

Investigating the Dark Realities of the United States Immigration System



By Jerry Grzeca and John Sesini
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The American Declaration states that “no person may be deprived of liberty for non-fulfillment of obligations of a purely civil character.” Despite the United States’ obligation to protect the rights of all individuals, programs such as Alabama’s HB56, Arizona’s SB1070 and 287(g) and Georgia’s HB87, which promote racial profiling, have become the recent immigration trend. These programs have negated the U.S.’s declaration to treat all individuals humanely despite their citizenship status. Instead, the U.S. government has put all of its efforts into enforcement-only tactics and detention. In fact, the number of ICE detentions of non-citizens has practically doubled from approximately 209,000 in 2001 to 378,582 in 2008.

These recent trends in immigration have many civil rights and human interest groups outraged. In particular, the significant increase in immigrant detainees, according to the Inter-American Commission on Human Rights (the Commission), warranted an investigation to ascertain whether or not United States’ immigration policies and practices are compatible with international human rights obligations.

The Commission, which is based in Washington, is an international organization of impressive stature and reputation both within the U.S. and abroad. Their 155-page report reveals their extensive research, which began in 2008 and includes a series of visits in July of 2009 by a team of investigators to six American detention centers in Arizona and Texas.

In the report, the Commission highlights their chief concern with the increasing use of immigrant detention based on a presumption of necessity, when in fact detention should be the exception. The Commission explains “their disturbance by the rapid increase in the number of partnerships with local and state law enforcement for purposes of enforcing civil immigration laws,” the report said. The Commission’s findings show that ICE has failed to de-

velop an oversight and accountability system to ensure that local law enforcement does not enforce immigration law in a discriminatory manner. In other words, local enforcement partners have no way to prove that racial profiling and supposed investigation of crimes are the pretexts for prosecution and detention of undocumented migrants.

The Commission also communicates their disturbance “by the impact that detention has on due process, mainly with respect to the right to an attorney which, in turn, affects one’s right to seek release.” Stronger programs offering alternatives to detention are needed in order to better guarantee rights to legal representation and due process. The Commission is “particularly troubled by the lack of legal representation by the State for cases of unaccompanied children, immigrants with mental disabilities and other persons unable to represent themselves,” the report said. The Division of Immigrant Health Services (DIHS) estimates that anywhere from 2% to 5% of the detained immigrants suffer from some serious and persistent mental illness, and as many as 16% may have required mental health services; detention has debilitating physical and psychological effects, particularly on these vulnerable groups.

In their report, the Commission also highlights their concern with the length of detentions. The Department of Homeland Security reports that the average period of detention is approximately 30 days; however, individuals who fight their cases are detained for significantly longer periods of time, and this length of time will even further increase due to backlogs in the immigration courts.

The United States has an obligation to ensure the human rights of all immigrants, documented and undocumented alike; this includes the right to humane treatment, personal liberty, due process, and nondiscrimination. The Commission’s investigation has only further emphasized what immigrant advocates have known all along about the unfairness of our immigration system. However, the organization has shown the importance of documentation and investigation when it comes to igniting any action for change. Hopefully our current administration and immigration officials alike will use the Commission’s findings as a true testament of how far our nation has to go to mend our broken immigration system.

For more information about the Inter-American Commission on Human Rights’ report, or if you have any immigration-related questions, please contact Grzeca Law Group at (414) 342-3000 or visit our website at www.grzecalaw.com.

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