

# United Nations Human Rights Council

Universal Periodic Review  
UPR for USA 36<sup>th</sup> Cycle May 2020

## Preamble

1. This report is a submission of civil society actors listed below based at UNHQ in New York who represent members working in 60+ countries in direct service to local populations. The recommendations below follow on the National Report submitted by the USA in 2014 during the second cycle of the UPR process. The organizations contributing to this report, together with their corporate logos, are listed below for reference purposes.



EDMUND RICE INTERNATIONAL is a global network determined to promote and protect the rights of Earth and its peoples. Members work in over twenty-five countries to ensure that marginalised children and their communities can build healthy partnerships with their local ecosystems, access education and the services they are entitled to from their societies

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## INTERNATIONAL PRESENTATION ASSOCIATION

INTERNATIONAL PRESENTATION ASSOCIATION. "The International Presentation Association is a networking of the various congregations of Sisters of the Presentation of the Blessed Virgin Mary around the world, formed to foster unity and to enable collaboration for the sake of the mission."

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VIVAT INTERNATIONAL. VIVAT engages in a two-fold mission of working at the grass-roots as well as doing advocacy work at the United Nations. Sharing a vision of the world and of every human being as created in goodness and dignity, and believing, defending and proactively supporting the equality in rights and in dignity of all individuals, peoples and cultures, VIVAT's presence at UN envisages attaining a world of equality, justice, reconciliation, peace and care of the environment. Membership: About 25,000 Sisters, Priests and Brothers from 13 religious congregations working in more than 100 countries, along with lay people and NGOs.

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LORETTO COMMUNITY. The Loretto Community, while founded and based in the United States, consists of the Congregation of the Sisters of Loretto and Loretto co-members located in seven countries. Like our early sisters who called themselves Friends of Mary, we, too, stand at the Foot of the Cross as we strive to bring the healing spirit of God into our world. We work for justice and act for peace because the Gospel urges us.

Loretto at the United Nations

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MARYKNOLL. Maryknoll, a Catholic non-profit mission movement now comprised of four organizations, has been the heart and hands of the U.S. Catholic Church's overseas mission work for more than 100 years, serving the poor and others in need in over 20 countries that include the U.S.  
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THE CONGREGATION OF OUR LADY OF CHARITY OF THE GOOD SHEPHERD is a Catholic religious order that was founded in 1835 by Saint Mary Euphrasia Pelletier in Angers, France. The sisters belong to a Catholic international congregation of religious women dedicated to promoting the welfare of women and girls

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## Immigration

### Background and Framework on Immigration Issues

2. The following information describes the response of the US government to recommendations on immigration made to it in previous UPR sessions. “In our first UPR in 2010, the United States supported in whole or in part 173 of 228 recommendations. This report responds to all recommendations that we supported in whole or in part, even where such recommendations fall outside the scope of the United States’ human rights obligations and commitments.”

3. In the first round of the UPR in 2010 the US Human Rights Network (USHRN) called on the US Department of Homeland Security (DHS) to reform its immigration system to ensure due process and to protect family unity. In addressing these concerns, the US Department of Homeland Security revised some of its policies in an attempt to reduce the number of family separations. For instance, in January 2012 The US Immigration and Customs Enforcement Agency (ICE) issued Policy 11022.1: Detainee Transfers. Among other goals, this Directive establishes criteria for transfer decisions intended to substantially reduce the transfer of detainees who have family members in the area from out of which they might be transferred.

4. On August 23, 2013 ICE issued Directive 11064.1 on Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities. This Directive applies to immigrants who are not US citizens, regardless of whether or not their children are US citizens. The directive does not suspend or block the deportation of parents when deportation would separate them from their children. It only facilitates in a limited way the participation of detained parents in family court proceedings related to the custody and welfare of their children, and only while the parents’ case is still being processed. It does not consider family unity nor the rights of the child in the decision-making process with regard to the deportation of the parents.

5. The Memorandum of Understanding (MOU) between the Department of Homeland Security of the USA and the Secretariat of Governance and the Secretariat of Foreign Affairs of the United Mexican States on the Safe, Orderly and Dignified Repatriation of Mexican Nationals of February 2004 states in Article 3e that “*the unity of families should be preserved during repatriation, taking into consideration administrative parameters...*”

6. The policy directives and the MOU indicated above are not adequate to safeguard the interests and welfare of parents and children, much less of other family members. The Department of Homeland Security and the US Immigration and Customs Enforcement Agency are routinely separating large numbers of parents from their children. When parents of children who are US citizens are in detention and/or deported their children are entrusted to Child Welfare Courts that whenever possible place the children with relatives of the family or with friends of the parents who are then recognized as guardians. However, the Child Welfare Courts also place children in foster care with people who are complete strangers to them. The report *Falling through the Cracks*<sup>1</sup> estimates that at least 5,100 children who are US citizens and are currently living in foster care have parents who are detained or have been deported. In some cases the parents who are separated from their children lose all contact with those children.

7. The US Department of Homeland Security (DHS) has itself recognized that DHS policies and actions often separate family members from one another. For example, in a report to Congress in March 2012 the DHS admitted that in just the first half of 2011 it had deported 46,486 parents of children who are US citizens<sup>2</sup>.

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<sup>1</sup> *Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught Up in the Child Welfare System*, a report of the Immigration Policy Center of the American Immigration Council and of First Focus, December 2012; [http://www.immigrationpolicy.org/sites/default/files/docs/falling\\_through\\_the\\_cracks\\_3.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/falling_through_the_cracks_3.pdf)  
<https://www.americanimmigrationcouncil.org/research/falling-through-cracks>

<sup>2</sup> 2012. Deportation of Parents of U.S.-Born Citizens, Fiscal Year 2011 Report to Congress, Second Semi-Annual Report, Washington, DC: U.S. Immigration and Customs Enforcement, Department of Homeland Security, March 26, 2012. (Cf. <http://www.lirs.org/wp-content/uploads/2012/07/ICE-DEPORT-OF-PARENTS-OF-US-CIT-FY-2011.pdf>)  
<http://immigrationimpact.com/2012/04/02/ice-deported-more-than-46000-immigrants-with-u-s-citizen-children-last-year-report-finds/#.XXvUnihKg2w>

8. Information obtained by Color Lines from DHS through the Freedom of Information Act reveals that 204,810 parents of children who are US citizens were removed from the U.S. between July 1, 2010 and September 31, 2012<sup>3</sup>.

9. The data given in the previous two paragraphs does not include the separation of other parents from their children who are not US citizens. The “Kino Report”<sup>4</sup> is based on interviews with persons deported to Mexico along the US-Mexican border. Through these interviews it was established that of those parents who were deported to the northern Mexican border from January through March 2012, almost one in three of the persons interviewed (32.0%) had at least one child living in the United States. An estimated 1,971 parents who were deported to this border area of Mexico during the first quarter of 2012 had at least one child but no spouse still living in the U.S. It is likely that during the first three months of 2012 alone, at least 1,971 children were left in the U.S. without either parent. Reliable estimates indicate that in 2012 roughly 150,000 children were separated from at least one of their parents by deportation<sup>5</sup>.

10. The consequences of separating children from their parents are dire, especially if the parents are imprisoned or deported. Children forcibly separated from one or both parents are often subject to emotional trauma, feelings of grief and loss, and psycho-social regression, sometimes developing Post Traumatic Stress Disorder (PTSD), and they are very often deprived of financial security. All this can have a very negative impact on the children’s cognitive, relational, social and emotional development, including detrimental consequences for educational performance and behavioral issues. Such children are vulnerable to abuse of all types (i.e., emotional, physical and sexual) as well as to temptations to abuse alcohol or drugs. They are also at risk of being trafficked or of being recruited into criminal gangs.

11. In the experience of our members who work with immigrants, the separation of parents from their children is a primary reason why many deported persons attempt to re-enter the United States without documentation; they enter, to be with their children. Unfortunately, if these parents are apprehended at the border in the attempt to re-enter they are then criminalized, making it even more difficult for them to ever reunite with their children or to care for them. In mid-2014 thousands of children are also attempting to enter the USA without documents in order to reunite with their families. The need to be with one’s family is a powerful human motivator.

12. Detention and Deportation proceedings also separate married people from each other, as well as from their children. Even when spouses and children are apprehended together in the border area, they are routinely separated from each other in detention. Sometimes they are even deported to different cities and have difficulty re-establishing communication with each other. This separation renders them vulnerable to becoming victims of every form of criminal activity and can place them in physical danger, in addition to the psychological trauma that it causes. This is an indication that US authorities do not make adequate attempts to identify members of families or give adequate importance to the principle of family unity. The protection of Family Unity is a principle of International Law. The Integrity of the Family is also a social good that benefits society by fostering stability, emotional and financial security and protection of the most vulnerable. The US Government must recognize the fundamental right of migrant families to maintain the unity of their families.

13. As of July 25<sup>th</sup> 2019, a new online platform operated by the American Bar Association and developed by a Florida technology company will match volunteer lawyers with immigrant children facing deportation in several

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<sup>3</sup> Deportations of Parents of U.S.-Born Citizens 12/2012, information obtained by Color Lines through Freedom of Information Act. [http://colorlines.com/archives/2012/12/us\\_deports\\_more\\_than\\_200k\\_parents.html](http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html)  
[http://www.scribd.com/doc/116875649/Deportations-of-Parents-of-U-S-Born-Citizens-12-2012?secret\\_password=2alzgcasiwglnk94xcp](http://www.scribd.com/doc/116875649/Deportations-of-Parents-of-U-S-Born-Citizens-12-2012?secret_password=2alzgcasiwglnk94xcp)<https://www.colorlines.com/articles/us-deports-46k-parents-citizen-kids-just-six-months>

<sup>4</sup> The “Kino Report” of February 13, 2013 is a joint report of Jesuit Refugee Services/USA, Jesuit Conference of the United States and the Kino Border initiative entitled *Documented Failures, the Consequences of Immigration Policy on the U.S.-Mexico Border*. It is based largely on interviews in the border area with persons who were deported from the USA.

<sup>5</sup> Sara Satinsky et al., *Family Unity, Family Health: How Family -Focused Immigration Reform Will Mean Better Health for Children and Families*, Human Impact Partners, June 2013,  
<http://www.familyunityfamilyhealth.org/uploads/images/FamilyUnityFamilyHealth.pdf>

states. The website – Pro Bono Matters for Children Facing Deportation – offers help to immigrant children, 14,000 of whom are held in federal detention on any given day<sup>6</sup>.

14. According to the US Homeland Security Report (OIG-19-47)<sup>7</sup> The United States has expressed its unwavering commitment to respect the human rights of all migrants, regardless of their immigration status. Moreover, the U.S. immigration and Customs Enforcement (ICE) has promulgated the Performance-Based National Detention Standards 2011 (PBNDS 2011) which is crafted to improve medical and mental health, access to legal assistance and religious opportunities, improve communication with detainees with limited English proficiency, improve the process for reporting and responding to complaints, and increase recreation and visitation. However, we are deeply concerned that the human rights of the migrant detainees at Adelanto ICE Processing Center (California), LaSalle ICE Processing Center (Louisiana), Essex County Correctional Facility (New Jersey), and Aurora ICE Processing Center (Colorado) are not being respected. As it is shown on the report issued by the Office of Inspector General (OIG) which summarizes the violations of the ICE standards, and as a ripple effect, it violates the human rights of their detainees. Below is an illustration of the situation reported by OIG. “We observed immediate risks or egregious violations of detention standards at facilities in Adelanto, CA, and Essex County, NJ, including nooses in detainee cells, overly restrictive segregation, inadequate medical care, unreported security incidents, and significant food safety issues, we issued individual reports to ICE after our visits to these two facilities.

15. All children have the right to equal access to public elementary and secondary education, regardless of their or their parents’ immigration status, and such schools must provide meaningful access to their programs to persons with limited English proficiency, including migrants.

## Recommendations to the State

- (i) **The US Department of Homeland Security (DHS) and the US Immigration and Customs Enforcement Agency (ICE) acknowledge the human right of families to remain united and/or be reunited and the fundamental obligation of states to protect this right.**
- (ii) **The DHS and ICE further revise their policies regarding detention and deportation proceedings to avoid separating family members from each other. For example, DHS/ICE should permit parents to make telephone calls in order to arrange for the care of their children; DHS/ICE should facilitate visits of children to their detained parents as well as enable telephone calls between parents and children.**
- (iii) **The DHS and ICE give their agents adequate training to be able to determine relationships between detained persons, to recognize family units and to enable members of a family to remain in communication with each other at every stage of detention and deportation proceedings.**
- (iv) **Federal and privately contracted detention centers permit NGOs and other civil society groups to have free access to detained persons in order to help them find and re-establish communication with members of their families from whom they have been separated by detention. Until such familial ties have been verifiably re-established, no detainee should undergo deportation proceedings.**
- (v) **Preserve and reinforce the Flores Settlement of 1997 to protect the rights of migrant children in detention facilities.**<sup>8</sup>

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<sup>6</sup> <https://www.law.com/legaltechnews/2019/08/01/aba-launches-pro-bono-portal-for-immigrant-children-deportation-cases/?slreturn=20190809122002>

<sup>7</sup> <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>

It reports the results of unannounced visits to four immigration detention facilities that at the time of the visit were not in compliance with the ICE standards. OIG recommends ICE to oversight the facilities and management operation. ICE has committed to provide documentation to OIG evidencing that corrective actions have been completed. ICE estimates that this documentation will be ready by September 30, 2019.

<sup>8</sup> Miriam Jordan, “Migrant children may lose school, sports and legal aid as shelters swell.”

<https://www.nytimes.com/2019/06/05/us/migrant-children-services.html?action=click&module=Well&pgtype=Homepage&section=US> ; Flores Settlement of 1997: <https://www.humanrightsfirst.org/resource/flores-settlement-brief-history-and-next-steps>



- (vi) **Defend the right of civil society to extend humanitarian aid to refugees and asylum seekers crossing the border<sup>9</sup>.**
- (vii) **Defend and promote the rights of volunteers and humanitarian groups of civil society to extend assistance – like water, food – to refugees and asylum seekers without reprisal of receiving fines or imprisonment.**
- (viii) **Ensure that detention centers for migrants and the treatment they receive meet the basic conditions and universal human rights law.**
- (ix) **Assure that all minors now being apprehended at US border crossings be provided rapid and meaningful access to schooling regardless of their immigration status.**

## **Environment**

16. United States National Report for the 22nd Session of the Human Rights Council Working Group on the Universal Periodic Review May 2015, included the following: Environment Recommendations 51, 221, and 222, 109. The United States is firmly committed to addressing the causes and impacts of climate change. The National Environmental Policy Act requires federal agencies to incorporate environmental considerations in their planning and decision-making processes. The President’s Climate Action Plan has committed to cut carbon pollution and other greenhouse emissions; promote renewable energy development and use; cut waste in homes, businesses, and factories; conserve land and water resources; use sound science to manage climate impacts; launch a climate resilience toolkit and climate data initiative; and actively engage in international efforts to address global climate change<sup>10</sup>.

17. 2014 Recommendations - the United States Supports in Part: Recommendations 51, 221, and 222: (51)<sup>11</sup> Comply with its international obligations for the effective mitigation of greenhouse gas emissions, because of their impact in climate change; (221) Take positive steps in regard to climate change, by assuming the responsibilities arising from capitalism that have generated major natural disasters particularly in the most impoverished countries; (222) Implement the necessary reforms to reduce their greenhouse gas emissions and cooperate with the international community to mitigate threats against human rights resulting from climate change. Since the US government has promoted fossil fuels and isn’t adequately dealing with climate change effects, the benefit for citizens is being compromised

18. Rollbacks of the previous Administration’s policy are in process across a wide spectrum. The US Federal Administration is currently rolling back 83 environmental protections; 49 rollbacks are completed and 34 are in process; of the 49 completed, 10 are related to air pollution and emissions, 9 to drilling and extraction, 3 to toxic substances and safety, and 4 to water pollution.

19. Urgent action is not being taken by the US to address climate change in order to demonstrate respect for human dignity and protect vulnerable communities who bear the burden of climate change effects yet are often the least responsible and the least able to adapt. The administration’s proposed and completed rollbacks will have disproportionate impacts, and will expose pregnant women, people of color, children, people with disabilities, and indigenous peoples to significant health risks. These communities will face increased exposure to air pollution, dangerous toxins, augmented childhood asthma, and even premature death. The US claims that it “seek[s] meaningful involvement and fair treatment of all people” despite rolling back policies that disproportionately hurt vulnerable populations:

- The administration repealed water pollution regulations for fracking on federal and Indigenous lands
- The administration approved the construction of the Dakota Access pipeline, which sits adjacent to the Standing Rock Sioux reservation.

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<sup>9</sup> Helen Obregon Gieseken, The protection of migrants under international humanitarian law,” <https://www.icrc.org/en/international-review/article/protection-migrants-under-international-humanitarian-law/>

<sup>10</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/024/66/PDF/G1502466.pdf?OpenElement>

<sup>11</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/207/66/pdf/G1520766.pdf?OpenElement>

- Repealing the Clean Power Plan and replacing it with “Affordable Clean Energy Plan” could lead to 1,630 more premature deaths, more asthma attacks and missed school days, and 48,00 lost work days annually by 2030.<sup>12</sup>
- According to the American Lung Association, about 141 million Americans were exposed to unhealthy air between 2015 and 2017.<sup>13</sup>
- The EPA estimates that Obama-era regulations being reversed under the current administration meant to limit power plants and bar heavy trucks could result in an additional 14,000 deaths.<sup>14</sup>
- The Mercury and Air Toxic Standards that the Administration is attempting to roll back would prevent 11,000 premature deaths a year, 130,000 asthma attacks, and 4,700 heart attacks.<sup>15</sup>

## **Recommendations to the State**

**(i) The US immediately take steps to overturn the executive branch decision made in June 2017, to withdraw the USA from the Paris Climate Agreement.**

**(ii) The USA immediately takes steps to address violations of the public trust doctrine, which provides that public lands, waters and other resources are held in trust by the government for the benefit of its citizens..**

**(iii) The US take immediate steps to reverse the policy decisions eliminating the 83 environmental protection mechanisms of the previous administration in particular those protections relating to air and water pollution threatening the health of the most vulnerable populations.**

**(iv) Reverse White House Executive Orders 2017a “On Promoting Energy Independence and Economic Growth” and 2017b “An America First Energy Plan,” which end Obama administration programs already in place.**

**(v) Include and renew through the U.S. budget financial support to the United Nations Climate Change programs like the Green Climate Fund. The United States must fulfill the commitments it made to these programs.**

**(vi) Remove all barriers blocking access to climate change-related information, data, and research within scientific agencies at the federal level, such as the United States Geological Survey and the National Climate Assessment, as well as greater honesty and respect for science by U. S. representatives on the Arctic Council and the U.N. Intergovernmental Panel (IPCC).**

**(vii) Reinstate federal programs and commissions, including the Denali commission, and personnel related to these programs that safeguard, protect, or relocate communities (E.g., indigenous communities: Alaskan, Louisiana bayous, etc.) affected by rising sea levels, storms and droughts, and melting permafrost areas.**

**(viii) Put in place a market mechanism that would support the transition at the pace and scale needed to limit warming to 1.5 degrees C.**

**(ix) Implement a national price on carbon at a range of \$135-\$5,500 per ton by 2030 as recommended by the UN to keep warming below 1.5 degrees C.**

**(x) Adopt Just Transition policies like those set forth in the Green New Deal, which codify justice for workers and marginalized people and communities through the low carbon transition. Policies may include guaranteeing a living wage, high-quality healthcare, affordable and safe housing, access to clean water, clean air, and healthy and affordable food.**

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<sup>12</sup> <https://jamanetwork.com/journals/jama/fullarticle/2684596?appid=scweb&appid=scweb&alert=article>

<sup>13</sup> <https://www.lung.org/our-initiatives/healthy-air/sota/key-findings/>

<sup>14</sup> <https://www.scientificamerican.com/article/the-epas-climate-rollbacks-could-mean-thousands-of-premature-deaths/>

<sup>15</sup> [Ibid](#)



## Human Rights Treaties

20. 2014 Recommendations 10, 11, 13, 14, 20, 21, 22, 26, 28, 30, 33, 34, 35, 39, 43, 47, 48, 49, and 93: (10) Consider ratifying ICESCR, CEDAW and CRC at the earliest; (11) Consider undertaking necessary steps leading to ratification of the parent/umbrella United Nations Convention on the Rights of the Child and CEDAW respectively;

## Recommendations to the State

**(i) The USA take meaningful actions to compel the US Senate to early agreement on ratification of the Convention on the Rights of the Child without reservations.**

**(ii) The USA take immediate action to open negotiations to bring ratification of CEDAW to a vote in the US Senate in favor of the treaty without reservations.**

## Violence Against Women

21. At issue is the restoration of tribal jurisdiction over non-Native Americans, which a House bill expanded to include sexual assault, child abuse, sex trafficking, and assaulting a tribal officer. The opposition to expanded tribal jurisdiction could prevent the introduction of a Senate companion bill. The 2013 version of the Violence Against Women Act (VAWA) was an excellent first step toward recognizing tribal sovereignty, and improving public safety in Indian Country, but it alone does not offer adequate protection. A Senate bill that is similar to the House version needs to be passed as soon as possible.

## Recommendations to the State

**(i) The US Senate ratify the reauthorization of the Violence Against Women Act (VAWA) that includes the same tribal provisions as passed earlier in the US House of Representatives.**

**(ii) Consult with the International Association of Official Human Rights Agencies and the National Association of Attorneys General (see paragraph 6) and take steps to establish a national human rights institution.**

**(iii) Examine critically the proposals and actions of the U.S. State Department's new advisory panel the Commission on Unalienable Rights with the U.N. Declaration of Human Rights and other relevant documents.<sup>16</sup>**

**(iv) Renew commitment and rejoin the U.N. Human Rights Council.**

**(v) Minimize and limit the circulation of deadly weapons to protect the right to "freedom from fear and want" under ICCPR. Introduce gun control policies as a human right to promote collective safety and security.<sup>17</sup>**

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<sup>16</sup> <https://www.passblue.com/2019/06/04/pompeo-retreats-on-universal-human-rights-as-us-looks-more-inward/>

<sup>17</sup> The U.S. human rights crisis of gun violence leaves more than 30,000 men, women and children killed every year (Amnesty International). International Covenant on Civil and Political Rights (ICCPR) <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>. And Adam Fletcher, "What does human rights law say about gun control?" <https://castanecentre.com/2016/03/16/what-does-human-rights-law-say-about-gun-control/>