Deprived of freedom of movement, uncertain of their future right to live and work in the country we all share, people in immigration detention are among the most powerless individuals in America. Many of the detained are refugees, people with American citizen families and children, green card holders and others with a strong claim to being part of our communities. Our national commitment to transparency, democracy, and respect for human rights demands that we take particular care to treat these detainees with compassion – to show the world that security and humanity need not be at odds.

Unfortunately, people’s most fundamental rights are at risk in the US immigration detention system.

1. **The Right Not To Be Arbitrarily Detained**, based on the US Constitution and International Covenant on Civil and Political Rights (ICCPR): No one should be imprisoned unless they are a danger to the community or likely to flee justice. The right to be free from arbitrary detention is violated by laws that subject certain groups to mandatory detention that no judge can overrule. Current law also allows Immigration and Customs Enforcement (ICE) Officers broad discretion to incarcerate anyone who has been merely accused of being eligible to be deported. Among those who are detained under these laws despite lack of any evidence that they are dangerous or will flee justice are:
   - asylum seekers who request protection upon arrival at our borders, but cannot provide officers with the address of a friend, relative, or other sympathetic person in the US who will take them in upon release;
   - legal immigrants accused, but not yet convicted, of offenses such as possessing prescription medication without a prescription, or shoplifting a loaf of bread;
   - mentally disabled individuals in community treatment programs who have criminal records ten or twenty years in their past, during periods when they were not receiving the care and treatment they needed.

2. **The Right to the Highest Attainable Standard of Health/The Right to Have Health Care Needs Met While Involuntarily Imprisoned**, based on the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the US Constitution: No one should be deliberately denied access to health care, particularly when imprisonment prevents one from independently obtaining it. Unfortunately, the detention system too often fails to provide even the most basic medical attention. Violations of the right to health occur for numerous reasons: understaffing of detention center health units, staff distrust of detainees, an expressed intention by government authorities to provide only enough care to keep detainees healthy enough to be deported, and more.

For example, in 2006, as Francisco Castaneda entered into ICE custody, he discovered a small lesion growing on his penis, for which he promptly requested medical attention from detention authorities. Over the course of the next year, as the lesion grew larger and more painful, and as Francisco developed a lump in his groin and began to have difficulty urinating and even sleeping, no fewer than four health professionals who examined him ordered a biopsy to confirm their suspicions that Francisco suffered from cancer. Despite this, US
Public Health Service officials refused to authorize the biopsy, ruling that it was an “elective” procedure. A biopsy was finally approved after a fifth recommendation, but before it could be performed, Francisco was suddenly released from detention and the US Department of Homeland Security was freed from responsibility for his care. Tragically, it was too late for treatment to save Francisco’s life, and he passed away after several months.

3. The Right to Be Treated With Respect for Dignity, based on the ICCPR and the US Constitution: No detained person should be subjected to cruel or degrading treatment by the government, nor should civil detainees who are held for administrative purposes be punished in detention. Whether or not an individual can be deported is a civil, not criminal, matter. The only defensible reason for detaining someone because of questions about his/her immigration status is to ensure the person’s compliance with the civil immigration court process. Civil matters do not merit the harsh treatment and difficult conditions of confinement typically reserved for criminals. Nonetheless, immigration detainees are most commonly held in the same prisons and jails that house convicted criminals. In more than 200 county, state, and federal lockup facilities that rent space to ICE, tens of thousands of immigrants endure daily humiliations and hardships including:

- being moved into punitive solitary confinement for “offenses” as minor as retrieving and saving a packet of mayonnaise thrown away by a guard, or filing a complaint with facility officials after being provided with blood-stained underwear;
- giving birth while shackled or restrained with chains;
- being forced to wear prison jumpsuits that mis-identify them as criminals;
- spending long days with no distractions other than TVs shared by scores of “inmates” and attempts at conversation with fellow detainees who may not speak the same language;
- frequent geographic isolation from family and friends and visitation periods that may be limited to as little as fifteen minutes at a time; and
- transfers between distant facilities that occur in the middle of the night, with no advance notification to detainees, their attorneys, or their families.

At its outer limits, immigration detention sometimes takes place in conditions that constitute torture. Advocates in Arizona, for example, have documented very recent allegations of mistreatment that include freezing temperatures, crowding in short-term holding cells so severe that detainees had no room to sit or lie down, serious physical and verbal abuse by border patrol and other immigration enforcement officers, and being fed bug-infested food.

4. The Right to Freedom from Persecution and Torture, based on the International Protocol Relating to the Status of Refugees, the International Convention Against Torture, and the Refugee Act of 1980: No individual may be forcibly returned to a country where s/he faces likely persecution or torture.

Our national commitment to ensure the safety and security of refugees fleeing persecution and torture is undercut by policies that make it particularly difficult for asylum seekers to prove their eligibility for protection. Detention laws permit, and even require, many asylum seekers to be incarcerated while their cases are pending. Detention impairs the ability of asylum seekers to prove they were tortured and prosecuted in numerous ways.

Having already survived traumatic experiences, asylum seekers suffer particularly bad and declining mental and physical health in the restrictive and demoralizing setting of detention centers. Far fewer detained asylum seekers find legal representation than do asylum seekers who are released in the community, because not many attorneys are willing or able to travel to remote detention centers. Supporting evidence is difficult or impossible to amass when access to communications and advocates is strictly limited and expensive.

Because asylum cases are complex and can take years to resolve, many detained asylum seekers end up dropping their cases because they cannot endure extended incarceration.

In short, imprisoning asylum seekers unquestionably leads to denial of valid asylum claims, and thus to violation of the right to freedom from persecution via the repatriation of people who are threatened, tortured, and even killed upon their deportation.

What Can We Do?

PHR needs your voice to ensure that critical human rights are honored throughout the immigration detention system. To find out how to support legislation and policies that will help detained immigrants, contact Mike Corradini in PHR’s DC office at 202-728-5335 x. 302, or mcorradini@phrusa.org.