

AMERICAN BAR ASSOCIATION Immigration Detention

The American Bar Association (ABA) has long supported due process rights and legal protections for immigrants and asylum seekers in detention. Over 200,000 non-citizens are detained annually in Department of Homeland Security (DHS) detention facilities and in state and local jails. These individuals are detained for months or even years while their immigration cases work their way through the courts. Detention conditions at these facilities do not meet DHS' own detention standards, which were designed to assure access to counsel, legal information, and other protections. The ABA strongly believes that due process and legal access must be afforded to immigrant detainees.

- **The ABA opposes the detention of non-citizens except in extraordinary circumstances**
 - Extraordinary circumstances may include a specific determination that an individual presents a threat to national security, a threat to public safety, or a substantial flight risk
- **The ABA supports humane alternatives to detention that are the least restrictive necessary to ensure that non-citizens appear in immigration proceedings**
 - Alternatives to detention should include supervised release, and bond based on economic means and flight risk
 - Alternatives should be used only where an individual would otherwise be detained
- **The ABA supports provision of a prompt hearing before an immigration judge for any detained individual in removal proceedings**
 - Removal proceedings should include notice, an opportunity to be heard, and a decision including findings of fact and conclusions of law
 - Removal decisions should be subject to meaningful administrative and judicial oversight
- **The ABA supports mechanism to ensure that immigration authorities have complete information to inform administrative review and judicial oversight of an individual's detention**
- **The ABA supports mechanisms to ensure full compliance with the Supreme Court decisions in *Zadvydas v. Davis* and *Clark v. Martinez***
 - Contrary to the law, detainees are being held indefinitely after they are ordered removed
 - Detainees do not have access to adequate, independent review of custody decisions
- **The ABA opposes incommunicado detention and urges protection of Constitutional and statutory rights**
 - Detainees should be charged and given custody hearings promptly, before immigration judges, with administrative and judicial oversight
 - Removal hearings should be public, except when necessary to protect safety or national security
- **The ABA supports promulgating DHS detention standards on legal access into regulations**

For more information please contact Kristi Gaines, American Bar Association, 202-662-1763

February 2006

- Access to counsel, legal materials, and legal rights (or “legal orientation”) presentations should not be impeded by detention
- **The ABA supports permitting independent organizations to visit detention facilities and meet privately with detainees to monitor compliance with the DHS Detention Standards**
- **The ABA opposes detention in remote locations where legal assistance is unavailable**
 - Detainees should not be transferred involuntarily if the transfer interferes with an attorney-client relationship
- **The ABA supports the *due process right to counsel* for all persons in removal proceedings, and the availability of legal representation to all non-citizens in immigration-related matters**
- **The ABA supports protections for asylum seekers in detention**
 - Detained asylum seekers should have full, meaningful physical and telephonic access to their legal representatives, and access to accurate lists of legal service providers
 - Counsel should be permitted to enter limited appearances for bond and custody proceedings
- **The ABA supports protections children in detention**
 - Children should be entitled to a presumption against detention
 - Children who cannot be released to family members, legal guardians, or other appropriate adults should be housed in culturally-appropriate, family-like settings
 - Children in custody should be protected from physical, sexual, or mental violence, injury, or abuse, as well as neglect, abandonment, maltreatment, and exploitation
 - Children should not be detained in facilities with or for juvenile offenders
 - Children should have the right to an attorney in matters affecting their immigration status
 - An advocate should be involved in all placement decisions, to protect children’s best interests
- **The ABA opposes expedited removal**
 - Expedited removal deprives individuals of the right to counsel and judicial review
 - Only impartial adjudicators should have the authority to enter removal orders, which should be subject to administrative and judicial review