



MEMORANDUM

To: Fernand de Varennes, OHCHR mandate of the UN Special Rapporteur on Minority Issues

From: Nathan Madson, Staff Attorney

Date: November 2, 2021

Re: Minority issues in the United States

Founded in 1983, The Advocates for Human Rights (“The Advocates”) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. In the Upper Midwest region of the United States, The Advocates is the primary provider of legal services to adults, families, and children who are fleeing persecution, torture, and trafficking, as well as people in immigration detention.

This memorandum summarizes some of the most pressing issues concerning the human rights situation of linguistic and religious minorities, as well as noncitizens who are members of national or ethnic minorities, in the United States.

Linguistic minorities

1. Although the United States does not have a de jure official language, English remains the de facto official language. At the state level, some jurisdictions have adopted “English-only” legislation, which make English the only official language in the state. In practice, this can cause significant barriers to people with limited English proficiency.
2. In South Dakota, for example, our colleagues at South Dakota Voices for Peace (“SDVP”) reported that the state’s English-only law has meant that the government lacks the interest to translate important information into other languages.¹ It took the government three months to provide information about the COVID-19 pandemic in languages other than English.²
3. South Dakota’s Second Judicial District (comprising Minnehaha and Lincoln counties) represents 80 to 90% of all interpretation needs in South Dakota’s state court system.³ On 1 May 2019, Minnehaha County reallocated funding for court interpretation and courts began denying requests for interpreters in civil matters, divorce, misdemeanors not involving potential jail time, traffic-level offenses, small claims, child support, probate,

¹ Zoom Interview with Taneeza Islam, Executive Director, South Dakota Voices for Peace, Sioux Falls, SD, Nov. 1, 2021.

² COVID -19 materials were translated into Spanish, Nepali, Somali, Karen, and American Sign Language.

³ Ibid.

guardianship, trusts, adoptions, or any administrative issues. This policy severely restricted limited-English speakers' access to justice. The legal service organization East River Legal Services filed a complaint with the U.S. Department of Justice, which [recently closed the complaint](#) because the South Dakota Unified Judicial System has agreed to increase the availability of language assistance services.

4. Even when courtroom interpreters are available, interpreters and interpretation services are largely unregulated. Courts also lack training on how to work with interpreters. SDVP has documented instances in which limited English speakers have received substandard interpretation in court. In one case, a woman who could communicate in English, but was concerned about her ability to understand complicated legal procedures, requested an interpreter.⁴ During the hearing, the interpreter was interpreting the client's statement when the woman interrupted him to tell the judge—in English—that the interpreter had not faithfully interpreted what she had said. Although this woman could recognize that the interpreter was making mistakes, not all people with limited English can.
5. All information pertaining to the guardianship process in South Dakota is [exclusively in English](#). Potential guardians must read a book and pass a test, both of which are in English, in order to become guardians in the state. SDVP reports, however, that nearly all of existing guardians and potential applicants are Spanish speakers. When SDVP asked the State Bar of South Dakota how they communicated guardianship information with limited English speakers, the State Bar said they put the material through Google Translate.
6. The Advocates' WATCH Project monitors criminal cases involving violence against women in Ramsey, Washington, and Hennepin Counties in Minnesota.⁵ Courtroom observers of remote hearings (held over Zoom) in 2021 specifically noted the inability to see more than one person at a time, which interfered with limited English users' ability to understand who was speaking and what was being said.⁶ Being able to see multiple people at once depended upon participants' knowledge of Zoom settings. Those unfamiliar with the technology were unable to easily change their settings and found it difficult to follow what was happening. For example, one defendant had difficulty attributing what was being interpreted to the person who was speaking. In cases involving sign language, the ability to "pin" the interpreter and ensure both the interpreter and speaker are visible is vital to ensuring Deaf persons can understand and participate effectively in the hearing.
7. The Advocates' observer teams are also concerned about the amount of time allowed for interpretation.⁷ At times, court personnel spoke in long segments without pauses, only stopping for interpretation when reminded. These instances impede accurate interpretation, and for those dependent on interpretation, it interfered with their understanding of the proceedings.
8. While several volunteer court observers commended the judges' and attorneys' patience toward the interpreter and individuals needing interpretation, others expressed concern about poor attitudes toward cases requiring interpretation. For example, one public

⁴ Ibid.

⁵ The Advocates has also documented disparate treatment of racial minorities. For example, in Hennepin County, the most populous county in Minnesota, non-white defendants are more likely to be subject to domestic abuse no contact orders (DANCO) than white defendants. Racial minorities constitute only 29.5% of Hennepin County, but according to courtroom observations, non-white defendants are 1.4 times more likely to be subject to a DANCO than a white defendant. Black defendants are the most likely to be subject to DANCOs, despite only accounting for 13.8% of Hennepin County's population.

⁶ Interview with Elizabeth Montgomery, Staff Attorney, The Advocates for Human Rights, Minneapolis, MN, Nov. 3, 2021.

⁷ The Advocates for Human Rights, *Bearing Witness in the Moment: Report from the Immigration Court Observation Project*, by The Advocates for Human Rights (Minneapolis, MN: January 2020), 29-33.

defender visibly expressed annoyance with cases involving interpretation while another judge was dismissive of the interpreter and was visibly annoyed at having to repeat what they had said.⁸

Religious minorities

9. The First Amendment to the U.S. Constitution guarantees the freedom of religion and under its aegis the U.S. and state legislatures have passed legislation that ostensibly enumerates what religious freedom looks like in practice. The Religious Land Use and Institutionalized Persons Act, for example, is a federal law that requires local, state, and federal governments demonstrate a “compelling governmental interest”—a very high burden—before it can use zoning regulations to place a “substantial burden” on the practice of a person’s religion.⁹ The Advocates has reported, however, that several communities in Minnesota have [blocked the creation of mosques and Islamic centers](#).
10. The Advocates have found several examples of local communities asked to approve the creation of mosques or Islamic centers inundated with protests and objections.¹⁰ In some cases, city councils will approve the creation of new religious buildings, but Muslim Minnesotans report feeling unwelcome in their communities. In other cases, city councils have caved to pressure and refused the building requests. In one instance, community members were reluctant to live near a mosque and pressured the school district not to sell to Muslims who planned to turn the building into a mosque. The community did not, however, have a problem with the school district building being converted into a church. Another refusal to grant a permit for an Islamic center was investigated by the Department of Justice as a violation of the Religious Land Use and Institutionalized Persons Act; it took two years for the city to eventually grant a permit for an Islamic center.¹¹
11. [Despite the termination of the travel bans instituted by the prior administration](#), Muslims, people assumed to be Muslim, and people from countries with a high percentage of Muslims have reported profiling by Customs and Border Patrol agents and other airport staff when entering the country. This includes forcing Muslim travelers to go through additional security measures and delays.¹²
12. One Muslim traveler told The Advocates: “Any Muslim who travels to Muslim countries will get stopped at the Minneapolis airport. They will be directed into secondary questioning. The agency claims it is random, but everyone in the room is Muslim.”¹³ Another woman said that nearly every time she and her husband re-enter the country, her husband is forced to go through secondary inspections.
13. Since the 11 September 2001 terrorist attacks, the U.S. government has engaged in “executive overreach and a broad range of government abuses—such as racial profiling, warrantless wiretappings, illegal detentions and secret deportations—perpetrated in the name of keeping our country safe from terrorism.”¹⁴ In addition to state-sponsored

⁸ Interview with Elizabeth Montgomery, *supra* note 6.

⁹ The Advocates for Human Rights, *Moving from Exclusion to Belonging: Immigrant Rights in Minnesota Today*, by The Advocates for Human Rights (Minneapolis, MN: March 2014), 240.

¹⁰ *Ibid.* at 239-240.

¹¹ U.S. Department of Justice, “Justice Department and City of St. Anthony Village Resolve Lawsuit Over Denial of Permit for Islamic Center,” accessed Nov. 3, 2021, <https://www.justice.gov/opa/pr/justice-department-and-city-st-anthony-village-resolve-lawsuit-over-denial-permit-islamic>.

¹² The Advocates for Human Rights, *Moving from Exclusion to Belonging*, *supra* note 9, 261-262.

¹³ *Ibid.* at 262.

¹⁴ Southern Poverty Law Center, “Islamophobia After 9/11: How a fearmongering fringe movement exploited the terror attacks to gain political power,” accessed Nov. 3, 2021, <https://www.splcenter.org/news/2021/09/17/islamophobia-after-911-how-fearmongering-fringe-movement-exploited-terror-attacks-gain>.

targeting of Muslims, the government's actions toward Muslims shifted national rhetoric against Muslim Americans.

Noncitizens who are members of national or ethnic minorities

14. In December 2018, then-President Trump created the Migrant Protection Protocol (“MPP”), also known as the Remain in Mexico policy, which requires asylum seekers remain in Mexico until their claims are processed in U.S. proceedings.¹⁵ Although President Biden paused this program when he took office, a federal court in Texas issued an order requiring the Biden Administration to continue the program. President Biden issued a memo complying with the Court order, but recently reversed course in terminating the program. Notwithstanding, the Biden Administration has continued the “Title 42” policy of expelling people based on perceived public health threats. By returning asylum seekers to Mexico, the U.S. government is engaging in refoulement due to security risks—including thousands of documented cases of rape, kidnapping, and other harms—faced by migrants in border towns. Migrants also struggle to find shelter, health care, and other basic assistance after being returned to Mexico, not to mention the due process violations involved in barring access to seek asylum through fair proceedings.
15. The Advocates, along with 73 other legal service organizations, also note that it is increasingly difficult for U.S. lawyers and humanitarian staff to safely cross into Mexico to provide services to asylum seekers, further restricting who may apply for asylum.¹⁶ Since President Biden took office, there have been 6,356 reports of asylum seekers facing kidnapping, rape, torture, and other violence while waiting to enter the U.S. or after having been returned to Mexico.
16. In March 2020, the Trump administration, via an order from the Centers for Disease Control, began using Title 42 of the U.S. Code to expel migrants without giving them the opportunity to seek protection.¹⁷ The law on which Title 42 expulsions are based, the Public Health Service Act of 1944, was meant to give public health officials the power to quarantine anyone—U.S. citizens and noncitizens alike—but since the March 2020 order, it has only been used to exclude migrants crossing the border from Canada and Mexico. These expulsions violate the international legal requirement of conducting non-refoulement evaluations before potentially sending migrants back to a dangerous location. Despite promises to reopen the U.S. border with Mexico to asylum seekers, the Biden administration continues to use Title 42 to expel migrants from the U.S.
17. Haitian migrants to the U.S. have been particularly hard hit by Title 42 expulsions. In 2020 and 2021, around 15,000 Haitians traveled to Del Río, Texas, to seek asylum, but were forced to take refuge under the International Bridge spanning the Río Grande and connecting the U.S. and Mexico.¹⁸ In September 2021, the Biden administration began using Title 42 to justify clearing the makeshift camp and begin deporting people back to Haiti. Between 19 September and 3 October 2021, the U.S. Department of Homeland Security deported 7,016 Haitians via 65 repatriation flights. Many other Haitians in the camp crossed the Río Grande into Mexico to avoid deportation.

¹⁵ NPR, “‘Remain in Mexico,’ the Trump era policy that haunts the Biden administration,” accessed Nov. 3, 2021, <https://www.npr.org/2021/10/22/1048492677/remain-in-mexico-the-trump-era-policy-that-haunts-the-biden-administration>.

¹⁶ The Advocates for Human Rights, “The Advocates Signs on to Letter Condemning the Remain in Mexico Program,” accessed Nov. 3, 2021, <https://www.theadvocatesforhumanrights.org/News/Index?id=240>.

¹⁷ Human Rights Watch, “Q&A: US Title 42 Policy to Expel Migrants at the Border,” accessed Nov. 3, 2021, <https://www.hrw.org/news/2021/04/08/qa-us-title-42-policy-expel-migrants-border#>.

¹⁸ NPR, “Haiti faces disasters and chaos. Its people are most likely to be denied U.S. asylum,” accessed Nov. 3, 2021, <https://www.npr.org/2021/10/16/1043458530/haitians--u-s-asylum--racist>.

18. Many asylum seekers who are able to enter the U.S. are subject to mandatory detention, which impedes their ability to successfully apply for and receive asylum.¹⁹ In advance of their credible fear hearings, they are held in detention, “are not entitled to a bond hearing before an immigration judge or to independent review of their custody determination by a court while awaiting a credible fear review.”²⁰
19. Asylum seekers may still be subject to detention following a determination of credible fear if U.S. Immigration and Customs Enforcement (“ICE”) denies parole.²¹ Despite a determination of credible fear and a pending asylum case, those asylum seekers who have been denied parole may not have an immigration judge evaluate whether continued detention is necessary. Continued custody after a determination of credible fear can deter individuals from continuing with their asylum case, [particularly as COVID raged through detention centers and the lack of guaranteed legal counsel leaves many without knowledge of their options.](#)
20. Given that bona fide refugees and asylees faced or feared persecution in their home countries, detention in the U.S. risks re-traumatization.²² Moreover, asylum seekers who are detained by ICE—at any stage of the asylum process—are less likely to successfully obtain asylum because they are less likely to obtain legal counsel. Detained asylum seekers also face difficulties in gathering evidence to support both a credible fear determination and, eventually, asylum status.
21. Those migrants who are detained and facing removal proceedings, including those immigrants who are not seeking asylum or refugee status, often are not told that they may secure legal representation from legal service organizations or pro bono volunteers.²³ Migrants rely upon word of mouth to understand that they may be represented by an attorney in their removal proceedings, as well as how to find an attorney. Given the limited number of legal service organizations and their overwhelming caseloads, many migrants struggle to secure legal representation.²⁴ Once they have secured an attorney, many migrants have trouble understanding their rights because information is not provided in indigenous languages, but exclusively in highly technical English and Spanish legal jargon.²⁵
22. Attorneys who have volunteered at the South Texas Family Residential Center in Dilley, Texas, report that federal employees obstruct their ability to represent clients.²⁶ Center staff change rules without warning and policies are arbitrarily enforced. For example, “hand lotion and hotel soap have been confiscated, and open-toed shoes are sometimes banned.”²⁷ At the Karnes City, Texas, facility, attorneys report that they were not allowed to bring office supplies into the facility. Attempts to obtain a written list of policies from officials at the Dilley, Texas, facility were refused.
23. Immigrant detention centers are not legally meant to operate as criminal detention facilities—immigration violations are administrative, not criminal, matters in US law—but

¹⁹ The Advocates for Human Rights, *The United States of America’s Compliance with the International Covenant on Civil and Political Rights Suggested List of Issues Prior to Reporting Relating to Asylum, Immigration Enforcement and Detention, and Human Trafficking*, by The Advocates for Human Rights (Minneapolis, MN: January 2019), ¶33.

²⁰ Ibid.

²¹ Ibid. at ¶34.

²² Ibid. at ¶35.

²³ Ibid. at ¶¶37-38.

²⁴ The Advocates for Human Rights, *Bearing Witness in the Moment*, *supra* note 7.

²⁵ The Advocates for Human Rights, *The United States of America’s Compliance with the International Covenant on Civil and Political Rights Suggested List of Issues Prior to Reporting Relating to Asylum, Immigration Enforcement and Detention, and Human Trafficking*, *supra* note 19, ¶¶37-38.

²⁶ Ibid. at ¶39.

²⁷ Ibid.

detained immigrants are often subject to penal-style rules and regulations with none of the due process protections provided in criminal proceedings: “The government incarcerates people in locked cells where they wear prison jumpsuits, are shackled during court appearances, and are subject to surveillance and strip searches.”²⁸ Violations of rules frequently results in the use of solitary confinement, often for first violations.²⁹ Between 2013 and 2015, 96% of all rule violations were punished with solitary confinement. One migrant was sent to solitary confinement for 12 days for damaging an identification wristband. Another detainee did not close his food port after he found worms in his food and was put in solitary confinement for 15 days.

24. Between 2014 and 2019, more than 200 incidents of sexual assault and abuse were reported by migrants in ICE detention facilities.³⁰ Despite the high number of reported incidents, advocates believe that the problem of sexual abuse in detention centers is more widespread. Survivors of sexual assault, harassment, and abuse within ICE detention also face barriers to reporting.

Annex

1. The Advocates for Human Rights, *Immigration Detention and COVID-19: Illuminating Human Rights Concerns in Minnesota Jails*, by the Advocates for Human Rights, James H. Binger Center for New Americans, and Minnesota Immigrant Health Alliance (Minneapolis, MN: March 2021). Also available online at <https://www.theadvocatesforhumanrights.org/res/byid/8604>.
2. The Advocates for Human Rights, *Bearing Witness in the Moment: Report from the Immigration Court Observation Project*, by The Advocates for Human Rights (Minneapolis, MN: January 2020). Also available online at <https://www.theadvocatesforhumanrights.org/res/byid/8597>.
3. The Advocates for Human Rights, *United States: Stakeholder Report for the United Nations Universal Periodic Review Relating to Asylum, Immigration Enforcement, and Detention*, by The Advocates for Human Rights, Illinois Coalition for Immigrant and Refugee Rights, Immigrant Law Center of Minnesota, ISIAAH (MN), Massachusetts Immigrant and Refugee Advocacy Coalition, Professor Stephen Meilli, and Northwest Immigrant Rights Project (Minneapolis, MN: October 2019). Also available online at <https://www.theadvocatesforhumanrights.org/res/byid/8651>.
4. The Advocates for Human Rights, *The United States of America’s Compliance with the International Covenant on Civil and Political Rights Suggested List of Issues Prior to Reporting Relating to Asylum, Immigration Enforcement and Detention, and Human Trafficking*, by The Advocates for Human Rights (Minneapolis, MN: January 2019). Also available online at <https://www.theadvocatesforhumanrights.org/res/byid/8653>.
5. The Advocates for Human Rights, *Moving from Exclusion to Belonging: Immigrant Rights in Minnesota Today*, by The Advocates for Human Rights (Minneapolis, MN: March 2014). Also available online at <https://www.theadvocatesforhumanrights.org/res/byid/7366>.

²⁸ Ibid. at ¶48.

²⁹ Ibid. at ¶52.

³⁰ Ibid. at ¶50.