

**NGO Submission for the Universal Periodic Review of the United States:  
Justice in Immigration, Parole and Capital Punishment**

**I. EXECUTIVE SUMMARY**

1. The United States leads the world in both total prison population and rate of incarceration.<sup>1</sup> These figures do not include the millions of additional people monitored in other phases of the correctional system, and the hundreds of thousands detained yearly in Immigration and Customs Enforcement (ICE) facilities. Although human rights concerns exist throughout all stages of the US criminal justice and civil detention systems, Dui Hua focuses in this submission on three areas of concern that we have recently encountered in our work: parole policy, immigration detention, and capital punishment. We call for additional scrutiny of the indeterminate parole process at the US state level, increased monitoring and accountability in ICE, and a moratorium on the death penalty.

**II. Parole Policy**

**A. AREAS OF CONCERN**

2. International human rights law does not recognize the right to parole. However, jurisdictions that adopt parole must do so in accordance with international human rights law. US states and the US federal government make independent decisions regarding the structure of their penal systems, including whether to institute discretionary parole (i.e. parole boards), non-discretionary parole (i.e. fixed prison terms), or some combination of the two. While many states have trended away from discretionary parole since the 1970s,<sup>2</sup> the discretionary parole process has also become more rigid in many states. In California, less than one percent of inmates whose cases are heard are recommended for parole by the parole board, and the current Governor has overturned all but four of those recommendations.

3. Article 10 Section 4 of the International Covenant on Civil and Political Rights (ICCPR) states that “the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.” As shown in the Working Group on Arbitrary Detention’s findings in *Jan Borek v. United States*,<sup>3</sup> denial of parole based solely on the circumstances of the original commitment offense, without consideration of an inmate’s fulfillment of parole criteria, and without recourse to a judicial body, constitutes arbitrary detention.

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<sup>1</sup> World Prison Population List (Eighth Edition)

<sup>2</sup> *Trends in State Parole, 1990-2000*, US Bureau of Justice Statistics (October 2001)

<sup>3</sup> U.N. Doc. E/CN.4/2002/77/Add.1 at 16 (2000).

## B. ACHIEVEMENTS

4. On March 16, California State Court of Appeals overturned the Governor's denial of parole in the case of Bennie Moses and the board of parole's rejection of parole in the case of Ernesto Juarez, ruling that there was no evidence to support the denial of parole.

## C. RECOMMENDATIONS

5. US states with indeterminate parole systems should establish independent bipartisan parole boards with judiciary oversight. A full accounting of an inmate's behavior and fulfillment of parole qualifications should be made, and the original commitment offense should not in itself be cited as sole grounds for denial of parole.

6. As put forth in the February 16, 2009 report of the Working Group on Arbitrary Detention, Dui Hua calls for the creation of a special procedure of the Human Rights Council whose mandate provides for a global and comprehensive approach to the protection of all human rights of all persons deprived of their liberty. This mandate would address parole-related human rights concerns worldwide.

## III. Immigration and Customs Enforcement Detention

### A. AREAS OF CONCERN

7. In 2008, US Immigration and Customs Enforcement, under the Department of Homeland Security (DHS), detained 379,000 foreign nationals.<sup>4</sup> These detainees, which included both individuals apprehended at the national border and inside the country, are held in hundreds of ICE facilities throughout US territory, including ICE field centers, state and local jails that ICE subcontracts to detain individuals, and unlisted subfield offices.<sup>5</sup> Although ICE detention is putatively civil detention and non-punitive, the very notion of civil custody in criminal facilities alongside convicted criminals belies this claim, while the stipulated civil nature of the confinement legally denies detainees many of the internationally protected human rights afforded to their criminal cohabitants.

8. ICE detainees lack the right to counsel, which violates Article 13 of the ICCPR, which states that an alien "be allowed to submit the reasons against his expulsion and to have his case reviewed by, and *be represented for the purpose* before, the competent authority or a person or persons especially designated by the competent

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<sup>4</sup> "Immigration Enforcement Actions", Annual Report 2009, Department of Homeland Security Office of Immigration Statistics (July 2009)

[http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement\\_ar\\_08.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_08.pdf)

<sup>5</sup> "America's Secret ICE Castles," *The Nation* (22 December 2009).

authority.” Legal representation at ICE proceedings has been shown to significantly impact outcomes, and non-citizens who are represented at asylum hearings are almost three times as likely to be granted asylum as those who are not.<sup>6</sup> Despite the importance of counsel, more than half of all immigrants are not represented by an attorney at any stage in the deportation process.<sup>7</sup>

9. Even when non-citizens do secure counsel, their representation is often disrupted by transfers. ICE offers no effective checks on the use of the transfer process, although this process may have serious and deleterious effects on a non-citizen and the status of his or her case. Most notably, transfer often denies a non-citizen access to witnesses and evidence that might be used in a non-citizen’s defense, even though a right to access is protected by Article 13 of the ICCPR, and further elaborated in the UN Human Rights Committee’s general comment on the position of aliens under the covenant.<sup>8</sup>

10. More broadly, the structure and management of ICE detention in the United States leads to widespread violations of Article 9 of the ICCPR prohibition against arbitrary detention. As a human rights organization concerned with conditions of confinement and criminal justice in both the United States and China, Dui Hua is particularly concerned with the process of mandatory detention, whereby a non-citizen who has committed a felony or crime involving a broad range of other characteristics, such as “moral turpitude,” a term which lacks a firm legal basis for objective assessment—and served his or her criminal sentence—may be held indefinitely in an ICE facility pending removal proceedings. Once a removal order is issued, however, some detainees find that their home country will not accept them. ICE is supposed to hold a custody review within 90 days of a removal order, and another review is required if an individual is in detention six months after the removal order. However, Dui Hua has received reports of Chinese citizens in the United States who have been held for years and have not received custody reviews at stipulated intervals.<sup>9</sup>

11. Finally, as an NGO that advocates transparency and accountability as necessary protections against human rights abuses, we are concerned about the lack of a uniform and up-to-date tracking system for ICE detainees.

## **B. ACHIEVEMENTS**

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<sup>6</sup> “Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, a Case Study,” *Fordham Law Review* (Peter Markowitz, November 2009).

<sup>7</sup> “Huge Increase in Transfer of ICE Detainees,” TRAC Immigration Report (December 2 2009).

<sup>8</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 15: The Position of Aliens Under the Covenant*, 11 April 1986

<sup>9</sup> “Once in Prison, Now Reaching Out,” *Dialogue, Issue 36* (The Dui Hua Foundation, Summer 2009).

12. In a talk given in January 2010, Assistant Secretary of Homeland Security for ICE John Morton outlined the reforms currently being instituted at ICE, including the creation of detention hubs that centralize services, a new medical intake classification system, an electronic detainee locator system, set to go online in June, and increased use of detention alternatives in non-criminal cases. Dui Hua applauds these goals. However, given the lack of meaningful reform over the reporting period, despite repeated reports of internal policy changes, Dui Hua remains skeptical about the efficacy of the program described above.

### **C. RECOMMENDATIONS**

13. ICE detention decisions should be the subject of an independent judicial body, and detainees should receive guaranteed access to representation before that body.

14. The policy of automatic mandatory detention should be replaced with a system that specifies that detention pending deportation proceedings be shown as a necessary and proportionate measure. Prisoners who have served their sentences in US state or federal facilities before being remanded to ICE facilities should not be denied liberty solely on the basis of prior conviction. Alternative measures such as bond should be implemented where possible.

15. Conditions of confinement should be non-punitive, and ICE should cease the practice of contracting to house immigration detainees in criminal justice facilities.

16. ICE should institute a national system of detainee tracking that is electronic, up-to-date, and easily accessible to attorneys and family members.

## **VI. Capital Punishment**

### **A. AREAS OF CONCERN**

17. Thirty-five US states and the US federal government retain the death penalty. Dui Hua has deep concerns about the well-documented racial disparities in the application of the death penalty,<sup>10</sup> as well as the implications of the 73 post-conviction DNA exonerations that have taken place in the United States between 2006 and 2009.<sup>11</sup> Given the deep-seated and long-running questions of the application of this penalty, Dui Hua joins the UN General Assembly in its 2007 resolution in calling on the United States to join in a worldwide death penalty moratorium.

### **B. ACHIEVEMENTS**

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<sup>10</sup> See The Death Penalty Information Center's Fact Sheet (<http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>.)

<sup>11</sup> See The Innocence Project (<http://www.innocenceproject.org/know/>)

18. Three US states abandoned the death penalty over the quadrennial period. In 2009, New Mexico Governor Bill Richardson signed a bill abolishing the death penalty. In 2007, Governor Jon S. Corzine signed into law a measure repealing New Jersey's death penalty. In 2004, ruling in *People v. LaValle*, the New York Court of Appeals ruled that the state's death penalty statute was unconstitutional, and in 2007, the court ruled that holding also applied to the last remaining death row prisoner.

19. During the quadrennial period no individuals were executed for crimes committed under the age of 18, following the 2005 US Supreme Court ruling in *Roper v. Simmons*.

### **C. RECOMMENDATIONS**

20. Given the clear inconsistencies in the application of the death penalty and the constant possibility of irrevocable wrongful execution, Dui Hua calls for US state and federal moratoria on the death penalty.

The Dui Hua Foundation  
April 18, 2010