



May 19, 2010

Inter-American Commission of Human Rights  
Organization of American States  
1889 F Street, NW  
Washington, DC 20006

*Via E-mail: cidhoea@oas.org*

**Attention: Rapporteurship on the Rights of Persons Deprived of Liberty**

Dear Members of the Commission:

The Detention Watch Network, Amnesty International USA, and The Advocates for Human Rights, submit these answers to the Questionnaire on the Rights of Persons Deprived of Liberty.

We are grateful for the opportunity to provide this information to the Rapporteurship and to the commitment of the Inter-American Commission on Human Rights to ensure that the human rights of persons deprived of their liberty in the Americas are respected.

This response addresses the situation of those held in the custody of the U.S. Department of Homeland Security for violations or suspected violations of immigration law. Attached to this response is a comprehensive list of recent reports on the U.S. immigrant detention system.

**Legislative and policy framework**

1. In the United States, Congress holds the authority to make the laws that govern admission, protection, and removal of non-citizens. Federal immigration law, however, must be understood in its context within the U.S. tripartite system of government. The Executive branch agencies, including the Department of Homeland Security, the Department of Justice, and the Department of State, promulgate regulations that directly govern the application of U.S. immigration law. There are a myriad of public and internal policy guidance that spells out how the U.S. immigration system operates in practice. Federal courts also play a role in providing a final review of individual decisions made in removal proceedings in administrative courts.
2. Federal immigration law in the U.S. continues to be based on the Immigration and Nationality Act of 1952 (INA)<sup>1</sup>. Authority to detain aliens in the United States is contained in various provisions of the INA, including:
  - Section 232, Detention of aliens for observation and examination.
  - Section 236, Apprehension and detention of aliens.

- Section 236A, Mandatory Detention of Suspected Terrorists; Habeas Corpus; Judicial Review and
  - Section 241, Detention and removal of aliens ordered removed.
3. Reforms to the INA were made in 1965 and again with the Immigration Act of 1990, which amended the INA to set a permanent annual worldwide level of immigration divided into categories for (1) family-related immigrants, (2) employment-based immigrants, and (3) diversity immigrants. Refugees were excluded from these numerical limits; the Refugee Act of 1980 defines the U.S. laws relating to refugees.<sup>2</sup> In 1986, Congress enacted the Immigration Reform and Control Act (IRCA) to toughen criminal sanctions for employers who hired undocumented persons and limit access to federally funded welfare benefits.
  4. The Immigration Act of 1990 substantially expanded the “aggravated felony” category of deportable crimes, first added to the INA in 1988.<sup>3</sup> In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)<sup>4</sup> and the Antiterrorism and Effective Death Penalty Act<sup>5</sup> added additional crimes to the aggravated felony ground for deportation and reduced the term of imprisonment threshold requirement from five years to at least one year,<sup>6</sup> drastically increasing the number of people subject to prolonged and indefinite detention, including those convicted of misdemeanor offenses. The IIRIRA also created a new “expedited removal” system for arriving aliens without proper documentation for admission.<sup>7</sup>
  5. The USA PATRIOT Act of 2001,<sup>8</sup> passed just weeks after the 9/11 terrorist attacks, and the REAL ID Act of 2005<sup>9</sup> expanded the class of individuals who are inadmissible to the U.S. for having provided “material support” to terrorism. In guidance effective February 26, 2007, the U.S. Secretary of Homeland Security exercised his waiver authority regarding the application of the “material support” bar.<sup>10</sup>
  6. The Department of Homeland Security (DHS) was created in 2003 as part of federal agency reform in the aftermath of the 9/11 terrorist attacks, shifting immigration enforcement into the arena of anti-terrorism policy. The INS was replaced with three different agencies within DHS: U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE).
  7. Because immigration is a matter of federal law, state and local governments in the U.S. have historically played a very limited role in immigration enforcement. Recent policies, however, have shifted federal responsibility for enforcing civil immigration laws to state and local police through formal and informal programs, such as the 287(g) program, the Criminal Alien Program (CAP), and Secure Communities.<sup>11</sup>

## **Right to Due Process and Fair Deportation Procedures**

8. The U.S. immigration enforcement system is an enormous operation, today accounting for 30% of the Department of Homeland Security's budget of US\$56,335,737,000.<sup>12</sup> In fiscal year 2009, ICE completed 387,790 removals, an increase of 18,569 over the previous year. Through its Criminal Alien Program, ICE placed 234,939 detainees, made 249,486 arrests, of which 101,779 were non-citizens with criminal convictions, and screened over 300,000 people.<sup>13</sup> ICE attorneys represented the United States in 389,352 new matters before the Immigration Courts and completed 351,234 cases.<sup>14</sup> U.S. immigration courts complete more than 280,000 proceedings each year, with the Board of Immigration Appeals deciding more than 30,000 cases annually.<sup>15</sup>
9. CBP apprehended over 556,000 people between ports of entry, and encountered over 224,000 inadmissible non-citizens at the ports of entry.<sup>16</sup> CBP operates a combination of 32 permanent and 125 tactical traffic checkpoints nationwide as "part of a three-tiered, defense-in-depth strategy to secure our nation's border" between ports of entry.<sup>17</sup> "This strategy involved the use of line-watch operations on the border, roving patrol operations near the border and traffic checkpoints on highways leading away from the border."<sup>18</sup>

## **Right to Liberty and Security of the Person and Freedom from Arbitrary Detention**

10. Immigrant detention has become a cornerstone of U.S. immigration enforcement. Today ICE operates the largest detention and supervised release program in the United States, with a total of 378,582 non-citizens from 221 countries in custody or supervised by ICE in fiscal year 2008.<sup>19</sup> Sixty-six percent of the 31,075 people detained on September 1, 2009, were subject to mandatory detention.<sup>20</sup> In violation of ICCPR articles 9(1) and 9(4), U.S. law imposes **mandatory detention without an individualized custody determination by a court** in a broad category of cases, including arriving asylum seekers<sup>21</sup> and non-citizens convicted of certain crimes.<sup>22</sup> Individuals subject to "mandatory detention" in the United States are not entitled to a bond hearing before an immigration judge.<sup>23</sup>
11. Arriving **asylum seekers in expedited removal proceedings** are subject to mandatory detention and may not be released while awaiting their initial "credible fear" review to determine whether they may apply for asylum before an immigration judge.<sup>24</sup> Following determination of credible fear, asylum seekers may be released on parole pending their asylum hearings before an immigration judge or while on appeal, but if the detaining authority (ICE) denies parole, the asylum seeker is prevented under regulations from having an immigration court assess the need for his continued custody.<sup>25</sup> ICE revised its parole guidelines effective January 2010, but ICE has not put these guidelines into regulations.<sup>26</sup>

12. **U.S. border enforcement policies, tactical infrastructure, and restricted legal entry options have placed migrants in mortal danger along the Mexico/United States border**, in violation of ICCPR Article 6. The Mexico/U.S. border has become increasingly militarized.<sup>27</sup> The dangers migrants risk in crossing are known to the US, yet the United States has failed to minimize the threats to safety. Instead, deployment of heavy security near population centers has pushed migrant flows to more treacherous and remote corridors where they are dependent on smugglers.<sup>28</sup> This funnel effect has increased the risk of death. According to DHS numbers, over one migrant per day perished in FY08.<sup>29</sup> Mexican estimates for 2008 are over 725 deaths.<sup>30</sup>

### **Right to Humane Conditions of Detention**

13. In FY 2009, the United States detained an estimated 378,582 individuals in ICE custody, including those under ICE supervision.<sup>31</sup> Immigrant detainees are held in over 350 facilities around the United States,<sup>32</sup> operating variously by the U.S. Department of Homeland Security, state and local governments, and private prisons.<sup>33</sup> Virtually all immigrant detainees are held in prison- or jail-like settings,<sup>34</sup> which fail to adhere to guarantees in ICCPR articles 10(1) and 10(2)(a).<sup>35</sup> Immigrant detainees wear prison uniforms, are regularly shackled during transport and in their hearings, and are held behind barbed wire.<sup>36</sup> Depending upon where they are detained, they may not be permitted contact visits with family,<sup>37</sup> may be subject to degrading conditions including strip searches,<sup>38</sup> and generally face barriers to communicating with their family, counsel, or other support systems.<sup>39</sup> Immigrants in detention may be held for prolonged periods of time without access to the outdoors.<sup>40</sup> Appropriate psychological and medical services for torture survivors are universally unavailable,<sup>41</sup> serious illnesses have gone untreated and deaths have occurred. Immigrant detainees routinely are commingled with convicted people.<sup>42</sup> In August and October 2009, ICE announced plans to reform the immigrant detention system, but thus far there has been limited progress toward a shift to non-penal facilities in cases where detention is required.<sup>43</sup>

14. **Highly publicized cases illustrate a systemic disregard for the rights to necessary medical care in detention, humane conditions of detention, and treatment respecting basic human dignity.**<sup>44</sup> Since 2003, ICE has reported over 100 deaths of non-citizens in their custody.<sup>45</sup> Shocking reports of the United States' failure to provide care to ill or injured persons in its custody abound.<sup>46</sup> Although the United States has adopted detention standards, the standards are not enforceable and have significant deficiencies in monitoring and oversight, little transparency, and no consequences for non-compliance with standards.<sup>47</sup> Reports indicate that the United States failed to report deaths in a transparent way.<sup>48</sup> Between 2007 and 2009, at least 26 reports on the failures of the U.S. immigrant detention system have been released.<sup>49</sup>

15. Migrants, including minor children, apprehended by CBP often are detained in **short-term custody facilities** which hold immigration detainees for less than 72 hours.<sup>50</sup>

During apprehension, transport, and detention in CBP's custody, migrants have reported verbal and physical abuse, denial of access to medical aid, misleading legal information, and deprivation of Constitutional and human rights. Some holding cells are compared to large cages in the desert.<sup>51</sup> The GEO Group, and other privately contracted transportation buses are utilized as virtual detention centers where individuals are held until the bus departs.<sup>52</sup> Provision of food, water and medical care for those awaiting repatriation on the buses are inconsistent and inadequate. CBP has an agreement that they will not repatriate individuals until Mexican officials have been notified, but officers will consider this satisfied by a phone call made even after the Mexican immigration offices are closed, rendering the notification meaningless.<sup>53</sup>

## **Questionnaire**

### **1. Legal and Institutional Framework**

#### **1.1 What are the main constitutional and legal norms that regulate the fulfillment of custodial sentences? In the case of Federal States, please reference the pertinent federal and state legal sources.**

Federal immigration law in the U.S. continues to be based on the Immigration and Nationality Act of 1952 (INA)<sup>54</sup>. Authority to detain aliens in the United States is contained in various provisions of the INA, including:

- Section 232, Detention of aliens for observation and examination.
- Section 236, Apprehension and detention of aliens.
- Section 236A, Mandatory Detention of Suspected Terrorists; Habeas Corpus; Judicial Review and
- Section 241, Detention and removal of aliens ordered removed.

#### **1.2 What are the specific laws and norms that regulate the activity of the prison system? In the case of Federal States, please reference which matters are regulated by the states and which are reserved to the federal jurisdiction.**

All immigration detention is under the authority of the U.S. Department of Homeland Security (DHS). Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), agencies within DHS, each operate detention facilities and have contracts with state and local governments and private contractors.

#### **1.3 Please indicate if any internal regulations or specific directives exist that regulate the activity in particular penal institutions.**

Currently non-binding standards of detention govern ICE detention facilities. No such standards govern conditions in CBP facilities. Jails and prisons run by state or local governments that house immigrant detainees under contract with the Department of Homeland Security are inspected against non-binding standards modeled after penal

standards and may be subject to additional state or local rules governing penal facilities generally.

**1.4 Which are the authorities (judicial and/or administrative) in charge of administrating all matters related to the fulfillment of the custodial sentences? Include high-level officials of the main branches of government; penal institutions; criminal enforcement judges. If the State does not utilize criminal enforcement judges, please indicate the authority which exercises equivalent functions.**

**1.5 What are the major challenges in penitentiary management nationwide?**

The immigrant detention system is a sprawling network of over 350 facilities around the country. A combination of detention centers owned and operated by ICE; prisons and jails operated variously by federal, state, and local governments; and prisons owned and operated by private prison corporations house over 30,000 people on any given day.

This system has expanded rapidly since 1996. This explosive growth has strained a system ill-designed for civil immigration detention. Significant problems with access to medical care, treatment for survivors of torture, family, legal counsel, outdoor recreation and exercise, proper nutrition, and clergy are endemic.

Additionally, the lack of legally enforceable detention standards and meaningful oversight of detention facilities has created an environment where human rights abuses occur frequently, including degrading and abusive treatment by detention guards, lack of access to legal counsel and materials, limited or no visitation with loved ones, malnourishment, prolonged detention, lack of necessary medical treatment, the improper use of solitary confinement, and retaliation by government actors in response to individuals asserting their basic rights.

**1.6 Are there any policies or national action plans oriented to improve penitentiary management? What are the components of such policies and/or action plans, besides the rule of law and the maintenance of public safety?**

Immigration and Customs Enforcement (ICE), the agency responsible for immigration enforcement under the Department of Homeland Security, has announced a reform of the immigrant detention system. The announcement laid out a series of new initiatives to address seven major components outlined in a review conducted by Dr. Dora Schriro, the former ICE Office of Detention Policy and Planning Director. A link to the report produced by Dr. Schriro is attached for your convenience.

While many of the reform efforts have not been implemented, ICE has created the Office of Detention Policy and Planning, the Office of Detention Oversight, an independent apparatus to inspect facilities and investigate detainee grievances, and has formed two advisory groups comprised of local and national stakeholders.

Included below is an overview of the respective components of the detention reform plan:

### ***Population Management***

ICE has announced its intention to create a library of contracts for all facilities with which ICE has active agreements and centralize all contracts under ICE headquarters' supervision. At present, the Office of Acquisitions at ICE headquarters negotiates and manages only 80 of the more than 300 active contracts for detention facilities. The remaining contracts are overseen by disparate ICE field offices and the Office of the Federal Detention Trustee.

ICE has announced its intention to monitor and enforce contract performance in order to ensure contractors comply with terms and conditions—especially those related to conditions of confinement. When confronted with repeated contractual deficiencies, ICE will pursue all available avenues for remedying poor performance, including termination of contracts. To date, it is unclear how ICE will remedy poor performance and what thresholds must be met to continue contractual agreements with facilities with a history of deficiencies.

### ***Alternatives to Detention (ATD)***

ICE has submitted to Congress a nationwide implementation plan for alternatives to detention. The plan has not been released to the public.

ICE has begun to devise and develop a risk assessment and custody classification tool to identify individuals suitable for ATD. ICE has sought input from NGOs on the development of this tool.

### ***Detention Management***

ICE has announced its intention to use the risk assessment and custody classification tool to enable individuals to be placed in an appropriate facility.

ICE has hosted “an industry day” to begin market research about utilizing non-penal institutions as immigration detention facilities for non-criminal, non-violent populations.

### ***Program Management***

In September 2009, ICE began housing newly arriving asylum seekers, at the Broward Transitional Center in Florida, which is located near immigration service providers. ICE also announced its intention to provide staff “to support trial attorneys in assessing the credibility of asylum seekers’ claims and identifying and addressing asylum fraud.”

### ***Medical Care***

ICE announced plans to devise and implement a medical classification system to support individuals with unique medical or mental health needs by February 2010. To date, the classification system has not been implemented.

### ***Special Populations***

In September 2009, ICE stopped detaining families at the T. Don Hutto Family Residential Facility (Hutto) in Texas. Today, ICE detains females at the Hutto facility.

### ***Accountability***

ICE announced the intent to hire at least 23 federal employees to provide on-site oversight at ICE's largest detention facilities as well as the development of training courses, policies and procedures.

ICE has developed an online locator system for attorneys, family members and others to locate detained individuals. To date, the tool has not yet been launched.

#### **1.7 What are the major developments that have been accomplished in the last five years on prison management?**

In 2008, ICE released a new set of "performance-based" detention standards to govern the treatment of detained immigrants. The "performance-based" standards are not yet in effect for all detention facilities. The government provided NGOs with the opportunity to review and comment on the draft standards.

DHS established a complaint process concerning detention standard violations with the Office of Civil Rights and Civil Liberties and the Office of Inspector General.

In 2009, ICE formed two NGO Advisory groups in connection with its detention reform efforts

In 2009, ICE established the Office of Detention Policy and Planning to oversee its detention reform initiatives. ICE also created the Office of Detention Oversight (ODO) whose agents are responsible for inspecting detention facilities and investigating detained individuals' grievances.

In 2009, ICE discontinued use of family detention at the Hutto facility in Texas. Detained families are not housed at Berks Family Residential Center – a detention facility located in Pennsylvania.

#### **1.8 Include a detailed account of the best practices that have been implemented over the past five years in prison management. N/A**

#### **1.9 What state branches or authorities are in charge of supervising and monitoring the respect for the human rights of persons deprived of liberty?**

The Department of Homeland Security's Office of Civil Rights and Civil Liberties and the Office of the Inspector General receive and investigate complaints lodged by persons in immigrant detention.

#### **1.10 What is the percentage of the national budget allocated to the penitentiary system?**

ICE has an annual budget of \$5.74 billion with its custody operations accounting for \$1.77 billion of its annual budget.

## **2. Prison Staff and Facilities**

### **2.1 How many penal institutions are in the country and what are their locations?**

Today ICE operates the largest detention and supervised release program in the United States, with over 350 facilities throughout the United States housing or under contract to house immigrant detainees.

### **2.2 Indicate the characteristics of each penal institution (i.e., if they are of maximum, medium or minimum security / for inmates of federal or common law / if they are for those charged or convicted / if they are for men, women or minors).**

Immigrant detention centers range from maximum security to minimum security institutions. Some detention centers house only ICE detainees. State and local jails contracting with ICE to house immigrant detainees range in security levels and practices. Depending on the facility, immigrant detainees may be held in separate pods from convicted persons or co-mingled with convicted persons and other pre-trial detainees. Women and men generally are segregated from one another. One facility detains families together.

### **2.3 Indicate the year in which each penitentiary system was built, and specify which centers were built to be a penitentiary center, and which were transformed or remodeled from the original structure that originally served another purpose.**

The Hutto facility was remodeled from a penal institution to a facility used for the detention of families. Today, only women are detained at this facility.

### **2.4 Which authority is responsible for monitoring and evaluating of the adequacy of the prison infrastructure?**

Detention centers owned and operated by ICE are monitored and evaluated by the Department of Homeland Security. Other facilities are overseen by a patchwork of oversight authorities, including county boards, state departments of corrections, the federal Bureau of Prisons, and ICE. Failure to have a central monitoring and evaluation system of all immigrant detention centers has resulted in markedly different conditions for immigration detainees.

### **2.5 What is the capacity of accommodation of each prison facility, and what is the actual population?**

See attached listing of facilities which house individuals detained by ICE which was current as of August 15, 2009.

### **2.6 Describe the health care personnel in prisons. That is, how many doctors, specialists, or nurses are working in each prison facility?**

There are no specific requirements, including no requirement that a licensed doctor oversee on-site medical treatment. The staff assigned varies from facility to facility. For example, in some facilities no doctor is assigned to the facility and one nurse works in the facility on a full-time basis.

**2.7 Identify the security personnel embodied in penal institutions.**

**2.8 Specify which security institution (ie. police / military / civil guards), is in charge of maintaining security in prisons. In the case of two or more bodies, please indicate what specific role each has and how they interact.**

Security personnel include variously employees of the Department of Homeland Security, employees of the state or local units of government operating the prisons and jails in their jurisdictions, employees of the Bureau of Prisons, and employees of private corrections corporations. All are civil guards.

**2.9 Indicate whether the State has schools for the training of prison staff, and what body or institution is in charge of these schools.**

Training requirements vary depending on the institution in which the immigrant detainees are housed.

**3. Persons detained on remand and prison benefits**

**3.1 What is the constitutional and legal framework governing pretrial detention? Indicate in which cases pretrial detention during criminal proceedings is available, and what are the legal requirements for the authorization of pretrial detention. N/A**

**3.2 In which cases may pretrial detention be ordered and what are the grounds on which it may be granted and maintained? N/A**

**3.3 What percentage of the total prison population is on remand? N/A**

**3.4 What are the legal rules governing the granting of early release or other similar programs, and which authorities can decide to grant it? N/A**

**3.5 If possible, present comparative statistics indicating the number of applications for granting early release or other similar programs that are received each year, the percentage of the processed applications, and the percentage of those that are granted. N/A**

#### **4. Protection of life and personal integrity**

##### **4.1 What are the judicial remedies to protect the life and physical integrity of persons deprived of liberty?**

In *Hui v. Castañeda* (2010), the United States Supreme Court issued a decision that immunizes government doctors from personal liability for providing constitutionally inadequate medical care to detained individuals. The Supreme Court's decision in *Hui v. Castañeda* forecloses a vital way to deter unconstitutional conduct. In that case, the district court noted that Castañeda's allegations, if proven at trial, described "conduct that transcends negligence by miles" and presented "one of the most, if not the most, egregious Eighth Amendment violations the Court has ever encountered".

##### **4.2 What are the rates of prison violence in the country? How many acts of violence have occurred in prisons over the past 5 years? How many people have died in prisons in the last 5 years?**

ICE reports the occurrence of 68 deaths in its custody since May 22, 2005.

#### **5. Other matters**

##### **5.1 Indicate whether the detainees have conjugal visits. If so specify what the applicable regulation is and which prisons have implemented this system of visits.**

Conjugal visits are not available.

##### **5.2 Specify if conjugal visits are limited to those married couples under the civil or family law, or if they are also available for people in union or common law marriage. Also, indicate if conjugal visits are allowed to same-sex couples. N/A**

##### **5.3 Indicate whether there are institutional mechanisms or channels through which prisoners can lodge complaints concerning their conditions of detention, and indicate how these mechanisms work.**

The Office for Civil Rights and Civil Liberties reviews and assesses information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security. Complaints filed with the Office for Civil Rights and Civil Liberties are forwarded to the Office of the Inspector General, and may be forwarded to other Department components or to other government agencies, such as the Department of Justice, as appropriate.

Advocates report that the complaint process has not been effective in capturing abuses occurring within detention facilities because detained individuals are unaware of how to lodge complaints.

Additionally, the ICE Detention Standards for Detainee Grievance Procedures requires each facility to devise a method for documenting detainee grievances. At a minimum, the facility must maintain a Detainee Grievance Log containing a copy of grievances, an assigned log number for each grievance, a receipt date, and the date of the disposition. Also, it requires that a copy of the formal grievance remain in the detainee's detention file for at least three years. The standard also requires grievances to be acted on within five working days through informal or formal resolution. Further, the standards require that the facility will convene a grievance committee to study the grievance in the event the detainee does not accept the department head's decision.

The DHS Office of Inspector General has reported several areas of non-compliance with respect to the ICE Detention Standards on Detainee Grievance Procedures since 2005.<sup>55</sup>

Also, the ICE Detention Standard on Detainee Grievance Procedures does not explicitly address individuals rights related to the reporting of abuse and civil rights violations.

**5.4 What work-study programs (intramural and extramural) does the national prison system provides, as well as in the states and provinces? What is the specific regulation of these programs? And, what percentage of the prison population participates in them? N/A**

**5.5 Are there programs for post-prison assistance to facilitate the social reintegration of persons who have completed prison sentences? N/A**

**5.6 How do civil society organizations participate in the formulation, implementation, monitoring and evaluation of programs and prison management policies?**

A broad coalition of more than 30 organizations from around the country works with DHS on immigration detention and enforcement issues through the DHS Enforcement Working Group. The Working Group advocates with DHS and ICE on fairness and due process issues in the immigration enforcement and detention system. The group meets with government officials on a quarterly basis.

In addition, a second Working Group meets regularly with representatives from the DHS Office of Civil Rights and Civil Liberties to raise concerns about patters of violations occurring across the country.

In late 2009, two advisory groups focused on detention and medical care, were formed by the government. These groups provide recommendations concerning ICE's detention reform efforts.

### **5.7 How is the participation of civil society in the supervision and monitoring of the respect for human rights of persons deprived of liberty?**

The level of access varies depending on the facility and whether it is a corporate-owned detention center or a local jail. There are a number of visitation programs which pair detained individuals with visitors across the country.

## 6. Study Presentation

**In addition to the answers to the questions provided, all reports and specialized studies that have been prepared in relation to the situation of the individuals deprived of liberty would be greatly appreciated.**

### 2010

#### **Summaries of Recent Reports on Immigration Detention, 2007 - 2009**

February 24, 2010 - National Immigration Forum

This document summarizes a number of reports that have been issued by a range of groups over the past two years (most of them issued in 2009) that document conditions in immigration detention facilities.

#### **Summaries of Recent Immigration Enforcement Reports**

April 06, 2010 - National Immigration Forum

This document summarizes a number of reports issued in 2008 through 2010 by non-profit and governmental watchdog organizations documenting problems with various immigration enforcement programs.

### 2009

#### **The ICE Process for Authorizing Medical Care for Immigration Detainees**

December 22, 2009 - Department of Homeland Security Office of Inspector General

In this report, the OIG evaluated the effectiveness of the process used to authorize care for immigration detainees. The OIG identified a variety of limitations that hinder the processing of requests. OIG determined that the existing medical treatment request process can be improved through a reduction in the amount of pre-authorization review, expansion of case management functions, and improvement in relationships with outside medical providers who deliver care to immigration detainees.

#### **Huge Increase in Transfers of ICE Detainees**

December 02, 2009 - Transactional Records Access Clearinghouse

As the number of detainees has grown, ICE has not sought to balance where it located new detention beds with where individuals are apprehended. Instead, ICE transports detainees from their point of initial detention to many different locations, often to remote locations. As a result, the number of detainees transferred each year has grown much more rapidly than the population held in custody. [Facility-by-Facility Reports](#).

#### **Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States**

December 02, 2009 - Human Rights Watch

This report presents new data showing that immigrants in detention are increasingly being transported to remote facilities. Detained immigrants have the right to be represented in deportation hearings by an attorney of their choice and to present evidence in their defense. But once they are transferred, immigrants are often so far away from their lawyers, evidence, and witnesses that their ability to defend themselves in deportation proceedings is severely curtailed.

### **Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers**

November 10, 2009 - Department of Homeland Security Office of Inspector General

This report found that transfer determinations made by ICE officers at the detention facilities are not conducted according to a consistent process. This leads to errors, delays, and confusion for detainees, their families, and legal representatives. The OIG recommends that ICE establish a national standard for reviewing each detainee's administrative file prior to a transfer determination, and that it develop protocols with EOIR court administrators for exchanging hearing and transfer schedules.

### **Immigration Detention: Overview and Recommendations**

October 06, 2009 - Dr. Dora Schriro, Immigrations and Customs Enforcement

This report provides a review and evaluation of the Immigration Detention system. It describes the policy, human capital, informational, and management challenges associated with the rapid expansion of ICE's detention capacity. It identifies important distinctions between the characteristics of the Immigration Detention population in ICE custody versus the population in the Criminal Incarceration system. It provides a seven part framework for developing a new system of immigration detention.

### **Immigrant Detention: Can ICE Meet its Legal Imperatives and Case Management Responsibilities?**

September 10, 2009 - Donald Kerwin and Serena Yi-Ying Lin, Migration Policy Institute

This report explores whether U.S. Immigration and Customs Enforcement (ICE) is capable of meeting its legal and case management responsibilities in light of its use of information systems that may not be collecting all the data necessary for compliance with legal, detention management and humanitarian standards. ICE may well need more information on detainees than it currently collects.

### **A Broken System: Confidential Reports Reveal Failures in U.S. Detention Centers**

July 28, 2009 - National Immigration Law Center, ACLU of Southern California, and Holland & Knight, LLP

This report, based on an analysis of hundreds of detention facility review reports from 2001 through 2005 that were obtained through litigation, finds that the men and women within the nation's immigration detention system find their fundamental rights routinely and systematically violated. The report highlights the importance of having independent monitors of detention centers, and offers specific recommendations to ameliorate the current situation.

### **The Math of Immigration Detention**

July 07, 2009 - National Immigration Forum

This background report examines how much it costs the taxpayer to detain immigrants, most of whom have no criminal record and who could be placed in less expensive alternatives to detention.

### **Jailed Without Justice: Immigration Detention in the USA**

March 25, 2009 - Amnesty International

Amnesty International has found that the dramatic increase in the use of detention as an immigration enforcement mechanism has resulted in a number of human rights violations. The conditions under which immigrants are held violate both US and international standards on the treatment of detainees.

### **Immigration and Customs Enforcement's Tracking and Transfers of Detainees**

March 17, 2009 - Department of Homeland Security Office of Inspector General

This report finds that ICE tracks immigration detainees with 94% accuracy. Agency staff interviewed generally considered completing and providing copies of the transfer forms to detainees a low priority, and they did not know that they were responsible for informing detainees' legal representatives of transfers. Medical staff at detention facilities did not always conduct physical examinations within 14 days, as required.

A comprehensive listing of more than reports prepared by civil society institutions can be found at <http://immigrationforum.org/research/enforcement>.

Thank you for your consideration of this response.

Sincerely,

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<sup>1</sup> The INA of 1952 also created the Immigration and Naturalization Service (INS), the federal agency responsible for administering immigration law and policy until the creation of the Department of Homeland Security in 2003. *See* Immigration and Nationality Act, 8 U.S.C. § 1187 (2006).

<sup>2</sup> The term “refugee” means “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” INA § 101(a)(42).

<sup>3</sup> *See* INA § 101(a)(43). *See also* The Anti-Drug Abuse Act of 1988, Pub. L. 100-690, subtitle J, 102 Stat. 4181 (Nov. 18, 1988) (creating a separate ground of deportation for serious crimes such as murder, drug trafficking or illegal trafficking of firearms or destructive devices), Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1999) (substantially expanding the category of aggravated felony).

<sup>4</sup> Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

<sup>5</sup> Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

<sup>6</sup> *See* INA § 101(a)(43).

<sup>7</sup> INA § 235.

<sup>8</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

<sup>9</sup> Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Div. B, Pub. L. No. 109-13 (2005).

<sup>10</sup> 72 Fed. Reg. 9958 (Mar. 6, 2007) Notice of Determination.

<sup>11</sup> Local enforcement of immigration laws has resulted in problems with racial discrimination and profiling. *See generally* U.S. DEPT. OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL, THE PERFORMANCE OF 287(G) AGREEMENTS (Mar. 2010); ACLU OF N.C. LEGAL FOUND. AND IMMIGR. AND HUM. RIGHTS POL’Y CLINIC AT THE U. OF N.C. AT CHAPEL HILL, THE POLICIES AND POLITICS OF LOCAL IMMIGRATION ENFORCEMENT LAWS, 287(G) PROGRAM IN NORTH CAROLINA, (Feb. 2009), *available at* <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf>; GOV’T ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, IMMIGRATION ENFORCEMENT: BETTER CONTROLS NEEDED OVER PROGRAM AUTHORIZING STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS (Jan. 2009), *available at* <http://www.gao.gov/new.items/d09109.pdf>; TREVOR GARDNER II & AARTI KOHLI, THE CHIEF JUSTICE EARL WARREN INST. ON RACE, ETHNICITY & DIVERSITY AT THE U.C. BERKELEY L. SCH., THE C.A.P. EFFECT: RACIAL PROFILING IN THE ICE CRIMINAL ALIEN PROGRAM, (Sept. 2009), *available at* [http://www.law.berkeley.edu/files/policybrief\\_irving\\_FINAL.pdf](http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf).

<sup>12</sup> U.S. DEPT. OF HOMELAND SECURITY, FY 2011 BUDGET IN BRIEF, at 15 [*hereinafter* DHS BUDGET IN BRIEF].

<sup>13</sup> *Id.* at 63.

<sup>14</sup> *Id.* at 64.

<sup>15</sup> ABA, REFORMING THE IMMIGRATION SYSTEM: PROPOSALS TO PROMOTE INDEPENDENCE, FAIRNESS, EFFICIENCY, AND PROFESSIONALISM IN THE ADJUDICATION OF REMOVAL CASES 5 (2010) [*hereinafter* REFORMING THE IMMIGRATION SYSTEM], *available at* [http://www.abanet.org/media/nosearch/immigration\\_reform\\_executive\\_summary\\_012510.pdf](http://www.abanet.org/media/nosearch/immigration_reform_executive_summary_012510.pdf).

<sup>16</sup> DHS BUDGET IN BRIEF, *supra* note 12, at 54.

<sup>17</sup> *Id.* at 54.

<sup>18</sup> *Id.* at 54.

<sup>19</sup> DR. DORA SHIRO, U.S. DEPT. OF HOMELAND SECURITY, IMMIGR. AND CUSTOMS ENFORCEMENT, IMMIGRATION DETENTION OVERVIEW AND RECOMMENDATIONS (Oct. 6, 2009) at 2.

<sup>20</sup> *Id.*

<sup>21</sup> INA § 235(b)(1)(B)(iii)(IV).

<sup>22</sup> Section 236(c) of the INA mandates detention of any alien who is inadmissible by reason of having committed any offense covered in § 212(a)(2); is deportable by reason of having committed any offense covered in INA § 273(a)(2)(A)(ii), (A)(iii), (B), (C), or (D); is deportable under INA § 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least 1 year; or is inadmissible under INA § 212(a)(3)(B) or deportable under INA § 237(a)(4)(B) when the alien is

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released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

<sup>23</sup> See *Id.* § 236(c).

<sup>24</sup> INA § 235(b)(1)(B)(iii)(IV).

<sup>25</sup> See HUMAN RIGHTS FIRST, RENEWING U.S. COMMITMENT TO REFUGEE PROTECTION:

RECOMMENDATIONS FOR REFORM ON THE 30<sup>TH</sup> ANNIVERSARY OF THE REFUGEE ACT (Mar. 2010) at 10 (noting that while Immigration Judges can review ICE’s custody decisions for other immigrant detainees, they are precluded under regulatory language from reviewing the detention of “arriving aliens,” a group that includes asylum seekers who arrive at airports and other U.S. entry points under regulations located primarily at 8 C.F.R. § 1003.19 and § 212.5, as well as § 208.30 and § 235.3). See also U.S. Comm’n on Int’l Religious Freedom, ICE Parole Guideline is an Important First Step to Fix Flawed Treatment of Asylum Seekers in the United States (Dec. 23, 2009) (noting low rates of release on parole and citing that New Orleans released only 0.5 percent of asylum seekers, New Jersey less than four percent, and New York eight percent following a finding of credible fear), available at [http://www.uscirf.gov/index.php?option=com\\_content&task=view&id=2891&Itemid=126](http://www.uscirf.gov/index.php?option=com_content&task=view&id=2891&Itemid=126).

<sup>26</sup> U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, News Release: ICE issues new procedures for asylum seekers as part of ongoing detention reform initiatives (Dec. 16, 2009), available at <http://www.ice.gov/pi/nr/0912/091216washington.htm>.

<sup>27</sup> See DHS BUDGET IN BRIEF, *supra* note 12, at 52 (noting that “CBP increased the number of miles of border under effective control from 757 in FY 2008 to 939 miles by the end of FY 2009”).

<sup>28</sup> See ACLU OF SAN DIEGO AND IMPERIAL COUNTIES AND MEXICO’S NAT’L COMM’N OF HUMAN RIGHTS, HUMANITARIAN CRISIS: MIGRANT DEATHS AT THE U.S.-MEXICO BORDER (Oct. 1, 2009) at 19.

<sup>29</sup> *Id.* at 5.

<sup>30</sup> *Id.* at 17.

<sup>31</sup> SHRIRO, *supra* note 19, at 2.

<sup>32</sup> See NAT’L IMMIGR. L. CTR., ACLU OF S. CAL., AND HOLLAND & KNIGHT, A BROKEN SYSTEM: CONFIDENTIAL REPORTS REVEAL FAILURES IN U.S. IMMIGRANT DETENTION CENTERS 4 (2009) [*hereinafter* A BROKEN SYSTEM].

<sup>33</sup> See e.g., DETENTION WATCH NETWORK, ABOUT THE U.S. DETENTION AND DEPORTATION SYSTEM, available at [www.detentionwatchnetwork.org/aboutdetention](http://www.detentionwatchnetwork.org/aboutdetention).

<sup>34</sup> SHRIRO, *supra* note 19, at 2.

<sup>35</sup> International Covenant on Civil and Political Rights (ICCPR), art. 10(1), *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), (guaranteeing that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person); *id.* art. 10(2)(a) (providing that accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons).

<sup>36</sup> See Human Rights Advocates, Submission to the Human Rights Council, 11th Session, Agenda Item 3: Rights of Migrants.

<sup>37</sup> County jails holding immigrant detainees in Minnesota have “video visits” with family members, where detainees see and speak with their family members via closed circuit television.

<sup>38</sup> See A BROKEN SYSTEM, *supra* note 32, at 14-15.

<sup>39</sup> See, e.g., KATHERINE FENNELLY AND KATHLEEN MOCCIO, U. OF MINN. HUBERT H. HUMPHREY INST. OF PUB. AFFAIRS, ATTORNEYS’ PERSPECTIVES ON THE RIGHTS OF DETAINED IMMIGRANTS IN MINNESOTA (Nov. 2009).

<sup>40</sup> County jails, designed for short periods of detention, do not necessarily have outdoor recreation facilities. The Ramsey County Law Enforcement Center in St. Paul, Minnesota, has an average daily immigrant detainee population over 100. The facility has no outdoor recreation access. See also A BROKEN SYSTEM, *supra* note 32, at 21.

<sup>41</sup> See Dana Priest & Amy Goldstein, *Caught Without Care*, THE WASH. POST, May 13, 2008 (reporting that suicide is the most common cause of death among detained immigrants with 15 of 83 deaths since 2003 the result of suicide and stating, “No one in the Division of Immigration Health Services (DIHS), the agency responsible for detainee medical care, has a firm grip on the number of mentally ill among the 33,000 detainees held on any given day, records show. But in confidential memos, officials estimate that about 15 percent -- about 4,500 -- are mentally ill, a number that is much higher than the public ICE

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estimate. The numbers are rising fast, memos reveal, as state mental institutions and prisons transfer more people into immigration detention”). *See also* PHYSICIANS FOR HUMAN RIGHTS, BELLEVUE/NYU CENTER FOR SURVIVORS OF TORTURE, FROM PERSECUTION TO PRISON: THE HEALTH CONSEQUENCES OF DETENTION FOR ASYLUM SEEKERS (2003), *available at*

<http://physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf>.

<sup>42</sup> A client of The Advocates for Human Rights seeking asylum from Ethiopia and being treated for depression and Post-Traumatic Stress Disorder, was detained for over one year in the Ramsey County Adult Detention Center in St. Paul, Minnesota, following her asylum hearing in front of an immigration judge. While detained, she never saw the outdoors and was co-mingled with the general convicted population because the facility with which ICE contracts lacks the facilities.

<sup>43</sup> U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, Press Release: ICE Announces Major Reforms to Immigration Detention System (Aug. 6, 2009), *available at* <http://www.ice.gov/pi/nr/0908/090806washington.htm>; U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, Fact Sheet: ICE DETENTION REFORM: PRINCIPLES AND NEXT STEPS: Sec. Napolitano Announces New Immigration Detention Reform Initiatives (Oct. 6, 2009), *available at* [http://www.dhs.gov/xlibrary/assets/press\\_ice\\_detention\\_reform\\_fact\\_sheet.pdf](http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf).

<sup>44</sup> The New York Times alone contained at least 25 reports of problems with conditions in detention, including deaths in detention, between 2005 and March 2010.

<sup>45</sup> Immigration and Customs Enforcement, List of Deaths in ICE Custody Since October 2003, (attached).

<sup>46</sup> Nina Bernstein, *Hong Kong Emigrant's Death Attracts Scrutiny of U.S. Detention System*, N.Y. TIMES, Aug. 13, 2008 (reporting that “[i]n April, [Hiu Lui] Ng began complaining of excruciating back pain. By mid-July, he could no longer walk or stand. And last Wednesday, two days after his 34th birthday, he died in the custody of Immigration and Customs Enforcement in a Rhode Island hospital, his spine fractured and his body riddled with cancer that had gone undiagnosed and untreated for months.”).

<sup>47</sup> *See* A BROKEN SYSTEM, *supra* note 32, at 4-5.

<sup>48</sup> Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, N.Y. TIMES, Jan. 9, 2010, *available at* <http://www.nytimes.com/2010/01/10/us/10detain.html>.

<sup>49</sup> *See* NAT’L IMMIGR. FORUM, SUMMARIES OF RECENT REPORTS ON IMMIGRATION DETENTION 2007-2009 (Feb. 2010), *available at* <http://www.immigrationforum.org/images/uploads/DetentionReportsSummaries2007-2009.pdf>

<sup>50</sup> 8 U.S.C. § 236; 8 C.F.R. § 236.1; CBP Directive No. 3340-030A (Mar. 9, 2004), *available at* <http://foia.cbp.gov/streamingWord.asp?i=10>.

<sup>51</sup> NO MORE DEATHS, CROSSING THE LINE: HUMAN RIGHTS ABUSES OF MIGRANTS IN SHORT-TERM CUSTODY ON THE ARIZONA/SONORA BORDER 13 (Sept. 2008) [*hereinafter* CROSSING THE LINE].

<sup>52</sup> Adam Borowitz, *Wackenhut Worries: A Company with a Sketchy Record has Quietly Taken Over Deportation Duties from the Border Patrol*, THE TUCSON WEEKLY, May 2, 2007.

<sup>53</sup> CROSSING THE LINE, *supra* note 511, at 20.

<sup>54</sup> The INA of 1952 also created the Immigration and Naturalization Service (INS), the federal agency responsible for administering immigration law and policy until the creation of the Department of Homeland Security in 2003. *See* Immigration and Nationality Act, 8 U.S.C. § 1187 (2006).

<sup>55</sup> Office of Inspector General DEPARTMENT OF HOMELAND SECURITY, Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities, OIG-07-01, December 2006, *available at*: [trac.syr.edu/immigration/library/P1598.pdf](http://trac.syr.edu/immigration/library/P1598.pdf)