

UNHCR Global Strategy Beyond Detention 2014-2019

A global strategy to support Governments to end the detention of asylum-seekers and refugees



NATIONAL ACTION PLAN United States of America

What is the UNHCR Global Strategy - Beyond Detention?

In June 2014, UNHCR launched its Global Strategy - Beyond Detention 2014-2019, which aims to support governments to end the detention of asylum-seekers and refugees. The Strategy lays out three main goals: (1) to end the detention of children; (2) to ensure that alternatives to detention (ATDs) are available in law and implemented in practice; and (3) to improve conditions of detention, where detention is necessary and unavoidable, to meet international standards. To support the implementation of the Global Strategy, focus countries have developed National Action Plans ('NAP'). This document is a summary and public version of the NAP.

All documents relating to the Global Strategy - Beyond Detention 2014-2019 are available at: <http://www.unhcr.org/detention>

The process of developing the National Action Plan

In developing a National Action Plan for the United States of America, UNHCR engaged in broad and intensive consultations with affected populations during their detention, the Government, a wide range of civil society actors representing the full scope of advocacy organizations, legal service providers, community-based organizations, academia, faith groups and visitation volunteers who act in support of asylum-seekers, and other persons of concern. UNHCR hosted one consultative meeting with civil society stakeholders around each of the three goals, mapping existing efforts towards the realization of the Global Strategy's three goals. After close consultation with Government stakeholders, UNHCR finalized its plans to support its realization of the three goals. Throughout the plan, UNHCR provides a clear and consistent international perspective on the detention of asylum seekers and the use of alternatives to detention, while maintaining a close and collaborative relationship with its partners in the U.S. Government. Beginning in 2015, Regional Office Washington will lay the groundwork for achieving these goals.

The actions foreseen

Goal 1. End the detention of children

Under Goal 1, UNHCR will focus both on mitigating the harm that detention poses for children in the U.S. and on ending the U.S. Government's practice of detaining children. This goal is particularly pressing given significant increases in the number of family units and unaccompanied and separated children ('UASCs') fleeing the ongoing humanitarian situation in the Northern Triangle of Central America. In 2015, UNHCR will advocate to stop the use of detention for the purposes of deterrence and support the U.S. Government's reduced reliance on detention as the primary measure to ensure appearance at removal proceedings. In particular, UNHCR will support the U.S. Government to limit the length of detention, improve procedures to identify children in need of protection, and provide training in assessing vulnerabilities of children with the goal to end their detention. In 2016, UNHCR will comprehensively review the practice of detention of UASCs, identify practices that ensure their access to protection and address gaps, and will work with Immigration and Customs Enforcement ('ICE') to broaden the use of individualized assessments to determine the need to detain children accompanied by a parent. In 2017, UNHCR will promote the use of less restrictive custody for UASCs, as well as best practices for protecting children both in custody and post-release. In 2018, UNHCR will convene an inter-agency conference to assess implementation of a 'best interests' framework; research the impact of counsel and child advocates on children's detention; and support efforts to establish custody reviews for UASCs. UNHCR will also prioritize work to broaden the use of release and the availability of post-release services for UASCs. By 2019, UNHCR's activities hope to bring U.S. Government practices and policies into alignment with international standards for the treatment of asylum-seeker children.

Goal 2. Ensure that alternatives to detention are available in law and implemented in practice

UNHCR will work to ensure that alternatives to detention (ATDs) are available to asylum-seekers and other persons of concern to UNHCR, both in law and as a practical matter. In 2015, UNHCR will work with the U.S. Government and other partners to expand access to ATDs for individuals seeking protection, including to prioritize case management alternatives for LGBTI persons of concern and families. UNHCR will complete an independent evaluation of ATD case management pilots and organize a conference on access to asylum in the U.S., which will include discussion on ATDs for asylum-seekers, and will encourage ICE to expand the use of community-based ATDs. In 2016, UNHCR

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will deepen its efforts to expand access to parole and ATDs, in particular by making recommendations that help ICE improve the use of individualized determinations to assess vulnerabilities and recommend release or ATDs. In 2017, UNHCR will work with the U.S. Government to support the expansion of community support models of ATDs by recruiting additional case management providers and will convene a roundtable to define the ideal components of an ATD program for those with severe mental health concerns. In 2018, UNHCR will prioritize work to expand the use of ATDs for individuals with severe mental health concerns by identifying a partner to develop and implement a pilot program for these individuals. By 2019, UNHCR aims to have achieved the Goal of having ATDs available to persons of concern both in law and in practice.

Goal 3. Ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards

UNHCR will work in partnership with the U.S. Government to ensure that international standards for conditions of detention are met, maintained and allow access to asylum. In 2015, UNHCR will train stakeholders on a standardized monitoring tool. In 2016, UNHCR will work with Customs and Border Protection ('CBP') to develop standards for its detention facilities that are consistent with U.S. and international law, and will support the monitoring and inspection of CBP facilities by promoting stakeholder access and enhancing complaints mechanisms. UNHCR will also support ICE to improve condition for transgender asylum-seekers held in detention as a last report. In 2017, UNHCR will renew its focus on conditions of detention in ICE facilities, and will advocate for the creation of an independent monitoring body for the Office of Refugee Resettlement ('ORR') and CBP detention standards. UNHCR will also assess implementation of new child screening protocols and will report on findings. UNHCR will also focus on the mandatory detention of asylum-seekers in the U.S., with the goal of aligning U.S. practice with its obligations under domestic and international law. In 2018, UNHCR will focus on expanding U.S. Government and other stakeholders' awareness and implementation of international detention standards, and on robust monitoring of detention facilities. In 2019, UNHCR will focus on leveraging the U.S. Government's global leadership role in appropriate international forums to share best practices for managing irregular migration while adhering to international protection and detention standards.

Detention overview

In many cases, decisions to detain in the U.S. are not based on individualized assessments of the necessity to detain but rather on laws requiring the mandatory detention of certain classes of people, including anyone arriving to the U.S. without authorization such as asylum-seekers and other persons of concern. Detention facilities are located in rural areas that limit asylum-seekers' access to counsel. Increasingly, asylum interviews and court hearings are conducted by video-teleconference from the facilities and problems with interpretation limit asylum-seekers' ability to articulate a protection claim. The U.S. detention system is also affected by a lack of codified, enforceable standards, and conditions in detention facilities are governed by standards derived from a correctional model. Within this system, special populations, including children, torture survivors, LGBTI asylum-seekers, and persons with mental health concerns, are at heightened risk. Notably, family detention has expanded significantly in the past year, and by the end of 2015, the U.S. will have approximately 3,800 family detention beds. The U.S. has no foreseeable chance of amending or eliminating mandatory detention laws. However, discretion does exist to release asylum-seekers once they have passed certain screening thresholds. UNHCR welcomes the recent announcement by the Department of Homeland Security ('DHS') to end the use of long-term detention for families who have been found to be *bona fide* asylum-seekers and hopes to see further reductions of family detention in the coming months.

Good practices and alternatives to detention

ICE has engaged in a series of reforms to the detention system over the past five years, including the introduction of new 2011 Performance Based National Detention Standards; new policies on stakeholder access to facilities, greater oversight over the use of segregation, and the prevention of sexual assault and abuse; and implementation of a Risk Classification tool to determine detention and release decisions for those not subject to mandatory detention. ICE has access to a broad continuum of ATDs, ranging from release on recognizance and community support programs to bond and periodic check-ins. They also include custodial mechanisms, such as electronic reporting and ankle monitors. ICE partnered with two national faith-based NGOs to pilot community support ATDs in four sites nationally to demonstrate/measure the effectiveness of community-based, case management models of ATDs. In early 2015, ICE announced a large scale request for proposals for contracts in five major cities to provide case management-based ATDs to asylum-seeking families. This is a positive development, as it is the first time ICE will pay for such services. UNHCR looks forward to partnering with the U.S. Government and civil society to explore options for expanding the use of community support-based ATDs, including for LGBTI asylum-seekers and those with severe mental health concerns, as such models have proven successful in other contexts.

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UNHCR Washington, October 2015