

GLOBAL **NEXTGEN** INDEX

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End Child Detention Scorecard

UNITED STATES

Published August 2018 using information compiled between November 2017 – January 2018, based on the most up-to-date reports and analysis available.



 **END** IMMIGRATION
DETENTION
OF CHILDREN

FINAL SCORE

16

The United States scored lowest in the 2018 NextGen Index, which consists of 21 total country assessments. The United States has the world's largest immigration detention system operating over 200 immigration detention facilities with over 34,000 people detained each day.

Further, there are detention facilities dedicated specifically to detaining children and their parents. Families, including infants and toddlers, are locked up in immigration detention facilities for weeks, months, and even years.

The US intercepted 57,000 families with children in 2017, and more than 27,000 unaccompanied children. The vast majority of these children are subject to immigration detention.

	United States	Possible
Treaties	2	20
National laws	0	10
Processing	9	26
Placement	2	12
Rights	8	20
Oversight	7	12
Sub Total	28	100
Points off	-12	-15
Bonus points	0	+15

Treaties 2/20

The United States has ratified one of the six Conventions and Protocols that assist in the protection of children in the context of migration - the International Covenant on Civil and Political Rights.

Recommendation: The Government of the United States is strongly encouraged to immediately ratify the Conventions and Protocols that assist in the protection of children in the context of migration, particularly the Convention on the Rights of the Child.

National laws 0/10

There is no law in the United States to prevent children from being detained. In 2009, the U.S. had stopped using large-scale family detention but since 2014 the harmful practice of detaining children and their parents has been used extensively. There are currently three family detention facilities in the United States- two located in South Texas (in Karnes City and Dilley) and one in Pennsylvania (in Berks county). Combined, these facilities have over

3,000 beds used to lock-up parents and children, with government plans for expansion. Unaccompanied children may also be detained, although special laws require that the best interests of the child govern custody determinations and placement.

Recommendation: The Government of the United States is strongly encouraged to acknowledge that Immigration detention has been shown to fail as a policy of deterrence. Further, the government is strongly encouraged to stop using this harmful practice for children – whether unaccompanied or with their families.

Processing 9/26

The United States has some processes in place that support migrant children while migration processes are underway, but significant improvements need to be made. Many of the processes in place are not consistent, varying on the demographic of the children or the agency that comes into contact with the child. Outdated age determination techniques are utilised, such as dental and skeletal radiographs. No clear process for Best Interest Determination is available. Some guardianship models exist for unaccompanied children, and strong case management exists, but it is not available for children who arrive with their families and are detained by Immigration and Customs Enforcement (ICE).

Recommendation: The Government of the United States is encouraged to immediately establish a systematic screening process to identify children and assess their age in a child-sensitive manner. Further, the government is strongly encouraged to include a robust, systematic and individual Best interest Determination policy and practice that is always undertaken by an independent child specialist. These Case Management programs must be made available to all children, regardless of whether a child is deemed accompanied or unaccompanied.

Placement 2/12

In the United States, families with children are housed in processing centers for the beginning of their migration process, which have worse conditions than immigration detention centres. Studies have shown that conditions in these places include freezing temperatures, inadequate provision of food, and lack of access to hygiene. Concerningly, there are many reports of abuse, and routinely children are housed with unrelated adults. Currently, there are immigration detention centers specifically for children and families, with a capacity to lock-up about 3,000 parents and children despite the fact that the U.S. government is legally mandated to release children to family members as quickly as possible and to place children in the least restrictive setting appropriate to their age and needs. Unaccompanied children are usually released from detention, but there are cases where they can be detained.

The United States has had successful experience with alternatives to detention, although they are only used intermittently. These include the recent Family Case Management Pilot (FCMP) and other local initiatives that have proven to be less costly than immigration detention and cause less harm to the well-being of children and families. These alternatives are not to be confused with electronic monitoring devices, or ‘ankle bracelets’, which criminalize migration and are classified by the International Detention Coalition as an alternative *form* of detention.

Recommendation: The Government of the United States is strongly encouraged to utilise successful community-based alternatives to detention programs for all migrant children and their families. Additionally, the government is strongly encouraged to urgently improve conditions in processing centers in order to comply with basic human rights standards and international law.

Rights 8/20

Some rights are provided for in the United States system, but significant improvement is required. Children in detention and in community settings have access to education, although the quality of education in immigration

detention is low. Non-detained parents of children seeking asylum are able to work, although significant waiting periods can impede the family unit from being able to function and be self-sufficient. There is no government housing, or financial support for housing, provided by the government. Access to healthcare is of a low quality. An informal process for firewall protection is in place with some services at the federal level, although periodically these have not been implemented. Additionally, there is a strong trend across localities to implement local level firewall protections, which has been met with resistance from the federal government.

Recommendation: The Government of the United States should utilise existing successful alternatives to immigration detention programs to provide for the rights of migrant children and their families. Additionally, the federal government is strongly encouraged to acknowledge and respect the firewall policies of local jurisdictions in accordance with the recent federal court decision by Judge Michael Baylson.¹

Oversight 7/12

Some oversight processes exist in the United States, but they rely largely on ad-hoc rather than systematised approaches. Statistics are published, but not in real time or on a regular basis, and they are not disaggregated to indicate child-specific detention statistics. The Inspector General has access to monitor places of immigration detention, although the scope and use of this power is unclear.

Recommendation: The Government of the United States is strongly encouraged to require its immigration authorities to regularly publish immigration detention statistics, including age and sex of the detained population. Additionally, the government is strongly encouraged to ratify OPCAT, and establish a National Preventative Mechanism (NPM) with the mandate and resources to monitor places of immigration detention.

Points off -12/ -15

The United States intercepted more than 57,000 families with children in 2017, and more than 27,000 unaccompanied children. The vast majority of these children are subject to immigration detention, and families are often held for extended periods of a month or more. 12 points were deducted in line with the scoring system.

Recommendation: The Government of the United States is strongly encouraged to abolish the detention of children on the basis of their migration status. Further, the government is strongly encouraged to take significant and immediate action to reduce the numbers of children detained for extended periods of time.

Bonus points 0/15

No bonus points were assigned to the United States. There is no political commitment to end child detention, very little international human rights framework in the State, and no pilot programs are underway to expand alternatives to detention. Expressed intentions of the government indicate that these policies are likely to remain, which have seen thousands of children detained. Even short periods of immigration detention are harmful for child health and well-being, with effects that last a lifetime.

Recommendation: The Government of the United States must urgently uphold the rights of children, and the child's rights to family unity must be respected. The government is strongly encouraged to immediately engage in collaboration with civil society agencies to ensure that all immigration related efforts are working towards ending child immigration detention.

¹ NBC Philadelphia, 6 June 2018. [Federal Judge Sides With Philly Over Sanctuary City Policy.](#)



This scorecard has been assessed by the United States NextGen Index Committee:

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- The International Detention Coalition

For further information regarding how this score was measured visit <http://next-gen-index.org/>

If you have any questions, please contact the Global Campaign:
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Additional Resources

Treaties & National Laws

- [Immigration and Refugee Protection Act \(IRPA\)](#)
 - Section 60
- The Office of the High Commissioner for Human Rights
 - [State of Convention Ratification](#)
- Global Campaign to End Child Immigration Detention
 - [Country Profile: United States](#)
- Global Detention Project
 - [Country Profile: United States](#)
- American Immigration Council
 - [Guide for Children Arriving at the Border](#)
- Human Rights Watch Annual Report
 - [Children Behind Bars](#)

Processes & Placement

- Department of Homeland Security, Office of Inspector General, pg 4-7
 - [Age Determination Practices for Unaccompanied Alien Children in ICE Custody, 2009](#)
- Appleseed, *B. Cavendish and M. Cortazar*, Section 3, pg 22
 - [Children at the Border: The Screening, Protection, and Repatriation of Unaccompanied Mexican Minors, 2011](#)
- Immigration and Customs Enforcement
 - [Age Determination Procedures for Custody Decisions, 2004](#)
- Congressional Research Service
 - [Unaccompanied Alien Children: An Overview, 2016](#)
- UNICEF, pg 56
 - [Age Assessment Practices: A Literature Review and Annotated Bibliography, 2011](#)
- Office of Refugee Resettlement
 - [ORR Guide: Children Entering the United States Unaccompanied, 2015](#)
- UNHCR, BID Determinations, pg 23
 - [Guidelines on Determining the Best Interests of the Child, 2008](#)
- International Detention Coalition, pg 79
 - [Captured Childhood Report, 2012](#)