

U.S. IMMIGRATION DETENTION: POLICY AND PROCEDURE FROM A HUMAN RIGHTS PERSPECTIVE

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INTRODUCTORY REMARKS

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Many of us who are gathered today in this room enjoy the blessings of American citizenship, or legal residency. Here, we take for granted the ideas of due process, fair treatment, access to courts – even in cases when one is accused of the most horrendous of crimes.

But we often forget the fact that we too are foreigners in most of the parts of this planet. In these places, we expect to be treated, if not well, at least fairly. We expect to be granted certain minimum guarantees of due process, even if we violated the laws of our host country. We expect our home country to stand up for us and to vigorously exercise its right of diplomatic protection. It behooves us to be aware of this observational standpoint of ours, as we go further in our discussion today. In one of his immortal ballads, contrasting two worlds, Bertolt Brecht wrote:

*There are some who are in darkness
And the others are in light
And you see the ones in brightness
Those in darkness drop from sight¹*

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¹ BERTOLT BRECHT, *The Ballad of Mack the Knife*, in VOCAL SELECTIONS FROM THE THREEPENNY OPERA 5 (Marc Blitzstein trans., Warner Bros. Publ'n 1984).

As we are “in light,” our higher angels tell us that all men are created equal, that they are endowed by their Creator with certain unalienable rights, among them life, liberty and the pursuit of happiness. It is the American Dream, stunningly formulated in the ever unmatched Declaration of Independence.

When the starting-point of the shining “City upon a Hill” became the reality of a nation-state, the needs of forming a nation with citizens more closely bound to the destiny of the community than a fleeting visitor, resulted in the rescission of the originally universalist promise of equal treatment to “all” men and women.

The positive legal regime of the Constitution made it clear that there was a distinction between those who were inside, and those who were outside the boundaries of citizenship, as it allowed the federal government to make laws respecting immigration and naturalization.

It is too much for the purposes of this introduction to retrace the history of those laws—sometimes facilitating, but often carefully restricting the flow of people to this country. The history of immigration legislation and administration marked some of the high points, as well as some of the low ones, of the very history of this country. The acts of forgiveness for undocumented aliens and the measures of arbitrary detention of members of certain groups, such as the internment of Japanese Americans in World War II, are cases in point.

Our symposium today is designed to focus on the harsher measures of present-day immigration law, the enforcement of the legal divide between citizens and law-abiding legal aliens, on one side, and those who have not followed, or have run afoul of, the rules regulating non-citizens, on the other side. It is the plight of the latter group, the one which dwells often in darkness, that our symposium will, at least for today, bring to light.

We will start with a close analysis of the history of detention for the purposes of the enforcement of immigration laws. My colleague and treasured expert in the field, Professor Lauren Gilbert, will chair the first panel, which will feature distinguished Professor

Lenni Benson of the New York Law School and eminent Attorney Sunita Patel of the Center for Constitutional Rights in Washington, D.C. You have seen the impressive biographies of these panelists, and we look forward to most insightful presentations. Professor Julie Cavanaugh-Bill, legal counsel of the Western Shoshone, joins them today with a focus on immigration detention from an indigenous peoples' perspective. The panel will also explore avenues of alternative methods that may be more effective, while at the same time more humane.

Our second panel focuses on the plight of indefinite detention of unwanted deportable aliens, as it attempts to answer large and looming questions with respect to the squaring, or not, of their treatment within fundamental guarantees of due process, under domestic and international law. Professor David Abraham, noted immigration law scholar from our sister university, the University of Miami, will chair this panel, which features our very own Professor Michael Vastine, head of our Immigration Clinic and vanguard in the daily struggles in this field. On the other side, we have the great pleasure of welcoming to our campus, the Deputy Chief Counsels of the Miami Office of the Chief Counsel of the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) agency, Mr. Gracian Celaya and Mr. Howard Marbury, who will inform us of the difficult decisions they have to make in fulfilling their statutory mandate, in light of the surrounding legal and factual environment.

Panel Three focuses on often distressing conditions detainees face during detention. It will be chaired by our own Professor Lydie Pierre-Louis. Two skilled legal practitioners, Ms. Angela Morehouse of Virginia and our graduate from the LL.M. Program in Intercultural Human Rights, Ms. Madhurima Paturi, will focus on the exact forms of violations, including, in particular, the problems regarding the medical care afforded to women in immigration detention. Professor Pierre-Louis will also share her expertise, by adding her own substantive contribution in discussing, inter alia, contractual obligations between ICE and immigration detention service providers, including potential breaches of contract and negligence claims for failure to provide adequate health and safety

services at immigration detention centers.

Last, but not least, Panel Four will tackle the procedural safeguards presently lacking in the immigration legal process. Under the moderation of my esteemed colleague and constitutional law expert Professor John Kang, we will hear from the highly-respected, distinguished guest speakers Michael Churgin, Raybourne Thompson Centennial Professor of Law at the University of Texas; Professor Rebecca Sharpless, the Director of the University of Miami Immigration Clinic; and Professor Raha Jorjani, Director of the Immigration Clinic of the University of California Davis School of Law. We look forward to them discussing the present state of affairs, as well as the establishment and enhancement of due process guarantees and elements of judicial review. It is in this context that the specter of arbitrariness of detention arises, as well as the possible violation of pertinent standards of the international law of human rights.

Minimum standards of human rights should limit the conduct of any government anywhere on the globe. This concept of a minimum, or core, entitlement of any human should be established in an intercultural dialogue. It should particularly be accorded to those in the most vulnerable conditions. Unwanted immigrants in detention, fellow creatures in the image of God, as Monsignor Casale reminded us, certainly face one of the most precarious situations. What substantive and procedural rights are their due, is the topic of this special day. We look forward to a fruitful exchange of information and ideas.

This day has been made possible by the tireless and most professional work of my students, members of the Editorial Board of our Intercultural Human Rights Law Review, particularly Ludys Garcia and Sweta Patel, who were the heart of this Symposium. They were diligently assisted in planning and execution of this event by Maudisa McSween, Brandon Stein, Antonio Rodriguez, Stephanie Villavicencio, Irene Moldaver, Peter Calin, Leyla Nikjou, and Jon Minear.

Mention should also be made of the unfailing support from our staff: Peter Kelly, Olga Leyva, Maikel Marquez and Mark

Rogers. Thank you all very much indeed.

With respect to what we can do now and what has to be done, my most famous compatriot, Blessed Mother Teresa has left us with this precious thought:

Yesterday is gone. Tomorrow has not yet come. We have only today. Let us begin.

Mother Teresa

