

Arbitrary Detention of Asylum Seekers in the United States:

Amnesty International USA and Human Rights First Joint Summary of Concerns

1. Detention is Automatic for Arriving Asylum Seekers

U.S. law calls for “mandatory detention” of all asylum seekers who are subject to expedited removal. As a result, asylum seekers who arrive at U.S. airports and borders are held in detention facilities and immigration jails around the country. Yet, under international law, detention of asylum seekers may only be resorted to “if necessary” and on “grounds prescribed by law” for certain specified reasons relating to the individual asylum seeker.

2. Parole Process for Detained Asylum Seekers is Arbitrary

Parole guidelines are not codified in formal regulations and the criteria are applied inconsistently by local immigration offices. A major report issued by the U.S. Commission on International Religious Freedom in February 2005 reflected substantial variations in release rates across the country and a drop in the rate at which local immigration officers paroled asylum seekers from detention facilities in the years since September 11, 2001.

3. Lack of Independent Review

In cases involving arriving asylum seekers, parole decisions are made by the Department of Homeland Security (DHS), which is the same authority charged with detention and deportation. Arriving asylum seekers are not provided with access to a court charged with assessing the need for their continued detention. When DHS denies parole to an arriving asylum seeker, there is no administrative or judicial venue for appeal.

4. No Limit on the Length of Detention

Neither U.S. statutes nor regulations specify a limit on the length of time an asylum seeker may be detained while his or her removal and asylum proceedings are pending. The press and human rights groups have documented numerous examples of asylum seekers who have been detained for lengthy periods of time, many for more than one year.

5. Inappropriate Conditions and Psychological Harm

Asylum seekers are detained in prison-like facilities which are inappropriate for non-criminals. Medical experts have concluded that these conditions create a serious risk of long-term psychological harm. Facilities designated to accommodate families and children are unsuitable.

6. Discrimination against Asylum Seekers Based on Nationality

Since 2001, the Department of Homeland Security has initiated discriminatory nationality based detention policies, which have targeted Haitian asylum seekers and asylum seekers coming from primarily Muslim countries and territories, invoking national security concerns to justify these policies.

CASE EXAMPLES

- A stateless family from the West Bank, including a pregnant woman, her husband and four children, were separated and detained for three months at a Texas residential facility and at a New Jersey immigration jail, until the Board of Immigration Appeals agreed to reopen and rehear their asylum case.
- A Burmese woman, a member of a religious and ethnic minority group, was detained for nearly two years in a Texas immigration jail, even though she would clearly face torture and persecution because of her political views if returned to Burma.
- A Sri Lankan fisherman, who was kidnapped and forced to pay ransom to his kidnappers, the LTTE, has been detained in a New Jersey immigration jail for two years.
- A pastor, who fled Liberia after criticizing the use and abuse of child soldiers, was detained for three months in a New Jersey immigration jail.
- A young human rights worker from Cameroon, who was arrested, jailed, and tortured there on three harrowing occasions, was detained for 16 months at New York and New Jersey immigration jails, before he was granted asylum and released.
- Two refugees from the Darfur region of Sudan were detained for about five months in a U.S. immigration jail before being granted asylum and finally released.