Why are Noncitizens in Immigration Detention?

Anyone in the US who is not a citizen – even a green card holder – may be deported if convicted of any one of a long list of crimes, or if found to have violated the terms on which he or she was admitted to the country. Deportation proceedings are considered civil, not criminal, and take place in special Immigration Courts. Even though US immigration law is famously complex, and the penalty of deportation can have dire consequences for family and community members left behind, noncitizens are not afforded the protections given to criminal defendants. For example, indigent people in deportation proceedings are not provided with government-appointed legal counsel, nor do they have a right to impartial competency determinations or to be represented by a guardian ad litem if they are unable to understand or participate in deportation hearings.

Just as any noncitizen may be placed in deportation for an immigration violation, any person in deportation proceedings, or who has been ordered deported, may be held in a prison-like detention center until he or she wins an immigration case, or until departure from the US.

Immigration detention was traditionally used sparingly, only for those with the most serious criminal convictions or who posed national security concerns. However, tough immigration laws passed in 1996 made detention mandatory for anyone arriving in the US without valid identification, a visa, or other permission to enter, as well as for persons convicted of any one of a vastly expanded list of crimes. As a result, immigration detainees are today the fastest growing segment of the incarcerated population in the country.

Detention of Asylum-Seekers in the US

US law offers safe haven and legal immigration status to noncitizens who have experienced or are likely to experience persecution, torture, domestic violence, and other treatment that violates human rights.

However, these asylum seekers and torture survivors are particularly likely to find themselves subject to mandatory detention while awaiting resolution of their cases. Any noncitizen stopped with invalid or missing documents while trying to enter the US must be detained according to law.

Asylum seekers very often flee their homes in acute danger, and must travel under assumed or false identification, or even without documentation, to avoid official detection until they reach a country where they hope to find refuge. As a result, in 2002, for example, almost 20% of all asylum seekers experienced detention. Human rights advocates recently estimated that well over 48,000 asylum seekers have been detained in the US since 2003.
Detention Is Not Appropriate for Vulnerable Noncitizens

Immigration detention has **damaging effects on the well-being of individuals who have already been traumatized**. In a landmark 2003 survey, PHR and the Bellevue/NYU Program for Survivors of Torture found that 90% of asylum seekers in detention suffered one or more of the conditions of anxiety, depression, and PTSD, and more than 90% of these individuals reported that detention had substantially contributed to worsening their mental health. Moreover, nearly half of survey respondents reported that their physical health had declined while they were in detention.

In view of its damaging effects on vulnerable people, UN guidance and international law strongly disfavor any detention of asylum seekers.

The immigration detention system features a health care delivery system that is profoundly broken. Between October 2003 and January 2010, a shocking 107 detainees died in immigration detention, many due to documented substandard care or severe neglect of their medical conditions. Respondents in the PHR/Bellevue-NYU study reported that they had “a lot of” or “extreme” difficulty accessing care.

By its own admission, the government’s plan for health care of detainees has historically focused not on maintaining and improving health, but on “mak[ing] sure [detainees] are medically able to travel and medically able to return to their country” — that is, just well enough to be deported.

Alternatives to Detention

Detention is justified only when an asylum seeker is determined, through individualized review, to pose a danger to the community. Otherwise, an individual should be released into an alternative community supervision plan. These programs are highly effective in ensuring that noncitizens attend their immigration hearings.

For example, the Vera Institute of Justice created a pilot program in the late 1990s called the Appearance Assistance Program (AAP), in which immigrants selected by the government were diverted from detention, received help with establishing community ties and finding “sponsors,” and were required to meet regularly with program staff about their rights and duties in the legal process. 93% of formerly detained asylum seekers in AAP appeared for all of their hearings, compared to 78% of a control group who received no special services.

Health Professionals Can Help End the Abuses of Immigration Detention

As a health professional experienced in working with survivors of persecution, you are an authoritative voice on the needs of vulnerable immigrants. There are many ways that you can use your influence to advocate for immigration policies that respect fundamental human rights, including:

- Responding to PHR action alerts and communicating with your elected representatives on emerging issues in immigration and detention policy;
- Taking part in dialogue with other PHR members and US Department of Homeland Security officials in your area about local issues affecting refugees;
- Participating in PHR's research, monitoring, and evaluation of immigrant health and detention conditions; or
- Advising government officials and the nonprofit coalitions with whom PHR works on human rights and health care standards.

Contact Mike Corradini in PHR’s Washington, DC office, at mcorradini@phrusa.org or 202-728-5335 x302, to discuss opportunities to get involved.