

# Facts about Mandatory Detention



DETENTION  
WATCH NETWORK

## 1988

Mandatory detention provision is enacted into U.S. law.

## 1996

Congress passes AEDPA and IIRIRA, two laws which drastically expand the category of people subject to mandatory detention.

## 2001

In response to 9/11, Congress further expands the category of people subject to mandatory detention and starts ratcheting up race-based enforcement programs.

## 2011

The Obama administration announces new prosecutorial discretion guidelines and relief for some immigrants. However, the new guidelines will have no impact on immigrants subject to mandatory detention.

## What is mandatory detention?

Mandatory detention is the practice of imprisoning an individual without any consideration of whether incarceration is necessary or appropriate. Current U.S. immigration policies require whole categories of non-citizens to be imprisoned without any individual assessment of their risk to public safety or flight or of their vulnerability in detention while the government tries to prove that it has the authority to deport them.

## Who is subject to mandatory detention?

Any non-citizen can end up being subject to mandatory detention, including legal permanent residents who have lived in the U.S. their entire lives, asylum seekers, torture survivors, single mothers, the sick and the elderly. There are two types of mandatory detention: under Expedited Removal, asylum seekers and other people arriving in the country without proper documentation must be detained without bond while their cases are reviewed. Mandatory detention can also be imposed on any non-citizen who has ever been convicted of a crime, regardless of the seriousness of the offense or the fact that they have already completed any sentence for the offense. Their family and community ties or the strength of their legal case also cannot be considered. Misdemeanor crimes as minor as shoplifting or petty drug-possession trigger mandatory detention.

## How does mandatory detention affect individuals?

Immigrants subject to mandatory detention suffer all the same hardships that people in prison suffer. Conditions in immigration detention are notoriously inhumane. Human rights violations are rampant, including poor medical care, physical and verbal abuse, interference with religious practice, and the use of solitary confinement. Facilities are often located hundreds of miles from urban centers, and individuals are regularly sent to facilities several states away from where they were originally detained, making family visits and access to counsel nearly impossible. People in mandatory detention often give up their legal rights to stay in the U.S. because they and their families must suffer for long periods of time while they fight their cases.

## How does mandatory detention affect communities?

Mandatory detention takes mothers and fathers away from their children, deprives businesses of their employees, and sows fear in neighborhoods across the country. Immigration enforcement programs are a driving force behind the rapid expansion of immigration detention, and the increasing numbers of people subject to mandatory detention are creating pressure to add more beds to the system. As a result, local communities are being pressured to become prison towns, despite studies which show the long-term negative effects of prisons on the economic development of growing communities.

## Who benefits from mandatory detention?

Private prison corporations and those invested in for-profit incarceration are the main benefactors of mandatory detention. Nearly 50% of immigration detention beds are run by big companies like Corrections Corporation of America and the GEO Group, which each earn more than a billion dollars every year keeping people behind bars. These companies also spend several million dollars a year lobbying officials in state, local and federal government to support laws and policies that will increase the number of people subject to detention, and therefore the demand for their services.

## Is mandatory detention legal?

In 2003 the Supreme Court upheld the constitutionality of mandatory detention while individuals are in deportation proceedings. However, there is a growing consensus in the courts that when mandatory detention results in incarceration for long periods of time, it is no longer constitutional. The Supreme Court will likely reconsider this issue at some point in the future. There is also a good argument that mandatory detention violates the international human rights law prohibition against arbitrary detention. This prohibition is codified in the International Covenant on Civil and Political Rights, which the United States has signed and ratified.

## Is mandatory detention ethical?

Locking people up without requiring any justification for depriving them of their liberty, and without any legal safeguards in place to protect their civil and human rights, violates not only universal principles of justice, but also fundamental American values. Many people are mandatorily detained as a result of convictions in the criminal justice system, which is notorious for disproportionately targeting people of color. Mandatory detention imposes an additional punishment on individuals who have already paid their debt to society, one which is often harsher because -- unlike criminal incarceration -- there is no definite release date.

## Why end mandatory detention?

Mandatory detention impacts over 200,000 immigrants every year. In order to restore due process to the immigration system, mandatory detention must be repealed. Without the repeal of mandatory detention laws, immigrants will never have a fair opportunity to pursue their right to live in the U.S. and stay with their families and communities.

### 363,000

The number of people detained in 2010, a more than 500% increase since 1996.

### 2.5 million

The number of people who have passed through immigration detention since 2003.

### \$1.7 billion

Money Congress spent in 2010 to lock up immigrants.

### 60%

Percentage of immigrants detained under mandatory detention. ICE expects this number to continue to rise.

### 123

The number of people known to have died in ICE custody since 2003.