long: Prolonged Detention in Border Patrol Holding Cells, Government Records Show*, 10 June 2015, <http://www.immigrationpolicy.org/just-facts/way-too-long-prolonged-detention-border-patrol-holding-cells-government-records-show>.

<sup>140</sup> American Immigration Council, *Way Too Long: Prolonged Detention in Border Patrol Holding Cells, Government Records Show*, 10 June 2015, <http://www.immigrationpolicy.org/just-facts/way-too-long-prolonged-detention-border-patrol-holding-cells-government-records-show>.

<sup>141</sup> American Immigration Council, *Way Too Long: Prolonged Detention in Border Patrol Holding Cells, Government Records Show*, 10 June 2015, <http://www.immigrationpolicy.org/just-facts/way-too-long-prolonged-detention-border-patrol-holding-cells-government-records-show>.

<sup>142</sup> Martha Terry (CBP FOIA Division), Letter to Lydia Medland (Access Info Europe), 16 August 2013.

<sup>143</sup> Immigration and Customs Enforcement, ERO Custody Management Division, "FY2010/2012 Count of Detainees un ICE Facilities with a Facility Length of Stay Over 2Days," [http://www.globaldetentionproject.org/sites/default/files/foia\\_13-31381\\_fy10-fy12.xlsx](http://www.globaldetentionproject.org/sites/default/files/foia_13-31381_fy10-fy12.xlsx).

ICE's 2009 report "[Immigration Detention: Overview and Recommendations](#)" found that in addition to the fact that most migrant detainees are kept in inappropriately carceral environments they also often suffer physical and sexual abuse, lack of access to adequate medical care, and inadequate nutrition and exercise.<sup>144</sup>

Also in 2009, Amnesty International documented several serious issues in relation to immigration detention conditions in the United States and found that the conditions of detention did not meet either international human rights standards or ICE guidelines. These included the comingling of immigration detainees with individuals convicted of criminal offenses and the inappropriate and excessive use of restraints.<sup>145</sup>

In 2010, an Inter-American Commission on Human Rights (IACHR) report expressed concern due to a variety of issues, including a lack of amenities, inadequacies in healthcare, complaints about the quality and quantity of food and water, lack of telephone access, the frequent transfer of migrants to remote locations, lack of oversight and inspection of conditions, and the fact that a large amount of detention centres rank as "deficient" based on ICE's standards.<sup>146</sup>

A 2015 report by the U.S. Commission on Civil Rights concluded that immigrant detainees were subject to "torture-like conditions" and in some instances faced threats and violence from guards.<sup>147</sup>

The Center for Migration Studies and the U.S. Conference of Catholic Bishops, in their joint 2015 report, described severely poor conditions in detention centres, including reports that women detainees often face sexual abuse, that government officials have pressured detainees to abandon legal claims, and that visitors have been confronted with arbitrary and cruel visitation policies. In addition, they found that many detention centres provide limited access to outside groups, with some reportedly barring groups that have expressed concerns about conditions or abuse.<sup>148</sup>

Some observers have argued that part of the challenge in improving conditions in the U.S. immigration detention infrastructure is that detention guidelines are not mandatory. The guidelines were introduced in 2000 by immigration authorities and provide detailed non-binding standards for facilities holding immigration detainees, including issues such as

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<sup>144</sup> Dora Schriro (Immigration and Customs Enforcement, "Immigration Detention: Overview and Recommendations," October 2009, <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>; Detention Watch Network, Expose & Close Report – Executive Summary, November 2012, <https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Executive%20Summary.pdf>.

<sup>145</sup> Amnesty International, USA: Jailed Without Justice, 25 March 2009, <http://www.amnestyusa.org/research/reports/usa-jailed-without-justice?page=show>.

<sup>146</sup> Inter- American Commission on Human Rights, Report on Immigration in the United States: Detention and Due Process, OEA/Ser.L/V/II.

<sup>147</sup> U.S. Commission on Civil Rights, With Liberty and Justice for All: The State of Civil Right at Immigration Detention Facilities, September 2015, [http://www.usccr.gov/OIG/Statutory\\_Enforcement\\_Report2015.pdf](http://www.usccr.gov/OIG/Statutory_Enforcement_Report2015.pdf).

<sup>148</sup> Migration and Refugee Services/U.S. Conference of Catholic Bishops & The Center for Migration Studies, Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System, 2015.

access to attorneys and conditions of detention. In 2008, ICE announced the publication of 41 new performance-based detention standards, which were to be fully implemented by January 2010. These performance-based standards were also not legally binding.<sup>149</sup> Thus, organisations running detention facilities cannot be sued merely for failure to strictly adhere to the standards.<sup>150</sup>

The lack of non-mandatory guidelines also has the potential to impact specific groups of detainees, such as transgender women. For example, guidelines released in June 2015 meant to provide increased protection to transgender immigrants provided that transgender detainees “shall be treated as a protective custody detainee for the duration of the intake process” and that decisions about how to hold the detainee should consider where the person would feel safest.<sup>151</sup> However, Human Rights Watch has argued that these guidelines are not routinely followed, leaving transgender women open to sexual assault, harassment by male detainees and guards, extended placement in solitary confinement, and inadequate access to necessary medical treatments.<sup>152</sup>

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<sup>149</sup> Amnesty International, USA: Jailed Without Justice, 25 March 2009, <http://www.amnestyusa.org/research/reports/usa-jailed-without-justice?page=show>.

<sup>150</sup> Global Detention Project, Immigration Detention and the Law: U.S. Policy and Legal Framework, August 2010, <http://www.globaldetentionproject.org/content/immigration-detention-and-law-us-policy-and-legal-framework-0>.

<sup>151</sup> Maria L. La Ganga, Transgender Detainees at High Risk of Assault in US Immigration Facilities, The Guardian, 23 March 2016, <http://www.theguardian.com/us-news/2016/mar/23/transgender-detainees-sexual-assault-ice-custody>.

<sup>152</sup> Brian Stauffer, “Do You See How Much I’m Suffering Here?”, Human Rights Watch, 23 March 2016, <https://www.hrw.org/report/2016/03/23/do-you-see-how-much-im-suffering-here/abuse-against-transgender-women-us>.