Detention and Dignity: Violations of Basic Human Rights in United States Immigration Facilities

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Abstract

Although the United States presents itself as a global champion of liberty and human rights, its immigration detention system reveals deep contradictions between principle and practice. Every year, hundreds of thousands of non-citizens are held in civil detention facilities, often under punitive and degrading conditions that mirror or exceed those in criminal prisons. This article examines how the contemporary U.S. immigration detention regime undermines basic human rights, including the rights to liberty, health, family unity, security, and humane treatment. It traces the historical evolution of immigration detention from the late 19th century through the post-9/11 era, analyzes the legal and political frameworks that sustain large-scale detention, and identifies key patterns of abuse such as inadequate medical care, solitary confinement, sexual and physical violence, and the impact of privatization. Drawing on international human rights standards, U.S. constitutional principles, and existing empirical reports, the article argues that current practices amount to arbitrary and disproportionate deprivation of liberty. It concludes by proposing a set of legal and policy reforms, including the expansion of community-based alternatives to detention, access to legal representation, binding detention standards, and stronger accountability mechanisms for public and private actors.

Keywords: *immigration detention, human rights, due process, ICE, private prisons, United States*

1. Introduction

Article 9 of the *Universal Declaration of Human Rights* (UDHR) proclaims that "no one shall be subjected to arbitrary arrest, detention or exile" (United Nations, 1948). Despite its central role in drafting and promoting this foundational instrument, the United States operates one of the world's largest and most expansive immigration detention systems. Within this system, non-citizens are routinely deprived of liberty under civil rather than criminal authority, yet in conditions that frequently lack robust procedural safeguards and often fall far below internationally recognized human rights standards (Human Rights Watch, 2010; Wilsher, 2012).

Immigration detainees are not being punished for crimes. Most are held for civil immigration violations—such as unauthorized entry, visa overstays, or pending removal proceedings—offenses that in many countries would not justify incarceration at all. Nonetheless, detainees are frequently subjected to punitive, prison-like environments marked by heavy surveillance, restricted movement, and coercive disciplinary practices (Welch, 2012). Many are confined in county jails or large privately operated facilities, far from their homes, legal representatives, and support networks. Numerous reports document prolonged detention, inadequate or delayed medical care, overuse of solitary confinement, verbal harassment, and instances of physical and sexual abuse (American Civil Liberties

Union [ACLU], 2011; Bernstein, 2010). These conditions challenge the notion that immigration detention is merely administrative and raise concerns about whether it is functionally punitive in nature.

The scale and intensity of detention practices have increased under recent U.S. administrations, reflecting a broader shift toward enforcement-centered migration governance. This trend has been driven by a combination of criminal law rhetoric, national security narratives, and administrative policies that collectively normalize the use of detention as a primary strategy for controlling migration (Ewing, 2012; Wilsher, 2012). Congressional "bed mandates," which require Immigration and Customs Enforcement (ICE) to maintain a minimum number of detention beds each day, have created structural incentives to detain individuals irrespective of individualized risk assessments. Simultaneously, lucrative contractual relationships with private prison corporations have embedded profit motives into detention practices, further entrenching reliance on confinement as the default approach to immigration enforcement.

Given these developments, this article argues that the contemporary U.S. immigration detention regime is fundamentally inconsistent with basic human rights norms and core principles of due process. The system's reliance on prolonged, automatic, and often unnecessary detention undermines the presumption of liberty, violates principles of proportionality, and produces significant harm to individuals, families, and communities. This analysis examines the historical evolution of detention policies, identifies recurring patterns of abuse within the system, evaluates the legal frameworks that enable and legitimize such practices, and proposes rights-respecting alternatives that can align U.S. policy with constitutional and international standards.

2. Historical Evolution of U.S. Immigration Detention

2.1 Early Federal Immigration Control and Judicial Deference

Systematic federal immigration control in the United States developed in the late 19th century, coinciding with industrialization, urbanization, and rising political concern about race, poverty, and "undesirable" foreigners (Hayes, 2001; Wilsher, 2012). The creation of a federal immigration office in 1891 marked the beginning of centralized screening for admission and exclusion.

From the outset, detention was closely linked to immigration control. Non-citizens arriving at ports who were suspected of being inadmissible—for example, "likely to become a public charge"—could be held pending determination of their status. In *Nishimura Ekiu v. United States* (1892), the Supreme Court upheld the authority of immigration officials to make exclusion decisions without meaningful judicial review, holding that administrative determinations made under congressional authority constituted "due process of law." This doctrine significantly limited the role of courts in supervising immigration detention.

Soon thereafter, in *Wong Wing v. United States* (1896), the Court distinguished between criminal punishment, which required constitutional safeguards such as a jury trial, and "temporary confinement" pending removal. This formal distinction allowed the government to detain non-citizens outside the full protections of criminal process, laying the foundation for the modern dichotomy between "civil" immigration detention and criminal incarceration (Wilsher, 2012).

2.2 Deportation, Internment, and Economic Crisis

In the early 20th century, deportation and detention became increasingly entrenched as tools for managing social and economic anxieties. During the Great Depression, federal and local authorities orchestrated mass "repatriation" campaigns targeting Mexican and Mexican-American communities, many of whose members were

U.S. citizens (Hayes, 2001). These removals were often conducted without formal deportation hearings and reflected broader racialized fears.

World War II saw large-scale detention of Japanese Americans and some individuals of German and Italian descent. Under executive order, approximately 120,000 people of Japanese ancestry—many U.S. citizens—were forcibly relocated to remote camps (Ewing, 2012). In *Korematsu v. United States* (1944), the Supreme Court upheld the exclusion orders, emphasizing wartime necessity over individual rights. Although widely criticized today, that decision exemplifies the Court's deference to the political branches in matters involving non-citizens and national security.

2.3 Post-War Reforms and Renewed Emphasis on Detention

The 1952 Immigration and Nationality Act (INA) introduced some flexibility into the system, including the use of parole for certain non-citizens pending admission or removal, and statutory limits on the duration of post-order detention (Briggs, 2003; Wilsher, 2012). For a time, there was a presumption against prolonged detention, and release on parole was common except in cases involving national security or serious criminal conduct.

That balance shifted again in the late 20th century. Economic instability, rising public anxiety about crime, and increases in undocumented migration fueled political interest in strict immigration enforcement (Hayes, 2001; Welch, 2012). The 1980 Mariel boatlift, during which thousands of Cubans and Haitians arrived by sea, prompted broad policies of mandatory detention for certain groups, including individuals who could not readily be repatriated (Wilsher, 2012).

In 1996, the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) expanded the categories of deportable offenses, restricted judicial review, and significantly broadened mandatory detention provisions. Many lawful permanent residents with minor or decades-old convictions became subject to automatic detention pending removal, while asylum seekers and other arriving non-citizens faced increased barriers to release (Welch, 2012).

2.4 Post-9/11 Restructuring and National Security Narratives

The attacks of September 11, 2001 reshaped U.S. immigration policy by fusing it with national security objectives. The Homeland Security Act of 2002 dismantled the Immigration and Naturalization Service (INS) and created three new agencies under the Department of Homeland Security (DHS): Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS) (Ewing, 2012).

In this new framework, non-citizens—particularly Muslims, Arabs, and South Asians—were increasingly framed as potential security threats. Programs such as the National Security Entry-Exit Registration System (NSEERS) and "special registration" requirements targeted specific nationalities for monitoring and enforcement. Domestic legislation such as the Enhanced Border Security and Visa Entry Reform Act of 2002 and the REAL ID Act of 2005 further tightened identification, surveillance, and border control measures.

During this period, Congress repeatedly increased funding for immigration enforcement and detention, and instituted "bed quotas" requiring ICE to maintain a minimum number of detention beds each day. These policies embedded detention as a central, normalized feature of immigration control (ACLU, 2011; Human Rights Watch, 2010).

3. The Contemporary Immigration Detention Regime

3.1 Civil Label, Punitive Reality

Formally, immigration detention is characterized as *civil* and non-punitive. The stated purpose is to ensure that non-citizens appear at hearings or are available for removal, not to punish them for past conduct. In practice, however, detainees are held in conditions that are functionally indistinguishable from criminal incarceration (Welch, 2012; Wilsher, 2012).

Many immigration detainees are housed in county jails that also hold pretrial criminal defendants and sentenced prisoners. Others are confined in large facilities operated by private corporations under contract with ICE. Common features include locked cells or dormitories, regimented schedules, uniform requirements, head counts, restricted movement, and disciplinary segregation. For detainees, the distinction between civil and criminal custody is largely semantic.

3.2 Scale, Cost, and Privatization

The scale of immigration detention in the United States has grown dramatically. In some years, ICE has held hundreds of thousands of people in more than 200–300 facilities nationwide (Human Rights Watch, 2010). Funding for detention has likewise expanded into the billions of dollars annually.

Private prison corporations such as GEO Group and CoreCivic (formerly Corrections Corporation of America) play a central role in this system. Under per-diem contracts, they are paid for each occupied bed, creating potent financial incentives to maintain or increase detention capacity (ACLU, 2011). By 2010, a substantial share of immigration detention beds—often nearly half—were operated by private entities (ACLU, 2011).

Detention is also significantly more expensive than alternatives. Community-based supervision and case management programs have demonstrated high appearance rates at hearings at a fraction of the cost per day of confinement (Obser, 2014). Nonetheless, congressional bed mandates and political rhetoric about "cracking down" on undocumented migration continue to support a detention-heavy model.

4. Human Rights Concerns in Immigration Detention

4.1 Health and Medical Care

A central human rights concern within the U.S. immigration detention system is the chronic inadequacy of medical care provided to detainees. Multiple independent investigations, media reports, and human rights assessments have documented patterns of delayed, insufficient, or outright negligent treatment for individuals with serious medical conditions. These failures have, in numerous cases, contributed to preventable illnesses, long-term disabilities, and deaths that could have been avoided with timely and appropriate medical attention (Bernstein, 2010; Human Rights Watch, 2010). Common chronic conditions—such as diabetes, cardiovascular disease, asthma, and cancer—are often underdiagnosed or inadequately monitored, placing detainees at heightened risk of medical deterioration. Mental health needs, including anxiety disorders, depression, post-traumatic stress disorder, and suicidal ideation, are frequently unmet due to limited psychiatric staffing and insufficient therapeutic services. Pregnant women have reported being shackled during transport, denied prenatal monitoring, and refused necessary obstetric procedures, practices that directly contravene international standards on the treatment of pregnant detainees.

While Immigration and Customs Enforcement (ICE) has promulgated detention standards and a Detention Operations Manual intended to guide medical service delivery, these documents function primarily as internal

guidelines rather than binding legal requirements (Human Rights Watch, 2010). As a result, compliance across facilities—many of which are operated by private contractors or local jails—is inconsistent and often poor. Detainees face substantial structural barriers when attempting to challenge inadequate care, including language limitations, fear of retaliation, complex grievance procedures, and restricted access to outside medical professionals. Moreover, the absence of independent oversight mechanisms and enforceable accountability measures allows systemic problems to persist with minimal consequences for facility operators.

4.2 Respect, Security, and Family Unity

Detention can be deeply disruptive to family life and personal security. Individuals are often transferred to facilities far from their homes—sometimes hundreds or thousands of kilometers away—making family visits rare and costly (Ewing, 2012). Where visits are permitted, they are frequently conducted through video or behind glass, reinforcing isolation.

Most immigration detainees do not have a government-provided lawyer, even though the stakes include permanent separation from family, loss of livelihood, and potential exposure to persecution or torture upon return (Welch, 2012). Proceedings are complex and heavily legalistic, making it extremely difficult for unrepresented detainees to understand and assert their rights.

Reports from advocacy groups and media investigations also describe incidents of sexual harassment, assault, and physical abuse within detention facilities (ACLU, 2007, 2011). Because detainees fear retaliation or deportation, and because internal grievance procedures lack transparency, many abuses are likely underreported.

4.3 Solitary Confinement and Environmental Deprivation

The use of solitary confinement—often called "segregation"—is another deeply troubling feature of the detention system. Detainees may be placed in isolation as a disciplinary measure, for alleged security reasons, or purportedly "for their own protection," including individuals who are LGBTQ+, mentally ill, or otherwise vulnerable (Human Rights Watch, 2014).

Solitary confinement typically involves confinement in a small cell for up to 22–24 hours per day, with minimal human contact and severely restricted stimulation. Extensive medical literature indicates that prolonged isolation can cause or exacerbate psychiatric symptoms such as anxiety, depression, paranoia, and suicidal thoughts. International bodies, including the U.N. Special Rapporteur on Torture, have recognized prolonged solitary confinement as a form of cruel, inhuman, or degrading treatment and, under certain conditions, as torture.

Many detainees also report prolonged lack of outdoor access, with some facilities providing only indoor "recreation" rooms or small enclosures with minimal natural light (Lerner & Winston, 2013). Deprivation of sunlight, fresh air, and meaningful activity has serious psychological and physical consequences, undermining mental health and a sense of humanity.

5. Legal and Normative Frameworks

5.1 International Human Rights Law

International human rights instruments provide an important normative framework for assessing immigration detention. Article 9 of the ICCPR, for example, prohibits arbitrary detention and requires that any deprivation of liberty be lawful, necessary, and proportionate, with access to judicial review. The UDHR recognizes the right to liberty, security of person, and protection from cruel, inhuman, or degrading treatment (United Nations, 1948).

Soft-law guidelines issued by international bodies emphasize that immigration detention should be a measure of last resort, used only when less restrictive alternatives are insufficient and for the shortest time possible. Children, asylum seekers, and other vulnerable groups are afforded particular protections.

When detention is prolonged, automatic, or implemented in punitive conditions without individualized assessment, it risks crossing the line into arbitrariness under international law.

5.2 U.S. Constitutional Principles and Supreme Court Jurisprudence

Domestically, the Fifth Amendment's Due Process Clause applies to "persons" within the United States, including non-citizens, and protects against deprivation of life, liberty, or property without due process of law. Although courts have historically deferred to Congress and the executive in immigration matters, they have imposed some limits on detention.

In *Zadvydas v. Davis* (2001), the Supreme Court held that the INA does not authorize indefinite detention of non-citizens following a final removal order. It interpreted the statute to allow detention only for a period "reasonably necessary" to effect removal, establishing a presumptive six-month limit. Beyond that time, the government must show a significant likelihood of removal in the reasonably foreseeable future.

Despite *Zadvydas*, many detainees continue to be held for extended periods while their cases proceed, sometimes for months or years, particularly where mandatory detention provisions apply or where access to bond hearings is limited (Wilsher, 2012). The tension between broad statutory detention powers, judicial deference, and core due process values remains unresolved.

6. Consequences of Maintaining the Status Quo

Failure to reform the immigration detention system carries profound and multilayered consequences that extend beyond the immediate experiences of those confined. At the individual level, detainees often endure significant psychological trauma, including anxiety, depression, and post-traumatic stress symptoms stemming from prolonged uncertainty, institutional isolation, and exposure to punitive conditions. Physical harm is also well documented, ranging from untreated medical conditions to injuries associated with inadequate supervision or coercive discipline. Importantly, detention frequently disrupts family relationships, severing the emotional, economic, and social ties that sustain stability in immigrant communities. Children of detained or deported parents may experience emotional distress, behavioral changes, economic instability, and long-term educational setbacks. These intergenerational impacts reveal that the effects of detention extend well beyond the detained individual, destabilizing entire households and communities for years (ACLU, 2011).

At the societal level, continued overreliance on detention imposes substantial fiscal burdens on taxpayers. Detention is significantly more expensive than community-based alternatives, yet federal spending continues to prioritize incarceration over cost-effective and humane supervision models (Human Rights Watch, 2010). Moreover, aggressive detention practices undermine trust between immigrant communities and law enforcement, discouraging individuals from reporting crimes, cooperating with investigations, or seeking protection when victimized. This erosion of trust compromises public safety and exacerbates community marginalization.

Excessive dependence on detention also contributes to the normalization of carceral responses to social and economic issues, reinforcing a punitive framework that disproportionately targets racialized and economically vulnerable communities. Framing migration as a matter of criminality or national security perpetuates stigma and legitimizes harsh enforcement measures, even when such measures are unnecessary or ineffective. Finally, the

persistent use of detention under conditions that violate basic standards of human dignity undermines the United States' moral authority and credibility in advocating for human rights abroad. International observers frequently highlight inconsistencies between U.S. rhetoric and its domestic practices, weakening its global standing and diminishing its influence in promoting human rights norms (Welch, 2012).

These consequences demonstrate that reform is not merely a humanitarian concern but an essential component of responsible governance, fiscal prudence, and adherence to constitutional and international legal obligations.

7. Alternatives and Reform Proposals

A more rights-respecting system is both possible and empirically supported.

7.1 Community-Based Alternatives to Detention

Alternatives such as community supervision, reporting requirements, and case-management programs have demonstrated high compliance rates with immigration hearings at far lower cost than detention (Obser, 2014). Where there is no demonstrable flight risk or danger to the community, such alternatives should be the default mechanism.

7.2 Legal Representation and Procedural Safeguards

Ensuring access to legal representation for indigent detainees—particularly vulnerable groups such as children, persons with mental disabilities, and asylum seekers—would significantly improve fairness and accuracy in proceedings. Regular, individualized custody reviews and meaningful bond hearings should be guaranteed as a matter of due process.

7.3 Binding Standards and Accountability

Detention standards should be codified in binding regulations that are judicially enforceable, rather than left to non-binding internal guidelines. Independent monitoring, transparent reporting, and mechanisms for detainees to seek redress are essential. The federal government should assume responsibility for abuses occurring in facilities operated under its authority, including privately run centers.

7.4 Limiting Solitary Confinement and Ensuring Humane Conditions

Solitary confinement should be strictly limited, prohibited for vulnerable individuals, and subject to rigorous oversight. All detainees should receive regular access to outdoor spaces, natural light, exercise, and meaningful activities. Basic health, safety, and dignity standards must be treated as non-negotiable obligations, not discretionary policy choices.

8. Conclusion

The United States immigration detention system operates at the intersection of administrative law, criminal law, and human rights. Although formally justified as a civil, non-punitive tool to manage migration, it has evolved into a sprawling carceral apparatus characterized by prolonged confinement, inadequate oversight, and serious violations of basic human rights.

Reorienting this system requires a shift from an enforcement-dominant approach toward one grounded in necessity, proportionality, and respect for human dignity. Expanding alternatives to detention, guaranteeing access to counsel, enacting binding standards, and imposing accountability for abuse are essential first steps. Ultimately, the treatment of non-citizens in state custody is a profound test of the country's commitment to liberty and justice for all.

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