

United States of America

PROGRESS UNDER THE GLOBAL STRATEGY BEYOND DETENTION 2014-2019, MID-2016

THE UNITED STATES has faced new protection challenges since the roll-out of the Global Strategy, with an increasing number of men, women and children seeking asylum at the Southern border. In the last two years, UNHCR has worked to promote the three goals of the Global Strategy with the United States' larger protection response. In particular, UNHCR has supported the expansion of alternatives to detention (ATDs) in the United States, challenged the increased detention of families and children and raised awareness about particularly vulnerable populations in detention, such as LGBTI asylum-seekers.

In developing a National Action Plan (NAP) for the United States, 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. 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. UNHCR regularly participates in relevant civil society forums, including the Detention Watch Network (DWN), and government-stakeholder forums, that allow for coordination and roll-out of the strategy. These interactions provide opportunities for information sharing, brainstorming, and updating among a wide variety of civil society actors working on immigration detention, including the progress under the NAP.



KEY DEVELOPMENTS

- Launch of a pilot project on ATDs, the new "Family Case Management Program" aiming to release 800 vulnerable asylum-seeking families out of DHS custody into community care in five US cities. The program involves case management for access to services and legal aid, as well as assistance with compliance in immigration hearings. The first 180 participants entered the program in January 2016.
- Expansion of the Child Advocate Program for particularly at risk UASC from 2 sites in 2013, to 8 sites in 2016.
- Allocation of \$9 million in grants over two years from the Government to various programs to provide direct legal representation to UASC. However, the programs are only expected to be able to represent approximately 2,600 children which is a fraction of the UASC arriving to the United States.
- Creation by the U.S. Customs and Border Protection of a governmental interagency working group focused on UASC to revise and improve the screening process border officials use to identify UASC with international protection needs. The revised screening process will be implemented by the end of 2016.

Activities undertaken during the roll-out period of the Global Strategy

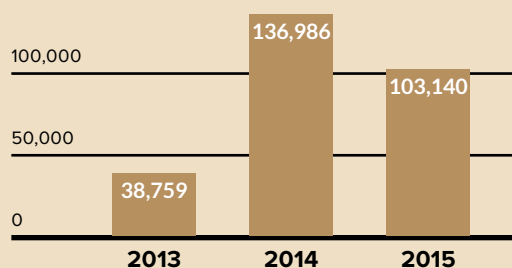
In 2015, UNHCR completed a review of ATD case management pilots run by two faith-based U.S. NGOs. That effort and review was disseminated to stakeholders, including the U.S. Government, and informed stakeholders' approach to the current "Family Case Management Program". From November 2015 onward, the office also provided technical support and shared good practices on ATDs with the U.S. Government and the implementing partner, Geocare, in the preparatory phase of this program. Moreover, UNHCR participates as an observer in the advisory committee set up by the authorities for the project.

UNHCR also has engaged in litigation to challenge the detention of children. The office submitted an amicus brief, reiterating UNHCR's position in the 2012 Detention Guidelines and in the Global Strategy, in the landmark case, *Flores v. Lynch*. In July 2016, the Court of Appeals for the Ninth Circuit ruled in this case, affirming that a national settlement agreement applies to all children whether accompanied or unaccompanied by their parents. Thus, the current state of U.S. law has a presumption in favor of releasing minors, and imposes the following obligations on the immigration authorities: 1. The government is required to release children from immigration detention without unnecessary delay to, in order of preference, parents, other adult relatives, or licensed programs willing to accept custody; 2. If a suitable placement is not immediately available, the government is obliged to place children in the "least restrictive" setting appropriate to their age and any special needs; 3. The government must implement standards relating to the care and treatment of children in custody.

During the reporting period, UNHCR in the United States focused more specifically on the situation of LGBTI asylum-seekers, particularly at risk in detention. In 2015, UNHCR started a new body of work pushing for greater protection of LGBTI asylum-seekers (and in particular, transgender people). On December 7, 2015, UNHCR held a roundtable with key actors in civil society working on LGBTI asylum issues in the United States with the aim to develop a white paper on ATDs

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED



NB. The change in the number of children detained is linked to the increasing number of children arriving to the U.S. territory.

- ⊘ Legal framework does not ensure that children are not detained.

GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation	☑	U	U
Reporting conditions	☑	U	U
Directed residence	☑	U	U
Residence at open/semi-open reception/asylum centres	☑	U	U
Release on bail/bond	☑	U	U
Provision of a guarantor/surety	☑	U	U
Community supervision arrangements	☑	U	U

☑ available in legislation ☑ used in practice

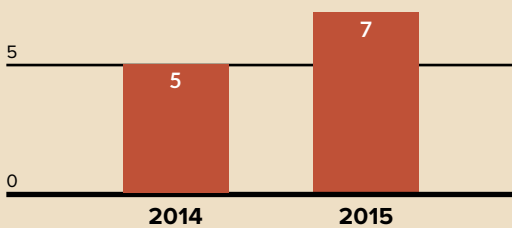
**PERCENTAGE OF PERSONS IN ATDs
(out of total number of persons detained)**



- ✔ Mechanism allowing asylum-seekers to stay legally in the community.
- When residing in the community, asylum-seekers sometimes have access to basic rights in the U.S. (accommodation, medical and psychological assistance, education, legal assistance), but these rights are often limited.
- ✔ Case management* is provided in the "Family Case Management Program".

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- The United States are not a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ✔ Yes ○ No ○ Partially
N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

for LGBTI asylum-seekers. This will be designed to formulate proposals for avenues for further dialogue between UNHCR and the Government. UNHCR has also been working with transgender activists around conditions in immigration detention, aiming to identify best practices in conditions of confinement. UNHCR has been providing information and referrals for detained LGBTI individuals through the asylum hotline, and has been intervening on individual cases with particular relevant issues.

In late 2015, UNHCR partnered with the Detention Watch Network to host a training on detention monitoring for over 60 participants from civil society across the United States. Drawing on existing expertise within UNHCR, its international partners, and civil society, the training sought to lay a strong foundation in detention monitoring practices for advocates newly interested in conducting monitoring activities and to increase the detention monitoring skills of those already engaged. Starting in 2015 and on-going in 2016, UNHCR participated as a technical advisor with ICE on the roll-out of the Family Case Management Program, providing trainings on case-management-based ATDs and serving on the "community reference committee" that meets quarterly.

Gaps and challenges

The detention of asylum-seekers, including vulnerable groups such as child asylum-seekers and families, continue to be a problem in the United States, with numbers of asylum-seekers from the Northern Triangle of Central America continuing to increase. ICE's new family case management program is a welcome initiative, but serves only a small fraction of asylum-seeking families and faces political opposition for expansion. In part due to responses to increased arrivals, efforts to improve screening and referral mechanisms at the U.S. border (thus shifting asylum-seekers away from detention) have been slow. Access to legal advice in detention is also still a challenge, despite increases in federal funding for the Legal Orientation Program (LOP) since 2013. Finally, ICE continues to contract with private prison companies and local jails and prisons resulting in occasions where asylum-seekers are confined in the same locations as persons suspected or convicted of a crime.



TRAININGS ORGANIZED IN THE UNITED STATES DURING THE REPORTING PERIOD

- 1 on Detention monitoring methodology
- 1 on Child protection
- 4 on Attention to vulnerable groups

NUMBER OF PERSONS TRAINED IN THE UNITED STATES DURING THE REPORTING PERIOD

- 60 on Detention monitoring methodology
- 20 on Child protection
- 100 on Attention to vulnerable groups

Next steps

UNHCR's next steps under the Global Strategy will be to continue to support the development of screening tools to identify children (and others) with international protection needs and to review the U.S. Government's program for the care and custody of unaccompanied children based on international standards for child protection. This program is housed within the Office of Refugee Resettlement (ORR), which is tasked with the care of unaccompanied children pending their release to a family member or sponsor if one is available, or the resolution of their immigration case if one is not. During its monitoring, UNHCR will be visiting approximately 20 locations where children are in ORR custody (there are over 125 locations across the country), which range in level of restriction from foster care placements to shelters to secure detention facilities, and will be monitoring the conditions, ORR's intake, screening and referral processes (both for legal and social services), access to asylum and other forms of legal relief, and release to sponsors and other ATDs.

UNHCR will continue to support the U.S. Government efforts to improve the greater use of ATDs for families and transgender women held in detention and will also be executing a 'legal capacity' project to train U.S. lawyers on how to effectively use international law in their advocacy. The trainings and materials will include information on UNHCR's position related to detention of asylum-seekers and ATDs. UNHCR will also continue following U.S. litigation for developments in detention-related laws and policy. Finally, UNHCR will engage with the U.S. Government on legislation and policy surrounding immigration detention including the "Fair Day in Court for Kids" Act, which would improve due process for children including those in detention.

For more information, please contact Alice Farmer, farmera@unhcr.org.
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