IARMJ World Conference – Nairobi - November 2025

Detention working group paper

Introduction

Since reporting to the IARMJ World Conference in the Hague only a little over 2 years ago the attitudes of the public, and consequently the rhetoric of politicians and the direction of government policies towards irregular migrants have hardened throughout most of the world. In Europe the EU Pact on Migration and Asylum takes legal effect in June 2026 and includes detention provisions[1]. In the USA the Border with Mexico has been effectively

[1] Directive 2024/1346 art 10–13: detention of asylum-seekers; replaces directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast). Regulation 2024/1349 art 5: detention for return border procedure, detention grounds enacted in directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals are applicable; maximum length is 12 weeks. Regulation 2024/1351 art 44–45: replaces so called Dublin III regulation 604/2013 of the European Parliament and of

sealed and migrants have been returned to third countries. In the UK the demise of the Conservative government saw the abandonment of the Rwanda scheme under which asylum seekers would have been removed to Rwanda to pursue their claims there. The new Labour government have entered into an agreement with France to detain and return some of those entering the UK by sea and recently announced plans to abolish the First-tier Tribunal of the Immigration and Asylum Chamber and replace it with "trained members of the public" hearing appeals under the supervision of legal experts. The Australian government has recently entered into a Memorandum of Understanding with the Government of Nauru to allow persons who have no legal right to stay in Australia to be granted long-term visas by Nauru. The Japanese Immigration Services Agency has published the "Zero Illegal Foreign Residents Plan for the Safety and Security of People in Japan."[2]

In terms of detention, it remains common ground that liberty is a fundamental human right. The Universal Declaration of Human Rights (UDHR) guarantees the right to liberty (Article 3) and protection from arbitrary arrest or detention to everyone. The 1951 Refugee Convention provides that a person shall not be penalised for unlawful entry when seeking asylum (Article 31). Most states have within their constitution or national legislation provisions guaranteeing the rights set out in the UDHR.

It also remains common ground that States are justified in protecting their borders and providing security to their citizens, that illegal migration should not be tolerated and that those foreign nationals lawfully present in a host country must obey its laws and not abuse its hospitality.

It is against these competing interests that countries around the world provide in law and policy for the way in which irregular migrants and foreign criminals should be treated. This paper provides updated examples and comparisons of how certain countries deal with this issue. In preparing this paper we have been anxious not to stray into the political arena or to seek to suggest that one country deals with the issue of immigration detention in a way that is any better or more acceptable than another. The reader will be able to make their own comparisons and draw their own conclusions. There are, however, two matters that stand out from our research. The first is the significance of the ability of the detainee to have access to speedy judicial review where their detention is maintained or prolonged. The second is the degree to which states may use immigration detention as a deterrent to migration and a coercion to return rather than simply to effect the removal of those unlawfully present in their territories. Detention as punishment following conviction for criminal transgression is an accepted and rational aspect of the Rule of Law whereas administrative detention will always be a difficult concept for human rights lawyers, and as judges in the IARMJ we are all human rights lawyers, to condone unless

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the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), incl. provisions of detention. Reform of the directive 2008/115/EC is also under consideration, see: https://home-affairs.ec.europa.eu/news/new-common-european-system-returns-2025-03-11_en.

[2] See: https://www.moj.go.jp/isa/content/001446181.pdf.

such detention is necessary, proportionate and maintained for the shortest possible period.

This paper is not a comprehensive or authoritative assessment of the law in the states covered; rather it is intended to be a brief and general description demonstrating the differences of approach to the same, or at least similar, issues.

Most topics have a section dedicated to the European Union (EU). Firstly, there is a general overview of EU law/practice. Secondly, two Member States, Estonia and the Netherlands, are brought out as examples. These countries are very different taking account of their size, location and the background of the migrants that they have. Estonia is one of the smallest EU countries with a population of only 1.3 million. It is situated next to the Russian border and is mainly a transit country with regard to traditional asylum seekers (from Asia, Africa and the Middle East). Main "clients" are from Ukraine, Russia, Belarus and other former USSR countries. The Netherlands on the other hand is a destination country with a more ethnically diverse population of over 18 million and so has a wider variety of "clients".

Definitions of detention, including restrictions on liberty

UNITED KINGDOM

In the United Kingdom the definition is very simplistic. If a person is 'detained' they are held in either an IRC (Immigration Removal Centre) or HMP (Prison). In either case detention means that they are imprisoned. They are not allowed to leave the prison or detention centre and are 'locked up'. The UK does not have 'home detention'. There is presently a proposal to house asylum seekers in disused military camps but it is assumed that they will not be 'detained' in these facilities.

USA

There is no specific definition of detention in statute. However, for reporting purposes the Department of Homeland Security defines detention by Immigration and Customs Enforcement as "an alien that is physically booked into … custody."[3]

CANADA

Under Canadian law, detention may be defined varyingly according to context. In the immigration context, there is no specific definition of "detention" in the *Immigration and Refugee Protection Act* (IRPA) or *Regulations* (IRPR). However, the IRPA establishes a legislative scheme for the arrest and detention of non-citizens on certain grounds and conditions. In practical terms, a person who has been detained is housed either at an immigration holding centre, a provincial correctional facility or police detachment or other facility operated by a law enforcement agency. In all cases, the person who is

[3] See: https://ohss.dhs.gov/glossary?utm_source=chatgpt.com#A-d.

detained is subject to controls on their movements and activities and cannot leave the facility unless ordered released by the Canada Border Services Agency (CBSA) (within 48 hours of detention) or the Immigration Division (ID) of the Immigration and Refugee Board (IRB) (after 48 hours). In Canada, a person is not considered detained when subject to terms and conditions imposed by CBSA or the ID. These terms and conditions could include for example the requirement to participate in an electronic monitoring program, reside in a specific location, abide by a curfew or participate in a treatment program.

AUSTRALIA

There is no specific definition of detention. Australia operates a universal visa policy, which means that all non-citizens require a visa to enter or stay in Australia. Since 1992 that has included a policy of mandatory immigration detention, which requires all non-citizens without a valid visa to be detained until they are granted a visa or removed from Australia (ss.189 and 196 of the Migration Act). The Act does not contain a process for challenging immigration detention, rather it provides for the review of decisions to refuse or to cancel a visa.

NEW ZEALAND

There is no statutory definition of detention in New Zealand's Immigration Act, although it does set out the circumstances in which a person can be detained, the time limits of detention, and the processes involved in ensuring judicial oversight of the detention regime.

JAPAN

The Immigration Control and Refugee Recognition Act does not contain a definition of detention but allows for the detention of illegal entrants and those remaining unlawfully for an initial period of 30 days followed by an extended period of up to a further 30 days (Article 41).

SWITZERLAND

There is no specific definition of "detention". The cantons are in charge of the organisation of detention in terms of capacity and conditions, which results in a high number of facilities used for the purpose of administrative detention and a certain diversity of detention conditions. In the whole national territory, there are 260 places reserved for administrative detention, be it in specialised detention facilities or in ordinary prisons.

EU MEMBER STATES

According to Court of Justice of the European Union (CJEU) the concept of *detention* extends to any confinement of the person (asylum-seeker, illegal immigrant) by a Member State within a particular place, where the person is deprived of their freedom of movement and isolates them from the rest of the population, by requiring them to remain

permanently within a restricted and closed perimeter. Detention assumes a deprivation, and not a mere restriction, of freedom of movement. E.g. the obligation imposed on a third-country national to remain permanently in a transit zone the perimeter of which is restricted and closed, within which that person's movements are limited and monitored, and which they cannot legally leave voluntarily, in any direction whatsoever, is considered to be a deprivation of liberty and therefore detention. (See: C-924/19 PPU and C-925/19 PPU – Országos Idegenrendeszeti Főigazgatóság Dél-alföldi Regionális Igazgatóság, paras 216–231.)

ESTONIA

The definition used in EU law is applied.

The obligation of an asylum seeker to live in an accommodation centre is not considered to be detention. The person is free to leave for normal day to day purposes, however if they leave the accommodation centre permanently without permission or without having informed the Police and Border Guard Board or have not returned to the accommodation centre within a reasonable period of time, it is used against them (it is presumed that the application has been withdrawn or waived).

NETHERLANDS

The definition used in EU law is applied.

Immigration detention is used to forcibly return foreigners who are required to leave the Netherlands but fail to do so independently. Keeping them available for return to their country of origin prevents them from evading deportation. It is not intended as punishment for the foreign national and is qualified as an administrative measure.

A foreign national cannot leave an immigration detention centre, unlike the restrictive locations. The Netherlands has measures to restrict the freedom of movement of the foreigner by placement in restrictive locations. When placed in an enforcement and supervision location (htl), a restrictive custody location (vbl), or a family location (gl), the foreign national is subject to a restrictive custody measure pursuant to Article 56 of the Aliens Act 2000, also known as an area order. Foreign nationals subject to this measure must remain within a designated area.

This measure is often imposed in conjunction with Article 54 of the Aliens Act, which concerns the obligation to report to the AVIM (General Information and Communications Authority). In principle, the restrictive custody measure for both the vbl and htl lasts a maximum of twelve weeks but can be extended if there are still sufficient grounds for it. There is no specific time limit for residence in the family location.

Reasons for detention

UNITED KINGDOM

A foreign national who does not have permission to enter or remain in the United Kingdom may be detained as a person liable to examination or removal. A foreign national who, having been convicted of a criminal offence, is subject to deportation may be detained at the end of their custodial sentence for the purposes of deportation. The prime reason for detention is to facilitate removal. Where removal is not imminent a person may be detained for the protection of the public or their own protection or to prevent absconding.

USA

Under the *Immigration and Nationality Act* (INA), the Department of Homeland Security may – and in some cases must – detain non-citizens (i.e. aliens) who are subject to removal from the United States for immigration reasons. For example, detention is generally required where the non-citizen engaged in specified criminal acts or for a period following the completion of removal proceedings.[4]

CANADA

A non-citizen may be arrested and detained by an officer of the CBSA if the officer has reasonable grounds to believe he or she is inadmissible and there is a ground for detention as detailed below.

The CBSA has the power to continue the detention of a non-citizen until the first detention review by the ID, which is required to take place within 48 hours after the person is taken

[4] See: https://www.congress.gov/crs-product/R45915.

into detention, or without delay afterward. Once the first detention review before the ID commences, the CBSA no longer has the authority to release the person.

The IRPA establishes grounds for detention that ID members are required to consider at a detention review, when deciding whether to order release or continue detention. ID members must order the release of a non-citizen unless they are satisfied, taking into account prescribed factors, that they are a danger to the public; they are unlikely to appear for examination, an admissibility hearing, removal from Canada, or other immigration proceeding; the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality; or the Minister is of the opinion that the identity of the foreign national has not been, but may be, established and they have not reasonably cooperated with the Minister by providing relevant information for the purpose of establishing their identity or the Minister is making reasonable efforts to establish their identity.

At a detention review before the ID the onus is always on the Minister to demonstrate, on a balance of probabilities, that there are reasons which warrant continued detention.

Subsection 58(1) of the IRPA directs the ID to consider "prescribed factors" in deciding the question of detention and release with respect to flight risk, danger to the public and identity not established. If it is determined that there are grounds for detention, the ID must also consider the other factors in section 248 of the Immigration and Refugee Protection Regulations (IRPR) before a decision is made on detention or release. These factors include the reason for detention; the length of time in detention; whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time; any unexplained delays or unexplained lack of diligence caused by the Minister or the person concerned; the existence of alternatives to detention; and the best interests of a directly affected child who is under 18 years of age.

AUSTRALIA

Any person known or suspected to be in Australia without a visa is deemed an 'unlawful non-citizen' and must be detained in immigration detention until they are granted a visa (including a class of temporary visas known as bridging visas, which provide lawful status for certain non-citizens who would otherwise be unlawful) or removed from Australia.[5] For persons who cannot be returned to their country of origin because of Australia's *non-refoulement* obligations, the constitutionally permissible period of immigration detention comes to an end when there is no real prospect of removal of the alien from Australia becoming practicable in the reasonably foreseeable future.[6] In practice this also applies to persons who cannot be returned to their country of origin because they are stateless or because their country cannot or will not accept their return.

[5] Sections 189 and s 196 *Migration Act 1958*.
[6] *NZYQ v MICMA* [2023] HCA 37.

NEW ZEALAND

The framework for immigration detention is focused on detention of people prior to turnaround at the border, or after a person has become liable for deportation (including becoming unlawfully present once their visa expires), pose a threat to, security or have breached earlier reporting requirements or have issues establishing their identity. However, detention is seen as a measure of last resort and used sparingly.

Different detention time periods apply to any group of "mass arrivals" (e.g. 30 people who arrive on a non-scheduled vessel) to ensure they can be processed and are able to access necessary health and legal services.

SWITZERLAND

In Switzerland, administrative (immigration) detention is only applied for the purpose of removal, after a procedure has ended with a decision of removal or transfer according to the Dublin III Regulation (removal to EU country of first arrival). The administrative detention of asylum seekers during the procedure is rarely practiced (for instance in the form of detention in preparation for departure and Temporary detention in some exceptional cases), while the other detention types are possible only after a removal decision has been issued.

The *temporary detention* for identification purposes or for the purpose of issuing a decision in connection with their residence status may be ordered according to article 73 of the Foreign Nationals and Integration Act (FNIA) for a maximum of 3 days.

Detention in preparation for departure may be ordered during the asylum procedure according to article 75 FNIA to facilitate the conduct of removal proceedings. It can be ordered where persons (1) refuse to disclose their identity, submit several applications for asylum using various identities or repeatedly fail to comply with a summons without sufficient reason or ignore other instructions issued by the authorities in the asylum procedure; (2) leave an area allocated to them in accordance with a restriction order or enter an area they are prohibited from entering; (3) enter Swiss territory despite a ban on entry and cannot be immediately removed; (4) were removed and submitted an application for asylum following a legally binding revocation of their residence or permanent residence permit or a non-renewal of the permit due to violation of or representing a threat to the public security and order or due to representing a threat to internal or external security; (5) submit an application for asylum after an expulsion ordered by the Federal Office for Police to protect internal or external national security; (6) stay unlawfully in Switzerland and submit an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order; (7) seriously threaten other persons or considerably endanger the life and limb of other persons and are therefore being prosecuted or have been convicted; or (8) have been convicted of a felony; or (9) is a risk to Switzerland's internal or external security according to findings made by the Federal Office for Police or the Federal Intelligence Service.

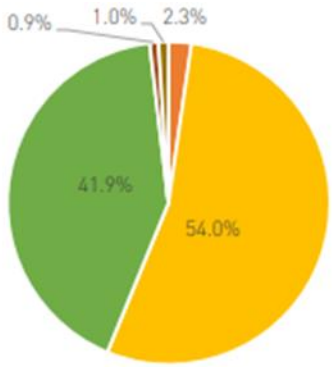
Detention pending deportation according to article 76 FNIA is applicable to persons who have received a negative decision as well as a dismissal without entering in the substance of the case. A person can also be kept in detention if they are already in detention in preparation for departure according to article 75 FNIA and, according to article 76 FNIA, if they (1) refuse to disclose their identity, submit several applications for asylum using various identities or repeatedly fail to comply with a summons without sufficient reason or ignore other instructions issued by the authorities in the asylum procedure; (2) leave an area allocated to them in accordance with a restriction order or enter an area they are prohibited from entering; (3) enter Swiss territory despite a ban on entry and cannot be immediately removed; (4) stay unlawfully in Switzerland and submit an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order; (5) seriously threaten other persons or considerably endanger the life and limb of other persons and are therefore being prosecuted or have been convicted; (6) have been convicted of a felony; (7) is a risk to Switzerland's internal or external security according to findings made by the Federal Office for Police or the Federal Intelligence Service; (8) are suspected of seeking to evade deportation, according to serious indications, in particular because they fail to comply with the obligation to cooperate with the authorities; (9) based on their previous conduct, it can be concluded that they will refuse to comply with official instructions; (10) are issued with a removal decision in a federal centre and enforcement of the removal is imminent.

According to article 76a FNIA, a person *in the Dublin procedure* can be detained if (1) there are specific indications that the person intends to evade removal; (2) detention is proportionalte and (3) less coercive alternative measures cannot be applied effectively.

The so-called *Coercive detention* under article 78 FNIA can be ordered when a legally enforceable removal or expulsion order cannot be enforced due to the conduct of the person.

Numbers for 2024:

- Temporary detention (article 73 FNIA): 708
- Detention in preparation for departure (article 75 FNIA): 60
- Detention pending deportation (article 76 FNIA): 1,330
- Detention under the Dublin procedure (article 76*a* FNIA): 1,010
- Detention pending deportation due to lack of cooperation in obtaining travel documents (article 77 FNIA): 21
- Coercive detention (article 78 FNIA): 33



In the years 2022 to 2024, 54 % of the ordered detention were Detention pending deportation, 41.9 % Detention under the Dublin procedure, 2.3 % Detention in preparation for departure, 1 % Coercive detention and 0.9 % were Temporary detention.

EU MEMBER STATES

Based on status (as migrants) there are two major types of migrants' detention:

1) detention of asylum seekers during their asylum procedure and
2) detention of illegal immigrants to expel them from the EU (they are the subject of return procedures in order to prepare the return and/or carry out the removal process).

As a third category so called 'Dubliners' can be distinguished, i.e. persons who are detained in order to transfer to another responsible EU Member State under Dublin III Regulation.

Grounds for their detention are regulated by EU law[7] supplemented by Member States' laws. E.g. Member States must define objective criteria on the bases of which the "risk of absconding" is assessed[8]. Applicants for international protection can be held in detention only on grounds laid down in art 8(3) of directive 2013/33 (C-36/20 PPU – Ministerio Fiscal, paras 95–113). Concerning illegal immigrants Member States can add additional grounds, however all grounds must meet certain conditions (see C-241/21 – Politsei- ja Piirivalveamet, paras 36–50).

Taking account the fact that, all EU Member States are also members of European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) the quality of law allowing restriction of liberty must correspond to convention as interpreted and implemented by European Court of Human Rights (ECtHR). In short: legal basis must be clear, predictable, accessible and protect against arbitrariness. This has been emphasised also by CJEU (see C-241/21 – Politsei- ja Piirivalveamet, paras 47–50). E.g. if Member States have not adopted provisions laying down objective criteria underlying the reasons for believing that an applicant for internation protection may abscond, the person may not be detained (C-528/12 – Al Chodor, para 47).

[7] Directive 2008/115/EC art 15; directive 2013/33/EU art 8; regulation 604/2013 art 28.
[8] Directive 2008/115/EC art 3 (7); regulation 604/2013 art 2 (n).

These grounds do not rule out detention of a migrant who has been convicted of a crime or other relevant offence under criminal law.

Detention of minors should be a strict exception under EU law despite the status of minor (asylum seeker, illegal immigrant or so-called Dubliner) or whether he/she is with family or unaccompanied.[9]

The EU uses a "safe country of origin" concept. People originating from those countries should not, in principle, receive international protection, since those countries are generally considered safe.[10] Those migrants can be expelled from the EU, and they are excluded in principle from refugee status. The probability of those migrants coming from "safe countries" of being expelled is high and therefore the probability of absconding is also high. So, there is a high probability of detention.

Detention of illegal immigrants is possible only with the aim to expel the person from the Member State and the EU. If there is no prospect of expelling the person, there is no legitimate aim to detain the person and he/she should be released (e.g. C-357/09 PPU – Kadzoev, para 67). In order to avoid this, the EU has made big efforts to conclude bilateral readmission agreements with third countries and taken several other measures to make the EU returns policy more effective.[11] EU law reform package (see above) gives additional possibilities for that.

ESTONIA

Estonia's legislation has strictly implemented EU requirements.

NETHERLANDS

The Dutch legislation has strictly implemented EU requirements.

A foreign national is given the opportunity to leave the Netherlands voluntarily. Detention is the last resort, also known as the "ultimate remedy," if a foreign national does not return to their country of origin or transit independently. It is the last resort that ensures the foreign national remains available for return.

[9] Directive 2008/115/EC art 17; directive 2013/33/EU art 11 (2), (3); regulation 604/2013 art 6, art 28 (4).
[10] For time being it is mainly up to Member States to designate those countries (directive 2013/32/EU art 37 ff). Taking account changes in EU law, from 2026 there will be major changes in the area (see also: Proposal Regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the establishment of a list of safe countries of origin at Union level).
[11] See e.g.: EMN Inform. Bilateral Readmission Agreements, September 2022; MPG. Mapping Bilateral Return Agreements: towards a Comprehensive Inventory. Working Paper. 2025. See also: European Commission, Migration and Home Affairs. An effective, firm and fair EU return and readmission policy.

Average number in immigration detention per day

UNITED KINGDOM

In the United Kingdom the numbers in detention are restricted by the number of spaces available. As at 12 January 2024 there were 1,946 people in immigration detention with 1,737 in IRC (Immigration Removal Centres) and 209 in HMP (Prisons). By mid 2024 the UK had an IRC detention capacity of around 2,200 of which 77% was occupied. On 23 June 2024 only 94 were held in HMP. Two new IRC are scheduled to open by the end of 2025 giving an additional capacity of about 1000.

The numbers in HMP have steadily fallen over the last 2 years. This seems to be due to lack of capacity. HMP are heavily oversubscribed, so much so that those prisoners serving custodial sentences are being released having served 40% of their term rather than 50%. In these circumstances the pressure to either bail Foreign National Prisoners (FNP) or transfer them to IRC at the end of their custodial sentence is immense.

USA

As of 20 September 2025, 48,404 non-citizens were in immigration detention each day on average during fiscal year 2025, which runs from 1 October 2024 to 30 September 2025. This compares with 37,722, 28,289 and 22,578 in fiscal years 2024, 2023 and 2022 respectively.

The state with most detainees is Texas (12,224) followed by Louisiana, California, Georgia and Arizona.

CANADA

In fiscal year 2024-25, which runs from 1 April 2024 to 31 March 2025 and is the last year for which public information is available, 213 individuals were in immigration detention each day on average. Looking back over the past 12 years, this represents the third lowest daily average. The lowest daily average during this period was 134 in 2020-21, and the highest was 539 in 2012-13.

SWITZERLAND

The last figures available are of the year 2023, when the reported detainee population per day was of 145.

AUSTRALIA

As of 31 July 2025, there were 965 people held in immigration detention facilities in Australia with a further 109 people being approved for a residence determination (1077 in total).[12]

NEW ZEALAND

No data available

JAPAN

No data available

ESTONIA[13]

In January 2025 there are 123 places in Detention Centres, so in principle there is a possibility to detain 123 migrants per day. However, the Detention Centres have never been 100% full. There are two aspects that must be born in mind. First, in principle migrants can be detained in exceptional cases also in prison or arrest houses. This means that the number of migrants can be higher. Secondly, on the other hand, there are restrictions in placement (men and women must be kept separately, families must be kept together etc) which reduces the number in practice.

NETHERLANDS

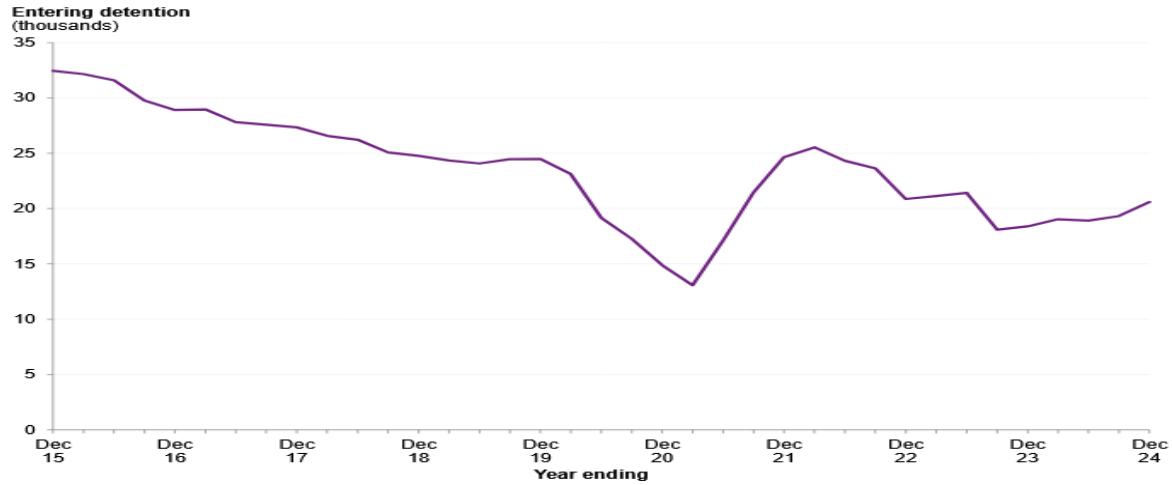
Approximately 320 foreign nationals are held in immigration detention every day.[14]

[12] See: Immigration Detention and Community Statistics Summary 31 July 2025.
[13] Please remind that Estonia as a Member State of European Union is a small country – population is only *ca* 1,3 million.
[14] See: https://www.dji.nl/justitiabelen/vreemdelingen/vraag-en-en-antwoord.

Overall numbers detained annually

UNITED KINGDOM

Following a high of 32,447 in 2015 the number entering immigration detention had dropped to 20,446 in 2022 and 18,400 in 2023 increasing to 20,604 in 2024.



USA

As of 20 September 2025, 310,181 individuals were detained for immigration reasons in fiscal year 2025 (year to date). This compares with 277,913 in 2024, 273,220 in 2023 and 306,979 in 2022 fiscal years. Fiscal year in the USA runs from 1 October – 30 September.

CANADA

In fiscal year 2024-25 (1 April – 31 March) a total of 4,263 individuals were detained for immigration reasons. The number of detained persons in 2024-25 represents the third lowest volume in the past 12 years. The lowest volume year was 2020-21, when 1,729 individuals were detained, while the highest volume year was 2012-13, when 9,396 individuals were detained. By way of context, Canada's population stood at approximately 41.3 million in 2024. During calendar year 2024 CBSA processed 93.4 million travellers entering Canada.

AUSTRALIA

Australia's Department of Home Affairs publishes statistics showing the number of persons held in immigration detention at the end of each quarter, but does not publish statistics showing the number of persons detained annually.

The Department of Home Affairs has published the following graph showing the number of people in immigration detention from 1990 to 2025[15]:

[15] See: Immigration Detention and Community Statistics Summary 31 July 2025.

Figure 1 – Population in Immigration Detention

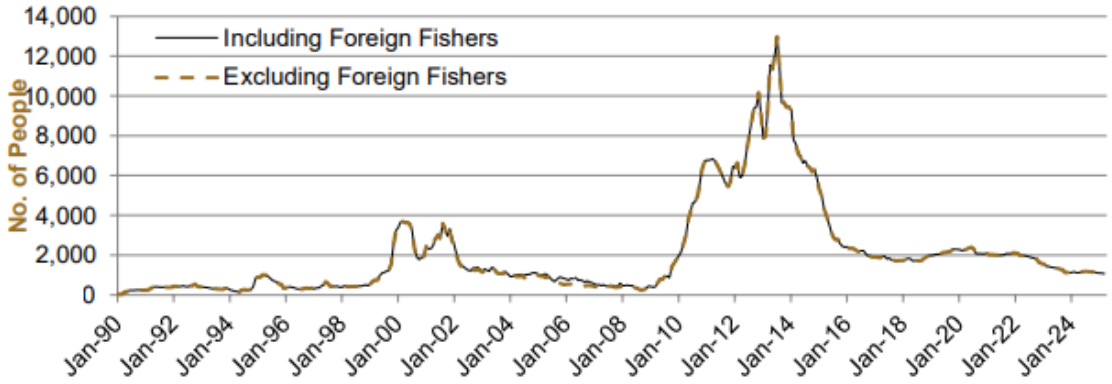


Figure 1 above, shows the number of people in immigration detention from 1990 to 2025.

NEW ZEALAND

New Zealand does not have any dedicated detention facilities. Individuals are detained in prisons and correctional facilities, and detention is designed to be used for short periods, immediately prior to deportation. Between 1 July 2024 and 29 May 2025, 89 individuals were detained under warrants of commitment in various prisons around the country.

In August 2025 there were 5 people in detention, with 11 released with conditions and another 40 living in the community but subject to reporting requirements (56 in total).

JAPAN

The number detainees at the Immigration Services Agency's detention facilities from January to August 2025 was 8,402 persons, while the number released from these facilities was 8,514 persons. The highest number of detainees at month-end was recorded 531 persons in June 2025.

Table 1: Detainees in Japan 2025 (persons)

	January	February	March	April	May	June	July	August	Total
Entered	930	1,003	1,064	825	1,119	1,226	1,303	932	8,402
Released	965	1,028	1,103	736	1,129	1,204	1,363	986	8,514
Detainees at month-end	494	469	430	519	509	531	471	417	

Source : Immigration Service Agency of Japan, 10 October 2025 https://www.moj.go.jp/isa/content/001448366.pdf

SWITZERLAND

In 2024 administrative detention was ordered against asylum applicants and other foreigners in 3,162 cases. Of this number, 1,010 were Dublin cases. Temporary detention, which cannot exceed 3 days, concerned 708 short-term detentions (overall in 2023: 2,867)

ESTONIA

In 2024 there were 298 detainees: 263 illegal immigrants (*ca* 88%) and 35 asylum seekers (*ca* 12%; it is approximately 2.6% of all asylum-seekers).

NETHERLANDS[16]

Rejected foreigners who refuse to cooperate with return to their country of origin or transfer to another EU country may be detained as a last resort to keep them available for departure (Article 59 of the Aliens Act). In addition, the Royal Netherlands Marechaussee (KMar) may detain foreigners without a right of residence at the border (Article 6 of the Aliens Act).

	2020	**2021**	**2022**	**2023**	**2024**	**2025 (until June)**
Article 59 (illegal stay in NL)	2320	2880	2580	3190	3650	1870
Article 6 (detention at border)	230	310	340	520	790	310
Total	2550	3190	2920	3710	4440	2180

[16] See: https://www.dienstterugkeerenvertrek.nl/over-dtv/cijfers.

Average lengths of immigration detention

UNITED KINGDOM

The UK does not have an upper limit on the time for which a person can held in immigration detention. Of people leaving detention in 2023, 65% had been detained for less than 29 days, 18% for 29 days to 2 months, 14% for 2 months to 6 months, 2% for 6 months to 1 year, and 1% had been detained for 1 year or longer.

Female detainees are, on average, held for shorter periods than male detainees. The length of detention is longer for people held in prisons. Just over half (53%) of people who had been held in immigration detention for at least 6 months as of the end of September 2022 (the most recent period available) were former offenders held in prisons, while people detained in prisons made up 22% of all detainees (i.e., those who had been in detention for any period of time as at 30 September 2022). A 2022 inspection report argued that immigration detention in prisons was prolonged by operational failures to progress detainees' cases and either release or remove them. By the 2025 the number held in prisons has very significantly reduced (see above)

USA

As of 20 September 2025, the average length of immigration detention was 50.3 days in fiscal year 2025. However, it has been noted that immigrants who are deported within a short time frame skew this data[6]; data from a class action lawsuit challenging mandatory detention found that immigrants who applied for relief from removal were held in California ICE detention facilities for an average of 421 days. A 2022 probability sample of 306 Mexican nationals deported from the US found that 47% had experienced detention lasting more than a year. (jamanetwork.com)

CANADA

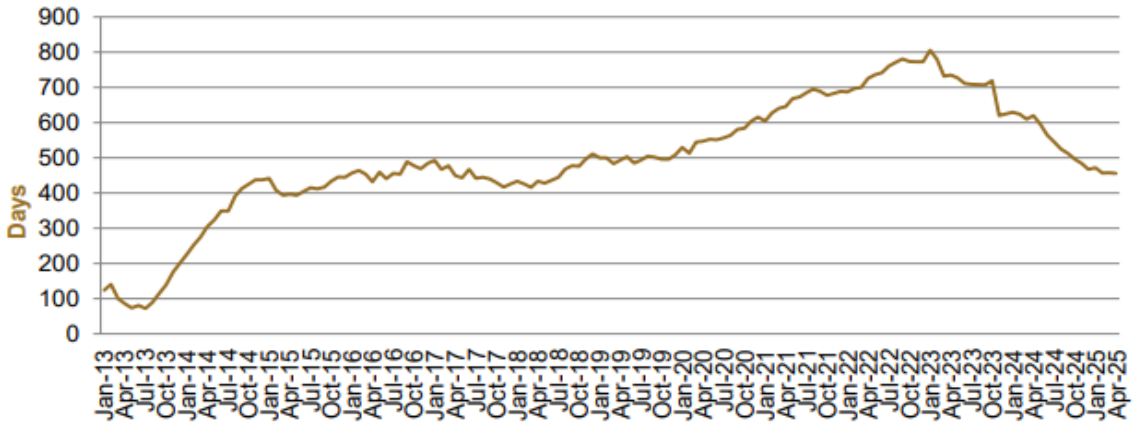
Like the UK, Canada does not have an upper limit on the time during which a person can held in immigration detention. Based on the total number of persons detained in Canada for immigration reasons in fiscal year 2024-25, the average length of detention was 19 days. This includes both individuals released by CBSA prior to 48 hours, when the Immigration Division (ID) of the Immigration and Refugee Board of Canada assumes jurisdiction for reviewing the grounds of detention and ordering release or continued detention, as well those detained for a longer period. Of people detained for more than 48 hours and thus subject to a detention review by the ID in calendar year 2024, 2,330 (89%) had been detained for less than 90 days, 205 (8%) for 91 to 180 days, 63 (2%) for 181 to 365 days, and 10 (0.4%) for more than 365 days.

AUSTRALIA

At 31 July 2025, of the 965 people detained in immigration detention facilities, 30.1 per cent had been detained for 91 days or less and 66.8 per cent had been detained for 365

days or less. The average period of time for people held in detention was 462 days. The Department of Home Affairs published the following graph showing the average number of days of people held in immigration detention between January 2013 and July 2025, noting that the length of time a person spends in immigration detention depends on a range of factors, including the complexity of their case, the legal processes they pursue and whether they voluntarily choose to leave Australia.[17]

Figure 5 – Average Number of Days of People in Held Immigration Detention Facilities



NEW ZEALAND

There is no data available on this specific issue.

Legally, there is no upper no time limit, but detention must reviewed by a District Court Judge every 28 days. Recent reviews following the long-term detention of asylum seekers (prior to 2020) have resulted in legal and operational changes which are designed to avoid the use of detention wherever possible (in favour of community release subject to reporting conditions), and ensuring that periods of detention are as brief as possible.

Detention in prisons, whether of asylum seekers or people awaiting deportation, is intended to be short term and a measure of last resort and only where alternatives are not appropriate.

JAPAN

As of the end of June 2025, the number of detainees under a deportation order whose period of detention was more than six months was 24 persons. The longest period of detention was 12 years and 9 months.

Detainees by Facility (persons)

	Detention by Detention Order	Detention by Deportation Order	Less than 6 months	6months-1 year	More than 1 year to 1	More than 1 year and	More than 2 years to 2	More than 5 years and	More than 10 years to 10	More than 12 years and	

[17] See: https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-community-statistics-30-april-2025.pdf.

					year and half	half to 2 years	years and half	half to 6 years	years and half	half to 13 years	
Total	94	437	413	8	8	4	1	1	1	1	
Ushiku (Easter Japan)	0	44	24	7	6	3	1	1	1	1	12 years and 9 months
Omura (Western Japan)	0	5	4	0	1	0	0	0	0	0	1 year and 4 months
Sendai	1	0	0	0	0	0	0	0	0	0	
Tokyo	66	283	281	1	1	0	0	0	0	0	1 year and 4 months
Narita	1	0	0	0	0	0	0	0	0	0	
Yokohama	7	19	19	0	0	0	0	0	0	0	
Nagoya	8	41	41	0	0	0	0	0	0	0	
Osaka	10	43	42	0	0	1	0	0	0	0	1 year and 11 months
Hiroshima	1	0	0	0	0	0	0	0	0	0	
Fukuoka	0	2	2	0	0	0	0	0	0	0	

Source : Immigration Service Agency of Japan, 10 October 2025
https://www.moj.go.jp/isa/content/001448366.pdf

Cases (more than 5 years of detention)

1) A detainee from East Africa was sentenced to more than three years of imprisonment for criminal offences including robbery causing injury. Following the completion of his sentence, he was detained at the detention facility pursuant to the execution of a deportation order and has persistently refused deportation.
   For this individual, deportation is difficult due to the lack of cooperation from his country of nationality in issuing the necessary passport. Furthermore, the detainee himself refuses to be released under supervisory measure or temporary release, leading to prolonged detention.

2) A detainee from the Middle East, after illegally entering Japan, was sentenced to more than three years imprisonment for violations of the Immigration Act and drug-related laws. Following the completion of his sentence, he was detained at the detention facility pursuant to the execution of a deportation order and has persistently refused deportation.
   For this individual, deportation is difficult due to the lack of cooperation from his country of nationality in issuing the necessary passport. Furthermore, the detainee himself refuses to be released under supervisory measure or temporary release, leading to prolonged detention.
   Additionally, this detainee has consistently asserted that 'the Immigration Agency's doctor is not trustworthy' and has not received medical treatment either within the facility or at external medical institutions to date.

3) A detainee from Southwest Asia has repeatedly applied for refugee status determination on numerous occasions and has persistently refused deportation for even after a deportation order was issued.

This individual intentionally refuses to consume solid food, including institutional meals, necessitating special consideration regarding his health. The detainee himself refuses to be released under supervisory measure or temporary release, leading to prolonged detention.

Source : Immigration Service Agency of Japan, 10 October 2025
https://www.moj.go.jp/isa/content/001448366.pdf

SWITZERLAND

In Switzerland, Cantons are competent to enforce removals as well as to use coercive measures aiming at facilitating such enforcement.

Average length of detention according to the types of detention/person (January 2022 to December 2024):

- Detention in preparation for departure (art 75): 22 days
- Detention pending deportation (art 76): 23 days
- Detention in Dublin procedures (art 76*a*): 19 days
- Coercive detention (art 78): 77 days
- All types of detention: 22 days

Maximum length of detention according to the types of detention/person:

- Detention in preparation for departure (art 75): 86 days
- Detention pending deportation (art 76): 509 days
- Detention in Dublin procedures (art 76*a*): 92 days
- Coercive detention (art 78): 384 days

EU MEMBER STATES

- Maximum length of detention of illegal immigrants is regulated by EU law[18]: 6 months which can be extended to maximum 18 months.
- There is no special rule in EU law[19] on maximum detention of asylum seekers, however, as detention of an asylum seeker is exception (e.g. C-36/20 PPU – Ministerio Fiscal, paras 100–105), the maximum length cannot be longer than maximum length of illegal immigrants.
- It is important to note that maximum 18 months encompasses only one status (i.e. as illegal immigrant or as asylum-seeker; in case asylum seeker "changes" and becomes illegal immigrant, the term starts from zero).
- A person who is detained for the purpose of transfer to another EU Member State[20] (who is responsible for examining his/her application for international protection)

[18] Directive 2008/115/EC art 15.
[19] See directive 2013/33/EU art 8–9.
[20] Regulation 604/2013 art 28 (3).

can be detained for six weeks (“Dubliners”). The term is prolonged if the person challenges transfer and this has suspensive effect.

ESTONIA

Estonia’s legislation has implemented the deadlines enacted in EU law.

Official publicly available data on average length is not accessible. From CPT report[21] stems that in 2022 the average length was 40 days and in 2023 it was 15 days (that said, five of the persons held in the Centre at the time of the visit had been detained for over two months and one person for about 16 months).

NETHERLANDS

Dutch legislation has implemented deadlines enacted in EU law.

The average duration of detention of foreigners in the Netherlands is approximately 44 days. The average duration of detention of families in the Netherlands is approximately 7 days.[22]

Both nationally and internationally, the general guideline is that alien detention should be as short as possible. The measure may not last longer than is strictly necessary for its intended purpose. The longer the detention measure lasts, the more important the illegal third country nationals interest in being released weighs against the interest in continued detention.

Case law from the Aliens Chamber shows that after six months, the court assesses the continuation of detention more strictly. After six months, the principle is that the individual interest of the illegal third country national generally outweighs the general interest involved in deportation. This case law shows that exceeding the six-month period can be considered lawful in the following cases:

-a declaration of undesirability or a serious criminal record;

-frustration with the actual deportation due to aggressive behaviour;

-frustration by the foreign national with the investigation into establishing identity or nationality;

-the fact that, after being detained, the foreign national initiated one or more procedures to obtain a residence permit with the apparent aim of delaying deportation or obtaining a travel document.

[21] See: https://rm.coe.int/1680b13702.
[22] See : https://www.dji.nl/justitiabelen/vreemdelingen/wie-zitten-er-in-vreemdelingenbewaring.

Places of detention (prisons, detention centre, other)

UNITED KINGDOM

Immigration detainees are generally held in Immigration Removal Centres (IRC) but those who continue to be detained having completed a custodial prison sentence often remain in prisons (HMP). Over 90% of immigration detainees are held in IRC.

USA

Individuals detained for immigration reasons are housed in a variety of settings. Some are held in state or local jails or privately-operated detention facilities contracted by Immigration and Customs Enforcement (ICE) to house such detainees. Others are detained in facilities operated directly by ICE. As of the end of June 2025, immigration detainees were being held in 201 facilities across the US.

CANADA

In fiscal year 2024-25, 74 percent of individuals detained for immigration reasons were housed in one of three immigration holding centres, operated by the Canada Border Services Agency (CBSA); 9 percent in provincial jails; and 16 percent in other facilities. Other facilities include police detachments and cells as well as port of entry and CBSA inland enforcement cells. Such cells are only used for very short periods of time.

AUSTRALIA

Persons subject to immigration detention in Australia may be detained in the following ways:

- In an Immigration Detention Centre/ Immigration Transit Accommodation;
- In an Alternative Place of Detention (including hospitals, aged care facilities, mental health inpatient facilities and hotel style accommodation);

- By way of a 'residence determination', where the Minister determines that a person is to reside at a specified place and be subject to specified conditions, instead of in an Immigration Detention Centre.

NEW ZEALAND

New Zealand has no dedicated immigration detention centres. Individuals can be held for up to 96 hours at a police station. Beyond that, a judge must order a warrant of commitment and in those situations, a person is detained in a correctional facility, usually alongside the general prison population.

JAPAN

Immigration detainees are generally held in Immigration Centres for long-term, and Regional Immigration Centres for short-term.

SWITZERLAND

The Swiss Federal Act on Foreign Nationals and Integration FNIA states that detention shall take place in detention facilities intended for the enforcement of preparatory detention, detention pending deportation and coercive detention. If this is not possible in exceptional cases, in particular because of insufficient capacity, detained foreign nationals must be accommodated separately from persons in pre-trial detention or who are serving a sentence. The needs of vulnerable persons, unaccompanied minors and families with minor children must be taken into account in the detention arrangements. The detention arrangements are also governed by the EU Directive 2008/115/EC232 for returns to a third country, the Regulation (EU) No 604/2013233 for Dublin transfers and are in accordance with the Convention on the Rights of the Child.

EU MEMBER STATES

Minimum requirements are enacted in EU law. Detention shall take place as a rule in specialised detention facilities and in only limited circumstances illegal immigrants and asylum-seekers can be held in prison.[23] E.g. detention in prison accommodation of a third-country national is allowed, in case

1) he or she poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or the internal or external security of the Member State concerned, provided that he or she is separated from ordinary prisoners (C-18/19 – Stadt Frankfurt am Main, paras 31, 48);
2) the number of third-country nationals who are the subject of a detention is so great that it places an unforeseen heavy burden on the capacities of the specialised detention facilities located throughout its territory (those capacities are structurally close to saturation) (C-519/20 – Landkreis Gifhorn, paras 74–75).

[23] E.g. directive 2008/115/EC art 16 (1), art 18 (1); directive 2013/33/EU art 10 (1); regulation 604/2013 art 28 (4): directive 2013/33/EU art 10 applies.

Specialised detention facilities must be distinguished from prison accommodation, i.e. the conditions of detention in those facilities must have certain specific features in relation to the normal conditions under which custodial sentences are enforced in prison accommodation. The conditions must be such that they avoid, as much as possible, the detention of that national resembling detention in a prison environment, suitable for detention for punitive purposes. Connection of a purely administrative nature (management structure, is connected administratively to an authority which also has powers with regard to prisons) is, in principle, irrelevant. However, particular attention to the arrangement of the premises specifically dedicated to the detention of third-country nationals, the rules which specify their conditions of detention and the specific classification and duties of the staff responsible for the establishment (need for specialised training). (C-519/20 – Landkreis Gifhorn, paras 36, 45, 50, 56.)

Even if migrants are detained in prison, they must be separated from ordinary prisoners. As far as possible, detained asylum-seekers must be kept separately from other third-country nationals who have not lodged an application for international protection. There are special rules for minors, families and vulnerable persons.

ESTONIA

Places of detention: detention centre, in exceptional cases (grounds are enacted in law harmonising EU law) in a prison or police arrest house.

NETHERLANDS

Immigration detainees are held in two detention centres in the Netherlands. The Rotterdam detention centre holds adult males. The Zeist judicial complex houses a Closed Family Facility for families and (unaccompanied) minors. This facility takes into account the protection of children and their experiences. In this centre, children and their parents have considerable freedom of movement within the enclosed grounds. They also have their own home, and children have access to play facilities. The secure family facility is used only as a last resort and under strict conditions.

Furthermore, there is the detention centre at the border: airport of Schiphol or in the port of Rotterdam, carried out by the Royal Marechaussee or Seaport Police.

Detention conditions

UNITED KINGDOM

Immigration Removal Centres (IRCs) and Her Majesty's Prisons (HMPs) have distinct purposes and conditions, with IRCs designed for secure but humane accommodation of detained persons awaiting removal, while HMPs are for individuals serving custodial sentences.

Immigration Removal Centres (IRCs):
Purpose: To provide secure but humane accommodation for individuals detained under immigration law, pending their removal from the UK.
Regime: IRCs aim for a relaxed regime with as much freedom of movement and association as possible, consistent with maintaining a safe and secure environment.
Physical Environment: Provision of showers, laundry facilities, etc. is usually to an adequate level so that detainees have access, but standards of cleanliness and repair are variable, with some detention centres having a much better maintained environment and others poor. In particular some of the older former prison buildings can be poorly maintained and drab.
Detainees normally wear their own clothes. IRC have made attempts through the provision of 'cultural kitchens' where detainees can occasionally cook food of their choice, but the general provision is still considered to be poor.
The rules require that each detainee should have the opportunity of at least one hour in the open air every day. This can be withdrawn in exceptional circumstances for safety or security. Most IRCs have a gym or fitness suite and outdoor exercise space. Access is variable, ranging from being generally accessible during daylight hours to restricted access. Detainees have access to the detention centre library and to the internet. Facilities normally include a fax machine. New guidance was issued by the Home Office in 2016, aiming to make the access in detention centres more consistent and ensure that sites were not inappropriately blocked. This guidance was updated in 2019.
Some IRCs, like Colnbrook and Brook House, are built to "Category B" (high security) prison designs and are run by private security companies. While some efforts are made by contractors to distinguish regimes from those in prisons, in practice the physical environment means that most detainees experience these centres as prisons.
Concerns: The Council of Europe's Committee for the Prevention of Torture raised concerns about the use of prison-like facilities in some IRCs. For example, Tinsley House IRC, Harmondsworth (2024), and Yarl's Wood (2015 and 2023).
Vulnerable Detainees: A person considered vulnerable under guidance may be detained only where the immigration factors in their particular case outweigh the risk factors. Women are detained separately from men except where they are a family. Tinsley House has accommodation for one family group at a time and Gatwick pre departure accommodation has capacity for two families. Other than the family units, there are no special facilities for vulnerable people.

Her Majesty's Prisons (HMPs):

Purpose: To house individuals who have been sentenced to a custodial sentence by a court.
Regime: HMPs have a more structured and restrictive regime compared to IRCs.
Physical Environment: HMPs are designed for secure detention, with varying levels of security depending on the type of prisoner. Prisoners do not wear their own clothes. Access to the internet and to telephones is restricted.

USA (information from National Immigrant Justice Center)

The U.S. government spends over three billion dollars a year on the largest immigration detention apparatus in the world to detain and deport people who have lived in the U.S. for decades or who arrived recently seeking safety or a better life. It is alleged that people in detention experience inhumane conditions and rights abuses that include medical neglect, preventable deaths, punitive use of solitary confinement, lack of due process, obstructed access to legal counsel, and discriminatory and racist treatment. The numbers behind the immigration detention system provide a glimpse of the depths of inhumanity experienced on a daily basis by those in detention and the significant public costs, as more taxpayer dollars go towards private prison companies profiting each year off detention contracts. The numbers reiterate the urgent need to halt efforts to expand the system and phase out the use of immigration detention. (Source immigrantjustice.org.)

CANADA

CBSA is responsible for managing the immigration detention process in Canada. Following an arrest, an individual may be detained at one of three CBSA immigration holding centres (IHC) in Canada (Laval, Quebec, Toronto, Ontario and Surrey, British Columbia).

CBSA's National Immigration Detention Framework has introduced investments to improve IHCs across Canada. These investments have enabled the modernisation of infrastructure, ensured national alignment to detention standards and conditions of detention, and ensured detainees have access to services and supports while detained.

Where a risk assessment determines an individual cannot be effectively managed within an IHC, for example due to a propensity towards violent or aggressive behaviour, CBSA has historically housed such individuals in a provincial correctional facility. However, Ontario, the last province to allow CBSA to house immigration detainees in its provincial jails, has recently ended its agreement to do so and as a result there are no longer detainees housed in provincial correctional facilities in Canada.

Detainees at IHCs may have access to a variety of facilities and services, including for example outdoor recreational areas; common rooms for social interaction and activities; a multi-faith prayer room; library; medical services; private meeting rooms for meetings with legal counsel and NGOs; visitation rooms; health services; on-site kitchen providing three meals and snacks daily. Detainees also have access to structured programming, including for example addiction counselling. Conditions of detention are governed by the

CBSA's national immigration detention standards, which are available on the CBSA website. The CBSA also has an in place an agreement with the Canadian Red Cross to undertake regular detention monitoring, including with respect to conditions of detention, treatment of detained individuals, legal guarantees and procedural safeguards and detainees' ability to contact family members. Red Cross monitoring reports are published annually.

Given provinces' withdrawal from their agreements to house immigration detainees, CBSA is making infrastructure upgrades in its IHCs, as well as updating operations and implementing training programs for employees, to enable the housing of higher-risk detainees at these locations. In addition, CBSA has concluded an agreement with Correctional Service Canada (CSC) to make temporary use of CSC space to house a small number of high-risk immigration detainees. This follows legislative changes enacted in 2024 which allows the temporary use (until June 2029) of federal correctional facilities for the purpose of high-risk immigration detention.

CSC's Regional Reception Centre (RRC) located in Sainte-Anne-des-Plaines, Quebec, has been identified as a temporary location to house high-risk detainees. This location will only be used to detain adult males who present a significant risk to public safety. Individuals to be considered for placement in this facility include those who have prior convictions and/or outstanding charges for violent crimes such as assault with a weapon, attempted murder, assaulting an officer with a weapon, and aggravated sexual assault, or have demonstrated violent, non-compliant, and unpredictable behaviour that places them, other detainees, the guards and medical personnel at risk. This temporary facility has approximately 25 beds and detainees will be kept separate from any federal inmates.

AUSTRALIA

There are no specific provisions relating to conditions for individuals detained for immigration purposes.

NEW ZEALAND

There are no specific provisions relating to conditions for individuals detained for immigration purposes. In prisons, they are subject to the same conditions as the general prison population (despite their non-criminal status).

JAPAN

There are no specific provisions related to conditions for individuals detained for immigration purposes.

SWITZERLAND

Federal law does not provide any more detailed preconditions for detention conditions, as detention is ordered at the cantonal level and lies within the competence of the

respective cantons. However, the Federal Supreme Court has laid down some requirements for pre-removal detention. There are significant differences between cantons and between facilities with regard to the conditions of detention, the type of facilities used, as well as the legal bases and practices of ordering and reviewing detention. In 2022, the Federal Supreme Court has judged the conditions of detention inadmissible in a number of cases concerning regional prisons.

EU MEMBER STATES

Minimum detention conditions are regulated by EU law.[24] There are special norms for minors, families and vulnerable persons.

ESTONIA

Estonian Detention Centre opened in 2018 and according to CPT, the conditions are generally good.[25] Estonian national preventive mechanism (under OPCAT)[26] visits the centre regularly and makes recommendations to improve the regime, e.g. there have been some concerns concerning video-surveillance, communication with outside world, possibilities to engage in meaningful activities (reading books etc) etc.

NETHERLANDS

Immigration detention is always a last resort. In the detention centre the detainees are permitted to leave their rooms between approximately 8:00 AM and 5:00 PM, and—if sufficient staff is available—also between 6:00 PM and 10:00 PM. Meals, which take into account religious beliefs and dietary preferences, are served in their own rooms. An evening program is also increasingly offered. An evening program is also available in the Closed Family Facility and for Article 6 detainees (those awaiting an appeal hearing).

During the hours when the room doors are open, immigration detainees can move freely within the centre and participate in an activity program. Most can spend these hours as they wish. Unlike in penitentiary institutions, no work or education is offered, because detainees return to their country of origin (and not to Dutch society) and because their stay is generally short. Self-study is possible. Furthermore, the weekly program includes activities such as library visits, drawing, activities in the interactive multimedia room, painting, sports, and recreation. During holidays, such as Eid-al-Fitr, Christmas, Chinese New Year and Passover, additional (dining) activities are organised. Detainees are allowed to make phone calls and spend the entire day outdoors. They are also entitled to two hours of private visits each week, which they can schedule themselves. Detainees receive a hot meal, a bread meal, and coffee and tea daily. They also receive 15 euros of pocket money each week. This allows them to make phone calls and order groceries. All centres have shops where they can buy items such as cigarettes and extra food. Each unit also has a kitchen where they can prepare their own meals. In the detention centres, detainees can also wash their clothes (or have them washed) and are entitled to a haircut

[24] Directive 2008/115/EC art 16, 17; directive 2013/33/EU art 10, 11; regulation 604/2013 art 28 (4).
[25] See: Report, p 33 ff, accessible: https://rm.coe.int/1680b13702.
[26] See: https://www.oiguskantsler.ee/en/areas-activity/prevention-ill-treatment.

every six weeks. The common areas of the unit also offer targeted internet access. This allows detainees to prepare for their departure. Foreign newspapers are also available in this area to prepare for departure.

The Administrative Jurisdiction Division of the Council of State (Council of State), which is the highest court, ruled that the detention of foreign nationals in the Rotterdam detention centre (where sections for immigration detainees and criminal detainees are strictly separated, with different walking routes and separate exercise areas) can be considered a 'special institution' within the meaning of Article 16, paragraph 1 of the EU Return Directive. The fact that immigration detainees and criminal detainees are in the same building does not therefore constitute a conflict with the EU Return Directive, provided they are separated from each other within that building.[27] This ruling was followed in a ruling by the District Court of The Hague. The court also took into account that aliens and detainees in the Rotterdam detention centre do not use the same waiting areas.[28]

In two rulings dated January 29 and February 26, 2025, the Council of State ruled that border detention at Schiphol Judicial Complex (JCS) is not unlawful. This is despite the fact that there were more restrictions in November and December 2024 due to the unusual number of foreigners arriving by air. Even in that situation, JCS can still be considered a specialised detention facility within the meaning of the EU Reception Directive.[29] However. The lower court asked the Court of Justice to explain what is meant by a 'specialised detention facility' as referred to in the Reception Directive (which applies to asylum seekers) and the Return Directive (which applies to rejected asylum seekers).[30]

The government may only detain families with children if departure is possible within two weeks. Unaccompanied migrants under 18 are detained as little as possible and for as short a period as possible. Vulnerable individuals receive special attention tailored to their individual circumstances. For example, there is an additional care unit and a dedicated area for children and their parent(s).

In exceptional cases, a decision to end a foreign national's detention may be made based on an assessment of their suitability for detention. This requires compelling reasons, which in practice are often medical or psychological in nature. The assessment can be requested by the foreign national's lawyer or the management of the detention centre and is conducted by a medical advisor of the Ministry of Justice.

Access to remedy

UNITED KINGDOM

[27] Council of State 25 November 2020, ECLI:NL:RVS:2020:2795.
[28] District Court The Hague 27 January 2021, ECLI:NL:RBDHA:2021:549.
[29] Council of State 29 January 2025, ECLI:NL:RVS:2025:258 and 26 February 2025, ECLI:NL:RVS:2025:789.
[30] District Court The Hague, zp Amsterdam 20 March 2025. ECLI:NL:RBDHA:2025:4570 and ECLI:NL:RBDHA:2025:4571.

The UK operates an immigration bail regime. All irregular migrants are liable to be detained for removal but it is recognised that where removal is not imminent detention should not normally be maintained. Release is by way of bail. Where the Home Office do not grant bail of their own volition bail applications may be made to the Home Office (the detaining authority) at any time. Bail applications may be made to the First-tier Tribunal at any time and are listed for hearing promptly, usually within 3 working days. The decision on whether to grant bail will depend on an assessment of the likelihood of absconding and where the applicant has completed a criminal sentence the likelihood of reoffending. Time already spent or to be spent in detention pending removal will be a prime consideration. Unconditional bail is not allowed. The judge granting bail has a wide discretion on conditions to impose but will usually impose reporting and residence conditions. Where a person is subject to a criminal deportation order an electronic monitoring condition is mandatory.

USA

If ICE decides to keep an individual in custody or sets a bond that the person cannot afford to pay, individuals may ask an immigration judge to order either release or a reduction of the bond amount. This request may be made orally, in writing, or, at the immigration court's discretion, by telephone.

Significantly, a detainee does not need to be in removal proceedings before asking an immigration judge for a custody review hearing; the person need only be detained in immigration custody. To request a custody review hearing, a detainee must make the request to the immigration court with authority over their place of detention at the time of filing.

The same general process applies if the Department of Homeland Security (DHS) has set a condition of release with which the individual disagrees. For example, an individual may ask an immigration judge to review and vacate an ICE decision to release a person on an ankle monitor.

What happens at an initial custody redetermination (bond) hearing?
The first step in any custody redetermination hearing (also known as a "bond hearing") is for the judge to determine whether he or she has authority to review or modify the person's custody status. For example, if DHS claims that the individual has been convicted of an offence that subjects him or her to mandatory detention, the immigration judge first must determine whether the individual in fact has been convicted of that crime and, if so, whether the conviction falls under the mandatory detention statute. A person held under the mandatory detention statute generally is not eligible for release.

If the immigration judge determines that a person is eligible for release, the judge then decides whether release is warranted, and if so whether to release the individual on their own recognizance, bond, and/or other conditions. Release is warranted if the individual does not pose a danger to property or persons and is likely to appear at future court hearings. The immigration judge also can modify the conditions of release set by ICE, for

example, by increasing or decreasing the amount of bond or by ordering the removal of an ankle monitor.

If the immigration judge determines that release is not warranted or the individual cannot afford to pay the bond amount set, the individual remains locked up in immigration detention. Individuals who must litigate their immigration cases from detention face numerous practical barriers, including limited access to attorneys and confinement in remote locations far from family, community, and their own attorney.

CANADA

CBSA may arrest and detain a foreign national or permanent resident for immigration reasons under certain conditions. After 48 hours of detention or as soon as possible afterwards, the law requires the Immigration Division (ID) to hold a detention review and to order release unless the ID determines that the person concerned is a danger to the public, a flight risk, their identity has not been established, or if the CBSA is taking necessary steps to inquire into a reasonable suspicion they are inadmissible to Canada due to security, human or international rights violations or serious criminality. If it is determined that there are grounds for continued detention, the ID must also consider other factors in section 248 of the Immigration and Refugee Protection Regulations (IRPR) before a decision is made on detention or release. These factors include for example the reasons for detention, the length of detention and any unexplained delays or unexplained lack of diligence caused by the Minister or the person concerned.

After the first detention review at 48 hours, a second review takes place at 7 days and then every 30 days thereafter until the person concerned is released or removed from Canada.

Detention review decisions are subject to judicial review with leave by the Federal Court of Canada.

AUSTRALIA

In 2004, the High Court of Australia held that the *Migration Act* gives the Commonwealth the power to detain people in immigration detention, even where there were no realistic prospects of removal from Australia and indefinite detention would result. The majority of the Court determined that such administrative detention is for the purpose of making a non-citizen available for deportation; that purpose was not punitive and therefore the detention is not an exercise of judicial power and does not breach Australia's constitutional arrangements (*Al-Kateb v Godwin* [2004] HCA 37).

In November 2023 the High Court of Australia overturned its 2004 decision in *Al-Kateb*, limiting the permissible duration of immigration detention to an end point when there is no real prospect of removal from Australia becoming practicable in the reasonably foreseeable future. The Court held that a Commonwealth law which authorises the detention of a person, other than through the exercise by a court of the judicial power of the Commonwealth in the performance of adjudging and punishing criminal guilt, will

contravene Ch III of the Constitution unless the law is reasonably capable of being seen to be necessary for a legitimate and non-punitive purpose (*NZYQ v MICMA* [2023] HCA 37).

A series of applications for writs of habeas corpus followed in the Federal and High Courts, seeking the release of a number of persons from immigration detention on the basis that there was no real prospect of their removal from Australia becoming practicable in the reasonably foreseeable future and therefore their continued detention was unlawful.

In August 2025, the Australian government entered into a Memorandum of Understanding to allow persons who have no legal right to stay in Australia to be granted long-term visas by Nauru. That arrangement is stated to allow for the continued management of the *NZYQ* cohort.[31]

NEW ZEALAND

All detention beyond 96 hours must be approved by a District Court Judge and reviewed every 28 days.

Further, since 2022, a "panel" (yet to be codified in law), made up of senior immigration officials, now oversees all cases of immigration detention involving asylum seekers and must approve applications (to a Judge) for warrant of commitment (detention in prison). It is guided by the UNHCR's guidelines on detention and has involvement from representatives from the legal profession, the UNHCR, and Amnesty International. It operates on the assumption that detention is a last resort, to be used sparingly, and only where absolutely necessary.

The panel is available 24/7 and meets at least fortnightly (and often more regularly) to review all cases where an immigration officer has recommended detention. Wherever possible, individuals are released, often with residence or reporting conditions (i.e. to live at a certain address; and make contact with an official on a regular basis). It continually reviews not only those in detention, but all those subject to reporting requirements – and tries to facilitate or expedite the processing of their refugee claims / consider whether the grant of a visa is appropriate / or if their departure from New Zealand is imminent - all to minimise the time spent in detention or subject to conditions.

Since 2022, the panel has considered 66 individuals: the vast majority are released on conditions into the community rather than detained. There have never been more than five people detained in prison at any one time, and none have spent long periods (weeks) in prison. There is currently just one person in detention (prison) but they are there because of criminal charges (not immigration offences).

SWITZERLAND

[31] See: Statement on Nauru MOU.

Review of administrative detention is regulated under the Federal Act on Foreign Nationals and Integration FNIA. The legality and the appropriateness of detention must be reviewed at the latest within 96 hours by a judicial authority on the basis of an oral hearing. If detention pending deportation has been ordered due to lack of cooperation in obtaining travel documents, the detention review procedure shall be carried out in writing.

According to a ruling of the Federal Supreme Court, the review should in principle be conducted within 96 hours after the request, which means that the time limit can be exceeded by a short period of time.

The judicial authority may dispense with an oral hearing if deportation is anticipated within eight days of the detention order and the person concerned has expressed their consent in writing. If deportation cannot be carried out by this deadline, an oral hearing must be scheduled at the latest twelve days after the detention order.

When reviewing the decision to issue, extend or revoke a detention order, the judicial authority shall also take account of the detainee's family circumstances and the circumstances behind the enforcement of detention. In no event may any detention order in preparation for departure, detention pending deportation or coercive detention be issued in respect of children who have not yet attained the age of 15.

The Federal Supreme Court also needs to examine if detention is proportionate and if removal could not be achieved through other means.

The detainee may submit a request for release from detention one month after the detention review. The judicial authority must issue a decision on the request on the basis of an oral hearing within eight working days. A further request for release in the case of detention in preparation for departure may be submitted after one month or in the case of detention pending deportation, after two months.

As to the detention order and detention review under the Dublin procedure, the legality and appropriateness of detention shall be reviewed at the request of the detainee by a judicial authority in a written procedure. This review may be requested at any time. The detainee may apply for release from detention at any time. The judicial authority must decide on the application within eight working days in a written procedure.

Every decision on legality and the appropriateness of detention is contestable at the higher instance (at least one, depending on the Canton two instances; the judicial review can be appealed at cantonal level and in the last instance at the Federal Supreme Court). Cantonal practice is very diverse with regard to judicial review. Each Canton organises its system of judicial review, and the practice of Cantonal Courts is very diverse.

Judicial review of detention takes place automatically except for detention under the Dublin procedure. Usually, detainees are not legally represented during this procedure, but this depends on the Cantonal legal bases and practice. Indeed, the right to free legal assistance is regulated by Cantonal procedural law. As a minimal constitutional

guarantee, the Swiss Federal Supreme Court has ruled that free legal representation must be granted upon request in the procedure of prolonging detention after 3 months. Regarding the first review by a judge, free legal representation must only be granted if it is deemed necessary because the case presents particular legal or factual difficulties.

EU MEMBER STATES

According to EU law detention shall be ordered by administrative or judicial authorities. In case detention has been ordered by administrative authorities, Member States shall guarantee access to court/*ex officio* judicial supervision.[32]

ESTONIA

According to the Constitution of Estonia no one shall be held in custody for more than 48 hours without the specific permission of a court (§ 21(2)). It encompasses also migrants. i.e. from 0 to 48 hours a person can be detained on the basis of Police and Border Guard Board decision, after that there must be permission by the (administrative) court which is given on the basis of the application of the Police and Border Guard Board. The practice in applying the norm and obligation to ask for judicial permission is very strict.

The court gives permission to place the person into the Detention Centre for up to two months.

The administrative court shall extend the term on the application of the Police and Border Guard Board by up to four months at a time, but for no longer than 18 months as of the day of placing the person to be expelled to the detention centre.

In Estonia the permission, its prolongation and appeals against permission and its prolongation is decided and resolved by ordinary court system – administrative court. There is the possibility to challenge the permission and its prolongation twice – to the second (appeal court) as well as to the third level (Supreme Court).

NETHERLANDS

Under Article 94 of the Aliens Act 2000, an immigration detainee may appeal against a custodial measure imposed on them. This applies to measures imposed pursuant to Articles 6, 6a, 58, 59, 59a, and 59b of the Aliens Act 2000.

Article 69, paragraph 3, of the Aliens Act 2000 stipulates that filing such an appeal is not subject to a specific time limit. Even if a detainee does not file an appeal, the custodial measure will be reviewed by the court. Under Article 94 of the Aliens Act 2000, the Minister is obligated ex officio to notify the court of his decision within four weeks of imposing the measure if the detainee has not yet filed an appeal. The court then reviews whether the detention is contrary to law and justified, taking into account all the interests

[32] Directive 2008/115/EC art 15 (2), (3); directive 2013/33/EU art 9 (2)-(5); regulation 604/2013 art 28 (4).

involved. The detainee may appeal against the court's decision within one week to the Administrative Jurisdiction Division of the Council of State (Article 95 Vw 2000).

In cases where a foreign national has been detained and is appealing against this, the administrative judge must now also independently (ex officio) review whether this is lawful, regardless of any objections the detainee himself files.[33]



Alternatives to detention (including tagging/electronic monitoring)

UNITED KINGDOM

Persons liable to detention may be released on bail either by the Home Office (the administrative authority) or the First-tier Tribunal. Bail cannot be unconditional. Conditions must include at least one of the following:

Residence, appearance, reporting, restrictions on work or study, electronic monitoring (tagging) or anything else the authority/judge thinks appropriate. The condition may be supported by a financial condition (surety) although the use of sureties is diminishing.

USA

At 26 July 2025, there were 183,799 individuals or families being monitored under the (Immigration and customs enforcement (ICE) Alternatives to Detention (ATD) programs. The majority are on SmartLINK monitoring.

SmartLINK Mobile Application enables participant monitoring via smart device using biometric facial comparison technology to establish identity. SmartLINK also includes a database of community resources, the ability to upload documents, participant location confirmation during check-in, and a mechanism to easily communicate with ICE or BI, Inc.; and SmartLINK is an application that utilizes several technologies. It uses facial matching technology by comparing a selfie to a set of photos taken during program

[33] Council of State 26 July 2023, ECLI:NL:RVS:2023:2829 following the CJEU ruling of 8 November 2022, C-704/20 – Staatssecretaris van Justitie en Veiligheid (Examen d'office de la rétention), ECLI:EU:C:2022:858.

enrolment to ensure identity verification. Simultaneously, SmartLINK may obtain a single GPS point to monitor participant compliance at the time of a login or scheduled check-in. SmartLINK also provides virtual case management support, notification reminders, and direct communication with the case specialist. If an ATD-ISAP participant does not have a personally owned mobile phone at the time of ATD-ISAP enrolment, the participant will be issued a device capable solely of running the SmartLINK application. SmartLINK devices must be returned upon the participant's re-assignment to a different level of supervision or completion of the ATD-ISAP program when the alien acquires their own personally-owned phone, the SmartLINK application can be loaded onto that device. SmartLINK is intended for the sole purpose of providing immigration compliance and case management services to ATD-ISAP participants. The application does not access personal data on a personally-owned phone such as call logs or history, contact information, text messages made outside of the SmartLINK application, or location data outside of single data points gathered through the application at login or pre-scheduled check-in times.

CANADA

The ID must actively consider and reassess alternatives to detention (ATDs) at each detention review hearing. Where the ID determines that an ATD is necessary or may be appropriate, each element of a proposed ATD should be weighed in order to determine its overall adequacy and necessity in managing the applicable risk. In circumstances where detention is lengthy, the ID is under a heightened obligation to consider ATDs, specifically release with appropriate conditions.

The Chairperson Guideline 2: Detention provides guidance to ID members when they are considering release on terms and conditions:

> 3.2.1 Where conditions of release are imposed, they should include (1) provide an address and reside at that address; and (2) advise CBSA of a change of address prior to moving.
>
> 3.2.2 If deemed necessary to offset a higher level of risk, additional conditions may be imposed, taking into account proportionality and attainability, as well as a rational connection to the circumstances of the case and specific ground of detention. Conditions may include the following:
>
> i. report to CBSA periodically (in person or by telephone);
> ii. appear whenever required by CBSA, including for removal;
> iii. a bondsperson to pay a deposit or post a guarantee for compliance with conditions;
> iv. provide CBSA with a travel document or cooperate with CBSA in obtaining a travel document, except in the case of an asylum seeker or refugee who has not exhausted their legal remedies;
> v. reside with a bondsperson or other person considered capable of exercising control and influence over the person concerned;
> vi. remain within (or outside) a particular location or geographic area;
> vii. abide by a curfew;

viii. reside at community housing or a rehabilitation centre;
ix. not have contact with certain people (e.g., the victim of domestic abuse);
x. not commit criminal offences;
xi. report criminal charges or convictions to CBSA;
xii. abide by conditions of parole or conditions imposed by a justice of the peace or criminal court;
xiii. not consume alcohol, drugs or other intoxicating substances, except in accordance with a medical prescription or in the context of a rehabilitative program, to be applied only for persons with a history of addiction and non-compliance;
xiv. make all reasonable efforts to obtain treatment for alcohol or drug abuse, mental illness or anger management;
xv. enrol in a community case management and supervision program;
xvi. not possess a firearm or other weapon;
xvii. not knowingly associate with individuals who have a criminal record;
xviii. refrain from using a cell phone or a computer or have no functioning internet connection in the person's residence (as an exceptional measure);
xix. permit entry into the person's residence at all times by CBSA or designated personnel (as an exceptional measure); and/or
xx. obtain and wear an electronic bracelet to track movements (as an exceptional measure).

The Guideline on Detention also provides the following guidance to members when considering an alternative to detention:

> 3.1.2 Release with minimum conditions without a deposit or a guarantee should be the first consideration, and members should apply conditions of release as necessary to manage heightened risk. Release conditions imposed should be tailored to the specific circumstances of the case. They should be linked to risk and be effective in adequately mitigating those risk factors. The principles of proportionality and attainability must apply to every interference with or deprivation of liberty. Each condition imposed is a restriction on a person's liberty. There should be a justification for each condition.

In some cases, members will decide that there are no conditions that could sufficiently mitigate the risk posed by the individual and accordingly will order continued detention. In other cases, members will determine that conditions are available that could sufficiently mitigate the risk. In these circumstances, the release conditions imposed will be tailored to the individual and the risk they pose. Where appropriate, conditions may be minimal and include only a requirement to provide a residential address to CBSA and to reside at that address. However, in situations where there is a higher level of danger to the public or flight risk, the release conditions will necessarily be more strict in order to manage this risk. In extreme cases, release conditions could include for example a requirement that a person remain within their residence at all times, with outings permitted only in the company of designated individuals for specified reasons.

Where electronic monitoring is imposed as a release condition, such monitoring may be funded by the detainee through a contract with a private company, or through a government program administered by the Canada Border Services Agency (CBSA).

AUSTRALIA

A person will only be released from immigration detention into the Australian community if they are granted a visa or are the subject of a 'residence determination' (in which case they will still technically be in immigration detention). If a person is not granted a visa, they must be deported or otherwise removed from Australia 'as soon as reasonably practicable' (s 190 of the Act).

Persons who do not hold a substantive visa may apply for a bridging visa permitting them to stay in Australia on a short-term basis while they regularise their visa status or make arrangements to depart.

In response to the High Court's decision in *NZYQ v MICMA* [2023] HCA 37, the Australian government passed legislation to introduce a new class of Bridging Visa, BVR:

- BVRs can be granted to non-citizens who they have had a visa cancelled or refused on character grounds and where there is no real prospect of their removal from Australia becoming practicable in the reasonably foreseeable future;
- BVRs impose certain visa conditions including a curfew between 10pm and 6am and a requirement that the visa holder wear a monitoring device at all times. These visa conditions were mandatory unless the Minister is satisfied the visa holder does not pose a risk to the community. The High Court later considered a special case brought by a plaintiff who argued that the curfew and monitoring conditions themselves were punitive in nature and infringed the separation of powers under the Constitution, the majority ruling that the imposition of each of the curfew and monitoring conditions on a BVR by the Executive Government of the commonwealth on every person granted that visa was prima facie punitive and were invalid.[34]
- In response to the Court's decision, the government amended the regulations to provide that the Minister can only impose the monitoring or the curfew condition on a BVR using a new test if satisfied that the holder poses a substantial risk of seriously harming any part of the Australian community by committing a 'serious offence' and includes a definition of 'serious offence'[35];
- The legislation was also amended to create a number of offences for non-compliance with the mandatory visa conditions. If a breach of any of these conditions results in a conviction, a mandatory one-year term of imprisonment applies.

[34] YBFZ v MICMA [2024] HCA 40.
[35] Migration Amendment (Bridging Visa Conditions) Regulations 2024.

NEW ZEALAND

The New Zealand detention framework encourages the least restrictive measures, which usually involves release into the community, with some reporting requirements. These may include living at a specific address; reporting obligations to authorities; and/or some restrictions on movement or movement only within a certain area.

A current bill before parliament seeks to expand the scope of the legislation regarding alternatives to detention, including a formal framework for considering release on conditions; the use of electronic monitoring; and guidelines and requirements for Judges considering warrants of commitment (detention in prison). It emphasises that any measures must be the least restrictive necessary to manage a clearly articulated risk.

SWITZERLAND

The examination of alternatives to detention is implied by the principle of proportionality. The Federal Act on Foreign Nationals and Integration FNIA provides for some measures which can be used as alternatives to detention. In particular, Cantonal authorities can require the foreign national: (a) to report to an authority regularly; (b) to provide appropriate financial security; (c) to hand in travel documents. Those measures can be used with the aim of ensuring the enforcement of removal orders and can function as alternatives to detention. Furthermore, the restriction and exclusion orders, prohibiting respectively to leave an allocated area or to enter a specific area, were explicitly introduced in the law as alternatives to detention. The implementation of alternatives to detention is not registered as such and there are no statistics available on their use. In 2022, the Swiss Federal Council examined and rejected the possibility of introducing electronic surveillance as an alternative to detention. However, it decided to propose the introduction of another alternative consisting in the obligation to stay in a specific accommodation during a few hours every day or night. It is not known yet, when the amendments will come into force.

EU MEMBER STATES

Minimum requirements are regulated by EU law.

Concerning illegal immigrants EU law only refers “other sufficient but less coercive measures can be applied effectively” without stipulating the list of alternatives.[36] However, Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common ‘Return Handbook’ to be used by Member States' competent authorities when carrying out return-related tasks, brings non-exhaustive list of examples: residence restrictions, open houses for families, case-worker support, regular reporting, surrender of ID/travel documents, bail and electronic monitoring; in addition reference to UNCHR good practice is made (see para 14.1).

[36] Directive 2008/115/EC art 15 (1).

Concerning asylum seekers Member States ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.[37]

ESTONIA

Surveillance measures in national law are:
1) residing in a determined place of residence;
2) appearing for registration at the Police and Border Guard Board at prescribed intervals;
3) appearing at the Police and Border Guard Board to clarify circumstances ensuring compliance with a precept;
4) appearing for counselling;
5) notifying the Police and Border Guard Board of the changes of residence of the alien and of his or her prolonged absence from the place of residence;
6) notifying the Police and Border Guard Board of the changes in the alien's marital status.
7) depositing of a travel document of a foreign country or an identity document of an alien at the Police and Border Guard Board or the Estonian Internal Security Service.

NETHERLANDS

Minimum is regulated by EU law.

The Netherlands uses four alternatives to immigration detention[38]:
1-reporting obligations;
2- requirement to reside at a designated place;
3- obligation to surrender a passport or travel document;
4- issue of a financial deposit/release on bail.

The fifth alternative, obligation to communicate the address to the authority, is not applied as an alternative to detention in the Netherlands but is a general procedural obligation in immigration procedures.

[37] Directive 2013/33/EU art 8 (4).
[38] EMN, Detention and alternatives to detention in international protection and return procedures. The situation in the Netherlands compared to other EU Member States, 2022: See: https://www.emnnetherlands.nl/sites/default/files/2022 07/EMN_BM_detention_ENG_opgemaakt_def.pdf.

Access to legal representations/legal aid

UNITED KINGDOM

Any detained person may be legally represented but in practice access to representation from IRC or HMP may be difficulty and/or limited. Legal aid is available if a representative can be found.

USA

Individuals in detention may be represented by legal counsel at their own expense; the federal government generally may not provide counsel. In practice, this means that relatively few individuals have legal representation at their immigration proceedings. According to information from the American Immigration Council dating from 2016, 14 percent of detainees secure legal representation. Other constraints to access to meaningful legal representation include for example the remoteness of many detention facilities along with limitations in phone or internet access for detainees.

CANADA

Individuals subject to a detention review hearing may, at their own expense, be represented by legal or other counsel. In several provinces, including Ontario, Quebec and British Columbia, detained individuals may also be eligible for free legal representation provided and/or funded by provincial legal aid organisations. While delivery methods vary by jurisdiction, representation may variously be provided by legal aid staff lawyers or private lawyers funded by a legal aid agency. Eligibility for legal aid funded representation varies by province but is regularly determined further to an assessment of merit and financial eligibility.

AUSTRALIA

Detained persons may be legally represented but may find it difficult to access legal representation. The availability of publicly funded or pro bono legal representation is limited.

NEW ZEALAND

Legal aid representation is available to all asylum applicants, and to anyone detained under immigration provisions (if they meet financial eligibility rules). However in practice, sometimes it is not available.

SWITZERLAND

Judicial review of detention takes place automatically except for detention under the Dublin procedure. Usually, detainees are not legally represented during this procedure, but this depends on the cantonal legal bases and practice. Indeed, the right to free legal assistance is regulated by cantonal procedural law. As a minimal constitutional guarantee, the Federal Supreme Court has ruled that free legal representation must be granted upon request in the procedure of prolonging detention after 3 months. Regarding the first review by a judge, free legal representation must only be granted if it is deemed necessary because the case presents particular legal or factual difficulties. There are no statistics on the number of detained asylum applicants having a legal representation. Some detention facilities provide access to legal support services by NGO.

EU MEMBER STATES

Minimum requirements for legal aid are enacted in EU law.[39]

ESTONIA

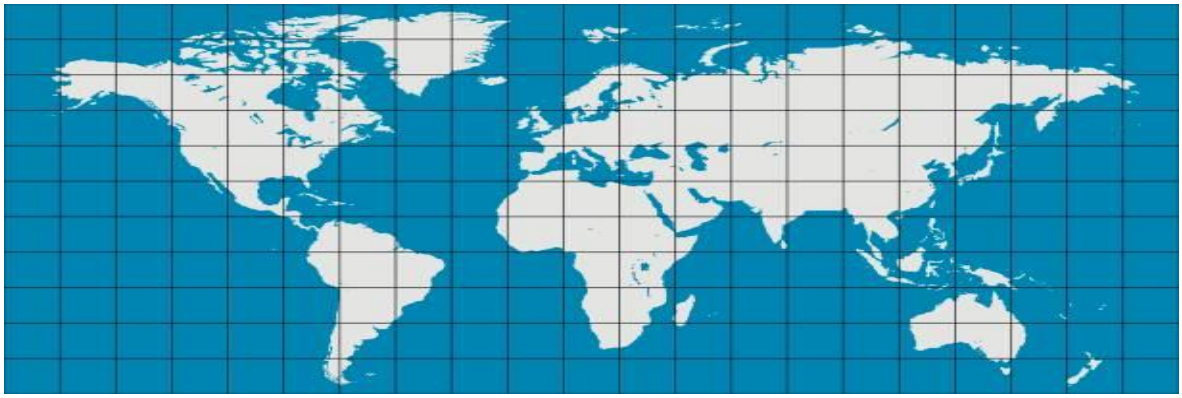
Estonia's legislation has implemented EU requirements.

In practice free legal aid is granted in court, except when the court has to give for the first time permission to detain the person (takes place max within 48 hours from factual detention).

NETHERLANDS

Dutch legislation has implemented EU requirements. Free legal aid is granted for detained foreigners. The legal aid provider must be registered as an immigration law specialist.

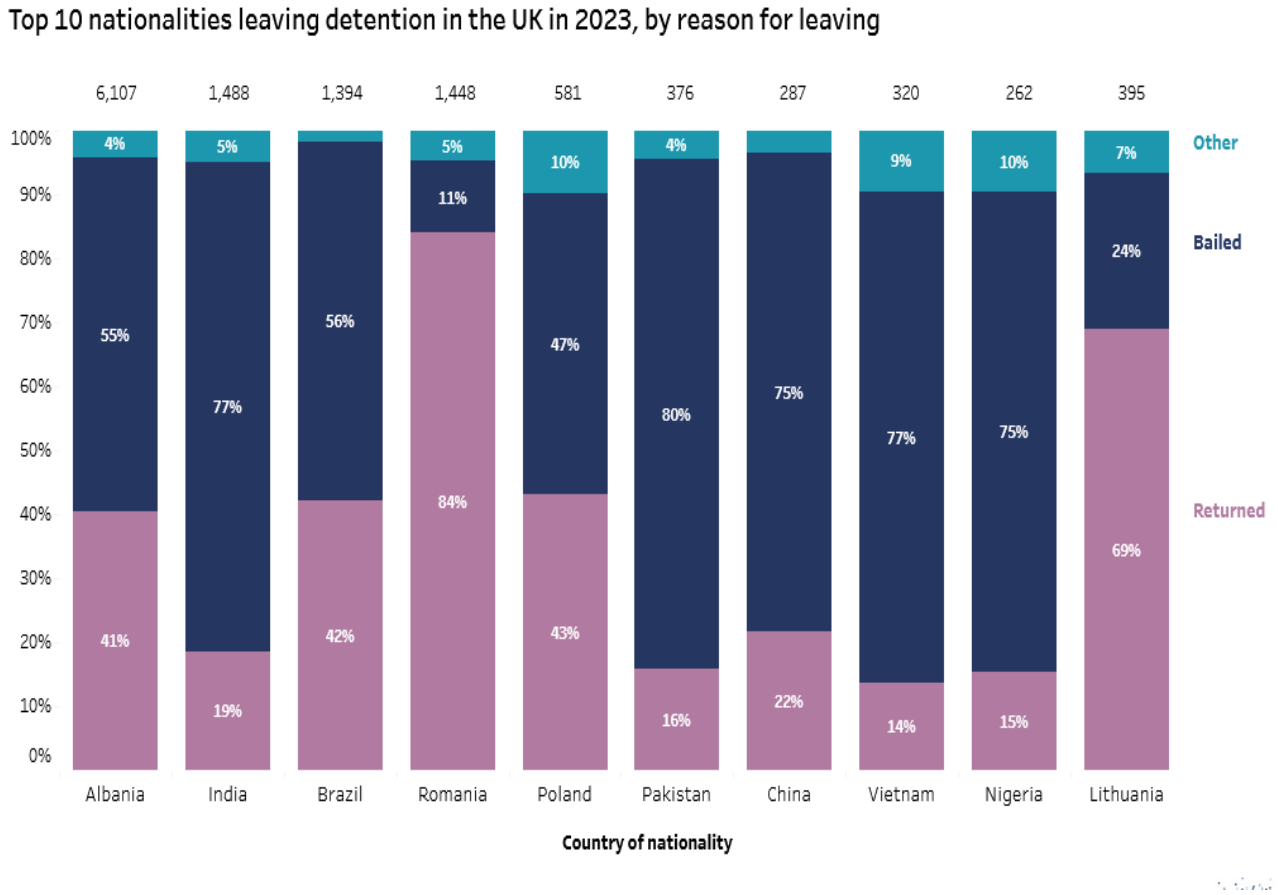
[39] Directive 2008/115/EC art 13 (4); directive 2013/33/EU art 9 (4)-(10); regulation 604/2013 art 28 (4).



Who is detained (by gender and country)

UNITED KINGDOM

Well over 80% of those detained are male. 21% of those entering detention are EEA + nationals and the majority of these are from Romania, Poland and the Baltic states.



USA

According to ICE data for the period between October and December 2024, the top five countries of citizenship of non-citizens arrested for immigration reasons in the US were Mexico (11,586 arrests), Guatemala (3,202 arrests), Honduras (3,167 arrests), El Salvador (1,230 arrests), and Nicaragua (1,141 arrests).

CANADA

According to CBSA statistics, approximately 86 percent of persons detained in fiscal year 2023-24 were male and 14 percent were female.

In calendar year 2024, the top ten countries of origin of persons detained with a detention review scheduled were, from highest to lowest: India, Mexico, Romania, Nigeria, Jamaica, Colombia, United States, Chile, Algeria and China.

AUSTRALIA

As at 31 July 2025, there were 965 people in held immigration detention facilities, comprising 907 men and 58 women. Of these 965 people, 19.0 per cent were from New Zealand, 7.8 per cent were from Iran, 6.2 per cent were from United Kingdom, 5.4 per cent were from India, and 4.4 per cent were from Vietnam.[40]

NEW ZEALAND

Of the 89 people detained in the last 11 months (mostly not asylum seekers), 16 were from India, 14 from Vietnam, 13 from China, 10 from Tonga, 9 from Samoa, 8 from Indonesia and 7 from Malaysia. One or two people from each of Brazil, Canada, Chile, Fiji, the UK, Nepal, Saudi Arabia, Thailand and the United States.

SWITZERLAND

Countries by number of detention orders (January 2022 to December 2024):

Detention in preparation for departure	**Detention pending deportation**	**Detention in Dublin procedure**	**Coercive detention**
Algeria: 41	Albania: 492	Algeria: 910	Algeria: 27
Afghanistan: 21	Algeria: 478	Morocco: 515	Morocco: 11
Morocco: 21	Morocco: 220	Afghanistan: 305	Somalia: 7
Tunisia: 13	Romania: 212	Tunisia: 179	Tunisia: 4
Kosovo: 10	Kosovo: 199	Georgia: 130	Iran: 4
Nigeria: 10	Nigeria: 158	Nigeria: 98	Eritrea: 3
Georgia: 6	Tunisia: 149	Turkey: 95	Turkey / Iraq: 2
Guinea/Russia: 4	Turkey: 138	Guinea: 75	Albania: 1

[40] See: Immigration Detention and Community Statistics Summary 31 July 2025.

ESTONIA

No data available.

Who is not detained (by country)

UNITED KINGDOM

Where there is no return agreement with the country of nationality detention will not normally be continued unless the individual is considered a danger to the public or to themselves or where it is considered that there is a considerable risk of absconding. For this reason persons from e.g Iran, Eritrea, North Korea are unlikely to be detained for long.

USA

No data is readily available on any limitations on detention by country. That said, non-citizen unaccompanied children may not be detained by Immigration and Customs Enforcement for more than 72 hours; they must be transferred to the custody of the Office of Refugee Resettlement (ORR) within the Administration for Children and Families (ACF), an operational division of the US Department of Health and Human Services (HHS). Under statute, children must "be promptly placed in the least restrictive setting that is in the best interest of the child," in consideration of flight risk and whether the child is a danger to self or others.

CANADA

For detention to be lawful, there must be a nexus to an immigration purpose. Where detention is for the purpose of removal, and there is no possibility of removal, detention under the Immigration and Refugee Protection Act is not possible and the person must be released.

For this reason, persons from countries to which removals are suspended (e.g. Afghanistan, Democratic Republic of Congo, Venezuela) are unlikely to be detained for long.

AUSTRALIA

Any non-citizen who does not hold a visa will be an unlawful non-citizen liable to be detained and removed. In practice, most unlawful non-citizens will have their visa status regularised by the grant of one of a number of classes of bridging visa, permitting them to remain in Australia for a specified period or until a specified event occurs.

NEW ZEALAND

No data available

SWITZERLAND

No data available.

ESTONIA

No data available.

NETHERLANDS

Among foreigners who have departed from the Netherlands, the following nationalities are most common.[41]

	2020	2021	2022	2023	2024	2025
1	Nigeria	Morocco	Morocco	Algeria	Algeria	Syria
2	Morocco	Algeria	Algeria	Morocco	Syria	Algeria
3	Algeria	Nigeria	Nigeria	Nigeria	Morocco	Turkey
4	Syria	Albania	Syria	Syria	Moldova	Morocco
5	Iraq	Syria	Ukrain	Moldova	Nigeria	Mongolia

[41] See: https://www.dienstterugkeerenvertrek.nl/over-dtv/cijfers.

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