

Fact Sheet: Immigration Detention

The Episcopal Church has longstanding General Convention policy advocating for humane and dignified alternatives to detaining immigrants, acknowledging that the current system of immigrant detention denies asylum seekers and other immigrants due process and holds them for months in often unsafe, unsanitary, and inhumane conditions.¹ Across the country, Episcopal clergy and laypersons are involved in detention visitation ministries, and are active in local and national advocacy and detention abolition movements. This fact sheet focuses on the detention of adults, and was created in partnership with many of these clergy and laypersons who are members of EMM's Detention Ministry Network.

WHY ARE IMMIGRANTS DETAINED?²

Immigrants are detained for various reasons, primarily by two federal agencies: ICE and CBP. It is important to understand that immigrants who are detained are not criminals; if they had been charged with the federal crime of improper entry by alien, they would be in federal prison. As of March 2020, 61.2 percent of ICE detainees had never had a criminal conviction, even of a minor offense. Among those who did have criminal convictions, only 10 percent had a serious criminal conviction. So, why are immigrants detained?

Immigrants may be detained by ICE, which is charged with interior enforcement, or CBP, which is charged with enforcement along and within 100 miles of U.S. land and coastal borders, for reasons such as:

- They presented themselves for inspection at the U.S. border or at an airport, including those requesting asylum:
 - Border Patrol can let them enter the country or transfer them to an ICE detention facility.
 - If detained, the only option for early release (i.e., before case is decided) is parole.
- They were detained inside the U.S. soon after crossing border illegally:
 - ICE can let them enter the country or transfer them to an ICE detention facility.
 - If detained, the only option for early release is bond.
- They were detained inside the U.S. months or years after crossing the border illegally:
 - Detention is almost certain. The only option for early release is bond.
- They were detained after overstaying a visa.
- They were brought to the U.S. as children and did not have a pathway to legal status.
- They obtained but then somehow lost legal status.

In the interior, everyday events like running a red light, not having a driver's license, or overstaying a visa may lead to an ICE apprehension. Immigrants may be detained during broad-based or targeted raids at work, home, or at school drop-off lanes. ICE detains people based on a presumption that he or she is a "flight risk" or that they pose a public safety threat. Some federal courts have held that the burden of proof that an immigrant is not a flight risk or safety threat falls on the immigrant. However, other federal courts have held that this denies due process; the burden of proof falls to the government. The Supreme Court has not made a final determination on this matter.³

DEFINITIONS

Department of Homeland Security (DHS): Department of the Executive Branch of the U.S. government charged with homeland security: preventing terrorism and managing risks to critical infrastructure; securing and managing the border; enforcing and administering immigration laws; safeguarding and securing cyberspace; and ensuring resilience to disasters.

(U.S.) Immigration and Customs Enforcement

(ICE): The principal investigative arm of DHS, ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration.

Customs & Border Protection

(CBP): An agency of DHS responsible for securing the United States and its territories by preventing the illegal entry of people and goods while facilitating legitimate travel and trade.

Office of Refugee Resettlement

(ORR): Located within the federal Department of Health and Human Services' Administration for Children & Families, ORR provides programs for various immigrant populations, including refugees, asylees, and Special Immigrant Visa holders. ORR is also charged with caring for unaccompanied children. Once children are transferred from CBP at the border, they typically are transferred to ORR within 72 hours for placement in a facility somewhere in the U.S.

HOW MANY IMMIGRANTS ARE IN DETENTION?

The U.S. has the world's largest immigrant detention system. In fiscal year 2019, the U.S. government detained more than 500,000 immigrants in 200 facilities. ICE contracts with local governments and private prison companies like GEO Group Inc. and CoreCivic to operate the majority of these facilities. Private prison companies thus have a substantial profit motive to maintain the current immigration detention system; local governments rely on these contracts for significant portions of their budgets.⁴

WHAT DOES IT COST TAXPAYERS?

Immigration detention is a costly use of taxpayer dollars. It costs more than \$208 per person per day to hold someone in immigrant detention. By contrast, various alternatives to detention programs (ATDs) costs as little as 70 cents to \$17 per person per day. In addition to being more cost-effective, ATDs have proved to be effective at ensuring that immigrants appear in court: immigrants in "full service" ATD programs that feature case management attend their final hearings 95% of the time.⁵

DO PERSONS HELD IN IMMIGRANT DETENTION HAVE DUE PROCESS?

Immigration courts are not criminal courts; individuals in immigration court proceedings do not have the right to an attorney. Because there are not enough immigration attorneys and immigrants often can't afford them, most immigrants in court proceedings lack representation. They must defend themselves in a complicated court system, typically without adequate interpretation and the time or resources to prepare. Sometimes, immigrants are asked by ICE to sign legal documents without explanation, interpretation, or a chance to speak to an attorney.

The ACLU has argued in a number of cases that the indefinite detention of immigrants violates constitutional rights to due process.⁶ In December 2020, the federal district court for the Southern District of New York ruled that ICE "must present detained immigrants before a judge within 10 days of being arrested – the first of its kind requirement in the nation, and intended to curb ICE's unconstitutional malpractice of holding detained immigrants indefinitely, in violation of their Fifth Amendment due process rights.⁷ As stated previously, the Supreme Court has still not ruled on whether the absence of bond hearings and indefinite detention of immigrants violates immigrants' rights to due process.⁸

WHAT ARE CONDITIONS LIKE IN IMMIGRANT DETENTION?

Conditions in immigrant detention are often abysmal, and have grown worse during the COVID-19 pandemic.

- Detainees have restrictions on visits and phone calls; all visits have been halted since the coronavirus pandemic began.
- The detention facilities are often in rural areas, far from detainees' families and any networks of support.
- If persons in detention are able to work, they are paid \$1-\$4/day which can go toward the purchase of food or phone cards. The minimum pay requirement for any ICE facility in the US is \$.08/hour.⁹
- Detainees are placed in solitary confinement for punishment or retaliation for hunger strikes and behaviors associated with mental health issues.
- There is limited medical or mental health care, and widely reported medical abuse and neglect.¹⁰

FURTHER READING & RESOURCES

- Episcopal Migration Ministries: [Immigrant Detention during COVID-19: Resources, Networks, and Organizations to Know](#)
- American Immigration Council Fact Sheet: [Immigration Detention in the United States by Agency](#)
- Freedom for Immigrants: [Detention Statistics](#)
- National Immigrant Justice Center: [Immigration Detention & Enforcement | Policy Brief | 5 Reasons to End Immigrant Detention](#)

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REFERENCES

- 1: Relevant General Convention resolutions include [2018-A178](#), Denounce Inhumane Immigration Policies and Advocate on Behalf of Migrants; [2018-D009](#), Set Forth Christian Principles to Guide Responses to Human Migration; [2018-D029](#), Condemn Prolonged Solitary Confinement as a Form of Torture; [2015-A011](#), Urge Advocacy for Policy Changes to End Mass Incarceration Practices [2012-D059](#), Halt Unjust Immigration Enforcement; and, [2009-B006](#), Advocate for Immigration Reform.
- 2: Episcopal Migration Ministries' webinar, [Immigrant Detention During COVID-19: Prophetic Action & Compassionate Response](#), May 19, 2020.
- 3: Congressional Research Service: [Immigration Detention: A Legal Overview](#), September 16, 2019.
- 4: Detention Watch Network: [Immigration Detention 101](#).
- 5: National Immigration Forum: [The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply](#).
- 6: American Civil Liberties Union (ACLU): [Is It Constitutional to Lock Up Immigrants Indefinitely?](#) March 8, 2018; ACLU of Massachusetts: [The government is denying due process to detained immigrants. We're suing.](#) June 13, 2019.
- 7: Davis Vanguard: [Federal Court Rules Detained Immigrants Must Receive Timely Access to Judges](#), December 2, 2020.
- 8: National Immigration Forum: [Supreme Court Ruling Made Indefinite Immigrant Detention the Law of the Land](#), February 27, 2019.
- 9: Farmville Herald: [Detention Center: an inside look](#), November 27, 2019.
- 10: Los Angeles Times: [19 women allege medical abuse in Georgia immigration detention](#), October 22, 2020.