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When and How U.S. Immigration Detention Can Reach International Review

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Immigration detention in the United States is not a uniform experience. It can ensnare a lawful permanent resident intercepted after a brief trip abroad; an asylum seeker; a student or worker who overstayed their visa but has a pending application for relief; a long-term resident placed in removal proceedings for alleged criminal conduct; or an undocumented migrant held for months or years while navigating an impenetrable bureaucracy, among others.

Under the Immigration and Nationality Act (INA), officials wield broad authority to detain individuals in removal proceedings, and, in certain categories, must detain them without bond. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) reshaped this landscape, replacing the pre-1996 presumption of liberty (detention as an exception for flight risk or danger) with detention as an administrative default. The legal justification for this power rests on a familiar premise: sovereign states have the right to control their borders. Yet sovereignty is not an absolute shield. Under both domestic and international law, the United States is bound by obligations that protect the rights of all individuals within its jurisdiction, citizens and non-citizens alike.

While immigration cases in the U.S. are overwhelmingly fought on domestic terrain, a parallel web of international human rights instruments also sets standards that the U.S. government is obligated to respect. This article explores when and how non-citizen detainees can cross that legal bridge and seek accountability before international bodies. The answer lies in understanding the evolving domestic practices, the legal definitions that frame “lawfulness,” and the limited but real pathways to international oversight.

The Current State of Immigration Detention Practices

Donald Trump’s return to the presidency has accelerated immigration enforcement. His “big beautiful bill” allocates $165 billion to the Department of Homeland Security–the

largest single increase in U.S. history–with $45 billion earmarked for expansion of immigration detention.

As of July 2025, ICE detained 56,945 people, over 71% with no criminal conviction and many for minor infractions. Conditions are deteriorating and include overcrowding, inhumane treatment, and transfers to offshore sites like Guantánamo Bay in a move advocacy groups have called an attempt to create a "legal black hole." Reports have also emerged of U.S. citizens being wrongfully detained in ICE operations, fueling fears of racial profiling and constitutional violations.

Cross-border transfers compound the issue. In 2025, over 200 Venezuelans were deported to El Salvador's maximum-security prisons under conditions of incommunicado detention, prompting petitions to the Inter-American Commission on Human Rights (IACHR), a principal and autonomous organ of the Organization of American States (OAS) whose mission is to promote and protect human rights in the Americas.

These developments have brought intense international scrutiny to U.S. immigration and detention policy.

Defining the Boundaries of Lawful Detention

Whether immigration detention can ultimately be challenged depends, in part, on how that detention is classified under both U.S. and international standards. Three overlapping but distinct categories frame the analysis.

1. Indefinite Detention: Deprivation of liberty without a fixed or reasonably knowable release date. The endpoint is uncertain.

In the United States:

- Indefinite detention is not automatically illegal but is subject to constitutional limits.
  - Zadvydas v. Davis set a presumptive 6-month cap on post-removal detention if deportation is not "reasonably foreseeable."

- Later cases in 2022 (Garland v. Gonzalez, Johnson v. Arteaga-Martinez) eliminated class-wide remedies and declined to read the INA as requiring automatic bond hearings after prolonged confinement.

2. Unlawful Detention: Detention contrary to applicable law, either domestic (statutes, constitution, regulations) or international treaty obligations.

In the United States:

- Detention is lawful only if it falls within (1) criminal proceedings with full procedural protections, or (2) special, narrow civil contexts with strong justification.
- Immigration detention falls into the latter category, meaning it cannot be punitive and it must be supported by a case-specific justification that outweighs the individual's liberty interest and is accompanied by strong procedural protections. Detention that is excessive in duration, imposed for deterrence, administrative convenience, or political signaling, or lacking meaningful review can therefore violate the Due Process Clause of the U.S. Constitution.
- All persons physically present in the United States regardless of legal status are entitled to Due Process protections, though the Supreme Court in Shaughnessy v. Mezei carved out an exception for "arriving" non-citizens at the border, whose rights Congress may limit.

International law imposes more exacting standards for immigration detention, requiring due process robust enough to ensure a fair determination of immigration claims. This ties directly to the third concept below: arbitrary detention.

3. Arbitrary Detention: A broader human rights concept. Even if domestically lawful, detention is arbitrary under international law if it fails reasonableness, necessity, proportionality, or predictability tests.

The UN Working Group on Arbitrary Detention (WGAD) has established criteria for determining if detention is arbitrary. These include where there is:

- No clear legal basis.
- Punishment for exercising rights.
- Serious fair trial violations.
- Prolonged administrative custody for refugees/asylum seekers.
- Discrimination-based detention.

In short, all unlawful detention is also arbitrary under international law, but not all arbitrary detention is unlawful under U.S. law. Indefinite detention, even for refugees and asylum seekers, is a form of detention that can be lawful (narrowly) under U.S. precedent. Under human rights law, such detention is likely to be considered arbitrary.

Pathways to International Review

U.S. immigration detention cases seldom reach an international court that can issue judgments binding on the U.S. government. The reasons are mainly structural, as the United States has declined jurisdiction under most individual complaint procedures and has not accepted the authority of any supranational tribunal with compulsory jurisdiction over human rights claims.

Consequently, cases challenging U.S. immigration detention are far more likely to appear before quasi-judicial oversight bodies, most notably the IACHR and the WGAD. These bodies can investigate and recommend remedies, but their decisions lack direct enforcement power within the U.S. legal order.

Even so, access to these forums is not automatic. While each tribunal applies its own rules around which cases it will accept, they usually revolve around two core ideas:

1. Jurisdiction: The forum must have authority over the United States, established through treaty obligations, customary international law, or– in the IACHR's case–membership in the OAS.
2. Exhaustion of domestic remedies: The complainant must have pursued all available and effective legal avenues at the national level, unless those

remedies are demonstrably unavailable, ineffective, or subject to unreasonable delay.

The exhaustion rule is a foundational principle of international human rights law, designed to respect state sovereignty by affording the domestic legal system the first opportunity to redress the alleged violation. In the U.S. immigration detention context, the requirement to exhaust domestic remedies can be met in various ways, though the following is not an exhaustive list. For example, a detainee or their counsel might:

- File a habeas corpus petition in federal court to challenge the legality or duration of detention;
- Pursue statutory remedies under the INA such as motions to reopen, appeals to the Board of Immigration Appeals, and petitions for review in federal circuit courts; or
- Raise constitutional claims, including Fifth Amendment due process and equal protection arguments, through the federal appellate process, with the option of petitioning the U.S. Supreme Court for review.

If these avenues have been explored or are legally foreclosed, international bodies may consider the exhaustion requirement satisfied and proceed with considering the merits of the complaint.

Which International Oversight Bodies are Applicable to the United States?

Key Venues:

1. United Nations System

a. Universal Declaration of Human Rights (UDHR)

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Although the UDHR is not a binding treaty, it articulates core norms of liberty, security, and dignity that inform customary international law and shape the interpretation of binding treaties. Articles 3, 5, 7, 9, and 10 together enshrine the rights to life, liberty, and security of person; freedom from torture and cruel, inhuman, or degrading treatment; equality before the law; and protection against arbitrary arrest or detention. In the immigration detention context, these provisions frame international scrutiny, even if they cannot by themselves produce a judicial order against the United States.

b. International Covenant on Civil and Political Rights (ICCPR)

Ratified by the United States in 1992, the ICCPR imposes binding obligations prohibiting arbitrary detention (Art. 9), requiring humane treatment of persons deprived of liberty (Art. 10), and prohibiting torture or cruel, inhuman, or degrading treatment (Art. 7). The UN Human Rights Committee (HRC) monitors compliance and issues 'Views' on individual complaints, but only for states that have ratified the First Optional Protocol, which the U.S. has not. As a result, individuals cannot bring direct complaints against the U.S. to the HRC. Instead, U.S. practices are assessed through periodic state reports or inter-state complaints, which are not legally binding.

c. Convention Against Torture (CAT)

Ratified in 1994, the CAT obligates the United States to prevent torture and cruel, inhuman, or degrading treatment in any territory under its jurisdiction, including immigration detention centers and extraterritorial facilities such as Guantánamo Bay. The Committee Against Torture reviews compliance through periodic reports, on-site visits (where permitted), and, in states that accept it, individual complaint mechanisms. Notably, the United States has not accepted the individual complaint mechanism, so individuals

cannot file complaints to the Committee as against the United States. Nevertheless, the United States remains bound to the Convention Against Torture, and its violations of the Convention could be raised in other forums or as part of a larger advocacy strategy.

d. UN Working Group on Arbitrary Detention (WGAD)

The WGAD, as part of the UN's "Special Procedures" system, can receive individual petitions alleging arbitrary detention even without U.S. consent. It applies five categories of arbitrariness, ranging from detention without a legal basis to detention that results from discriminatory treatment. WGAD opinions are non-binding but carry persuasive authority in both diplomatic and advocacy contexts.

2. Inter-American Human Rights System

Inter-American Commission on Human Rights (IACHR)

As a founding member of the OAS, the United States is bound by the American Declaration of the Rights and Duties of Man (ADRDM). Although the U.S. has not ratified the American Convention on Human Rights, the IACHR considers the ADRDM legally binding on all OAS members.

Individuals can file petitions alleging violations of ADRDM rights, such as liberty (Art. I), due process (Art. XXVI), and freedom from arbitrary arrest or detention (Art. XXV), with the IACHR. The Commission can investigate, issue merits reports, and recommend corrective

measures. In U.S. immigration cases, the IACHR has held that due process guarantees apply equally in removal proceedings, and that prolonged, incommunicado, or family-separating detention can be arbitrary even if permitted under domestic law.

The OAS has its own adjudicative body, the Inter-American Court of Human Rights (IACtHR). While the IACHR can refer cases to that Court, the Court lacks jurisdiction over the U.S. because the U.S. has not accepted its contentious jurisdiction. Thus, for the U.S., the IACHR is the final regional adjudicator, making its findings politically and diplomatically consequential even without formal enforcement power.

The Case of Ameziane v. United States: Djamel Ameziane, an Algerian refugee held at Guantánamo Bay for over a decade without charge, was first classified as an "enemy combatant" by a 2004 Combatant Status Review Tribunal based on alleged ties to the Taliban and al Qaeda, despite no evidence he had fought or received military training. Administrative Review Boards repeatedly upheld his detention from 2005 to 2007, while his 2005 habeas petition stalled for years until Boumediene v. Bush recognized detainees' habeas rights; even then, procedural delays and secrecy around transfer decisions left his case unresolved.

In 2008, with no relief forthcoming in U.S. courts, Ameziane petitioned the IACHR, alleging arbitrary and indefinite detention, torture, and risk of persecution if returned to Algeria. The IACHR had a track record of issuing precautionary measures for Guantánamo detainees despite U.S. objections to its authority. In 2010, it ordered the U.S. to prevent torture and ill-treatment. In 2012, the Commission accepted jurisdiction in Ameziane's case, finding that the "unwarranted delay" in his domestic proceedings satisfied the exhaustion-of-remedies exception under Articles 18 and 20 of its Statute. Importantly, the IACHR applied an extraterritorial "effective control" standard, holding that Guantánamo falls within U.S. jurisdiction under the ADRDM despite its location on Cuban soil.

While Guantánamo detentions are often framed as national-security cases, Ameziane is instructive for immigration detention analysis in two ways. First, it demonstrates that the IACHR is willing to pierce formalistic jurisdictional arguments when the U.S. exercises total control over a facility and the individuals within it (a test that could apply to certain offshore or extraterritorial immigration detention sites). Second, it shows that where U.S. courts fail to deliver a timely, effective remedy for arbitrary or indefinite detention, petitioners can invoke the IACHR's competence to review the legality and conditions of confinement under the ADRDM.

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3. International Criminal Court (ICC)

The United States is not a party to the Rome Statute, the treaty that established the ICC. As a result, the ICC generally lacks jurisdiction over crimes committed by U.S. nationals on U.S. territory, unless the UN Security Council refers the situation (an unlikely scenario given the U.S.'s veto power as a permanent member of the Security Council).

Situations in which the ICC would have jurisdiction over U.S. nationals are not relevant to this blog's topic, as they apply only when a citizen of a non-member state commits war crimes, crimes against humanity, or genocide on the territory of an ICC member state.

4. Universal Jurisdiction in Foreign Courts

Separate from treaty bodies, some national courts exercise universal jurisdiction over grave international crimes such as torture, enforced disappearance, and crimes against humanity, regardless of where they occur or the nationality of the perpetrators or victims.

For example, Spanish magistrates once investigated U.S. officials for abuses at Guantánamo Bay under Spain's then-broad universal jurisdiction law. However, a 2014 reform limited Spain's jurisdiction to cases where the accused are Spanish citizens or residents, leading its National Court in 2015 to close the Guantánamo investigations after six years.

In theory, certain forms of indefinite or unlawful immigration detention could qualify as torture under the strict definitions of international law, depending on the severity of conditions and the treatment of detainees. If those detainees were nationals of countries that maintain robust universal jurisdiction provisions, such states could, at least legally, initiate investigations or prosecutions against responsible U.S. officials. In practice, however, no such cases have been brought, and they are unlikely to proceed given the substantial diplomatic and evidentiary obstacles involved.

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Pathways Forward

In 2023, the Onondaga Nation advanced a centuries-old land rights dispute into the Inter-American human rights system after more than two hundred years of unanswered domestic petitions.

Confronted with the U.S. government's position that the matter was "settled" and beyond review, the IACHR determined that two of the Nation's claims alleging violations of equality before the law and the right to judicial protection were admissible.

For immigration detainees and their advocates, the Onondaga decision illustrates that when domestic courts foreclose relief, international human rights bodies may still provide a forum for adjudication.

The limitations are real when it comes to challenging U.S. detention practices: none of the bodies listed above can compel U.S. compliance with international law. Butut "non-binding" is not the same as "non-consequential." An IACHR merits decision becomes part of a country's permanent human rights record, a citation that can resurface in congressional hearings, allied parliaments, and multilateral negotiations. It can raise the diplomatic and reputational costs of inaction to the point where such inaction is no longer politically sustainable. In some circumstances, those reputational costs can translate into concrete protection. For example, when a U.S. ally is bound by treaty to uphold human rights rulings, an international decision can give that ally legal justification, or even a legal obligation, to decline participation in abusive practices (such as a request to participate in a third-country transfer of an immigrant detainee).

**Disclaimer: This information is presented for the purposes of general education and does not constitute legal advice.*