

BRING *the* SKY

The LIRS Detention Visitation Guide



Lutheran Immigration
and Refugee Service



MODULE 2

Realities

The Impact of
the U.S.
Immigration
Detention
System

About LIRS



Lutheran Immigration and Refugee Service

migrant children, and support for migrants at risk of deportation and detention and their families. LIRS advocates for welcome, working with government officials to craft laws and policies that preserve human dignity and guiding churches as they support newcomers through the ups and downs of transition into U.S. society.

With an expertise born of decades of service experience, LIRS works with at-risk migrants, offering critical legal and social support to asylum seekers, torture survivors, and other vulnerable individuals. This expertise, experience, and compassion inform the agency's advocacy for just and humane treatment of those who seek protection, freedom, and opportunity in the United States.

Lutheran Immigration and Refugee Service has been a champion for vulnerable migrants and refugees since 1939. The organization provides resettlement and community integration services for refugees, specialized care for

About *Bring the Sky*



Abdinasir Mohamed, a Somali journalist, was imprisoned and tortured when he stood up to a terrorist organization. Abdinasir escaped and fled to the United States.

But instead of finding welcome, his freedom was taken again. Abdinasir was detained, shackled, and interrogated for 16 hours before being hauled off to a detention cell.

When a visitor asked him if he missed his family, Abdinasir replied, "I miss my family, but I miss the sky more than anything else. Is American sky blue?"

Abdinasir was freed after seven months and was granted asylum. Many others are held for even longer. All share the same intense longing for a glimpse of freedom. By visiting detained migrants, you can bring that glimpse of freedom—you can bring the sky. A 30- or 60-minute visit can refresh a detainee's spirit, revitalize her courage, rekindle his hope.

Bring the Sky: The LIRS Detention Visitation Guide is a series of inspirational and practical resources to help you touch the lives of detained migrants and be touched by the experience. It was developed as part of an ongoing collaboration with the Presbyterian Church (USA) to provide assistance to those affected by immigration detention.

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Introduction¹

Immigrant detention is the fastest-growing, least scrutinized form of incarceration in the United States.² On any given day, the U.S. government incarcerates more than 33,000 immigrants in a vast national network of approximately 250 federal, private, state, and local jails.³

Among the detained population as a whole, the United States detains asylum seekers, refugees, torture survivors, undocumented immigrants, victims of human trafficking, long-term lawful permanent residents, families, and parents of children who are U.S. citizens. Although the government sometimes argues that detention is necessary to keep communities safe from immigrants with criminal histories, more than half of the immigrants detained in 2009 and 2010 had no criminal histories, and among those who did, almost 20 percent had committed only traffic-related offenses.⁴ Only 11 percent of the detainees with felony convictions had committed violent crimes.⁵ Many of the individuals who are detained will remain in detention while their immigration applications are pending before the immigration courts. Some are detained while awaiting removal. For this latter group, detention may be indefinite if the detainee is stateless (e.g., for those from the West Bank and the Gaza Strip) or if their country of origin will not issue travel documents for repatriation.

Though international law recognizes that control over immigration is an essential power of government, it does not give nations unfettered discretion to use arbitrary, prolonged detentions. The United Nations (UN) Working Group on Arbitrary Detention acknowledges “the sovereign right of states to regulate migration,” yet cautions that “immigration detention should gradually be abolished. . . . If there has to be administrative detention, the principle of proportionality requires it to be a last resort.”⁶

With an expertise born of decades of coordinating services for newcomers, Lutheran Immigration and Refugee Service (LIRS) offers critical legal and social support to asylum seekers, torture survivors, and other vulnerable individuals at risk for detention and deportation. LIRS’s expertise, experience, and compassion inform the organization’s advocacy for just, humane treatment of people who seek protection, freedom, or opportunity in the United States, and inspire the call to end the use of unnecessary detention and other overly restrictive enforcement measures.

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What Is Detention?

Immigration detention is the institutional housing of noncitizens in prisonlike conditions throughout the country. The U.S. Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) can detain noncitizens who arrive at U.S. border without proper permission to enter the country, who have previously entered the United States without notifying or asking the U.S. government, or who entered with permission but violate the conditions of their visa. Anyone in or attempting to enter the United States without proper documentation is at risk of being detained and potentially deported.



Following the prison model, individuals in immigration detention have limited movement, are usually required to wear prison uniforms, do not have access to appropriate legal or social services, and are intentionally separated from their families and communities. Individuals in ICE custody often lack proper medical and mental health care, as well as freedom to appropriately practice their faith. Despite the civil nature of immigration violations, ICE utilizes a combination of its own immigrant-specific facilities, federal Bureau of Prisons facilities, privatized prisons, and contracted space within local and state penitentiaries. There are over 250 authorized immigration detention facilities in the United States, housing more than 33,000 individuals on a daily basis.

Since the mid-1990s the use of immigration detention in the United States has grown tremendously. It is the primary tool for immigration enforcement in this country, rather than a last resort. Detention is extremely expensive. It is inhumane and retraumatizes individuals who have suffered persecution and torture, yet it is widely used in every state in America. As of March 2011, there are over 250 authorized detention facilities in the United States where federal authorities can detain immigrants, and the government’s reliance on detention has substantially increased throughout the last five years. From 2006 to 2011, the average number of immigrants in detention on any given day has increased by 45 percent. Why does the United States rely so heavily on detention? Why would we punish those who come to this country in search of freedom and protection? Can we not find ways to enforce U.S. immigration laws and respect the international human rights of migrants?

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Whom Does Immigration Detention Affect?

The impact of immigration detention falls most directly on noncitizens in the United States. It also places a terrible financial and emotional burden on families whose loved ones are detained and takes a toll on communities where friends and neighbors are suddenly ripped from the fabric of daily life.

Perhaps the most overlooked impact is the burden detention places on all taxpayers. Did you know it costs nearly \$120 per day to hold an individual in immigration detention? Did you know that the federal government paid for nearly 400,000 individuals to be detained in the United States in 2010 at a total cost of \$1.7 billion dollars to taxpayers?

People desire to come to the United States for a wide variety of reasons. Some to work, some to play. Some to study, some to tour. Thousands of individuals come to the United States seeking a better life for themselves and their families, and another few thousand enter looking for legal protection and security—to be safe from war and persecution. However, in the United States, no matter the individual motivation for migrating here, noncitizens are subject to arbitrary detention and potential deportation. Those who don’t have citizenship in this country can be deported and banned from coming back for a decade.

What would you do if you were faced with leaving your family and loved ones without knowing when or if you would ever see them again? How would you react if you were faced with being sent back to a country that was unable to protect you from violence based on your religious beliefs or gender?



Debunking Myths and Defining Terms

Immigration is a heated topic in current U.S. political debates and has become a very divisive issue for families and communities. Myth and fact can be hard to distinguish, making the realities difficult to believe. The general public often receives information that is twisted and convoluted. Unfortunately, news stories and articles released by the media and our elected officials do not always tell the truth.

LIRS believes it is important to understand common terminology and facts before entering a discussion about immigration, and we strive to provide unbiased information on the matter. We encourage individuals to do research and be sure to seek input from trustworthy sources. And we create and collect such resources to encourage understanding. Visit www.lirs.org/dignity to access reliable materials that we have created or collected, and read the following overview of terms we often use when talking about immigration:

Two categories of people are legally admitted into the United States and authorized to visit or reside here:

Immigrants are people born outside the United States who have been lawfully admitted and are eligible for permanent residency. Once an immigrant receives a green card, they are referred to as Lawful Permanent Residents (LPRs) or green card holders. They essentially have the same rights and obligations as a U.S. citizen with the exceptions of voting, holding certain public offices, and holding civil service positions with federal agencies. Five years after obtaining a green card, an immigrant may apply to naturalize and become a U.S. citizen. Even if they do not become citizens, immigrants may remain indefinitely in the United States. However, immigrants can be detained or deported for certain offenses, including misdemeanors punishable by one or more years in jail. With or without a green card in hand, immigrants are at-risk of prolonged detention in and deportation from the United States.

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Nonimmigrants are people born outside the United States who have been lawfully admitted for a specific purpose (e.g., work, study, or tourism) for a temporary stay that will end when its purpose has been accomplished. If nonimmigrants overstay their visas beyond the length of time they are permitted or otherwise fall out of status and become undocumented, they can also be detained and potentially deported from the United States.

People come to the United States without proper authorization from immigration officials for many reasons: to visit, pursue a better future, or escape violence in their home countries. Despite this diversity of reasons, all are commonly labeled “undocumented.”

Undocumented migrants are people who enter or are in the United States without authorization from the government or who have overstayed their visa. Because they have no permission to reside in or visit the United States, they will be detained and placed in removal proceedings if they are caught by immigration officials. Removal proceedings, also called deportation proceedings, are a series of immigration court hearings to determine whether the U.S. government can deport a person



from the United States. Undocumented migrants can be detained following home or workplace raids, traffic stops, or any form of contact with law enforcement—even if they are seeking protection or assisting with an investigation. Undocumented individuals do not have many legal options to defend themselves and stay in the United States. And finding an immigration attorney from a detention cell is not easy. As a result, the majority of individuals in detention are deported within several weeks of being apprehended. Some who fight their cases may be eligible for release and allowed to live in the community, but others will stay in detention until their case is decided, which can take months or even years. In 2008 the number of undocumented migrants in the United States was estimated to be 11 million.

Unfortunately, undocumented individuals are at great risk of arbitrary detention based on federal and, in some locations, state and local laws. The term “undocumented” is very broad and possibly confusing. Below are some examples of undocumented individuals that are at risk of detention and deportation in the United States:

- *Victims and witnesses of crimes* who are undocumented may be referred to federal officials and eventually detained for immigration violations. Even individuals who assist law enforcement in criminal investigations can be detained and deported. Advocates are working with the U.S. government to ensure that this population can safely cooperate with police without fear of being turned over to immigration officials. This protection will not only reduce migrants’ fear of being detained, it will clearly benefit public safety.
- *Children and youth* are another vulnerable group. Undocumented children in the United States, whether alone or accompanied by an adult, are detainable and deportable if caught without proper immigration documentation. Often referred to as “DREAMers,”⁷ young people who came to the United States as children and have graduated from U.S. high schools struggle to obtain higher education or employment due to strict immigration policies. Undocumented individuals are ineligible for federal benefits such as financial aid, which inhibits their ability to seek a higher education. Without the legal option to work or attend university, many young people are left hopeless and defeated. Having lived in the United States for the majority of their lives and having the potential to positively contribute to our society in multiple ways, they are also fearful of returning to a country they may not know. Some DREAMers have mobilized to fight for protection from deportation and the right to pursue higher education.
- *Asylum seekers* come to the United States to seek protection from violence or persecution in their home countries, but are commonly detained because they entered without preapproval from the federal government. Refugees have also fled violence or persecution, but differ from asylum seekers

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in that they first enter another country and undergo proper authorization and screening before being invited to come to the United States. Asylum seekers flee their home countries for the same reasons as refugees, but for various reasons, e.g., grave imminent danger or lack of access to international refugee authorities, are unable to wait to receive refugee status before coming to the United States. If caught at the border or found in the United States, asylum seekers are detained indefinitely and often deported.

- *Survivors of torture* who are in the United States without proper immigration status are also detainable in and deportable. Having suffered severe trauma and survived horrific violence, they are among the most vulnerable migrant populations. Though the United States could protect them from further trauma, our current system exacerbates their suffering by automatically detaining them, usually with insufficient access to medical and mental health services.

What Is the Process for Seeking Asylum in the United States?

While some people who arrive at the border are turned away by immigration officials, those who express a fear of returning to their country of origin will be held in detention as “arriving asylum seekers.” They will stay in detention until they pass through a screening process to determine whether their fear is credible. The law requires asylum officers to interview asylum seekers and decide whether or not their fear of returning home is real. In 2010 the government started evaluating all asylum seekers for possible release from detention if they were found to have credible fear. This new policy has significantly reduced the length of detention for many arriving asylum seekers who have credible fear. Those who are unable to prove their identity will be detained for the duration of their asylum hearing, which can take months or years. Proving identity can be a difficult task for people from countries that do not issue official photo identification or whose circumstances did not allow them the leisure of gathering official documents before fleeing for their lives.

Individuals granted refugee status in the United States may enter and resettle here while it is unsafe for them to live in their country of origin. After one year of residence they can apply to adjust their status to Lawful Permanent Resident, or green card holder. As highlighted in a 2009 report by Human Rights Watch, *Jailing Refugees*, those who do not apply for this adjustment after one year or who violate the conditions of their status can be detained as well.

There are two types of asylum applications in the United States. People who are already residing in the country can file an application at an asylum office within a year of their arrival. This is considered an “affirmative application.” An asylum officer will review the application and conduct an extensive interview before deciding to grant or deny asylum. People who request asylum at the border, including at an airport, are making a “defensive application,” which stops the expedited removal process (i.e., fast-track deportation). While the initial screening interview is conducted by an asylum officer, the full application will

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be reviewed through the immigration courts by a judge if the applicant passes the initial screening interview. This is a more adversarial process because DHS is represented by a trial attorney who can cross-examine the applicant in court. Most people who undergo the affirmative process do not spend time in detention. However, most people who start a defensive claim will spend time in detention. In 2010, the government instituted a new policy to parole arriving asylum seekers who pass their credible fear interviews. The parole policy has successfully reduced the amount of time that some arriving asylum seekers spend in detention.

Many persons seeking protection in the United States are legally eligible to be released from detention; however, ICE rarely grants parole requests, and counter to international human rights law and U.S. criminal justice law, the burden rests on the individual to initiate and prove their eligibility for release rather than on the government to prove why a restriction of liberty is necessary. Individuals are detained while their case is pending in the immigration court system, and the period of detention can be prolonged for months and even years after relief has been granted. Despite the significant financial burden on the U.S. government and negative impact on U.S. communities, this country's reliance on detention continues to increase rapidly. In addition, many U.S. residents are uninformed and unaware of the realities of immigration detention.

What Is the Process for Deporting Someone from the United States?

People who encounter immigration officials at the U.S. border, including airports or checkpoints, and do not have documents showing authorization to enter the United States may face deportation. Deportation is also known as “removal” from the United States. Expedited removal is a fast-track deportation process for arriving aliens that places the individual in immigration detention while awaiting removal without judicial review. Anyone who seeks to enter the United States without valid documents or with documents that an immigration officer believes are fraudulent is subject to expedited removal proceedings and, therefore, mandatory detention. Arriving asylum seekers who have valid visas but indicate a fear of returning home are considered to have invalidated their visas, leaving them in the same category as those who lack appropriate documents. However, those who express a fear of returning to their country of origin will undergo a credible fear interview. This interview serves as a screening process for asylum officers to determine eligibility for asylum protections. Asylum seekers who pass the interview are no longer subject to expedited removal. They are placed into “asylum only” proceedings, and an immigration judge evaluates their complete asylum applications.

Individuals in removal proceedings have the right to representation throughout the court process by an attorney or a legal representative accredited by the Board of Immigration Appeals (BIA). But the government will not pay for or appoint counsel, so the individual must either hire counsel or find counsel who is willing to take the case pro bono. As a result, more than 85 percent of detained individuals lack counsel.

The U.S. government initiates removal proceedings, deportation proceedings, by issuing a “notice to

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appear,” a document that lists the immigration violations and the basis for deportation from this country. For people in detention, their first court hearing will usually be held within two weeks and is called a “master calendar” hearing. Each individual will face the judge for about 10 minutes to either admit or deny the charges listed on the notice to appear. Some people who admit the charges and choose not to apply for relief will only have one master calendar hearing. Those who challenge the charges or wish to apply for legal relief will have more than one master calendar hearing. They may ask for a continuation of the hearing in order to seek legal advice or consider their options.

At some point during the master calendar hearing phase, the immigration judge will either cancel proceedings or declare that the individual can be deported. If the latter, the individual must then tell the judge whether he or she wishes to apply for legal relief and attempt to stay in the United States. If not, then the case is completed and the judge will order deportation. If so, the individual must submit an application at the next master calendar hearing.

Once the application is submitted, the court will set a date for the “individual merit” hearing. At this hearing, both the government and the individual may present evidence and witnesses and may question the evidence and witnesses presented by the opposing party. Individual merit hearings typically take three to four hours. Cases with a lot of evidence or many witnesses may require multiple individual merit hearings, but one is usually sufficient. After the individual merit hearing phase is completed, the immigration judge will enter a decision whether or not to grant the application for relief. If the judge does not grant relief, an order of removal or deportation will be issued.

At this point either party may appeal to the BIA by submitting a brief notice of appeal within 30 days of the immigration judge’s decision. Many people in detention will remain in detention while the appeal is pending. Appeals are expedited for people who are detained, and a decision is usually made within 6 months from the filing date. There will not be another series of hearings after this. The BIA will usually decide the appeal solely on legal briefs written by the two parties, but may on rare occasions ask the two parties to prepare oral arguments to which the board will respond with follow-up questions.

The BIA’s decision is usually final. It can be appealed only by filing a petition for review in the U.S. Court of Appeals for the jurisdiction within which the immigration judge made the initial decision. If the detained individual is the appealing party, he or she may file a request for a “stay of removal,” an order that prohibits the government from carrying out the deportation order while the circuit court is reviewing the case. Without an approved stay of removal, the government can execute the final order of removal from the BIA even while an appeal is pending at the circuit court.

Many Americans are unaware that this crisis exists in the United States. The more people know, the more likely they will be to do something about the injustice taking place across our country. Share this information—tell your friends, family, church, and community what you know about immigration and detention.

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Notes

1 Reprinted from *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, published by Lutheran Immigration and Refugee Service in 2011.

2 Nina Bernstein, “City of Immigrants Fills Jail Cells With Its Own,” *New York Times*, Dec. 27, 2008.

3 Speech by John Morton, assistant secretary of the U.S. Department of Homeland Security, to American Immigration Lawyers Association, San Diego, June 16, 2011 (hereinafter Morton speech, June 16, 2011); and Dora Schriro, *Immigration Detention Overview and Recommendations* (Washington, DC: U.S. Immigration and Customs Enforcement, Oct. 6, 2009), <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>. Note that “as of October 18, 2011, the number of ICE authorized facilities is down from 340 to 249. Of those 249 authorized facilities, 115 over-72 hour facilities, with an average daily population of greater than 10, account for 98.6% of the detained population.” Correspondence from Andrew Lorenzen-Strait, senior policy advisor for ICE’s Detention Management Division, to LIRS, on file with author.

4 U.S. Immigration and Customs Enforcement, *Immigration Enforcement Actions: 2010* (Washington, DC: U.S. Department of Homeland Security, June 2011), <http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf>; American Civil Liberties Union of Georgia and Georgia Detention Watch, “Securely Insecure: The Real Costs, Consequences & Human Face of Immigration Detention” (fact sheet), January 2011, <http://www.georgiadetentionwatch.com/documents>; According to Human Rights First’s report, *Jails and Jump Suits*, released October 2011, asylum seekers and other immigration detainees today are still overwhelmingly held in jails and jail-like facilities. They found that approximately 50 percent of the ICE’s population was held in actual correctional facilities that also held criminal detainees. They found that since DHS and ICE announced intentions to reform the detention system, there has been no decrease in that proportion citing ICE data from FY 2011. This data indicates that approximately 47 percent of the average daily detained population (14,934 out of 31,653) was being held in nondedicated or shared-use facilities—i.e., correctional facilities that either have an ICE section within the larger facility, or that actually co-mingle ICE detainees with regular criminal pre-trial detainees and/or sentenced criminals, depending on the facility.

5 Dora Schriro, *Immigration Detention Overview and Recommendations*, 2. ICE maintains that the population is shifting because of the recent enforcement priority memo and offered that as of October 18, 2011, “90 per cent of the average daily population at ICE detention facilities during FY ‘11 were detained either because their detention was mandatory by law or because their cases fell into one of the agency’s three immigration enforcement priorities.” Correspondence from ICE to LIRS is on file with author. Whether there is a shift in the percentage of detainees with serious felony convictions remains unknown.

6 UN Human Rights Council, *Report of the Working Group on Arbitrary Detention*, A/HRC/13/30, Jan. 18, 2010, http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.30_en.pdf.

7 This term derives from the DREAM Act, legislation that has been repeatedly introduced in the U.S. Senate since 2001. The bill would provide a path to permanent residency for certain undocumented youth who graduate from U.S. high schools and complete two years of military service or higher education.