**UN Committee on Migrant Workers General Comment No. 5 on**

**Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention**

**Questionnaire**

**December 2018**

This questionnaire has been created to collect information from States, civil society organizations, intergovernmental entities, academic institutions, and other interested parties for the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) in its drafting of General Comment No. 5 on Migrants Workers’ Right to Liberty and Protection from Arbitrary Detention. CMW invites these stakeholders to submit responses to this questionnaire in accordance with their expertise and capacity. Parties are asked to provide detailed information including sources, data, statistics, evidence, and documentation as available. Parties need not answer every question, and may submit information in alternate formats.

Input may be sent electronically in Word format to the email: [cmw@ohchr.org](mailto:cmw@ohchr.org) with the subject line, “Submission for General Comment on Migrants’ Right to Liberty.” **Submissions should not exceed ten pages in length and should be received by 1 April 2019.** Written contributions will not be translated and should preferably be submitted in English. Submissions in French and Spanish will also be accepted.

**Organization Information**

Name of Organization Completing Form: Catholic Charities, Diocese of Cleveland, Migration and Refugee Services

Country: United States of America

Date: March 28, 2019

**Part A: General Information**

**1. Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?**

The process by which migrants are detained in our country is arbitrary and highly depends on the agency and officer who is making the determination. The agencies who can decide to detain a migrant are Customs and Border Protection, Immigration and Customs Enforcement, and local police and sheriff’s officers. Both Customs and Border Protections and Immigration and Customs Enforcement are under the jurisdiction of the Department of Homeland Security.

Detaining an individual can occur at different times but usually starts with an arrest. This can happen when a migrant first encounters Customs and Border Protection (CBP) at a port of entry (such as an airport or at our border). If the officer is unable to verify valid migration status, the CBP officer can arrest the migrant and detain him or her. An arrest can also happen when local authorities conduct a raid or otherwise come across a person in the community who does not have the necessary documentation. In Ohio, often times arrests occur at a random traffic stop. If an officer is unable to verify the migrant’s identity or valid immigration documents, he or she can arrest and detain the migrant. The local officer will call Immigration Customs Enforcement (ICE) and the ICE officer will “pick up” the migrant and detain them until identity and status are verified or until the migrant successfully litigates his/her case in Immigration Court.

**2. Where do arrests and detentions take place? Is force typically used during arrest or detention? Are there standards for treatment of migrants during an arrest? To what extent are migrants informed of what is going on during an arrest (why they are being detained, possible charges against them, etc.)?**

Arrests can take place anywhere within the United States or at a port of entry. There are approximately 1500 detention centers across the United States. A migrant can be transferred to any facility that ICE deems appropriate. While there are standards of treatment as dictated in the 2008 Performance-Based National Detention Standards (PBNDS) not all facilities follow the 2008 standards. Many facilities are “grandfathered” in and permitted to use older versions of the PBNDS. There are countless reports of officers at the detention facilities abusing their authority and failing to comply with the PBNDS. In addition, many of the detention facilities are owned by private companies and therefore often times, the standards of the private companies supersede the standards of PBNDS. These private companies have untethered discretion to abuse detainees and there have been countless reports of these abuses. Many reports have cited to the poor detention conditions as human rights violations.

Most, if not all, detainees are not clear as to what their rights are or what the possible charges against them are. This is because no migrant has the right to an attorney. Also, most migrants do not speak English and an interpreter is not always provided to interpret/translate the allegations against them. U.S. immigration law is very complex, and there is much confusion as to how it works. It is impossible for a person who cannot read or speak English to understand what little rights are afforded to him or her.

**3. Who are the personnel that staff facilities that hold people in detention (corrections officers, law enforcement, social workers, etc.)? What are the professional qualifications of staff at these detention facilities? Who oversees staff at detention facilities?**

The personnel who staff facilities in detention centers varies and depends on the type of detention center. If it is a state run detention center, then trained corrections officers and law enforcement officers are on staff. However, if it is a privately owned detention center then the private companies higher “detention officers” and each company creates their own qualifications for the officers. The qualifications to become a detention officer are minimal. Often times, individuals with only 6 months experience as a security officer are employed by the private companies. It is clear with all privately owned detention centers that there is no requirement to speak a foreign language and no intense training, experience, or education necessary.

**4. Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?**

Facilities that house detained migrants are both public and private. Private corporations contract with ICE to operate several of the detention centers housing migrants. The privatization model is based on a profit maximization whereby the more detainees result in the more money for the private companies that operate the facilities. The remaining detention facilities are state operated jails or prisons that contract with ICE for a certain amount of beds.

**5. Does your country monitor detention facilities? Who monitors detention facilities? What are the standards that detention facilities must adhere to?**

Technically, ICE is in charge of monitoring all detention facilities and making sure all facilities adhere to the PBNDS. ICE can fine any private or state facility contractor when “deficiencies” are found. These monetary penalties are the main tool used to ensure that standards are complied with. However, a report issued by the Department of Homeland Security indicated that between the years 2015-2018 only two fines have been issued by ICE. (See DHS OIG Highlights “ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards.” July 29, 2019)

**6. During detention, do detainees have access to communication with their families, legal counsel, and their own consular authorities? Are detainees provided with information on the process they are going through?**

Detainees often face obstructions to communicating with their counsel and families. Many detention centers are in extremely remote locations, forcing attorneys and families to travel for many hours to meet with their clients. At times, attorneys wait for hours for a visitation room to become available. Detention at times require attorneys to schedule appointments days in advance and prevent them from emergency visits. ICE sometimes even transfers detainees to facilities in different states without first notifying their attorneys.

When detainees try to reach their family or attorneys for aid, they often face costly telephone charges, long waits for access to phones, and calls that automatically cut off after short time periods. They may find themselves brought to expedited immigration proceedings without the chance to tell their attorneys, or face abject prison conditions with no ability to report them. Attorneys are limited in contacting their clients and face barriers when important information needs to be communicated to clients expediently.

Legal representatives from nonprofit organizations provide explanations about immigration court procedures along with other basic legal information to large groups of detained individuals through Legal Orientation Programs (LOP) and Know Your Rights presentations. The Immigration Court manages the LOP through a contract with the Vera Institute of Justice and local subcontracting legal service organizations to provide program services.

**7. Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?**

Women face unique problems during detention. Human rights organizations like the American Civil Liberties Union (ACLU), Human Rights Watch (HRW), and the immigrant advocacy group Community Initiatives for Visiting Immigrants in Confinement (CIVIC) have alleged several instances of sexual abuse and physical abuse by detention guards against females, as well as unlawful strip searches. There is a large lack of sufficiently safe spaces, or medical and psycho-social support systems. In some cases, women are also unable to obtain menstruation kits because they feel humiliated.

The situation will likely only get worse for women — particularly mothers — in detention as the Trump administration continues to deliberate over family separation as an enforcement tactic to deter future border crossers. Women who are separated from their children would have to fight for legal relief separately, facing the possibility that either case could have different legal outcomes. And because separated family members may not have access to the same documentation of their joined cases, some people may be unable to provide evidence showing that they are fleeing from harm.

Torture survivors seeking asylum protection in the United States may be detained upon arrival at an airport or border port of entry or may be apprehended on the border or in the interior of the United States. Very little to no consideration is given to the status of asylum seekers, victims or torture, and other vulnerable immigrants during detention. For many of these individuals, the immigration detention experience is often traumatizing and may lead survivors to relive their horrid experiences of torture, including the profound sense of powerlessness and loss of sense of self, contributing to further psychological damage.

**8. Does the detention process look any different if minors are involved?**

Children first detained at the time of entry to the United States, whether they are unaccompanied or in family units, are held by the Department of Homeland Security (DHS) in CBP processing centers. If an accompanying adult cannot verify that he or she is the biological parent or legal guardian, this adult is separated from the child, and the child is considered unaccompanied. After processing, unaccompanied immigrant children are placed in shelters or other facilities operated by the US Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), and the majority are subsequently released to the care of community sponsors (parents, other adult family members, or nonfamily individuals) throughout the country for the duration of their immigration cases. Children detained with a parent or legal guardian are either repatriated back to their home countries under expedited removal procedures, placed in Immigration and Customs Enforcement (ICE) family residential centers, or released into the community to await their immigration hearings

**Part B: Legal Treatment**

**1. What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system and public policies? Please identify any relevant cases in your country’s court system.**

U.S. law governing immigration detention is provided in several acts, which are consolidated in Section 8 of the U.S. Code. In addition, there are a large number of memorandums, guidance documents, and policy statements issued by ICE and the of Homeland Security (DHS) that relate to immigration detention.

It has long been recognized that non-citizens, including those in the United States unlawfully, are entitled to the fundamental guarantees of the Constitution. As early as 1903, the Supreme Court ruled that a non-citizen could not be deported without an opportunity to be heard that met constitutional due process requirements, although this did not necessarily mean an opportunity for a judicial proceeding.

The stated purpose of immigrant detention has been to ensure that individuals appear for their removal proceedings and do not abscond after a final order of removal has been issued. During the last twenty year, federal immigration policies and priorities have increasingly focused on enforcement and normalized deportations. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 promulgated mandatory detention laws for certain immigrants and initiated a “get tough on undocumented immigration” era. Through expedited legal removal proceedings, harsher penalties, and mandatory detention, IIRIRA begat the first wave of large-scale immigrant detention in the U.S. As removals became a high immigration priority of the U.S. government, the use of immigrant detention increased in an effort to keep immigrants in custody while they awaited deportation. Relevant case law includes *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), *Orantes-Hernandez v. Meese*, 919 F.2d 549 (9th Cir. 1990), *Flores v. Sessions*, 862 F.3d 863 (9th Cir. 2017), *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999), *Matter of Kotliar,* 24 I&N Dec. 124 (BIA 2007), *Zadvydas v. Davis,* 533 U.S. 678 (2001), *Demore v. Kim*, 538 U.S. 510 (2003)

**2. Is immigration governed by criminal law or administrative law?**

The U.S. immigration enforcement system is intimately intertwined with the criminal justice system, as exemplified by the long-standing U.S. practice of using prisons to confine immigration detainees. An important form of immigration criminalization in the United States is that many immigration-status-related violations are subject to prosecution. Although non-citizens who are in detention to complete immigration or asylum-related processes are considered in administrative (or “civil”) detention, tens of thousands of people are also incarcerated for immigration-related crimes every year.

**3. Does the immigration detention proceed ex officio or there is an individualized analysis of its pertinence and proportionality?**

Whether an individual is detained and placed into removal proceedings is a decision subject to the Department of Homeland Security’s (DHS) discretion. Four primary statutory grounds exist under which DHS has authority to detain an individual. Some statutory grounds authorize mandatory detention, meaning that the immigration judge (IJ) has no authority to re-determine the person’s custody or to set a bond. The strategies available for an individual to seek release will depend on which classification he or she falls into.

The Risk Classification Assessment (RCA) program has been used by field agents since 2013 to help determine whether a person arrested by ICE should be kept in detention or be released on bond until their day in immigration court. Under the current administration, DHS has amended its risk assessment system as part of a move to “better align” agency processes with Trump administration priorities, and maintains that final custody decisions are always made by ICE deportation officers. This has resulted in increased detention of all migrants, regardless of risk assessment and things like criminal backgrounds and previous deportation records.

**4. Does legislation establish a maximum amount of time for immigration detention? What is the maximum amount of time that someone can be detained? Are there any exceptions or extensions allowed by law?**

An immigrant can be subject to prolonged, indefinite detention after losing their case in Immigration Court and being ordered deported. This happens when the Government cannot actually follow through and deport the client because their home country refuses to accept them or they are stateless, leaving the client in a detention limbo.

The United States Court of Appeals for the Ninth Circuit has ruled that immigrants are entitled to a bond hearing every six months and that the government must show that the immigrant poses a flight risk or a danger to the community to justify extending the detention. In a 2003 decision, the U.S. Supreme Court upheld the constitutionality of mandatory detention of an immigrant in *Demore v. Kim*, 538 U.S. 510, but that case did not address the legality of prolonged mandatory detention.

**5. Does legislation provide any mechanism to challenge the legality of the detention?**

In practice, an immigrant has the right to file a habeas corpus petition in the federal district court if they are detained six months after their deportation order. The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless government action. Immigrants can pursue habeas relief challenging the legality of prolonged detention on purely constitutional grounds.

**6. Is there any national legislation that guarantees legal representation or interpreters in immigration proceedings? Is there a guarantee of access to free legal representation?**

The U.S. immigration system does not provided court-appointed counsel to immigrants facing deportation who are unable to afford a lawyer. The Immigration Court provides interpreters during immigration proceedings. A List of Pro Bono Legal Service Providers is provided to individuals in immigration proceedings. The List contains information on non-profit organizations and attorneys who have committed to providing at least 50 hours per year of pro bono legal services before the immigration court location where they appear on the List.

**7. Is there any legislation that establishes the right to consular assistance for migrants? Is this right guaranteed in practice?**

The United States is subject to the Vienna Convention on Consular Relations (VCCR). Article 36 VCCR provides for informing the foreign national of the right to consular notification and access if the national is "arrested or committed to prison or to custody pending trial or is detained in any other manner." While there is no explicit exception for short detentions, the Department of State does not consider it necessary to follow consular notification procedures when an alien is detained only momentarily, e.g., during a traffic stop.

On the other hand, requiring a foreign national to accompany a law enforcement officer to a place of detention may trigger the consular notification requirements, particularly if the detention lasts for a number of hours or overnight. The longer a detention continues, the more likely it is that a reasonable person would conclude that the Article 36 obligation is triggered. After arrest, an immigrant is typically asked if they would like to contact consular officials. It is generally in DHS’s best interest to work with foreign consulates in case they need the assistance of the consulate when deporting an immigrant.

**8. Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens? If not, what are the differences?**

Yes. Courts have consistently held that anyone on United States soil is protected by the Constitution’s right to due process, even if they illegally entered the country, though people generally have greater legal protections inside the country than at the border. Immigrants at times do not share all of the rights held by citizens -- for example, they cannot vote in state and national elections.

**9. Is information available to detainees regarding the processes of requesting asylum or applying for refugee status?**

Immigrants at most detention facilities will have access to a Legal Orientation Program or Know Your Rights Presentation. These presentation are often given by local non-profit organizations and provide basic information to give immigrants an understanding of their rights under U.S. law during immigration proceedings or if they are arrested and detained by the Department of Homeland Security. This includes the process for requesting asylum in the United States. If given prior approval, informational materials and guidelines can be distributed to detainees describing these processes.

**10. What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? What are the qualifications of the decision-makers? Are they appointed or elected?**

The Immigration and Nationality Act (INA) establishes a number of avenues by which various categories of aliens can be denied entry or removed from the United States. Typically, when the Department of Homeland Security (DHS) seeks to remove an alien found in the interior of the United States, it institutes removal proceedings under INA § 240. These “formal” proceedings are conducted by an immigration judge (IJ) within DOJ’s Executive Office for Immigration Review. Immigration Judges are formally appointed by the U.S. Attorney General.

The process differs if the immigrant is subject to expedited removal. Expedited Removal allows DHS officials to return non-citizens arriving in the United States without proper authorization to their countries of origin without delay and without an immigration court proceeding. To ensure the protection of bona fide refugees, a non-citizen who expresses a fear of returning home is referred to a DHS asylum officer for a credible fear determination and must be detained, with very limited exceptions. If the asylum officer finds a credible fear of persecution or torture, the asylum seeker may, at the government’s discretion, be released from detention until an immigration judge determines whether the applicant qualifies for asylum, withholding of removal, or protection under the Convention Against Torture.

Decision makers can include an Immigration Judge or an Asylum Officer. An Immigration Judge is an attorney appointed by the Attorney General to act as an administrative judge within the Executive Office for Immigration Review. They are qualified to conduct specified classes of proceedings, including removal proceedings. Asylum Officers represent USCIS when people seek asylum in the United States. They also conduct screening interviews for people placed in expedited removal proceedings who request asylum or express a fear of returning to their country of nationality. Asylum officers are neither appointed nor elected to their positions.

**11. Is there a duty to ensure that decisions are duly motivated by legal reasoning? How is that ensured in practice?**

Immigration Judges are responsible for conducting Immigration Court proceedings and act independently in deciding matters before them. Immigration Judges are tasked with resolving cases in a manner that is timely, impartial, and consistent with the Immigration and Nationality Act, federal regulations, and precedent decisions of the Board of Immigration Appeals and federal appellate courts. If an IJ decision is not based on sound legal reasoning, their decisions can be reviewed by the Board of Immigration Appeals.

The Board of Immigration Appeals is the highest administrative tribunal adjudicating immigration and nationality matters. The Board is responsible for applying the immigration and nationality laws uniformly throughout the United States. Accordingly, the Board has been given nationwide jurisdiction to review decisions of Immigration Judges and certain decisions made by the Department of Homeland Security (DHS). The Board is tasked with resolving the questions before it in a manner that is timely, impartial, and consistent with the Immigration and Nationality Act (INA) and federal regulations. The Board is also tasked with providing clear and uniform guidance to Immigration Judges, DHS, and the general public on the proper interpretation and administration of the INA and the federal regulations.

**12. How much time elapses after arrest before a determination of migration status is made? How long does the initial determination of status process take?**

Individuals are detained by DHS in a variety of circumstances. Some are apprehended soon after crossing the border without inspection, or after presenting themselves at a port of entry seeking asylum. Many are detained due to contact with a state or local criminal justice system. Other individuals end up in immigration detention as a result of ICE enforcement actions, such as encounters at the home or workplace.

CBP first encounters non-citizens at ports of entry or after they cross the border. If it is determined that a person does not have a valid entry document (passport, evidence of lawful permanent residence, visa, etc), then the individual will placed in holding for additional questioning. If DHS alleges that an immigrant does not have valid status or has violated their current status, and immigrant has the right to dispute this allegation in court. The timeline of how long it takes to determine migration status varies dramatically from case to case. For instance, if an immigrant claims they are entitled to asylee status in the United States, the process for this determination can take several years in Immigration Court due to extensive backlogs in the court system. While detained immigrants benefit from “expedited” proceedings, they can remain in detention for over a year while a determination of their migrant status takes place.

**13. If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?**

Parent and children’s cases are generally adjudicated together. Thousands of women and children immigrants are detained in jail-like facilities located in isolated areas, far from legal resources and social support networks. This continues to be the case despite the existence of effective and less costly alternatives to detention programs ranging from release on bond or supervision to more intense forms of control such as electronic monitoring via an ankle bracelet. Generally, a parent is considered the primary applicant while the child is considered a derivate of the parent.

Children who are not accompanied by a parent or legal guardian and who are apprehended at the border are considered “unaccompanied minors.” The *Flores* settlement agreement requires that the government (1) release children "without unnecessary delay" to (in order of preference) the children's parents, legal guardians, other adult relatives, or another individual designated by the parents/guardians, (2) put children in the "least restrictive" setting appropriate and (3) create and implement standards for the care and treatment of immigrant children in detention. In September 2018, the Trump Administration proposed regulations that seek to terminate the Flores Settlement Agreement’s legal safeguards for children, including the provision that children must be transferred to a non-secure, licensed facility within three to five days of apprehension, which has been interpreted to allow for an extension of up to 20 days in times of “emergency” or “influx.” The proposed regulations include a number of policies which, if implemented, would allow the government to incarcerate more families for even longer periods of time.

**14. What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?**

If an individual is found to have entered the country without valid status or to have violated their current immigration status, they can be detained by DHS and placed in removal proceedings. After an individual is arrested by DHS, an officer must make a custody decision: detain the individual, release the individual with conditions (including bond), or release the individual without conditions (called release on recognizance). When DHS apprehends the individual, DHS typically transfers him or her to a DHS facility, usually an ICE Enforcement and Removal Operations (ERO) field office or sub-office, for processing. During processing, officers interview, fingerprint, and photograph the individual, and make a custody determination based on factors such as criminal history, prior removal data, visa violations, community ties, and alleged gang affiliation. If DHS decides to detain the individual, the individual may be detained at a facility relatively close to his or her home or DHS may transfer the individual to a detention center anywhere in the country.

The types of detention centers where ICE holds individuals, and the conditions at those facilities, vary. Some individuals are held in state or local jails that contract with ICE and receive payment for each immigration bed they offer. Others are held in facilities run by ICE. Still others are detained in facilities run by private for-profit prison companies.

Detained immigrants sometimes have the opportunity to be released on a cash bond while fighting their cases. ICE usually assigns detainees a bond and the bond amount varies depending on each case. The immigration bond must be paid in full before a detainee can get out of custody. A detainee is eligible for a bond when they prove that they are not a danger to the community and are not at flight risk. In some cases, a detainee is not eligible for a bond, for instance due to certain criminal convictions or because they have already been deported in the past. In other cases, ICE refuses to give a bond to detainees. Some immigrant detainees have the right to judicial review of bond determinations in court.

**15. Is there a right to appeal of finding of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantees are given during the appeal process of a finding of irregular migration status? Does the appeal process have suspensive effect regarding deportations?**

An immigrant has the right to appeal their case after a finding by an Immigration Judge or Immigration Officer. Decisions of an Immigration Judge can be appealed to the Board of Immigration Appeals (BIA). Typically, an immigrant has 30 days to appeal a final decision by and Immigration Judge. Once appealed, the immigrant has about 2 months to file a legal brief with the BIA in support of their case. After these documents are filed, it can take around a year for the BIA to render its decision.

If the BIA denies the appeal, an immigrant may file another appeal, this time with the federal Circuit Court of Appeals that serves their jurisdiction. If that fails, the immigrant may continue your appeal up to the U.S. Supreme Court.

**Part C: Impact on Detainees**

**1. Please describe the impact that detention has on detainees’ physical and mental health.**

Detention has grave adverse effects on immigrants’ physical and mental health. Government agencies and prison administrators alike have repeatedly failed to address acute and chronic medical needs of detainees. Advocates face difficulty in obtaining even the most routine forms of medical care for their clients. Detention facilities’ failure to provide adequate medical treatment to detainees has caused outbreaks of infectious disease in some areas. Bureaucratic road blocks make it nearly impossible for an immigrant detainee to have his medical needs addressed adequately.

Mental health is rarely addressed within immigration detention. Many asylum seekers are detained for the duration of the court proceedings. It is common for detained asylum seekers to experience feelings of despair and to become discouraged about the potential to overcome the process. The national media has reported on several suicides of detained immigrants in recent years.

**2. Please describe the varying impacts on particularly vulnerable groups, including racial and ethnic minorities. What systems or practices are in place to prevent discrimination in both proceedings and detention?**

Protections aimed at preventing discrimination in immigration proceedings and detention have not been systematically implemented. Immigrants are routinely detained in local jails and prisons pursuant to Immigration and Customs Enforcement’s contracts with local governments. These local facilities do not separate immigration detainees from the general criminal population, which can make immigrant detainees more susceptible to discrimination.

**3. Please describe the way in which detention of migrants in your country particularly affects children who are detained. How does the detention affect education? Are educational resources available in the facilities in which they are held? Please describe any of these programs.**

Detention of immigrant children is heavily regulated, but serious challenges remain despite the regulation. By law, unaccompanied children are to be housed in “shelters” during their detention. The government has not provided sufficient funding for the contractors who provide the shelters. Consequently, the detention shelters are overcrowded and many children have been relegated to sleeping in outdoor tents located in the hot climate of the southern border. Also due to overcrowding, recreation time is insufficient. Though classroom instruction and medical facilities are present in the shelters, overcrowding and lack of funding produce subpar care. Recent reports allege wide spread accounts of sexual abuse of unaccompanied immigrant children by shelter employees.

**4. Is consideration given to keeping families together?**

Though the U.S. immigration system historically centered on family unity, recent executive policies aim to deter irregular immigration through family separation. Recently, the administration enacted an executive policy known as “zero tolerance,” which aimed to prosecute and impose civil penalties on adults who crossed the U.S. border without authorization. As a consequence of this policy, adult asylum seekers who arrived to the U.S. border were forcibly separated from the children with whom they arrived. The policy was later overturned in the federal appellate court system, but reflects the deteriorating attitudes about immigrant families.

**5. Are children typically kept in detention? How long?**

Detention of unaccompanied immigrant children is mandated by law. Children under eighteen years old are detained in “shelters” which are run by private corporations contracted by the government. While detained, the government seeks a suitable sponsor to care for the child post release. The length of this process depends on background checks and occasionally home studies to assess the suitability of the sponsor.

Family detention is also common, though not mandated by law. Immigrant children can be detained together with a parent seeking asylum. The family may be detained for a short period while being assessed for credible fear, but it is also possible that the family is detained for the duration of asylum proceedings. Some families may be eligible to request a custody redetermination or obtain release on bond from an immigration judge.

**6. How does the detention of migrants in your country particularly affect women? Are health resources for women made available to women in detention? How can women in detention access health resources? Are resources available for pregnant women in detention? How are pregnant women accommodated with respect to the conditions of detention?**

In previous years, the government disfavored the detention of pregnant immigrants. Instead, it preferred to offer pregnant women a bond or to release them on their own recognizance. More recently, the government has moved away from its reluctance to detain pregnant women and because of the scarcity of medical care in detention, many women have reportedly miscarried. Officers are under directives to identify pregnant women and facilitate appropriate care, but the medical needs of pregnant women are routinely ignored.

**Part D: Alternatives to Detention**

**1. What alternatives to detention exist in your country? Please describe these alternatives to detention and how they are generally perceived and implemented in your country.**

Alternatives to detention (ATD) programs include electronic monitoring, telephonic or in-person reporting requirements, and/or case management support and supervision services to ensure court appearances.

ICE’s primary ATD program is the Intensive Supervision Appearance Program (ISAP) II, which involves either electronic monitoring only or electronic monitoring plus case management. The electronic monitoring component uses ankle bracelets enabled with Global Positioning Systems or voice recognition software for telephonic reporting. Case management services are provided by the contractor and include: encouraging participants to comply with immigration proceedings, obtaining travel documents, and planning for return to their country of origin; providing information on transportation, medical care, religious services, legal resources, and other community resources; scheduling unannounced visits to the participant’s work and/or living address; scheduling participant visits to the contractor’s office; and reporting to ICE any instances of program noncompliance.

**2. Have all detainees access to alternatives to detention? How many persons get an alternative to detention in comparison with the number of detainees?**

Individuals subject to mandatory detention are not entitled to bond or alternatives to detention. Mandatory detention refers to a provision of the INA that states that non-citizens with certain criminal convictions must be detained by ICE.

**3. Have there been any policies proposed in your country that could achieve the same objectives as detention? How have these proposals for alternatives to detention been received in your country? Are proposals for alternatives to detention generally met with favor or have they been rejected? Please describe the criticisms of the policies for alternatives to detention by the general public. If these proposals have been rejected, what was the rationale for rejecting them?**

A large number of immigrant advocates and non-profit organization propose that the U.S. government work to reform the immigrant detention system and end the painful suffering and human indignity that the current system inflicts on many immigrants and their families. One ATD option proposed is to use a combination of GPS tracking and home visits to keep tabs on immigrants who have been picked up, allowing them to stay out of detention while their case works through the legal system. That program is dramatically cheaper, costing around $4.50 per day, according to a Department of Homeland Security estimate, compared to the $134 per day it costs to hold an adult in immigrant detention. It takes about $319 per day to hold an individual in a family detention center in 2018, according to DHS. Another alternative was the now-shuttered Family Case Management program, which paired families who helped them navigate the immigrant process and life in the U.S. That program, which had around 630 families enrolled when the Trump Administration ended it in mid-2017.

These programs have been rejected by the current administration, which argues that the policies which allow immigrants caught crossing the border to stay out of detention amount to “catch and release” and encourage other people considering immigrating illegally to try to cross the border too.

**Part E. Additional information**

Please add any other information that you consider to be relevant for the CMW to take into account in the elaboration of this general comments.

*Attorney from Catholic Charities, Denver, March 2019*