HOLIDAY ON ICE: THE U.S. DEPARTMENT OF HOMELAND SECURITY'S NEW IMMIGRATION DETENTION STANDARDS

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION POLICY AND ENFORCEMENT

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

MARCH 28, 2012

Serial No. 112–104

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

73–543 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

LAMAR SMITH, Texas, *Chairman*

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona
MARK AMODEI, Nevada

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SÁNCHEZ, California
JARED POLIS, Colorado

RICHARD HERTLING, *Staff Director and Chief Counsel*
PERRY APELBAUM, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

ELTON GALLEGLY, California, *Chairman*
STEVE KING, Iowa, *Vice-Chairman*

DANIEL E. LUNGREN, California
LOUIE GOHMERT, Texas
TED POE, Texas
TREY GOWDY, South Carolina
DENNIS ROSS, Florida

ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
PEDRO R. PIERLUISI, Puerto Rico

GEORGE FISHMAN, *Chief Counsel*
DAVID SHAHOULIAN, *Minority Counsel*

CONTENTS

MARCH 28, 2012

Page

OPENING STATEMENTS

The Honorable Elton Gallegly, a Representative in Congress from the State of California, and Chairman, Subcommittee on Immigration Policy and Enforcement 1
The Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration Policy and Enforcement 2
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Chairman, Committee on the Judiciary 11
The Honorable Pedro R. Pierluisi, a Representative in Congress from Puerto Rico, and Member, Subcommittee on Immigration Policy and Enforcement 12
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 13

WITNESSES

Kevin Landy, Assistant Director, Office of Detention Policy and Planning, U.S. Immigration and Customs Enforcement
Oral Testimony 18
Prepared Statement 20
Jessica M. Vaughan, Policy Director, Center for Immigration Studies
Oral Testimony 31
Prepared Statement 33
Chris Crane, President, National ICE Council
Oral Testimony 39
Prepared Statement 41
Michelle Brané, Director, Detention and Asylum Program, Women's Refugee Commission
Oral Testimony 48
Prepared Statement 51

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration Policy and Enforcement 3
Material submitted by the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary
Article from The New York Times titled "Detention Is No Holiday" 14
Letter to the Honorable Lamar Smith, Chairman, Committee on the Judiciary 16

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 74

Page

Prepared Statement of the Honorable Pedro R. Pierluisi, a Representative in Congress from Puerto Rico, and Member, Subcommittee on Immigration Policy and Enforcement 79

Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration Policy and Enforcement 81

Press Release, February 28, 2012, from the Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Chairman, Committee on the Judiciary 199

Prepared Statement of Cheryl Little, Esq., Executive Director, Americans for Immigrant Justice (formerly Florida Immigrant Advocacy Center) 200

HOLIDAY ON ICE: THE U.S. DEPARTMENT OF HOMELAND SECURITY'S NEW IMMIGRATION DETENTION STANDARDS

WEDNESDAY, MARCH 28, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION
POLICY AND ENFORCEMENT,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:36 p.m., in room 2141, Rayburn Office Building, the Honorable Elton Gallegly (Chairman of the Subcommittee) presiding.

Present: Representatives Gallegly, Smith, Lofgren, Conyers, King, Gowdy, Ross, Waters, and Pierluisi.

Staff present: (Majority) Dimple Shah, Counsel; Marian White, Clerk; and (Minority) Tom Jawetz, Counsel.

Mr. GALLEGLY. I call the Subcommittee to order. I would ask unanimous consent that the Chair would have the right to recess the proceedings at any time should there be a vote call on the floor.

Hearing no objection, that will be the order.

Today our hearing focuses on the detention of illegal and criminal immigrants. From the onset, I would like to make it clear that no Member is against the humane treatment of detainees. However, I am concerned that ICE's new Performance-Based Detention Standards, because they unreasonably put the interests of removable aliens ahead of the interests of the Nation.

Full implementation of the new detention standards is likely to be extremely costly. Nevertheless, cost estimates are not addressed at any point in the 400-plus page standards. Has ICE considered the impact of this new policy on America and the American taxpayers?

To make matters worse, the impetus for the new standards have little to do with a need for detention reform. Rather, they are part of an extensive public relations effort aimed at pro-amnesty advocates.

Shortly after the detention standards were released, DHS announced the opening of a new detention facility in Texas. A San Antonio newspaper describes it as being more like a private college setting than a detention center.

It is outrageous that the immigration detention facilities have morphed into college campuses, particularly when we are dealing with a facility that costs the taxpayer $32 million to start with.

This is especially true when American families struggle to make ends meet.

However, even these changes do not make advocates happy. They have consistently said the new detention facilities are improved, but do not go far enough. What will ever enough be? Numerous statements issued by the advocates make clear they are opposed to the immigration detention in and of itself.

DHS's new detention standards are part of a trend. The trend began with leaked DHS memos that discussed mechanisms the agency could utilize to circumvent Congress and provide amnesty by administrative action. It continued with DHS issuing memos regarding priorities whereby potentially millions of illegal immigrants could be exempt from removal. These memos were superseded by new prosecutorial discretion policy allowing those in violation of the law, who are already in the removal process or ordered removed, to remain here undisturbed.

And now, we have the release of new standards involve policies for detainee-friendly detention centers for those illegal and criminal immigrants that DHS does intend to detain, and, again, all at taxpayer expense.

I have a recommendation to the Administration. The best way to help immigration detainees is not to roll out the welcome mat at detention facilities. It is, reduce the amount of time they spend in detention by making better use of the tools Congress has provided to process illegal immigrants for removal more expeditiously. It would be best if ICE spent more time, energy, and resources on removing illegal and criminal immigrants.

With that, I will yield to the gentlelady, the Ranking Member, Ms. Lofgren.

Ms. LOFGREN. In September of 2007, an armed ICE agent transported Ms. M.C. from the Krome Detention Center to the Broward Transitional Center. But instead of driving straight to Broward, the agent took her to his house, forced her to perform oral sex, and then forcibly raped her. According to documents related to his criminal conviction, the agent kept his firearm in his gun belt attached to his waist at all times during the sexual assault.

I ask unanimous consent to enter the full statement of Ms. M.C. into the record.

Mr. GALLEGLY. Without objection.

[The information referred to follows:]

Americans for Immigrant Justice

formerly Florida Immigrant Advocacy Center (FIAC)

STATEMENT FOR THE RECORD SUBMITTED BY

M.C.

Client, Americans for Immigrant Justice (Formerly Florida Immigrant Advocacy Center)

March 26, 2011

A Brutal Rape

1. My name is M.C. I am a native of Jamaica. On September 21, 2007, I was picked up by an immigration official and brought to Krome Detention Center in South Miami. I was in the booking area where I was the only female. Women aren't held at Krome, so I was waiting to be sent somewhere else.

ICE Officer Vasquez

2. I was waiting at Krome for about 15 or 20 minutes. An ICE officer (whom I later learned was named Officer Vasquez) came in and looked at me. He asked the desk officer where I was going and they said BTC (Broward Transitional Center). He said that he was going up to BTC and that he could take me. He said to me, "I'll rescue you so you don't have to wait for them to process all the men." He picked up my paperwork from the desk officer and told me to follow him.

3. While we were still inside Krome, Officer Vasquez took my handcuffs off me. He said, "I don't cuff females." We went outside to a van. He opened the back of the van and locked me in one of the cages.

4. While I was in the cage, he asked if I was hungry. I said I was. He said he was going to put me in the front of the van because it was more comfortable, but first he had to get out of the Krome vicinity. After a while, he pulled over on a street, let me out of the cage and put me in the front of the van with him.

5. When I was in the front seat, he asked if I wanted to call anyone. I said yes, I wanted to call my daughter. At this point, I thought I was going to be deported very quickly, so I was talking to my daughter about making arrangements for me back in Jamaica.

6. Then Officer Vasquez said to me, "So, are you wearing that federal underwear?" He said, "Show me your underwear." I told him no. I thought it was very strange he would say something like that.

7. What the officer said next made me start to feel even more uncomfortable. He said, "You know what attracted me to you? You have beautiful eyes." I didn't respond because I was starting to get worried. It was totally inappropriate. I was hoping that he would just stop talking about this.

8. Officer Vasquez picked up his cell phone and made a call. He was speaking to someone in Spanish. I don't understand Spanish, so I didn't know what he was saying. It turns out that he had called his wife to check if she was home. He told me that she was not at home.

9. Next, I found out why he'd called her. After he hung up, Officer Vasquez told me that he "wants to eat my pussy." He told me he wanted me to take off my pants so he could touch me in the van, but that didn't make sense because people could have seen. So that is why he called his wife – he wanted to take me to his house to have sex with me.

10. Suddenly, my heart sunk and I tried not to panic. I couldn't believe he had said that. I knew he had a gun – I had seen it when we were going to the van at Krome, it was in a holster on his hip. I didn't respond or say anything. I didn't know what to think. I really prayed he was joking. I am not sure why, but I remember that it was 1:11 pm when he hung up with his wife and said that to me. I was staring at the clock.

11. He kept joking and talking to me like we had known each other for a long time. He was flirty and very comfortable – it seemed like he had done this before. I wanted to change the subject. I was hoping I could distract him. I asked him questions about his family and his job. He told me he was 37 years old and that he had worked at BTC for about three years.

12. Officer Vasquez asked me where I lived. He asked me if I knew my way around Broward County very well. I told him I didn't know Broward County, but that wasn't true. I think he wanted to make sure that I wouldn't be able to keep track of where he was taking me.

13. Driving from Krome to BTC, you would normally drive North on the Turnpike all the way to Sample Road, then turn left on Powerline Road to BTC. Instead, Officer Vasquez turned off on Commercial Boulevard. He drove west on Commercial to Rock Island Road. Then he went north on Rock Island to Bailey Road. He went west on Bailey Road to the place where his house was located. He made a left turn into his housing community.

14. By this time, I was really scared. I was nervous, anxious, and angry all at the same time. Officer Vasquez said that he loved to give oral sex to Black women. I kept quiet and didn't say anything. I was just praying. I tried telling myself that this wasn't really happening.

Sexual Assault and Rape at his House

15. He pulled up into his driveway. He got out of the van and came over to my side. He opened the door and told me get out of the van. I couldn't refuse him. He had a gun and all the power. I knew I had to do what he said. So when he told me to get out, I did.

16. When we got into the house, he said to me, "Take off those federal clothes." I couldn't believe this was happening. I took off my sweat pants, sneakers and underwear, like he said. He disappeared for a second and came back with a condom.

17. I just stood there praying to myself, saying, "God, please don't let this man hurt me." I was asking God to have mercy so this man wouldn't kill me. I was afraid he would kill me or seriously hurt me when he was done with me. All I could think of was that he was totally crazy for doing this. If he was crazy enough to bring me to his house and rape me, then what would he be willing to do to cover it up?

18. Officer Vasquez ordered me to sit on the sofa. He told me that the house has three exits. He pointed to where they were, but I wasn't really paying attention. I was praying. He told me I had to look out for a black Acura car that his wife drives. He said, "If you see that car, you have to grab your clothes and get out right away." That just added even more insult to injury. This man was going to rape me and he wanted me to act as his look out! I was so ashamed and humiliated.

19. Officer Vasquez kneeled in front of me and pushed me back on the sofa. He held my legs up and had oral sex with me. I remember looking at the top of his head and thinking how much I just wanted to hit him or push him away. But I couldn't. He had a gun and I truly believed that if I fought or tried to run away, he would kill me. If it was any other man, I would have fought him off. I would have screamed, hit, kicked, punched. I felt completely out of control and I couldn't do anything about what was happening to me. It was horrible.

20. When he finished, he told me I should "return the favor." He took out his penis. It was erect. He told me I should "suck his dick." He held the back of my head and pushed his penis into my mouth. I couldn't stand it. I told him that I've never been able to do this. I didn't want to make him angry, but I couldn't give this man oral sex.

21. Then Officer Vasquez ordered me to kneel on the sofa and turn away from him. He put on the condom and had sex with me. Words can't describe what was going through my head this whole time. I was just dazed. I kept saying to myself, "How can I stop him?" But I was just too scared. There was nothing I could do, but pray and wait for it to be over.

22. After he was done, I just sat there on the sofa without any underwear on. Officer Vasquez walked toward the dining room table to where there must have been another room or something. I guess he got rid of the condom. He came back with wet wipes and gave me one. I wiped myself off with it. I got dressed.

23. He said, "Come on, let's go." The entire ordeal had lasted probably about 15 minutes. We started to walk outside. He stopped to make sure no one was watching. I was still terrified. I kept thinking that since he had gotten his way with me, he was probably going to try to kill me to cover it up. I was afraid that he wasn't even going to take me to BTC; he might drive me somewhere else to kill me.

24. There was a van parked across the street from his house. The lights were on, so it looked like someone was in the van. I thought about running over there and screaming for help. But then I thought he might just shoot me in the back and say that I tried to escape from him. I really believed he was capable of killing me. So I went with him back to the van. He let me back in the front of the van again. We started driving toward BTC.

25. By this time, Officer Vasquez was talking and acting like everything was totally normal. He told me that he was going to Jamaica on October 16th. He said I would probably be deported by then and he wanted me to come to Kingston to meet up with him. He said he was taking a prisoner back to Jamaica. He explained that when you need to hand someone over to the government, someone from ICE accompanies them. Every month, they rotate by alphabet and it was his turn this time.

26. He said he didn't want to give me his phone number right now because someone might find it while I was detained. But he did give me his email address. He took my address book and wrote his email address in it himself.

27. I asked him if he'd done that with other detainees before. He said no, but that he had looked at my record and saw that I was "clean." I guess he meant that he looked to make sure I don't have HIV or any other diseases. I think he has definitely done this with other women.

Going to BTC

28. When we were almost back to BTC, Officer Vasquez took me from the front of the van and locked me back in one of the cages. He said he couldn't let the people at BTC see him carrying me in the front of the van, but acted like he had done me this huge favor by letting me ride up front with him.

29. In fact, since we met, he'd kept acting like he was doing me all these favors. He told me he was "rescuing me" by taking me from Krome, let me sit up front. It was so crazy that he thought I was going to actually be grateful to him when he was really kidnapping and raping me. At one point, I asked him if he was drunk because I found it impossible to believe he could actually think this was all okay.

30. When we got to BTC, Officer Vasquez handed me off to a female BTC guard. Because they seemed to be friends and they worked together, I was too afraid to say anything to her. I didn't think she would really believe me. I mean, I lived through it and still find it hard to believe that this actually happened.

31. I was booked in and brought to my room. I just laid on my bed in the fetal position crying. I was so traumatized. I didn't want to think about what had happened.

How Many Others?

32. At first, after this happened to me, I just wanted to go home. I didn't want to think about what had happened to me and I was scared the officer would try to hurt me. I was also worried about my family.

33. So, I was thinking about not telling anyone and giving up. I thought if I could just leave and put this behind me, I could forget about it and go on with my life. I know it's not really that easy, but I wanted it to be.

34. I also realized that this officer should not get away with this. He was so comfortable with everything that he did that day. This makes me think he has done this before and that he would almost certainly do it again, if he could get away with it. How many other women had been attacked? How many of them have already been deported so they couldn't do anything about it? I think that Officer Vasquez chose me because he thought I was going to be deported very quickly and what was I going to do about it.

Continuing to Suffer

35. Once the sexual attack and rape were over, the effects were so awful. I felt like I'm not the same person. I was scared all the time. I used to be a really outgoing, friendly, confident, strong woman. But then I could hardly look people in the eye. I walked around with my head down and I felt like people were looking at me. I was so ashamed of what happened to me. I had to keep telling myself it's not my fault.

36. I could hardly sleep. I had nightmares every night. Sometimes I woke up screaming. When I closed my eyes at night, I just saw his face. I felt like I've lost all control.

37. Thank God that I found the Florida Immigrant Advocacy Center, now known as Americans for Immigrant Justice. They took my case and asked the U.S. attorney to investigate the crime against me. And Officer Vasquez pled guilty. He was sentenced to 87 months in prison as a result of his guilty plea to two counts of sexual abuse on me. The judge noted the horrific nature of the crime, and the message it sends to other immigration detainees about the system of justice Vazquez had sworn to uphold, also guided his decision. The Judge also said that the evidence against Vazquez was overwhelming and, if the case had gone to trial, he would most likely have received a much harsher sentence. A pre-sentencing report recommended a sentence of up to 14 years.

38. The unprovoked and unsolicited abuse that Wilfredo Vasquez inflicted upon me on September 21, 2007 was well beyond anything that any woman should have to experience anywhere and especially within the United States.

39. I must express my deep frustration and sense of outrage toward the Department of Homeland Security that apparently knew, or should have known, that when I was placed in the sole custody of Wilfredo Vazquez I would be a likely victim.

40. I no longer want to feel like a victim. I'm better now, but it's not like it's over. I don't want what happened to me to happen to anyone else. It was so horrible. So anything I can do to call attention to this kind of abuse, I will do. I thank Rep. Logfren and members of the committee the opportunity to submit this statement.

Ms. LOFGREN. This was not an isolated incident. Four years earlier, another ICE agent was charged criminally with raping a female detainee during transportation, and last fall an ICE guard

was criminally charged after he sexually assaulted at least 9 women during transportation.

Male guards have also sexually assaulted women while performing strip searches. In 2007, women at the San Diego Correctional Facility filed complaints about a guard who sexually assaulted them when strip searching them in a secluded room. Another guard in Texas pled guilty to multiple criminal charges stemming from similar abuses.

Some of the detention reforms at issue today were adopted to protect female detainees from such horrors. The new standards, for example, prevent a lone officer from transporting or strip searching a single detainee of the opposite sex. If this were in place earlier, Ms. M.C. and countless other women could have been spared rape.

The new reforms could have spared Francisco Castaneda from amputation of his penis and then death. He testified in 2007 before this Subcommittee about the serious medical neglect he experienced during his 10 months in detention. Suffering from excruciating pain, he spent months begging for a simple biopsy that had been repeatedly ordered by medical professionals. ICE refused to authorize the medically-ordered biopsy at every turn, claiming it was elective. ICE finally released Francisco because of his deteriorating health and the threat of litigation. He took himself to an emergency room where a simple biopsy confirmed that he had penile cancer. Because it had not been caught earlier, the cancer metastasized and spread throughout his body. After having his penis amputated and receiving chemotherapy, Francisco came to Congress with his teenage daughter to tell his story so that others would not have suffered unnecessarily the way he had. He died just 4 months later.

According to the judge who presided over his Federal lawsuit, the case represented "one of the most, if not the most, egregious 8th Amendment violations the court has ever encountered." The United States ultimately settled the lawsuit for $2 million.

This Subcommittee also considered the story of Jason Ng, a computer engineer from New York with a U.S. citizen wife and two U.S. children. Although he had a pending green card petition and no criminal history, Jason spent more than a year in detention due to government error in a previous proceeding. In detention he complained about crippling back pain, but guards said he was just faking. They ignored his request for medical care. They even denied his request for a wheelchair. One day guards pulled him from his bed, dragged him face down through the facility, placed him in restraints, and pressed him up against the wall while he screamed and cried for help. These photographs taken the following day at the hospital show the bruises that he suffered. When doctors finally examined Jason, they diagnosed him with advanced liver disease and a fractured spine. Despite a broken back, guards kept him restrained in the hospital until he died 5 days later.

Other photographs here are of Boubacar Bah, who died in a similar fashion. While at the Elizabeth Detention Center in New Jersey, a detainee saw Boubacar collapse and violently hit his head on the floor. He was taken to the medical ward in shackled, but guards mistook his calls for help and erratic behavior as resistance, so they moved him to a disciplinary cell. He lay in that cell for 14

hours, despite repeated notations that he was unresponsive and foaming at the mouth. When they finally took him to the hospital, doctors diagnosed him with inter-cranial bleeding. They rushed him into surgery, but it was too late. He had slipped into a coma and died 4 months later.

Incidents like these led this Subcommittee to hold hearings in 2007 and '08. Those hearings uncovered policies that led to suffering and death. We learned that ICE was tracking the amount of money it was saving by denying critical medical care for things like HIV, and head injuries, and tuberculosis. ICE could not even account for the detainees who died in its custody. Only after an extensive search ordered by new director Morton did they learn about 10 previously untracked deaths between 2004 and 2010.

To its credit, this Administration came in, admitted the problem, and fundamental change was necessary to prevent unnecessary suffering and death. That is the purpose behind the new detention standards at issue today. So, I was deeply disappointed to learn of the title of this hearing, "Holiday on ICE." Certainly Francisco, Jason, or Boubacar would not think that their deaths in custody were any kind of a joke. I know, and Mr. Gallegly called me to say that he regretted the title of this hearing, and I accept that call on his part. However, I do not accept the criticism of the Administration expressed by the Chairman of the full Committee in his press release where he criticizes these detention standards as a hospitality guideline.

I do not think that it is a hospitality guideline to prevent rape of detainees, women who have done nothing wrong, to prevent death and abuse of detainees in custody. I do not think women deserve to be raped. I do not think individuals deserve to be tortured through physical or medical abuse or gross medical neglect. I do not think women deserve to be shackled when they give birth.

Throughout this Congress, we have seen elements of what I think of as sort of a Republican war on immigrants. In today's hearing, I am afraid we are starting to see where the war meets the Republican war on women.

And just a note on cost. You know, it costs about $122 a day to keep a detainee, a civil detainee, locked up in the immigration system. The new, less restrictive system is estimated to cost a little over $56 a day. So, these new standards will avoid torturing individuals. They will avoid the $2 million judgments for hurting or killing people, and it also will cost us less than half of the current costs.

So, Mr. Chairman, I regret the focus of this hearing. I think it is wrong. And I look forward to having an opportunity to confer on this matter further, and yield back.

Mr. GALLEGLY. The gentlelady's time has expired.

I would just like to respond to one thing in your statement, Zoe, and that was something that was laid before me yesterday, that we give anecdotal examples, none of which goes unrecognized as serious. None of these anecdotal examples seem to be more serious to me than one came across my desk yesterday when a criminal alien was released recently from detention because his native land would not repatriate him, and within days of the time he was released, he murdered 5 people in San Francisco.

With that, I would yield——

Ms. LOFGREN. Mr. Chairman, since you have raised that issue, I think it is only fair if I be given a few——

Mr. GALLEGLY. Okay.

Ms. LOFGREN [continuing]. Moment to respond. That individual should have been deported to Vietnam. Vietnam refused to take him. As you will recall, we had a hearing on a bill authored by a Republican Member of the Committee that was so poorly drafted, it would have prevented Benjamin Netanyahu from being able to come to the United States to deliver his address to the Joint Session of Congress.

At that time, I indicated a willingness to write a bill that would actually work to make sure that an individual like this could, in fact, be deported. I know that there has been some discussion at the staff level, but we have not reached an agreement on a workable bill. And I would urge the Chairman to intervene to see if we cannot get some consensus because there is not an argument.

Mr. GALLEGLY. The gentlelady can rely on that. It was not my intent to get into a debate when we have a hearing going on. The only point I was trying to make is that there are many anecdotal examples that none of us condone, none of us can accept, and we are all, I believe, charged with the responsibility of trying to find the best way to correct it. And the status quo is not working.

I yield to the gentleman from Texas, the Chairman of the full Committee, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

First of all, let me say to the gentlewoman from California, Ms. Lofgren, that we actually marked up a bill in the full Judiciary Committee, the Secure Communities Act, which would have prevented that individual from being released, and would have prevented the deaths of those 5 individuals. And I am sorry she voted against that bill because if she had have voted for it, we might have had it passed by this time.

Mr. Chairman, on February 28th, 2012, U.S. Immigration and Customs Enforcement released about 400 pages of new Performance-Based National Detention Standards. But the Administration's new detention manual reads more like hospitality guidelines for illegal immigrants.

According to the preface, the detention standards supposedly "were drafted with the input of many ICE personnel across the Nation, as well as the perspectives of non-governmental organizations."

But the preface fails to disclose that the union that represents ICE detention officers, who are among those most affected by these new standards, was not a part of a process that will have a large impact on their own safety. Neither were advocates for immigration law enforcement or advocates for American taxpayers who will have to pay for the new standards.

Instead, ICE consulted with those who appeared to consist primarily of pro-illegal immigrant groups when it drafted the new detention standards.

Under this Administration, detention looks more like recess. While funds for American students' physical education classes are being cut, the new detention standards expand recreation for illegal

immigrants. For instance, illegal and criminal immigrants in ICE custody will have options such as soccer, volleyball, and basketball. It would be nice if all American students got those options.

ICE wasted no time in putting their new standards into practice. Immediately following the release of the new detention manual, ICE opened up a new, state-of-the-art detention facility in Karnes City, Texas. The new detention facility was built with specifications set by ICE, which involved limited public scrutiny and no congressional oversight.

Among the new amenities, the Karnes City facility contains a library with free Internet access, cable TV, an indoor gym with basketball courts, soccer fields, and sand, and that is for beach volleyball. Instead of guards, unarmed "resident advisors" patrol the grounds. And the cost of the complex: over $30 million taxpayer dollars.

To make matters worse, the new standards expand the complaint process against ICE officers and facilities. It offers numerous avenues for complaints, unlike the Bureau of Prisons, which has a single streamlined process for complaints. Detained illegal immigrants can complain to ICE's Office of Professional Responsibility, the Department of Homeland Security Office of the Inspector General, or the DHS Office of Civil Rights and Civil Liberties.

With no protections against false accusations of abuse filed by detainees, and a process biased against ICE agents, the new detention standards could subject the agency and its employees to constant and frivolous lawsuits.

It is no surprise that an agency that considers illegal and criminal immigrants it detains as its "customers," ranks—listen to this, Mr. Chairman—ranks 222nd out of the 240 government agencies surveyed by the Partnership for Public Service for employee satisfaction.

This hearing is entitled, "Holiday on ICE," because ICE has decided to upgrade accommodations for detained illegal and criminal immigrants. While we would all like to be upgraded, we do not have the luxury of billing American taxpayers or making Federal law enforcement agencies our concierge.

The Obama Administration should put the interests of American taxpayers ahead of illegal and criminal immigrants.

Mr. Chairman, I will yield back.

Mr. GALLEGLY. The gentleman from Michigan from Michigan, the Ranking Member of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Gallegly. With your permission, I would like to yield two of my minutes to the former attorney general of Puerto Rico, the Honorable Pedro Pierluisi.

Mr. GALLEGLY. Mr. Pierluisi, 2 minutes.

Mr. PIERLUISI. Thank you, Mr. Chairman. Thank you, Ranking Member Conyers.

Mr. Chairman, I must respectfully say that I find the premise of today's hearing to be misguided and, frankly, appalling. Our immigration detention system has serious problems. The evidence is as well documented as it is heartrending.

Over 110 people have died in immigration custody since 2003. Too many others have been subject to rape, abuse, or medical neglect. Although there is still a long way to go, DHS and ICE de-

serve credit for making important strides in reforming our detention system as reflected in the 2011 National Detention Standards.

Rather than welcoming these common sense standards and seeking their implementation at ICE facilities across the Nation, my colleagues on the other side of the aisle have claimed that detainees are now being pampered. That assertion does not even pass the laugh test. But nobody should find it amusing.

Mr. Chairman, all Members of this Subcommittee are blessed to be Americans, citizens of this great democracy, which has done so much to make the world a better, freer, more humane place. But this love of country should be tempered by a sense of humility, rooted in the knowledge that we could just as easily have been born in a darker corner of this world where liberty or economic opportunity is in short supply. We should have more empathy for men and women who have left behind everyone and everything they know in order to reach our shores, especially since many detainees have violated no criminal law, and those that did have already served their sentences.

Instead of simply paying lip service to the idea of humane treatment, we ought to promote policies that treat people with decency and compassion, guided by the understanding that there, but for the grace of God, go I.

I yield back.

Mr. CONYERS. Thank you very much.

Chairman Gallegly and to our full Committee Chairman, Lamar Smith, I have always been proud of the fact that the House Judiciary Committee has always evaded the partisan tiffs that frequently characterize what goes on in the House of Representatives. And I regret that today we are confronted with a dilemma that I would like to address and see if we can somehow rebuild the good will that has always existed on this Committee.

Now, as I look across this audience, I would be pretty naive not to notice that there are many more women in this audience than is usually the case. And I think it is because of the nature of the hearing that is going on today.

I want to remind everybody, and with the permission of the Chairman, I would like to put into the record the New York Times editorial of today by this famous Haitian writer, Haitian-American writer—she has citizenship in both countries—Ms. Edwidge Danticat, whose article is entitled, "Detention is No Holiday."

Mr. GALLEGLY. Mr. Conyers, I assume you are referring to what was, I believe, to be an op-ed, not an editorial?

Mr. CONYERS. Oh, I am sorry. Yes, it was an op-ed.

Mr. GALLEGLY. Okay. Without objection.

[The information referred to follows:]

The New York Times Reprints

This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers here or use the "Reprints" tool that appears next to any article. Visit www.nytreprints.com for samples and additional information. Order a reprint of this article now.

LOLA VERSUS

March 27, 2012

Detention Is No Holiday

By EDWIDGE DANTICAT
Miami

LAMAR SMITH, the chairman of the House Judiciary Committee, is presiding over a hearing Wednesday on new guidelines for immigration detention that were issued last month and are now beginning to go into effect. The official (and facetious) title of the hearing is "Holiday on ICE," in reference to the more humane treatment undocumented immigrants should now receive after being picked up by Immigration and Customs Enforcement.

Mr. Smith, a Republican from Texas, and members of the House Subcommittee on Immigration Policy and Enforcement, which is holding the hearing, seem to think the United States is too nice to the immigrants it detains. We are being too generous in deciding to give them safe water, an hour a day of recreation, and off-site medical care if they are in danger of dying.

With draconian immigration laws spreading across the country, immigration detention is one of the fastest-growing forms of incarceration in the United States. There are more than 30,000 men, women and children in immigration custody, spread throughout jails as well as detention centers, some of which are outsourced to private companies. It is only fitting that ICE seek out more humane ways of treating this growing population.

The new ICE guidelines are not perfect. They do not offer, for example, alternatives to jail-like detention, even for unaccompanied minors, the elderly, the disabled or pregnant women. But they are a step forward. In addition to medical care, safe water and limited recreation, they also require that staff members not perform strip searches on detainees of the opposite sex and that detainees not be used for medical experiments or for clinical trials without informed consent. They will crack down on sexual assault by staff members, contract personnel or other detainees and suggest that victims of sexual abuse be given access to emergency medical treatment.

Clearly, these new standards are far from luxurious. They simply help protect basic human rights.

The flippant title of the hearing shows a blatant disregard for the more than 110 people who have died in immigration custody since 2003. One of them was my uncle Joseph, an 81-year-old throat cancer survivor who spoke with an artificial voice box. He arrived in Miami in October 2004 after fleeing an uprising in Haiti. He had a valid passport and visa, but when he requested political asylum, he was arrested and taken to the Krome detention center in Miami. His medications for high blood pressure and an inflamed prostate were taken away, and when he fell ill during a hearing, a Krome nurse accused him of faking his illness. When he was finally transported, in leg chains, to the prison ward of a nearby hospital, it was already too late. He died the next day.

My uncle's brief and deadly stay in the United States immigration system was no holiday. Detention was no holiday for Rosa Isela Contreras-Dominguez, who was 35 years old and pregnant wheu she died iu immigration custody in Texas in 2007. She had a history of blood clots, and said her complaints regarding leg pains were ignored. It was no holiday for Mayra Soto, a California woman who was raped by an immigration officer. It was no holiday for Hin Lui Ng, a 34-year-old Chinese immigrant with a fractured spine who was dragged on the floor and refused the use of a wheelchair in an ICE detention center in Rhode Island.

In October 2007 I testified at another Congressional hearing on immigration detention conditions, where I told my uncle's story. Also testifying was Francisco Castañeda, an immigrant from El Salvador. In 2006 he had been placed in a detention facility in San Diego, where he was refused treatment for a penile lesion and a lump in his groin. When he was eventually released from ICE custody, he had to have his cancerous penis amputated. A few months after giving his Congressional testimony, he died.

In May 2010, the Supreme Court ruled in Hui v. Castañeda that public health officials in the detention system could not be held liable for failing to provide medical care to detainees like Mr. Castañeda and my uncle. This ruling further reduced the accountability for mistreatment. The new guidelines are a valuable gestnre toward protecting detainees, but they are only guidelines, and they do not have the force of law behind them. Immigration facilities around the country can, and will, choose to interpret them any way they want, or ignore them altogether.

The "Holiday on ICE" hearing may just be a political stunt, but the message behind it is dangerous; it suggests that the 30,000 vulnerable people in our jails and detention centers should have little right to proper medical care, that their very lives are luxuries, and that it is not our responsibility to protect them.

Edwidge Danticat is the author, most recently, of the essay collection "Create Dangerously: The Immigrant Artist at Work."

Mr. CONYERS. Thank you, Mr. Chairman.

So, here is the problem, and this is a sentence that comes out of the article, the op-ed that is going into the record by Ms. Danticat, whom I must confess I just talked to on the phone an hour ago to let her know that I had delivered a letter to our Chairman, Lamar Smith, which I also ask unanimous consent to include in the record, please.

Mr. GALLEGLY. Without objection.

[The information referred to follows:]

LAMAR S. SMITH, Texas
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM REED, New York
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225–3951
http://www.house.gov/judiciary

JOHN CONYERS, JR., Michigan
RANKING MEMBER

HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SÁNCHEZ, California
DEBBIE WASSERMAN SCHULTZ, Florida

March 27, 2012

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
2409 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Smith:

It has come to my attention that tomorrow afternoon, the Subcommittee on Immigration Policy and Enforcement will be holding a hearing titled, "Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards." As you know, this Committee has performed oversight in the past on the issue of immigration detention. In the 110th Congress, we held two hearings on the topic and we received testimony from family members of people who needlessly died in our custody, doctors who told us where the system was falling short, and lawyers who had successfully sued the government over its mistreatment of detained immigrants.

We disagree on a number of important issues regarding immigration policy, but I hope we agree that the manner in which we treat immigrants in our detention facilities is not a laughing matter. I urge you to reconsider the title of tomorrow's hearing and to instead use a title that shows greater respect for the issue and for the people in our custody and care.

Sincerely,

John Conyers, Jr.
Ranking Member

Mr. CONYERS. Thank you very much. I will read just a sentence from Ms. Danticat. "We are being too generous in deciding to give them safe water, an hour a day of recreation, and of offsite medical care if they are in danger of dying." And I think that is what it comes down to.

And I conclude with this. I have the highest respect for the director of U.S. Immigration and Customs Enforcement, John Morton, its director. I know of the good reputation of the assistant director, Kevin Landy, who is our lead off witness today. And so, I want us to balance what we say against what our Ranking Member, Zoe Lofgren of California, has recited about the kind of conditions that

people are frequently forced to live in. And I hope that we can come to reasonable conclusions.

And I thank the Chairman for his time, and I yield back whatever is left.

Mr. GALLEGLY. The time of the gentleman has expired. As you obviously are aware, the bells have rung for, I believe it is two votes, if I am not mistaken. And we will recess until we complete the two votes. And I would assume that we ought to be able to reconvene within about 25 minutes.

[Whereupon, at 2 p.m., the Subcommittee recessed, to reconvene at 3:08 p.m., the same day.]

Mr. KING [Presiding]. I call this hearing back to order.

We have a very distinguished panel of witnesses today. Each of the witnesses' written statements will be entered into the record in its entirety. I ask that each witness summarize his or her testimony in five or minutes or less. To help you stay within the time, there is a timing light on your table. When the light switches from green to yellow, you will have 1 minute to conclude your testimony. When the light turns red, it signals that the witness' 5 minutes have expired.

Introduction of the witnesses. Mr. Kevin Landy is assistant director for the Office of Detention Policy and Planning of U.S. Immigration and Customs Enforcement at the U.S. Department of Homeland Security. The Office of Detention Policy and Planning leads ICE's efforts to overhaul the current immigration detention system. Prior to joining ICE, Mr. Landy served for 13 years on Senator Joseph Lieberman's staff on the Committee on Homeland Security and on Government Affairs. He received his bachelor's degree from Amherst College and his law degree from Yale Law School.

And Ms. Jessica Vaughan. As the policy director at the Center for Immigration Studies, she has been with the center since 1991, where her area of expertise is administration and implementation of immigration policy. Prior to joining the center, Ms. Vaughan was a foreign service officer with the U.S. State Department, and she holds a master's degree from Georgetown, and a bachelor's degree from Washington College in Maryland.

I would also welcome Mr. Chris Crane. He currently serves as the president of the National Immigration and Customs Enforcement Council 118, American Federation of Government Employees. He has worked as an immigration enforcement agent for U.S. Immigration and Customs Enforcement—that is ICE—at the U.S. Department of Homeland Security since 2003. Prior to his service at ICE, Chris served for 11 years in the United States Marines.

And then we have Ms. Michelle Brané. Ms. Brané is the director of the Detention and Asylum Program at the Women's Refugee Commission, which focuses on the critical protection of needs of women and children asylum seekers in the United States. She has more than 18 years' experience working on immigration and human rights issues. Ms. Brané holds a bachelor's degree from the University of Michigan and a law degree from Georgetown University.

I thank all the witnesses for being here and for your testimony in advance, and then recognize Mr. Landy for 5 minutes.

TESTIMONY OF KEVIN LANDY, ASSISTANT DIRECTOR, OFFICE OF DETENTION POLICY AND PLANNING, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Mr. LANDY. Vice-Chairman King, Ranking Member Lofgren, on behalf of Secretary Napolitano and Director Morton, thank you for the opportunity to highlight the ongoing efforts of U.S. Immigration and Customs Enforcement to reform our Nation's immigration detention system.

The Nation's immigration detention system expanded rapidly in the last 15 years, from an average daily population of less than 7,500 detainees in 1995 to more than 33,000 in 2011. This growth has presented challenges for the agency, and since 2009, Director Morton has made reforming ICE's detention system a top priority.

We wanted to develop facilities more appropriate for the agency's detained population, and to improve conditions at existing facilities. We wanted to use fewer facilities located closer to the location of apprehension, to reduce the number of people transferred away from their families, communities, and attorneys.

We wanted to ensure that detainees received adequate medical and mental health care, and that detention facilities receive necessary Federal oversight. And we wanted to do this in a fiscally prudent way.

And, in fact, the agency's reforms have produced concrete changes, while also achieving greater operational efficiency. I am pleased to highlight some of these reforms today.

Last month, ICE promulgated the 2011 performance-based national detention standards. The standards cover a wide range of topics relevant to the management of detention facilities, including all necessary security safeguards. And in most respects, they are identical to the standards developed in 2008 by the prior Administration.

In this new version, however, we have made important and targeted revisions to better address the needs of ICE's unique detainee population. For example, the standards improve medical and mental health care services, reinforce protections against sexual abuse and assault, enhance opportunities to engage in religious practices, and in other ways establish new safeguards defining the appropriate treatment of detainees.

It is important to note, however, that our new detention standards are only one of several interrelated reform initiatives that ICE has undertaken. For instance, ICE has made substantial progress in improving medical care available to detainees. The ICE Health Service Corps has streamlined the system for authorizing care to ensure timely treatment for detainees who have serious medical needs. And ICE is also developing an electronic health records system.

ICE has also deployed field medical coordinators at all field offices to provide for better coordination with detention facilities and to monitor serious medical cases across the country.

In 2009, ICE created an Office of Detention Oversight to conduct targeted inspections of detention facilities. ICE has also located more than 40 new Federal monitors at large detention facilities to inspect and monitor conditions, replacing a more expensive contract for those services.

In July 2010, ICE launched an online detainee locater system, a public web-based tool that allows family members and attorneys to locate detained aliens in ICE custody. By providing information online, the tool frees up time for ICE employees to focus on carrying out other responsibilities.

ICE has made great strides in reducing costly long distance transfers of detainees by increasing detention capacity where it is most needed. This makes it more likely that detainees will remain near their families and attorneys. It also reduces disruptions to ongoing immigration proceedings that may lengthen an alien's detention. The ICE transfer directive, signed by Director Morton in January of this year, ensures that decisions regarding the long distance transfer of detainees will be made only after careful consideration of the individual circumstances of each detainee. The policy will further decrease the transfer of detainees who have local attorneys, family members, or ongoing removal proceedings.

As part of our continued effort to develop a better model for immigration detention, ICE has opened the Karnes County Civil Detention Center outside of San Antonio. The facility will house low risk detainees, many of them asylum seekers, in a less restrictive environment. The facility's design permits greater freedom of movement, including easy access to outside recreation, and has other features consistent with our detention of foreign principles. Karnes also costs ICE far less than the agency's average cost of detention. ICE plans to open additional new civil detention facilities in regions where they are most needed.

Thank you again for the opportunity to testify today, and for your continued support of ICE and its law enforcement mission. I would be pleased to answer any questions at this time.

[The prepared statement of Mr. Landy follows:]

U.S. Immigration and Customs Enforcement

STATEMENT
OF
KEVIN LANDY

ASSISTANT DIRECTOR
OFFICE OF DETENTION POLICY AND PLANNING
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING
"HOLIDAY ON ICE: THE U.S. DEPARTMENT OF HOMELAND SECURITY'S NEW IMMIGRATION DETENTION STANDARDS"

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

Wednesday, March 28, 2012
2141 Rayburn House Office Building

INTRODUCTION

Chairman Gallegly, Ranking Member Lofgren, and distinguished Members of the Subcommittee, on behalf of Secretary Napolitano and Director Morton, thank you for the opportunity to highlight the ongoing efforts of U.S. Immigration and Customs Enforcement (ICE) to reform our nation's immigration detention system.

REFORMING OUR NATION'S IMMIGRATION DETENTION SYSTEM

ICE is the principal investigative arm of the U.S. Department of Homeland Security (DHS) and the second largest investigative agency in the Federal Government. Created in 2003, through a merger of the U.S. Customs Service and the U.S. Immigration and Naturalization Service, ICE now has more than 20,000 employees in all 50 States and 47 foreign countries.

ICE identifies, apprehends, and removes criminal and other removable aliens from the United States and dismantles terrorist and criminal organizations that exploit our borders by: (1) preventing terrorism and enhancing security; (2) securing and managing our borders; and (3) enforcing and administering our immigration laws.

At ICE, Enforcement and Removal Operations (ERO) is the principal component for enforcing the nation's immigration laws in a fair and effective manner. ERO enforces the Nation's immigration laws by identifying and apprehending removable aliens, detaining these individuals when necessary, and removing them from the United States. To protect public safety and national security, ICE prioritizes the removal of criminal aliens, repeat immigration law violators, recent illegal entrants, and immigration fugitives.

The nation's immigration detention system has changed significantly in the last 15 years – growing from an average daily population of less than 7,500 detainees in Fiscal Year 1995 to over

33,000 in FY 2011. This growth has presented challenges for ICE, both in terms of ensuring the safety of the individuals in our custody and also in protecting local communities from those individuals who may present risks.

In August 2009, Director John Morton announced that ICE would begin reforming ICE's detention system. ICE made this effort a top priority for our agency. We envisioned an improved detention system that housed criminal and non-criminal aliens in different environments, in circumstances commensurate to their level of risk. We wanted to use fewer facilities, located closer to the location of apprehension, to reduce the number of people transferred away from their families, communities, and attorneys. We wanted to develop facilities more appropriate for the agency's detained population and to improve conditions at facilities. We wanted to be fiscally prudent by improving efficiency. Therefore, we have adopted the following principles to guide our reforms:

- ICE detains aliens in settings commensurate with the risk of flight and danger they present.
- ICE ensures detainees receive adequate medical and mental health care.
- ICE ensures that detention facilities receive necessary federal oversight.
- ICE prioritizes efficiency throughout the removal process in order to reduce detention costs, minimize the length of stays and ensure fair proceedings.
- ICE is fiscally prudent when carrying out detention reform.

The reforms have produced concrete changes. ICE has improved medical care, custodial conditions, oversight of the immigration detention system, and substantially reduced transfers. Our reforms have addressed many of the concerns raised about the immigration detention system, while also allowing ICE to operate essential detention facilities to complete its mission and achieve greater operational efficiency.

HIGHLIGHTS OF ACCOMPLISHMENTS

Establishment of an Office Dedicated to Reform and Outreach on Detention Issues

In August 2009, ICE established the Office of Detention Policy and Planning (ODPP) to help coordinate the agency's overall detention reform effort. ODPP develops these initiatives in close collaboration with ERO, other ICE components, and ICE field offices. ODPP meets on a regular basis with two advisory groups of local and national organizations interested in, and working towards, detention reform. These groups provide feedback and input to ICE, focusing on general policies and practices as well as detainee health care. In the course of our work we have seen a genuine commitment to detention reform at every level of the organization.

Launch of Online Detainee Locator System (ODLS)

In July 2010, ICE launched the Online Detainee Locator System (ODLS) (http://www.ice.gov/locator), a public, web-based tool designed to assist family members and attorneys in locating detained aliens in ICE custody. The ODLS is available in multiple languages, including English, Spanish, Portuguese, French, Arabic, Vietnamese, Chinese, Somali and Russian. Once an individual is located, the system provides users information about where the person is being held and additional information such as the address, phone number and visiting hours for the facility. More than 100,000 people use the ODLS each month. This allows family members and attorneys to access information on-line, and enables ICE employees to focus on carrying out the core mission of the agency.

Enhancement of Federal Detention Oversight and Accountability

In 2009, ICE created the Office of Detention Oversight (ODO) to conduct targeted inspections at detention facilities, where complaints or deficiencies have been reported. Housed within ICE's

Office of Professional Responsibility (OPR), ODO also conducts thorough investigations of all detainee deaths that occur while individuals are in ICE custody.

ICE also established the On-Site Detention Compliance Oversight Program within the Detention Management Division (DMD) of ERO. This program comprises a corps of more than 40 new federal detention site monitors who are based at large detention facilities to inspect and monitor their compliance with ICE detention standards, respond to and report any problems found, and work with local ICE field offices to address concerns. As of January 2012, the program covers 52 facilities representing approximately 84 percent of ICE's average daily population of detainees. ICE ensures compliance with standards at the remaining facilities through annual inspections and weekly visits by ICE staff. ICE is in the process of adding 18 more staff, which will reach approximately 90% of the detained population. The creation of these federal positions allowed ICE to end costly facility compliance monitoring visits and compliance reviews contracts, saving ICE more than $14 million in just one year. In addition, replacement of contractors with detention site monitors allowed for more immediate oversight, reporting and corrective action.

The on-site monitors provide ICE headquarters with a weekly report that documents problems identified within the facilities. In many cases, problems are remedied immediately. In other instances, DMD will implement a remedial plan. DMD also ensures corrective actions are taken to address deficiencies identified by: ODO, contract inspectors that conduct annual evaluations of facilities; and by other oversight entities such as the DHS Office of Civil Rights and Civil Liberties and the DHS Office of the Inspector General. Having on-site monitors also strengthens ICE's ability to ensure that plans to correct deficiencies are properly implemented and understood by facility operators.

In addition, ICE has created a Detention Monitoring Council, which is chaired by the Executive Associate Director of ERO, and whose membership includes the leadership of OPR, the ICE Office of the Principal Legal Advisor, the ICE Office of Acquisition Management, and ODPP. The Council meets regularly to review issues found by the agency's oversight entities and discuss policy

implications, including immediately after any detainee death or other critical incident. In cases where more serious problems have been identified, ICE leadership can determine whether ICE will discontinue using particular facilities or impose monetary sanctions. A key part of ICE detention reform efforts includes ensuring that the agency takes appropriate action with contractors when services do not meet contract requirements.

Finally, ICE has worked to centralize detention facility contracts under ICE headquarters supervision to ensure more uniform contracting processes. ICE has developed a new Intergovernmental Service Agreement template to standardize detention services contracts and to improve compliance with contract terms by clearly identifying sanctions associated with non-compliance. This also allows for a nationwide analysis of which contracts are in the agency's financial interest and those that are unfavorable from both an operational and financial perspective.

Reduction in Transfers

ICE has made great strides in reducing long distance transfers of detainees by increasing detention capacity where it is most needed. ICE used forecasting models that aligned detention capacity with arrest activity to determine the locations of new facilities. This makes it more likely that detainees will remain close to their families and attorneys. It also helps reduce disruptions to ongoing immigration proceedings that may lengthen an alien's detention. ICE has also determined that eliminating pre-final order transfers can also reduce an alien's length of stay in detention.

Reductions in transfers from one area of responsibility (AOR) to another are most evident in Los Angeles and the northeast. As of January 2012, transfers of detainees prior to their final orders of removal from the Los Angeles AOR had virtually ceased, and transfers from the New York City AOR had decreased by more than 80 percent from FY 2010.

Transfer Directive

The ICE Transfer Directive, signed by Director Morton on January 4, 2012, ensures that decisions regarding the long-distance transfer of detainees will be made only after careful consideration of the individual circumstances of each detainee. The Transfer Directive builds on the successful reduction of long-distance transfers, by ensuring that transfers are made only when necessary and prioritized appropriately. Under the Directive, unless a transfer is deemed necessary by a Field Office Director or his or her designee, ICE will not transfer a detainee to another AOR if:

- the detainee has immediate family within the AOR;
- the detainee has an attorney of record within the AOR;
- the detainee has pending or on-going removal proceedings; or
- the detainee has been granted bond or scheduled for a bond hearing.

The Transfer Directive also establishes procedures for filing a notice to appear (NTA) in immigration court. As a general matter, NTAs will be submitted to the relevant immigration court within five workdays of the NTA being served on the alien, or upon the alien entering ICE custody, whichever is later. This filing deadline will ensure that the venue of a detainee's proceedings is established quickly to expedite his or her case in the area where the alien was initially apprehended, if possible.

Development of Risk Classification Assessment

ICE has designed a new risk classification assessment tool (RCA) that will improve transparency and uniformity in detention custody and classification decisions while promoting the prioritization of detention resources. The RCA will be a component of the automated custody management system ICE officers use every time an individual is apprehended. It contains objective

criteria related to public safety, flight risk and other relevant factors, and a general scoring system to guide the decision-making of ICE officers and their supervisors regarding:

- whether an alien should be detained or released;
- if released, the alien's appropriate level of community supervision; and
- if detained, the alien's appropriate custody classification level.

The RCA incorporates factors that reflect the agency's civil enforcement priorities and criteria established in the prosecutorial discretion memoranda issued by ICE Director Morton. The RCA, for instance, helps ensure criminal aliens are prioritized for detention. It will also permit both supervisors in the field and ICE headquarters staff to monitor the entire decision making process in individual cases and on a system-wide basis. The agency continues to test a pilot of the RCA in paper form and plans to begin deployment of the RCA in electronic form in the summer of 2012.

Development of New Civil Detention Facilities

ICE is opening new civil detention facilities that, for the first time, incorporate civil detention principles and the needs and characteristics of ICE's diverse detainee population. Earlier this month, ICE opened the Karnes County Civil Detention Center (Karnes), outside of San Antonio. Karnes is the first facility designed and built from the ground up with ICE's civil detention reform standards in mind. The facility will house a minimum security population, such as asylum-seekers, those without criminal convictions, and other low-risk individuals. It was built uniquely to offer the least restrictive environment permissible to manage persons in administrative custody. Similar facilities, also restricted to minimum security detainees, have been opened in the Newark and Los Angeles AORs. Among other things, these new facilities offer:

- greater freedom of movement;
- contact visitation; and

- greater access to legal services.

ICE plans to continue opening similar new, dedicated civil facilities in regions where they are most needed, including in the Chicago and Miami AORs. ICE has consolidated the number of facilities from 340 to approximately 250, and discontinued the use of three high-cost ICE-owned Service Processing Centers in Aguadilla, Puerto Rico, Varick Street, New York City, and San Pedro, California. The closures of the Varick Street and Aguadilla facilities and the transformation of the T. Don Hutto Residential Center from a family residential facility into a female-only detention facility have saved and are projected to save ICE many millions of dollars. ICE's plans to further consolidate the detained population in new or improved facilities. These facilities are expected to be budget neutral, or in some cases, to result in operational efficiencies and cost savings, for instance, because the new facilities will be located closer to ICE Field Offices.

Development of Revised Detention Standards

ICE has recently promulgated the 2011 Performance-Based National Detention Standards. In developing the revised standards, ICE incorporated the input of many agency employees and stakeholders, including the perspective of Congress, nongovernmental organizations and ICE field offices. The ICE detention standards have been revised to better address the needs of ICE's unique detainee population. The standards:

- improve medical and mental health care services;
- reinforce protections against sexual abuse and assault;
- maximize access to counsel and legal resources;
- expand access to religious services and opportunities;
- improve communication assistance services for detainees with limited English proficiency or disabilities; and

- enhance procedures for reviewing and responding to detainee grievances.

ICE will implement these standards throughout 2012 on a rolling basis. Contract modifications are expected to be completed by April 15, 2012 at the six federally owned Service Processing Centers, to be followed within three months by implementation at all remaining dedicated detention facilities. ICE will also require adoption of the new standards in other facilities housing ICE detainees, such as county jails, beginning with those facilities that have the largest population of ICE detainees.

Medical Care

ICE has recently reformed the way medical services are authorized to improve timely access to treatment for detainees who have serious medical needs. In addition, the ICE Health Service Corps (IHSC) has designated regional Clinical Directors to provide medical oversight and Field Medical Coordinators have been assigned to field offices in each of the ICE AORs. These individuals will provide enhanced communication and reporting and expeditious and ongoing case management to monitor and track serious medical cases across the country.

IHSC has also begun a program of site visits to facilities housing ICE detainees to establish a stronger relationship with the health care providers there. These visits are being conducted by the IHSC Field Medical Coordinator responsible for that particular AOR. There are several activities during these site visits, which include:

- meeting the health care providers and introducing the IHSC Field Medical Coordinator program to establish stronger communications with the facility;
- surveying the facility's and the surrounding community's health care resources to learn more about the health systems capabilities available to the facility;
- assessing the facility's chronic health care load and needs; and
- initiating a quality of care audit program based on detention standards requirements.

Parole Policy

In January 2010, DHS revised ICE policy for granting parole to asylum seekers determined by DHS to have a credible fear of persecution. Prior policy required asylum seekers to initiate a request for parole in writing. As a result, asylum seekers who might have qualified for parole remained in detention during often lengthy litigation, at great expense to the federal government. The new policy mandates that all arriving aliens who are found by DHS to have a credible fear of persecution automatically be considered for parole. Such asylum seekers can be eligible for parole if they establish their identities, pose neither a flight risk nor a danger to the community, and have no additional factors weighing against their release.

CONCLUSION

In closing, I would like to thank ICE employees, the Congress, and our stakeholders who continue to provide significant collaboration and support in this important mission - reforming the immigration detention system.

Thank you again for the opportunity to testify today and for your continued support of ICE and its law enforcement mission.

I would be pleased to answer any questions at this time.

Mr. KING. Thank you, Mr. Landy.

And now recognize Ms. Vaughan for her testimony.

TESTIMONY OF JESSICA M. VAUGHAN, POLICY DIRECTOR, CENTER FOR IMMIGRATION STUDIES

Ms. VAUGHAN. Thank you for the opportunity to be here today.

Of course no one wants to see people mistreated in detention, but this initiative goes too far and is a waste of taxpayer dollars that is motivated not by a genuine need for reform, but as part of a larger strategy to trivialize immigration law enforcement, and minimize the consequences of illegal immigration, which imposes enormous fiscal, economic, national security, and public safety burdens on American communities.

It is just wrong to ask Americans to foot the bill for the Obama Administration programs that seek to help illegal aliens game the system. For example, as part of this detention reform initiative, DHS has set up hotlines and special advocates for illegal aliens to complain about their treatment. As in any large detention system, abuses occur and are dealt with, but at this point, the people who really need a hotline and a special advocate are the ones who have been the victims of the illegal acts committed by illegal aliens.

While critics of immigration law enforcement like to call them concentration camps, in reality immigration detention centers have always been softer than other detention centers. With their turf soccer fields, juice bars, satellite television, and polo shirt clad resident advisors, the descriptions of the brand new facility in Karnes City, Texas sound like more a college campus, not like a temporary holding place for people who have violated U.S. laws.

Now, I am not here to suggest that DHS start housing detainees in tents in the desert, but the new Karnes facility cost $32 million to build. That is more than twice as expensive per bed as another new facility that was built not too long ago in Farmville, Virginia. It is reasonable to ask why the new facility, built according to the new standards, cost so much more, and how this compares to other options, such as housing detainees at local correction centers.

How can DHS justify these facilities and services considering that the vast majority of detainees are there only for a short period of time? The average length of stay for a so-called non-criminal of Mexico or Central America is 10 to 21 days, just long enough for travel documents to be issued and flights to be arranged. And a large share of these ICE detainees, Mexicans who are apprehended by the Border Patrol, stay only 12 hours.

ICE turns over groups of 100 of these illegal aliens twice a day. The only reason that they are in detention at all is for the purpose of padding ICE's year end removal statistics.

For others, mainly in the interior, the centers are really just a brief way station in the Obama Administration's massive catch and release program. Under current policies, also known as prosecutorial discretion, if they are not a mandatory detainee and have not yet been convicted of a crime, they are whisked back onto the street, often with a work permit.

Many of the small number who remain for long periods are there because they are refusing the option of quick return and choosing to challenge their deportation or seek relief. Unfortunately, too

often they are given false hope by advocacy groups who, under the new standards, get increased access to detainees. The humane thing to do is to process them more expeditiously so that they can get back home.

An increasing number who choose to stay in detention in the hopes of getting permission to stay are illegal arrivals who are taking advantage of the Administration's new lenient policies that reward people who express fear of return to their home country. They are usually assisted in this claim by NGO advocates who put on regular briefings in detention centers as called for in the new standards.

After the application process, they are released with a work permit and notice to appear at some future date. These applications have increased 500 percent since the new policies were adopted.

Advocates for illegal aliens are quick to point out that a large share of the individuals in detention are classified as non-criminals. This is not because they are harmless; it is usually because local authorities often will drop charges against illegal aliens in the expectation that ICE will take care of their problem by detaining and removing them. So, this population of so-called non-criminals in reality includes any number of unsavory and dangerous characters.

Convicted or not, ICE still has the responsibility to remove them. Putting them in a center with standards that are too soft may put detention officers, resident advisors, and other detainees at risk, and releasing them back into our communities puts everyone at risk.

The majority of aliens who are not detained while in proceedings will fail to appear for their hearings or will ignore orders to depart. And the number of absconders is now more than 700,000, which is a 28 percent increase over 2008. A huge number of them abscond from local criminal proceedings, too.

One recent case illustrates what happens when ICE looks for ways to release rather than detain people who have been arrested. Last September, they released a man in Chicago who was charged with 42 counts of child molestation, including incest and rape. He was supposedly being monitored electronically, but like many thousands before him, he has not been seen since. There are thousands of other cases that we can point to that are similar to this, but for now since my time has expired, I will await your questions.

[The prepared statement of Ms. Vaughan follows:]

Holiday on ICE:
The U.S. Department of Homeland Security's New Immigration Detention Standards

U.S. House of Representatives Judiciary Committee
Subcommittee on Immigration Policy and Enforcement
Washington, DC

March 28, 2012

Statement of Jessica M. Vaughan
Director of Policy Studies
Center for Immigration Studies

Chairman Gallegly, Ranking Member Lofgren, and other committee members, thank you for the opportunity to be here today to discuss ICE's new Performance Based Detention Standards. While no reasonable person would be against the humane treatment of detainees, this Obama Administration initiative goes too far and puts the interests of removable aliens ahead of the national interest. The initiative undercuts immigration laws passed by Congress by eliminating reasonable deterrents to illegal entry. It is a waste of taxpayer dollars that is motivated not by a genuine need for reform, but as part of a larger strategy to trivialize immigration law enforcement and minimize the consequences of illegal immigration, which imposes enormous fiscal, economic, national security and public safety burdens on American communities.

Instead of softening immigration detention standards and helping illegal aliens game the system, the Department of Homeland Security should be expanding ICE detention capacity in order to keep more lawbreakers off the street until they are removed, and to deter others from remaining. A better way to help immigration detainees would be to reduce the amount of time they spend in detention by making more use of the tools Congress has provided to process removable aliens more expeditiously. DHS should not be helping illegal aliens prolong their stay; they should be devoting more effort to helping the people who were victims of their crimes and illegal actions.

New Standards Pamper Immigration Detainees. Descriptions of the brand-new ICE detention facility in Karnes City, Texas evoke images of college campuses where parents pay room and board of $10,000 or more a year, not facilities that temporarily hold people who have violated U.S. laws. "Behind tall walls, the grassy compound offers inmates a salad bar, a library with Internet access, cable TV, and indoor gym with basketball courts, and soccer fields. Instead of guards, unarmed 'resident advisors' patrol the grounds in polo shirts and khakis," reported the *Los Angeles Times*.[1]

Reads another:

> "Airport-style chairs line the waiting area instead of cold, hard prison benches. Small, locking rooms with large glass windows line the walls. Glass appears like a motif, as do framed prints of paintings, like those by Georgia O'Keefe. The spacious dining hall, its linoleum floors marked by colorful pinwheels, summon memories of wood parquet, or the shiny halls of suburban mega-schools. The theme shifts to summer camp with two large interior courtyards housing volleyball and basketball courts, along with an AstroTurf soccer field. The quad dorm areas are named after

[1] Brian Bennett, "New prison for detained immigrants features salad bar, unarmed guards," *Los Angeles Times*, March 18, 2012.

trees – Cedar Hall, Oak Hall, merging the summery and more autumnal thoughts of school. A private college, perhaps."[2]

Even before these standards were issued, ICE detention centers were already softer than those at other federal and local facilities. "ICE is a country club compared to anything else," one career federal detention manager told me, with centers equipped with the most modern recreational amenities. One of ICE's existing larger centers has a huge artificial turf soccer field; volleyball and basketball courts; new kitchens and dining areas – complete with juice and soda bars and unlimited refills; flat screen TVs in the housing units, with personal headphones so each detainee can watch their choice of English or Spanish satellite TV in peace; movie nights; potted flowers; and a vegetable and herb garden.

In addition, the standards dictate very generous and flexible visitation policies for detainees' friends and family (including contact visits) and freedom of movement within the facility. Another explicit goal is to improve detainees' access to lawyers and other advocates who seek to help them contest their charges and fight to remain here longer.

New Facilities Costly. Naturally, none of this comes cheaply. The 608-bed Karnes facility cost the private operator, GEO Group, $32 million to build. This works out to $52,632 per bed. ICE is expected to pay GEO Group about $15 million a year to run the center.

A 1,040-bed facility was built just a couple of years ago in Farmville, Virginia by a group of private investors for $21 million, or $20,192 per bed, which is less than half the cost per bed of the Karnes center.

ICE must balance its obligation to house immigration detainees humanely with its responsibility to perform its mission efficiently and cost-effectively. Before giving DHS a blank check for detention facility projects, Congress should ask the agency leaders to explain the fiscal impact of the new standards, why the new center is so much more expensive than similar recent projects, and how this center compares in cost to alternatives such as IGSA agreements and leasing space at local corrections centers.

Most ICE Detainees are Short-timers. It is important to evaluate this initiative in the context of the overall ICE/ERO caseload. The vast majority of those eligible for detention in one of these centers represent less than half of ICE's removal caseload, and typically are not held in ICE detention for long periods of time. According to ICE field office supervisors, the average length of stay in detention for a "non-criminal" citizen of Mexico or Central America is 10 to 21 days. They are held just long enough for travel documents to be issued and flights to be arranged. These cases make up 87% of the ICE "non-criminal" removal cases.

A large share of "non-criminal" detainees, namely Mexicans apprehended near the border, stay less than one day in detention. These are individuals who are apprehended by the Border Patrol and bused north to an ICE detention center for quick processing and return to Mexico. Their stay in detention is about 12 hours. ICE detention centers in the southwest border areas handle groups of 100 of these illegal entrants twice a day. They are processed as Voluntary Returns, which means they face no penalties or repercussions, are not barred from future legal admission, and cannot be prosecuted as a repeat violator if they try to enter illegally again. The only reason this group is in detention at all is for the purpose of padding ICE's year-end removal statistics. These quick turn-backs numbered about 75,000 last year, or nearly 20 percent of ICE's total reported removals.

---

[2] Scott Andrews, "What design elements at Karnes facility tell us about the state of immigrant detention," *San Antonio Current*, March 21, 2012.

Return to Catch and Release. For a large number of detainees, these fancy civil detention centers are really just a brief way station in a massive catch and release program. Far too many illegal aliens who are apprehended and whom ICE euphemistically refers to as "non-criminals" (because in most cases they were discovered as a result of being booked into jail for local non-immigration crimes) are quickly whisked back on to the street, usually with a work permit.

This is because under current Obama administration policies, ICE removal officers and trial attorneys have been instructed to focus their efforts nearly exclusively on those individuals who have been convicted of crimes, while enabling those who are identified but not yet convicted remain at large. Some are released on bonds, some on electronic monitoring or other forms of supervision, and some on their own recognizance. In effect, ICE is largely conditioning the exercise of its authority to the disposition of these cases at the local level. According to ICE guidelines, which have been outlined in a well-publicized series of announcements and policy memos, unless an illegal alien is a repeat offender, they should be allowed to remain at large, no matter the seriousness of their charges, and regardless of the likelihood that they will actually appear in court to face either their criminal or their immigration charges. Officers are instructed to be especially lenient if the illegal alien offender has been here long enough to acquire a U.S. citizen spouse or child, or other ties to the community.

With a few exceptions, the small number who remain in ICE detention facilities for long periods are there because they continue to challenge their deportation. And they often do so because they are given false hope by open-borders advocacy groups intent on using such people as pawns in a political effort to hamper enforcement of American immigration laws. The humane thing to do would be to make clear to these illegal aliens that immigration to the United States is a false dream for them and help them return home and get on with their lives. Instead, they languish in detention – a needed detention, given the virtual certainty that they would ignore a negative decision on their cases if set free– but languish nonetheless.

In addition, according to ICE managers, an increasing number of individuals are taking advantage of the administration's new lenient policies on asylum seekers that went into effect in January, 2010. Illegal aliens apprehended by immigration officers, whether at the border or at the port of entry, who find themselves in detention are offered the opportunity to express their fear of return to their home country. According to ICE detention center supervisors, often this fear is articulated shortly after the alien has attended the biweekly "know your rights" presentations that have recently become a fixture in ICE detention centers – and that are a key component of the new detention standards we are discussing today. The most commonly expressed fears are of domestic violence or gang or drug cartels. According to ICE statistics, the asylum officers who evaluate these cases find the fear to meet the new standards of "credible" in about 80 percent of the cases. Aliens then receive a Notice to Appear before an immigration judge, which makes them eligible for release from detention, even if they have been deported before. They are awarded parole status, which makes them eligible for a work permit. This process, from claim of fear to release on parole can be completed in about 30 days. It is no wonder that the number of "credible fear" applications went up nearly 500 percent from 2009 to 2010. The number of grants of parole in these cases went up from 71 percent in 2009 to 80 percent in 2011.

"Non-Criminals" Not Necessarily Harmless. Advocates for illegal aliens are quick to point out that, despite the Obama administration's claimed focus on the removal of aliens who are a threat to public safety, a large share of the individuals in immigration detention are classified as "non-criminals." The reality is that a large share of the so-called "non-criminals" selected for removal processing have in fact been involved in criminal activity, sometimes violent, and their placement in these new "soft" detention centers could place detention officers, resident advisors, and other detainees at risk. The decisions to release of many of these individuals, rather than remove them, can possibly put everyone at risk.

The detained aliens who are labeled "criminals" are those who have been convicted of a crime. The "non-criminal" category includes a large number of unsavory characters who may or may not have been prosecuted for their activities, including alien smugglers, gang members, drug dealers, drug users, drug mules, sexual predators, identity thieves, petty criminals, drunk drivers, prostitutes and pimps. Some may have a criminal history in their home country that is unknown to agencies here. Some are serial traffic offenders who have been a menace on the roadways. Those local law enforcement agencies that are able to keep track report that anywhere between 10 and 50 percent of the illegal aliens who are booked into their jails were arrested for drunk driving, often multiple times.

There can be a variety of reasons why these non-citizen miscreants lack a criminal conviction. Many drunk driving and traffic offenses are thrown out by local courts or end up in continuance for technical reasons. Some criminals get off because their victims are afraid to testify; this is especially true in domestic violence or gang cases. But the most common reason some alien offenders are not convicted of crimes is because local prosecutors or investigators are prone to drop charges when they become aware that ICE has issued a detainer and the offender is potentially removable. It is common for these agencies to use ICE and the opportunity of immigration charges as a substitute for local charges as a pressure valve to relieve their crowded local dockets, saving everyone the time and effort required to follow through with the prosecution of what they may see as relatively minor offenders who should not be present in the community anyway.

Convicted or not, ICE still has the responsibility to remove individuals who are here in violation of our laws; especially those who have been troublesome. Nothing in immigration law provides for violators to avoid enforcement and be allowed to stay here simply because they have not been convicted of another crime.

One case out of Chicago illustrates the absurd and irresponsible lengths to which ICE now goes to avoid holding aliens in custody and to rationalize the use of "prosecutorial discretion." Amado Espinoza-Ramirez was arrested in August, 2011 by Chicago police and charged with multiple sex offenses, including incestuous child rape. He was ultimately charged with 42 counts of child molestation. Two days after Espinoza was arrested, ICE properly issued a detainer, so when a "friend" appeared with $10,000 to bail him out, ICE was able to keep him in custody. But the next day, ICE turned around and let him go. According to agency statements, Espinoza was released with an electronic monitoring bracelet because he had "no prior criminal convictions, no prior immigration violations, and is the parent of a U.S. citizen child" (no mention of whether that child was also a victim). Not surprisingly, Espinoza has not appeared for any of his hearings. ICE has issued a statement saying that because Espinoza did not appear for his immigration hearing in November, he is now a priority for enforcement and will be held in custody if anyone ever finds him.[3] .

While the circumstances of the Espinoza case may be unusually serious, it is not an isolated case. In recent years, ICE has made increasing use of electronic monitoring, supervision, and bonds as alternatives to detention. The results are not encouraging. Newspapers periodically report on offenders who had been in ICE custody recently and were released only to re-offend. According to data I have reviewed from the Secure Communities program, about nine percent of the aliens identified through this screening, which occurs at the time of an arrest, are found to be already in removal proceedings – meaning that they were caught once, released to await a hearing, and got arrested again. As of one year ago, this was more than 40,000 aliens across the country who had re-offended while waiting to be ordered removed. That's a lot of unnecessary victims. Other reports are beginning to surface suggesting that a large share of individuals released on ICE bonds also have absconded.

---

[3] Michael Volpe, "ICE admits releasing alleged child rapist," *The Daily Caller*, March 21, 2012, http://dailycaller.com/2012/03/21/ice-admits-releasing-alleged-child-rapist/.

The Alternative to Detention Is Fugitives and Absconders. It is worth re-stating that the main point of immigration detention is not to keep criminal aliens off the street (even though that is a real benefit), but to enable the enforcement of immigration laws. The only way to ensure that illegal aliens actually appear before an immigration court (for the sub-set of removable aliens who are actually entitled to that form of due process) is to physically compel them to do so through detention. While it can be worth experimenting with various alternatives to detention, in the real world their likelihood of success is limited. Pilot programs to assess the viability of alternatives to detention often either include people who would not have been detained anyway (i.e., cream-skimming or cherry-picking those most likely to yield the "right" result) or fudge the statistics to make the results appear more favorable, or both. For instance, a *Houston Chronicle* investigation two years ago found that nearly one in five suspected illegal immigrants who went through an experimental ICE intensive monitoring program absconded while under supervision.

Experience and studies have shown that illegal aliens who are not detained, especially those who are facing criminal charges, often will flee from proceedings in order to avoid prosecution and removal. One recent study published by my organization found that nearly 60 percent of aliens who are not detained while in proceedings will fail to appear for their hearings or will ignore orders to depart.[4] Some of these individuals, such as illegal alien Saul Chavez, a repeat drunk driving felon who killed a pedestrian named Dennis McCann in Chicago last year[5], also flee from local criminal proceedings, leaving in their wake victims and families of victims who are unable to obtain the closure they deserve through the justice system.

Absconders are a huge problem in our immigration system. In 2010, there were 715,000 aliens present here who had failed to appear in immigration court or who had disobeyed orders to depart. This is a 28 percent increase over 2008. Today there are more than one million unexecuted orders of removal, and the number has increased more than 84 percent since 2002.[6] It is no wonder that the size of the illegal population has stopped shrinking in the last two years.[7]

Despite this record, the Obama administration is trying to move away from using detention centers, even the softer ones we have been discussing, in favor of alternatives such as electronic monitoring and other forms of supervision. The administration has asked Congress in its recent budget request for the flexibility to shift funds from detention beds, which are specified by Congress and which must be used by DHS, to these less effective alternatives.

Given this abysmal record of enforcement, Congress would surely come to regret awarding such flexibility to DHS under this administration. Instead, Congress should preserve the requirement that all the funded space be used for that purpose, and increase the number of funded detention beds to a level that enables ICE to meet its needs and the expectation of lawmakers and the public. DHS should be expected to use the most cost-effective options possible, including IGSA agreements with local sheriffs

---

[4] Mark H. Metcalf, *Built to Fail: Deception and Disorder in America's Immigration Courts*, Center for Immigration Studies, May 2011, http://www.cis.org/Immigration-Courts.

[5] Jessica Vaughan, "Cook County Pressured to Reverse Sanctuary Policy," Center for Immigration Studies Blog, January 6, 2012, http://cis.org/vaughan/cook-county-pressured-to-reverse-sanctuary-policy and "The Alternative to Immigration Detention: Fugitives," October 18, 2011, http://cis.org/vaughan/alternative-to-detention-fugitives.

[6] Metcalf, op.cit.

[7] Steven Camarota, "New DHS Estimates Confirm That the Illegal Immigrant Population Stopped Declining Under Obama," Center for Immigration Studies, March 26, 2012, http://www.cis.org/camarota/new-dhs-estimates-confirm-illegal-immigrant-population-stopped-declining-under-obama.

and private contractors, to manage its detainee population within reasonable detention standards. In addition, Congress should provide additional funding for contract transportation or transportation agreements with local law enforcement agencies. Some local jurisdictions have devised creative low-cost ways to transport detainees, and ICE should be directed to explore and pilot more such options where feasible.

Most importantly, rather than looking for ways to avoid removing illegal aliens, DHS should be exploring ways to streamline the removal process so that their time in detention is reduced. Specifically, DHS agencies should be expanding use of expedited and stipulated removal. Our review of a sample of cases from ICE's Secure Communities and Criminal Alien Program suggests that in a number of cases, ICE officers are choosing more drawn-out proceedings rather than taking advantage of these tools that can benefit both aliens and the government.

Detention Standards Include Advocate for Detainees, No Help for Victims. Another curious aspect of the Obama administration's efforts on behalf of immigration law violators is the establishment of a complaint hot line and new official advocate within the ICE bureaucracy.[8] Meanwhile, those who are the victims of this unlawful activity have no one in these agencies to speak to for for them. Congress should direct ICE to establish a Victim's Advocacy Unit to address the concerns of those who are victims of crimes and other damaging actions committed by removable aliens. Currently these victims and their families have no voice within the DHS bureaucracy, no avenue to get their questions answered, and no way to help ensure that immigration law enforcement failures that have tragic consequences are not repeated. In fact, ICE appears to have no interest whatsoever in meeting and discussing their cases with surviving family members, much less providing basic information on how they were handled. The Victims Advocacy Unit would provide a point of contact for those directly affected by alien crime and be empowered to investigate incidents and trends with the goal of identifying system breakdowns and correcting policy or procedural gaps. In addition, the unit staff would work with established local and national victims organizations on issues of common concern.

Respectfully submitted by,

Jessica M. Vaughan
Director of Policy Studies
Center for Immigration Studies
Washington, DC
jmv@cis.org

[8] Andrew Lorenzen-Strait, "ICE Announces First Ever Public Advocate," http://blog.dhs.gov/2012/02/ice-announces-first-ever-public.html.

Mr. KING. Thank you, Ms. Vaughan.

I would recognize Mr. Crane.

TESTIMONY OF CHRIS CRANE, PRESIDENT, NATIONAL ICE COUNCIL

Mr. CRANE. Good afternoon, Vice Chairman Gallegly—I am sorry, Vice Chairman King, and Members of the Committee.

Executive Order 13522 in part states, "Federal employees and their union representatives are an essential source of front line ideas and information." It goes on to say that union involvement services improve the productivity and effectiveness of the Federal Government, and that management should discuss workplace changes, challenges, and problems with labor, and endeavor to develop solutions jointly. The order was signed by President Obama on December 9th, 2009.

Ironically, the very next day, December 10th, 2009, I gave testimony regarding ICE's proposed detention reforms and detention privatization, stating emphatically that as a union and as Federal law enforcement officers, we should be involved in the predecisional development of ICE detention standards, emphasizing the President's point that front line employees have valuable knowledge and experience that can make our government function more effectively.

Appropriate 2 and a half years after my 2009 testimony, ICE's new detention standards were implemented. There was never any union involvement. DHS and ICE excluded its own officers.

Safety concerns are at the top of our list, safety for both officers and detainees. At ICE, some detention facilities now prohibit officers from carrying handcuffs. Some facilities prohibit officers from wearing uniforms, allegedly because detainees find uniforms offensive. Detainees wear street clothes and are free to wander throughout the facility, and even enter officer work spaces.

Last night, an officer working in a low security facility reported that all officers and guards at his facility, inside and outside, are unarmed. There are no armed personnel at all providing security at the detention facility. He stated that there are no fire detectors inside detainee housing units leading the facility failing two fire inspections. Yet ICE headquarters directed that detainees be housed in the facility anyway, a dangerous gamble at best.

Approximately 1 year ago, ICE leadership divulged the assaults against officers and escape attempts were up significantly, doubling numbers from the previous year. While data supporting these claims is not available to the union, we had already observed an apparent increase in the number of assaults and escape attempts.

Efforts by the union to discuss stronger safety precautions for ICE officers has been met with strong opposition by ICE. This as the Administration efforts to apprehend the worst of the worst led to the obvious: detainee populations that are increasingly more dangerous and criminal in nature.

New ICE detention standards provide no criminal background screening of visitors, as is standard practice at agencies like the U.S. Bureau of Prisons. Without screenings, ICE will permit individuals who pose a security threat to enter detention facilities, threatening the safety of both detainees and officers.

New ICE detention standards continue to establish pat down searches as the standard security search of detainees prior to admission or reentry into an ICE detention facility, not strip searches, creating an increased risk that weapons, drugs, and other contraband will enter ICE facilities.

New ICE detention standards also establish prohibitions on strip searches of detainees following full contact visitation with members of the public. New ICE detention permit detainees to observe as officers search detainee housing and work areas, allowing detainees to monitor and learn officer search techniques better enabling detainees to conceal dangerous contraband inside the facilities.

New ICE standards allow for detention officers to perform medical and mental health screenings of detainees to include screenings for emergent medical conditions, suicide risk, and controlled substance dependency. If interpreted correctly, new standards prevent detainees with serious medical concerns from seeing qualified medical staff for 36 hours or more, recklessly assigning important medical duties to officers instead of medical professionals.

In conclusion, as a union and as Federal law enforcement officers, we do not oppose public outreach as part of policy development, but we do point out that such approaches are unbalanced and ineffective when law enforcement officers who perform the duties involved are prohibited from providing input as well. We believe that new detention standards proposed by ICE are at times unsafe, unsafe for detainees and unsafe for employees. Good intentions do make for sound security, and do not create a safe detention setting.

If the Administration is concerned with providing a safe detention setting for detainees and safe working conditions for employees, it will begin to work with the union toward achieving those goals.

This concludes my testimony. Thank you, sir.

[The prepared statement of Mr. Crane follows:]

Statement by Chris Crane, President,

National Immigration and Customs Enforcement Council 118

of the

American Federation of Government Employees

Before the

Judiciary Subcommittee on Immigration and Policy Enforcement

March 28, 2012

Good afternoon,

On December 10, 2009, I testified before the Subcommittee on Border, Maritime and Global Counterterrorism, House Homeland Security Committee regarding ICE Detention Reforms. Among other things, I testified that the lack of oversight of ICE contract employees presented perhaps the most significant risk to detainee welfare; I testified that ICE detainee populations were becoming increasingly criminal and violent in nature, and that while DHS Secretary Janet Napolitano and ICE Director John Morton brought in over a hundred "stakeholders" consisting primarily of immigrants advocacy groups to provide input on the new ICE detention standards, both DHS and ICE excluded ICE officers, agents and field managers from having input in creating the new ICE detention standards.

It was with great appreciation that the union accepted the 2009 invitation from Representative Loretta Sanchez to testify before Congress. Subcommittee staff shared union concerns that the so called ICE detention reforms provided no real increase in oversight of ICE detention centers, the most significant change needed to provide for the proper welfare of ICE detainees. In large part, ICE detention centers already had sufficient standards that were in keeping with national detention guidelines established by nationally recognized accreditation associations. Problems in ICE detention facilities arose when those guidelines were not followed, a byproduct of mismanagement and inadequate oversight by ICE. In our opinion, without proper management and oversight of contractors to ensure standards are followed, new standards do not equate to improvement.

Regarding union involvement in the new detention reforms since the 2009 hearing, there was none. Janet Napolitano and John Morton actively sought for over three years to exclude their own employees from any and all participation or input in the new detention reforms; the most anti-union and anti-federal law enforcement campaign we have witnessed. As employees, we were shocked and embarrassed by the actions of both individuals. On October 15, 2010, ICE Director John Morton signed an agreement regarding the new detention standards sent to AFGE National President John Gage agreeing that ICE would engage the union in interest based bargaining, a type of bargaining that lends itself to an open discussion of issues. When the agency and union met to bargain, ICE Director Morton and his staff broke the agreement and refused to bargain with the union. Members of the Federal Mediation and Conciliation Service, as well as the Federal Service Impasses Panel were called upon. Both informed ICE leadership that they must bargain with the union. ICE utilized stalling tactics to prevent bargaining of the new detention standards during the two week negotiation session.

Now that ICE had successfully avoided bargaining with the union during the first negotiation session, John Morton and his staff notified the union that the policy was to be dropped altogether. We suspect that this was done in an attempt to permanently nullify the original agreement Director Morton signed with AFGE President John Gage to bargain with the union. The tactic was simple, if the new detention standards policy was taken off the table completely,

Morton's agreement with the union to utilize interest based bargaining would die with it. Keeping in step with that strategy, Director Morton later reinstated the new detention standards policy under a new notice to the union, but this time refused to utilize interested based bargaining as previously agreed to. By breaking the original agreement with the union and refusing to engage in interest based bargaining, Director Morton knowingly decreased the union's ability to provide input by approximately 95%. But it did not end there.

In October 2011, after approximately three years of mismanaged efforts to change ICE detention standards, a project that should have taken no more than a year, John Morton and his staff notified the union that the new detention standards policy had to be bargained by January 1, 2012. The union scrambled to meet the timelines, submitting an incomplete list of 224 proposed changes. ICE accepted the proposals but when the parties met to negotiate the new detention standards ICE determined that it wanted to bargain a different policy instead. In good faith, the union agreed to bargain a different policy with a commitment from John Morton and his staff that the new detention standards would be bargained on another date. On January 20, 2012, ICE notified the union that all of its proposals, which had previously been accepted by ICE and scheduled by ICE for bargaining in November 2011, were now determined unilaterally by ICE to be non-negotiable with no discussions with the union or a third party, so the new detention standards were implemented by ICE Director John Morton immediately with no union involvement.

Important to note, had the union refused to bargain a different policy in November 2011 and insisted that the detention standards be bargained, the union would have secured many of its bargaining rights. Instead, when ICE asked for our assistance in completing a different policy it needed to implement, the union obliged and completed the policy in short order. DHS Secretary Janet Napolitano and ICE Director John Morton repaid the favor by breaking yet another agreement and deceptively excluding the union from bargaining the new detention standards altogether, stripping the union and federal law enforcement officers of their part in this process as American citizens. The three year exclusion of the union in the creation of new ICE detention standards cannot be justified and flies in the face of the Presidential Executive Order 13522, signed by President Barack Obama which states in part, "*allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106.*"

ICE has now notified the union that it will not even engage the union in post implementation bargaining of the new standards for the purpose of developing adequate training programs for officers and ensuring appropriate officer safety protocols are in place. It is apparent that those representing the safety, health and wellbeing of federal officers and their families will not be heard by this Administration.

Detainee Populations

In 2009, ICE announced its goal of having a nationwide detainee population consisting of at least 85% to 90% convicted criminals within 12 months. Currently, while not every ICE detainee is a convicted criminal, ICE has moved toward a "conviction only" model and stressed publicly its desire to arrest the "worst of the worst." Clearly, any efforts that increase targeting of the most violent criminals will result in a more violent, aggressive and overall dangerous detainee population in ICE facilities nationwide. ICE officers around the nation believe that is exactly what is happening.

As officers, we are concerned that as detainee populations become more criminal in nature and violence by detainees appears to be on the rise, security protocols within ICE facilities appear to be weakening. While the purpose of ICE detention may not be punitive in nature, one cannot ignore the dangers associated with holding large numbers of criminals against their will pending removal. For that reason, the Administration should be working with the union to increase security and safety protocols in conjunction with new changes to ICE detention standards and detainee populations - but the Administration is not. It is the union's opinion, that if left unchecked, the Administration's actions will defeat many of its own stated goals by creating a more dangerous detention system resulting in injury to ICE detainees, ICE officers and contract employees.

Assaults against officers

Approximately one year ago ICE leadership divulged to union representatives that assaults against officers and escape attempts were up significantly, doubling numbers from the previous year. While data supporting these claims is not available to employees or the union, the union had already observed what appeared to be a steep increase in both violence and aggression by detainees against officers as well as escape attempts.

A push by the Administration to change detention standards and create a more criminal detainee population has been accompanied by no measures to increase safety for ICE officers and contractors. In fact, the trend has been to knowingly make conditions more dangerous in the face of valid concerns voiced. Attempts by the union to discuss stronger safety precautions for ICE officers and agents have been met with strong opposition by ICE. ICE and DHS appear to have a singular concern for working with immigrant's advocacy groups, and no concern for working with unionized federal law enforcement officers, as shown by the DHS/ICE exclusion of union involvement in detention reforms.

ICE currently has no national reporting system accessible to employees for reporting detainee assaults against officers, and no national training exists to guide officers on reporting assaults. It is hard to imagine that such an inexpensive measure so fundamental to the safety of employees is

not already in place. As a result, many assaults go unreported as officers are not provided guidance on reporting assaults, and managers may unilaterally determine not to report assaults through the chain of command for varying reasons, such as when mismanagement or low staffing are contributing factors. Perhaps most importantly, trends or "lessons learned" are not identified, tracked or shared nationally that could prevent future assaults or allow individual officers or the agency as a whole to better prepare. The gathering, sharing and utilization of this type of internal intelligence is critical to officer safety and practiced by almost every legitimate law enforcement agency in the nation, except ICE. Our concerns for officer and detainee safety should be the Administration's concerns; it is troubling that they are not.

No Criminal Background Screenings of Visitors

New ICE detention standards provide no criminal background screening of visitors before they enter an ICE detention facility. Background screenings of visitors are standard practice at most detention facilities throughout the nation, to include those run by the U.S. Bureau of Prisons. Without appropriate screening, ICE will unknowingly permit convicted felons, wanted fugitives, and other individuals who pose a security threat to the facility, or a safety threat to employees and detainees, to enter ICE facilities. Conducting background checks of visitors is a long held and proven law enforcement security practice established by other agencies in their facilities to establish safety, security and good order. To ignore these protocols blatantly and negligently places the lives of ICE detainees and ICE employees at risk and compromises the overall security of ICE facilities, which often hold large numbers of violent and aggressive criminal detainees who pose a significant threat to communities if able to escape. Some of course may also have terrorist ties, as may their unscreened visitors.

In discussions with ICE leadership, ICE stated that it was concerned that aliens attempting to enter ICE facilities would be identified as being in the U.S. illegally during background screenings and would therefore be subject to arrest or otherwise unable to enter the facility. ICE was more concerned with preserving the ability of foreign nationals illegally in the U.S. to enter ICE facilities than the safety of its own officers and the general security of ICE detention facilities and communities nationwide.

It is my understanding that all facilities and camps utilized by the U.S. Bureau of Prisons (BOP) require, among other things, that each person entering a BOP facility first pass a criminal background screening. We ask that members of Congress support us in instituting similar security protocols in ICE detention facilities.

ICE Prohibition on Strip Searches

A "pat down search," is a technique developed primarily for law enforcement officers making arrests on the street enabling the detection of weapons and other dangerous items and providing for immediate and short term officer safety until a more thorough search can be conducted in a secure and private location. Pat down searches may also be utilized in some facilities during the

initial intake process in semi-public areas, but consistently are followed by strip searches in a private location before the individual enters the facility's detainee/prisoner population. While for the most part effective in detecting most weapons, pat down searches do not detect all weapons and can be highly ineffective in detecting all manner of miscellaneous contraband such as controlled substances. Throughout law enforcement, strip searches of those admitted to detention facilities, jails and prisons is standard practice and is considered essential in preserving life and safety.

While assaults against ICE officers appear to be increasing and the Administration pushes ICE to detain the most violent and dangerous criminals citing a goal of 100% convicted criminal populations, new ICE detention standards establish the highly ineffective pat down searches as the standard search for ICE detainees prior to their admission to an ICE facility, not strip searches, creating the opportunity for unprecedented levels of smuggled weapons and drugs to enter ICE facilities placing the lives and safety of ICE officers, contractors and detainees at greater risk than ever before.

ICE officers and contract staff are prohibited from conducting strip searches of detainees entering ICE facilities unless the officer can meet and articulate the law enforcement standard of "reasonable suspicion." Reasonable suspicion was not intended to and cannot effectively be applied to individuals smuggling small items into a detention setting on their bodies, under clothing, that is not visible and cannot be felt by touch. Reasonable suspicion when applied to the smuggling of well concealed contraband into ICE facilities will generally require an allegation or admission by a detainee that a specific detainee is smuggling contraband. Otherwise the presence of contraband must be so obvious that it is visibly detected or easily felt during pat down searches. In discussing reasonable suspicion, the new ICE detention standards state, "*No simple, exact or mathematical formula for reasonable suspicion exists*," clearly identifying it as an impractical and ambiguous standard to meet. Security protocols protect lives and cannot rely on concepts that are impossible to qualify.

Even with strict requirements at most state and federal facilities that officers conduct thorough pat down searches of prisoners prior to entering a detention facility, strip searches routinely result in the detection of weapons, drugs and other contraband missed by officers during thorough pat down searches.

Important to note, new ICE detention standards also establish limited prohibitions on strip searches following full contact visitation with the public, to include attorneys, legal assistants, consular officers or "accredited representatives," automatically assuming that any of these groups are less prone to smuggle contraband simply based on their positions as detainee representatives. As just one example, a recent article in the USA TODAY titled, *"Strippers pose as legal aides at detention center,"* reports that strippers hired by drug lords posed as legal assistants and were able to enter a maximum security federal detention center. Once inside, the

imposters committed various improper acts and allegedly smuggled money and pornography to detainees.

It is the union's opinion that new prohibitions on strip searches ignore sound and proven detention practices utilized nationwide and we ask members of Congress to support us in changing this standard. In order to preserve life and safety inside ICE detention centers for detainees and officers, strip searches following full contract visitation or upon initial admission or reentering a detention facility must be the nationwide standard in ICE detention facilities as it is in other organizations such as the U.S. Bureau of Prisons. Strip searches are not a punitive action in any organization, but instead a proven safety and security technique. As ICE detainee populations become increasing more dangerous, forcing ICE employees to adhere to a separate and hazardous standard is at best unethical and inappropriate.

ICE Detainees May Observe Searches

New ICE detention standards allow for detainees to observe ICE officers and contractors as they search detainee housing and work areas as well as when officers search personal items contained within those areas.

Generally, searches are conducted by one officer searching housing units that contain more than one detainee. Officers cannot safely search and inspect housing and work areas and monitor detainees at the same time, even if only one detainee is present. Most importantly, however, when detainees observe officer searches they are also able to monitor and learn officer search techniques allowing them to better conceal contraband such as weapons and controlled substances within the facility.

Medical, Dental, Mental Health, Substance Abuse and Suicide Screenings for Detainees to be performed by ICE officers

New ICE detention standards allow for "detention officers" to perform initial medical, dental and mental health screenings of detainees to be conducted within 12 hours of arrival. This will include detention officers questioning and observing new detainees with regard to emergent medical conditions, mental illness and propensity for suicide, as well as reliance on and potential for withdrawal from mind and mood altering substances. Detainees responding in the affirmative to any of these conditions will see a qualified, licensed health provider no later than two working days from the time of the initial screening. Of course medical attention within two working days is solely dependent on "detention officers" properly recognizing and reporting suspected conditions.

If interpreted correctly, new ICE detention standards prevent detainees with potentially serious mental, medical or dental issues from seeing qualified medical staff for 36 hours or more after being placed in detention. Most concerning, under the new ICE detention standards ICE officers

and agents will now perform medical screenings and evaluations regarding matters of life and death typically reserved for highly trained medical professionals.

This standard, as with others is blatantly negligent and places ICE detainees at risk. It is the union's position that the only responsible approach is that these types of duties be performed by medical professionals.

Conclusion

As a union and as federal law enforcement officers we do not oppose public outreach as a part of policy development, but we do point out that such approaches are unbalanced and ineffective when law enforcement officers who perform the duties and are familiar with current practices, facilities and equipment involved are prohibited from providing input as well. New detention standards proposed by ICE are unsafe; unsafe for detainees and unsafe for employees. Good intentions do not make for sound security and do not create a safe detention setting. In addition to many parts of the new standards being unsafe, the policy is littered with ambiguous statements and titles that require clarification so that officers and managers in the field can successfully implement and follow the new guidelines and clearly understand the different roles of contractors, managers, officers and agents. As ICE is consistently criticized for not following its own policies, training programs for ICE officers will be critical to ensuring policies are understood and adhered to in the field. For years ICE leadership has refused to provide adequate training for officers, a far reaching problem that the union is attempting to rectify. Without union involvement, training for the new detention standards will amount to nothing more than "checking a box" resulting in officers not being familiar with new standards and therefore not following them.

If the Administration is only concerned with implementing a policy for political purposes it will move forward with the new detention standards as is. If the Administration is concerned with providing a safe detention setting for detainees and safe working conditions for employees it will work with the union in achieving those goals.

This concludes my testimony; I welcome any questions that you may have.

Mr. KING. Thank you, Mr. Crane.
And I would now recognize Ms. Brané.

TESTIMONY OF MICHELLE BRANÉ, DIRECTOR, DETENTION AND ASYLUM PROGRAM, WOMEN'S REFUGEE COMMISSION

Ms. BRANÉ. Good afternoon. Thank you for this opportunity to testify about this matter, which profoundly affects the lives of hundreds of thousands of——

Ms. LOFGREN. Could you pull your microphone a little bit closer so we can hear?

Ms. BRANÉ. The Women's Refugee Commission identified as GAPS, researches solutions and advocates for change to improve the lives of crisis affected women and children. For nearly 2 decades, we have visited immigration detention facilities throughout the United States and spoken to detention center staff, local service providers, and to detainees about policies, practices, conditions of detention, and access to protection.

There is no question that conditions of immigration detention in the United States have been inadequate, inhumane, and unsafe. These conditions have been in violation of the U.S. Constitution and our obligations under international law and treaties, exposing detainees to harm and leaving the Department of Homeland Security and its employees vulnerable to litigation.

The purpose and authority of ICE detention is to hold, process, and prepare individuals for removal. It is not to punish or rehabilitate. Despite this distinction, ICE uses a penal incarceration system. Regardless of whether it is inconvenient, the agency has a duty to provide basic services and care to those it detains. Anything less is unlawful.

The detention reforms we are discussing today are a response to the public outcry and litigation over conditions of confinement. Abuses and inhumane conditions have been well documented by NGOs, the media, and government oversight agencies. The 2009 report by former DHS special advisor, Dr. Dora Schriro, concluded that significant reforms were necessary.

The violations led ICE to launch a much needed reform effort, including the updating of the 2008 standards. Despite years of development, the 2011 standards are only slightly better. They do, however, articulate stronger guarantees to appropriate and necessary medical/mental health and women's health care, and protections against sexual assault for immigration detainees.

Let us be clear. These standards for confinement are no hospitality guide.

In my numerous visits to detention facilities, I have encountered a litany of shortcomings, abuses, and tragic consequences. As evidenced by over 120 documented deaths in immigration custody since 2003, this lack of medical care is not a frivolous matter to be cast aside as insignificant. The case of Mr. Boubacar Bah's death, previously articulated by Representative Lofgren, is a case in point.

The current medical standards for women also fall well below those in our Federal prison system. Women have been denied medically necessary treatment and prenatal care that have resulted in serious consequences, including untreated cancer and miscarriages. Even basic needs, such as sanitary napkins, have been inconsistently available.

Sexual assaults occur during intake, during detention, and even during transport and removal. Frontline recently highlighted sexual assaults at the Willacy Facility in Texas. In 2009, a guard forced a woman at the Willacy Detention Facility into a bathroom and raped her. He threatened to make things worse for her if she reported the assault. He was not sentenced until 2 years later when he pled guilty in August of 2011.

The 2011 standards include basic provisions for treatment that are consistent with, not more generous, than what is available in the Federal prison system and by law. These include appropriate guidelines for the provisions of medical care, including access to prenatal care and gynecological services, limits on the use of shackles for pregnant women, and provisions to prevent and respond to sexual assault, including a requirement that victims be provided emergency and medical health services.

To imply that these very basic protections are a holiday or an undue burden on the agency is simply wrong. The new provisions bring ICE detention standards closer to a minimum level of compliance with legal obligations of a civil detention system. They will realign priorities so that people like Mr. Bah and victims of sexual assault receive basic needed medical care and protection from abusive practices. They also provide clear guidelines and protection for agency and facility staff.

Instituting reforms to improve the operation and oversight of detention operations should be welcomed. Revising existing detention standards is not only necessary for the safety of detainees, it is a significant opportunity for ICE to create a more efficient and effective system of enforcement.

This concludes my testimony, and I am happy to take questions at this time.

[The prepared statement of Ms. Brané follows:]

COMMITTEE ON THE JUDICIARY: SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT
"Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards."

Written Testimony of Michelle Brané
Director, Detention and Asylum Program
Women's Refugee Commission

Washington, DC
March 26, 2012

Good afternoon. Thank you for this opportunity to testify about this extremely important matter, which profoundly affects the lives of hundreds of thousands of people.

The Women's Refugee Commission identifies gaps, researches solutions and advocates for change to improve the lives of crisis-affected women and children.. In particular, the Detention and Asylum Program focuses on the detention of migrants and access to due process and human rights protections within the United States. For nearly two decades we have visited immigration detention facilities throughout the United States and internationally, and spoken to detention center staff, local service providers and to detainees about policies, practices, conditions of detention, and access to protection. There is no question that conditions of immigration detention in the United States have been grossly inadequate, inhumane, and unsafe. These conditions have been in violation of the U.S. Constitution and our obligations under international law and treaties, exposing detainees to harm and leaving the Department of Homeland Security and its employees vulnerable to litigation.

ICE operates the largest detention and supervised release program in the country. In FY 2010, the agency detained approximately 363,000 individuals, not including those enrolled in supervisory programs.[1] On an average day in FY 2011, ICE had in its custody over 33,300 individuals.[2] Many will be detained for months or even years. It is critical to understand the difference between the administrative purpose of ICE detention and the punitive purpose of the criminal incarceration system. The purpose and authority of ICE detention is to hold, process, and prepare individuals for removal. It is not to punish or rehabilitate. Despite this distinction, ICE relies primarily on a correctional incarceration system. Aside from a few exceptions,

[1] "Annual Report: Immigration Enforcement Actions: 2010." Department of Homeland Security Office of Immigration Statistics. June 2011. http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf
[2] "Fact Sheet: Detention Management." Immigration and Customs Enforcement. November 10, 2011. http://www.ice.gov/news/library/factsheets/detention-mgmt.htm

detainees are confined in facilities that were built and operate as jails and prisons intended for pre-trial and sentenced felons. This system both imposes more restrictions and provides fewer protections than are necessary or appropriate for this distinct population. Immigration detainees have very different needs and security requirements from those of populations awaiting criminal proceedings or serving criminal sentencing.[3]

ICE has no criminal detention authority, but pursuant to the Immigration and Nationality Act ICE has administrative authority to detain aliens during the removal process.[4] Regardless of the purpose of detention, the agency has a duty to provide basic services and care to those in its custody.

Immigration detainees include pregnant women, families, the sick, the elderly, legal permanent residents, torture survivors, and victims of human trafficking. In addition, U.S. citizens are increasingly being detained as immigrants, leading to the need for a hotline to address the problem.[5] Due to the civil nature of the system, immigration detainees are not entitled to a court-appointed lawyer and 84% do not have an attorney.[6]

The detention reforms we are discussing today are a response to the public outcry and litigation over conditions of confinement for the hundreds of thousands of individuals who are detained by ICE each year that were — and continue to be — inappropriate, inefficient, and unsafe. In addition to inadequate standards, the system lacks an effective oversight mechanism. ICE's jailors violate current minimum standards of confinement frequently and often with impunity. Abuses and inhumane conditions have been well documented not just by NGOs such as the Women's Refugee Commission,[7] but also by investigative reports including the New York

---

[3] Despite all too common references to the criminality of immigrants in immigration proceedings, detainees in immigration custody are being held on administrative, civil infractions and are not serving criminal sentences. ICE does not have authority to detain aliens for criminal violations. The authority to detain on criminal charges lies with the Department of Justice, subject to review of the federal courts. For example, while many aliens who enter illegally have committed a misdemeanor criminal offense in violation of 8 U.S.C. 1325, it is the Department of Justice, not ICE that has the authority to detain aliens for that criminal violation while criminal proceedings are pending. Dr. Dora Schriro, *Immigration Detention Overview and Recommendations,* Department of Homeland Security, Immigration and Customs Enforcement, Oct. 6, 2009, *available at* http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf

[4] Immigration proceedings are civil proceedings and immigration detention is not punishment. *Zadvydas v. Davis*, 533 U.S. 678, 609 (2001).

[5] Julia Preston, *Immigration Crackdown also Snares Americans*, New York Times, December 13, 2011, available at: http://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html?pagewanted=all; http://www.ice.gov/detention-reform/toll-free-hotline/

[6] S. Lewis and Paromita Shah, "Detaining America's Immigrants: Is this the Best Solution?," *Detention Watch Network*.

[7] Women's Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, October 2010, available at: http://www.womensrefugeecommission.org/resources/doc_download/656-migrant-women-and-children-at-risk-in-custody-in-arizona; Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration detention, Human Rights watch, March 2009

Times,[8] the Washington Post,[9] and government agency reports such as the Government Accounting Office and the DHS Office of the Inspector General.[10] A report by then-DHS Special Advisor Dr. Dora Schriro, issued after an extensive internal review of the system, concluded that significant reforms were necessary.[11]

As a result, ICE announced in 2009 the beginning of a reform effort. Reforms included reviewing and updating the 2008 Performance Based National Detention Standards (PBNDS) to address the many concerns and shortcomings outlined in Dr. Schriro's report, the media and by advocates.[12] On February 27, 2012, ICE released the updated 2011 PBNDS. These long-anticipated standards were a welcome step that, when implemented, will afford thousands of immigrants in immigration detention slightly more appropriate environments. Perhaps most importantly, the 2011 PBNDS articulate stronger guarantees to appropriate and necessary medical, mental health, women's health care, and protections against sexual assault for immigration detainees. But let's be clear, they are not a "hospitality guide." Rather, they set the minimum standards necessary to prevent abuse, neglect, injury, or death. Moreover, these standards, despite years of development, are only slightly better than the 2008 version. Concerns remain that these new standards are insufficient to hold accountable the hundreds of facilities under ICE contract, many of which are still operating under insufficient standards that date back to 2000.

Conditions of Detention

In my numerous visits to detention facilities across the country I have encountered reports of sexual assault, insufficient medical care, lack of access to telephones, frequent and disruptive transfers, limited access to legal services, severely limited recreation and visitation, and restricted access to family courts that has led to the permanent loss of parental rights. Prohibition of contact visits among family members is common and was found to be "unnecessary and cruel" by the Police Assessment Resource Center in October 2009.[13] Telephone access in immigration detention is plagued by broken equipment, confusing and complicated instructions,

---

[8] for example: Nina Bernstein, *Ill and in Pain Detainee Dies in U.S. Hands*, New York Times, August 12, 2008 available at: http://www.nytimes.com/2008/08/13/nyregion/13detain.html?pagewanted=all

[9] Dana Priest and Amy Goldstein, *Careless Detention*, Washington Post, May 11-14, 2008, *available at* http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html

[10] Department of Homeland Security, Office of Inspector General, *Immigration and Customs Enforcement: Detention Bedspace Management*, OIG-09-52, April 2009, *available at* http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_09-52_Apr09.pdf; *Immigrations and Custom Enforcement Policies and Procedures Related to Detainee Transfers*, DHS Office of Inspector General, OIG-10-13, Nov. 2009, *available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-13_Nov09.pdf*

[11] Dr. Dora Schriro, *Immigration Detention Overview and Recommendations*, Department of Homeland Security, Immigration and Customs Enforcement, Oct. 6, 2009, *available at* http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf

[12] See ICE Press Releases at http://www.ice.gov/pi/nr/0910/091020boston.htm and http://www.ice.gov/pi/nr/0911/091123philadelphia2.htm

[13] Police Assessment Resource Center, *The Los Angeles County Sheriff's Department 28th Semiannual Report*, Oct. 2009, at 41, *available at* http://www.parc.info/client_files/LASD/28th%20Semiannual%20Report.pdf

steep service rates, and limited hours of operation. The use of remote facilities and the overuse of transfers severely curtail detainees' access to legal services and family, and impede their ability to challenge their detention and deportation. Advocates in Minnesota reported in 2009 that it takes attorneys an average of six days to make initial contact with their clients in immigration detention.[14] The DHS Inspector General documented the harsh and disruptive consequences of frequent and haphazard transfers in their 2009 report.[15]

Overwhelmingly, what strikes most people after meeting with detainees is the daily humiliation and lack of contact with the outside world. Most ICE facilities have open showers and toilets with no shower curtains, doors or partitions. Even the provision of shower curtains that begin at the waist have been welcomed by detainees as a significant improvement. In addition, when detention lasts for extensive periods, recreation is not a luxury but a fundamental human right. Many ICE facilities provide at most one hour of recreation in an enclosed area with no exposure to natural light. Lack of exposure to natural light and air for extended periods of time can also lead to medical issues, skin conditions, and mental health issues.

The litany of shortcomings, abuses, and tragic consequences are too numerous to address here in their entirety. I will concentrate on a few areas that have been of particular concern to the Women's Refugee Commission and which are addressed, at least in part, in the new 2011 PBNDS.

Medical Care

Medical care is a critical concern in immigration detention. The denial of adequate medical care to immigration detainees is well documented.[16] Reports are based on hundreds of interviews with detainees, direct observations, and conversations with jail and immigration officials over the past decade. Deficiencies include difficulty accessing medical records; delayed or denied care; shortage of qualified staff; unsanitary facilities; improper care of mentally ill patients; inadequate care of physically disabled patients; denial of and inattention to administration of prescription

---

[14] Jacob Chin, Katherine Fennely, Kathleen Moccio, Charles Miles, Jose D. Pacas, *Attorneys' Perspectives on the Rights of Detained Immigrants in Minnesota,* Nov. 2009, *available at* http://lawprofessors.typepad.com/files/final-cura-article-11-10-09.pdf

[15] Department of Homeland Security, Office of Inspector General, *Immigration and Customs Enforcement's Tracking and Transfers of Detainees*, OIG-09-41, March 2009, *available at* http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_09-41_Mar09.pdf

[16] Women's Refugee Commission, Politicized Neglect: A Report from Etowah County Detention Center, March 2012, available at: http://www.womensrefugeecommission.org/resources/doc_download/809-politicized-neglect-a-report-from-etowah-county-detention-center , Women's Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, October 2010. Available at: http://www.womensrefugeecommission.org/resources/doc_download/656-migrant-women-and-children-at-risk-in-custody-in-arizona; Women's Refugee Commission and Lutheran Immigration and Refugee Service, *Locking Up Family Values: The Detention of Immigration Families*, February 2007, available at: http://www.womensrefugeecommission.org/resources/doc_download/150-locking-up-family-values-the-detention-of-immigrant-families; letter to ICE regarding our visit to Willacy, Women's Refugee Commission and Dr. Susan MacNamara, April 6, 2010, Available on file from the WRC; Human Rights Watch, *Detained and Ignored*

medication; lack of translation; abusive behavior by some clinic staff; and threats of transfer in retaliation for complaints.

As evidenced by the over 120 documented deaths in immigration custody since 2003, this lack of medical care is not a frivolous matter to be cast aside as insignificant.[17] Prior to the implementation of reforms, not only were detainees dying in immigration custody due to lack of even basic medical care, these deaths were routinely not recorded or reported until brought to light through outside inquiry from family or advocates.[18]

Mr. Boubacar Bah: The case of Mr. Bah, documented by Nina Bernstein in the New York Times, demonstrates the extreme negligence and inhumane treatment that has happened under the immigration detention system we are talking about reforming. Mr. Bah died after emergency surgery for a skull fracture and multiple brain hemorrhages. "Government documents detail how he was treated by guards and government employees: shackled and pinned to the floor of the medical unit as he moaned and vomited, then left in a disciplinary cell for more than 13 hours, despite repeated notations that he was unresponsive and intermittently foaming at the mouth."[19]

> *"It began about 8 a.m., ... Guards called a medical emergency after a detainee saw Mr. Bah collapse near a toilet, hitting the back of his head on the floor.*
> *When he regained consciousness, Mr. Bah was taken to the medical unit ... He became incoherent and agitated, reports said, pulling away from the doctor and grabbing at the unit staff. Physicians consulted later by* The Times *called this a textbook symptom of intracranial bleeding, but apparently no one recognized that at the time.*
> *He was handcuffed and placed in leg restraints on the floor with medical approval, "to prevent injury," a guard reported. "While on the floor the detainee began to yell in a foreign language and turn from side to side," the guard wrote, and the medical staff deemed that "the screaming and resisting is behavior problems."*
>
> *Mr. Bah was ordered to calm down. Instead, he kept crying out, then "began to regurgitate on the floor of medical," the report said. So Mr. Bah was written up for disobeying orders. And with the approval of a physician assistant, Michael Chuley, who wrote that Mr. Bah's fall was unwitnessed and "questionable," the tailor was taken in shackles to a solitary confinement cell with instructions that he be monitored.*

---

[17] Eric Tucker, *Chinese Detainee's Widow Wants Government Kept in Lawsuit,* Boston Globe, Nov. 12, 2009, *available at:* http://www.boston.com/news/local/rhode_island/articles/2009/11/12/chinese_detainees_widow_wants_government_kept_in_lawsuit/; Nick Miroff, *ICE Facility Detainee's Death Stirs Questions,* Washington Post, Jan. 30, 2009, *available at* http://www.washingtonpost.com/wp-dyn/content/story/2009/01/31/ST2009013101877.html; Nina Bernstein, *U.S. Agency Issues Scathing Report on Death of Immigrant in its Custody,* New York Times, Jan. 16, 2009, *available at* http://www.nytimes.com/2009/01/16/world/americas/16ilnt-detain.1.19422767.html

[18] *Id.*

[19] Nina Bernstein, "Few Details on Immigrants Who Died in Custody", New York Times, May 5, 2008.

Under detention protocols, an officer videotaped Mr. Bah as he lay vomiting in the medical unit, but the camera's battery failed, guards wrote, when they tried to tape his trip to cell No. 7.

Inside the cell, a supervisor removed Mr. Bah's restraints. He was unresponsive to questions asked by the Public Health Service officer on duty, a report said, adding: "The detainee sat up in his bed and moan and he fell to his left side and hit his head on the bed rail."

.....The watching began. As guards checked hourly, Mr. Bah appeared to be asleep on the concrete floor, snoring. But he could not be roused to eat lunch or dinner, and at 7:10 p.m., "he began to breathe heavily and started foaming slightly at the mouth," a guard wrote. "I notified medical at this time."
However, the nurse on duty rejected the guard's request to come check, ...at 8 p.m., when the warden went to the medical unit to describe Mr. Bah's condition, the nurse, Raymund Dela Pena, was not alarmed. "Detainee is likely exhibiting the same behavior as earlier in the day," he wrote, adding that Mr. Bah would get a mental health exam in the morning.

About 10:30 p.m., more than 14 hours after Mr. Bah's fall, the same nurse, on rounds, recognized the gravity of his condition: "unresponsive on the floor incontinent with foamy brown vomitus noted around mouth." Smelling salts were tried. Mr. Bah was carried back to the medical unit on a stretcher.
Just before 11, someone at the jail called 911.

When an ambulance left Mr. Bah at the hospital, brain scans showed he had a fractured skull and hemorrhages at all sides of his swelling brain. He was rushed to surgery, and the detention center was informed of the findings.

But in a report to their supervisors the next day, immigration officials at the center described Mr. Bah's ailment as "brain aneurysms" — a diagnosis they corrected a week later to "hemorrhages," without mentioning the skull fracture. After Mr. Bah's death, they wrote that his hospitalization was "subsequent to a fall in the shower.""[20]

Reforms:
ICE medical policies for detainees have been generally limited to treating emergencies that are "threatening to life, limb, hearing or sight."[21] This has led to countless cases in which needed

[20] Nina Bernstein, "Few Details on Immigrants Who Died in Custody", New York Times, May 5, 2008.
[21] Division of Immigration Health Services, *DIHS Medical Dental Detainee Covered Services Package*, Sept. 19, 2007.

medical services are denied because life-threatening consequences are not considered imminent. When questioned about this policy, an ICE spokesperson explained, "We are in the deportation business. . . . Obviously, our goal is to remove individuals ordered to be removed from our country. . . . We address their health care issues to make sure they are medically able to travel and medically able to return to their country."[22] Experts in penal detention systems have clearly articulated that this standard would be unquestionably unacceptable even in the Bureau of Prisons system.

The 2011 PBNDS eliminate some of these restrictions and allow on-site medical personnel to provide basic care to detainees without bureaucratic pre-approval from Washington, D.C. Medical providers will now have greater authority to provide medically necessary treatment. This is more in line with medical service provision for incarcerated populations and ensures not only improved services, but a more cost effective and efficient system for everyone involved. This is the very minimum of what experts have recommended and is consistent with rules that apply to the incarcerated population.

Women's Medical Standards

Women comprise approximately 10% of the population detained by ICE. Current standards—the 2008 PBNDS and the National Detention Standards—for women's needs fall well below those in our federal prison system. Routine women's medical needs, such as gynecological, reproductive, and obstetric health needs, including routine age- and gender-appropriate reproductive system evaluations, pelvic and breast examinations, Pap smear and STI tests, and mammograms, are considered non-emergency and are very difficult or impossible to obtain even where medically and urgently necessary. Pregnant women are routinely denied appropriate pre-natal care, or are released in unsafe conditions, late in their pregnancy, late at night, in remote areas. They are routinely shackled during their pregnancy, and even on occasion during labor and recovery.

Ectopic Pregnancy:

On December 18, 2003, a woman at the Broward Transitional Center (BTC) in Broward County, Florida, requested assistance from the medical staff for symptoms of severe abdominal pain and a missed period. Although she had the classic symptoms of an ectopic pregnancy, a painful and potentially fatal condition, her concerns were ignored. On several occasions, she was simply given Tylenol and told her pain was normal. When she began to bleed profusely, the medical staff still did not take her complaints seriously. Two and a half weeks later, when she was finally seen by a doctor, she was immediately taken to a hospital for surgery, resulting in both the loss of her unborn child and the removal of her fallopian tube.[23]

---

[22] Caitlin Webber, *ICE Officials' Testimony on Detainee Medical Care Called into Question*, Congressional Quarterly, June 16, 2008.

[23] FIAC and the Women's Commission for Refugee Women and Children wrote DHS to request an investigation into this case and another case involving a pregnant woman at BTC. An investigation was conducted, but FIAC was advised that the results could not be forwarded.

I was told that this was not uncommon. Also that several other women missed their period for two or three months due to stress and not to worry about it. At that visit, I was given about 20 packets of Ibuprofen for the pain. ...By January 1, 2004 the pain was getting much worse... I was in too much pain. After being told again that this was due to stress I was given Tylenol and Ibuprofen and asked to go back to bed. When I went to bed the pain was so bad that I was moaning and the officers came. They went downstairs to get a nurse but no one is in the clinic at night. The officers thought it might be a stomach problem so they gave me antacid and soda...When I woke up there was blood everywhere. I was bleeding heavily. The officers wrote the request for me to go to the clinic that morning, on January 2, 2004.

I was given more Tylenol and Ibuprofen and asked to go back to bed again. I insisted that it was not normal for me not to get my period and was finally given a pregnancy test. The test revealed that I was pregnant... But the pain continued to get worse and I kept bleeding. On January 3, 2004, I went to the clinic again... They kept giving me more Tylenol and Ibuprofen and sending me back to bed. ... On January 4, 2004 the pain was severe. My roommate... helped me get to the clinic. They [clinic employees] wanted to send me back to my room again but my roommate said no. She told them how much I was suffering and said she would not take me back to my room in that condition.

Finally, they brought me back to a room with a table in the clinic and told me to lie down on the table. A male doctor was there. I was in so much pain I was screaming. All he did was touch my stomach and then he said they had to take me to the emergency room immediately. They took me out in a wheelchair. I was taken to the Broward Medical Center and was told by the Doctor there that it was too late and they needed to operate because I had an infection. He said it was an ectopic pregnancy.
I had surgery on January 5, 2004. I was told afterwards that one of my tubes had to be removed. I was devastated by the news because not only had I lost the baby but also because now it would be much more difficult for me to have a baby....I spent three days at the hospital and all the time that I was there, even though there was a phone in my room, the guard that stayed with me did not allow me to use the phone to contact my relatives and let them know what had happened... I was not able to get any special visit with my family either.... I will never be able to forget all that I went through since I've been here.[24]

Miscarriage:
Another female detainee who miscarried while in immigration custody at the Turner Gilbert Knight (TGK) facility in Florida described her failed efforts to get medical attention:

---

[24] Statement of Haitian woman at the Broward Transitional Center (February 4, 2004). See also letter from Kerline Phelizor (April 27, 2003).

"When I was brought to this jail facility I was placed in the intake holding cell. The room I was locked in for hours had feces smeared on the walls and floor. I thought well maybe it was just that room, however, I was moved to another one and that too had feces smeared on the walls and the rooms where absolutely filthy disgusting.... I was six weeks pregnant when I came into this place.

I have been so distraught about the physical conditions and cleanliness of this place. On 7/12/04 I put in a written request to see the facility psychiatrist as I felt these above conditions were not viable to my pregnancy. I wanted to document the stress this facility is causing me. My written request went ignored and on 7/15/04 I miscarried. I was taken to Jackson Memorial Hospital in shackles and handcuffs. I sat in the waiting room amongst other pregnant women who wore looks of concern sitting next to what looked like a criminal. I was wearing bright orange jail uniform and in shackles and handcuffs with two guards at all times. I waited for three hours at which point I started to visibly hemorrhage and only at this point did the medical staff attend to me. I was supposed to go back to the hospital for a follow up, however I was not going back through that humiliation and violation of my human rights unless my life depended on it. To date my request to see the facility psychiatrist has still gone ignored and I have been unable to tell anyone of the upset and emotional stress I have gone through losing my child in a place like this. This jail is not set up to handle real medical emergencies."[25]

ICE's detention reform efforts have included much-needed improvements to the provision on medical care to detainees. The 2011 PBNDS provide clear and concrete guidelines to protect detainees, detention officials, and the agency from the dangers all were subject to prior to the development of these standards. These are not extreme services but the most basic medical services called for in responsible medicine. They include basic provisions for care that must be made available where medically advised and are consistent with, not more generous than, what is available in the federal prison system and by law. These include appropriate access to pre-natal care and gynecological services. The new standards institute sensible restrictions on the use of shackles on women during childbirth, and provide instructions for how to use them in the rare cases where they are considered necessary.[26] These guidelines are long overdue.

---

[25] Letter from detainee to FIAC, July 28, 2004.

[26] *See* Villegas v. Metropolitan Government of Davidson County, 2011 WL 1601480, *24 (M.D. TN 2011) (holding that the "shackling of a pregnant detainee in the final stages of labor shortly before birth and during the post-partum recovery violates the Eighth Amendment's standard of contemporary decency"); *see also* Nelson v. Correctional Medical Services, 583 F.3d 522, 533 (8th Cir. 2009) (denying summary judgment for officer because shackling pregnant prisoner during labor clearly established as a violation of the Eighth Amendment); Women Prisoners of D.C. v. District of Columbia, 93 F.3d 910, 918, 936 (D.C. Cir. 1996) (recognizing that correctional authorities cannot use "restraints on any woman in labor, during delivery, or in recovery immediately after delivery" and noting prison did not challenge district court's finding that "use of physical restraints on pregnant women . . . violate[s] the Eighth Amendment"); Brawley v. State of Washington, 712 F.Supp.2d 1208, 1221 (W.D. Wash 2010) (denying summary judgment because shackling a prisoner in labor clearly established as a violation of the Eighth Amendment).

Sexual Assault

Sexual assaults in custody are a major concern of the Women's Refugee Commission.[27] They occur during intake, during detention, and even during transport and removal. While immigration detention authorities have for decades insisted that sexual assaults are not common and are adequately addressed, evidence continues to indicate otherwise.[28]

Sexual assault in detention:

In 2000, the Women's Refugee Commission issued a report documenting widespread sexual, physical and emotional abuse of detainees held at the Krome Service Processing Center in Miami.[29] Over 15 officers were involved in sexual assaults varying from rape to fondling. The ensuing scandal led to the transfer of all women out of the Krome facility, but little or nothing was done to correct the systemic issues that led to the situation.

In 2009, an officer pled guilty to entering the rooms of women being held in isolation at the Port Isabel detention facility in Texas, and ordering them to strip so that he could fondle them. [30] On Aug. 4, 2011, a guard pleaded guilty to forcing a female immigration detainee at the Willacy detention center in Texas into a guard bathroom and having intercourse with her. Although the detainee immediately complained, internal e-mails show that officials did not put the guard on leave until eight months later.[31]

Sexual assault during transport:

Sexual assault during transport to and from appointments, during transfer, or even release has been well documented. The Women's Refugee Commission and Americans for Immigrant Justice[32] have made repeated requests to ICE to implement policies to prevent the risk of sexual assault during transport. In 2003, an ICE agent was charged criminally with raping a female detainee prior to returning her to the facility after her medical appointment.[33] In 2007, another ICE agent was charged with raping a female detainee during transport from one facility to

---

[27] Women's Commission for Refugee Women and Children, "Innocents in Jail: INS Moves Refugee Women From Krome To Turner Guilford Knight Correctional Center, Miami," June 2001 (follow-up Report to "Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center," October 2000.

[28] Human Rights Watch, *Detained and At Risk*, August 2010, available at: www.hrw.org/sites/default/files/reports/us0810webwcover.pdf

[29] Women's Commission for Refugee Women and Children, *Behind Closed Doors: Abuse of Refugee Women at the Krome Detention Center*, Oct. 2000, *at* http://womensrefugeecommission.org/press-room/557-sexual-abuse-widespread-at-krome-detention-center-miami-refugee-women-and-immigrants-subjected-to-

[30] Mary Flood, *Ex-Prison Guard Admits to Fondling Immigrant Women*, Houston Chronicle, Sept. 24, 2009, *available at* http://www.chron.com/news/houston-texas/article/Ex-prison-guard-admits-to-fondling-immigrant-women-1722996.php

[31] http://www.justice.gov/opa/pr/2011/August/11-crt-1016.html

[32] Formerly Florida Immigrant Advocacy Center

[33] *Immigration Officer Accused Of Raping Detainee*, KHBS, Sept. 24, 2003, *at* http://spr.igc.org/en/news/2003/0924-3.html.

another.[34] He later pled guilty to federal sexual battery charges in order to avoid a charge of aggravated sexual assault.[35] Last fall, the American Civil Liberties Union filed a class action lawsuit against ICE alleging that one of its contract guards sexually assaulted at least nine female detainees during transportation from the Hutto Detention Center in Texas. State and federal criminal charges also have been filed.[36]

2011 PBNDS:

On our visits to detention facilities over the past 15 years we have consistently heard conflicting understandings of the governing policy regarding reporting and response to sexual assaults, what constitutes a sexual assault – with some facilities informing us that sexual assault requires penetration and that only confirmed penetration cases are reported to ICE - and varying procedures to avoid or prevent assault. The Women's Refugee Commission has long advocated for the full implementation of Prison Rape Elimination Act (PREA) standards in DHS facilities. The PREA standards are the result of bipartisan concern over the prevalence of prison rape in confinement. Representatives Frank Wolf (R-Va.) and Bobby Scott (D-Va.) wrote DHS Secretary Janet Napolitano in December of 2011, urging her to support the new PREA regulations and stating that the law's original intent was to include immigrant detainees under the statute's protections.

While the 2011 Standards do not go far enough to fully implement PREA, they are a step in the right direction toward preventing and responding to rape in custody. The new 2011 Standards provide many but not all of the provisions set forth in PREA.[37] The 2011 PBNDS provide for numerous protections and response mechanisms, including special consideration for factors that could lead to victimization and assault, a written policy of zero tolerance for all forms of sexual assault, a coordinated, multidisciplinary team approach to responding to sexual abuse, written procedures for internal administrative investigations, and a requirement that victims shall be provided emergency medical and mental health services and ongoing care.

The new standards also incorporate recommendations for basic protections against assault during transport by prohibiting that a individual officer transport an individual detainee of the opposite gender, and also provide restrictions and guidelines for performing strip searches.

To imply that these very basic protections are a "holiday" or an undue burden on the agency is simply wrong. They are basic standards of decency that provide what should be the minimum

---

[34] Jay Weaver, *Ex-ICE agent: I had sex with immigration detainee*, Miami Herald, Apr. 4, 2008, *at* http://detentionwatchnetwork.org/node/808.

[35] Id.

[36] Doe v. Neveleff, No. 1:11-cv-907 (E.D. Tex., Oct. 19, 2011); Julia Flip, *Sexual Abuse Continues in Immigration Jails*, Courthouse News service, October 24, 2011, available at: http://www.courthousenews.com/2011/10/24/40857.htm

[37] Lovisa Stannow, *When Good is Not Good Enough*, Huffington Post, March 6, 2012, available at: http://justdetention.org/en/jdinews/2012/03_06_12.aspx

response to any assault or rape. To refer to these critical protections and guidelines for enforcing rule of law as "perks" is absurd. In fact, the 2011 PBNDS do not go far enough in protecting detainees from sexual assault and should be expanded to implement the full intent of PREA, including clear mechanisms for detainees and third parties to report abuse, provisions for confidential staff reporting, agreements with outside public entities and community service providers, appropriate training, audits and oversight. Denying the need for these protections not only puts detainees at risk, it exposes the agency to further scandal and liability.

Family Separation and Parental Rights

Thousands of parents are detained by ICE, leaving behind thousands of children. Many of these children end up in the child welfare system at taxpayer expense. In some cases, parental rights are terminated by the state, not because a parent intends to abandon their child, or due to abuse or neglect, but simply because a parent in immigration detention is unable to attend a family court hearing.[38]

PBNDS 2011 contains new language permitting detainees to make escorted trips to attend family-related state court proceedings, at the discretion of an ICE Deportation Officer and at the expense of the detainee. These are minimal protections that do not burden the system and in fact provide a mechanism that will facilitate coordination between federal and state stakeholders, ease the burden on state foster care systems, and save taxpayers money, while also protecting the due process rights of parents and U.S. citizen children.

Reform

ICE has responded to the numerous findings of abuse within their system by implementing reforms designed to operate a detention system with policies, facilities, programs, and oversight mechanisms that align with the administrative purpose of Immigration Detention.[39]

Revising existing detention standards is not only necessary for the safety of detainees, it is a significant opportunity for ICE to create a more efficient and effective system of enforcement.

In addition to the improvements made to its standards, ICE has developed an online detainee locator system so that individuals detained by ICE can be located by family members and attorneys; has hired Detention Services Managers, whose responsibility is to ensure appropriate conditions exist at detention facilities; developed a risk classification assessment to assist in determining both whether detention is necessary and the most appropriate placement (not yet

---

[38] Women's Refugee Commission, *Torn Apart By Immigration Enforcement: Parental Rights and Immigration Detention*, December 2010. Available at: http://www.womensrefugeecommission.org/resources/doc_download/667-torn-apart-by-immigration-enforcement-parental-rights-and-immigration-detention

[39] See ICE Press Releases at http://www.ice.gov/pi/nr/0910/091020boston.htm and http://www.ice.gov/pi/nr/0911/091123philadelphia2.htm

implemented); improved transparency by increasing access to facilities and detainees for visitation and monitoring purposes; and improved medical procedures and eliminated obstacles to medical care.

While the 2011 PBNDS provide for important improvements to current conditions, they are not enough. They continue to rely heavily on penal standards that were designed for a criminal population and do not take into account that detainees in ICE custody are there on the basis of civil violations only and are not serving criminal sentences or awaiting criminal proceedings. The improvements merely bring ICE detention standards closer to a minimum level of compliance with legal obligations of a civil detention system.

It is critical to note that any actual improvement in conditions will depend on the implementation of these announced reforms and the enforcement of adequate standards. These standards must be mandatory at all facilities with sufficient oversight to produce consistent and humane treatment of detainees. Violations must trigger appropriate and enforceable sanctions.

Within this context, NGOs have welcomed the administration's announcements of reform. It is ICE's responsibility to ensure the adequacy of medical care, protections from assault and rape, access to attorneys, and other basic care are provided to its detainees, regardless of where they are housed, because it is ICE that holds them prisoner. ICE has in the past abdicated this responsibility by failing to oversee the provision of such care.

The 2011 PBNDS are a bare minimum for the operation and oversight of ICE's vast network of confinement and custody. Though a start, they will only become meaningful if the agency continues to implement and institutionalize the reforms recommended by Dr. Schriro's report and commits to creating a civil system of detention that is used as a last resort and not modeled on the criminal incarceration system. This includes implementing effective tools for detaining only where appropriate and necessary; ending the use of all jail and jail-like facilities for immigration detention; screening apprehended immigrants to inform care, needs and custody restrictions; ensuring functional and meaningful oversight and monitoring of detention operations, performance and outcomes; and imposing sanctions on facilities that violate ICE's standards.

Mr. KING. Thank you, Ms. Brané. And I appreciate all your testimony, and I recognize myself for 5 minutes.

And I would turn first to a remark or comment that I heard made by the gentleman from Puerto Rico in his opening remarks, Mr. Pierluisi, where he said that 110 have died in detention ICE custody since 2003, I believe the number was. And so, I would ask Mr. Landy, do you have a sense of—I understand that there are in-

dividual cases here that does assuage anybody's grief when it is personal, and it is personal to every family. But from a statistical standpoint, do you have a sense of whether it is safer or more dangerous to be in ICE detention than it is in the broader society of America?

Mr. LANDY. With respect to detention deaths, first of all, in 2004, there were 28 deaths in immigration detention. During so far in this Fiscal Year, there have been 6 detention deaths. And in the previous Fiscal Year, there were 8.

ICE has been working very hard to improve medical care, to address the concerns that have been raised thus far.

Mr. KING. I understand that, Mr. Landy, and I appreciate your statements with regard to that. But data wise, my question was, is it safer to be in ICE detention as compared to in the broader society of America, or is it more dangerous to be in ICE detention from a fatality standpoint? And you have about 33,000 people at any snapshot given day incarcerated. So, have you given any sense to that whether when they go inside your doors they are safer than they were outside the doors?

Mr. LANDY. Safer——

Mr. KING. Less likely to die.

Mr. LANDY. I myself have not done a statistical analysis.

Mr. KING. Okay. Let me help you out then. I just did a little math here when I heard the statement made from Mr. Pierluisi, and I thought, what does that mean, 110,000 deaths since 2003? So, I just did a little math and roughly 9 years, and you shake this out, it comes down to about 1 out of every 2,500 people. And if you figure the 33,000 annual, about 1 out of every 2,500 would die in ICE custody. That is the data that Mr. Pierluisi gave us if you are accepting the 33,000 number. If you look at the broader society of America, about 2.4 million people die in America every year out of a 313 million population. So, that would be .767 percent, which happens to be 1 out of every 28 and a half—1 out of every 128.5 people statistically die in America.

So, just think of a town of 128 people. Likely 1 of them will pass away in a given year. So, that means that it is 20 times safer statistically to be in your ICE facility, and I would just point that out because not that there are not any problems. I would not take that position. But statistically, 110 deaths over that period of time is not alarming to me.

Mr. LANDY. May I respond to that, Vice-Chairman?

Mr. KING. Please.

Mr. LANDY. In the general public, typically people who pass away do so at an advanced age. Our population on average is much younger. There are people who, in our general public, would be considered healthy, young adult males at that age primarily. We do not have very many elderly people in our custody.

Mr. KING. Okay. Thank you for that analysis, Mr. Landy, and I would just suggest, though, that you take a look then, and it is going to be a question I will ask you on the record today, and we want to follow up with a response to it. I will ask you do a statistical analysis of the universe that you have described in the broader society versus that of the ICE facilities, and I think that would

be instructive for this panel to know, because it has been part of the discussion that has taken place.

And then I would turn to—thank you. And I would turn to Mr. Crane and ask you if you would have any comments you would like to make after you have heard the testimony from Ms. Brané.

Mr. CRANE. A lot of things run things went through my mind during the testimony today regarding the deaths. And I think the first thing that I would say is that the people that made these happen were bad players. And no number of rules or regulations that we make will get rid of bad players. They are going to do bad things if they are not supervised 100 percent of the time. And I think that is one of our biggest issues with the performance-based detention standards is that we really feel that they have kind of been off the mark starting in 2009. We said that the agency needed more oversight. We did not necessarily need more regulations per se and more rules.

You know, providing people with opportunities to have more rec time during the day is not going to overcome this type of issue. But also, as law enforcement officers, well, at ICE specifically, first of all, we know that many of these facilities are local jails.

Mr. KING. Is it true that some of the inmates control the keys to their own cells?

Mr. CRANE. I am not aware of that.

Mr. KING. Okay, thank you. And I would just quickly turn to Ms. Vaughan then and ask you to flush out your comment that ICE looks for ways to release rather than to detain.

Ms. VAUGHAN. Well, the policies now in place, the guidelines for ICE agents, ICE removal officers in particular, is to hold only those as a priority who have been convicted of a crime. And that policy overlooks the reality of our how our criminal justice system plays out in that many of these individuals are not going to be convicted unless they are held because they stand a chance of fleeing before their proceedings can occur, both their criminal proceedings and also their immigration proceedings. So, that is why that policy puts the rest of us at risk when people who are released back into the community have the opportunity to go on to commit other crimes.

Mr. KING. Thank you, Ms. Vaughan.

The Chair would turn and recognize the gentlelady from California, Ranking Member Lofgren.

Ms. LOFGREN. Before asking my questions, I would like to ask unanimous consent to include in the record the following statements: a statement from Congresswoman Lucille Roybal-Allard; a statement from a Member of the full Committee, Congressman Jared Polis; a statement from Dora Schriro, the commissioner of the New York City Department of Corrections and the former special advisor to Secretary Napolitano; a statement from the American Civil Liberties Union; from the Advocates for Human Rights; from the American Immigration Lawyers Association; from the National Immigration Forum; from Human Rights Watch; from Human Rights First; from the Lutheran Immigration and Refugee Service; from the National Latino Evangelical Coalition; the National Immigrant Justice Center; and Susanna Barciela, the Policy Director for Americans for Immigrant Justice.

Mr. KING. Hearing no objections, so ordered.*

Ms. LOFGREN. Thank you, Mr. Chairman.

You know, there have been a lot of statements made, and we only have 5 minutes, so it is not possible to spend all the time necessary to correct various things that were said that were incorrect. But I do think it is important to take a look at the facility that has been described as kind of a country club, I guess.

We have a couple of pictures, because I think pictures are worth more than a few words. This is, to me, again, there are bunks. It does not look my idea of a plush holiday locale. I mean, this is the new center that has been built. And by the way, several Members have said that this was a $30 million building at taxpayers' expense. It was actually $32 million, but it was not built at taxpayers' expense. It was built by Geo Group, a private for-profit prison company, and they are paid per bed about half of what we pay for other facilities.

If we could show the next picture. This is the plush recreation yard. You can see the very large fence in back, a rather grim recreation area. It is not where really I would plan to spend my holiday. It is not what I would consider a holiday on ice. And the third and final picture, this is the showers, as you can see. No curtains. Not exactly what I would consider a plush environment.

You know, I think it is very easy to pick on the most vulnerable people, and I think that is some of what is going on here today. You know, I heard Ms. Vaughan say that these standards, these new detention standards, just go too far. I think that was the exact words she said. And I am just sort of wondering, you know, Ms. Vaughan, you have studied this. Is it too far to not shackle women as they give birth? Do you think that is something that really protects the American people? Or if you have a mental illness, would it go too far to say, do not put that person in segregation because we have seen that some of those mentally ill people if they are segregated without any care, they have committed suicide while in custody? Or how about this: the guidelines prohibit the male guards from strip searching the female detainees. Do you think that really goes too far to say that the male ICE officers should not strip search the women detainees?

Or how about this: Frontline did a big expose of sexual assault in the ICE system. And one of the things they pointed out was that—and I am not saying this is all ICE officers, Mr. Crane, but certainly there have been multiple instances where officers, some employees of the Federal Government, some by contract, have taken a detainee by themselves and then assaulted them. And now under these guidelines, if you are an ICE officer or a contract officer, you cannot take for a ride the female detainees, and take her and rape her or abuse her.

Do you think those things really go too far?

Ms. BRANÉ. Well, we really think that those are all obviously the very minimum of what one would expect in a civil detention facility. As I have said, the objective and the authority of ICE is not to detain punitively; it is to detain pending processing a hearing

*The information referred to is available in the Appendix.

and removal. And in that context, ICE absolutely has a duty to protect and provide minimum care to the people in their custody.

The new standards, I think, provide really minimum basic protections and provisions for preventing some of the horror stories we heard today. Of course I think that Mr. Crane is absolutely right, that oversight in implementation of these standards is critical. We have seen that they have not necessarily implemented them.

Ms. LOFGREN. Let me ask Mr. Landy, and maybe it is not fair to ask you because we asked the Secretary of the Department, and she has not really given us a definitive answer. But we had a bipartisan effort here in the Congress to do something called the Rape Prevention Act. And it was Congress Wolf from Virginia and Congressman Scott from Virginia came together and a whole series of procedures to prevent rape of people that are in our custody. Many of us believe that that bipartisan law should also be applied to the immigration detention that is now the law in the Bureau of Prisons.

Would you not think it would be a good idea to be against rape in these detention facilities and to adopt some of those standards mandatorily?

Mr. LANDY. Director Morton has recently testified there is no daylight between PREA and where we want to be as an agency. The Prison Rape Elimination Act establishes general principles to try to prevent sexual assault entirely, and, if it should occur, to respond appropriately and to investigate thoroughly. That is exactly what this agency does.

We promulgated in our 2011 standards far stronger protections, although the 2008 standards did that as well. We intend to aggressively follow up on any allegation of sexual assault, as well as prevent it, to the maximum extent possible.

Ms. LOFGREN. I see my time has expired, Mr. Chairman.

Mr. KING. I thank the gentlelady, and I recognize the gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Landy, what percentage of aliens are released on bond?

Mr. LANDY. We can get back to you on that.

Mr. GOWDY. Just give me a round number. I am not going to hold you to it. Just generally.

Mr. LANDY. I cannot give you that number, but I will say that anyone convicted of a serious crime is required by law to be detained. So, anyone who is released on bond——

Mr. GOWDY. That actually was not my question. My question is, in the full universe of aliens, what percentage of them are given bond?

Mr. LANDY. We will have to get back to you for an exact number.

Mr. GOWDY. What kind of flight assessment do you do before you determine the terms and conditions of the bond?

Mr. LANDY. ICE officers do a very careful assessment of the individual's criminal history and other aspects of that person's background.

Mr. GOWDY. Well, if it is that careful, can you tell me the percentage who actually abscond or fail to appear?

Mr. LANDY. We will have to get back to you on that precise number. I should say that is not——

Mr. GOWDY. Well, I see the number 40 percent in my paperwork. Would you disagree with that number, that 40 percent of aliens who are issued bonds abscond or fail to appear?

Mr. LANDY. I do not know that that is correct. And, in fact——

Mr. GOWDY. If it were 40 percent, would you agree that you probably ought to rework your flight assessments or retrain the people who are actually deciding whether or not grant bond?

Mr. LANDY. I should emphasize that my office does not work on these operational issues as to how people who are reviewed are released on bond. But I will say that——

Mr. GOWDY. Well, that is fine. You are the most knowledgeable person I can ask today about that.

Mr. LANDY. Which is why I will tell you that ICE officers, pursuant to the agency's policy, very carefully consider all relevant factors, and only would release someone who is not convicted of a serious crime, in which case detention is mandatory by law.

Mr. GOWDY. Well, I understand that, but, I mean, there are other ways to do threat assessments other than—I mean, a prior conviction for a serious violent offense would be a really good indicator that that person was a danger to the community. So, I am not going to give them any credit for detaining people who have suffered prior serious violent convictions.

Mr. LANDY. Our agency's enforcement priorities extend far beyond that one criteria. First of all——

Mr. GOWDY. Has bond ever been reissued for an alien, absconded, failed to appear, arrested for the failure to appear, and then a bond then reissued?

Mr. LANDY. The absconding from a final order of removal is one of the very high priorities that are included in the agency's initiative. So, if somebody had absconded from a final order of removal, it would be highly likely that that detention would occur in those instances.

Mr. GOWDY. And the detention would be indefinite, right?

Mr. LANDY. Excuse me?

Mr. GOWDY. Would the detention be indefinite?

Mr. LANDY. Detention would be until that person's removal could be effectuated.

Mr. GOWDY. Well, what if they come from a country that will not have them back?

Mr. LANDY. Under Supreme Court decision, *Zadvydas*, ICE is required by law to release people after——

Mr. GOWDY. So, they are right back where we started, right?

Mr. LANDY. The agency is required by law to release those people pursuant to the Supreme Court decision.

Mr. GOWDY. I am familiar with the Supreme Court decision. I am also familiar that there have been people that have been held in State jails and prisons for upwards of 2 years awaiting a trial.

Mr. LANDY. Under the Supreme Court decision, people who cannot be removed or repatriated must be released within 180 days. We must abide by that law.

Mr. GOWDY. Well, let me ask you about repatriation. Would you support legislation that would restrict visas or cut financial aid to countries that will not accept their citizens back?

Mr. LANDY. I will have to get back to you on whether the Administration has a position on that.

Mr. GOWDY. Well, you have a position. I mean, do you not?

Mr. LANDY. I am here in my official capacity to testify on detention policy, and my office does not work on that issue.

Mr. GOWDY. Well, I think it is actually the law. I think the law is in place that there are visa restrictions for countries that will not accept their citizens back. We just do not ever enforce it.

Mr. LANDY. Well, I cannot speak to that. In fact, I am not even sure that that is within the agency's mission.

Mr. GOWDY. Did you consult with line ICE agents before these standards were promulgated?

Mr. LANDY. Yes, we did. We provided the draft version of the performance-based national detention standards to Council 118 leadership in March of 2010.

Mr. GOWDY. Can you give me an example of something they asked you to include or asked you to take out that you did?

Mr. LANDY. Well, when we met with them in April of 2010, and then again when they were briefed in September of 2010, they never provided subsequent input as to what sorts of changes they would like to make, notwithstanding our request that they let us know our security concerns.

Mr. GOWDY. Do you have any information on ICE agents who have been injured themselves by detainees?

Mr. LANDY. I know that it is exceptionally rare, but I do not have specific facts.

Mr. GOWDY. What do you mean by exceptionally rare?

Mr. LANDY. Well, I personally review on a daily basis significant incident reports, and I also speak with ICE officers in the development of our initiatives. And I honestly do not recall an incident——

Mr. GOWDY. What about false allegations against ICE agents? Have you encountered any of those, or are those also extremely rare?

Mr. LANDY. Our office would not necessarily know about false allegations against ICE officers since we are a policy office that develops detention initiatives in collaboration with our operational components.

Mr. GOWDY. I see the red light is on, Mr. Chairman.

Mr. KING. I thank the gentleman from South Carolina, and recognize the gentlelady from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman, and Members. I have another Committee that is meeting and several other things going on, but I was so intrigued by this title, I thought I would come to see what it means. "Holiday on ICE." Ms. Vaughan, do you know what that means?

Ms. VAUGHAN. It is a reference to a film. I believe it means that it is a reference to the public perceptions of what some of the conditions may be in some of these facilities.

Ms. WATERS. I am not aware of it. I have not heard this kind of discussion. Could you describe to me what is meant by that? What conditions are you talking about?

Ms. VAUGHAN. Well, I cannot speak to what went into the naming of the hearing. I have seen some accounts in news media re-

ports, and I have also visited a facility myself. So, I have a reasonable sense of what the conditions are.

Ms. WATERS. What did you see?

Ms. VAUGHAN. Pardon me?

Ms. WATERS. What did you see when you visited a facility?

Ms. VAUGHAN. What I saw was a surprisingly relaxed atmosphere. This was a facility that ICE leased space in from a county detention center up in the northeast where the detainees had pretty free access within the facility and access to each other. They had meals that were brought in by a woman who cooked them in her home. What I saw, it was a pretty well-rounded meal of breaded chicken, mixed vegetables, and some mashed potatoes. They were on a first name basis with the officers who were in charge of security at the facility. Most of them actually we were told were requesting to be housed in that facility rather than being sent to places that were closer to where their families were, I think because it was smaller and a little bit different type of setting.

They accepted their detention because they knew that they were in the country illegally, and they were awaiting their removal.

Ms. WATERS. Yeah, but they had no choice. They had been detained, is that right?

Ms. VAUGHAN. Right. Oh, I am sure they would rather not be.

Ms. WATERS. They were not there voluntarily.

Ms. VAUGHAN. No, but they also knew that the reason for their detention was because they were here in violation of U.S. law.

Ms. WATERS. Well, but I want to talk about the "Holiday on Ice" and the conditions that this title refers to. And so, you had people who were relaxed. That means they were not screaming, or crying, or running around, or fighting, or anything, but they were just ordinarily calm people who happened to be detained. Is that correct?

Ms. VAUGHAN. Well, most of them were in there for drug violations.

Ms. WATERS. Could you describe to me what you think would be wrong with being relaxed and a little bit sane? Is something wrong with that?

Ms. VAUGHAN. No, though this is a number of years before the new standards were put into place.

Ms. WATERS. They had access to each other. What do you mean, families, that the mother, the father, children could talk to each other?

Ms. VAUGHAN. Well, they were able to have visitors. They seemed to appreciate our visit because the purpose of it was to get a sense of what the conditions were for them in detention.

Ms. WATERS. So, did you on your visit, did you determine that the conditions were luxurious and extravagant and a "Holiday on Ice," or just kind of an ordinary thing with some woman who cooked some food and brought it in? It was not catered by a restaurant. What was extraordinary or extravagant about these conditions?

Ms. VAUGHAN. I was surprised actually that it was as relaxed as it was considering that the local officers may not have had good information about who these people were or what all was in their background because this was before the era of secure communities

and biometrics-based background checks. So, I remember thinking that they were potentially at risk because it was so relaxed.

Ms. WATERS. But they did not demonstrate that they were violent, or they were about to attack anybody, or that they were fighting. They did not demonstrate any of that.

Ms. VAUGHAN. Not during our visit.

Ms. WATERS. You just thought that maybe they should have because they had records of some kind, and you were just surprised that they were not violent, or fighting, or that kind of thing.

But I guess the bottom line is you did not observe extravagance, did you?

Ms. VAUGHAN. I would not call it extravagance, no. It was more kind of Mayberry-ish like atmosphere.

Ms. WATERS. So, you think that is too nice for a detainee.

Ms. VAUGHAN. I would have left that up to the people who are in charge of running that facility. It seemed a little bit relaxed to me knowing what can happen.

Ms. WATERS. I know. You keep talking about it being relaxed, and I am not so sure what you are referring to. And what I am trying to find out is what this Holiday on ICE is because it implies that there is some kind of extravagance, and people want to be there. They are having a great time. They are having a vacation. But having just talked with you, I do not think that is the case.

Let me ask Mr. Landy, if I may——

Mr. KING. And as the gentlelady's time has expired, we will allow that last question.

Ms. WATERS. Oh, thank you very much.

I think everyone is interested in these facilities being safe and humane. Is that the mission? Is that the goal? You have to have these detainees until something happens. They are either deported or something happens. And are you trying to do anything more than safety and humaneness?

Mr. LANDY. It is essential that the detention facilities that we use be safe and humane, especially recognizing the fact that our population and the authority that we have is a civil detention authority, that we do not have the authority to punish people.

Also the fact that there are non-criminals in our detention, that there are asylum seekers in our detention, and given the variety and diversity of our population, we do need to make sure that our policies and standards are appropriate for our population.

Ms. WATERS. Thank you very much. I yield back.

Mr. KING. Thank you. I thank the gentlelady from California. I thank the witnesses, Mr. Landy, Ms. Vaughan, Mr. Crane, and Ms. Brané, for your testimony.

Ms. LOFGREN. Mr. Chairman——

Mr. KING. And without objection—yes, I would yield.

Ms. LOFGREN. Could I ask unanimous consent to place in the record also the pictures that we displayed of the new facility?

Mr. KING. Hearing no objection, so ordered.**

Mr. KING. Again, I thank the witnesses for your testimony today. And without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses,

**The information referred to is available in the Appendix.

which we will forward to ask the witnesses to respond as promptly as they can so that their answers may be made part of the record.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

And with that, again, I thank the witnesses. And this hearing is adjourned.

[Whereupon, at 3:57 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Statement of Ranking Member John Conyers, Jr.
Subcommittee on Immigration Policy and Enforcement
Hearing on: "Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards"
Wednesday, March 28, 2012, at 1:30 p.m.

Five years ago, this Subcommittee held two hearings to talk about the medical care being provided in our immigration detention facilities. We wanted to understand why so many preventable deaths were taking place.

One of our witnesses was Edwidge Danticat, a renowned author and the niece of Reverend Joseph Nosius Dantica. Rev. Dantica was a courageous man from Port-au-Prince, Haiti, who served his community for 50 years. But after gang members stormed his house and threatened his life, he fled Haiti at the age of 81.

Using his valid passport and visa, he sought safety in the United States, a country he regularly visited. But when he arrived at the airport and asked for political asylum, he was arrested, detained, and denied his heart and prostate medications.

As his niece told us in that hearing five years ago, one morning while in detention Rev. Dantica had a seizure and

began to vomit. She said, "[v]omit shot out of his mouth, his nose, as well as the tracheotomy hole he had in his neck as a result of [his] throat cancer operation." Despite this, it took fifteen minutes to get medical attention and when the medic arrived, he accused Rev. Dantica of faking his illness. He died not long thereafter.

I ask that we include in the record Ms. Danticat's op-ed published in this morning's New York Times. It is titled: "Detention Is No Holiday."

After those two hearings, I said I was "beyond shock." The stories of medical neglect and abuse taking place right under our nose seemed like they couldn't possibly be happening in America. But they were.

- We heard from doctors who told us where the system was falling short.
- We heard from family members of people who died in our custody.
- We heard from lawyers who had successfully sued the government over its mistreatment of detained immigrants.
- And we heard from one man, Francisco Castaneda, who

died only four months after testifying before us because of the government's refusal to treat his obvious medical needs.

Today I am again "beyond shock," because while we sit here to discuss this serious topic, we are doing it in a hearing called "Holiday on ICE."

When Rev. Dantica came to this country, he was not looking for a "holiday." He was fleeing for his life and looking for refuge.

And what Rev. Dantica found in this country was certainly not a "holiday." It was a prison cell, separation from the family members he had visited so many times before, medical neglect, and death.

A title like that makes it seem like we are talking about a Disney cartoon. But the reality is that this Administration is trying to fix a system in which we have seen too many sexual assaults; too many in-custody deaths; and too many acts of abuse. This Administration is simply trying to abide by the Constitution.

In light of this, yesterday I wrote to Chairman Smith and

asked him to reconsider the title of this hearing. I would like to enter my letter to the Chairman into the record.

Members of both political parties used to work together to fix our broken immigration system. Comprehensive Immigration Reform and the DREAM Act are bills that once had strong bipartisan support. But throughout this Congress, we keep hearing from my colleagues across the aisle that they want to deport all 11 million undocumented immigrants living in our communities. Sometimes they correct us and say that we don't need to forcibly deport all of them—we can just make life so difficult that will "self deport."

But with a hearing title like this one—"Holiday on ICE"—it looks like for some of my colleagues in the Majority, it is not enough to deport 11 million people. We also need to make them suffer.

And it is not enough to make life so difficult in places like Arizona and Alabama that millions of people will "self deport." Now we must make life in detention such hell—so unbearable—that even immigrants who are fleeing persecution

or who are likely to win their case and remain here with their family members will agree to give up and go home rather than spend one more night in custody.

When you have a serious problem, you need serious solutions. I hope we can all agree that protecting detainees from medical neglect and sexual assault requires that kind of seriousness.

Congressman Pedro R. Pierluisi
Statement for the Record
House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement
Hearing on "Holiday on ICE: the U.S. Department of Homeland Security's New Immigration Detention Standards."
March 28, 2012

Thank you, Ranking Member Conyers.

I want to begin by gently noting that the people of Puerto Rico that I represent have been American citizens since 1917. While millions of Island residents have relocated to the 50 states over the years, they are not immigrants.

On the one hand, this fact has perhaps made it easier for me to approach the complex issue of immigration with a sense of pragmatism, because it is not as intensely personal for me and my constituents as it is for other members of the Hispanic community, who are on the front lines in the immigration battle.

On the other hand, Puerto Rico, like so many communities around the country, is affected by our nation's immigration policy in profound ways. For example, there are many immigrants from the Dominican Republic living in Puerto Rico, both authorized and unauthorized. They, too, are my constituents and their welfare is my concern. How we treat these men and women—our fellow human beings—speaks volumes about who we are as a nation and about the values we hold.

With that as backdrop, I must say that I find the premise of today's hearing to be misguided and, frankly, appalling.

Our immigration detention system has serious problems. The evidence is as well-documented as it is heartrending. Over 110 people have died in immigration custody since 2003. Too many others have been subject to rape, abuse, or medical neglect.

Although there is still a long way to go, DHS and ICE deserve credit for making important strides in reforming our detention system, as reflected in the 2011 national detention standards.

Rather than welcoming these commonsense standards and seeking their implementation at ICE facilities across the nation, my colleagues on the other side of the aisle—and some of today's witnesses—have claimed that detainees are now being pampered.

That assertion does not even pass the laugh test—but nobody should find it amusing.

Mr. Chairman: the Members of this Subcommittee are blessed to be Americans, citizens of this great democracy, which has done so much to make the world a better, freer, more humane place. But this love of country should be tempered by a sense of humility, rooted in the knowledge that we could just as easily have been born in a darker corner of this world, where liberty or economic opportunity is in short supply.

We should have more empathy for men and women who have left behind everyone and everything they know in order to reach our shores, especially since many detainees violated no criminal law and those that did have already served their sentences. Instead of simply paying lip service to the idea of humane treatment, we ought to promote policies that treat these people with decency and compassion, guided by the understanding that "There, but for the grace of God, go I."

I look forward to questioning the witnesses and yield back the balance of my time.

Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration Policy and Enforcement

Testimony for the House Judiciary Committee
Congresswoman Lucille Roybal-Allard
March 28, 2012

I would like to thank the Judiciary Committee for convening today's hearing to discuss Immigration and Customs Enforcement's (ICE) new Performance Based National Detention Standards, an important and long-overdue step to safeguard the rights and well-being of detained immigrants in the United States.

To those who believe these rules are too generous, I say we should remember the catalogue of documented abuses—sexual assaults, random beatings, preventable deaths and management cover-ups—that has for years made our detention system a national embarrassment.

On any given night, more than 30,000 immigrants go to sleep in detention centers across America. Despite some recent progress, their growing ranks still include torture survivors, children, pregnant women and the elderly. Many detained immigrants have sought legal assistance only to discover that none was available; others have requested medical treatment and failed to receive it; still others have tried to contact loved ones and legal counsel and found that even the telephones didn't work.

Even more troubling is the long list of detainees who succumbed to preventable medical conditions. Hiu Lui Ng, a Chinese computer engineer, Boubacar Bah, a tailor from Guinea, and Tanveer Ahmad, a Pakistani cabdriver—three victims profiled in the media—are just three names on the heartbreaking list of detainees who died in agony because their desperate appeals for medical attention were ignored until it was too late.

The absence of due process protections in detention has even resulted in the deportation of US citizens. In 2007, Pedro Guzman, a mentally handicapped U.S. citizen from Los Angeles, was erroneously removed to Tijuana, Mexico, and spent three months bathing in rivers and eating out of dumpsters before being rescued. Similarly, in January 2009, Diane Williams, a

US citizen suffering from depression and bipolar disorder, was accidentally deported to Honduras.

Thankfully, under the Administration's thoughtful leadership, DHS and ICE have made detention reform a top priority. Acknowledging the present system's shortcomings, they pledged to implement a series of changes to improve the management and oversight of this sprawling network of facilities. The new Performance Based National Detention Standards are a significant component of this effort and I look forward to their rapid implementation.

While I support the Administration's approach to this issue, I also believe Congress has an important role to play in reshaping our flawed detention policies. Despite ICE's admirable intentions, the agency's policies have repeatedly failed to protect the most vulnerable detainees. That's why I introduced HR 933, the Immigration Oversight and Fairness Act, to give the standards governing immigrant detention the full force of law. Codifying these rules will bring new accountability to a system which has struggled to police itself and help ensure that immigrants are afforded the same basic level of treatment at every detention center—from the largest federal facility to the most remote county jail.

Unfortunately, in the pervading anti-immigrant climate in Washington, passing common sense detention reform appears unlikely. Yet even without new legislation, there are safe, sensible, cost-effective steps Congress can take to improve the detention system. For example, effective alternatives to detention, such as electronic monitoring, cost 90 percent less than traditional incarceration and have a proven record of success. By approving the President's request to expand these measures, we can safeguard immigrant rights, meet our enforcement goals and, at the same time, save the American taxpayer money.

While we might have different ideas about the best way to fix our flawed immigration laws and policies, surely we can all agree that the gross mistreatment of immigrants in our government's custody is simply unacceptable. I remain hopeful that Chairman Smith will join me, Congresswoman Lofgren and the DHS leadership in working to build a detention system which is compatible with our laws and consistent with our American values.

Congressman Jared Polis
Written Statement Submitted to the House Judiciary Subcommittee on Immigration Policy and Enforcement
Hearing on: "Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards."
March 28, 2012

Today, the Subcommittee on Immigration Policy and Enforcement will discuss the Department of Homeland Security (DHS) Immigration and Customs Enforcement's (ICE) 2011 Performance-Based National Detention Standards (PBNDS 2011). These common-sense and humane reforms are a first step towards reforming a profoundly broken system and are long overdue. I applaud ICE for taking seriously the need to improve immigration detention and call on the agency to implement the standards in all detention facilities as quickly as possible.

The need for detention standards could not be more urgent. Reports of abuse in detention facilities have continued despite previous attempts to address the situation. The American Civil Liberties Union (ACLU) discovered through the Freedom of Information Act that nearly two hundred cases of sexual abuse have been filed since 2007 alone. Equally horrifying are cases like Francisco Castaneda's and Hiu Lui Ng's who died either in detention or because of a lack of medical care while detained. Sadly, these cases are not limited to one bad facility or a few rogue agents; they are symptoms of problems that are endemic to the entire detention system.

These abuses clearly violate our nation's sense of justice and liberty, which is why I sent a letter, along with 29 other member of Congress, to the Government Accountability Office (GAO) asking it to investigate these cases of abuse. That request was accepted, and hopefully, along with the new standards, these abuses will finally end

PBNDS 2011 attempts to address some of the most glaring problems with immigration detention facilities, such as lack of access to adequate medical care, telephones and lawyers, and protection from sexual abuse. The standards have not yet gone into effect, however, and simply announcing them will not fix the problem. Unfortunately, many detention facilities have still failed to fully implement the 2008 detention standards. These abuses will not end, therefore, until PBNDS 2011 is fully and successfully implemented in every detention facility. ICE must be diligent in ensuring that every facility is in full compliance with the standards as soon as possible.

This is not a partisan issue. Regardless of which side of the aisle you are on, we all agree that human beings must be treated with decency and afforded basic human rights. Inflicting unnecessary harm on immigrants runs contrary to every value our nation holds dear. I applaud ICE for taking this step and look forward to working with them to ensure that the standards are implemented and enforced. Simply put, we can no longer allow these human rights violations to continue. It is time to put an end to abuse and injustice in our immigration detention facilities.

Written Testimony

for

The U.S. House of Representatives Committee on the Judiciary

Honorable Lamar Smith, Chair

Honorable Steve King, Vice Chair

Subcommittee on Immigration Policy and Enforcement

Honorable Elton Gallegly, Chair

by

Dr. Dora Schriro, Commissioner, NYC Department of Correction, and author,

A Report on the Preliminary Assessment of ICE Detention Policies and Practices

and A Recommended Course of Action for Systems Reform

March 28, 2012

Greeting and Introduction

I am Dr. Dora Schriro, Commissioner of the NYC Department of Correction, a very large jail system incarcerating approximately 90,000 inmates, primarily pre-trial detainees, annually. I am proud to have served in the field of Corrections virtually my entire career, primarily in leadership positions including Warden and then Commissioner of the St. Louis City jail system, and Director of both the Missouri and Arizona Departments of Corrections. I am an expert in Corrections and as such, I understand both the contributions and the limitations of the field. I was privileged to join the Department of Homeland Security in 2009 as Special Advisor to Secretary Napolitano on ICE Detention and Removal Operations and to head the Immigration Customs and Enforcement Office of Detention Policy and Planning as its first Director. I observed firsthand how correctional practices have been applied to civil detention and the limited extent to which it worked. During my tenure at ICE, I authored *A Report on the Preliminary Assessment of ICE Detention Policies and Practices and A Recommended Course of Action for Systems Reform.* I currently serve on the corrections and immigration subcommittees of the American Bar Association tasked with writing standards for criminal and civil incarceration. My expertise in both civil and criminal incarceration uniquely qualifies me to comment on the most recent reforms that ICE has undertaken.

The Challenge and the Opportunity: A System of Civil Detention

As a matter of law, civil detention is unlike criminal incapacitation. Immigration detention is expressly not permitted for the purpose of punishment and ICE cannot incarcerate aliens for criminal violations. That authority rests exclusively with the Department of Justice, subject to review of the federal courts. The authority of ICE is administrative, limited pursuant to the Immigration and Nationality Act, solely to detain aliens during the removal process, a civil proceeding.

My charge during my tenure at ICE was to consider the significant growth in immigrant detention and arrest priorities at the agency and to focus in particular, on civil detention and to identify and describe opportunities to improve its operation. I conducted in-depth assessments of 25 facilities in the various regions across the country. I read reports published by government and others, the majority of them containing striking similar conclusions and expressing shared concerns. I spoke at length with legislators, ICE personnel and detention staff, the detained alien population and advocates, and other stakeholders. I collected my own data and arrived at my own conclusions. Briefly, this is what I saw.

The rapid dissolution of INS and formation of DHS in 2003, and the marked change in policy from 'Catch and Release' to 'Catch and Remove' created unprecedented demand for detention beds. Essentially overnight, ICE became the nation's largest system of incapacitation with upwards of 400,000 aliens in its custody annually, without the benefit of basic management tools, information and informational systems critical to developing and sustaining a viable detention system. The civil system was cobbled together quickly; a string of correctional strategies used to incarcerate criminal defendants and sentenced inmates, became the strategy for administratively holding immigrant detainees, the majority of them not criminal aliens.

And up to now, despite bright line differences in civil and criminal detention law, ICE has continued to detain administratively held aliens in the same manner as are criminally incarcerated inmates. With only a few exceptions, the facilities that ICE continues to use to detain aliens were built and operate as correctional facilities. ICE also continues to rely upon criminal detention standards premised upon correctional principles of care, custody, and control. These standards impose more restrictions and incur more cost than is necessary to effectively manage the majority of the civil detention population. This is not to suggest that ICE has not made real improvements in the areas of detention management, community supervision and health care. It has and it will continue to do so: The administration is first to acknowledge, that there is more to do. Adopting standards, designing detention facilities and developing alternative, community-based placements that are congruent with the law of civil detention continues to be our challenge and our opportunity.

The First Detention Facilities modified for Civil Detainees will open shortly and the 2011 Performance-Based National Detention Standards have been recently released to guide their Operation

In 2009, Secretary Napolitano and Director Morton undertook comprehensive reform of the systems of civil detention, community supervision, and attendant health care, to further the effectiveness and

efficiency of these important government functions. A number of these improvements are in place today and include developing an objective risk assessment instrument to accurately ascertain individual alien's suitability for community supervision and to assign the conditions to achieve compliance; the consolidation of facility contracts and cancellation of some contracts with under-utilized and under-performing facilities, improved monitoring and better contract compliance procedures; expanded on-site oversight by government experts; the establishment of the Detainee Locator system; and timely Death-in-Detention Notifications. Most recently, ICE released revised detention standards and announced the opening of several, differently designed detention facilities. The response has been mixed.

In an effort to advance this conversation, I respectfully suggest these several issues be given serious consideration. What does the law allow? Do the standards advance compliance with law? Does the detained alien population present any unique characteristics that warrant special consideration? Are there any other significant issues that could impact outcomes?

The Law: The law is limited, but it is clear. Civil detention is unlike criminal incapacitation. Immigration detention is expressly not permitted for the purpose of punishment. The authority of ICE is expressly administrative and clearly limited only to detain aliens during the removal process, a civil proceeding.

The Population: The civilly detained population is appreciably different than the criminally incarcerated. None of the aliens in ICE custody is held by ICE on a criminal charge and many have never been incarcerated previously for any reason. Only the minority in ICE's custody has a record of a criminal conviction, fewer still a conviction for a serious felony crime.[1] Immigrant detainees are held administratively an average of 30 days. The institutional conduct of civil detainees including criminal aliens throughout their time in ICE's custody is largely incident-free. There are few reported incidents between alien detainees and with ICE agents or facility personnel. This population also differs from criminal inmates in terms of their life skills. The majority of detained aliens have an employment history, intact families and home making skills. They do not require the same level of supervision and the kinds of care as do many inmates in jail and prison. They do require language assistance, access to information about available relief, and health care that is not conditioned upon anticipated length of stay in detention.

Detention Standards: ICE's 2011 Performance-Based National Detention Standards mirror in most ways the correctional standards promulgated by the American Correctional Association (ACA) to guide the operation of jails and the oversight of pre-trial prisoners. The ACA standards did not consider and do not include provisions for administratively-held aliens. Its standards are specific to the field of corrections. They are based upon correctional statute and case law, common correctional practices, and characteristics about the prisoner population – offenders' criminogenic profiles, their propensity for violence and likelihood of reoffending. ACA standards also assume that the correctional system adopting them has the infrastructure in place to effectively implement them. ICE continues to make

[1] When the *Report* was published in 2009, less than one third of aliens admitted in a year and less than one half of aliens detained on a given day had a criminal conviction and relatively few (11 percent) had committed a UCR Part 1 crime.

strides however does not yet have the in-house expertise in immigration detention and the organizational infrastructure to tailor and to enforce detention standards specific to immigration law and the immigrant population.

Soon-to-open Detention Facilities: Jails and prisons are secure facilities whose design and construction reflect core assumptions about the criminal population to be detained and how they will be managed. Most fundamentally, correctional facilities are premised upon the principles of command and control, principles incorporated in their design, construction and operating assumptions. For example, in a low custody facility, movement within the housing unit and throughout the facility is largely unescorted, housing is dormitory-style not cells, and visits are contact not non-contact. ICE's soon-to-open detention facilities are comparable to low custody jails in a number of jurisdictions. They afford greater movement and personal expression than most facilities that ICE currently uses and affords some opportunity to be more self-sufficient. There are other models, less institutionalized and more normalized, that afford the necessary protections and precautions for the majority of immigrant detainees, persons with good life skills who present little risk of fight or flight including assisted living, seasonal work camps, kibbutz, and half-way houses. These facilities – facilities not so large that the aliens and employees cannot know one another, the physical plant congruent with its programs and appropriate for special populations, recreational and programs services readily accessible to the population, personal privacy afforded in sleeping areas and restrooms, cooking and laundry facilities to care for oneself, and adequate space on-site for ICE agents to interact regularly with the detained population; facilities proximate to arrest activities and located nearby transportation hubs, hospitals with 24-hour emergency health care, and legal representation – more closely reflect the field's best practices and our country's commitment to civil, civil detention.

Civil Discourse, Civil Detention

When government determines that certain persons will be taken into custody, whether the custody is civil or criminal, government commits to providing a certain level of care to them for the duration of their time in detention. Pursuant to the Immigration and Nationality Act, government detains as many as 400,000 aliens annually. Many must be detained.[2] Others are remanded by enforcement agents exercising the discretion afforded them by law. The majority is removed; the rest receive the relief that they sought. Regardless of the result, all of the time in detention must be constitutional. Aliens in civil detention must be afforded adequate health care; that is their fundamental right.[3] Detained aliens must be permitted to worship consistent with their sincerely held beliefs; compliance with the Religious Land Use and Institutionalized Persons Act is required by federal law. Likewise, aliens who are detained by

[2] In 2009, 66 percent of the detained population was subject to mandatory detention.

[3] The Constitution requires that the serious health needs of immigration detainees, like those of pretrial or sentenced inmates, be treated. In 2009 at the time of the Report, ICE conditioned care – even for uncontrolled suffering – upon the anticipated time to removal, or based on an assessment whether the alien was well enough to be deported. In the Corrections field, even an inmate sentenced to death and approaching the imposition of the sentence, is assured necessary medical care. To do otherwise would be deliberately indifferent.

the government must be protected by the government from unwanted sexual contact throughout their detention; transparency and accountability require compliance with the Prisoner Rape Elimination Act.

The taking of one's liberty is a serious matter. The determination to remove an individual is graver still. There is no color of paint to put on the wall or species of flower that can be planted on the grounds of a detention facility to mitigate the enormity of government's responsibility to the people, all of the people. There is no amount of movement that can be afforded an alien in a detention facility, no promise that there will be contact visitation that can lessen the consequences that removable aliens face. Let us have this conversation with all of the urgency and the civility that we can muster. To excel in this discourse will convey as much about whom we are as a nation as those who entered or remained here unlawfully.

WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

"Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards"

Submitted to the House Judiciary Subcommittee on Immigration Policy and Enforcement

March 28, 2012

ACLU Washington Legislative Office
Laura W. Murphy, Director
Joanne Lin, Legislative Counsel
Georgeanne Usova, Legislative Assistant
Christopher Rickerd

ACLU National Prison Project
David Fathi, Director
Gabriel Eber, Staff Attorney
Amy Fettig, Staff Attorney
David M. Shapiro, Staff Attorney

ACLU of Illinois
John Knight, Director, LGBT and AIDS Project

ACLU of San Diego
Sean Riordan, Staff Attorney

ACLU Immigrants' Rights Project
Judy Rabinovitz, Deputy Director, and Director of Detention and Federal Enforcement Programs
Michael Tan, Staff Attorney

ACLU Reproductive Freedom Project
Alexa Kolbi-Molinas, Staff Attorney

ACLU Program on Freedom of Religion and Belief
Dan Mach, Director

ACLU of Southern California
Ahilan Arulanantham, Deputy Legal Director
Michael Kaufman, Staff Attorney

I. Introduction

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to enforcing the fundamental rights of the Constitution and laws of the United States. The Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of immigrants, with its immigration detention work supported and complemented by the ACLU's National Prison Project (NPP), Reproductive Freedom Project (RFP), Lesbian Gay Bisexual & Transgender (LGBT) Project, and the Program on Freedom of Religion and Belief (PFRB). The ACLU's Washington Legislative Office (WLO) conducts legislative and administrative advocacy to advance the organization's goals.

The ACLU submits this statement to present its views on: (i) why the recently announced Immigration and Customs Enforcement agency's (ICE) 2011 Performance-Based National Detention Standards (2011 PBNDS)[1] are a necessary, though minimal, response to a crisis in immigration detention conditions; and (ii) why the 2011 PBNDS are only the first step toward establishing a civil immigration detention system that comports with the U.S. Constitution, as they contain serious deficiencies and omissions.

The ACLU and its affiliates have produced seven major reports on immigration detention in the last four years and have lawsuits pending over detention conditions at ICE facilities in Arizona, California, Nebraska, Rhode Island, and Texas. These reports and litigation address the topics covered in this statement, all of which are underpinned by every person's constitutional rights to fair and humane treatment in the United States, including due process. With respect to sexual abuse and assault; medical and mental health care; women's health; hormone therapy; segregation, shackling, and use of force; limited English proficiency; and religious freedom, as well as all other aspects of an immigration detainee's constitutional rights, the ACLU will continue to hold ICE accountable for humane treatment of those in its custody.

In some of these areas, as is elaborated below for women's health and religious freedom, ICE has made first-rate progress in the content of its standards. If they are properly implemented, these standards will result in tangible benefits to detainees. Other standards, including medical and mental health care, hormone therapy, segregation, and limited English proficiency, receive mixed appraisals, with elements of strength and weakness in the standards themselves. For the sexual abuse and assault standards, however, which ICE falsely claims to be fully compliant with the Prison Rape Elimination Act (PREA), as well as those applicable to

[1] Available at http://www.ice.gov/doclib/detention-standards/2011/pbnds2011.pdf (hereinafter PBNDS).

shackling and use of force, which have regressed from their 2008 counterparts, ICE does not merit a passing grade.

In brief, the ACLU believes that:

•Uniform and speedy implementation of the PBNDS is vital, and ICE must hold all detention facilities completely accountable to the standards, including prompt termination of contracts with deficient facilities. (See Section III, Types of ICE Detention Facilities)

•The PBNDS do not adequately address sexual abuse and assault in ICE detention facilities. Instead, immigration detainees should be covered, as Congress intended, by the Prison Rape Elimination Act's (PREA) protections implemented by the Department of Justice. (See Section IV, Sexual Abuse and Assault)

•While the PBNDS provide long-overdue minimal standards of medical and mental health care, they are not complete or consistently compliant with accepted correctional standards of care. (See Section V, Medical and Mental Health Care)

•If fully implemented and enforced, the PBNDS will help ensure that women in ICE detention receive necessary, potentially life-saving services. (See Section VI, Women's Health)

•The PBNDS on hormone therapy provides a positive starting point, but ICE also needs to ensure proper training for facility staff. (See Section VII, Hormone Therapy)

•The 2011 PBNDS make some improvements to the use of segregation in ICE facilities, but need to limit further these harsh incarceration methods which are inappropriate to use routinely in a civil detention system. The standards take troubling steps backwards in the regulation of restraints and use of force as compared with their 2008 predecessors, changes that should immediately be reversed. (See Section VIII, Segregation, Shackling, and Use of Force)

•The PBNDS on detainees with limited English proficiency must be carefully monitored to ensure implementation, and refined by ICE to achieve maximum language access. (See Section IX, Limited English Proficiency)

•The 2011 PBNDS are commendably attentive to religious freedom. (See Section X, Religious Freedom)

While the ACLU's focus in this statement is on conditions of immigration detention, the ACLU is also concerned about the massive expansion of immigration detention that has led to unnecessary incarceration of tens of thousands of individuals who pose no danger or flight risk. Until this problem is addressed, and procedures are put in place to ensure that detention is only

used as a last resort, the kinds of abuses that are documented in this statement will continue. The most direct and immediate path to creating a truly civil and humane immigration detention system – and to controlling the burdensome costs this system consumes – is to end the overreliance on jail-like detention for alleged civil immigration violators.

II. Overview of ICE Detention

The 2011 PBNDS were developed in the wake of sustained media exposure of gross human rights violations in ICE detention. Informed by documents obtained by the ACLU in federal court through Freedom of Information Act (FOIA) litigation, the *New York Times* reported that ICE "officials . . . used their role as overseers to cover up evidence of mistreatment, deflect scrutiny by the news media or prepare exculpatory public statements after gathering facts that pointed to substandard care or abuse."[2] The agency had even lost track of how many detainees died in its custody.[3] The *Washington Post* published a four-part series titled "Careless Detention: Medical Care in Immigrant Prisons," which concluded with an examination of the ACLU of Southern California's successful work to stop forcible drugging of detainees for deportation.[4] The *Post* collaborated with CBS News's *60 Minutes*, resulting in a broadcast segment featuring extensive "evidence that immigrants are suffering from neglect and some don't survive detention in America."[5]

ICE Director John Morton recently testified that his creation of ODPP in 2009 and its mission to develop detention standards arose from "a time when the agency was being very strongly criticized for a lack of uniformity particularly with regard to medical care. We had had a high number of deaths in 2004. There were 24 deaths in our custody."[6] Indeed, at least 129 ICE detainees have died in custody since October 2003.[7] The *Washington Post* noted in 2008 that the leading cause of death is suicide, adding that care for mental illness was grossly

---

[2] Nina Bernstein, "Officials Hid Truth of Immigrant Deaths in Jail." New York Times (Jan. 9, 2010), available at http://www.nytimes.com/2010/01/10/us/10detain.html?pagewanted=all

[3] Nina Bernstein, "Officials Say Detainee Fatalities Were Missed." New York Times (Aug. 17, 2009), available at http://www.nytimes.com/2009/08/18/us/18immig.html

[4] Dana Priest and Amy Goldstein (May 11 -14, 2008), available at http://www.washingtonpost.com/wp-srv/nation/specials/immigration/index.html

[5] Scott Pelley, "Detention in America." (Feb. 11, 2009), available at http://www.cbsnews.com/stories/2008/05/09/60minutes/main4083279.shtml

[6] John Morton, Testimony to the House Appropriations Subcommittee on Homeland Security (Mar. 8, 2012).

[7] *See* ICE, "List of Deaths in ICE Custody." (Dec. 19, 2011), available at http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf; "ICE detainee passes away after being rushed to local hospital." (Jan. 18, 2012), available at http://www.ice.gov/news/releases/1201/120118lasvegas.htm; "ICE detainee passes away at Los Angeles-area hospital. Mexican national was being treated for pneumonia." (Mar. 5, 2012), available at http://www.ice.gov/news/releases/1203/120305victorville.htm

deficient: "Suicidal detainees can go undetected or unmonitored."[8] These deaths took place in an immigration detention system which detains hundreds of thousands of people annually, using about 250 authorized facilities across the country. In 2002, the former INS detained 202,000 individuals.[9] By 2010, that number increased by 80% to 363,000.[10] Whereas detention beds in FY 2003 numbered 18,000,[11] the current level of 34,000 is an 89% increase, with nearly half of those beds contracted from private prison companies.[12]

The massive expansion of immigration detention has been fueled by the assumption that detention is necessary to ensure removal. Yet immigration detainees are overwhelmingly non-violent,[13] and other alternative forms of supervision are available that would effectuate the government's interest in removal without the same economic and human costs. Instead, despite the civil and nonpunitive purpose of immigration detention, ICE continues to rely on an overwhelmingly penal model of incarceration. In October 2009, correctional expert Dr. Dora Schriro, who served as Department of Homeland Security (DHS) Secretary Janet Napolitano's Special Advisor on ICE Detention & Removal and as Director of the ICE Office of Detention Policy and Planning (ODPP), presented DHS with her comprehensive report, *Immigration Detention: Overview and Recommendations*, which noted that "[w]ith only a few exceptions, the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pre-trial and sentenced felons. ICE relies primarily on correctional incarceration standards designed for pre-trial felons and on correctional principles of care, custody, and control. These standards impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population."[14]

---

[8] Dana Priest and Amy Goldstein, "Suicides Point to Gaps in Treatment: Errors in Psychiatric Diagnoses and Drugs Plague Strained Immigration System." Washington Post (May 13, 2008), available at http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d3p1.html

[9] Donald Kerwin and Serena Yi-Ying Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities*? (Migration Policy Institute, Sept. 2009), 7, available at http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf

[10] DHS Office of Immigration Statistics, *Immigration Enforcement Actions: 2010*. (June 2011), 4, available at http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf

[11] DHS, Office of Inspector General, *Detention and Removal of Illegal Aliens*. (Apr. 2006), 5.

[12] Detention Watch Network, "The Influence of the Private Prison Industry in the Immigration Detention Business." (May 2011), 1, available at http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/PrivatePrisonPDF-FINAL%205-11-11.pdf

[13] The majority of those detained from 2005 through 2009 had no criminal convictions whatsoever. Transactional Records Access Clearinghouse (Syracuse University), "Detention of Criminal Aliens: What Has Congress Bought?" (Feb. 11, 2010), available at http://trac.syr.edu/immigration/reports/224/index.html. Moreover, those detainees with criminal convictions – many of which are minor and reflect criminal conduct years before, from which the individual has long been rehabilitated – have all served their sentences. The purpose of immigration detention is not to punish, but to ensure appearance at removal if it is ordered.

[14] Schriro, 2-3, available at http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf

Many immigrants are subject to unnecessary detention due to ICE's assumption that mass detention is necessary to effective immigration enforcement. Immigrants who do not pose any flight risk or public safety concern are routinely detained despite enormous costs of $2 billion to U.S. taxpayers annually.[15] Detention costs range from $122 to $166 per person per day, while alternative methods cost from 30 cents to $14 per person per day.[16] DHS itself understands that its Alternatives to Detention (ATD) program "is a cost-effective alternative to secure detention of aliens in removal proceedings."[17] Indeed, DHS's pilot programs for ATDs achieved an appearance rate of 94%, far in excess of the targeted 58%.[18] Ultimately, no detention standards can address ICE's misuse of detention resources to incarcerate individuals who do not need to be detained. ICE's promulgation of the 2011 PBNDS should, therefore, not serve as an excuse to avoid the fundamental issue of reducing over-incarceration in the immigration detention system, which is the best way to control costs and ameliorate deficient conditions of confinement.

III. Types of ICE Detention Facilities

The 2011 PBNDS are plagued by key deficiencies, several of which are explained below. Chief among these deficiencies, however, is ICE's continued refusal to ensure that its standards are applied uniformly to all detainees in its custody. As currently written, the PBNDS do not require uniform implementation across the disparate types of facilities nationwide where ICE currently holds detainees. ICE's facilities, which include private prisons, contracts with state and local jails (known as Intergovernmental Service Agreements or IGSAs), as well as ICE-owned facilities, operate under widely varying detention standards, with prior versions dating from 2000 and 2008. ICE still makes extensive use of facilities that do not even have its 2008 standards in operation. *No ICE detention facility presently operates under the 2011 PBNDS.* Indeed, even ICE's new flagship facility in Karnes County, Texas, is governed by the 2008 PBNDS; as the *Los Angeles Times* noted, "the Karnes facility, which opened after the new standards were announced, is not required to comply with them because federal officials didn't bother to write it into the operating contract. Instead, the facility will operate under 2008 guidelines, with an option to shift to the new rules later this year."[19]

Contractual renegotiations for implementation of the 2011 PBNDS promise to be laborious, particularly for what are known as "non-dedicated" IGSA facilities, meaning state and local facilities which incarcerate both criminal and immigration detainees. As ICE Director Morton recently testified, "there are a few facilities that we completely control and in those

---

[15] DHS FY 2012 Budget Justification, ICE Salaries and Expenses, 938, available at http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf. By adding 600 beds to the administration's request, Congress's enacted budget added expenditures of $27 to $36 million.
[16] National Immigration Forum, *The Math of Immigration Detention*. (Aug. 2011), 1, available at http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf
[17] DHS FY 2012 Budget Justification, supra, 940.
[18] *Id.* at 925.
[19] Editorial, "Immigration's loose rules of detention." Los Angeles Times (Mar. 18, 2012).

implementation can be immediate. The vast majority of the facilities that we use, we use by contract."[20] Although it is encouraging that the 2011 PBNDS will apply fully to "dedicated" IGSA facilities, which hold 100% immigration detainees, non-dedicated IGSA facilities, which hold both immigration and non-immigration populations, are given excessive latitude throughout the standards either to "conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures." Thus, a lack of uniformity will persist even if even if non-dedicated IGSA facilities reach contractual agreements to upgrade to the 2011 PBNDS. ICE must ensure that the same standards apply for all detainees in its custody.[21]

The ACLU also urges ICE not to exempt facilities holding detainees for 72 hours or less from its standards – a lesson the agency should have learned from bitter experience. In April 2009, the ACLU of Southern California and its litigation partners filed a lawsuit against DHS for violations of the constitutional rights of immigrant detainees at a secret detention facility in Los Angeles known as B-18. B-18 was part of a network of such facilities across the country, which were designated as short-term processing centers but instead held detainees in limbo, sometimes for weeks. Detention took place without basic provisions such as beds, drinking water, toothbrushes, and means of communication with the outside world. Detainees were often not able to shower, change clothes, or brush their teeth for days, and had no recreation opportunities. As one immigrant recalled, "we were like animals . . . I was very scared for my life."[22] The lawsuit led to a settlement agreement whereby DHS agreed not to hold persons overnight at B-18, and to provide basic supplies and avenues of communication while they are housed at the facility.[23]

Current immigration detention conditions at just one "non-dedicated" IGSA facility, the Pinal County Jail (PCJ) in Florence, Arizona, provide a useful illustration of the danger posed by ICE's patchwork approach to implementation. PCJ operates under the antiquated 2000 ICE

---

[20] Morton Testimony (Mar. 8, 2012), supra.

[21] ICE must also ensure that individuals in its legal custody are transferred only to facilities that comply with its detention standards. The ACLU has documented several instances of ICE detainees subjected to abusive or substandard treatment upon transfer to a non-ICE facility. For example, the ACLU of San Diego reports that John Doe, an immigrant with no criminal history, was transferred against his will from the Otay Mesa detention facility, run by Corrections Corporation of America, to a contracted hospital, Alvarado Parkway Institute (API) in La Mesa, on at least two occasions. During the approximately one month combined that he spent in isolation at API, and subject to ICE orders, Doe reports being subjected to the following conditions under armed guard: both ankles shackled to the bed except for bathroom/shower use, no exercise, and no television or newspapers. His only "treatment" was one 10 or 15 minute visit a week by a psychiatrist and occasional questions by staff as to whether he was in pain.

[22] Associated Press, "Lawsuit: Detainees kept in squalid conditions." (Apr. 2, 2009), available at http://www.msnbc.msn.com/id/30020279/ns/us_news-crime_and_courts/t/lawsuit-detainees-kept-squalid-conditions/#.T2Imp8US1WI

[23] *Castellano v. Napolitano* (C.D. Cal. 2009); see also Robert J. Lopez, "Lawsuit brings better conditions for immigration detainees." Los Angeles Times (Sept. 17, 2009), available at http://articles.latimes.com/2009/sep/17/local/me-immig-jail17

detention standards and has been the subject of extensive and critical detention conditions reporting by the University of California, Davis Immigration Law Clinic, the Inter-American Commission on Human Rights,[24] and the ACLU of Arizona.[25] Ongoing concerns include inadequate medical care, insufficient hygiene supplies, no contact visits with family, no outdoor recreation, and verbal abuse by jail personnel.

PCJ received "deficient" audit ratings in 2007, 2008, and 2009, yet ICE acted only at the end of 2010, by transferring female detainees to another facility (the agency claimed that the transfer was unrelated to conditions).[26] This decision left male detainees in place, 90 of whom went on hunger strike in 2011 to protest PCJ's conditions. In a recent press interview, the Pinal County official in charge of the jail exemplified local resistance to making accommodations for ICE detainees: "Asked whether he sees a difference between 'criminal inmates' and 'detainees,' [the Chief Deputy] answers, 'Corrections, detention — it's all the same thing.'"[27] This context, in which ICE pays about $13 million annually to Pinal County for use of its jail, will test Director Morton's commitment that for "those facilities [in which] we impose the standards by way of a contract renegotiation . . . [i]f anyone refuses to comply, then they no longer have our business. This is not optional."[28]

ICE's tolerance of inhumane detention conditions at places like PCJ has resulted in assaults on detainees' health and welfare. For PCJ, the ACLU of Arizona documented Leticia's story, that of a mother with two U.S. citizen children who is a 20-year resident of Phoenix and has never been arrested or convicted of any crime. ICE nevertheless detained her for more than a year at PCJ, during which she was deprived of contact with her children, was allowed no outdoor recreation, and suffered depression and anxiety. Phone calls at PCJ, a local newspaper reported, can cost $20 for 15 minutes, adding that "[i]t took more than a year after Leticia was taken by ICE for her to hug one of her children, and it happened as a fluke. Her 8-year-old son began crying for his mother during her court hearing, and a guard had the heart to allow them a short

---

[24] The Inter-American Commission's findings and March 2011 report are available at http://www.oas.org/en/iachr/media_center/PRelease s/2011/021.asp

[25] ACLU of Arizona, *In Their Own Words: Enduring Abuse in Arizona Immigration Detention Centers* (2011), 15, available at http://www.acluaz.org/sites/default/files/documents/detention%20report%202011.pdf

[26] ICE's inspection and compliance procedures have been the subject of sustained criticism. See generally NILC, ACLU of Southern California, and Holland & Knight, *A Broken System: Confidential Reports Reveal Failures in U.S. Detention Centers* (July 2009), vii (identifying "systemic problems with the annual review procedures and their inadequacy for identifying and correcting noncompliance with the detention standards"), available at www.nilc.org/document.html?id=9

[27] Gregory Pratt, "Immigrants Who Fight Deportation Are Packed Into Federal Gulags for Months or Years Before Their Cases Are Heard." Phoenix New Times (June 23, 2011), available at http://www.phoenixnewtimes.com/2011-06-23/news/immigrants-who-fight-deportation-are-packed-into-federal-gulags-for-months-and-years-before-their-cases-are-heard/3/. Most of the "criminal" inmates at PCJ are in fact pretrial detainees who are presumed innocent.

[28] Morton Testimony (Mar. 8, 2012), supra.

visit. The separation adversely affected the boy. Depressed, he started failing in school."[29] ICE continued to detain Leticia after her year at PCJ, releasing her only after a federal district court judge intervened nine months later.

Leticia's ordeal is far from atypical. And, as the following review of specific detention standards makes clear, her very survival in the immigration detention system – without being sexually assaulted, mistreated for medical and/or mental health care, or brutalized by detention officers' use of force – was far from certain.

IV. Sexual Abuse and Assault

The 2011 Performance-Based National Detention Standards Do Not Adequately Address the Widespread Problem of Sexual Abuse and Assault in ICE Detention Facilities and Are Inferior to Protection under the Prison Rape Elimination Act (PREA).

a. ICE's dismal track record on sexual abuse and assault prevention

Sexual abuse and assault is a serious and pervasive problem in immigration detention facilities. Government documents obtained through an ACLU FOIA request reveal nearly 200 allegations of sexual abuse and assault at detention facilities across the country since 2007.[30] Various reports,[31] documentaries,[32] and complaints[33] point to numerous specific examples of ongoing abuse. These reported cases evidence a widespread, systemic problem—particularly in light of the many obstacles immigration detainees face in reporting abuse. In January 2012, 28 House members requested that the Government Accountability Office (GAO) investigate these

---

[29] *Id.*

[30] See https://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities

[31] See, e.g., Carrie Johnson, "Immigration Detainees Seek Prison-Rape Protection." (Dec. 13, 2011), available at http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection; David Kaiser and Lovisa Stannow, "Immigrant Detainees: The New Sex Abuse Crisis." New York Review of Books blog (Nov. 23, 2011), available at http://www.nybooks.com/blogs/nyrblog/2011/nov/23/immigrant-detainees-new-sex-abuse-crisis. For editorials on the topic, see "Protect Detainees Too." Los Angeles Times (Dec. 12, 2011), available at http://www.latimes.com/news/opinion/editorials/la-ed-prea-20111212,0,2790539.story?; "A Broken, Dangerous System." New York Times (Dec. 4, 2011), available at http://www.nytimes.com/2011/12/05/opinion/a-broken-dangerous-system.html?; "How committed is the Dept. of Justice to ending rape behind bars?" Washington Post (Nov. 25, 2011), available at http://www.washingtonpost.com/opinions/how-committed-is-justice-dept-to-ending-rape-behind-bars/2011/11/22/gIQAiuz5wN_story.html

[32] *PBS Frontline: Lost in Detention* (Oct. 18, 2011), available at http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/transcript-11/

[33] National Immigrant Justice Center, "Mass Civil Rights Complaint Details Systemic Abuse of Sexual Minorities in U.S. Immigration Detention ." (Apr. 13, 2011), available at http://www.immigrantjustice.org/issues/stop-sexual-abuse-detained-immigrants

incidents.[34] Many other incidents have doubtless gone unreported by detainees who fear speaking out, have language barriers, or are unable to do so without the help of an attorney to navigate the difficult process (84 percent of detainees lack legal counsel).[35] The cases we do know about clearly demonstrate an immediate need for stronger protections against sexual abuse and assault, in particular the immediate and direct application of the Prison Rape Elimination Act (PREA) to all immigration detainees.

Claudia Leiva Deras, a 27-year-old woman who fled domestic violence in Honduras, is one detainee who suffered the consequences of ICE's systemic failure to protect.[36] Ms. Leiva Deras was arrested by police after a 911 call reporting domestic violence, and detained in the Cass County, Nebraska, Jail, which contracts with federal authorities to house ICE detainees as a "non-dedicated" IGSA facility.[37] During her four months in custody, she alleges suffering extremely violent physical and sexual assaults by another detainee on an almost daily basis, resulting in physical injuries including bleeding, headaches, abdominal pain, and stomach cramps.[38] According to her complaint, the other detainee "sexually assaulted [Ms. Leiva Deras], including digitally penetrating [her]. [The assailant's] long fingernails lacerated Plaintiff internally, leaving Plaintiff in pain as well as in fear of contracting a sexually transmitted disease. After penetrating Plaintiff to the point that she bled, [the assailant] would lick the blood off her fingers in front of Plaintiff."[39]

Frightened that reporting these constant attacks would result in retaliation from her abuser, Ms. Leiva Deras filed written grievances asking for medical attention to her injuries, hoping she could tell a doctor what was happening. Her pleas for a doctor were refused.[40] When Ms. Leiva Deras did report the assaults and her injuries, she was still denied medical examination, STD testing, mental health care, or counseling, in spite her attorney's requests.[41] After learning that she had been repeatedly raped and beaten under their care, the facility staff

---

[34] January 4, 2012 letter available at http://polis.house.gov/UploadedFiles/010512_GAO_Detention_Letter.pdf

[35] See generally ACLU, "Sexual Abuse in Immigration Detention." (Oct. 2011), available at http://www.aclu.org/sexual-abuse-immigration-detention; see also American Bar Association Commission on Immigration, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*. (2010), 5-8, available at http://new.abanet.org/immigration/pages/default.aspx

[36] *Leiva Deras v. Brueggemann*, No. 4:2012cv03000 (D. Neb. Jan. 3, 2012), Complaint at 1-2, available at http://www.aclunebraska.org/images/attachments/Leiva_Deras_Complaint.pdf.

[37] *Id.* at 3.

[38] *Id.*at 3-4.

[39] *Id.* at 3.

[40] *Id.* at 4.

[41] *Id.* at 4-5.

offered Ms. Deras nothing but a Tylenol; on a medical round, she was told that no doctor's appointment would be scheduled: "Immigration doesn't pay for that. You're not outside."[42]

Ms. Deras, who has become a lawful permanent resident of the United States based on the domestic violence she suffered, is not the only woman to escape violence in her home country only to become the victim of sexual assault while in ICE custody. The ACLU of Texas recently filed a class action lawsuit on behalf of three immigrant women named plaintiffs who were sexually assaulted by a male guard while being transported from the T. Don Hutto Family Residential Center in Taylor, Texas.[43] One of the women assaulted, Sarah, who had escaped to the U.S. to avoid repeated beatings and rapes by a military commander in Eritrea, described her ordeal at Hutto this way: "As he was doing this I was having a flashback to what happened to me in my home country. I thought, this man is never going to take me to the airport, he is going to take me to a certain place where he will do whatever he wants to me."[44]

All three women had come to the United States seeking asylum, but rather than finding safety in this country they were instead sexually assaulted by Escort Officer Donald Dunn, a contract employee.[45] ICE's policy prohibiting opposite-sex solo transport of detainees was repeatedly ignored, giving Dunn the opportunity to prey on vulnerable people placed in his care. Log books and other documents obtained by the ACLU of Texas indicate that in addition to the seven known occasions on which Dunn is believed to have assaulted a total of nine women, at least 20 different male guards transported at least 44 female detainees alone between December 2008 and May 2010. Dunn assaulted the three named plaintiffs and at least six other female detainees as he drove them—alone—to the airport.[46] For these assaults, Dunn pled guilty in state court to counts of official oppression and unlawful restraint, and has also been convicted on two federal criminal counts of violating civil rights.[47]

These crimes were perpetrated by staff of a facility that is run by a Correction Corporation of America (CCA), a private prison company. Hutto is promoted by ICE as a model

---

[42] *Id.*; *see also* Press Release, ACLU of Nebraska, Offered a Tylenol in Response to Rape in Jail (Jan. 23, 2012), available at http://www.aclunebraska.org/index.php/immigrants-rights/137-qoffered-a-tylenolq-in-response-to-rape-in-jail

[43] Press release, ACLU of Texas, ACLU of Texas Sues ICE Officials, Williamson County and CCA for Sexual Assault of Immigrant Women (Oct. 19, 2011), available at http://www.aclutx.org/2011/10/19/aclu-of-texas-sues-ice-officials-williamson-county-and-cca-for-sexual-assault-of-immigrant-women/; *Doe v. Neveleff*, No. 1:11-cv-00907 (W.D. Tx. 2011), Complaint, available at http://www.aclutx.org/documents/111019DoeyNeveleffFileStampedPublicComplaint.pdf

[44] ACLU, *Sexual Abuse in Immigration Detention - Sarah's Story* (Oct. 16, 2011), https://www.aclu.org/immigrants-rights/sexual-abuse-immigration-detention-sarahs-story

[45] *Neveleff* complaint, supra, at 1-2.

[46] *Id.*

[47] ACLU, "Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees Is Widespread National Problem." (Oct. 19, 2011), available at http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse.

of its detention reforms, and featured a newly installed ICE Detention Services Manager at the time of the incidents. ICE's failure to prevent the Hutto crimes demonstrates how the agency's oversight regime is insufficient, how the ICE model of self-policing falls short, and why PREA needs to be applied directly to ICE facilities.

ICE's failure to protect its most vulnerable detainees is sadly recurrent: at the Eloy Detention Center in Arizona, also run by CCA, Tanya Guzman-Martinez, a transgender woman, was placed in housing with men.[48] Each time she courageously sought help, she says she was threatened with segregation rather than protected. She alleges that she was sexually assaulted twice. One incident involved a detention officer who, after repeated harassment, maliciously forced her to ingest his ejaculated semen and threatened to deport her if she did not comply with his demands. Ms. Guzman-Martinez immediately reported the assault to detention staff and the Eloy Police Department, and the detention officer was later convicted in Pinal County Superior Court of attempted unlawful sexual contact. Despite this attack, ICE and facility staff allegedly did nothing to protect her from further abuse. In a second incident that allegedly took place five months later, Ms. Guzman-Martinez was sexually assaulted by a male detainee in the same all-male housing unit. She feared retaliation by detention staff and other detainees; a week later, after she was able to report the second assault to police, Ms. Guzman-Martinez was released from ICE custody.[49]

These horrific cases do not simply tell the story of a few "bad apples" on staff at ICE detention centers. On the contrary, incidents like these have been reported in almost every state where detention facilities exist.[50] Other incidents since 2007 have occurred at Hutto; Port Isabel, Texas; Pearsall, Texas; and in Florida.[51] Human Rights Watch's comprehensive 2010 report examined "more than 15 separate documented incidents and allegations of sexual assault, abuse, or harassment from across the ICE detention system, involving more than 50 alleged detainee victims," and concluded that "[t]his accumulation of reports indicates that the problem cannot be dismissed as a series of isolated incidents, and that there are systemic failures at issue. At the same time, the number of reported cases almost certainly does not come close to capturing the

[48] ACLU of Arizona, *In Their Own Words*, supra, at 2.
[49] *See Guzman-Martinez v. CCA*, (D. Az. Dec. 5, 2011), available at http://www.acluaz.org/sites/default/files/documents/Guzman%20-%20Complaint.pdf
[50] *See* ACLU, *Sexual Abuse in Immigration Detention Facilities* (Oct. 17, 2011), https://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities
[51] See Carol Lloyd, "Hanky-Panky or Sexual Assault?" Salon.com (May 31, 2007); "Ex-Fed Agent Pleads Guilty in Sex-Assault Case." Miami Herald (Apr. 3, 2008); Brian Collister, "More Sex Assault Allegations at Immigrant Detention Center." WOAI.com (Dec. 29, 2008); Mary Flood, "Ex-Prison Guard Admits to Fondling Immigrant Women." Houston Chronicle (Sept. 24, 2009).

extent of the problem."[52] This leaves no question that drastic reforms are needed to address ICE's systemic failure to protect its detainees from sexual abuse and assault.

b. The easily available and just solution: ICE detainees must be included in the Department of Justice's regulations implementing PREA

PREA, enacted by a unanimous Congress in 2003, was meant to protect all persons in civil or criminal custody from rape and sexual abuse.[53] PREA was passed with the support of "political odd couples;" as Pat Nolan, a former Republican leader in the California Assembly with roots in conservative politics and a PREA Commissioner, has noted, "[i]t was the late Sen. Edward M. Kennedy, a Democrat, and Sen. Jeff Sessions, a Republican, who jointly co-sponsored the Prison Rape Elimination Act, which passed unanimously and was signed by President George W. Bush in 2003."[54] PREA established the National Prison Rape Elimination Commission, which deliberated extensively and produced a report that includes specific recommended standards for immigration detainees.[55]

PREA defines the term "prison" as "any confinement facility, of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such government."[56] Nearly a decade after PREA's passage, however, ICE continues to resist direct application of PREA to immigration detention facilities, claiming that the agency's own non-binding and unenforceable standards provide the same protections. On February 15, at a House Appropriations Homeland Security Subcommittee hearing, Secretary Napolitano stated that "we have issued proposed standards that exceed anything that would be – I think – issued under the Prison Rape Elimination Act."[57] ICE Director Morton also recently touted ICE's ability to comply with PREA on its own, saying: "[O]ur standards which we have just issued have a specific standard on the prevention and investigation of sexual abuse and we will be fully PREA-compliant . . . there is no daylight between PREA and where we want to be as an

---

[52] Human Rights Watch, Detained and At Risk: Sexual Abuse and Harassment in United States Immigration Detention. (Aug. 2010), 3, available at http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf

[53] *See* House of Representatives Committee on the Judiciary, Report on the Prison Rape Reduction Act of 2003, 108th Cong., 1st sess. (2003); H.R. Rep. No. 108-219, at 14, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:hr219.108.pdf

[54] Connie Rice and Pat Nolan, "Policing prisons." Los Angeles Times (Apr. 5, 2010), available at http://articles.latimes.com/2010/apr/05/opinion/la-oe-rice5-2010apr05

[55] National Prison Rape Elimination Commission, *National Prison Rape Elimination Commission Report*. (2009), available at https://www.ncjrs.gov/pdffiles1/226680.pdf

[56] Prison Rape Elimination Act of 2003, 42 U.S.C. § 15609(7), available at http://www.justdetention.org//pdf/PREA.pdf.

[57] *Hearing on the Fiscal 2013 Appropriations for the Homeland Security Department Before the Subcommittee on Homeland Security of the House Committee on Appropriations*, 112th Cong. (2012) (statement of DHS Secretary Janet Napolitano), *available at* http://www.cq.com/doc/congressionaltranscripts-4030036

agency."[58] Even putting aside the fact that the 2011 PBNDS do not have the force of law, they fall far short of those claims.

The standards do make a number of much-needed, modest improvements to protect detainees against the threat of sexual assault. For example, they include an update to the policy on transporting detainees, like the victims at Hutto, prohibiting a single transportation staff member from transporting a single detainee of the opposite gender in all but emergency situations.[59] They also require a staff member of the same gender as the detainee to be present if a pat down is to be conducted.[60] The new standards provide that transgender detainees should be searched in private, a practice that might have spared Tanya some of the humiliation and hostility she allegedly encountered at Eloy. Further, the standards add new requirements that facilities adhere to a zero-tolerance policy for sexual abuse and assault, and that special consideration should be given to factors that would increase a detainee's vulnerability in classification for housing assignments, including gender identity, disabilities, and history of torture, trafficking and abuse.[61]

The PBNDS are nevertheless deficient in a number of crucial ways, and to accept them as an alternative to direct coverage by PREA would be a serious mistake. First, the PBNDS are not enforceable. They are internal ICE policies, drafted without the opportunity for public comment, and as such are not legally binding on the agency.[62] There is therefore no guarantee whatsoever that ICE will do a better job of self-policing than it has thus far. In contrast, the National Prison Rape Elimination Commission recognized the importance of enforcing standards through external review, stating in its report that "[e]ven the most rigorous internal monitoring . . . is no substitute for opening up correctional facilities to outside review."[63] For this reason, the Commission recommended detailed audits of all facilities by independent auditors at least every three years.[64] The PBNDS provide no such requirement that outside parties verify implementation, and, considering ICE's dismal track record, it would be credulous simply to

---

[58] *Hearing on the Proposed Fiscal 2013 Appropriations for the Homeland Security Department's Immigration and Customs Enforcement Before the Subcommittee On Homeland Security of the House Committee on Appropriations*, 112th Cong. 19 (2012) (statement of John Morton, ICE Director), *available at* http://www.micevhill.com/attachments/immigration_documents/hosted_documents/112th_congress/TranscriptOfHouseAppropriationsSubcommitteeHearingOnFY13ICEAppropriations.pdf
[59] PBNDS, supra, at § 1.3(II)(4).
[60] *Id.*
[61] *Id.* at §§ 2.11(II)(3), 2.2(V)(B)
[62] Lovisa Stannow, *When Good Isn't Enough*, The Huffington Post (Mar. 6, 2012), available at http://www.huffingtonpost.com/lovisa-stannow/when-good-isnt-enough_b_1317745.html
[63] National Prison Rape Elimination Commission Report, supra, at 9.
[64] *Id.*

trust that the agency will ensure compliance in every facility.[65] After all, the Hutto facility already had a policy in place prohibiting opposite-sex solo transfers when the escort officer committed a string of assaults against female detainees. What wasn't in place, however, was an adequate mechanism to oversee and enforce the facility's compliance with that rule. The 2011 PBNDS won't change that.

While the PBNDS commendably restrict strip searches conducted at intake by staff members of the opposite gender to the detainee, requiring that a staff member of the same gender be present, and that the search be documented,[66] there is no similar opposite-gender requirement for body-cavity searches, which are even more invasive than pat down or strip searches. Only transgender detainees may choose the gender of the staff member conducting a body cavity search "whenever possible."

Strip searches are permitted after contact visits without any reasonable suspicion. A contact visit alone should not provide a basis for a strip search: a detainee should never have to choose between hugging his or her children during a visit or forgoing a contact visit altogether and avoiding a strip search. While a strip search is a demeaning and humiliating experience for any human being, male or female,' . . . 'there is reason to believe the practice may have a disproportionately harmful effect on women.'"[67] As one detainee at the Bristol County Correctional Facility wrote to the ACLU of Massachusetts, "I was treated very inhumanely when I was arrested. First I was stripped completely and then asked to spread my legs wide apart over a mirror on the floor. I was made to cough and my breasts [were] lifted as if I am a drug dealer. It was a very humiliating experience for me."[68] In recognition of the humiliation and psychological harm caused by strip searches, a truly civil detention system would impose additional restrictions on strip searches to those contained in the 2011 PBNDS.

Not only do the 2011 PBNDS as a whole fail to provide any real transparency or accountability for facility conditions, but many of the improvements to the 2008 standards are also still inadequate and inferior to PREA. For example, ICE has introduced a new requirement that staff must limit the disclosure of information about a detainee who reports sexual abuse to include only "need-to-know" individuals—a positive step.[69] However, the standard does not

---

[65] See generally *A Broken System*, supra, vii (identifying "systemic problems with the annual review procedures and their inadequacy for identifying and correcting noncompliance with the detention standards").
[66] PBNDS, supra, at § 2.1(V)(B)(4).
[67] David M. Shapiro, "Does the Fourth Amendment Permit Indiscriminate Strip Searches of Misdemeanor Arrestees?: *Florence v. Board of Chosen Freeholders*." 6 CHARLESTON L. R. 131, 151 (Fall 2011) (citations omitted).
[68] ACLU of Massachusetts, *Detention and Deportation in the Age of ICE: Immigrants and Human Rights in Massachusetts*. (Dec. 2008), 47, available at http://www.aclum.org/sites/all/files/education/aclu_ice_detention_report.pdf
[69] PBNDS, supra, at § 2.11(II)(6).

specify what that means, nor does it provide for anonymous reporting by detainees or private reporting by staff, resulting in a toothless rule that does not encourage reporting.[70] Similarly, the standards prohibit retaliation against detainees and staff who report sexual abuse,[71] but don't provide necessary guidance on how to prevent it.[72] When it comes to training, the standards require that all staff, contractors, and volunteers receive general training on sexual abuse response, but require no other advanced training for specialized staff, which may be necessary for responding to the needs of abuse survivors.[73]

Such serious omissions crop up throughout the 2011 PBNDS. They fail to mandate background checks for hiring and promotions, an important tool for ensuring that detainees will not be placed with staff likely to abuse them.[74] They are also deficient when it comes to procedures for conducting internal investigations of sexual abuse—requiring investigations but failing to assign responsibility for the process to a specific staff member, or to ensure that detainees who have reported abuse are informed about the status of the investigation.[75] ICE also missed an opportunity to require that facility leadership review these investigations and affirmatively seek to reduce abuse.[76]

Finally, even if properly implemented, the standards leave detainees with extremely uneven protection. The 2011 PBNDS only apply to some facilities, excluding those holding detainees for less than 72 hours.[77] PREA, by contrast, specifically includes short-term detention because, as the PREA Commission concluded, "[n]o period of detention, regardless of charge or offense, should ever include rape."[78] Detainees' safety from sexual abuse under the 2011 PBNDS will depend on where they have the fortune, or misfortune, of being housed. Under PREA, meanwhile, immigration detainees would receive the same protection against sexual abuse and assault in a temporary lockup as they would at any other facility.

ICE's internal sexual assault and abuse standards, though a necessary improvement, are still fraught with serious problems and are no substitute for enforceable national PREA standards, which must be applied to every immigration detainee, just as they are to all other persons in government custody. While the proposed Department of Justice (DOJ) PREA regulations issued in February 2011 specifically excluded immigration detention facilities from

---

[70] See Stannow, supra.
[71] PBNDS, supra, at § 2.11(V)(F)(6).
[72] See Stannow, supra.
[73] *Id.*
[74] *Id.*
[75] *Id*; *see also* PBNDS, supra, at § 2.11(V)(J).
[76] *See* Stannow, supra.
[77] PBNDS, supra, at § 2.11(I).
[78] National Prison Rape Elimination Commission, *Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Lockups*. (2009), 1, available at https://www.ncjrs.gov/pdffiles1/226685.pdf

coverage,[79] since then a broad bipartisan group of politicians, advocates, and correctional experts have voiced support for applying PREA to immigration detention facilities. This includes the bill's original lead House co-sponsors, Representatives Frank Wolf (R-VA) and Bobby Scott (D-VA), who have publicly and repeatedly stated that PREA was meant to include all immigration detainees and facilities, with no second-class coverage.[80] As the National Sheriffs' Association has advised Congress, "DHS PREA standards need to be consistent with DOJ PREA standards. This would ensure that there are not differing standards for jails based on the federal, state, or local detainees held, as well as help with the swift and successful implementation of final PREA standards."[81]

The PBNDS's deficiencies combined with ICE's abysmal track record demonstrate that leaving ICE to its own standards is not a real solution. The problem of sexual assault and abuse in immigration detention is extremely urgent, and it is vital that the Obama Administration cover immigration detainees under DOJ's PREA rules, so the Claudias, Sarahs, and Tanyas who are vulnerable in immigration detention today don't have to wait any longer for the basic protection they deserve.

V. Medical and Mental Health Care

While the PBNDS provide long-overdue minimal standards of medical and mental health care, they are not complete or consistently compliant with accepted correctional standards of care.

Under the Constitution's Fifth Amendment, immigration detainees have a right to receive necessary medical care and to be free of unsafe and punitive conditions.[82] While the law varies in different parts of the country, the ACLU agrees with appellate decisions, based on longstanding Supreme Court precedent, that conditions of confinement for civil detainees must be superior not only to convicted prisoners, but also to pretrial criminal detainees.[83] If a civil detainee is confined in conditions that are identical to, similar to, or more restrictive than those under which pre-trial detainees or convicted prisoners are held, then those conditions are

---

[79] Department of Justice, Notice of proposed rulemaking re: National Standards To Prevent, Detect, and Respond to Prison Rape. 76 Fed. Reg. 6248, 6250 (Feb. 3, 2011).
[80] Letter of December 12, 2011, available at http://www.justdetention.org/pdf/congressprea.pdf
[81] Letter to Senators Leahy and Crapo, February 1, 2012, available at http://www.sheriffs.org/sites/default/files/uploads/documents/vawa%20reauthorization%20letter%20-%20senate.pdf
[82] *See, e.g.*, *Estelle v. Gamble*, 429 U.S. 97 (1976); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000); *Dahlan v. DHS*, 215 Fed. App'x 97, 100 (3d Cir. 2007).
[83] *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), *cert. denied*, 546 U.S. 820 (2005); *cf. Youngberg v. Romeo*, 457 U.S. 307, 321-32 (1982) ("Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.").

presumptively punitive and unconstitutional.[84] Civilly confined persons should not need to prove deliberate indifference to demonstrate a violation of their constitutional rights.[85]

a. ICE has mistreated countless detainees with inadequate or nonexistent medical and mental health care.

As Director Morton's recent testimony acknowledged, some of the worst failures in ICE detention facilities are related to medical care. The ACLU's affiliates and national litigation projects have documented cases of numerous detainees harmed by ICE's deficient medical and mental health care. Here are but a few examples:

• A legal resident of the United States who fled civil war in El Salvador at age 10, Francisco Castañeda was placed in a San Diego immigration detention facility in 2006. During his detention, Mr. Castañeda recounted, he suffered from excruciating pain caused by a draining penile lesion and a lump on his groin. Despite repeated doctors' requests for Mr. Castañeda to have a biopsy, the Division of Immigration Health Services (DIHS) failed to conduct it. Mr. Castañeda was told his treatment was unnecessary because it was "elective in nature." He was prescribed ibuprofen and antibiotics and given extra boxer shorts. It took a fourth specialist's recommendation – 10 months after Mr. Castañeda first asked for attention and only with ACLU intervention – before the biopsy came close to happening. Even then, instead of giving Mr. Castañeda proper medical care, ICE released him. One week later, a biopsy Mr. Castañeda arranged himself confirmed that he was suffering from penile cancer. The next day, Mr. Castañeda had his penis amputated. He started chemotherapy after learning that the cancer had spread to his groin. Treatment was unsuccessful, and Mr. Castañeda died in February 2008.

Francisco Castañeda made the most of his remaining year after being freed. He testified before Congress, alongside bereaved relatives of immigrants who had died in ICE detention, saying "I have a young daughter, Vanessa, who is only 14. She is here with me today because she wanted to support me – and because I wanted her to see her father do something for the

[84] *Jones*, 393 F.3d at 934; *cf. Agyeman v. Corrs. Corp. of Am.*, 390 F.3d 1101, 1104 (9th Cir. 2004) (noting that detention on noncriminal charges "may be a cruel necessity of our immigration policy; but if it must be done, the greatest care must be observed in not treating the innocent like a dangerous criminal").

[85] *Jones*, 393 F.3d at 934; *see also Hydrick v. Hunter*, 500 F.3d 978, 994 (9th Cir. 2007) ("[T]he Eighth Amendment provides too *little* protection for those whom the state cannot punish." (emphasis in original, citations omitted)). This is consistent with the Supreme Court's view that a trial court "erroneously used the deliberate-indifference standard" when instructing the jury that the plaintiff – a civilly committed individual – had to prove deliberate indifference to his serious medical and mental health needs in order to prevail on that claim. *See Youngberg*, 457 U.S. at 312 n.11.

greater good, so that she will have that memory of me. The thought that her pain – and mine – could have been avoided almost makes this too much to bear."[86]

• Victoria Arellano, a 23-year-old transgender woman with AIDS, was arrested on a traffic violation. She was sent to the detention facility in San Pedro, California where she alleges she was denied her AIDS medication and medical care for more than a month despite the symptoms she suffered, including extreme pain, fever, vomiting blood, and diarrhea with blood. As a newspaper account recalled, "[t]he task of caring for Arellano fell to her fellow detainees. They dampened their own towels and used them to cool her fever; they turned cardboard boxes into makeshift trash cans to collect her vomit. As her condition worsened, the detainees, outraged that Arellano was not being treated, staged a strike: They refused to get in line for the nightly head count until she was taken to the detention center's infirmary."[87] Only then did ICE send Arellano to a hospital where she died two days later.

• Angela, a 40-year-old Jamaican woman, has been a lawful resident for 33 years. She is blind in one eye and suffers from a painful and recurring skin disease. Upon her detention in Eloy, Arizona, she provided her medical history. Over the course of her four-month detention, Angela recounted, she began to experience significant pain and swelling of her face. Despite multiple requests for pain medication and attention from a doctor, she says she was not provided care until she fainted in her housing unit and was rushed to a local hospital. She remained in the hospital for several days and was given intravenous antibiotics. Angela filed a grievance with the detention center about their untimely response to her medical needs. Soon after she filed her grievance, she was released from custody.[88]

• The New York Civil Liberties Union's report on the now-closed Varick Street detention facility detailed the case of a detainee suffering from prostate cancer who filed a grievance in November 2008, describing an aborted attempt to deport him two days after he had requested a doctor's appointment for cancer treatment. The detainee, a 47-year-old Russian man, wrote of being forced to sit in a van at Kennedy International Airport for several hours with excruciating pain in his lower abdomen. He maintained that security guards refused his pleas to use a restroom and accused him of playing games. The pain was so great that he nearly lost consciousness and didn't recall how he returned to Varick Street. DIHS responded to the detainee's complaint by telling him that staff had made three unsuccessful attempts to contact the hospital to which he had been referred for treatment before his detention. Three weeks later, the detainee still had not visited a doctor. He filed another grievance expressing alarm and

---

[86] Gabriel Eber, "Remembering Francisco Castañeda." (May 5, 2010), available at http://www.aclu.org/blog/immigrants-rights-prisoners-rights/remembering-francisco-castaneda

[87] Sandra Hernandez, "A lethal limbo: Lack of healthcare turns federal detention into a death sentence for some immigrants." Los Angeles Times (June 1, 2008), available at http://articles.latimes.com/2008/jun/01/opinion/op-hernandez1

[88] ACLU of Arizona, *In Their Own Words*, supra, at 29.

frustration at his inability to receive treatment. "How long or when will you be able to get [my] appointment, will it be after [my] death?" he wrote. According to a handwritten note on the grievance form, the detainee was deported two weeks later. It is unclear whether he ever received medical care.[89]

• Despite complaining for months to prison officials at the no-longer-used Wyatt Detention Center in Rhode Island about being in excruciating pain, Hiu Lui Ng was only first diagnosed with terminal liver cancer and a broken spine less than a week before he died. Until that time, Ng alleges, guards and medical personnel at Wyatt continually accused him of faking his illness. He was routinely denied use of a wheelchair despite his inability to walk, including when his attorney, who had traveled from New York, sought to visit him. Only a week before Ng died, immigration officials forced him to travel to Hartford, Connecticut for no legitimate reason, where he was urged to drop his appeals. To get him to Hartford, guards forcibly dragged Ng out of his cell, shackled his hands, feet and waist, and dragged him to a transport van, despite his screaming in pain. The cruel treatment he received at that time was captured, in part, on videotape.[90] The ACLU of Rhode Island has filed a lawsuit on behalf of Mr. Ng's surviving relatives.

• A comprehensive report issued in July 2010 by the ACLU and Human Rights Watch concluded that "immigrants with mental disabilities are often unjustifiably detained for years on end, sometimes with no legal limits."[91] One detainee, a lawful permanent resident from Haiti with schizophrenia who was hospitalized before his arrest by DHS, was sent to an in-patient psychiatric facility at least four times while at a Texas immigration detention facility, causing him to miss several hearings. At the time he was interviewed, he had been detained for one year and said he still heard voices and attempted suicide twice while in detention.

• The ACLU of Massachusetts reported on Albert, a 27-year-old man from Liberia with a documented history of schizophrenia. During his 21 months in detention, he faced a variety of medical problems that went untreated. He complained that he sometimes spent days without his psychiatric medications and says he was often told by the nurses that they had run out. When he was transferred to Bristol County Correctional Facility, he wasn't given any of his medication during transit, and says he he spent four days without it. Albert began experiencing a painful skin condition and received a cream that proved effective. One day, he was disciplined for using obscenities against guards and not having his door locked during the head-count. He was

---

[89] New York Civil Liberties Union (NYCLU), Voices from Varick: Detainee Grievances at New York City's Only Federal Immigration Detention Facility. (2010), available at http://www.nyclu.org/files/publications/Varick_Report_final.pdf

[90] "Rhode Island ACLU Files Lawsuit on Behalf of Family of Wyatt Center Detainee Who Died in Custody; Suit Alleges Hiu Lui Ng Was Subjected to 'Cruel, Inhumane, Malicious and Sadistic Behavior.'" (Feb. 9, 2009), available at http://www.riaclu.org/News/Releases/20090209.htm

[91] *Deportation by Default* (July 2010), available at http://www.hrw.org/en/reports/2010/07/26/deportation-default-0

punished with 20 days in segregation. The disciplinary report made no mention of his schizophrenia or the fact that he had not been getting the medication on a regular basis.

Transferred to a third facility, Plymouth County Correctional Facility, Albert's medical records and prescription medication again did not accompany him. His skin condition worsened. At one point, the pain was so bad that he says he had trouble walking and could not climb onto his top bunk. He was treated with creams that did not work. An ACLU attorney intervened by sending a letter to the facility. Albert was called down to the medical unit and told he would be put in a medical cell until further notice, without a phone or recreation time. According to the officer on duty, Albert became upset and used profanity. The officer called for two other officers to come to the area and when Albert refused to drop the crutches he was using, they allegedly took the crutches and forced him to the floor. A disciplinary report states that Albert kicked while on the floor, so leg irons were applied and he was placed in a restraint chair where he stayed for three hours, shackled, bleeding and in pain from his skin condition. He was then sent to the segregation unit. He was in segregation for six days while his disciplinary case was heard. He was sentenced to 18 days of isolation and 30 days of loss of privileges. There is no mention of his psychiatric condition in the disciplinary reports or contemporaneous medical notes.

When he returned to a cell in the general population, his skin condition did not improve. Albert's relationship with the medical staff deteriorated and at one point he says they stopped believing that there was anything wrong with his skin. Albert wrote in a letter to the ACLU that the physician's assistant had told him not to fill out any more medical request slips because there was nothing wrong with him. Meanwhile, the ICE officer at the jail told Albert that even though his country would not accept him, he would have to wait 180 days in jail before being released. He pleaded with ICE officials either to treat him or let him go – he had resources to pay for his own treatment if he were released. Finally, in February 2008, seven months after Albert entered Plymouth and complained of skin problems, the jail doctors requested that ICE approve a hospital consultation. When Albert asked when he would be sent to the hospital, the medical staff allegedly told him that ICE would not pay for him to see a doctor because he was going to be released soon. The consultation was ordered on February 11th and Albert was not released until March 31st. Shortly after being released, Albert saw a private doctor, who found that Albert suffered from a fungal infection and prescribed medication.

• The ACLU of New Mexico reported a case of a detainee named Abel, who slipped and fell when he stepped in water that he said had leaked from the ceiling onto the floor of the dormitory at the Otero County Processing Center, which is operated by the private prison contractor Management and Training Corporation (MTC). He injured his arm in the fall, causing what Abel described as unbearable pain. Concerned that his arm might be broken, Abel asked for assistance. Staff reportedly told him to fill out a "sick call," though Abel thought it obvious that his arm was broken. He filled one out, but had already missed his last opportunity to submit it that day. He didn't want to wait until morning. He approached the medical staff when they

came around to distribute medications and asked if he could have something to mitigate his pain. Abel reported that the medical staff required the sick call, and he waited three days for an appointment. According to Abel's report, when he was finally seen, the doctor immediately recognized that his arm was broken. Abel was taken to hospital in El Paso and ultimately needed surgery to repair the damaged arm. Following the surgery, Abel reported that he did not receive adequate follow-up care. At the time the ACLU of New Mexico met with Abel, he claimed that his arm still hurt badly but luckily was not infected. ICE eventually released Abel, but he reported that his injury has affected his mobility and ability to find work.[92]

b. While there are positive features to the PBNDS's medical and mental health standards, they also contain omissions that endanger detainees.

ICE's 2011 PBNDS go some distance in establishing a template which, if implemented, will improve medical and mental health care from the egregiously low baseline set by ICE's historical practice. However, the standards remain woefully insufficient. The ACLU's *Woods* class action litigation regarding the San Diego Correctional Facility (SDCF) detailed the cases of 11 named plaintiffs who suffered a variety of serious medical and mental health issues that went untreated, including several with bipolar disorders and depression, a man who was forced to wait more than eight months for eye surgery and nearly suffered permanent disfigurement, and detainees who never received medical attention despite suffering from a variety of maladies including Type 2 diabetes, hypercholesterolemia, hypertension, abscessed and broken teeth, and severe chest pains. In settling the case, ICE committed to adhering to 19 of the standards promulgated by the National Commission on Correctional Health Care (NCCHC), standards which have been endorsed by the American Medical Association.[93]

It is troubling, therefore, that the 2011 PBNDS deviate in significant respects from the NCCHC standards, including from some that were included in the *Woods* settlement.[94] For example, in *Woods* ICE agreed to NCCHC standard J-E-07, which requires specific time frames in which post-triage sick call encounters must occur.[95] Yet the new ICE standard states that staff will "determine when the detainee shall be seen based on acuity of the problem."[96] Thus, a patient who complains of a serious medical condition may be triaged as needing a high-priority,

---

[92] ACLU of New Mexico, *Outsourcing Responsibility: The Human Cost of Privatized Immigration Detention in Otero County*. (2011), 46, available at http://aclu-nm.org/wp-content/uploads/2011/01/OCPC-Report.pdf

[93] The *Woods v. Morton* settlement agreement is available at http://www.aclu.org/files/assets/2010-12-16-WoodsvMorton-SettlementAgreement.pdf. Two years earlier, the ACLU settled a separate litigation focused on overcrowding at the San Diego Correctional Facility. *See Kiniti v. Myers*, No. 05-cv-1013 (S.D. Cal. June 4, 2008), available at http://www.aclu.org/files/images/asset_upload_file979_35530.pdf

[94] For details regarding all the NCCHC standards here referenced, see ACLU of San Diego, "Practice Advisory: Health Care for ICE Detainees after the *Woods v. Morton* Settlement." available at http://www.aclusandiego.org/article_downloads/001165/Woods%20Practice%20Advisory.pdf

[95] See NCCHC, *2008 Standards for Health Services in Jails*.

[96] PBNDS, supra, at § 4.3(V)(Q).

as-soon-as-possible visit with the facility practitioner, but the standard provides no guidance or requirement as to when that visit must occur. In contrast, the NCCHC standard requires that patients be seen within 24 hours of triage (72 hours on weekends).[97]

Another NCCHC standard accepted by ICE in *Woods* was J-D-02 (Medication Services). The 2011 PBNDS, however, are far less stringent in addressing best practices for detainee medication services. In stating that "[d]etainees who arrive at a detention facility with prescribed medications or who report being on such medications, shall be evaluated by a qualified health care professional as soon as possible, but not later than 24 hours after arrival, and provisions shall be made to secure medically necessary medications,"[98] this standard places patients at risk. NCCHC requires more exacting medication continuity, emphasizing that all inmates who are on prescription medication when they enter the facility must "continue to receive the medication in a timely fashion as prescribed" or an alternative.[99] The ACLU is also concerned about the PBNDS's provisions on medication delivery, which provide that "[i]f prescribed medication must be delivered at a time when medical staff is not on duty, the medication may be distributed by detention officers, where it is permitted by state law to do so, who have received proper training by the HAS [Health Service Administrator] or designee."[100] Medications should never be administered by anyone other than health care staff. Given the frequency of twice-daily dosing, there will be a significant number of detainees who will need medications administered in the evening. At many facilities, there may be no health care staff on site at this time.

While agreeing in *Woods* to NCCHC standard J-E-06 on oral care, which states broadly that oral treatment must be available when, in the judgment of a dentist, lack of treatment would harm an inmate's health, ICE has restricted routine oral care to detentions exceeding six months and kept its provision optional: "Routine dental treatment may be provided to detainees in ICE custody for whom dental treatment is inaccessible for prolonged periods because of detention for over six months."[101] This fails to take account when a detainee last received dental treatment, which may have long preceded the first day of incarceration. Dental care has long been a serious deficiency in ICE detention; one example reported by the ACLU of New Mexico involved a detainee who was told that he needed to be in detention for a year to obtain dental care. "He had been in the facility for nearly two years and stated that he did not receive adequate dental care. He had six teeth pulled during his detention in Otero. . . . Nabid, a [second] detained immigrant explained, 'Dental health is not taken seriously and rather than filling a cavity, they will pull the teeth.'"[102]

---

[97] Standard J-E-07, supra.
[98] PBNDS, supra, at § 4.3(V)(S).
[99] See Standard J-D-02; see also NCCHC, "Spotlight on the Standards: Medication Services." *CorrectCare* (Spring 2009), available at http://www.ncchc.org/resources/spotlight/23-2.html
[100] PBNDS, supra, at § 4.3(V)(S).
[101] *Id.* at § 4.3(V)(P).
[102] ACLU of New Mexico, *Outsourcing Responsibility*, supra, at 50.

The manifold medical and mental health failures in ICE detention chronicled by the ACLU and others are therefore only partially addressed by ICE's 2011 PBNDS. The crucial stage of medical and mental health screening of new arrivals is covered by a new standard that patients giving affirmative responses to screening questions about "acute or emergency medical conditions" shall be evaluated "as quickly as possible, but in no later than two working days."[103] This is not within the standard of care.[104] Patients reporting emergency medical conditions or symptoms consistent with such conditions must be sent immediately to the local emergency department for evaluation. Patients reporting urgent conditions must be seen by a provider within a time frame appropriate to their acuity. A categorical "no later than two working days" time frame, which could stretch to five days over a holiday weekend, is inappropriate. At intake, and throughout detention stays, moreover, the PBNDS should clearly specify that detainees must have access to all medically necessary diagnostic services such as offsite radiology, or biopsy, with strict timeliness compliance required and monitored.

In addition, the standard on required mental health services is deficient, in part because access to specific treatment modalities is not required. NCCHC Standard J-G-04 requires that, regardless of a facility's size or type, on-site individual counseling, group counseling, and psychosocial programming be provided.[105] The PBNDS requires none of these. The ACLU also recommends adherence to NCCHC Standard J-I-01, the substance of which is already incorporated into the PBNDS on housing persons at risk for suicide,[106] with respect to medical isolation and restraints: these must be interventions of last resort, by physician order only, for the shortest time necessary with an individual treatment plan developed.

Finally, ICE is to be commended for including a quality assurance component titled "Health Care Internal Review and Quality Assurance."[107] This standard, however, does not require formal Continuous Quality Improvement (CQI) activities or clinical performance enhancement reviews, both of which are key elements of an adequate quality assurance program.

VI. Women's Health

If fully implemented and enforced, the PBNDS will help ensure that women in ICE detention receive necessary, potentially life-saving services.

Consistent with constitutional and professional standards, ICE is obligated to address adequately women's unique health care needs, including gynecological, reproductive, and obstetrical health care. By improving access to appropriate and necessary health care for women

[103] *Id.* at § 4.3(V)(J).
[104] See NCCHC Standard J-E-02; John M. Raba, *Intake Screening & Periodic Health Evaluations, in Clinical Practice in Correctional Medicine* (2d ed.) 41, 42-43 (Michael Puisis, ed. 2006).
[105] See NCCHC, "Spotlight on the Standards: Basic Mental Health Services," *CorrectCare* (Summer 2010), available at http://www.nccho.org/resources/spotlight/24-3.html
[106] PBNDS, supra, at § 4.6.
[107] *Id.* at § 4.3(V)(BB).

in ICE custody, the 2011 PBNDS, if fully implemented and enforced, will help to ensure ICE policies satisfy basic legal standards.

These guidelines are a long time coming. Currently, we are witnessing the extended detention of increasing numbers of women, including those who are pregnant, nursing, and sole caretakers of their families. For medical reasons, to preserve family unity, and for other humanitarian reasons, the vast majority of these women should not be detained. ICE Director Morton has correctly recognized that "[a]bsent extraordinary circumstances or [what ICE understands to be] the requirements of mandatory detention, field office directors should not expend detention resources on aliens who [are] pregnant, or nursing, or demonstrate that they are primary caretakers of children."[108] However, until alternatives to detention are arranged, ICE must provide women in immigration detention with a comprehensive range of reproductive health services and options. Although as internal ICE standards the 2011 PBNDS lack the enforceability of binding regulations, they represent an important step towards that ultimate goal.

Previous ICE policies did not address critical reproductive health needs such as emergency contraception, freedom from restraints during labor and delivery, and access to abortion services. Indeed, the devastating impact on the health and fundamental rights of women immigration detainees has been well documented by investigations revealing inadequate medical care and related problems.[109] In fact, until the 2011 PBNDS were issued, ICE policies and practices addressing reproductive and obstetrical care afforded *less* protection for the health and rights of women in ICE custody than was available to women in the custody of the Federal Bureau of Prisons (BOP).[110]

Not only did the lack of adequate policies unnecessarily threaten women's health – including maternal and fetal health – but it also exposed ICE to legal liability. For example, in the ACLU's *Woods* class action litigation, one of the named plaintiffs, Marta Monteagudo-Guerrero, did not menstruate for the first four months of her detention. She alleged that she

> requested to see a gynecologist to discuss . . . problems with her menstrual cycle, but did not receive an appointment . . . until the end of May 2007, several months after the problem appeared to resolve itself. At that visit, [CCA-run San Diego

---

[108] "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens." (Mar. 2, 2011), available at http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf

[109] *See, e.g.*, Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention* (March 2009), available at http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed; University of Arizona Southwest Institute for Research on Women, *Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona* (January 2009), available at http://sirow.arizona.edu/files/UnseenPrisoners.pdf; Florida Immigrant Advocacy Center, *Dying for Decent Care: Bad Medicine in Immigration Custody* (March 2009), available at http://www.fiacfla.org/reports/DyingForDecentCare.pdf

[110] *See, e.g.*, 28 C.F.R. §§ 551.21-23, 570.41, *and* Program Statements 5200.01, 5538.05, 6070.05.

> Correctional Facility] staff informed her that the facility does not provide detainees with referrals to gynecologists and does not cover pap smears.[111]

In a case arising at the Eloy Detention Center, the ACLU of Arizona documented the case of a detainee named Helen who was held for one month:

> For almost the entire time she was detained, she experienced severe vaginal bleeding. She filed medical requests and told staff that this was not normal for her monthly period, but they still did not consider her situation a medical emergency. The bleeding became so severe that Helen experienced blurred vision, fainting, and could not walk. Helen continued to file requests to see a doctor. Ultimately, detention officers called a medical emergency and Helen was taken to a local hospital, where doctors performed a complete hysterectomy.[112]

ICE's settlement of the *Woods* litigation committed to providing all necessary health care to immigration detainees beyond just emergency care, at least for its San Diego facility, and the settlement also specified that ICE "must offer prenatal care (including medical exams, lab and diagnostic tests, and counseling), postpartum care, and obstetrical services when necessary."[113] The 2011 PBNDS are essential to ensuring that ICE complies with minimum legal standards for the treatment of detainees nationwide.

a. ICE is constitutionally obligated to provide women with access to appropriate and adequate health services in a timely manner, consistent with the professional standard of care.

The Fifth Amendment guarantee of adequate medical care described above necessarily encompasses women's unique health needs, including gynecological, reproductive, and obstetrical health care. For instance, federal and state courts have consistently held that the right to decide whether to continue or terminate a pregnancy is not lost as a condition of confinement.[114] Thus, under the Fifth Amendment, ICE is obligated to ensure that women in immigration detention can access abortion services. Similarly, because the use of physical restraints on pregnant women, particularly when they are in labor, delivery and post-partum

---

[111] *Woods* Complaint, supra.
[112] ACLU of Arizona, *In Their Own Words*, supra, at 30.
[113] *See Woods v. Morton*, No. 08-55376 (9th Cir. 2010) (Dec. 16, 2010 settlement agreement), available at http://www.aclu.org/files/assets/2010-12-16-WoodsvMorton-SettlementAgreement.pdf
[114] *See, e.g.*, *Roe v. Crawford*, 514 F.3d 789 (8th Cir. 2008), *cert. denied*, 129 S. Ct. 109 (2008); *Doe v. Arpaio*, 150 P.3d 1258 (Ariz. Ct. App. 2007), *cert. denied*, 128 S. Ct. 1704 (2008); *Bryant v. Maffucci*, 923 F.2d 979 (2d Cir. 1991); *Monmouth County Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987); *Roe v. Leis*, No. C-1-00-651, 2001 WL 1842459 (S.D. Ohio Jan. 10, 2001), *Doe v. Barron*, 92 F. Supp. 2d 694 (S.D. Ohio 1999).

recovery is dangerous to their health and lives, this practice violates the Fifth Amendment right to be free from inhumane treatment.[115] Indeed, a federal court jury recently awarded $200,000 in damages to a pregnant woman taken into immigration custody by the defendant, one of ICE's 287(g) immigration enforcement program partners, who shackled her during and after labor and delivery.[116]

b. The 2011 PBNDS on women's health are consistent with professional standards and existing federal law and policy.

As noted in the 2011 PBNDS, the new guidelines are based on standards set by the NCCHC and the American College of Obstetrics and Gynecology,[117] and are comparable to, though still not on par with, those standards enforced by the BOP.[118] For example, the 2011 PBNDS make available routine age- and gender- appropriate reproductive system evaluations, pelvic and breast examinations, Pap smear and STI tests, and mammograms, as well as access to contraceptive services, if desired.[119] Because it is well-settled as a legal matter that pregnancy in detention constitutes a special need and requires close medical supervision, the 2011 PBNDS require ICE: (a) to provide female detainees with access to pregnancy testing, nondirective options counseling, and health services in accordance with their expressed decisions regarding the pregnancy, whether they plan to carry to term or decide not to continue the pregnancy; (b) to provide ongoing prenatal care, specialized obstetrical care for high-risk pregnancies or complications, and safe and timely access to a medical facility for labor and delivery over the course of their pregnancies; and (c) to ensure that women who choose to terminate their pregnancies have access to a health provider for abortion care.[120] As the *Los Angeles Times* has pointed out with regard to the 2011 PBNDS's abortion provisions, "federal prisons provide

---

[115] *See Villegas v. Davidson County*, 2011 WL 1601480, *24 (M.D. Tenn. 2011) (the "shackling of a pregnant detainee in the final stages of labor shortly before birth and during the post-partum recovery violates the Eighth Amendment's standard of contemporary decency"); *see also Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 533 (8th Cir. 2009) (denying summary judgment for officer because shackling pregnant prisoner during labor clearly established as a violation of the Eighth Amendment); *Women Prisoners of D.C. v. District of Columbia*, 93 F.3d 910, 918, 936 (D.C. Cir. 1996) (correctional authorities cannot use "restraints on any woman in labor, during delivery, or in recovery immediately after de livery;" prison did not challenge district court's conclusion that "use of physical restraints on pregnant women . . . violate[s] the Eighth Amendment"); *Brawley v. State of Washington*, 712 F. Supp. 2d 1208, 1221 (W.D. Wash 2010) (denying summary judgment because shackling a prisoner in labor is clearly established as a violation of the Eighth Amendment).

[116] *See Woman Shackled During Labor Awarded Damages From Deputies*, USA Today (Aug. 18, 2011), available at http://www.usatoday.com/news/nation/2011-08-19-tennessee-woman-shackled-labor-damages_n.htm

[117] PBNDS, supra, at § 4.4.

[118] For example, the BOP clinical standards for women's health are considerably more comprehensive than the PBNDS, particularly with regard to preventive services such as mammograms, screening for STDs, and Pap smear tests. *See* BOP, *Preventive Health Care: Clinical Practice Guidelines*. (July 2011), available at http://www.bop.gov/news/PDFs/phc.pdf

[119] PBNDS, supra, at § 4.4(V)(D).

[120] *Id.* at § 4.3(V)(E)(2).

nearly identical [abortion] access."[121] Finally, the 2011 PBNDS ensure that physical restraints are used on pregnant women only in extraordinary circumstances, and are never used on women in active labor or delivery.[122]

These guidelines reflect common sense, compassion, and the bare minimum required by the U.S. Constitution. If fully implemented and enforced, the guidelines will help ensure that women in ICE detention receive necessary, potentially life-saving services.

VII. Hormone Therapy

The PBNDS on hormone therapy provides a positive starting point, but ICE also needs to ensure proper training for facility staff.

The 2011 PBNDS include a provision that "[t]ransgender detainees who were already receiving hormone therapy when taken into ICE custody shall have continued access. All transgender detainees shall have access to mental health care, and other transgender-related health care and medication based on medical need. Treatment shall follow accepted guidelines regarding medically necessary transition-related care."[123] While this standard provides a positive starting point, ICE needs to do more to ensure that problems arising in the past, such as refusing to start people on hormone therapy who weren't on it prior to being detained even if the medication is medically necessary; refusing to continue people on hormone therapy if no medical records can be produced to show that the therapy was prescribed by a doctor prior to the person being taken into custody; failing to have medical staff who are experienced at treating Gender Identity Disorder (GID); and failing to refer inmates with gender issues to persons outside the facility who have such experience, resulting in detainees with GID being denied competent evaluations or treatment.

For example, Romeo Fomai, a named plaintiff in the ACLU's *Woods* class action, was taking hormone therapy for GID since 1986. When he was transferred to SDCF in December 2006, Mr. Fomai alleged that facility staff confiscated his 30-day supply of hormones and placed them in storage with the rest of his personal property. While at SDCF, Mr. Fomai said he was repeatedly denied hormone therapy, pursuant to DIHS policy. After being taken off hormone therapy, Mr. Fomai experienced the physical symptoms of withdrawal, such as extreme pain in his breasts, hair loss, hot flashes, weight gain, and decreasing breast size. He became increasingly depressed and withdrawn, a particular concern because Mr. Fomai has a history of depression and was placed in a padded room at a prior correctional facility after slicing his wrists

---

[121] Editorial, "Immigration's loose rules of detention." Los Angeles Times (Mar. 18, 2012). *Compare* PBNDS, supra, at § 4.4(V)(E)(2) *with* BOP, "Female Offender Programs," available at http://www.bop.gov/inmate_programs/female.jsp
[122] PBNDS, supra, at § 4.4(V)(E).
[123] *Id.* at § 4.3(V)(U).

in a suicide attempt.[124] The Seventh Circuit Court of Appeals recently held that a Wisconsin law prohibiting any hormonal or surgical treatment to change a person's sex characteristics was facially unconstitutional, noting: "Surely, had the Wisconsin legislature passed a law that . . . inmates with cancer must be treated only with therapy and pain killers, this court would have no trouble concluding that the law was unconstitutional. Refusing to provide effective treatment for a serious medical condition serves no valid penological purpose and amounts to torture."[125]

ICE should draw more explicitly on best correctional practices, including training requirements for facility staff regarding GID. BOP has experienced the dreadful consequences of inadequate medical treatment for GID. A prisoner in BOP custody who was denied hormone therapy to treat her GID attempted to hang herself in her cell, then tried to cut off her testicles with a razor, requiring seven staples to repair the injury, and finally cut off her penis with a razor blade.[126] BOP finally started the prisoner on hormone therapy and also issued and distributed a clarification of BOP's program statements to make it clear that BOP inmates should receive individualized treatment plans that can include hormone therapy.[127] ICE should make its PBNDS more robust by incorporating the substance of NCCHC's Position Statement on "Transgender Health Care in Correctional Settings."[128] For example, NCCHC has there concluded that "[i]deally, correctional health staff should be trained in transgender health care issues. Alternatively, they should have access to other professionals with expertise in transgender health care to help determine appropriate management and provide training in transgender issues." Such training should include all aspects of diagnosis and treatment of GID.

VIII. Segregation, Shackling, and Use of Force

The 2011 PBNDS make some improvements to the use of disciplinary and administrative segregation in ICE facilities, but need to go further in limiting the use of these harsh incarceration methods which are inappropriate to use routinely in a civil detention system. The standards take troubling steps backwards in the regulation of restraints and use of force as compared with their 2008 predecessors.

a. Segregation

As described above in the cases of Tanya and Albert, administrative and disciplinary segregation can easily be misused by ICE. While the 2011 PBNDS improve aspects of

[124] *Woods* Complaint, supra.
[125] *Fields v. Smith*, 653 F.3d 550, 556 (7th Cir. 2011), *cert. denied* (Mar. 26, 2012).
[126] *Adams v. Fed. Bureau of Prisons*, 716 F. Supp. 2d 107, 109-10 (D. Mass. 2010).
[127] Federal Bureau of Prisons, Memorandum for Chief Executive Officers from Rear Admiral Newton E. Kendig to Assistant Director Charles E. Samuels, Jr., "Gender Identity Disorder Evaluation and Treatment." (May 31, 2011).
[128] National Commission on Correctional Health Care Board of Directors (Oct. 18, 2009), available at http://nccho.org/resources/statements/transgender.html

segregation, most notably by reducing the limit for disciplinary segregation from 60 to 30 days for a single violation – still a disproportionately lengthy period for a civil detention system – other problems remain. For example, it is unacceptable for ICE to outsource disciplinary segregation with only minimal oversight after a month of confinement. The PBNDS state that "[t]he facility administrator and the Field Office Director shall review the status of a detainee in disciplinary segregation after the first 30 days of segregation, and each 30 days thereafter, to determine whether continued detention in disciplinary segregation is warranted." (No such review requirement is in place for administrative segregation at all.) If detainees are in ICE custody, ICE's Field Office Directors (FODs) must be directly and daily responsible for their welfare, not content to leave detainees "out of sight and out of mind" for month-long periods. Similarly, ICE and its FODs must participate in, and ensure compliance with due process by, "disciplinary hearing panels," rather than leaving disparate procedures to vary by facility.

The American Bar Association's Criminal Justice Standards for the Treatment of Prisoners provide an absolute floor when assessing the PBNDS, as ICE detainees are not convicted of criminal offenses, but held in civil detention. Yet the PBNDS fall short of even the ABA's standards in several important respects. First, there is no requirement that a FOD reviewing prolonged segregation present a detainee with an individualized plan for leaving the unit. By contrast, the ABA standards require that where "[a] prisoner presents a continuing and serious threat to the security of others, correctional authorities should develop an individualized plan for the prisoner. The plan should include an assessment of the prisoner's needs, a strategy for correctional authorities to assist the prisoner in meeting those needs, and a statement of the expectations for the prisoner to progress toward fewer restrictions and lower levels of custody based on the prisoner's behavior. Correctional authorities should provide the plan or a summary of it to the prisoner, and explain it, so that the prisoner can understand such expectations."[129]

Second, the PBNDS's treatment of administrative segregation is far too permissive. The ABA standards applicable to segregation for more than 30 days do not permit sole reliance on "a detainee's criminal record" for administrative segregation, as the PBNDS do. ICE should limit all segregation to the ABA's three categories of: (a) discipline after a finding that the prisoner has committed a very severe disciplinary infraction, in which safety or security was seriously threatened; (b) a credible continuing and serious threat to the security of others or to the prisoner's own safety; or (c) prevention of airborne contagion, with a caveat that persons placed in segregation for medical reasons must be housed separately from other segregated detainees.[130]

---

[129] ABA, *Criminal Justice Standards for the Treatment of Prisoners*. (June 2011), Standard 23-2.9(b), available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/treatment_of_prisoners_commentary_website.authcheckdam.pdf

[130] Id. at Standard 23-2.7(a), 23-2.6(a).

Third, detainees with serious mental illness should never be placed in segregation. Courts have recognized that the Eighth Amendment's prohibition of cruel and unusual punishments precludes subjecting prisoners with serious mental illnesses to prolonged solitary confinement.[131] Instead, such prisoners should be expeditiously considered for release on appropriate conditions of supervision. Unlike the PBNDS, the ABA standards recognize that specialized mental health evaluations must proactively be provided to all detainees placed in segregation, not only when and if a member of the non-specialist facility health care staff determines that "reason for concern exists." ICE should require at a minimum that "[n]o prisoner should be placed in segregated housing for more than 1 day without a mental health screening, conducted in person by a qualified mental health professional, and a prompt comprehensive mental health assessment if clinically indicated. . . . Several times each week, a qualified mental health professional should observe each segregated housing unit, speaking to unit staff, reviewing the prisoner log, and observing and talking with prisoners who are receiving mental health treatment."[132]

Finally, the PBNDS's limitation of segregated detainees' recreation to "outside their cells," rather than outdoors, conflicts with case law regarding minimum standards for convicted prisoners, which ICE detainees are not. The Tenth Circuit Court of Appeals held that "even a convicted murderer who had murdered another inmate and represented a major security risk [is] entitled to outdoor exercise."[133] The PBNDS also provide excessive leeway to facilities in stating that "[w]hen space and resources are available, detainees in administrative segregation may be provided opportunities to spend time outside their cells (in addition to the required recreation periods)."[134] This not only suggests that facilities with space and resources can nonetheless choose not to provide such opportunities, but also fails to satisfy the ABA Standards' requirement that "[a]ll prisoners placed in segregated housing should be provided with meaningful forms of mental, physical, and social stimulation."[135]

As a more general matter, the ACLU is troubled by ICE's failure to place strict controls on facilities' use of administrative segregation. Even the outer limits for disciplinary segregation, like the 30-day maximum for individual disciplinary violations and the FOD review that occurs before disciplinary segregation exceeding 30 days may continue, are absent for administrative segregation. The ACLU of Arizona has reported that administrative segregation is often inappropriately used to isolate survivors of abuse. Release must instead be the first option considered for individuals whom ICE determines cannot be in general population for

---

[131] *See, e.g.*, *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995).
[132] ABA, Treatment of Prisoners, Standard 23-2.8.
[133] *Perkins v. Kansas Department of Corrections*, 165 F.3d 803, 810 (10th Cir. 1999); *see also Lopez v. Smith*, 203 F.3d 1122, 1132-33 (9th Cir. 2000) (en banc); *Allen v. Sakai*, 48 F.3d 1082, 1086 (9th Cir. 1994).
[134] PBNDS, supra, at § 2.12(V)(K).
[135] ABA, Treatment of Prisoners, Standard 23-3.8.

administrative reasons, with appropriate conditions of supervision if necessary. Reducing the frequency of detention would avoid documented situations such as these:

•"My client was raped in detention," wrote an immigration attorney in April of 2009. "He has no criminal record, and before leaving [his] home county, was raped. . . . While he was detained in Florence, he was raped by another detainee in the bathroom. It was reported to the police, but the prosecutor in Pinal County declined to prosecute. After the rape, he was placed in isolation. He couldn't eat, couldn't sleep; just kept reliving trauma. He is completely alone, not even a television. We can only visit him on certain days because he is in protective custody. Everything has to be put on lock-down for him to be moved to visitation. When he is brought to visitation (or anywhere else), he is shackled hands, feet, and waist. They refuse to take off the shackles even to speak with me, and this is despite the fact that we are in a non-contact booth through a glass window. And the guards stand right outside. He is also in stripes. It is so degrading, after having been a victim, that I am truly outraged."[136]

• As a gay man who has suffered prior assaults, harassment and threats in his home country and while detained in the United States, Simon is especially susceptible to harassment. He is HIV-positive and, in order to maintain his health, requires constant medical monitoring and an environment with minimal stress and anxiety. Simon was placed in protective custody when he was detained in Eloy because he told officers that he had been previously assaulted and was afraid for his safety. While there, he was made to wear an orange disciplinary jumpsuit and was shackled any time he was taken to court or for visitation. He felt humiliated and worried that the shackles would give the immigration judge the wrong impression and negatively affect his immigration case. Even though Simon's family wanted to visit him at the detention center, he did not want them to see him in shackles. As a result of these traumas, and compounded by his continued detention, Simon suffers from severe depression and anxiety.[137]

•The ACLU also continues to be concerned that ICE's Otay Mesa facility has a special medical segregation unit called F-Med for severely mentally ill immigration detainees. The ACLU of San Diego reports that some of the detainees in F-Med appear to be kept in isolation cells (distinct from suicide prevention "safety cells"), essentially solitary confinement, for months on end.

b. Shackling and Use of Force

---

[136] ACLU of Arizona, *In Their Own Words*, supra, at 23.

[137] Id. at 25; *see also* Nancy López, "Transgender Immigrant Detainees Cut Off from Legal Help." New America Media (Mar. 14, 2012) (noting that "[j]ail administrators won't let detainees in [administrative segregation] out for [know your rights] presentations . . . [so] presenters sometimes skip these detainees"), available at http://newamericamedia.org/2012/03/transgender-immigrant-detainees-cut-off-from-legal-help.php

The 2011 PBNDS have regressed by deleting a provision in the 2008 standards that prohibited use of "hard restraints" prior to a determination that soft restraints were ineffective. The 2008 standards also mandated that facilities document soft restraint use efforts in their incident reports. Even more dismayingly, the new standards no longer incorporate the DHS Use of Deadly Force Policy and drop the 2008 standard that that physical force be used only as a last resort.[138]

ICE detainees have constitutional rights to be free from unreasonable and excessive use of force.[139] "The 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."[140] It is undisputedly objectively unreasonable to apply restraints in a manner that causes unnecessary pain and injury; "the right to be free from unduly tight handcuffing [is] clearly established."[141]

The abuse of shackling and use of force by facility staff is endemic in the ICE detention system. For example, according to reports documented by the ACLU of San Diego,

•Carlos Lopez was placed in the administrative segregation unit upon arrival at the SDCF in December 2006. He had provided information to the United States and Mexican governments regarding a drug cartel and was apparently placed in administrative segregation for his own protection. For nearly ten months, Mr. Lopez alleges that he was shackled with handcuffs and leg irons whenever he was moved to the recreation area, the medical unit, or for one of his frequent guest visitations. The tightness of the leg irons caused Mr. Lopez pain from the start. Yet his verbal complaints to the guards who shackled him were allegedly ignored, as were subsequent written requests for assistance. By April 2007, the overly-tight leg irons had chewed through the soft tissue of Mr. Lopez's ankles, causing nearly constant bleeding. A facility counselor took photographs of Mr. Lopez's bleeding ankles in May 2007. Mr. Lopez eventually stopped using his recreation time because even wearing two pairs of socks failed to alleviate the pain caused by the leg irons.

Mr. Lopez filed a written grievance regarding the painful shackling in July 2007 and another in August 2007. Neither was answered. Despite SDCF authorities being on notice of Mr. Lopez's pain and injury, the manner of shackling was never modified. It is not clear why

---

[138] 2008 standard available at http://www.ice.gov/doclib/dro/detention-standards/pdf/use_of_force_and_restraints.pdf, 4, 2, 1.
[139] *See Bell v. Wolfish*, 441 U.S. 520 (1979); *cf.* Hudson v. McMillan, 503 U.S. 1 (1992); *see also Gibson v. County of Washoe*, 290 F.3d 1175, 1197 (9th Cir. 2002).
[140] *Graham v. Connor*, 490 U.S. 386, 397 (1989).
[141] *Vondrak v. City of Las Cruces*, 535 F.3d 1198, 1209 (10th Cir. 2008) (internal quotation marks omitted); *see also Wall v. County of Orange*, 364 F.3d 1107, 1112 (9th Cir. 2004); *LaLonde v. County of Riverside*, 204 F.3d 947, 960 (9th Cir. 2000); *Palmer v. Sanderson*, 9 F.3d 1433, 1436 (9th Cir. 1993); *Hansen v. Black*, 885 F.2d 642, 645 (9th Cir. 1989).

Mr. Lopez – who was classified at the lowest level of dangerousness when released from segregation into the general SDCF population in September 2007 – was shackled at all during this period. Each of Mr. Lopez's ankles is now marked with three dark scars, all the size of a quarter or larger.

•Jose Arias Forero was subjected to a distinct but equally troubling form of shackling. Mr. Forero arrived at SDCF around March 2005 from the El Centro Service Processing Center with an untreated torn rotator cuff. He was immediately placed in the segregation unit pending determination of where to house him permanently. Every time Mr. Forero wished to shower while in segregation, he alleges that CCA guards pulled his arms behind his back and cuffed them in that position. This aggravated Mr. Forero's torn rotator cuff, causing him great pain. Mr. Forero's daily complaints about pain to the guards who shackled him allegedly produced no change in the way he was shackled. A doctor eventually saw Mr. Forero regarding his torn rotator cuff. The doctor issued a medical order that Mr. Forero was to be handcuffed in front of his body, rather than behind, so as to not cause him pain. A surgery later repaired Mr. Forero's torn rotator cuff. Mr. Forero was then moved out of segregation into the general population.

Towards the end of April 2006, Mr. Forero was ordered back to segregation, allegedly for raising awareness among detainees about the pro-immigrant May Day marches being planned across the country. When staff arrived to shackle him for transportation to the segregation unit, Mr. Forero placed his hands in front of his body, consistent with the medical order. He says he was told to put his arms behind his back, and his protests about the medical order were ignored. An assistant warden instead ordered a guard to "get" Mr. Forero. The guard took Mr. Forero to the ground by putting his knee into Mr. Forero's back and pulling back on Mr. Forero's arms. Mr. Forero heard his repaired shoulder pop under the pressure of the guard's force and cried out in pain. The guard then cuffed Mr. Forero's hands behind his back and lifted Mr. Forero, who was then crying and screaming, by his arms. More excruciating pain shot through Mr. Forero's shoulder as he was lifted and carried by his arms to the medical unit. At the medical unit, a doctor ordered that the cuffs be removed. An MRI taken ten to fifteen days later showed that Mr. Forero's once-repaired shoulder had been re-torn.

•Mauricio Acuna-Garcia alleges he was similarly injured through shackling-related use of excessive force. On October 28, 2008, Mr. Acuna-Garcia was put in segregation for fifteen days for being implicated in the theft of a fire extinguisher pin. At the end of this period, he met with the CCA chief of security at SDCF, who allegedly informed him, "When I'm ready [to let you out of segregation], I'll let you know." After the meeting, a guard escorted Mr. Acuna-Garcia back to his cell. Once in his cell, Mr. Acuna-Garcia placed his hands and wrists out through a slot in the cell door in order to have his handcuffs removed. The guard, he says, instead pulled up on Mr. Acuna-Garcia's arms, causing pressure and pain in his wrists. Mr. Acuna-Garcia told the guard that this hurt several times. The guard finally freed Mr. Acuna-Garcia's right arm from the handcuffs. Rather than remove the left arm cuff, the guard allegedly pulled back with all his

weight on Mr. Acuna-Garcia's left arm. This twisted Mr. Acuna-Garcia's body around until he was smashed up against the slot and the door, his left arm sticking out of the slot at a painful angle.

The unnecessary force left Mr. Acuna-Garcia's arm and shoulder bruised purple and black and caused him pain for weeks. He filed an internal complaint about the incident but received no response. Mr. Acuna-Garcia also suffered bleeding and scarring on his ankles from over-tight leg irons. His complaints about this have produced no change in the type or manner of leg shackles used. Like Mr. Lopez, his attempts to abate the pain of the hard shackles by wearing two pairs of socks have proven ineffective.

Detention facility staff have also assaulted detainees without using shackles. In one Los Angeles case,

•Mohammad Mirmehdi was badly beaten in retaliation for seeking to assist a fellow detainee whose medical condition was being mocked. According to a press account, the incident "began because guards delayed assistance to an ailing detainee who was begging to be taken to the bathroom. The detainee, Abdel Jabbar Hamdan, said in an interview that he has several medical conditions, including diabetes and kidney stones, and that [a guard named] Lopez taunted and mocked him. 'I said, "Please let me go to the bathroom," I was crying,' Hamdan said. 'I was holding my stomach in extreme pain. Everyone see me crying. He was laughing at me. He said if you need to do it so badly why don't you do it on the floor. Then you have to clean it. I said, "Please, I'm an old man, let me go, please."' He was eventually taken to the bathroom." Mohammad's brother, Mostafa, who was also in detention, "had been troubled by Hamdan's cries for help and asked Lopez about it, along with his name, presumably to report the guard's conduct. Lopez became irate [and] Mohammad Mirmehdi asked Lopez why he was yelling at his brother. Lopez then attacked, beating and choking Mohammad . . . . 'Mohammad was saying, "You are killing me, you are killing me!"'[142] Despite ICE's claim that Mr. Mirmehdi was not seriously hurt, his ACLU of Southern California lawyer said Mirmehdi had bruises on his throat and under his ears, cuts on his face, and welts on his arms."[143]

The 2011 PBNDS's retreat on restricting restraints and the use of force more generally is alarming and sends a message to abusive staff that their actions will be tolerated. The ACLU urges ICE immediately to revise these standards and restore protections to detainees who are at the mercy of facility staff.

IX. Limited English Proficiency

[142] Kelly Thornton, "U.S. investigating fight between 9/11 detainee and guard." San Diego Union-Tribune (Mar. 10, 2005), available at http://www.signonsandiego.com/uniontrib/20050310/news_1n10brothers.html
[143] Id.

The ACLU will carefully monitor ICE's commitment throughout the PBNDS to translate written materials for detainees and ensure oral interpretation. There is an acute need for improvement in this area. The ACLU of Wisconsin reports that the Dodge County Detention Facility in Juneau, Wisconsin, a principal immigration detention facility for the state, has few if any staff who speak Spanish despite the prevalence of that language among the detained population. The ACLU of Georgia has received reports from immigration detainees at the Cobb County jail of "a lack of interpreters available to facilitate communication between detainees and jail personnel. Many people are coerced to sign documents they do not understand."[144] That affiliate's monitoring of the Stewart Detention Center, in concert with Georgia Detention Watch, cites an unnamed source who asserted first-hand knowledge of facility operations and alleged that when disciplinary segregation hearings were held (sometimes they were skipped altogether), they were often conducted without a bilingual hearing officer.[145]

It is also vital that ICE fully implement the PBNDS's requirement that in the context of medical care "[o]ral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate."[146] This requirement is crucial in light of the potential gap regarding oral communication beyond the fixed translations of written documents. Consider, for example, a detainee who wishes to ask questions about an informed consent form.

Inadequate language access for medical care can have dire consequences.[147] For example, Claudia Leiva Deras, the Nebraska woman who alleges being sexually assaulted while an immigration detainee, notes in her complaint that she "remained silent during these four months because none of the guards spoke Spanish, there were no signs or presentations about reporting sexual abuse, and she feared recrimination and harm to her family."[148] Under the American Public Health Association's standards, "[i]t is the institution's responsibility to maintain communication with the prisoners; therefore, personnel must be available to communicate with prisoners with language barriers."[149]

X. Religious Freedom

---

[144] Azadeh Shahshahani (ed.), *Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) Has Torn Families Apart and Threatened Public Safety*. (ACLU Foundation of Georgia, Oct. 2009), 17.
[145] Georgia Detention Watch, "Report on the December 2008 Humanitarian Visit to the Stewart Detention Center." (2009), available at http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf
[146] PBNDS, supra, at §§ 4.3-4.4.
[147] *See generally* Nina Bernstein, "Language Barrier Called Health Hazard in E.R." New York Times (Apr. 21, 2005) (giving examples of faulty medical care resulting from language access problems).
[148] *Leiva Deras v. Brueggemann* (D. Neb. Jan. 3, 2012), available at http://www.aclunebraska.org/images/attachments/Leiva_Deras_Complaint.pdf
[149] American Public Health Association, Task Force on Correctional Health Care Standards, "Standards for Health Services in Correctional Institutions." (2003), 27.

The ACLU commends ICE for its 2011 PBNDS on religious freedom. The standards favor broad accommodations for religious exercise, commit to equal treatment, provide access to external clergy and volunteers where necessary, permit detainee preachers, accommodate new or unfamiliar religious practices, protect religious property (including apparel), and provide religious diets.

XI. Conclusion

The ACLU praises ICE for the time and attention to detention standard reform that the 2011 PBNDS represent. They contain much that would constitute progress if properly implemented. As this statement shows, however, ICE long ago forfeited any confidence in its stewardship of detainees and must not be given any benefit of the doubt on matters such as PREA implementation. In telling detainees' stories, the ACLU bears witness to their suffering and reaffirms its vigilance on behalf of those currently in detention. ICE's shortcomings have serious inhumane and unconstitutional consequences; without adherence to and improvement of the 2011 PBNDS in the areas discussed here, and beyond, more harm will surely come to pass.

Appendix A

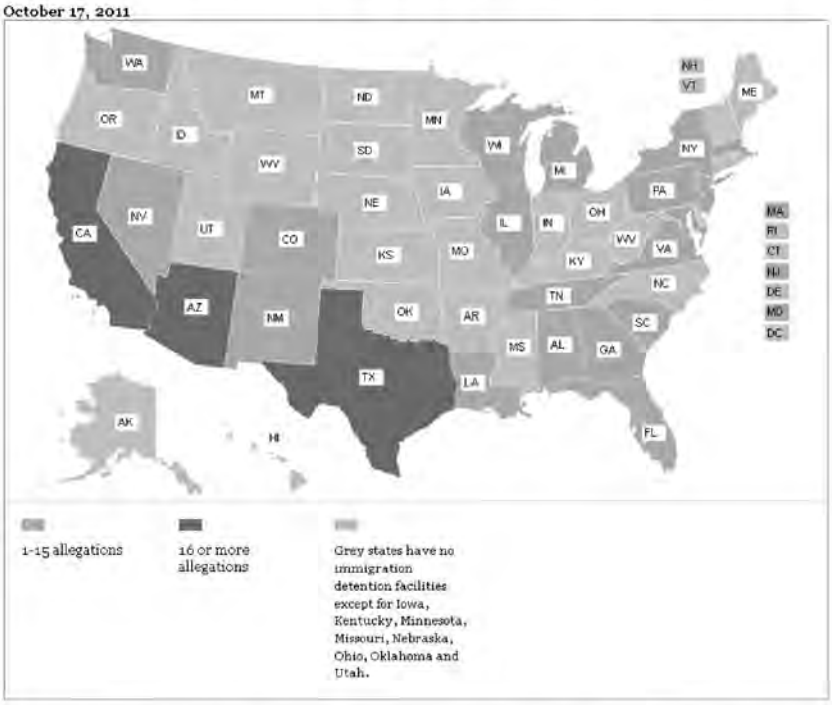
ACLU and ACLU affiliated reports referenced in statement (by date):

- ACLU of Arizona, *In Their Own Words: Enduring Abuse in Arizona Immigration Detention Centers* (2011): http://www.acluaz.org/sites/default/files/documents/detention%20report%202011.pdf
- ACLU of New Mexico, *Outsourcing Responsibility: The Human Cost of Privatized Immigration Detention in Otero County* (2011): http://aclu-nm.org/wp-content/uploads/2011/01/OCPC-Report.pdf
- American Civil Liberties Union and Human Rights Watch, *Deportation By Default* (2010): http://www.hrw.org/en/reports/2010/07/26/deportation-default-0
- New York Civil Liberties Union (NYCLU), *Voices from Varick: Detainee Grievances at New York City's Only Federal Immigration Detention Facility* (2010): http://www.nyclu.org/files/publications/Varick_Report_final.pdf
- NILC, ACLU of Southern California, and Holland & Knight, *A Broken System: Confidential Reports Reveal Failures in U.S. Detention Centers* (2009): www.nilc.org/document.html?id=9
- Georgia Detention Watch, *Report on the December 2008 Humanitarian Visit to the Stewart Detention Center* (2009): http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf
- ACLU of Massachusetts, *Detention and Deportation in the Age of ICE: Immigrants and Human Rights in Massachusetts* (2008): http://www.aclum.org/sites/all/files/education/aclu_ice_detention_report.pdf

Appendix B

Sexual Abuse in Immigration Detention Facilities

October 17, 2011



In January 2011, the National Prison Project of the American Civil Liberties Union filed a Freedom of Information Act request with several components of the United States Department of Homeland Security, including the Office of Inspector General, Immigration and Customs Enforcement, and the Office of Civil Rights and Civil Liberties, seeking all documents in their possession related to the sexual abuse of detainees in immigration detention facilities. While the

information gleaned from the documents we have thus far received is surely just the tip of the iceberg, and while these documents generally describe allegations rather than proven incidents, the results summarized above nonetheless paint a very instructive picture about how widespread this problem is and how vulnerable to abuse immigration detainees can be.

The documents obtained through the Freedom of Information Act request contain nearly 200 allegations of abuse in immigration detention facilities across the nation. And given that sexual abuse is a problem that is widely underreported in the outside world, there's little question that number does not fully represent the scope of the problem. But one thing is clear: the sexual abuse of immigration detainees is not an isolated problem, limited to one rogue facility or merely the result of a handful of bad apple government contractors who staff some of the nation's immigration detention centers. As our documents show and the map above depicts, while centers in Texas resulted in the largest number of allegations, sexual abuse allegations have come from nearly every state that houses an immigration detention center. The data crystallizes the urgent need for the government to admit just how pervasive a problem sexual abuse is in its immigration jails and to take immediate steps to ensure that all detainees are protected.

By scrolling over each state, you can see how many allegations from that state are shown in the documents and each of the individual facilities from which complaints have been received. Click on the state for more detailed information. For more information about the methodology used to arrive at the information above, and how allegations were counted, please visit https://www.aclu.org/sexual-abuse-immigration-detention-facilitites-methodology.

- **Allegations of Abuse where the state is unclear**

  30 allegations

  Examples of alleged incidents regarding this facility

  - Complainant alleged that h/she was made to strip naked in front of two other individuals, then mocked and sexually harassed. (Complaint Received: 03/2007)
  - Complainants allege that they were raped while in ICE custody and that ICE officials did not take their complaints seriously. (Complaint Received: 04/2007)
  - In transit between two detention facilities, the officer in charge of making the transfer allegedly took the subject detainee to his/her residence and proceeded to have sex with him/her against his/her will. (Incident date: 09/2007)

- **Alabama**

  - **Facilities Unknown**

    3 allegations

    Examples of alleged incidents regarding this facility

    - Complainant alleged being repeatedly raped and sexually assaulted by other detainees in the facility. (Complaint Received: 03/2009)

- **Arizona**

- **Florence Correctional Center**

  1 allegations

- **Florence SPC**

  1 allegations

  Examples of alleged incidents regarding this facility

- Report circulated alleging a sexual relationship between a detainee and an unknown ICE officer. (Report Received 9/9/2009).
- **Pinal County Adult Detention Center**

  6 allegations

  Examples of alleged incidents regarding this facility

-
- Complainant alleged that two corrections officers informed other inmates that he/she is homosexual. Complainant alleedly now fears for his/her safety because h/she has been physically and sexually assaulted in the past because of his/her homosexuality (Complaint Received: 6/11/09)
- Complainant alleged that detention officer physically/sexually assaulted her during an aggressive pat-down search when officer squeezed detainee's breasts and genital area unnecessarily hard. (Complaint Received: 1/29/2010).
- **Eloy Detention Center**

  8 allegations

  Examples of alleged incidents regarding this facility

- Officer allegedly witnessed potential sexual assault when he observed detainee grabbing the buttocks of other detainee while exiting cell. (Complaint Received: 11/6/2010).

- **California**

  - **El Centro Service Processing Center**

    1 allegations

    Examples of alleged incidents regarding this facility

  - Complainant alleged that he/she has been the victim of discrimination, emotional and physical abuse, and was raped twice while handcuffed by guards at this facility before transfer. (Complaint received 05/2007)
  - **Yuba County Jail**

    1 allegations

  - **Santa Ana City Jail**

    3 allegations

    Examples of alleged incidents regarding this facility

- Complainant alleged h/she was inappropriately strip-searched, then denied personal hygeine items. (Complaint Received: 02/2010)
- Complainant alleges that h/she was sexually assaulted while in transit to court by another detainee. (Complaint Received: 04/2011)
- **Otay Detention Facility**

  4 allegations

  Examples of alleged incidents regarding this facility

- Complainant alleged that he/she was sexually assaulted by cell-mate while he/she was sleeping. (Complaint Received: 07/12/2010)
- Complainant alleges that fellow detainee inappropriately touched his/her genitals in an act of unwanted sexual conduct, and threatened to hurt complainant if h/she reported the incident. (Complaint Received: 10/15/2009)
- Complainant currently a detainee at Otay alleged that h/she was raped by a police officer while being transported from police department to local jail. (Complaint Received: 4/2/2010).
- **Facilities Unknown**

  8 allegations

  Examples of alleged incidents regarding this facility

- Complainant alleged that h/she was repeatedly touched inappropriately while detained. (Complaint Received: 10/2007)

- **Colorado**

  - **Denver Contract Detention Facility**

    1 allegations

    Examples of alleged incidents regarding this facility

- Complainant alleged that h/she was subjected to verbal and sexual abuse by cellmate and other fellow detainees, and detention official ignored his/her complaints. (Complaint Received: 4/26/2010).
- **Facilities Unknown**

  3 allegations

  Examples of alleged incidents regarding this facility

- An immigration attorney reported multiple alleged incidients of his/her client being sexually harassed while in ICE custody.(Complaint Received: 12/2007)
- Complainant alleged that he had been verbally and sexually abused by fellow detainees. (Compliant Received 4/3/2010).

- **Florida**

  - **Baker County Facility**

    1 allegations

- **Glades County Detention Center**

  1 allegations

  Examples of alleged incidents regarding this facility

- Complainant alleged that h/she was forced by cell-mate to engage in an unwanted sexual encounter, and that cell-mate threatened to hurt him/her if h/she refused. (Complaint Received: 3/23/2010).
- **Wakulla County Facility**

  2 allegations

- **Krome Service Processing Center**

  3 allegations

  Examples of alleged incidents regarding this facility

- Complainant alleged that h/she was sexually assaulted during a pat-down search by contract officers. (Complaint Received: 8/21/2009).
- **Facilities Unknown**

  5 allegations

  Examples of alleged incidents regarding this facility

- Deputy sheriff allegedly intimidated 8 undocumented immigrants into performing sexual acts. (ICE Investigation Commenced 8/14/2009).

- **Georgia**

  - **Stewart Detention Center**

    1 allegations

    Examples of alleged incidents regarding this facility

  - Complainant alleged that his/her roommate first drugged him, then pulled down his/her pants and applied cream to his/her buttocks. (Complaint Received: 1/20/2010).

- **Illinois**

  - **McHenry County Adult Correctional Facility**

    2 allegations

    Examples of alleged incidents regarding this facility

  - Complainant alleged h/she was forced to shower and use the toilet in full view of many other detainees of the opposite sex and was groped by jail staff. (Complaint Received: 07/2010)

- Complainant alleged that h/she was subjected to sexual, physical, and verbal abuse by detention officers as a result of transgender identity, including being inappropriately groped, denied HIV medication, and repeatedly taunted. (Complaint Received: 4/30/2010).
- **Tri-County Detention Center**

  2 allegations

- **Louisiana**

  - **LaSalle Detention Facility**

    1 allegations

    Examples of alleged incidents regarding this facility

- Complainant alleged that h/she was forced to perform oral sex on a correctional officer while being held in a segregation cell. (Incident date: 03/2009)
- Complainant alleged that staff officer touched him/her innappropriately during pat-down contraband search. (Complaint Received: 9/10/2009).
- **Oakdale Federal Detention Center**

  1 allegations

- **Massachusetts**

  - **Plymouth County Correctional Facility**

    1 allegations

    Examples of alleged incidents regarding this facility

- Complainant alleged that on one occasion, h/she was stripped naked, sexually humiliated, and exposed to freezing cold and unsanitary conditions in solitary confinement. (Complaint received: 07/09/2007)
- **Suffolk County House of Corrections (South Bay)**

  1 allegations

  Examples of alleged incidents regarding this facility

- Complainant alleged that an officer sexually assaulted him/her, then pulled down his/her pants in the cafeteria of the detention center and brought other detainees in to look at him/her. (Complaint received: 08/17/2010)

- **Maryland**

  - **Facility Unknown**

    1 allegations

    Examples of alleged incidents regarding this facility

- Complainant alleged the sexual assault of a detainee by and ICE agent during a raid in Annapolis. (Complaint Received: 06/2008).

- **Michigan**

  - **Calhoun County Correctional Center**

    1 allegations

    Examples of alleged incidents regarding this facility

  - Complainant alleged sexual harrassment by two deputies who suggested that the detainees should have sex with each other.(Complaint Received: 10/2008)

- **New Jersey**

  - **Facility Unknown**

    1 allegations

  - **Facilities Unknown**

    1 allegations

  - **Hudson County Correctional Facility**

    2 allegations

    Examples of alleged incidents regarding this facility

  - Complainant alleged that h/she was stripped naked, sprayed with pepper spray on his/her genitals, and sexually assaulted. (Complaint Received: 04/2010)

- **New Mexico**

  - **Otero County Processing Center**

    4 allegations

    Examples of alleged incidents regarding this facility

  - Complainant alleged that while aggressively being searched before boarding a bus, a corrections officer lifted her shirt to expose her breasts to 40 other male detainees. (Complaint Received: 03/2010)
  - Complainant alleges that h/she is being sexually assaulted and harassed by fellow detainees because of his/her sexual orientation. Officers in the facility allegedly have offered to put him/her in solitary confinement for "safety." (Complaint Received: 09/2010)

- **Nevada**

  - **North Las Vegas Detention Center**

1 allegations

Examples of alleged incidents regarding this facility

- Complainant alleged that h/she was the victim of attempted sexual assault by a correctional officer. (04/30/2010)

- **New York**

  - **Orange County Correctional Facility**

    2 allegations

    Examples of alleged incidents regarding this facility

  - Complainant alleged that h/she was subjected to inappropriately sexual touching by cellmate.(Complaint Received: 11/05/2009)
  - **Facilities Unknown**

    3 allegations

- **Pennsylvania**

  - **Lackawanna County Prison**

    1 allegations

  - **Pike County Correctional Facility**

    1 allegations

  - **York County Prison**

    3 allegations

    Examples of alleged incidents regarding this facility

  - Complainant alleged that he had been subjected to physical and sexual abuse by a York County prison official who had twice struck him in the face and pulled down his pants, tugged on his genitals, and ordered him to say "uncle." (Complaint Received: 1/20/2010).

  - •

    Facility Unknown

    1 allegations

- **Rhode Island**

  -

- **South Carolina**
  - **Facility Unknown**

    1 allegations

    Examples of alleged incidents regarding this facility

  - Complainant alleged that fellow detainee and patient subjected him/her to a "forced sexual encounter." (Complaint Received 7/28/2010).

- **Tennessee**
  - **Facility Unknown**

    2 allegations

    Complainant alleged the h/she had been sexually assaulted while in his/her bed by fellow detainee. (Complaint Received 9/3/2009).

- **Texas**
  - **Johnson County Detention Center**

    1 allegations

  - **Houston Contract Detention Facility**

    2 allegations

  - **Polk County Adult Detention Center**

    2 allegations

  - **Laredo Contract Detention Facility**

    3 allegations

    Examples of alleged incidents regarding this facility

  - An ICE officer is alleged to have shoved a detainee against a wall and fondled him/her. (Complaint Received: 04/2008)
  - On more than one occasion, correctional officers allegedly requested a striptease dance from a detainee. These officers allegedly were aware that the detainee was formerly employeed as an exotic dancer at a local club. (Complaint Received: 11/2008)
  - **South Texas Detention Facility**

    4 allegations

    Examples of alleged incidents regarding this facility

- Detainee alleged that h/she was raped, reported the incident, then was transferred to Port Isabel Service Processing Center, where h/she has since attempted suicide and was placed in isolation. (Complaint Received: 05/29/2007)
- Complainant alleged that h/she was the victim of numerous sexual assaults. (Complaint Received: 01/2008)
- Complainant alleged that h/she was assaulted in the shower area, where h/she was forced to perform oral sex on an officer, dragged by his/her hair and then penetrated by the officer without a condom. (Complaint Received: 06/2009)
- **T. Don Hutto Residential Center**

  5 allegations

  Examples of alleged incidents regarding this facility

- A female detainee allegedly was sexually assaulted by an officer. (Complaint Received: 05/2007).
- **Port Isabel Service Processing Center**

  6 allegations

  Examples of alleged incidents regarding this facility

- An ICE detainee alleged that h/she was raped by an officer, then placed in isolation as punishment for reporting the incident. (Complaint Received: 08/2007)
- **El Paso Processing Center**

  8 allegations

  Examples of alleged incidents regarding this facility

- A detainee alleged that h/she was inappropriately touched in the groin area and butt at his/her residence by an ICE officer on the morning of his/her arrest. (Complaint Received: 07/2008)
- Complainant alleges that fellow detainee repeatedly made unwanted physical and verbal sexual advances toward him/her while sharing dorm. (Complaint Received: 7/21/2010).
- **Willacy Detention Center**

  12 allegations

  Examples of alleged incidents regarding this facility

- Complainant alleged that detainees were being raped by corrections officers. (Complaint Received: 06/2009)
- **Facilities Unknown**

  13 allegations

  Examples of alleged incidents regarding this facility

- Complainant alleged that h/she was asked by an officer for a photo and contact information so that h/she could "get together" after being released.(Complaint Received: 04/2007)
- ICE Security Officer is alleged to have sexually abused three detainees. (Complaint Received: 05/2008)
- Complainant alleged that h/she had been in an ongoing sexual relationship with an ICE officer, who had at one time sexually assaulted him/her during his/her stay in medical center
- Prison official employed by contractor allegedly had engaged in sexual intercourse with a detainee minor. (Report Received 4/1/2010)

- Complainant alleged that h/she was forced to perform oral sex on a border patrol officer in exchange for being allowed to remain in Texas. (Complaint Received: 1/26/2010).

- **Virginia**

  - **Rappahannock Regional Facility**

    2 allegations

    Examples of alleged incidents regarding this facility

- Complainant alleged that h/she was repeatedly sexually harassed and assaulted by his/her cellmate, but his/her complaints were repeatedly ignored by officers in the detention facility. (Complaint Received: 06/2010)
- **Hampton Roads Regional Jail**

  5 allegations

  Examples of alleged incidents regarding this facility

- Complainant alleged that h/she was raped by unidentified fellow detainee. (Complaint Received 4/20/2010)
- Complainant alleged that h/she was sexually assaulted by a fellow detainee wielding a knife, and was also physically attacked by a friend of the initial assailant. (Complaint Received: 10/26/2009).

- **Washington**

  - **Tacoma Northwest Detention Center**

    4 allegations

    Examples of alleged incidents regarding this facility

- Complainant alleged that h/she was repeatedly raped, assaulted, and harassed by the same individual at the facility. (Complaint Received: 04/2011)
- Complainant alleged that he/she was sexually assaulted and beaten by a group of fellow detainees in the bathroom area of the facility, resulting in several injuries requiring medical attention. (Complaint Received: 5/24/2010).
- **Facilities Unknown**

  1 allegations

  Examples of alleged incidents regarding this facility

- Complainant alleged that fellow detainee had sexually harassed him, leading to a physical altercation between them. (Complaint Received 1/19/2011).

- **Wisconsin**

  - **Kenosha County Detention Center**

1 allegations

Examples of alleged incidents regarding this facility

- Complainant alleged that h/she was physically and sexually abused by inmates while detained. (Complaint received 12/2009)

Written Statement of
The Advocates for Human Rights

Submitted to the United States House of Representatives
Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

For the March 28, 2012, Hearing on
"Holiday on ICE: The U.S. Department of Homeland Security's
New Immigration Detention Standards"

The Advocates for Human Rights is a non-governmental, nonprofit organization dedicated to the promotion and protection of internationally recognized human rights. With the help of hundreds of volunteers each year, The Advocates investigates and exposes human rights violations; represents immigrants and refugees in our community who are victims of human rights abuses; trains and assists groups that protect human rights; and works through education and advocacy to engage the public, policy makers, and children about human rights. The Advocates holds Special Consultative Status with the United Nations.

For nearly 30 years The Advocates has provided immigration legal assistance to asylum seekers in the Upper Midwest. Today The Advocates provides free legal services to asylum seekers who fear persecution if forced to return to their countries of origin and immigrant detainees who would otherwise be left without any access to counsel during removal proceedings.

The title of today's hearing seeks to suggest that people in the custody of Immigration and Customs Enforcement ("ICE") will be treated to a "holiday" at taxpayer expense because of ICE's proposed detention standards. This suggestion is unfounded and ignores the desperate need for accountability, oversight, and sound policy that is based on considerations of public safety, cost effectiveness, and respect for human dignity, that has characterized the immigration detention system since 1996. Indeed, ICE's proposed detention standards, the 2011 Performance Based National Detention Standards ("PBNDS"), fall short of providing much-needed accountability in the ICE detention system.

While the United States has the power and obligation to control immigration, its authority is limited by the obligation to respect the fundamental human rights of all persons, regardless of citizenship or immigration status. In designing and in enforcing our immigration laws, the rights to due process and fair deportation procedures; to seek and enjoy asylum from persecution; to freedom from discrimination based on race, religion, or national origin; to freedom from arbitrary detention; and to freedom from inhumane conditions of detention must be considered, protected, and upheld.

330 Second Avenue South • Suite 800 • Minneapolis, MN 55402 • USA
Tel: 612.341.3302 • Fax: 612.341.2971 • Email: hrights@advrights.org • www.theadvocatesforhumanrights.org

Misplaced Reliance on the U.S. Penal Model for Civil Immigration Detention

ICE does not operate a penal system. ICE has the authority to detain people suspected of being in the United States in violation of immigration laws or who have been found to be removable and are awaiting deportation.[1] The purpose of ICE detention is to ensure appearance at hearings and for removal, not to punish.

Despite this, ICE relies on a penal detention model[2] which fails to achieve the stated purpose of detention at a cost of over $2 billion annually. As Dr. Dora Schriro explained in her 2009 report: "With only a few exceptions, the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pre-trial and sentenced felons. ICE relies primarily on corrections incarceration standards designed for pre-trial felons and on correctional principles of care, custody, and control. These standards **impose more restrictions and carry more costs than are necessary** to effectively manage the majority of the detained population."

People detained by ICE wear prison uniforms, are regularly shackled during transport and in their hearings,[3] are held behind barbed wire,[4] and may be locked in their cells up to 18 hours each day.[5] People in detention often face barriers to communicating with their family, counsel, or other support systems.[6] Depending upon where they are detained, they may not be permitted contact visits with family.[7] Immigrants in detention may be held for prolonged periods of time without access to the outdoors.[8] People detained on allegations of civil immigration status violations routinely are commingled with individuals convicted in the general criminal justice system.[9] Use of solitary confinement, sometimes for prolonged periods of time, is permitted and routine. Administrative and disciplinary segregation, both used in ICE detention facilities, mirror punitive forms of solitary confinement imposed in the penal context.[10]

Scope of Migrant Detention in the United States

The U.S. immigration detention system is an enormous operation which has become a cornerstone of immigration enforcement in the United States. The Department of Homeland Security reports that in 2010 approximately 363,000 foreign nationals were detained by ICE.[11] People detained on civil immigration status violations are held in over 250 jails, prisons, and secure detention centers around the United States,[12] operated variously by ICE, state and local governments, and private prison corporations.[13]

The number of beds available each day for detention in ICE custody has nearly doubled in the past seven years, from 18,000 beds in 2004 to 33,400 beds in 2011.[14] The number of people who pass through the ICE detention system has nearly doubled as well from 209,000 in 2001 to 392,000 in 2010.[15] Approximately 2,700 new beds have been added to the system since July 2009.[16]

Federal expenditures on ICE detention have grown 134% in the past seven years, from $864 million to $2.02 billion.[17] The Obama Administration's FY2012 request amounts to expenditure of $5.5 million per day on ICE detention.[18]

The private prison industry has played a significant role in the growth of these budgets by advocating for the expansion of immigration detention and enforcement policies at the federal and state levels. A 2011 report by Detention Watch Network notes that "[a]lthough private

corporations have long exercised influence over detention policy in a variety of contexts, a recent accumulation of evidence indicates that the main contractors involved in the explosive growth of the immigration detention system have been involved in heavy lobbying at the federal level." The report finds that "[i]n 2009 ICE had an adult average daily population (ADP) of 32,606 in a total of 178 facilities. Of these, 15,942 detainees – or 49% – were housed in 30 privately-operated detention centers."[19]

Mandatory detention laws enacted in 1996 have contributed to the skyrocketing growth of detention as an immigration enforcement tool. Sixty-six percent of the 31,075 people detained on September 1, 2009, were subject to mandatory detention.[20] At the same time, ICE fails to exercise discretion to release those people not subject to mandatory detention laws.[21] Indeed, ICE increasingly relies on detention as the only way to guarantee appearance for hearings despite the availability of alternatives to detention. ICE has also failed to adequately fund or use alternatives to detention, despite findings that alternatives to detention cost significantly less[22] and "yield 93 percent to 99 percent appearance rates before the immigration courts."[23]

Lack of Appropriate Standards for Detention Facilities Result in Harm

ICE's proposed detention standards, the 2011 Performance Based National Detention Standards, fall short of providing necessary accountability for the ICE detention system, which has demonstrated a failure over the past decade to ensure the safety and dignity of those in detention. These standards have significant deficiencies in monitoring and oversight, little transparency, and no consequences for non-compliance with standards.[24]

Highly publicized and tragic cases illustrate a systemic disregard for the rights to necessary medical care in detention, humane conditions of detention, and treatment respecting basic human dignity. Between 2003 and December 2011, ICE reported 127 deaths of non-citizens in their custody.[25] Shocking reports of the United States' failure to screen for illness and failure to provide care to ill or injured persons in its custody abound.[26] Appropriate psychological and medical services for torture survivors are universally unavailable.[27]

> "One detainee, a legal permanent resident, had been diagnosed with bipolar disorder, post-traumatic stress disorder, and severe depression prior to her detention. Her mental health issues were not diagnosed when she was first detained by ICE in August, 2006, and during her 18-month detention her mental illness continued to go undiagnosed and untreated. Guards at the South Texas Detention Center ridiculed her by telling her she was not truly sick, she was faking her illness, that she had no rights in the United States, and that she would be deported to Mexico."[28]

> "Even though I was showing many symptoms, no one offered me any medical attention. [...] I was so sick that I was delirious, vomiting, had no appetite, a strong head ache, fever, I was very cold, and I had a cold sweat. In my cell there are more than forty people who are sick. As far as I know, no one in my cell has had a blood test or any lab testing done."[29]

> "When I came to this detention center, no one gave me a medical examination. I informed them that I had leukemia and diabetes, but up to this point, I have not received treatment for my cancer nor my diabetes. I have never had a blood test for my diabetes, and I'm only given a blood sugar test once a month."[30]

The Women's Refugee Commission has documented many instances of **delayed or denied medical care**. Women in one Arizona facility reported "that medical treatment was often degrading: they are frequently told by medical staff that they are criminals who are not entitled to care; other detainees are used as interpreters, including during mental health consultations; medical staff deny their complaints of depression or anxiety and refuse them medication for these conditions, even when they had been receiving treatment at a previous facility."[31] The Florida Immigrant Advocacy Center reported that, "Conditions of medical care have been deteriorating, funding is inadequate, detention is not cost effective, ICE oversight of detention facilities is lacking, detention facility staff often treats detainees cruelly, detainees are transferred in retaliation, and essential healthcare is often delayed or denied."[32]

A March 2011 report by the Department of Homeland Security's Office of Inspector General reports that while the ICE Health Services Corps ("IHSC") serves as medical authority for ICE, deficiencies call into question the effectiveness of care, particularly regarding provision of mental health care. The OIG reports that IHSC staffs only 18 of the approximately 250 facilities holding people in ICE custody, resulting in limited oversight and monitoring, and that even in those facilities which they staff, effectiveness is limited by persistent staff vacancy rates. The report finds that facilities were not always capable of providing adequate mental health care to ICE detainees.[33] Detention facilities lack the capacity to provide adequate care for the increasing number of people in detention and struggle to fill open medical positions.[34]

Medical and mental health issues are exacerbated by the lengthy and indefinite periods of detention endemic in the immigration detention system. Many people in ICE custody are held in county jails or other facilities designed for short-term stays by people in pre-trial criminal custody. These facilities lack the screening, protocols, personnel, and facilities to deal with people detained by ICE whose average length of stay is over 30 days.[35]

Sexual abuse of migrants in detention is a problem of serious concern. Over 200 reported complaints of sexual abuse have been filed by immigrant detainees in the past five years,[36] which advocates believe reflect a fraction of the problem.[37] Women make up 9 percent of the immigration detention population.[38] Some of these women are "victims of trafficking, survivors of sexual assault and domestic violence, pregnant women, and nursing mothers."[39] Human Rights Watch has identified "more than 15 separate documented incidents and allegations of sexual assault, abuse, or harassment from across the ICE detention system, involving more than 50 alleged detainee victims."[40] These figures likely understate the extent of sexual harassment and abuse in ICE facilities, as people in detention "face a range of obstacles and disincentives to reporting, from a lack of information about rules governing staff conduct, to fear of speaking out against the same authority that is seeking their deportation, to trauma from the abuse in detention and possibly from violence and other abuse they have previously suffered in their countries of origin."[41]

The Bureau of Justice Statistics collects data on sexual abuse in custodial settings. But its data on ICE detainees are limited to facilities that are "run by or exclusively for" ICE, and therefore exclude "sexual violence, abuse, and harassment of immigration detainees in the hundreds of jails and contract facilities in which ICE rents a portion of the bed space. This is a notable omission, both because of the number of such facilities used by ICE and because the rates of substantiated sexual violence are four to five times higher in state prisons, local jails, and privately operated jails, than in federal prisons, according to the 2006 BJS survey."[42] "Department of Homeland Security, the agency in charge of immigration detention, is not mandated under law to publish data on sexual violence, and has not done so."[43]

The ACLU reports disturbing accounts of rape of women detained by ICE. An excerpt from one woman's account states:

> He hurriedly shoved anything that was on the floor of the front area of the van and motioned for me to lay down on my back. I refused. When he saw that I wasn't going to cooperate, he went to the back of the van. He pushed my things off the seat in the cage inside the van and gestured for me to get back in. I complied. He followed me into the van. I told him I would report him if he continued to touch me and he pushed me into the van. I was crying and I thought it was the end of my life. I thought he was going to kill me. I thought I should have stayed in my home country if my life was going to end like this because at least I would have had more time with my children. He got in the cage with me and started unzipping his pants and pulling off my clothes. He exposed himself to me. He was angry that I would not take off my clothes. I kept yelling, saying that if he didn't stop I would tell someone.[44]

"Although federal law now criminalizes sexual contact between guards and detainees, the prohibition on such conduct is far from clear at the facility level. Advocates report that detainees sometimes deny knowledge of sexual misconduct at their facility, but will refer to 'alliances' between detainees and guards based on sexual relationships."[45] While United States' federal law, known as the Prison Rape Elimination Act ("PREA"), is in effect, recently proposed rules which would exempt immigration detention facilities from PREA have raised serious concerns. Despite Congressional intent of the 2003 Prison Rape Elimination Act to apply to all types of confinement, including confinement of immigrants in immigration detention, the rules proposed by Attorney General Eric Holder in June 2011 explicitly stated that they would not be applied to immigration detention. Justifications for this exclusion included that the Department of Justice cannot create rules for the Department of Homeland Security (the federal department with jurisdiction over immigration detention) and the Department of Health and Human Services (which has jurisdiction over the custody of unaccompanied alien children), as well as that the Department of Homeland Security already has its own policies to prevent sexual assault in detention. Ongoing advocacy around this issue has pushed for inclusion of all immigration detention in the Department of Justice's final rules, which have been finalized but not yet released.[46]

"Sexual harassment receives sparse and inconsistent treatment in current ICE materials. In some instances, the definition of sexual harassment is limited to actions or communications 'aimed at coercing or pressuring a detainee to engage in a sexual act.' This fails to encompass egregious

acts of harassment—humiliating comments of a sexual nature or unnecessary viewing of detainees while they undress—that are not directed towards instigating a sex act."[47]

"In spite of the non-criminal nature of immigration detention, ICE has adopted a policy that imposes few limitations on guards' authority to search detainees and, consequently, opens up unnecessary opportunities for abuse of that authority. To conduct a pat-down search of a detainee, a guard need not meet any threshold of suspicion of contraband; it is contemplated that these searches will be conducted routinely. ICE insists this policy is necessary to give facilities flexibility in maintaining security. Currently, although crossgender strip searches are only permitted in emergency situations, no restriction is placed on cross-gender pat searches. However, ICE has said that the new detention standards will prohibit cross-gender pat searches and will allow trans-gender detainees to select the gender of the guard searching them."[citations omitted][48]

Although there have been documented incidents of sexual assaults of people in detention during the course of transportation, ICE transportation policies are insufficient to protect against sexual assault. "Despite appeals from advocates that the transportation standard be amended to require that a female guard be present during transportation of female detainees, the existing standard has only required that transporting guards call in the time and mileage they spend transporting a female detainee. ICE has announced that the new standard will prohibit a single guard from transporting a single detainee of the opposite sex, but will not require the presence of a guard of the same-sex unless it is expected that a search of the detainee will be conducted during the transport."[49]

Frequent transfers of people between detention centers increase the likelihood that sexual abuse will remain unaddressed.[50] While ICE has announced its intent to implement a new transfer policy, that policy is not yet publicly available.

Lesbian, gay, bisexual, and transgender people face sexual and other abuse while in immigration custody. "Heartland Alliance's National Immigrant Justice Center (NIJC) filed 13 complaints in April 2011 with the Department of Homeland Security's (DHS's) Office of Civil Rights and Civil Liberties and Office of Inspector General demanding that the Obama administration investigate abuse allegations and take action to protect lesbian, gay, bisexual, and transgender (LGBT) immigrants in DHS custody. The 13 complaints describe violations including sexual assault, denial of medical and mental health treatment, arbitrary long-term solitary confinement, and frequent harassment by officers and facility personnel… In October 2011, NIJC filed with the government four additional complaints of abuse against detained LGBT immigrants, bringing the total number of complaints to 17 since April 2011."[51] Members of Congress recently called for an investigation into these allegations.[52]

Conclusion

Far from a holiday ICE detention can be a harrowing, violent, and dangerous experience. The wasteful and unnecessary penal nature of confinement coupled with the expanding rate of detention has resulted in egregious violations of detainees' civil and human rights. Detainees are denied adequate medical care, subjected to harsh treatment including unwarranted crossgender searches and solitary confinement, and documented cases have been sexually assaulted and

raped. The lack of accountability that permeates the current detention model, which utilizes state, federal, and private prisons, and the inadequate accountability standards in the 2011 PBNDS, create a detention environment where detainees can be subjected to significant harm with no avenue for justice. Congress should pass legislation and detention polices that provide humane and safe procedures that ensure that the rights of detained individuals are respected and protected.

---

[1] This detention is authorized by INA §§236, 236A, and 241.
[2] SHIRIRO, *supra* note 53 at 2.
[3] The Advocates for Human Rights regularly represents people detained in Minnesota and has observed that people routinely remained shackled when appearing before the Immigration Judge.
[4] *See* Human Rights Advocates, Submission to the Human Rights Council, 11th Session, Agenda Item 3: Rights of Migrants.
[5] Visit by The Advocates for Human Rights to Ramsey County Adult Detention Center, 2011 (notes on file with author).
[6] *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).
[7] 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.
[8] County jails, designed for short periods of detention, do not necessarily have outdoor recreation facilities. The Ramsey County Adult Detention Center in St. Paul, Minnesota, for example, has no outdoor recreation access. People in detention have very limited access to a small room with window near the high ceilings which can be opened to let fresh air into the room.
[9] 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.
[10] *See, e.g.*, Georgia Detention Watch, Report on the December 2008 Humanitarian Visit to the Stewart Detention Center, at 6. *Available at* http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf.
[11] U.S. Dept. of Homeland Security, Office of Immigration Statistics, Policy Directorate, "Annual Report," June 2011, *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf.
[12] *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].
[13] *See e.g.*, DETENTION WATCH NETWORK, ABOUT THE U.S. DETENTION AND DEPORTATION SYSTEM, *available at* www.detentionwatchnetwork.org/aboutdetention.
[14] Nat'l Immigration Forum, *The Math of Immigrant Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, at 2. *Available at* http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf.
[15] Nat'l Immigration Forum, *The Math of Immigrant Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, at 2. *Available at* http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf.
[16] Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review*, 2011, at iii.
[17] Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review*, 2011, at iii.
[18] Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review*, 2011, at i.
[19] Detention Watch Network, Grassroots Leadership, Inc., and Sarah V. Carswell, "The Influence of the Private Prison Industry in Immigrant Detention," *available at* http://www.detentionwatchnetwork.org/privateprisons.
[20] *Id.*
[21] *See, e.g.* Report to the American Bar Ass'n, *Reforming the Immigration System*, Executive Summary, Feb. 2010, at p. ES-25, *available at*

http://www.americanbar.org/content/dam/aba/migrated/media/nosearch/immigration_reform_executive_summary_012510.authcheckdam.pdf.

[22] ACLU of Georgia and Georgia Detention Watch, "Securely Insecure: The Real Costs, Consequences, and Human Face of Immigration Detention," *available at* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/1.14.11_Fact%20Sheet%20FINAL_0.pdf.

[23] ACLU of Georgia and Georgia Detention Watch, "Securely Insecure: The Real Costs, Consequences, and Human Face of Immigration Detention," *available at* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/1.14.11_Fact%20Sheet%20FINAL_0.pdf.

[24] Brittney Nystrom, Senior Legal Advisor, National Immigration Forum, Written Testimony before U.S. House of Representatives, House Homeland Security Committee, Border, Maritime, and Global Counterterrorism Subcommittee, "Moving Toward More Effective Immigration Detention Management," Dec. 10, 2009, *available at* http://chsdemocrats.house.gov/SiteDocuments/20091210105703-50708.PDF.

[25] Immigration and Customs Enforcement, List of Detainee Deaths Since October 2003, *available at* http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf

[26] 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."). *See also* 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).

[27] 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 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.

[28] Texas Appleseed, *Justice for Immigration's Hidden Population: Protecting the Rights of Persons with Mental Disabilities in the Immigration Court and Detention System*, Mar. 2010, at 25. *Available at* *http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=313&Itemid.*

[29] New Orleans Workers' Center for Racial Justice, *Detention Conditions and Human Rights Under the Obama Administration: Immigrant Detainees Report from Basile, Louisiana*, 2009, at p. 10-11. *Available at* http://www.nowcrj.org/wp-content/uploads/2009/07/detention-conditions-report.pdf.

[30] New Orleans Workers' Center for Racial Justice, *Detention Conditions and Human Rights Under the Obama Administration: Immigrant Detainees Report from Basile, Louisiana*, 2009, at p. 10-11. *Available at* http://www.nowcrj.org/wp-content/uploads/2009/07/detention-conditions-report.pdf.

[31] Women's Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, Oct. 2010, at 5.

[32] Florida Immigrant Advocacy Center, *Dying for Decent Care: Bad Medicine in Immigration Custody*, Feb. 2009, at 27. *Available at* http://www.fiacfla.org/reports/DyingForDecentCare.pdf. *See also* Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care In United States Immigration Detention*, Mar. 2009, at 29 (finding that appropriate treatment was often delayed or denied and that detainees sometimes were denied healthcare request in retaliation). *Available at* http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed.

[33] U.S. Dept. of Homeland Security, Office of Inspector General, "Management of Mental Health Cases in Immigrant Detention," at 1. *Available at* http://www.oig.dhs.gov/assets/Mgmt/OIG_11-62_Mar11.pdf. *See also*, Nat'l Immigration Forum, *The Math of Immigrant Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, at 5. *Available at* http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf.

[34] Physicians for Human Rights, *Dual Loyalties: The Challenges of Providing Professional Health Care to Immigration Detainees*, Feb. 2011, at 5. *Available at* https://s3.amazonaws.com/PHR_Reports/2011_DualLoyalties_Final_3_24_2011_opt.pdf.
[35] *See* Detention Watch Network, "Tracking ICE Enforcement," at http://www.detentionwatchnetwork.org/node/2382.
[36] See American Civil Liberties Union website http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities (detailing findings of a Freedom of Information Act request relating to complaints of sexual abuse). *See also*, Carrie Johnson, "Immigration Detainees Seek Prison-Rape Protection," Nat'l Public Radio, Dec. 13, 2011. *Available at* http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection.
[37] *See, e.g.*, Carrie Johnson, "Immigration Detainees Seek Prison-Rape Protection," Nat'l Public Radio, Dec. 13, 2011. *Available at* http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection.
[38] Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 3. *Available at* http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[39] Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 3. *Available at* http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[40] Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 3. *Available at* http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[41] Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 3-4. *Available at* http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[42] Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 4. *Available at* http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[43] Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 4. *Available at* http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[44] American Civil Liberties Union website, posted Oct. 16, 2011, *available at* http://www.aclu.org/immigrants-rights/sexual-abuse-immigration-detention-raquels-story.
[45] Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 16. *Available at* http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[46] *See, e.g.*, Women's Refugee Commission, "Docket No. OAG-131; AG Order No. 3244-2011 National Standards to Prevent, Detect, and Respond to Prison Rape,", Apr. 4, 2011, (commenting on proposed regulations on implementation of the Prison Rape Elimination Act which would exclude immigrant detention facilities), *available at* http://womensrefugeecommission.org/programs/detention/1142-national-standards-to-prevent-detect-and-respond-to-prison-rape. *See also* Carrie Johnson, "Immigration Detainees Seek Prison-Rape Protection," Nat'l Public Radio, Dec. 13, 2011, *available at* http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection. Michelle Brane, "It's Time to Protect Women and Children in Immigration Detention From Rape," *available at* http://www.huffingtonpost.com/michelle-bran/women-ice-rape_b_1130756.html.
[47] Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 16-17. *Available at* http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[48] Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 17. *Available at* http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[49] Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 17. *Available at* http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[50] Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 19. *Available at* http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.
[51] National Immigrant Justice Center, "Stop Abuse of Detained LGBT Immigrants," *at* http://www.immigrantjustice.org/stop-abuse-detained-lgbt-immigrants.
[52] Jan. 4, 2012, letter from Members of Congress to the U.S. Government Accountability Office, *at* http://polis.house.gov/UploadedFiles/010512_GAO_Detention_Letter.pdf.

AILA National Office
Suite 300
1331 G Street, NW
Washington, DC 20005

Tel: 202.507.7600
Fax: 202.783.7853

www.aila.org

Testimony of the American Immigration Lawyers Association

Submitted to the Subcommittee on Immigration Policy and Enforcement of the Committee on the Judiciary of the U.S. House of Representatives

Hearing on: "Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards"

March 28, 2012

The American Immigration Lawyers Association (AILA) offers the following testimony to the Subcommittee on Immigration Policy and Enforcement regarding the Performance Based National Detention Standards 2011 (PBNDS 2011). AILA is the national association of immigration lawyers with more than 11,000 active members and was established to promote justice and advocate for fair and reasonable immigration law and policy. Every day, AILA members represent noncitizens in removal proceedings, thousands of whom are being held in immigration detention.

ICE has a vast network of over 250 facilities scattered throughout the United States which it uses to detain approximately 400,000 individuals each year—including thousands of asylum seekers, trafficking victims, parents and spouses of U.S. citizens, the elderly, and the sick. Immigration detention is civil, not criminal, in nature. Many held in immigration detention have never been charged with or convicted of any criminal offense. These individuals, charged with civil violations of U.S. immigration law, are held in jails or jail-like facilities while they await civil immigration proceedings or removal to their home countries. While some may spend a few days locked-up, others are jailed for months or even years as their cases wend their way through the civil court process. Many ultimately win their cases and are released back to their families and communities in the U.S.

Liberty is a basic American principle enshrined in the Constitution, and the government bears the responsibility to protect and provide basic care to those it deprives of liberty. It is unconscionable that individuals die from a lack of medical care or neglect or are sexually or physically abused while in the government's custody. Yet such neglect and abuse has been uncovered time and again within the labyrinth of immigration detention. The establishment and implementation of rigorous standards to govern detention facilities is urgently needed to help ensure that the government lives up to its responsibility to those in its custody.

The dire need for detention reform has been starkly illustrated over the past several years in a series of news stories, congressional hearings, and reports. One of the most visible cases of medical neglect was that of Francisco Castaneda, who died of penile cancer in 2008 at the age of 36 after detention staff refused his numerous pleas for diagnosis and treatment during his eight month detention at a San Diego facility.[1] A federal district court judge later called the staff's refusal of medical care "one of the most, if not the most, egregious" violation of the constitutional prohibition against cruel and unusual punishment that the court had ever encountered and concluded that the staff's behavior "should be taught to every law student as conduct for which the moniker 'cruel' is inadequate."[2]

In May 2008, The Washington Post published a 4-part series on the medical neglect suffered by immigrants in ICE detention.[3] The investigation, which included a review of thousands of pages of government documents as well as interviews with current and former detainees, found that immigrants with serious physical or mental health conditions "are locked in a world of slow care, poor care and no care, with panic and coverups among employees watching it happen."[4] One nurse, who quit after two months because of the medical practices she witnessed, told the newspaper that "dogs get better care in the dog pound."[5]

In addition to medical neglect, the immigration detention system has been plagued by incidents of sexual assault and abuse. In 2007, an ICE agent admitted to driving a female immigrant to his house and raping her before transporting her to an immigration detention facility in Broward, Florida.[6] In 2010, a guard working at the T. Don Hutto Correction Center in Taylor Texas admitted to molesting female detainees that he was in charge of transporting.[7] Last year the National Immigrant Justice Center filed 13 civil rights complaints with the Department of Homeland Security's (DHS) Office of Civil Rights and Civil Liberties alleging physical, psychological, and sexual abuse, as well as denial of medical care, of LGBT detainees.[8] Most recently, in October 2011, PBS Frontline revealed multiple and chilling accounts of sexual abuse by guards at the Willacy Detention Facility in Raymondville, Texas, while government

---

[1] Henry Weinstein, *Feds' Actions 'Beyond Cruel'*, L.A. Times, March 13, 2008 (internal quotations omitted) *available at* http://articles.latimes.com/2008/mar/13/local/me-cruel13
[2] *Castaneda v. United States*, 538 F. Supp. 2d. 1279, 1290, 1298 n.18 (C.D. Cal. 2008).
[3] Dana Priest and Amy Goldstein, *Carless Detention: Medical Care in Immigrant Prisons*, The Washington Post, May 11-May 14, 2008 *available at http://www.washingtonpost.com/wp-srv/nation/specials/immigration/index.html*
[4] Dana Priest and Amy Goldstein, *System of Neglect*, The Washington Post, May 11, 2008 *available at* http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html
[5] *Id.*
[6] *Immigration Agent Charged With Rape*, National Weekly, November 25, 2007 *available at* http://www.cnweeklynews.com/news/local-news/646-immigration-agent-charged-with-rape-
[7] Jarrod Wise and Jackie Vega, *Detention Officer Admits Groping Women*, KXAN, August 20, 2010 *available at* http://www.kxan.com/dpp/news/local/williamson/detention-officer-admits-groping-women.
[8] Cindy Carcamo, *Gay, Transgender Immigrant Detainees Claim Abuse in O.C. Jails*, The Orange County Register, April 14, 2011 *available at* http://www.ocregister.com/articles/detention-296367-complaints-immigration.html

documents show that nationwide immigrants have filed more than 170 allegations of sexual abuse since 2007, mostly against guards and other staff at immigration detention centers.[9]

These incidents likely represent only the tip of the iceberg of abuse and neglect within the immigration detention system and demonstrate the urgent need for reform, including more stringent and comprehensive standards. In 2009, Dr. Dora Schriro, an expert on correctional policies and current commissioner of the New York City's Department of Corrections, completed a comprehensive review of the immigration detention system on behalf of ICE.[10] The development of PBNDS 2011 was a direct result of the findings and recommendations from that review.

Critics, including members of this committee, have argued that PBNDS 2011 are unnecessary and have suggested these minimum standards are overly hospitable for immigration detention. AILA disagrees with this grossly inaccurate characterization. Rather than oppose the creation, implementation, and rigorous oversight of detention standards, lawmakers should view them as a vital step in upholding our nation's values and ensuring government accountability.

While AILA urges the Administration to implement the PBNDS 2011 as quickly and thoroughly as possible, these standards alone are not enough to protect immigrants in detention. The PBNDS 2011 are internal agency policy—they do not carry the force of law; the administration can change them at any time; and they are not legally binding. AILA remains concerned that ICE cannot hold facilities accountable relying solely on these new standards.

Time and again, ICE has proven itself unable to safely and humanely manage its massive and sprawling immigration detention system. Whether and how detention conditions will be monitored and enforced depends solely on the commitment of current Immigration and Customs Enforcement (ICE) officials. Basic standards governing detention facilities cannot be subject to the fluctuating policy goals of ICE leadership.

Over more than a decade, ICE and legacy Immigration and Naturalization Service have been extremely slow to implement standards. For example, four years ago ICE published the PBNDS 2008, the precursor to the current PBNDS 2011. Yet many of the facilities ICE uses are still only held to the deficient National Detention Standards from 2000. ICE has not set forth a clear timeline for implementing the new PBNDS 2011 at the approximately 250 facilities ICE uses to detain immigrants.

To ensure that immigration detention facilities are safe and humane, detention standards should be established by statute. Congress needs to pass legislation, such as H.R. 933 (Roybal-Allard (D-CA) and Polis (D-CO)) that sets forth basic detention requirements intended to prevent mistreatment, injury, and death. The bill codifies standards for medical care, requires special

---

[9] Catherine Rentz, *How Much Sexual Abuse Gets "Lost in Detention?"*, Frontline, October 19, 2011 *available at* http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/how-much-sexual-abuse-gets-lost-in-detention/.

[10] Dr. Dora Schriro, *Immigration Detention Overview and Recommendations*, October 6, 2009 *available at* http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf

considerations for vulnerable populations, and sets forth minimal standards with respect to use of force and investigation of grievances, among other provisions.

The Obama Administration should also apply the regulations developed as part of the Prison Rape Elimination Act (PREA) to immigrants in DHS custody to provide them with the same protections from rape and sexual assault as all others in federal custody. Enacted in 2003, PREA created a commission charged with developing national regulations to address the pervasive problem of sexual abuse in detention. In its report, the Commission found that detained immigrants are at particular risk of sexual abuse recognizing that "their heightened vulnerability and unusual circumstances require special interventions."[11] Despite the clear intention of the Commission for *all* persons in federal custody to be included under PREA, the Department of Justice failed to cover immigration detainees in the draft regulations released in early 2011.

DHS has resisted the applicability of these PREA regulations to immigration detention facilities, asserting that its own standards will meet or exceed PREA.[12] In fact PBNDS 2011 falls far short of PREA in protecting against sexual assault. Among the more glaring deficiencies is the failure of PBNDS 2011 to cover immigrants held by ICE and Customs and Border Protection (CBP) in short-term detention. PBNDS 2011 also lacks the more rigorous audit requirements set forth in PREA draft regulations. As noted before, PBNDS 2011 are only internal agency policy whereas PREA will be established in regulations. It makes no sense for a population of inmates as vulnerable as immigrants to be left outside protections that will be granted to all others in federal custody.

Finally, but most fundamentally, reliance on immigration detention must be reduced. Locking up individuals facing civil immigration charges should be a last resort—used only when other means of supervision cannot mitigate flight risk or threats to public safety. Detention is expensive, both in terms of human and fiscal costs. American taxpayers currently spend $2 billion a year to detain 34,000 individuals each day—an arbitrary, congressionally-mandated number not based on any demonstrated need.

The better solution is to make more effective use of ICE's supervision and monitoring methods on an as-needed basis. The criminal justice system has long recognized that detention is only one of a spectrum of tools, ranging from bail to GPS tracking devices, it can use to ensure public safety and eliminate risk of flight. These tools are effective means to achieve the same ends as detention, without placing individuals unnecessarily at risk. ICE has begun to implement such alternative methods but continues to rely heavily on costly and often unnecessary detention.

Taking away one's liberty is a power that must be exercised carefully and with restraint. In the context of civil immigration proceedings, it must be utilized as a last resort. When someone is jailed, our government bears the responsibility for providing an environment free of neglect and

---

[11] *National Prison Rape Elimination Commission Report: Special Populations*, Chapter 9, *available at* http://cybercemetery.unt.edu/archive/nprec/20090820155208/http://nprec.us/publication/report/part_3.php#chapter_9

[12] John Morton, Director, Immigration and Customs Enforcement, testifying before the Subcommittee on Homeland Security, Committee on Appropriations of the House of Representatives, March 8, 2012.

abuse. Implementing PBNDS 2011 is one step in ensuring that the government fulfills that duty, but on its own these non-binding standards cannot accomplish what the U.S. must do to ensure immigration detention is safe and humane.

For follow-up, contact Gregory Chen, Director of Advocacy, 202/507-7615, gchen@aila.org or Alexsa Alonzo, Associate Director of Advocacy, 202/507-7645, aalonzo@aila.org.

Statement for the Record

March 28, 2012

House Subcommittee on Immigration Policy and Enforcement
"Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards"

Introduction:

The National Immigration Forum works to uphold America's tradition as a nation of immigrants. The Forum advocates and builds support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

ICE Detention- Positive First Steps Taken Toward Needed Reform:

The National Immigration Forum welcomes this hearing on the Immigration and Customs Enforcement (ICE) immigration detention system and the administration's new detention standards. In light of the growing costs of immigration detention, the sprawling size of the detention system, and the numerous concerns and critiques about immigration detention over the years, this conversation has been needed for some time.

Not only are the 2011 PBNDS not 'hospitality guidelines,' they're no more than a good first step toward addressing the safety and human rights deficiencies that leave immigrant detainees vulnerable to abuse and medical emergencies—and that's if they're actually implemented, which remains to be seen.

We begin with why reform, including improved detention standards, is necessary. First, the costs of immigration detention are enormous, and often unnecessary. Given the high expense and humanitarian concerns surrounding the use of immigration detention, more humane and cost-effective alternatives should be pursued. Many immigrants who are currently detained can be effectively monitored with alternative methods, such as telephonic and in-person reporting, curfews, and home visits. Alternatives can range in cost from as low as 30 cents to 14 dollars a day per individual. By comparison, it costs ICE an average of $122 per day of detention for each detainee. Alternative methods also have proven effective; in Fiscal Year (FY) 2010, alternatives to detention had a compliance rate of 93.8 percent. Thus, maximizing the use of alternatives to detention has the potential to save taxpayers millions of dollars annually as is chronicled in the National Immigration Forum's paper, The Math of Immigration Detention.

Second, the conditions of detention for those in ICE custody are not appropriate, consistent, or sufficient. We applaud ICE for issuing improved detention standards. Despite being characterized as "hospitality guidelines" by the Chairman of the Judiciary Committee, the 2011 Performance-Based National Detention Standards (PBNDS)

provide common sense guidance on the treatment of those in immigration detention. Many of these standards have been drafted in response to unacceptable conditions of detention or mistreatment of detainees. The National Immigration Forum has chronicled a parade of critical assessments and scathing reports that have been published by non-governmental organizations, advocates, and academics about immigration detention over the last 4 years in a Detention Digest.

Medical care for detainees illustrates one aspect of immigration detention that has received notoriety. Under pressure to address incidents of substandard and even fatal medical care at facilities ICE uses to hold immigrants—more than 120 immigrants have died in ICE custody since 2003—ICE's latest detention standards require that medical service requests be received and triaged by medical personnel within 24 hours.

In addition to improved medical standards, the 2011 detention standards also institute a sexual assault response team to help victims of sexual abuse access proper medical, crisis intervention and mental health services. These teams come not a moment too soon. According to the American Civil Liberties Union (ACLU), since 2007, more than 180 sexual abuse complaints were reported in immigration detention centers. But this number may barely scratch the surface; experts believe that the real incidence of sexual abuse is much greater because of unreported cases. Immigrants in detention are extremely vulnerable to abuse, due to language barriers and fear that if they report the abuse, they will be deported in retaliation.

These revised detention standards are an important step for ICE to make good on its promise of bringing accountability and safety to our nation's sprawling immigration detention system.

Despite the PBNDS 2011, Concerns About Detention Facilities Remain:

As positive as the 2011 PBNDS may be, major concerns remain. First, these standards are not yet in effect in any detention facilities. As long as detention facilities fail to implement these upgraded standards, there will be no improvement in the detention conditions that approximately 33,000 immigration detainees experience each day. Director Morton stated recently that when negotiating future contracts with detention facilities it will be non-negotiable that these new standards be included as part of any deal. However, this remains to be seen and does not affect the scores of facilities currently holding ICE detainees. In fact, many facilities currently in use by ICE have not even implemented the 2008 detention standards and are operating under the 2000 standards. Violations of the standards often occur without consequences.

Besides the fact that these new and improved standards have not been implemented, there are areas where even if they were implemented they would still fall short. For example, in 2003 a unanimous Congress passed the Prison Rape Elimination Act (PREA). This was the first civil law that focused on eliminating sexual abuse in detention. However, the Department of Justice proposed rule in January of 2011 would exempt DHS, and therefore all immigration detention, from PREA requirements. While the 2011 PBNDS, as they relate to sexual abuse, are an improvement from earlier

versions, they still fail to meet standards set by PREA in areas such as provisions for confidential reporting and protection from retaliation, requirements for proper criminal investigations of assaults and specialized post-assault training for investigators and medical staff, and the appropriate use of detainee screening, background checks for employees and applicants, and use of incident reviews, outside audits, and unannounced rounds to ensure proper policy implementation.

Furthermore, the latest PBNDS don't address the fundamental contradiction of immigration detention centers operating like, if not identical to, correctional institutions. Our immigration detention system is supposed to serve a limited purpose — to ensure that individuals comply with deportation proceedings, separate from the punitive function of the criminal justice system. In 2009, the Obama Administration promised to make immigration detention "a truly civil" system, with appropriate conditions for asylum seekers and immigrant detainees, many of whom pose no threat to public safety and are not a flight risk. Yet despite the administration's good intentions, there is often no tangible difference between immigration detention and criminal custody.

In sum, we applaud DHS for introducing the 2011 PBNDS. However, concerns remain around their implementation, their ability to prevent sexual abuse, and the financial burden of our enormous immigration detention system. Specifically, the PBNDS must be implemented at immigration detention facilities nationwide and not just posted on the ICE website. The administration also needs to keep its promise of a creating a "truly civil system," by expanding the use of alternatives to detention that are equally effective but save taxpayers millions. These steps would go a long way toward meaningful reform of our chronically troubled immigration detention system.

Human Rights Watch Statement to the
Subcommittee on Immigration Policy and Enforcement,
Committee on the Judiciary,
United States House of Representatives

Hearing on the Department of Homeland Security's New Immigration Detention Standards
March 28, 2012

Mr. Chairman and members of the Committee, thank you for the opportunity to submit a statement for today's hearing on the US Department of Homeland Security's new detention standards.

Human Rights Watch is an independent organization dedicated to promoting and protecting human rights in some 90 countries around the globe. We work to secure increased recognition of and respect for internationally recognized human rights in the United States, focusing on issues arising from excessive punishment and detention, insufficient access to due process, and discrimination.

Immigration detention is no holiday. 129 detainees have died in ICE custody since 2003,[1] and there is credible evidence that poor medical care in detention contributed to a number of those deaths.[2]

---

[1] ICE records indicate that 127 detainees died between October 2003 and December 19, 2011. ICE Health Service Corps (formerly the Division of Immigration Heath Services), "List of Deaths in ICE Custody October 2003 - December 19, 2011," http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf (accessed March 22, 2012). ICE has announced two detainee deaths in 2012. "ICE detainee passes away after being rushed to local hospital," January 18, 2012, http://www.ice.gov/news/releases/1201/120118lasvegas.htm (accessed March 22, 2012); "ICE detainee passes away at Los Angeles-area hospital; Mexican national was being treated for pneumonia," March 5, 2012, http://www.ice.gov/news/releases/1203/120305victorville.htm (accessed March 22, 2012).

[2] See e.g. Florida Immigrant Advocacy Center, *Dying for Decent Care: Bad Medicine in Immigration Custody*, March 17, 2009, http://www.fiacfla.org/reports/DyingForDecentCare.pdf (accessed March 22, 2012); Dana Priest and Amy Goldstein, "System of Neglect," *Washington Post*, May 11, 2008, http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html (accessed March 22, 2012); Nina Bernstein, "Ill and in Pain, Detainee Dies in U.S. Hands," *New York Times*, August 12, 2008, http://www.nytimes.com/2008/08/13/nyregion/13detain.html?_r=1 (accessed March 22, 2012).

The 2011 Performance Based National Detention Standards published by Immigration and Customs Enforcement (ICE) represent an important step toward ensuring the safety of immigrants in detention. Among the improvements in the standards is the establishment of a new standard addressing women's medical care.[3] The standard addresses a longstanding failure to adequately attend to the health of women in detention. In 2008 and 2009, Human Rights Watch conducted research into the medical care provided to women in ICE detention. As part of that research, we visited nine detention centers in Florida, Texas and Arizona, and spoke with detention medical care providers and ICE officials, in addition to numerous immigration attorneys and advocates. We conducted in-depth interviews with 48 women who were in detention or had recently been released from custody. As detailed in our March 2009 report, *Detained & Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention*, we documented dozens of cases in which detention center medical staff either failed to respond at all to health problems of women in detention or responded only after considerable delays.[4]

The impact of these institutional failures on individual women underscores the urgency behind the reforms ICE is currently implementing. Jameela E., a former ICE detainee, spoke with Human Rights Watch in 2008 and explained how her attempt to seek asylum in the United States had taken her from one nightmare into another.[5] For almost four months, ICE shuttled Jameela between four county jails in Virginia. During this time, she battled with pain over half of her body due to a cyst on one of her ovaries that went untreated while she was in custody. At the first jail, they determined that she required treatment and began the process to make arrangements for surgery. But in the meantime ICE moved her, without her medical records, to another jail where they refused to provide treatment without the records. She started getting her period every two weeks and put in multiple requests to consult a doctor without success. Making it worse, at one place she was detained, she said they did not provide underwear. At none of the jails did they allow her to wear her hijab. At each jail she was strip searched. Her mental health suffered from the humiliation, and when she asked to speak to a psychologist they took her to be suicidal and placed her in solitary confinement.

Unfortunately, Jameela's experience was not unusual among the women Human Rights Watch interviewed. Her story reflected recurring themes from our research. Human Rights Watch found that women in immigration detention did not have accurate information about available health services. Care and treatment were often delayed and sometimes denied.

---

[3] **Medical care (women), Section 4.4, ICE Performance-Based National Detention Standards (PBNDS), 2011 Operations Manual, http://www.ice.gov/doclib/detention-standards/2011/medical_care_women.pdf (accessed March 22, 2012).**

[4] **Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention*, March 17, 2009, http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed-0 (accessed March 22, 2012).**

[5] **Human Rights Watch interview with Jameela E., Virginia, June 2008.**

Confidentiality of medical information was often breached. Women had trouble accessing facility health clinics and persuading security guards that they needed medical attention. Interpreters were not always available during exams. Security guards were sometimes inside exam rooms even when there was no security risk, invading privacy and encroaching on the patient-provider relationship. Some women feared retaliation or negative consequences to their immigration cases if they sought care. A few were not given the option to refuse medication or received inappropriate treatment. Many detained women and their health care providers at other facilities were not able to obtain full medical records upon transfer or release. Women's written complaints about poor medical care through official grievance procedures went ignored. The list goes on.

One detainee, Lucia C., had obtained a Pap smear prior to her detention and learned that the result was abnormal.[6] Her doctor instructed her that she should follow up with Pap smears every six months to check for signs that cervical cancer was developing. When ICE detained her at a county jail in New Jersey, Lucia brought her situation to the attention of medical authorities. Initially rebuffed, she persisted:

"I was supposed to be checked every six months. I asked my daughter to send the records. I got it and I brought it to medical so they could see I'm not lying. I have asked a lot of times."

Speaking with Human Rights Watch after almost 16 months in detention, Lucia C. reported that the medical staff still had not provided her a Pap smear. "It's terrible," she said, "because you feel like you have something you can die for... and you don't have no assistance."

During our research, we met women who required screening and treatment for breast and cervical cancer but experienced extended delays and outright denials. We met women who complained of inadequate care during pregnancy, including one diagnosed with an ovarian cyst—threatening her five-month pregnancy shortly before she was detained—who never got to see a doctor. We met pregnant women who did get a doctor's appointment, but who were forced to be shackled in order to get there. We met mothers who were nursing their babies prior to detention and were then denied breast pumps in the facilities, resulting in fever, pain, mastitis, and the inability to continue breastfeeding upon release. We met women who had to beg, plead, and in some cases do chores within the facility just to get enough sanitary pads not to bleed through their clothes, and one woman who sat on a toilet for hours when the facility would not give her the pads she needed. We met women who sought mental health care for pre-existing conditions, including the effects of trauma and for the stress of detention, but found that the crisis orientation of services meant they could not get access to counseling and could expect to be put in isolation if their condition deteriorated to the point of suicidality.

---

[6] Human Rights Watch interview with Lucia C., New Jersey, May 2008.

Particularly striking are the backgrounds of the women enduring these conditions. They included asylum seekers, victims of trafficking, survivors of sexual assault and domestic violence, pregnant women, and nursing mothers. In almost all of these cases, the women we were talking to had either committed no crimes at all or no crimes of violence. They had not been found to present a danger to the community or to be a flight risk and yet they became entangled in a system of immigration enforcement that relies disproportionately on detention, and provides immigrants with health care that is in some respects inferior to that available to imprisoned criminals.

In most cases, detention is neither necessary nor cost-effective. Studies have shown that alternatives to detention – such as supervised release programs –cost roughly one-fifth as much and are as effective in ensuring that people show up for their immigration hearings.[7] Consequently, a major first step in addressing the gross medical failures in detention should be ensuring that fewer people are subjected to them unnecessarily, through the increased use of alternatives to detention such as humanitarian parole. But the second step is recognizing that the government cannot avoid the responsibility of providing quality health care to those it detains.

ICE's publication of the new detention standard on women's medical care is a step in the right direction. The standard requires that women in detention have access to the screenings for cancer that are the pillars of basic women's health care, and that proper care be provided for women during pregnancy. The new standard also provides for ICE to screen detainees to determine whether they have experienced sexual violence, a crime that occurs all too frequently during the course of migration. The standard's provisions on access to abortion services are in keeping with constitutional requirements[8] and will bring ICE into

---

[7] For example, from 1997 to 2000 the Vera Institute of Justice cooperated with the Immigration and Naturalization Service, a predecessor to ICE, to pilot an alternative to detention model called the Appearance Assistance Program. Through the AAP, individuals in immigration proceedings participated in a supervised release system wherein they regularly reported to a case manager and were provided with information on their legal rights and referrals to community resources. The Vera Institute reported that 91 percent of participants in the intensive supervision program appeared for all of their required hearings. Eileen Sullivan, et al., Vera Institute of Justice, "Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program," August 1, 2000, http://www.vera.org/download?file=615/finalreport.pdf (accessed March 22, 2012), p. ii. A similar undertaking by Lutheran Immigration and Refugee Service focusing on asylum seekers and working with community shelters reported a 96 percent success rate. Esther Ebrahimian, "The Ullin 22: Shelters and Legal Service Providers Offer Viable Alternatives to Detention," Detention Watch Network News, August/September 2000, p.8., quoted in "Statement from Faith Representatives Following April 30 Tour of the Wackenhut Detention Center," House Judiciary Committee, Subcommittee on Immigration, May 3, 2001, http://www.loc.gov/law/find/hearings/pdf/00092836976.pdf (accessed March 22, 2012), p.85.

[8] In *Estelle v. Gamble*, the landmark case defining custodial responsibility for medical care, the US Supreme Court held that the eighth amendment prohibits "deliberate indifference" on the part of detention authorities to a "serious medical need" of a prisoner in their custody. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).The US

line with the standards used by the US Bureau of Prisons.[9] Similarly, the limitations on the use of restraints on pregnant women will bring ICE into the fold of custodial authorities at the state and federal level, as well as state legislatures, which have instituted prohibitions on shackling pregnant women, particularly during labor and delivery.[10] In addition, the Eighth Circuit of the US Court of Appeals ruled in 2009 that shackling a woman during labor violates the US Constitution.[11] These developments contribute to a growing international consensus that shackling in these circumstances is an intolerable practice, irreconcilable with human rights principles, along with prohibitions against torture and inhuman or degrading treatment.[12]

Court of Appeals for the Third Circuit has recognized access to elective, non-therapeutic abortions as a serious medical need. *Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326, 351 (3d Cir. 1987). While disagreeing with the finding of a serious medical need, the Eighth Circuit nonetheless invalidated a ban on transporting incarcerated women for abortion on the basis of its unreasonable restriction on a woman's right to abortion under the fourteenth amendment. *Roe v. Crawford*, 514 F.3d 789 (8th Cir. 2008) (holding that elective, nontherapeutic abortion is not a serious medical need under the eighth amendment, but banning transportation for prisoners seeking abortions constituted an unreasonable restriction on the fourteenth amendment right to seek an abortion). See also *Doe v. Arpaio*, 150 P.3d 1258 (Ariz. 2007) (cert denied, 128 S.Ct. 1704, March 24, 2008) (holding that requiring court order for transportation to abortion procedure was impermissible because it constrained the incarcerated woman's constitutional right to terminate her pregnancy without a reasonable connection to a legitimate penological interest). But see *Victoria W. v. Larpenter*, 369 F.3d 475 (5th Cir. 2004) (finding the requirement of a court order was reasonable where it was required for all elective procedures and the asserted state interest was inmate security and avoidance of liability). The obligation to ensure that incarceration does not force a woman to forfeit her constitutional right to abortion has also been interpreted to include ensuring access to funding for the procedure. *Monmouth County*, 834 F.3d at 352.

[9] Federal Bureau of Prisons, US Department of Justice, "Program Statement: Birth Control, Pregnancy, Child Placement and Abortion," No. 6070.05, August 6, 1996, sec. 551.23.

[10] See e.g. Federal Bureau of Prisons, US Department of Justice, "Program Statement: Escorted Trips," No. 5538.05, October 6, 2008, sec. 11; U.S. Marshals Serv., Policy 9.1 (Restraining Devices) §§ (D)(3)(e), (h) (as amended in 2008); Cal. Penal Code § 5007.7 (Deering 2012); 730 Ill. Comp. Stat. Ann. 5/3-6-7 (Lexis 2011); Vt. Stat. Ann. tit. 28, § 801a (2012), N.Y. Correction Law § 611 (Consol. 2012); Tex. Gov't. Code Ann. § 501.066 (Lexis 2012); N.M. Stat. Ann. § 33-1-4.2 (Michie 2012); Nev. Rev. Stat. 209.376 (2012), Haw. Rev. Stat. Ann. § 353-122 (Michie 2011); Idaho Code § 20-902 (Michie 2012); R.I. Gen. Laws § 42-56.3-3 (2012); Col. Rev. Stat. § 17-1-113.7 (2011); Wash. Rev. Code Ann. § 70.48.500 (Lexis 2012); 61 Pa. Cons. Stat. Ann. § 5905 (Lexis 2012); and W. Va. Code § 25-1-16 (Michie 2011); An Act Amending Title 31, Arizona Revised Statutes, By Adding Chapter 5; Relating to Restraints on Pregnant Prisoners, 2012 Ariz. Sess. Laws 43 (Lexis 2012).

[11] *Nelson v. Correctional Medical Services*, 583 F.3d 522 (8th Cir. 2009) (en banc).

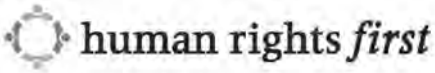
[12] See United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, rule 33. See also United Nations Committee against Torture, "Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, United States of America," CAT/C/USA/CO/2, July 25,

The new standard on women's health care, along with the package of revised detention standards, should help address some of the serious violations we have documented over the past four years. Congress should support, not attack, measures by agencies to respect the health and safety of people they confine.

The 2011 standards, helpful as they are, however, are simply insufficient to address the current risks to health and safety faced by immigration detainees. Unlike administrative regulations, which are created through a public process and can be enforced in courts, these standards were written internally and are not legally binding. The standards are not guaranteed to apply to all facilities housing detainees. Where the standards do apply, monitoring compliance with the standards will differ depending on whether the facility is run by ICE or by a private company. The 2011 standards also explicitly exclude short-term immigration detention from coverage.

ICE's inability to adequately ensure the health and safety of its immigration detainees stems from deep flaws that underlie the agency's detention system. These flaws remain unresolved by the new standards. ICE continues to incarcerate immigrants who have no criminal histories and are not flight risks. ICE runs an immigration detention system modeled around punitive criminal detention, even though immigration detention is not supposed to serve to punish. It is governed by a patchwork of weak and unenforceable policies. The 2011 detention standards will provide needed updates to this patchwork, but by themselves are insufficient to address all of these flaws. They do little to move the immigration detention system towards a civil model of detention, and they do nothing to address the problem of unnecessary detention. We recommend that Congress work with the administration to reexamine the role of detention in our immigration policy and question the necessity of depriving individuals in civil immigration proceedings of their freedom.

2006, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/432/25/PDF/G0643225.pdf?OpenElement (accessed March 22, 2012), para. 33; United Nations Human Rights Committee, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Conclusions of the Human Rights Committee, United States of America," CCPR/C/USA/CO/3/Rev.1, December 18, 2006, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/459/61/PDF/G0645961.pdf?OpenElement (accessed May 11, 2009), para. 33.



Statement of Human Rights First

House Judiciary Subcommittee on Immigration Policy and Enforcement Hearing "Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards"

March 28, 2012

Introduction

Human Rights First is an independent advocacy organization that challenges our country to live up to its ideals. We press American institutions—including government and business—to respect human rights, seeking to close the gap between values and action. We believe that on human rights, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values. Consistent with these principles, Human Rights First advocates on behalf of refugees and asylum seekers, including by running a legal representation program for both detained and non-detained asylum seekers, partnering with law firms in New York, New Jersey, and Washington D.C. to provide pro bono legal assistance to refugees from countries all over the world who are seeking asylum in the United States. For several years, Human Rights First has focused on the U.S. detention of asylum seekers, highlighting concerns about their detention in jails and jail-like facilities, the lack of individualized assessments and independent review of the need to detain, insufficient use of alternatives to detention, and major challenges asylum seekers in detention face accessing legal counsel. Given that the focus of this hearing is immigration detention standards this testimony focuses primarily on the conditions of immigration detention.

The conditions and practices in the U.S. immigration detention system have long been out of step with America's fundamental values and long-standing vision of liberty. Each day the U.S. Immigration and Customs Enforcement (ICE) detains up to 33,400 people in more than 250 jails and jail-like facilities nationwide. The limited purpose of this civil detention, as explained by ICE, is to ensure that immigrants in proceedings or with orders of removal show up for their removal hearings and comply with removal orders when relevant. However, in the jails and jail-like facilities used to detain immigrants and asylum seekers under the immigration laws, these individuals wear prison uniforms and are often handcuffed or shackled when transported or appearing in court. They live behind locked doors in thick cement-walled housing units, typically spending 23 hours a day in the same room where they eat, sleep, shower, and use the toilet without privacy. In almost all cases their freedom of movement within the facility is limited to the crowded "pod" where they live. Under minimum requirements, they receive an hour a day of outside recreation, and "outside" may be a room with an opening to the sky. Often, when family members visit, even children, they're only allowed to speak by phone and see each other through a Plexiglas barrier. At an average cost of $122 per person, per day, the U.S. immigration detention system costs taxpayers over $2 billion annually, despite the availability of less costly, less restrictive and highly successful alternative to detention programs.

Widespread, Bi-Partisan Criticism of Chronic Problems in U.S. Immigration Detention Practices

A range of non-partisan and bipartisan groups such as U.S. Commission on International Religious Freedom, the Council on Foreign Relations task force on immigration policy, and the Constitution Project's Liberty and Security Committee have all concluded that jails and jail-like facilities are inappropriate and unnecessarily costly to hold asylum seekers and other civil immigration detainees.[1] Reports by these groups and others have highlighted the pervasive use of shackles and overuse of strip-searches and solitary confinement. They detailed chronic challenges with access to legal counsel and telephones, excessive transfers, noncompliance with existing standards, and interference with the open practice of religion. In 2008, investigative reporting by *The New York Times*, *The Washington Post* and *60 Minutes* revealed widespread medical neglect, unreported deaths and suicides, and forced sedation of detainees by immigration officers.

This is not the first time the House Judiciary Committee has taken notice of the challenges facing our nation's immigration detention system. On June 4, 2008, this Subcommittee – then under the Chairmanship of Representative Zoe Lofgren (D-CA/16th) – held a hearing titled "Problems with Immigration Detainee Medical Care," during which Ann Schofield Baker, a Principal in the New York office of the law firm McKool Smith and pro bono attorney with Human Rights First's asylum representation program, testified about the repeated incidents of medical mistreatment, incompetence and neglect her client, a female refugee and survivor of torture from Somalia, suffered at the Elizabeth Detention Center (EDC) in New Jersey in 2007.[2] At EDC, Ms. Schofield Baker's client was misdiagnosed as psychotic and forced to take a strong anti-psychotic drug that made her dizzy, disoriented and confused. The drug caused her to shake uncontrollably. She was vomiting regularly and began lactating. Her attorney repeatedly contacted medical officers at the facility to express concerns about this inappropriate and damaging medical treatment, offering on repeated occasions to make an interpreter available during her client's medical visits. Nevertheless, staff at the facility continued to medicate Ms. Schofield Baker's client without the help of an interpreter. At the advice of the private doctor retained by her lawyer, who determined that she did not suffer from a psychotic illness, she stopped taking the medication. While in detention Ms. Schofield Baker's client also experienced severe abdominal pain. Ms. Schofield Baker described writing letters to medical staff and calling both ICE and medical staff repeatedly. Weeks of constant advocacy went by before she received meaningful medical attention. She was only brought to the hospital the day after Ms. Schofield Baker threatened to file a habeas petition in federal court.[3]

National Corrections Expert Reviews Immigration Detention System, ICE Initiates Reforms

In February 2009, DHS Secretary Janet Napolitano appointed a longtime expert on prison systems to serve as her Special Advisor on Immigration and Customs Enforcement and Detention and Removal –

---

[1] U.S. Commission on International Religious Freedom, *Asylum Seekers in Expedited Removal, Volume I: Findings & Recommendations* (Washington, DC: USCIRF, 2005), p. 189; Council on Foreign Relations Independent Task Force on U.S. Immigration Policy, *Independent Task Force Report No. 63—U.S. Immigration Policy* (New York: CFR, 2009), p. 32; Constitution Project, *Recommendations for Reforming Our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings* (Washington, DC: Constitution Project, 2009), p. 1.

[2] "Hearing on: Problems with Immigration Detainee Medical Care," House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, June 4, 2008, hearing information available at http://judiciary.house.gov/hearings/hear_060408.html.

[3] Testimony of Ann Schofield Baker, "Hearing on: Problems with Immigration Detainee Medical Care," House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, June 4, 2008, available at http://judiciary.house.gov/hearings/pdf/Baker080604.pdf.

following years of criticism of the U.S. immigration detention system, including in a number of U.S. government reports. Dr. Dora Schriro had previously run the corrections systems in Arizona and Missouri, and she currently serves as Commissioner of Correction for New York City.[4] As the DHS Special Advisor, Dr. Schriro spent the six months visiting detention facilities across the country, analyzing ICE and DHS data and other records, and reviewing reports from the federal government, the UN refugee agency, the American Bar Association, and many nongovernmental organizations. She also interviewed facility staff, detainees, federal, state, and local government officials, and members of Congress and their staffs. This research resulted in a report that was delivered to Secretary Napolitano in September 2009 and released to the public in October 2009.[5]

Dr. Schriro's findings and recommendations created the blueprint for ICE's reform efforts, which include promises to improve medical care, custodial conditions, fiscal prudence, and oversight as well as to shift away from its reliance on a "penal" model of detention that is inappropriate for the purpose of ICE detention and inconsistent with its civil detention authority.[6] These "civil" or "less penal" conditions – as described by ICE – would include increased outdoor access, contact visitation with families, and "non-institutional" clothing for some detainees. A few facilities – including the facility opened this month in Karnes County, Texas, or Delaney Hall, which opened in October in Newark, New Jersey – are designed to present templates for a more appropriate approach to immigration detention.

Human Rights First has been following ICE's detention reform efforts closely. This statement is based on research conducted for our October 2011 report, "Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review," as well as subsequent research.[7] In the past two and a half years, Human Rights First staff toured 19 jails, prisons and detention facilities used by ICE for immigration detainees. In conducting our research and our ongoing work more broadly, we have also met with government officials, legal service providers, detained asylum seekers and immigrants, former detainees, and private and county staff and federal government officers who operate ICE's facilities. We have also reviewed existing government data, and consulted with present and former correctional officials and prison reform experts. Human Rights First is submitting the full October 2011 report for the hearing record.

Reforming the U.S. Immigration Detention System – Standards, Conditions and Lessons Learned from Best Practices in the Penal Corrections System

Contrary to the accusations of the ICE Union that reforms to the condition of immigration detention will undermine officer and detainee safety,[8] it is well-established among corrections experts that a "normalized environment" – one that replicates as much as possible life on the outside – can help to ensure the safety and security of any detention facility. Similarly, despite the assertion by House Judiciary Committee Chairman Lamar Smith (R-TX/21st) that the Performance Based National

[4] "DHS, "Secretary Napolitano Appoints Dora Schriro as Special Advisor on ICE and Detention & Removal," news release February 4, 2009, available at http://www.dhs.gov/xnews/release/pr_1233777219314.shtm.
[5] Dr. Dora Schriro, *Immigration Detention Overview and* Recommendations (Washington, DC: Immigration and Customs Enforcement, 2009), p. 2-3, available at http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf. [hereinafter cited as 2009 DHS/ICE Report].
[6] Id.
[7] Human Rights First, "Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review," (October 2011), pg 24, available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf. [hereinafter cited as Jails & Jumpsuits].
[8] ICE Council 118 of the American Federation of Government Employees, "ICE union vote of no confidence," news release, July 23, 2010.

Detention Standards (PBNDS) of 2011 "[go] beyond common sense to accommodate illegal immigrants and [treat] them better than citizens in federal custody"[9] most of ICE's proposed changes already exist in the corrections context, including in federal custody. Moreover, the 2011 PBNDS, like the 2008 PBNDS, are still based on American Correctional Association standards. Human Rights First continues to urge ICE to develop and implement standards to reflect the environment and conditions appropriate for civil immigration detention.

A large proportion of ICE detainees are low risk or non-criminal, and only a small percentage have been convicted of violent crimes. A snapshot of ICE data reveals that on May 2, 2011 45% of ICE's detained population were non-criminals. 41% were classified as Level 1 detainees (lowest risk) and just 19% were classified as Level 3 detainees (highest risk).[10] DHS and ICE have repeatedly indicated—since the 2009 reform announcements—that while the government planned to develop more appropriate detention models for civil immigration law detainees, higher-risk detainees would be subject to some additional restrictions. Through an effective and automated risk classification assessment tool—which is considered a best practice in the corrections context – ICE officers should be able to identify individuals who may pose a danger and house them in facilities or areas of facilities that provide additional restrictions or protections for staff and other detainees. ICE has stated, "The new system will provide safe and secure conditions of confinement based on the individual characteristics of a diverse population, including: threat to the community, risk of flight, type and status of immigration proceeding, community ties, medical and mental health issues."[11] ICE has developed a risk classification assessment tool, which it is taking steps to automate. This tool should be implemented throughout the detention system and should be validated to ensure that it leads to appropriate outcomes, and its results should be audited regularly.

Normalized Environments within Detention Facilities Positively Impact Safety

Experts on criminal prison systems have confirmed that "normalized environments" within secure facilities—rather than highly "structured" jail-like environments—can actually positively impact facility safety. Corrections expert Steve J. Martin, who worked as a prison guard, probation and parole officer, and prosecutor in the Texas prison system, and also served as the system's General Counsel, told Human Rights First in an interview that "the extent that you can normalize the confinement setting is the extent to which you can have a safe environment… For a population detained under civil authority, as long as I have the outside security envelope [i.e. perimeter fencing and/or a secure facility], everything within that envelope is maximized to whatever the budget and the institutional management might permit."[12] Rather than a frivolous luxury, programming for detainees is considered a best practice in the corrections context; it helps fill detainees' time, which is otherwise mostly unoccupied, and thus contributes to a safer environment for detainees and officers alike.[13]

Some ICE officers seem to be concerned that facilities designed for civil immigration law detainees would be designed in such a way that would permit immigration detainees to "walk away" from the facility. However, ICE has not proposed an end to the use of facilities with secure perimeters, but rather a shift in the conditions *within* the detention facilities. In fact, ICE has emphasized that it seeks to develop "supervised" facilities that are "safe and secure" and that "prevent unauthorized entry and

[9] Smith: Deportation Manual a Hospitality Guideline for Illegal Immigrants, press release, February 28, 2012, available at http://judiciary.house.gov/news/02282012.html.
[10] Jails & Jumpsuits at 2.
[11] Id at 23 (citing DHS/ICE, "Statement of Objectives," p. 3.)
[12] Jails & Jumpsuits at 22 (citing Human Rights First interview with Steve J. Martin, April 1, 2011.).
[13] Id.

egress." The level of perimeter security necessary to prevent "walk-aways" must be distinguished from the level of facility security necessary to ensure the safety of detainees and officers. As Michele Deitch, criminal justice and juvenile justice policy expert at the University of Texas, told Human Rights First in an interview, "A secure perimeter is for public safety purposes. Perimeter security should be distinguished from conditions inside a facility."[14]

Immigration detention facilities should not be modeled on correctional facilities, but they should certainly not be operated with *more* restrictions than corrections experts believe are optimal for correctional facilities. The American Bar Association's 2010 Criminal Justice Standards on Treatment of Prisoners call for the adoption of contact visits, some privacy for detainees, and expanded outdoor recreation as "best practices" in both correctional and immigration detention facilities.[15] The impact of prison design and operations on safety has been the subject of many studies, particularly as prison and jail designs began to shift toward direct supervision models (away from a traditional "corridor" design) in the late 1960s and early 1970s with the goal of creating safer and more humane environments for inmates and officers. A central component (among others) of these direct-supervision models was "a normalized living environment, meaning that the interior of the facilities would have a less institutional feel to it."[16]

Maximizing the choice and autonomy available to inmates was also important in the direct-supervision model. Multiple experts have argued that normalized conditions—such as some degree of free movement within the facility, some privacy, natural light, comfortable and non-institutional furniture, tile or carpet flooring, and porcelain toilets (rather than stainless steel)—can contribute to improved safety inside a facility.. The former warden of the Chicago Metropolitan Correctional Center, which was one of the first direct-supervision models, wrote, "[I]n essence, an environment designed to be indestructible evokes destructive behavior, while an environment designed for normal usage evokes normal behavior."[17] Reviewing a number of studies conducted in the course of two decades on direct-supervision jails with "normalized" environments, one researcher concluded, "This is not to say that the jail will be converted into a luxurious setting, but if architects and administrators work to develop a normalized physical and social environment, the potential for reduction of inmate and officer stress, violence, and property damage exists."[18]

Prison wardens, corrections experts, and long-time corrections professionals interviewed by Human Rights First confirmed these observations linking normalized environments in detention to improved safety within a facility. Mr. Martin described the essential elements of a more normalized environment: maximum freedom of movement within the physical plant, outdoor space with dedicated area for sports or other activities (not just an empty yard enclosed by fencing), privacy in toilets and showers,

---

[14] Id. at 23 (citing Human Rights First interview with Michele Deitch, April 15, 2011.).

[15] Id. at 33 (citing American Bar Association, "Criminal Justice Standards on Treatment of Prisoners," (approved by the ABA House of Delegates in February 2010), available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html.). [hereinafter cited as ABA Criminal Justice Standards].

[16] Id (citing A.E. Bottoms, "Interpersonal Violence and Social Order in Prison," in *Crime and Justice: A Review of Research*, vol. 26, eds. M. Tonry & J. Petersilia (1999), p. 243, n. 32; Christine Tartaro, "Watered Down: Partial Implementation of the New Generation Jail Philosophy," *Prison Journal*, vol. 86, no. 3 (September 2006), p. 286.).

[17] Id. at 34 (citing W. Raymond Nelson, "The Origins of the Popular Direct Supervision Concept: An Eyewitness Account," *American Jail*, vol. 2, no. 1 (1988), p. 10; Atlas, "Changes in Prison Facilities," ("The primary assumption of operation [behind the direct supervision model] was that a normalized environment would evoke normal behavior.")).

[18] Id. (citing Tartaro, "Watered Down," p. 291. See also Bottoms, "Interpersonal Violence," p. 205. ("Enhanced physical restrictions can often reduce levels of violence due to restrictions on opportunity but may also sometimes lead to a loss of legitimacy that can escalate violence.")).

Internet access, common day space for congregate activity, and programming. He added, "Within reasonable limitations, there's no reason not to permit civilian clothing."[19]

A normalized detention environment can positively impact prison facilities holding higher-risk detainees as well as low-risk detainees. For example, McKean Federal Correctional Institution, a medium-security federal prison, was praised in the mid-1990s as "the best-managed prison in the country."[20] It housed more than 1,000 men, saw much less violence than was typical, and was significantly less expensive per inmate than the system-wide average. McKean offered "open" movement throughout the facility, generous recreation time, and a pleasant and comfortable physical environment." The long-time warden, Dennis Luther, reported, "We do surveys every year, and they show that as inmates get more involved in the rec program, they get in less trouble. Also, they tend to have less health trouble, and that saves money."[21]

Luther "insists that physical details [such as carpets, sofas, and plants] help to maintain order, just as the programs do." One of Luther's primary principles is to "[n]ormalize the environment to the extent possible by providing programs, amenities, and services. The denial of such must be related to maintaining order and security rather than punishment. Most inmates will respond favorably to a clean and aesthetically pleasing physical environment and will not vandalize or destroy it."[22]

Medical experts have found that an immigration detainee's lack of control over details of his living environment—"from the clothes he wears; to the number of hours he sleeps; to the degree of light or darkness in his cell; to the food he eats; to the sounds he hears; to the amount and quality of the fresh air he breathes; to the degree of physical activity or inactivity in which he engages; and the people with whom he communicates"— can exacerbate stress.[23] Bolstering the corrections professionals' recommendations that normalized detention environments promote safe facilities, such medical assessments suggest that a normalized environment can also be beneficial to the mental health of immigrant detainees.[24]

---

[19] Id. (citing Human Rights First interview with Steve J. Martin, April 1, 2011. Also, Jeanne Woodford (former warden, San Quentin State Prison, former Acting Secretary of the California Department of Corrections and Rehabilitation) told Human Rights First, "The more you give people in custody, the better behaved they are, because they have more to lose… The degree of freedom of movement granted to inmates should be as much as possible, based on behavior…Idleness is a terrible problem." (March 22, 2011) William Collins (former director of the American Correctional Association's Correctional Law Project, former head of Corrections Division of Washington State Attorney General's Office, editor of *Correctional Law Reporter*) suggested, "In a civil detention facility, detainees would presumptively be given a lot of responsibility over their interactions with each other. This would be premised on a philosophical shift." (March 16, 2011). Michele Deitch (criminal justice and juvenile justice policy expert, University of Texas Law School and LBJ School of Public Affairs) suggested that civil immigration detention might replicate conditions of trustee camps, which permit a high degree of freedom of movement, but place them inside a secure perimeter. She noted, "A secure perimeter is for public safety purposes. Perimeter security should be distinguished from conditions inside a facility… Criminal history of detainees should not affect the conditions inside the facility; it could be a risk factor, but far more determinative of custody classification would be the person's institutional behavior." (April 15, 2011)).

[20] Id. (citing Robert Worth, "A Model Prison," *The Atlantic Monthly*, November 1995, available at http://www.theatlantic.com/past/docs/issues/95nov/prisons/prisons.htm; and Todd R. Clear, George F. Cole, and Michael D. Reisig, *American Corrections* (Independence: Wadsworth Publishing, 2005), p. 352-53.).

[21] Id.

[22] Id.

[23] Id. at 35 (citing Physicians for Human Rights, *Punishment Before Justice: Indefinite Detention in the U.S.* (Washington, DC: Physicians for Human Rights, 2011), p. 14, available at https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf.).

[24] Id.

Federal Bureau of Prisons Facilities Allow Greater Freedom of Movement than Most Immigration Detention Facilities

More significant freedom of movement is actually permitted, to varying degrees, in federal correctional facilities across the country, including in all 6 Federal Bureau of Prisons minimum-security institutions, known as Federal Prison Camps (FPCs) and in all 29 Federal Bureau of Prisons low-security institutions, known as Federal Correctional Institutions (FCIs). In each of these facilities, which together house over 80,000 federal prisoners, inmates can generally exit and enter their housing area without an escort, walking to and from their job sites, the cafeteria, the indoor and outdoor recreation areas, the visitation room, the doctor, and the library. Although corrections facilities should not serve as models for the immigration detention system, the facts that many federal Bureau of Prisons facilities allow greater freedom of movement than most immigration detention facilities and that prison experts confirm the need for maximum freedom of movement strongly suggest that most civil immigration law detainees should be permitted greater mobility within secure facilities than they presently receive.[25]

All Federal Bureau of Prisons Facilities Allow Contact Visitation

Contact visits—during which inmates can hold hands with their family members, and embrace at the beginning and end of the visit – are permitted in jails and prisons across the country, including in the prison systems of all 50 states and in all federal Bureau of Prisons facilities.[26]

By contrast, only ten ICE-authorized facilities, out of 254, regularly permit contact visitation. Some others permit contact visitation under special circumstances, but not on a regular basis. Visitors and detainees—many who have lived in the United States for many years, and have families and extended communities here, as well as others who have fled brutal persecution in their homelands and were locked up upon arrival in the United States—instead must sit on either side of a Plexiglas window and speak via telephone. In several facilities, "visits" take place only via video, even when visitors are in the same building as detainees.[27] At some immigration detention facilities, visitation hours are

---

[25] Id. at 36 (citing federal Bureau of Prisons daily facility population data available at http://www.bop.gov/locations/weekly_report.jsp and noting this number includes daily population of FPCs, FCIs, and low-security satellite camps as of 9/19/11.). The FPCs include Alderson (West Virginia), Bryan (Texas), Duluth (Minnesota), Montgomery (Alabama), Pensacola (Florida), and Yankton (South Dakota) and the FCIs include Allenwood Low (Pennsylvania), Bastrop (Texas), Beaumont Low (Texas), Coleman Low (Florida), Danbury (Connecticut), Englewood (Colorado), Lompoc (California), Oakdale (Louisiana), Petersburg Low (Virginia), Safford (Arizona), and Texarkana (Texas).

[26] Id at 38 (citing 40 Rules of City of New York, § 1-09(g)(1), which state, "Physical contact shall be permitted between every prisoner and all of his or her visitors throughout the visiting period, including holding hands, holding young children, and kissing." Section 1-09 (f) provides that before and after a visit, prisoners "may be searched solely to ensure that they possess no contraband." 9 N.Y. Comp. Codes R. & Regs. § 7008.6 ("(a) Physical contact shall be permitted between a prisoner and his visitors"). 9 N.Y. Comp. Codes R. & Regs. § 7008.2 ("(b) The visiting area shall be designed so as to allow physical contact between prisoners and their visitors."). The standard provides that before and after a visit, prisoners, "prior and subsequent to each visit, may be searched solely to ensure that they possess no contraband." 9 N.Y. Comp. Codes R. & Regs. § 7008.7; As of August 31, 2011; detailed research on file with Human Rights First; Federal Bureau of Prisons Program Statement 5267.08, "Visiting Regulations," § 18 ("PROCEDURES §540.51. h. (2) Staff shall permit limited physical contact, such as handshaking, embracing, and kissing, between an inmate and a visitor, unless there is clear and convincing evidence that such contact would jeopardize the safety or security of the institution. Where contact visiting is provided, handshaking, embracing, and kissing are ordinarily permitted within the bounds of good taste and only at the beginning and at the end of the visit.")).

[27] This is the practice at Douglas County Corrections (127 detainees), Baker County Sheriff Department (250 detainees), Etowah County jail (349 detainees), Ramsey County Adult Detention Center (66 detainees), McHenry County Correctional Facility (315 detainees), Sherburne County jail (115 detainees), Freeborn County jail (75 detainees), and Jack Harwell Detention Facility (100). Human Rights First interviews with local service providers, August 2010, March 2011, and September 2011, http://www.bakersfieldcorrections/inmate-info, and http://www.cecintl.com/facilities_sf_tx_017.html. It is also the practice at Pinal

severely limited. Current ICE standards – including the PBNDS 2011 –leave it up to the facility administrator or officer in charge to decide whether to permit contact visits.

At a conference at Georgetown Law School in October 2011, Sister Josephe Marie Flynn, a member of the Sisters of Notre Dame and author of *Rescuing Regina: The Battle to Save a Friend from Deportation and Death,* described an Easter Sunday visit in 2005 to the Kenosha County Jail in Wisconsin, where Sister Josephe joined the husband and two young children of Regina Bakala, a Congolese survivor of rape and torture. Ms. Bakala was held at Kenosha County Jail while fighting her asylum case.

> *Regina was allowed four visitors on Easter Sunday. She listed David, Lydia, Christopher, and me. After going through metal detectors, we stood alone in the empty visitors' room, narrow counters on opposite sides, each with a thick Plexiglas barrier from counter to ceiling. Small panels partitioned off 11 visiting stations. We waited. Finally, a steel door on the prisoner's side opened. She was in prison orange from the neck down. Seeing David and the children, she threw up her hands, her face contorted in agony. We could hear her wailing through the soundproof glass, and she grabbed the narrow counter nearest David. He yelped then plunged toward her, sobbing as he grabbed the counter on our side. The children and I stood back, stunned. Gradually, she pulled herself to the nearest stool, her eyes streaming, open mouth turned down, quivering. She leaned toward the glass, her arms trying to scoop her children closer. Gradually, Christopher began to talk, but Lydia said only, "We want you to come home now." During the whole visit, she huddled close to her Daddy and then to me, never taking her eyes off her mother.*
>
> *Months later, when we miraculously succeeded in getting Regina's case reopened, a reporter squatted down to ask Christopher how he felt now that he knew his Mommy would be coming home. The little guy did not smile. Instead, he punched the air in front of him, saying, "I'm going to break the mirror." Lydia translated, "He wants to break the mirror, the big glass between him and Mommy." On Mother's Day, Christopher had not been allowed to give Mommy the dandelion he picked for her. He had to leave the little flower on the ledge in front of the thick Plexiglas.*[28]

Contact visits for immigration detainees would mean that they could embrace their family and friends in greeting and goodbye, and sit side by side while they visit. Loved ones could hold hands. Detained fathers and mothers would be able to touch their babies. Children would be able to hug their detained parents. Corrections experts have affirmed the value of contact visits for incarcerated individuals. The American Bar Association's Criminal Justice Standards on Treatment of Prisoners also provide for "contact visits between prisoners and their visitors," and "adequate" visiting time.[29] Dr. Schriro

---

County Jail (Arizona), which holds more than 400 detainees daily. At Pinal County, detainees are restricted to using video to meet not only with visiting family and friends, but also with their attorneys. ACLU of Arizona, *In Their Own Words*.

[28] See transcript of Reaffirming Protection: Strengthening Asylum in the United States, Conference Commemorating the 60th Anniversary of the 1951 Refugee Convention, hosted by the U.N. High Commissioner for Refugees, Human Rights First and Georgetown Law School, Tuesday, October 25, 2011. On file with Human Rights First.

[29] Jails & Jumpsuits at 38 (citing ABA Criminal Justice Standards, Standard 23-8.5, which states, "Visiting periods should be of adequate length. Visits with counsel and clergy should not be counted as visiting time, and ordinarily should be unlimited in frequency. Pretrial detainees should be allowed visiting opportunities beyond those afforded convicted prisoners, subject only to reasonable institutional restrictions and physical plant constraints. For prisoners whose confinement extends more than [30 days], correctional authorities should allow contact visits between prisoners and their visitors, especially minor children, absent an individualized determination that a contact visit between a particular prisoner and a particular visitor poses a danger to a criminal investigation or trial, institutional security, or the safety of any person.").

recommended that family visitation be improved by, among other things, increasing the hours and providing "appropriate space."[30] The Vera Commission on Safety and Abuse in America's Prisons, a national bipartisan commission created by Congress to examine violence in the U.S. prison and jail systems and make recommendations to improve safety for prisoners, staff, and the public, stated in its 2006 report, "Because contact visits can inspire good behavior, people confined in both prisons and jails should be allowed to touch and embrace their children, partners, and other friends and family. Physical barriers and telephones should be reserved for those who have abused visitation privileges or otherwise have been determined to pose too great a risk."[31]

Some wardens and ICE assistant field officers have expressed concern that permitting contact visits would make a facility vulnerable to contraband passed between visitor and detainee, and that they would have to institute strip searches for detainees who had contact visits. However, Martin Horn, who ran the corrections systems in Pennsylvania and New York City and currently serves as Distinguished Lecturer at the John Jay College for Criminal Justice, and Jeanne Woodford, former Secretary of the California Department of Corrections and former warden of San Quentin State Prison, both emphasized that strip searches following contact visits should take place only in cases of "reasonable cause or suspicion" or "high risk inmates." They noted that screening technology can help decrease the use of actual strip searches.[32]

Corrections Experts Assert Open-Bay Shower Areas –Which Exist in Most ICE-Authorized Facilities—are "Absolutely Inappropriate"

Many ICE-authorized facilities afford no privacy whatsoever to detainees taking showers or using the toilet. Yet according to an official who previously served with the Texas Department of Corrections, privacy in showers and toilets is available in "huge number of penal jails and prisons." "Gang showers"—open-bay shower areas with many showerheads—are "absolutely inappropriate."[33]

Some immigration detention facility administrators have cited safety concerns to justify the utter absence of privacy, but in fact many ICE and non-ICE facilities afford detainees the basic dignity of visual privacy in toilets and showers, without incident. Mr. Horn said that partial barriers, from knee to neck, can be used to reduce the risk of suicides or sexual assault. Another longtime corrections expert told Human Rights First that "privacy screens can be used that allow staff to see at least heads and/or feet in shower and/or toilet areas while still providing some level of privacy."[34]

Security concerns should not require that showers and toilets be completely open to staff observation, which implicitly means observation by other detainees as well. At Essex County jail, which holds hundreds of ICE detainees with criminal histories, toilet stalls have full-length doors, and showers have tear-away curtains (designed to prevent self-strangulation). The jail warden says that the facility has never had problems with this set-up, and that shower curtains are commonly used in criminal facilities. The ABA Criminal Justice Standards call for "reasonably private" toilets for prisoners.

---

[30] Id. (citing 2009 DHS/ICE Report, p. 24.)
[31] Id. (citing The Commission on Safety and Abuse in America's Prisons, *Confronting Confinement*, (New York: Vera Institute of Justice, 2006), p. 36, available at http://www.prisoncommission.org/pdfs/Confronting_Confinement.pdf).
[32] Id. (citing Human Rights First correspondence with Martin Horn, March 22, 2011 and interview with Jeanne Woodford, March 22, 2011).
[33] Id. at 39 (citing Human Rights First interview with Steve J. Martin, April 1, 2011.)
[34] Id. (citing Human Rights First correspondence with Martin Horn, March 22, 2011.).

"Sheriff's Guide to Effective Jail Operations" Outlines Benefits of Outdoor and Indoor Exercise for Operational Management and Safety

At present, many facilities where immigrants are detained have no outdoor recreation space, or the space considered "outdoor" is in fact interior to the facility, enclosed by high cement walls and a cage-like ceiling through which some light and air can enter. In other ICE facilities, the outdoor recreation area may be outdoors, but it is otherwise deficient—lacking shade or grass in extremely hot and sunny climates, or, in the case of Delaney Hall in Newark, plagued by poor air quality from neighboring industrial plants. The current detention standards permit ICE to hold detainees in facilities without outdoor recreation "in exceptional circumstances." Where outdoor recreation exists, the requirements state that detainees must have access to it for just one hour per day, five days per week—very little time for detained individuals with limited activities with which to fill their days. The PBNDS 2011, which have yet to be implemented, require outdoor recreation for just one hour per day, seven days per week.

Corrections professionals and ICE facility administrators have also acknowledged the benefits of outdoor recreation. The *Sheriff's Guide to Effective Jail Operations*, published by the National Institute of Corrections, states: "In addition to being beneficial for inmate health, the availability of outdoor and indoor exercise may result in fewer operational problems such as inmate-on-inmate assaults, inmate assaults on staff, damage to jail property, and lawsuits."[35] The former warden of a medium-security federal prison said in an interview, "We do surveys every year, and they show that as inmates get more involved in the [outdoor] rec program, they get in less trouble."[36] One ICE assistant field office director told Human Rights First that the better the recreation is, "the more likely they'll leave you alone."[37] A former prison official told us that outdoor recreation areas should have dedicated spaces for sports and other activities, rather than being just barren yards enclosed by fencing. The ABA's Criminal Justice Standards on Treatment of Prisoners provide that, "To the extent practicable and consistent with prisoner and staff safety, correctional authorities should minimize the periods during the day in which prisoners are required to remain in their cells. Correctional authorities should provide all prisoners daily opportunities for significant out-of-cell time and for recreation at appropriate hours that allows them to maintain physical health and, for prisoners not in segregated housing, to socialize with other prisoners."[38]

Programming and Activities Help to Ensure Safety Inside a Detention Facility

According to corrections professionals, programming for incarcerated individuals helps to ensure safety inside a detention facility. The *Sheriff's Guide to Effective Jail Operations* states, "Productive activities provide a powerful incentive for inmates to maintain positive behavior….If a jail does not provide inmates with productive activities, they will find other ways to fill their time, often through activities that are destructive and contrary to the jail's mission of providing a safe and secure environment."[39] The Vera Commission's 2006 report stated that "few conditions compromise safety more than idleness."[40]

---

[35] Id. (citing Mark D. Martin and Paul Katsampes, *Sheriff's Guide to Effective Jail Operations* (Washington, DC: National Institute of Corrections, U.S. Department of Justice, 2007), p. 46.). [hereinafter cited as Sheriff's Guide.].
[36] Id. (citing Robert Worth, "A Model Prison," *The Atlantic Monthly*, November 1995, available at http://www.theatlantic.com/past/docs/issues/95nov/prisons/prisons.htm.)
[37] Id. at 40 (citing Human Rights First tour of Port Isabel Detention Center, December 6, 2010.).
[38] Id (citing ABA, "Criminal Justice Standards," Standard 23-3.6.).
[39] Id (citing Sheriff's Guide at 41.).
[40] Id. (citing Commission on Safety and Abuse in America's Prisons, *Confronting Confinement*, p. 12.).

Phone service in detention facilities is unreliable, extremely expensive, and appears to have improved only marginally despite ongoing concerns at the Government Accountability Office and the DHS Office of the Inspector General.[41] Given that email communication has become a primary form of communication for people all over the world, it would make sense for ICE facilities to provide email access to its detainees. All facilities operated by the federal Bureau of Prisons have an email system that is available to inmates at all security levels. Known as TRULINCS, this system permits inmates to send emails to and receive emails from a preapproved list of contacts. Mr. Martin, the former General Counsel of the Texas prison system, contended that immigration detainees should have access to the Internet as well as email. He said, "The risk is minimal with proper controls, and the benefits would be enormous in facilitating communication with family and attorneys." ICE currently provides email access in just three facilities. [42]

CONCLUSION AND RECOMMENDATIONS

Contrary to assertions by Chairman Smith that ICE's detention reform efforts "[go] beyond common sense"[43] or allegations by the ICE Union's Council 118 President, Chris Crane, that ICE's detention reforms are "aimed at providing resort like living conditions to criminal aliens,"[44] many of the reforms ICE is contemplating actually exist in the corrections context and are well-understood to improve facility safety and humane treatment for many prison populations. They represent steps toward reform that are considered "best practices" in managing and designing any system that detains individuals, whether for correctional or immigration purposes. Immigration detention facilities should not be modeled on correctional facilities, but they should certainly not be operated with *more* restrictions than corrections experts believe correctional facilities should have or than experts believe are necessary for the safe management of the facilities.

While ICE has taken some steps to address some of the deficiencies in the immigration detention system, much more needs to be done to improve conditions and to address challenges in the system broadly, including the lack of individualized assessments and independent review of the need to detain.

---

[41] In January 2010, the DHS Office of the Inspector General raised concerns about ICE's lack of oversight of the financial aspects of its telephone service contracts, making it easy for detainees to be overcharged for calls. (DHS—Office of Inspector General, *Immigration and Customs Enforcement Management Controls over Detainee Telephone Services* (Washington, DC: DHS, 2010), OIG-10-36, p. 6, available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-36_Jan10.pdf. In 2008, the DHS OIG identified problems with existing telephone services including lack of incentive for the contractor to improve performance, significant connectivity issues, and lack of oversight of rates and contractor profits. (DHS—Office of Inspector General, *Review of Immigration and Customs Enforcement Detainee Telephone Services Contract* (Washington, DC: DHS, 2008), OIG-08-54, p. 3-4, available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_08-54_May08.pdf. In 2007, the Government Accountability Office found "systematic problems" with the system that allows free calls to consulates, pro bono legal service providers, nongovernmental organizations, and the DHS Office of the Inspector General, and noted that "ICE's lack of awareness and insufficient internal controls appear to have perpetuated telephone system problems for several years." (Government Accountability Office, *Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance* (Washington, DC: GAO, 2007), GAO-07-875, p. 10, available at http://www.gao.gov/new.items/d07875.pdf.

[42] Jails & Jumpsuits at 40 (citing, "TRULINCS FAQ," Bureau of Prisons, last modified October 4, 2011, accessed October 4, 2011, http://www.bop.gov/inmate_programs/trulincs_faq.jsp, explaining that emails sent via TRULINCS are subject to monitoring, even those emails between an inmate and his attorney—unlike USPS-delivered correspondence between an inmate and his attorney. The costs of the system are covered by commissary and phone charges, plus a charge of 5 cents per minute for the service itself; 3 Human Rights First interview with ICE assistant field office director, December 8, 2010. He said that he would permit male detainees the same access (Hutto houses women only); Human Rights First interview with Steve J. Martin, April 1, 2011.).

[43] See supra note 9.

[44] See supra note 8.

insufficient use of alternatives to detention, and major challenges immigrants in detention face accessing legal counsel. Human Rights First continues to emphasize the following recommendations:

- **Stop Using Prisons, Jails, and Jail-like Facilities, and When Detention Is Necessary Use Facilities with Conditions Appropriate for Civil Immigration Law Detainees.** ICE should end the use of prisons, jails, and jail-like facilities to hold detainees. After an individualized assessment of the need to detain, ICE should use facilities that provide a more appropriate normalized environment. Detainees should be permitted to wear their own clothing, move freely among various areas within a secure facility, access true outdoor recreation for extended periods of time, access programming and email, have some privacy in toilets and showers, and have contact visits with family and friends. ICE should develop and implement new standards not modeled on corrections standards to specify conditions appropriate for civil immigration detention.

- **Prevent Unnecessary Costs by Ensuring that Asylum Seekers and Other Immigrants Are Not Detained Unnecessarily.** ICE should create an effective nationwide system of Alternatives to Detention for those who cannot be released without additional supervision, and Congress should ensure that cost savings are realized in the program's expansion by reallocating part of the enforcement and removal budget to an increase in the ATD budget. Congress should enact legislation to provide arriving asylum seekers and other immigration detainees with the chance to have their custody reviewed in a hearing before an immigration court. Congress should revise laws so that an asylum seeker or other immigrant may be detained only after an assessment of the need for detention in his or her individual case, rather than through automatic or mandatory detention.

- **Improve Access to Legal Assistance and Fair Procedures.** Congress should ensure that detained asylum seekers and other immigration detainees have sufficient access to legal representation, legal information, and in-person hearings of their asylum claims and deportation cases, including by ending the use of facilities in remote locations that undermine access to legal representation, medical care, and family; ensuring that Legal Orientation Presentations are funded and in place at all facilities detaining asylum seekers and other immigration detainees; and ensuring that in-person Immigration Judges and Asylum Officers are available for all detained asylum seekers or other immigration detainees.

LIRS Statement for Hearing: "The U.S. Department of Homeland Security's New Immigration Detention Standards"

House Judiciary Subcommittee on Immigration Policy and Enforcement

March 28, 2012

BALTIMORE, March 28, 2012 – "I never thought the United States would put me in jail after I fled my country to save my life. How can anyone think we're enjoying ourselves?" asked Deborah[1], who escaped from Ghana and who was immediately detained upon her arrival to the United States by the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE). Before an immigration judge granted her with asylum, ICE transferred her to three different detention centers in New Jersey and denied her medical requests to treat her rheumatism and facial burns. "People on the outside just don't know what it's like," said Deborah.

Lutheran Immigration and Refugee Service (LIRS), the national organization established by Lutheran churches in the United States to serve uprooted people, is deeply troubled by the overuse of detention and calls on Congress and the Administration to use immigration detention only when necessary – only when an individual poses a risk of flight or a threat to the community – and to expand more cost-effective alternatives to detention programs. For individuals who must be held in custody, ICE needs to have a set of enforceable standards that ensures safety, dignity, and fairness.

Last month ICE released its 2011 Performance-Based National Detention Standards (PBNDS). The 2011 standards are a positive step towards improving basic detention conditions. They provide improved medical standards, greater protections against sexual assault, increased access to families and legal representatives, among other changes. However, they are not enforceable and will not apply to most ICE jails used to house detainees.

Some members of Congress have suggested that these standards represent a "holiday" for detainees. The 2011 PBNDS, like the 2000 and 2008 standards, are inappropriately based on the correctional models used for criminal populations. "Any set of detention standards that includes provisions for shackling pregnant women is no 'holiday,'" said Leslie E. Vélez, LIRS Director for Access to Justice. "Using a restrictive, correctional framework is unacceptable for anyone held for civil violations who does not pose a threat."

ICE updated its national detention standards because it acknowledged the need to provide better care to the growing number of detainees in its vast network of privately run jails, federal prisons, and county facilities. From fiscal year (FY) 2000 – 2010, the number of immigrants detained annually grew from 167,000 to over 363,000. Many of the noncitizens held in detention are refugees, asylum seekers, and survivors of torture or human trafficking.

[1] Name has been changed to protect the woman's identity.

National Headquarters: 700 Light Street, Baltimore, Maryland 21230 · 410-230-2700 · fax 410-230-2890
Advocacy Office: 122 C Street NW, Suite 125, Washington, D.C. 20001 · 202-783-7509 · fax 202-783-7502

Since 2003 ICE's inadequate medical care contributed to the deaths of more than 100 immigrants in custody.[2] More than 180 sexual abuse complaints have been reported in ICE detention centers since 2007.[3] Media reports revealed that ICE officials tried to hide the details of the mistreatment of immigration detainees.[4] Non-profit organizations and faith and community leaders also spoke out in the need for reform.

In 2007 LIRS and the Women's Refugee Commission released *Locking Up Family Values: The Detention of Immigrant Families*, a report which investigated the jailing of immigrant families in the T. Don Hutto Residential Treatment Center in Taylor, TX and the Berks County Shelter Care Facility in Leesport, PA.[5] It documented disturbing incidents of ICE failing to meet the basic needs of immigrants in its custody:

- A woman asked for medical attention because her child was suffering from repeated vomiting. The staff said that they would need to see the vomit to believe that her son was sick.
- A mother submitted a request for her son to see a dentist because he had a toothache. After waiting three weeks for an appointment, the dentist pulled his rotten tooth with no anesthesia.
- A pregnant woman did not receive her first prenatal exam until she was seven months pregnant.
- Another pregnant woman recounted that she was given an X-Ray to screen for TB without a lead protective cover even though she told the technician that she was five months pregnant.

From 2007 to 2008, the immigration task force of the Evangelical Lutheran Church in America's Conference of Bishops visited immigration detention facilities in Michigan, New Jersey, Virginia, and Washington.[6] The bishops were dismayed at what they heard and observed, expressed grave concerns regarding detainees' access to medical care along with the number of deaths in detention, and urged DHS and Congress to reform the immigration detention system.

In August 2009, in response to the calls for reform, DHS Secretary Janet Napolitano and ICE Assistant Secretary John Morton announced plans to overhaul the ICE immigration detention system.[7] Later in 2009 Dr. Dora Schriro, DHS's Special Advisor on Immigration and Customs Enforcement and Detention & Removal, released a comprehensive report which cited the need to improve conditions in immigration detention facilities and recommend increased oversight of the

---

[2] *Sixth Immigrant to Die Since October*, Fox News Latino, http://latino.foxnews.com/latino/news/2012/03/06/mexican-immigrant-is-sixth-immigration-detainee-to-die-since-october (Mar. 6, 2012).
[3] Elise Foley, *Immigrant Detainees Report Nearly 200 Instances of Sexual Abuse*, The Huffington Post, http://www.huffingtonpost.com/2011/10/21/immigrant-detainees-sexual-abuse-report_n_1024436.html (Oct. 21, 2011).
[4] Nina Bernstein, *Official Hid Truth of Immigrant Deaths in Jail*, The New York Times, http://www.nytimes.com/2010/01/10/us/10detain.html?ref=mcustodydeaths (Jan. 9, 2010).
[5] Lutheran Immigration and Refugee Service and the Women's Refugee Commission, *Locking Up Family Families: The Detention of Immigrant Families*, http://www.lirs.org/adf/cf/%7BA9DDB5E-C6B5-4C63-89DE-91D2F09A28CA%7D/RptLockingUpFamilyValues2007.pdf (Feb. 2007).
[6] *ELCA Bishops Visit Immigration Detention Centers*, ELCA News Service, http://www.elca.org/Who-We-Are/Our-Three-Expressions/Churchwide-Organization/Communication-Services/News/Releases.aspx?a=3882 (Jun. 10, 2008).
[7] *ICE Announces Major Reforms to the Immigration Detention System*, http://www.ice.gov/news/releases/0908/090830washington.htm (Aug. 6, 2009).

system.[8] The report also acknowledged that ICE used jail-like criminal incarceration too frequently on non-violent and vulnerable populations who pose no threat to the community and should be released from custody.

In an October 2011 report, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, LIRS called for the adoption of a risk assessment tool that allows U.S. immigration officers to make custody and release decisions based on the unique circumstances of each individual's case.[9] The tool would recommend the detention of immigrants convicted of serious crimes or who pose a risk to the public. Other migrants, who do not pose a flight or public safety risk, could be placed into community support programs or required to follow other supervision requirements – options that are smarter, cheaper, and more humane.

"This year alone, immigration detention will cost U.S. taxpayers more $2 billion," added Eric B. Sigmon, LIRS Director for Advocacy. "It is in the interest of the U.S. government and taxpayers to ensure that the U.S. immigration detention system provides basic care and treatment for all people navigating the immigration process."

LIRS is nationally recognized for its leadership advocating on behalf of refugees, asylum seekers, unaccompanied children, immigrants in detention, families fractured by migration and other vulnerable populations, and for providing services to migrants through over 60 grassroots legal and social service partners across the United States.

If you have any questions about this statement, please contact Eric B. Sigmon, Director for Advocacy, at (202) 626-7943 or via email at esigmon@lirs.org.

Additional LIRS Detention Resources

- The March 14, 2012 press release on the new Karnes County Civil Detention Center may be read here: http://bit.ly/GYl6VO.
- The December 15, 2011 press release expressing concerns with increased FY 2012 immigration detention spending may be read here: http://bit.ly/u9RoSw.
- The October 2011 report, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, may be read here: www.lirs.org/dignity.
- The May 24, 2011 statement on H.R. 1932, the Keep Our Communities Safe Act, may be read here: http://bit.ly/nql6Ur.
- The December 22, 2009 statement applauding ICE's parole policy reforms may be read here: http://bit.ly/lkOLom.
- The October 7, 2009 statement in support of DHS's announcement to overhaul the immigration detention system may be found here: http://bit.ly/iG7LcW.
- The February 2007 LIRS and Women's Refugee Commission report, *Locking Up Family Values: The Detention of Immigrant Families*, may be read here: http://bit.ly/iXl5bM.

---

[8] Dr. Dora Schriro, *Immigration Detention Overview and Recommendations*, Department of Homeland Security, Immigration and Customs Enforcement, http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf (Oct. 6, 2009).
[9] Lutheran Immigration and Refugee Service, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, http://www.lirs.org/atf/cf/%7BA8dBa5e-c6b5-4c63-89de-91d2f09a28ca%7D/RPTUNLOCKINGLIBERTY.PDF (Oct. 2011).

Statement for the Record

March 28, 2012

House Subcommittee on Immigration Policy and Enforcement
"Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards"

Introduction:

The National Latino Evangelical Coalition is a national network of over 3,000 evangelical congregations committed to working for the common good and speaking on behalf of the most vulnerable in our country. As a major advocate of the over 8 million U.S. Latino evangelicals we are committed to speaking publicly to the most pressing issues in our nation from an evangelical perspective. The National Latino Evangelical Coalition is committed to supporting public policies that strengthen families, defend the poor, and underscore the contributions of immigrants to the our nation's health and future.

Positive First Steps:

As evangelical pastors we begin with the conviction that all people are valued by God and merit human dignity and humane treatment. Many of the pastors in our networks have worked closely with these detainees and their U.S. citizen children. We are the pastors, chaplains, and prayer-partners of these men and women. For us, any standards that reify the United States' commitment to the human dignity of all people are standards consistent with the best of our ethical heritage. We too hold with the *Declaration of Independence* that "all men are created equal." Our calling for humane standards in all the immigration detention centers is grounded both in our faith and commitment to the equality of all human beings.

Having these convictions, we affirm the Department of Homeland Security's (DHS) announcement of new detention standards as a necessary first step in the right direction. The 2011 Operations Manual Immigration and Customs Enforcement's (ICE) Performance-Based National Detention Standards (PBNDS) provide some common sense fixes for many of the most serious problems in immigration detention centers.

Immigrants in detention centers are extremely vulnerable to abuse. For many, language hurdles and fear of deportation present a barrier to reporting instances of abuse. For evangelicals, these revised detention standards are an important step for ICE to make good on its commitment to bringing safety and dignity to our nation's immigration detention system.

Hispanic evangelicals were particularly saddened and troubled by the deaths of more than 100 immigrants in ICE custody since 2003. As faith leaders, we find it particularly

important that the Department of Homeland Security has addressed some of the concerns around substandard medical care, protections of victims of sexual abuse, and crisis intervention. We as faith leaders hold fast to the conviction that these protections are a reflection of a commitment to civility in U.S. laws. While we affirm these initial steps, our common humanity requires us to speak up for laws and standards that reflect this not just in name but also in deed. We need to move from standards to implementation.

Where do we go from here?

There is still much work to do. We are praying that these standards are quickly implemented in the detention facilities that hold over 30,000 immigration detainees each day. Our nation is at its best when we treat the most vulnerable among us with dignity, respect, and civility.

Many of the detention facilities have as of yet not implemented the standards established close to 4 years ago. As Christians committed to both good laws and compassion we believe it is not enough to establish humane standards. Implementation of these humane standards is a matter beyond political expedience; it is a matter of moral urgency. Facilities that contract with ICE ought to be legally bound to comply with ICE's detention standards. It is unimaginable to us that we have a national system that reflects substandard conditions for detainees in any part of our nation. We cannot have a two-tiered system where some detainees are treated with high ethical standards and others are subject to institutions who are non-compliant with the highest and noblest of our standards.

In the end, the National Latino Evangelical Coalition stands for the most humane treatment of our detainees while praying for the day we find common-sense and humane solutions to our immigration challenges. We stand in prayerful vigilance of the detention centers and the federal guidelines that inform how people are being treated in these centers. Our faith and conscience says we can do better.

Sincerely,

The Rev. Gabriel A. Salguero
President, National Latino Evangelical Coalition (NaLEC)

Testimony by Mary Meg McCarthy,
Executive Director, Heartland Alliance's National Immigrant Justice Center

Submitted to the House Judiciary Committee
Hearing on the Department of Homeland Security's 2011 Performance-Based National Detention Standards

March 28, 2012

Heartland Alliance's National Immigrant Justice Center (NIJC) welcomed the Department of Homeland Security's (DHS) long-awaited release of the 2011 Performance-Based National Detention Standards (PBNDS). NIJC appreciates the opportunity to submit this statement for the record to document why enforceable detention standards are desperately needed and outline why the PBNDS are inadequate.

As the number of detained immigrants swelled in a broken patchwork of jails throughout the country, the system urgently required reform. Detained immigrants do not have access to appointed counsel. Without legal counsel or information about their rights, they are particularly vulnerable. While the release of the PBNDS acknowledges the need for reform, the administration can only ensure humane and fair treatment of detained individuals through meaningful and sustainable reform.

Specifically, upholding America's commitment to justice will require legally enforceable standards, oversight and accountability, and sustainable laws/regulations, including application of the Prison Rape Elimination Act (PREA) to immigration detention. Congress and the administration must take steps to ensure that reforms include these protections.

Since its founding nearly 30 years ago, Chicago-based NIJC, a non-governmental organization, has been dedicated to safeguarding the rights of noncitizens, particularly those held in immigration detention. NIJC advocates for immigrants, refugees, and asylum seekers through direct legal representation, policy reform, impact litigation, and public education. NIJC and its pro bono network of 1,000 attorneys, the largest network of its kind, provide legal representation to approximately 10,000 individuals annually, including low-income immigrants, refugees, victims of human trafficking, unaccompanied minors, asylum seekers, and detained men and women.

As the co-convener of the DHS/NGO Enforcement Working Group (Working Group), NIJC facilitates advocacy and communication between DHS and human rights organizations, legal aid providers, and immigrant rights groups. With a national membership of nearly 50 organizations, the Working Group advocates for full protection of internationally recognized human, constitutional, and statutory due process rights and humane treatment of noncitizens. The Working Group's unique vantage point gives it valuable insights into national concerns while supporting efforts to reform the immigration system.

The need for enforceable detention standards is critical.

I. The PBNDS were developed in response to frequent reports of egregious human rights violations in the immigration detention system

Deplorable conditions of confinement persist for thousands of immigrants in remote jails across the country. As reports of deadly neglect and inhumane conditions made national headlines in the waning years of the Bush administration, NIJC represented many men and women who suffered egregious abuses.

- Domingo was in DHS custody from January 2006 to May 2010, detained at the Tri-County Detention Center (Ullin, Illinois) and at McHenry County Jail (Woodstock, Illinois). In April 2006, Domingo was transferred from DHS custody to the Kane County Department of Corrections in Illinois for two months. When he was returned to DHS custody in June 2006, DHS officers confiscated his dentures. For more than a year, DHS refused to return Domingo's dentures, despite numerous requests. Without dentures, Domingo endured severe pain and was unable to eat an adequate amount of food.

- Roome, an asylum seeker from Pakistan, was detained by DHS from April 2006 to March 2008. During her detention at McHenry County Jail and Dodge County Jail (Juneau, Wisconsin), Roome suffered from numerous medical conditions for which jail staff refused to provide adequate treatment. The most worrisome incident involved a painful lump on Roome's shoulder, which a nurse diagnosed as a "fatty tumor" but failed to provide any additional information or treatment. Roome also suffered from migraines, dental problems, and a skin rash during her time in detention. Even when medical staff examined these conditions and prescribed treatment, other jail staff administered the treatments inconsistently.

- When Lynda arrived in the United States in March 2007, she requested asylum. Instead, she was separated from her infant U.S. citizen daughter, whom she was still breastfeeding, and detained for more than a year until she was released with an ankle-monitoring bracelet in February 2006. Lynda had visited the United States previously, and her partner, the father of her child, had already received asylum and offered to provide housing if she were released. But DHS refused to release Lynda and she remained separated from her child during critical months of early development. DHS finally released Lynda following numerous requests by her NIJC attorneys.

- Carlyle Dale, originally from Jamaica, has been a permanent resident of the United States for more than 30 years. DHS detained Mr. Dale in April 2005 and initiated deportation proceedings. He spent the next five years in DHS custody. Throughout his detention, Mr. Dale suffered several serious health problems including chronic asthma and diabetes. Government officials and medical staff repeatedly ignored his requests for treatment and failed to provide him with adequate medical care, leading to multiple emergency admissions to the hospital. Following months of NIJC's advocacy, the U.S. government ultimately agreed to release Mr. Dale after the U.S. Court of Appeals for the Fifth Circuit overturned the Board of Immigration Appeals' determination that Mr. Dale should be

deported. In addition, NIJC filed a petition to the United Nations and *The New York Times* covered his story.[1]

II. More than two years after the administration announced reforms, immigrant detainees cannot wait for protections

In 2009, the Obama administration announced a series of reforms to create a more "civil" immigration detention system, recognizing that the vast majority of men and women in DHS custody do not have criminal histories and pose no threat to the community. Today, the administration's commitment to create a "truly civil" immigration detention – one that includes sound medical care, adequate oversight mechanisms, and fiscally prudent detention practices – is yet to be realized. Any meaningful reform must include the following crucial protections:

- **Commitment to a timeline for implementation of the PBNDS that ensures immigrants are protected from abuse, neglect, and inhumane conditions**
- **Requirement of all facilities to adopt uniform and legally enforceable detention standards**
- **Implementation of oversight procedures to ensure compliance with detention standards**
- **Process by which DHS, advocates, and immigrants can hold facilities accountable**
- **Access to legal counsel for detained immigrants**

When DHS released the PBNDS, it announced a timeline during which it will renegotiate contracts with facilities to include the new standards. That timeline did not include a deadline for contract negotiations with Intergovernmental Service Agreement (IGSA) facilities that hold both immigrant detainees and criminal inmates. Such facilities hold more than 50 percent of the detained immigrant population nationwide[2] and account for every immigration detention facility in the Midwest and the five remote county jails highlighted in the stories above. NIJC continues to receive reports from detainees who suffer egregious – and preventable – abuse and neglect at IGSA facilities.

In April 2011, NIJC filed a mass complaint with the DHS Office of Civil Rights and Civil Liberties on behalf of 13 men and women who were targeted for physical, sexual, and emotional abuse in immigration detention based on their identification as lesbian, gay, bisexual, and/or transgender (LGBT). Among the complainants was Raquel. She came to the United States seeking asylum after she fled persecution in Mexico because she is transgender. She was arrested by DHS and detained for more than a year at county jails in Illinois and Wisconsin. She describes her experiences in DHS custody as "living in hell." She was physically assaulted, placed in solitary confinement, and called degrading names. Even after she was released and granted lawful status, she had visible scars of the physical abuse she suffered at the hands of jail guards. She continues to suffer emotional trauma.

---

[1] Nina Bernstein, "Sick Detained Immigrant to Appeal to U.N. for Help," *The New York Times, June 24, 2010*, http://www.nytimes.com/2010/06/25/nyregion/25detain.html?_r=3&utm_source=twitterfeed&utm_medium=twitter

[2] ICE Fact Sheet: Detention Management, November 10, 2011, http://www.ice.gov/news/library/factsheets/detention-mgmt.htm

In October 2011, four additional DHS detainees joined the civil rights complaint. NIJC currently represents another transgender woman who was sexually abused at a remote IGSA facility in the southeastern United States. At this moment, she continues to languish in solitary confinement after reporting the attack.

In December 2011, NIJC released a report, Not Too Late for Reform,[3] calling for the end of immigrant detention at three remote Midwest county jails that contract to hold DHS detainees and have generated numerous reports of human rights violations. Detainees at these jails frequently complain about unsanitary conditions, medical neglect, and overuse of solitary confinement.

- Phillip, an NIJC client, suffered serious medical and mental health neglect while detained at Boone County Jail (Burlington, Kentucky) in 2011. Shortly before he was arrested and detained by ICE, a doctor told Phillip that a growth on his neck required further testing and might be cancerous. During his three months at Boone, he filed numerous requests to see a doctor but only saw nurses. He never received an examination. He began to experience headaches and had difficulty holding up his head. After one month of detention at Boone, Phillip reported to the nurses that he felt depressed and alone. The facility's response: solitary confinement.

- DHS detainees at Tri-County continue to report acute overcrowding. One DHS detainee reported that jail staff brought in extra beds so that some detainees slept with their heads next to toilets, even while the toilets were in use by others. The room where NIJC regularly conducts "Know Your Rights" presentations has also been filled with extra beds.

- Two detainees at Tri-County reported that they had made as many as five written requests to use the law library but were denied access. One of the individuals requested an asylum application from a guard and was told that access to the law library was blocked because the room was being used for video teleconferences.

- Another client reported numerous issues related to poor conditions while detained in 2011 at Jefferson County Detention Center (Mt. Vernon, Illinois). She was held from April until August 2011, when she won her case and was released. While at Jefferson, she reported a water leak in the women's pod; constant air-conditioning which made the jail extremely cold; and dirty showers, bed linens, and jail uniforms. When she closed the air vent and complained about the cold temperature, she was placed in solitary confinement.

III. DHS must ensure facility compliance with PBNDS guidelines

While the PBNDS provide some improvements in conditions over earlier standards, the guidelines lack oversight provisions and carry no consequences for facilities that fail to comply. For example:

---

[3] National Immigrant Justice Center, *Not Too Late for Reform*, December 2011. http://www.immigrantjustice.org/nottoolateforreform

- An NIJC client detained at Boone reported that the facility failed to provide proper HIV treatment. Within one day of his arrival at Boone, he told the nurse that he was HIV-positive. The nurse promised to call the clinic to obtain his medical history. The client also complained of depression and high blood pressure and informed a second nurse that he was HIV-positive. This nurse also promised to make a doctor's appointment. But, the client received no medication for six weeks before he was transferred to Tri-County Detention Center. There, the client once again reported his HIV status to a nurse, but the facility failed to conduct a medical examination or provide the client with medication.

Only after NIJC's extensive advocacy did this individual receive medical treatment. While every person in custody deserves robust human rights protections, it is noteworthy that people in DHS custody are held for civil purposes only. Most have no criminal history and the vast majority poses no threat to the community. Yet facilities that detain immigrants have no incentive to create non-punitive conditions. DHS does not take action in cases like the one described above unless advocates spend vast resources to make individual stories known.

The overuse of solitary confinement has come under intense scrutiny in the criminal justice system[4] and remains a problem in the immigration detention system. In many cases, detention facilities' use of solitary confinement is abusive, as represented in the stories above. Under the PBNDS, immigrants can be held in administrative solitary confinement indefinitely, and it is not clear that there is any oversight of solitary confinement practices. These individuals can easily become invisible within the immigration detention system, especially if they do not have attorneys.

In the 2008 PBNDS, the use of force against immigrant detainees was to be "a last resort" and "restricted to instances of justifiable self-defense, protection of others, protection of property, and prevention of escapes."[5] In the 2011 PBNDS, facilities are given broad discretion over when to use physical force, the only guidance being that it should be used "to the minimum extent necessary to restore order."[6]

IV. The U.S. government must implement legally enforceable standards in immigration detention because PBNDS are a weak nod at detention reform

Despite limited efforts by DHS to improve the detention system, thousands of detained men and women remain at risk for violence, medical neglect, and abuse. It will be virtually impossible to fix the immigration detention system as long as the government continues to arrest and detain record numbers of men and women who pose no threat to society. In achieving true detention reform, the Obama administration must abolish its overly harsh enforcement policies and work to reduce mass immigration detention, which costs taxpayers billions of dollars per year.

---

[4] Erica Goode, "Prisons Rethink Isolation, Saving Money, Lives and Sanity," The New York Times, March 10, 2012, http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=all

[5] U.S. Immigration and Customs Enforcement, *2008 Operations Manual ICE Performance-Based National Detention Standards (PBNDS)*, http://www.ice.gov/detention-standards/2008/

[6] U.S. Immigration and Customs Enforcement, *2011 Operations Manual ICE Performance-Based National Detention Standards (PBNDS)*, http://www.ice.gov/detention-standards/2011/

The government should close the worst facilities nationwide, including Boone County Jail, Jefferson County Jail, and Tri-County Detention Center, and cancel plans to build new facilities run by private prison contractors that are responsible for numerous documented human rights violations. Instead, the government should release more individuals into cost-effective alternatives to detention programs.

When individuals are detained, DHS must adopt enforceable detention standards appropriate for the civil nature of the immigration detention population. For example, PBNDS guidelines for mental health care are borderline negligent, allowing non-specialists to evaluate detainees for mental illness. Without appropriate treatment, individuals with serious mental health diagnoses are often unable to understand the nature of their detention or their proceedings. As a result, NIJC has encountered numerous individuals with mental illnesses who are held for prolonged periods of time in solitary confinement.

In addition, PREA, which Congress passed by a wide bipartisan margin in 2003 with the intention of protecting every detainee in the United States from sexual violence, could have saved Raquel and many others from the trauma endured in DHS custody. DHS refuses to adopt PREA, even though these standards provide better protections than the PBNDS.[7]

Congress must pass legislation that upholds basic constitutional and human rights for the more than 33,000 people held in DHS custody every day and holds detention facilities accountable for their treatment of detainees.

[7] Lovisa Stannow. When Good Isn't Enough. Huffington Post, March 6, 2012. http://www.huffingtonpost.com/lovisa-stannow/when-good-isnt-enough_b_1317745.html

Americans for Immigrant Justice

formerly Florida Immigrant Advocacy Center (FIAC)

STATEMENT OF SUSANA BARCIELA
Policy Director
Americans for Immigrant Justice
(Formerly Florida Immigrant Advocacy Center)

Dehumanizing Detention

March 26, 2011

Americans for Immigrant Justice (AI Justice) provides free legal services to low-income immigrants, including detainees in Immigration and Customs Enforcement (ICE) custody. We also document unacceptable and inhumane conditions at Florida detention centers. In 2009, we published Dying for Decent Care: Bad Medicine in Immigration Custody, (http://www.fiacfla.org/reports/DyingForDecentCare.pdf) detailing numerous violations of ICE detention standards at the time.

One example is the ordeal of Miguel Bonilla. He almost died in 2008 when his appendix ruptured while at the Glades County Detention Center. Mr. Bonilla agonized for a week before a nurse saw him doubled over from pain and sent him to a hospital where he had emergency surgery. A treatable condition turned into a life-threatening emergency that kept him hospitalized for 11 days.

Mr. Bonilla, a Honduran, has lived in the United States since 1998, has two U.S-citizen children and now is a U.S. legal permanent resident. He was detained by ICE at the Port of Miami though he had no deportation order or criminal record.

When detained at the Glades jail in July 2008 at age 30, he was the picture of health: He didn't smoke, drink alcohol or take drugs, prescription or otherwise. Soon he felt sick and repeatedly complained of increasing pain. Yet the jail's medical staff failed to order tests or recognize the symptoms of acute appendicitis, a condition that "a first year medical student should be able to recognize," according to a gastroenterologist described the symptoms.

Mr. Bonilla tried to get medical care. After the abdominal pains started, he filled out one or more requests for medical help daily. Every time he swallowed food he would vomit. He repeatedly asked for a doctor, pills, anything to stop the pain. Nurses gave him Pepto-Bismol, Maalox, salty soup and sent him back to his cell. When Mr. Bonilla complained that he couldn't eat, an officer told him not to worry: He could live without eating for 30 days.

Mr. Bonilla described the agony and lack of medical attention:

> "I told [two nurses] that my stomach hurt very much. I was burning from the inside – I think that was when my appendix ruptured. They told me that they couldn't do anything because they weren't doctors. My stomach felt as if it was exploding. I asked for medicine for the pain, the headache and fever. The nurses told me they could not give it to me because I hadn't eaten.... I thought I was going to die."

Two days later, pain had rendered Mr. Bonilla speechless. Two Glades nurses still denied him care. He was in a chair clutching his stomach when an unfamiliar nurse, quickly recognized his condition and sent him to the hospital. Despite his painful condition, he was handcuffed and shackled in transit.

Mr. Bonilla was hospitalized 11 days. After the surgery, he overheard one nurse say that he would have died had he arrived an hour later. He had tubes inserted to combat raging infections. He could barely move, but Glades guards shackled his feet as soon as he regained consciousness.

During this time, his family frantically was trying to find what happened to him. ICE failed to notify them of Mr. Bonilla's hospitalization or how to contact him, another detention violation. Family members had driven from South Carolina to immigration court in Miami. Instead of seeing Mr. Bonilla, they heard a Glades officer tell the judge that was hospitalized. For "security reasons," Glades jail refused to tell the family where he was hospitalized. Family also was barred from visiting or talking with him by phone.

Mr. Bonilla wasn't feeling well when he was released from the hospital. "Everything hurt in my body," he said. Still, he was forced to endure harrowing trips. Transported back to Glades in a small bus, he was handcuffed and shackled by jail officers who did not fasten his seatbelt. "Every time the bus turned, I felt as if I was about to fall," Mr. Bonilla said. "Everything hurt in my body, but I had to push down with my feet to stop myself from falling."

Shortly after arriving at Glades, he was transferred to the Krome detention facility in Miami, a grueling 115 mile trip in his still delicate condition. Getting on the bus, which had high steps, was distressing:

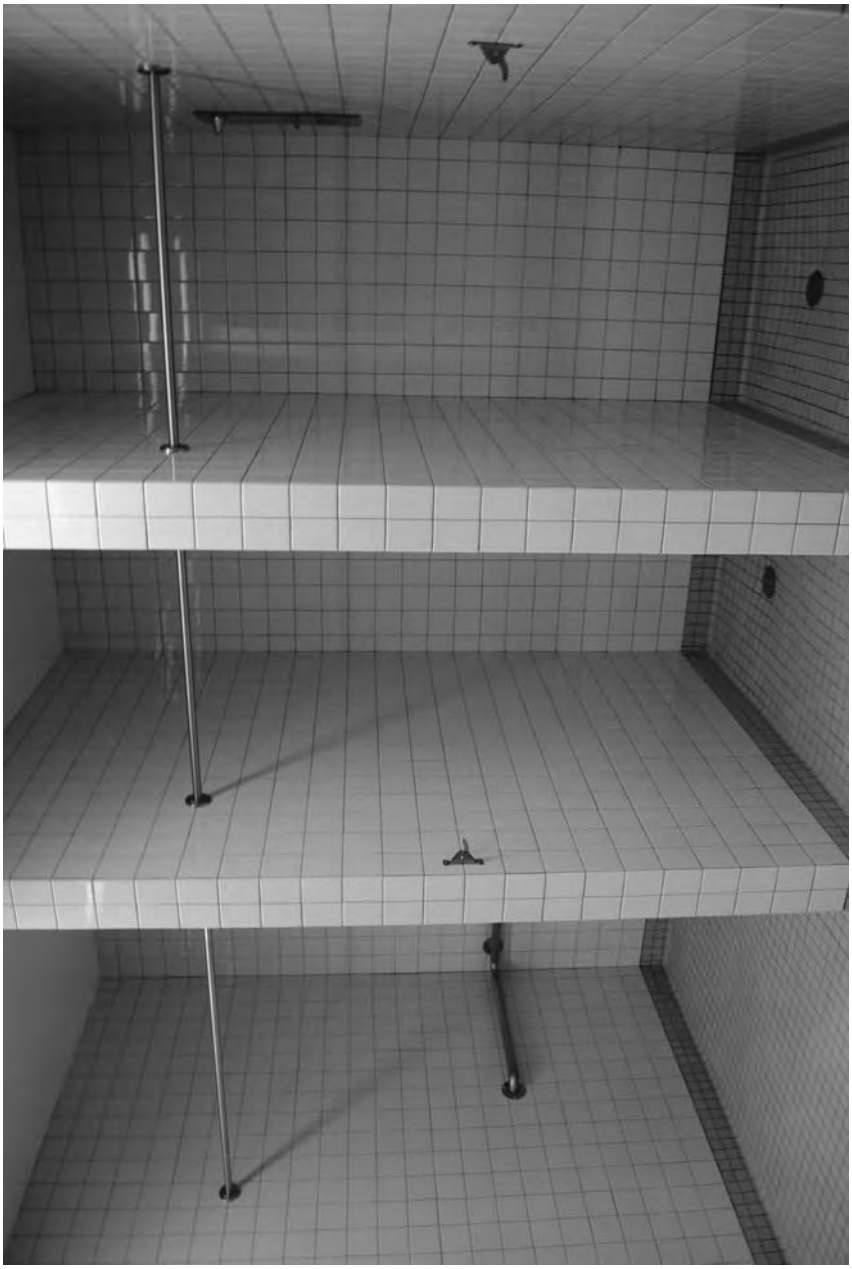
> "I couldn't raise my foot high enough to climb up the steps because it hurt so much," Mr. Bonilla said. "I tried and tried with Glades officers watching me. I finally had to climb up the steps on my knees."

That wasn't the end of the cruelty. At Krome, he was placed in a cold room at 4 p.m. He ended up spending the night there on a cement bench and in pain. He didn't see the doctor until the next morning. Mr. Bonilla asked for pain medication. But the doctor told him he could not give it because his medical records had not been sent when he was transferred from the Glades facility. Not sending those records was another violation of

medical standards and particularly egregious in this case, given that Mr. Bonilla had just left a hospital and had not fully recovered from a life-threatening illness.

He wasn't seen again by the doctor or by any other medical staff at Krome. Nor was he given any medication during his eight days detained there. Even his release turned into an obstacle course. Though an immigration judge granted him parole and his family had the money to post bond, they had to wait two days for Mr. Bonilla to walk out the door. Mr. Bonilla's experience in ICE detention was not a holiday. Such cruel and inhuman treatment is un-American and should be prohibited by enforceable detention standards.

Karnes City, Texas Detention Center



Francisco Casteneda, testifying before the House Committee on the Judiciary, four months prior to his death.

Bruises on Hiu Lui Ng's body photographed at the hospital prior to his death.

Boubacar Bah calling for help while being restrained in detention.

Family visits Boubacar Bah in the hospital before his death.

Boubacar Bah in the hospital before his death.

Government Chart Documenting Cost Savings Achieved Through Denials of Requests for Medical Attention.

TAR Cost Savings based on Denials

10/1/2005 - 9/30/2006

Diagnosis	TARs	Cost Savings
011.90 - UNSPEC PULMONARY TUBERCULOSIS CONF UNSPEC	3	$26,458.76
034.0 - STREPTOCOCCAL SORE THROAT	3	$10,631.31
042 - HUMAN IMMUNODEFICIENCY VIRUS [HIV]	17	129,713.62
052.9 - VARICELLA WITHOUT MENTION COMP	3	$12,405.35
245.9 - UNSPECIFIED THYROIDITIS	2	$6,887.16
250.00 - DIABETES UNCOMPL TYPE II NO UNCNTRL	2	$4,751.34
276.5 - VOLUME DEPLETION	1	$3,266.96
276.51 - DEHYDRATION	14	$70,192.36
292.0 - DRUG WITHDRAWAL SYNDROME	4	$13,868.21
295.3 - SCHIZOPHRENIA-PARANOID TYPE	1	$7,402.37
295.30 - PARANOID SCHIZOPHRENIA UNSPEC COND	1	$8,089.36
296.80 - MANIC-DEPRESSIVE PSYCHOSIS UNSPEC	4	$18,145.36
296.90 - UNSPECIFIED AFFECTIVE PSYCHOSIS	1	$6,402.16
298.9 - UNSPECIFIED PSYCHOSIS	2	$11,668.60
309.81 - PROLONG POSTTRAUMAT STRESS DISORDER	1	$5,920.85
309.9 - UNSPECIFIED ADJUSTMENT REACTION	1	$ 882.00
311 - DEPRESSIVE DISORDER NOT ELSEWHERE CLASSIFIED	9	$43,158.57
401.9 - UNSPECIFIED ESSENTIAL HYPERTENSION	17	$68,043.52
413.9 - OTH & UNS ANGINA PECTORIS	1	$3,140.36
414.9 - UNSPEC CHRONIC ISCHEMIC HRT DISEASE	1	$4,187.89
427.89 - OTH SPEC CARDIAC DYSRHYTHMIAS	1	$3,222.17
455.2 - INTERNAL HEMORRHOIDS WITH OTH COMPLICATION	2	$11,487.21
462 - ACUTE PHARYNGITIS	27	$88,723.89
465.9 - ACUTE UPPER RESPIRATORY INFECTIONS OF UNS SITE	16	$64,111.20
466.0 - ACUTE BRONCHITIS	2	$9,898.72
475 - PERITONSILLAR ABSCESS	1	$1,893.70
481 - PNEUMOCOCCAL PNEUMONIA	1	$ 400.51
486 - PNEUMONIA, ORGANISM UNSPECIFIED	1	$6,606.27
491.21 - OBSTRUCTIVE CHRONIC BRONCHITIS WITH EXACERBATION	1	$6,481.00
493.90 - UNS ASTHMA WO MO STATUS ASTHMATICUS	3	$10,842.93
493.91 - UNSPEC ASTHMA W/STATUS ASTHMATICUS	1	$4,979.41
518.89 - OTH DISEASES OF LUNG-NEC	1	$4,765.21
530.81 - ESOPHAGEAL REFLUX	6	$20,613.36
558.9 - OTH&UNSPEC NONINFECTIOUS GASTROENTERITIS&COLITIS	1	$3,059.69
564.00 - UNSPECIFIED CONSTIPATION	2	$6,213.66
571.2 - ALCOHOLIC CIRRHOSIS OF LIVER	2	$23,080.22
573.3 - UNSPECIFIED HEPATITIS	2	$8,986.81
575.0 - ACUTE CHOLECYSTITIS	2	$14,845.16
578.0 - HEMATEMESIS	1	$3,008.71
578.1 - BLOOD IN STOOL	2	$9,545.50
578.9 - UNSPEC HEMORRHAGE GI TRACT	2	$8,063.04
584.9 - UNSPECIFIED ACUTE RENAL FAILURE	1	$6,341.32
585 - CHRONIC RENAL FAILURE	1	$2,013.35
592.0 - CALCULUS OF KIDNEY	2	$6,712.56

TAR Cost Savings based on Denials

10/1/2005 - 9/30/2006

Diagnosis	TARs	Cost Savings
599.0 - UTI SITE NOT SPECIFIED	3	$16,088.23
599.7 - HEMATURIA	17	$37,715.18
620.2 - OTHER AND UNSPECIFIED OVARIAN CYST	2	$8,999.32
625.9 - UNSPEC SYMPTOM ASSOC W/FEMALE GENITAL ORGANS	1	$4,883.46
626.2 - EXCESSIVE OR FREQUENT MENSTRUATION	1	$5,050.35
632 - MISSED ABORTION	4	$11,974.84
682.3 - CELLULITIS&ABSC UPPER ARM&FOREARM	3	$13,104.66
682.4 - CELLULITIS&ABSC HAND NO FNGR&THUMB	1	$2,893.09
682.7 - CELLULITIS&ABSCESS FOOT EXCEPT TOES	2	$11,646.56
729.81 - SWELLING OF LIMB	1	$4,190.48
780.09 - OTHER ALTERATION OF CONSCIOUSNESS	1	$6,971.68
780.2 - SYNCOPE AND COLLAPSE	5	$22,216.90
780.39 - OTHER CONVULSIONS	4	$15,888.97
784.7 - EPISTAXIS	1	$2,462.90
786.3 - HEMOPTYSIS	5	$23,075.48
786.50 - UNSPECIFIED CHEST PAIN	27	$91,926.65
786.59 - OTHER CHEST PAIN	4	$13,222.82
786.6 - SWELLING, MASS, OR LUMP IN CHEST	3	$28,773.12
787.01 - NAUSEA WITH VOMITING	1	$2,099.66
789.03 - ABDOMINAL PAIN RIGHT LOWER QUADRANT	3	$7,528.98
789.06 - ABDOMINAL PAIN, EPIGASTRIC	2	$8,196.39
789.09 - ABDOMINAL PAIN OTHER SPECIFIED SITE	6	$39,704.37
795.5 - NONSPEC REACT TUBERCULIN SKN TEST W/O ACTV TB	3	$16,495.92
824.4 - CLOSED BIMALLEOLAR FRACTURE	1	$6,592.57
824.8 - UNSPECIFIED CLOSED FRACTURE ANKLE	3	$4,275.00
845.09 - OTHER ANKLE SPRAIN AND STRAIN	1	$5,121.75
847.0 - NECK SPRAIN AND STRAIN	1	$1,869.81
850.0 - CONCUSSION WITH NO LOC	1	$2,918.39
924.11 - CONTUSION OF KNEE	3	$8,710.83
959.01 - HEAD INJURY, UNSPECIFIED	13	$44,601.70
959.7 - INJURY OTHER&UNSPECIFIED KNEE LEG ANKLE&FOOT	6	$23,369.04
992.3 - HEAT EXHAUSTION, ANHYDROTIC	1	$2,034.84
992.5 - HEAT EXHAUSTION, UNSPECIFIED	3	$8,785.49
994.1 - DROWNING AND NONFATAL SUBMERSION	1	$1,991.82
V30.00 - SINGLE LIVEBORN HOSPITAL W/O C-SECTION	1	$1,004.35
V71.2 - OBSERVATION FOR SUSPECTED TUBERCULOSIS	25	$85,389.83
TOTAL SAVINGS:	**329**	**$1,372,887.09**

FOR IMMEDIATE RELEASE: February 28, 2012 CONTACT: Jessica Baker, (202) 225-3951

Smith: Deportation Manual a Hospitality Guideline for Illegal Immigrants

Washington, D.C. – U.S. Immigration and Customs Enforcement (ICE) recently released over 400 pages of new Performance Based National Detention Standards that dramatically expand privileges and resources to illegal immigrants in federal custody. Specifically, the administration's new detention manual drastically expands medical and mental health services for illegal immigrants far and beyond regulations or law, increases access to legal services, institutes an extensive complaint process, and increases visitation, recreation, and numerous options for diet.

House Judiciary Committee Chairman Lamar Smith (R-Texas) issued the statement below criticizing ICE's new detention manual.

Chairman Smith: "The Obama administration's new detention manual is more like a hospitality guideline for illegal immigrants. The administration goes beyond commonsense to accommodate illegal immigrants and treats them better than citizens in federal custody. The new detention manual contains extensive and customized details for each illegal immigrant's stay, regulating everything from the salad bar to recreational activities to medical care. Illegal immigration already costs American taxpayers billions each year and these increased regulations force them to keep an open tab for illegal immigrants.

"This new manual is not a surprise – it's just part of a broader pattern made by the Obama administration to reward lawbreakers. This administration has already granted backdoor amnesty to potentially millions of illegal immigrants and has appointed a taxpayer-funded advocate to lobby for them.

"Our detention system is in need of reform but not the kind the administration supports. We should increase detention space, but the President's budget makes substantial cuts to it and instead leaves illegal and criminal immigrants free to roam our communities. The Obama administration consistently puts illegal immigrants ahead of the interests of American citizens and taxpayers. Whose side is the President on?"

The Immigration Subcommittee plans to hold a detention oversight hearing at the end of March.

###

WRITTEN STATEMENT BEFORE THE
COMMITTEE ON THE JUDICIARY: SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT
"Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards"
Submitted by
Cheryl Little Esq., Executive Director, Americans for Immigrant Justice (Formerly Florida Immigrant Advocacy Center)

March 28, 2011

Dehumanizing Detention

Americans for Immigrant Justice (AI Justice) provides free legal services to low-income immigrants, including detainees in Immigration and Customs Enforcement (ICE) custody. We also document conditions at Florida detention centers and have written numerous reports documenting our concerns (available at http://aijustice.org/?page_id=664).[1]

This statement includes information from AI Justice reports that span more than two decades as well as significant new accounts. It is based on hundreds of interviews with detainees, AI Justice's own observations, medical and detention records, and conversations with jail and immigration officials.

ICE detainees are being held for civil violations only. Yet detention Standards adopted in 2000 and 2008 were based on correctional models used to house persons in criminal custody.

In 2009, after a rash of horrific detainee deaths and mistreatment, ICE announced ambitious plans to reform its detention system. One desperately needed reform: detention standards that truly address the mistreatment and abuse of detainees. Years later, we are still waiting for ICE standards with real teeth, standards that are enforceable and enforced -- and prevent the appalling abuses we see to this day.

Detainees remain at the mercy of the Department of Homeland Security (DHS). DHS officials determine where detainees are held and have control over how detainees are treated while in ICE custody. Oversight is woefully inadequate.

---

[1] AI Justice Reports include: *Dying for Decent Care: Bad Medicine in Immigration Custody*, February 2009; *Securing our Borders: Post 9/11 Scapegoating of Immigrants*, April 2005; *Haitian Refugees: A People in Search of Hope*, May 2004; *I Running Out of Hopely - Profiles of Children in INS Detention in Florida*, October 2002; *Supplement to A Double Standard of Treatment: INS Detainees In Florida*, April 2002; *INS Detainees in Florida: A Double Standard of Treatment, December 2001*; *Cries for Help: Medical Care at Krome Service Processing Center and in Florida's County Jails*, December 1999; *Florida County Jails: INS's Secret Detention World*, November 1997; *Krome's Invisible Prisoners: Cycles of Abuse and Neglect*, July 1996. http://aijustice.org/?page_id=664

Their Own Words

Americans for Immigrant Justice has documented dehumanizing detention conditions for years. In our client's own words, here are some examples:

- *"There are at lot of women here who are scared and depressed and many who have been hospitalized with mental health problems. There was one woman who was crying all the time and refusing to eat because she had been separated from her husband. We were very worried about her, so a couple of women and I wrote a letter to the immigration officials, telling them what was happening and requesting that she and her husband be placed in the same facility. One of the ICE officers came to talk to us; he told us that we were not allowed to send joint letters to them, and that we had broken the rules by sending a group letter. I felt really bad – I had been trying to help this woman and instead I just got in trouble."*

  A detainees worried about a suicidal woman detained at the Broward Transitional Center in Pompano Beach, Florida in 2011,

- *"At the (Glades County Jail) clinic, I could no longer speak, only cry. A nurse told me she was sorry, but that the doctor had resigned so there was no doctor. I sat in a chair and clutched my stomach.... I thought I was going to die."*

  Miguel Bonilla Cardona, who suffered a ruptured appendix in 2008 at the ICE-contracted Glades County jail in Central Florida.

- *"Once the sexual attack and rape were over, the effects were so awful. I felt like I'm not thesame person. I was scared all the time. I used to be a really outgoing, friendly, confident, strong woman. But then I could hardly look people in the eye. I must express my deep frustration and sense of outrage toward the DHS that apparently knew, or should have known, that when I was placed in the sole custody of Wilfredo Vazquez I would be a likely victim."*

  M.C., raped in 2007 by an ICE officer who transported her to a detention facility.

- *"He had a valid passport and visa, but when he requested political asylum, he was arrested and taken to the Krome detention center in Miami. His medications for high blood pressure and an inflamed prostate were taken away, and when he fell ill during a hearing, a Krome nurse accused him of faking his illness. When he was finally transported, in leg chains, to the prison ward of a nearby hospital, it was already too late. He died the next day."*

  Acclaimed author **Edwidge Danticat**, describing her Uncle's death in ICE custody in 2003. Following his death, AI Justice had to file a lawsuit to obtain Joseph's medical records.

- *"I have to pee on myself putting a towel on my laps [sic] to prevent the urine [from] running all over myself. When I have to do the other necessity [it] is very uncomfortable [and] unsanitary.... Don't you think I'm still a human being?"*

  Felipe Perez-Leon, a paraplegic denied handicap-accessible facilities in at an Atlanta jail in 2007.

ICE detainees include pregnant women, families, the sick and elderly, legal permanent residents, DREAM Act youth, asylum seekers, torture survivors, victims of human trafficking and even U.S. citizens. They are among those targeted for deportation. Most detainees have no criminal record and pose no threat to U.S. communities. Most of those who have records, many of which involve minor infractions, already have completed their sentences and paid for their crimes. ICE warehouses most immigration detainees in local and county jails or in large, privately run facilities.

Many government employees responsible for the care and custody of ICE detainees are competent and dedicated. Nonetheless, detainees remain in dire need of protection from abusive and arbitrary treatment.

Typical problems in detention include:

- Sexual assault
- Excessive use of force
- Misuse of isolation
- Unsanitary and overcrowded facilities
- Inadequate recreational time and/or lack of outdoor recreation
- Lack of adequate access to attorneys and legal materials
- Lack of competent, professional interpreters
- Retaliation if detainees complain and lack of due process
- Lack of independent oversight, leading to gross violations of detention standards and basic human rights.

In addition to the above, substandard medical care is a chief complaint from detainees. AI Justice has documented troubling complaints including:

- Wrongful and/or suspicious deaths
- Delayed and denied urgently needed healthcare
- Shortages of qualified staff
- Improper care of mentally ill patients
- Inadequate care of physically disabled patients
- Denied, mistaken and insufficient prescription medication
- Difficulty getting access to medical records

Deaths in Detention

After someone dies under suspicious circumstances, family members have to fight for answers.

Valery Joseph, a Haitian who came to this country as a boy, had suffered from seizures and was 23 years old when he died on June 20, 2008 at the Glades County Detention Center, where another detainee had almost died from an ruptured appendix a month earlier.[2]

While initially placed at Krome, Mr. Joseph was transferred to Glades. There he was chided by guards and some fellow detainees. Medical staff were well aware of his history of seizures and

[2] A separate statement regarding Miguel Bonilla was submitted to this Committee on March 26, 2012.

that he had a learning disability. Yet the staff repeatedly cleared Mr. Joseph to be placed in "confinement," a practice typically used to discipline detainees, despite his having most contraindications for confinement. A person who suffers seizures should not be left alone and unmonitored for long periods of time. Yet a fellow detainee described his frequent stays in confinement: "They mostly kept Valery in the hole. If he was out in the pod more than a couple of days that was a lot."

Mr. Joseph wrote a request to Immigration, begging to be sent back to Krome where they have a separate medical unit. He was not transferred and his health rapidly deteriorated. He died while in isolation. Autopsy results said he died of natural causes brought on by a seizure.[3]

Dr. Barry Crown conducted a thorough neuropsychological review of Mr. Joseph's medical records. Dr. Crown's conclusion: "It is my opinion that mental-health and health-care staff were negligent in their diagnosis, care, and treatment of Mr. Joseph.[4]

Mr. Joseph's mother said she learned about her son's death from Valery's girlfriend, who'd received a call from the chaplain at Krome. Mr. Joseph's mother left several messages at the Glades jail in an effort to learn where her son was. She went to the Glades jail and was told she needed to go to Krome for information. So she drove more than 90 miles to Krome, only to be denied entrance; a Chaplain met them at the entrance gate and told them all he knew was what was in the news—that her son had died. Valery's mother had to hire an attorney to find out where her son's body was.

Our attempts to obtain information regarding medical care and staffing provided to Glades detainees initially were unsuccessful. ICE said we needed to talk to jail officials, Glades referred us to Armor, who the jail contracts with to provide detainees' medical care, and Armor said they didn't have to give us anything.

Another Suspicious Case

We had to file a lawsuit to get 81-year old Reverend Joseph Dantica's medical records from ICE following his death in late 2004. An asylum seeker who had regularly travelled to the U.S. with a visa and always complied with the requirements set forth, Reverand Dantica was detained following his arrival at Miami's airport. Though Rev. Dantica's medical condition deteriorated during his detention at Krome, his lawyer was told he couldn't be released until he passed his asylum interview. Moments into the interview, Rev. Dantica began vomiting violently and was accused of faking his illness. Eventually he was transferred to the prison ward of Jackson Memorial Hospital in leg restraints and died the following day. Reverand Dantica's family was not allowed to see him either at Krome or in the hospital.

---

[3] See e.g., Carmen Gentile, "Group Calls for inquiry Into Death of Detainee," *The New York* Time, July 15, 2008; Trenton Daniel, "Clues Sought to man's jail death," *The Miami Herald,* July 15, 2008; Luis F. Perez and William E. Gibson, "Death of West Palm man in federal custody under scrutiny," *South Florida Sun-Sentinel,* July 9, 2008.

[4] "Dying for Decent Care: Bad Medicine in Immigration Custody," pp. 16-17, AI Justice Report, February 2009 http://www.fiacfla.org/reports/DyingForDecentCare.pdf

Many female detainees have reported not receiving regular gynecological and obstetric care. There have been problems with pregnancies, as well. In December 2003 a client at BTC who had classic symptoms of an ectopic pregnancy was simply given Tylenol as the only treatment. Even after she began to bleed profusely, her complaints were ignored. When she was finally rushed to the emergency room she learned about the loss of her unborn child and the removal of her fallopian tube.

Another BTC detainee, an African-born asylum seeker who was the victim of a politically motivated gang rape in her home country, was pressured to carry the baby to term. Only after AI Justice took the case was she informed that she could get an abortion at her own expense while in custody. This woman was eventually released and miscarried.

Incident reports from the Glades County jail documented examples of unacceptable mental health treatment and the improper use of force on detainees with mental-health issues. Several incidents reflect the problem, which include the inappropriate use of mace and forcible restraint. When used on detainees with mental illness, such practices can threaten their mental stability as well as their physical health.

Unacceptable Treatment

One Glades report documented a November 2007 incident in which a woman diagnosed with depression and on suicide watch was sprayed in the face with mace. Her offense: She had spread feces on the walls of her holding cell and refused to clean it. There was no indication in the jail's incident report that she posed a threat to her own safety, to other people, or to any property when she was maced.

Instead, it appears that jail staff used a chemical spray on detainees for punitive reasons, a clear violation of ICE National Detention Standards which allow immediate force only if necessary to prevent a detainee from harming himself, others, and/or property "when a detainee acts violently or appears on the verge of violent action(s)." These standards also expressly forbid using force on detainees as a punitive measure.[5]

In another disturbing case: A detainee, who had slit her wrists, was placed in isolation – a move that is more likely to exacerbate suicidal tendencies and mental illness than to stabilize or improve mental health. Worse, Glades officers ordered the woman to strip naked so they could place her in a restraint smock. She refused and threatened to bang her head against the wall. Eventually, she took off all her clothes except her underpants.

Two officers then restrained her arms while another forcibly removed her undergarment. Officers wrapped her in the restraint smock and placed her in a restraint chair. All this was documented in a jail incident report. Such treatment of mentally ill detainees violates ICE Standards and contributes to making suicide a principle cause of death in detention.

Our February 2009 report, "Dying for Decent Care: Bad Medicine in Immigration Custody," documents how failure to properly care for detainees with mental health issues can pose a danger

[5] See e.g., FIAC Letter to Joseph Greene, November 17, 2008.

both to detainees and others housed with them. Additionally, we discuss in detail the routine neglect of disabled detainees, the serious problems facing detainees in obtaining proper medication, the unique obstacles ICE detainees who don't speak English face in obtaining medical and mental health care, and unhealthy, unsafe living conditions in many of the facilities housing ICE detainees.

Sexual Abuse

AI Justice has also documented widespread sexual, physical and emotional abuse of detainees.[6] In 1990 there were serious, rampant complaints of sexual and other abuse at Krome. Yet despite the glare of publicity and high-level government investigations, little was done to address the issue. Two teachers and a nurse who spoke to reporters about the abuse were dismissed. Krome guards who publically complained of abuse felt their own safety was in jeopardy.

Abuses of ICE detainees continued. In 2000 more than 15 officers were accused of sexually assaulting Krome detainees. Many of these same officers had been implicated in abuse charges in 1990.

The 2000 investigation yielded few results. Two officers plea bargained, and all the female detainees were removed from Krome and placed in a maximum security Miami Dade County jail, Turner Guilford Knight Correctional Center (TGK). Although the INS District Director said that all but one of the 36 INS standards were being met at TGK, a detailed and highly critical government review assigned an "at-Risk" rating regarding conditions for Immigration detainees and the women were all moved to the Monroe County jail in Key West in 2004.

Reports of sexual abuse of detainees continued. In 2007, for example, an ICE agent was charged with raping M.C., a female detainee during transport.

M.C., whose own statement was submitted to this Subcommittee on March 28, 2011, is an AI Justice client.[7] ICE Officer Wilfredo Vasquez ultimately pleaded guilty to two accounts of sexual assaults and was sentenced to 87 months. The judge said that if the case had gone to trial, he most likely would have received a far harsher sentence. A pre-sentencing report recommended a sentence of up to 14 years.[8]

AI Justice has learned of recent sexual abuse allegations at three immigration detention facilities in Florida.

Cruel and Abusive

Other abuses by guards are a longstanding concern. In 1998, detainees at the Jackson County jail (JCCF), 60 miles northwest of Tallahassee, Florida, provided detailed, credible declarations claiming that officers taunted them with racial epithets, threw them in solitary for requesting

---

[6] See written testimony of Cheryl Little, Executive Director, Florida Immigrant Advocacy Center, before the National Prison Rape Elimination Commission, December 13, 2000.

[7] See Statement for the Record Submitted to Subcommittee on Immigration Policy and Enforcement, by M.C., March 26, 2011.

[8] Vanessa Blum, "Former Customs officer gets 7-year prison sentence in sex case," South Florida Sun-Sentinel, July 10, 2008.

medical attention or food, beat them and subjected them to potent shocks from electrified (50,000 volt) riot shields and stun guns, sometimes when they were shacked to a concrete bed.[9] Detainees called it "being crucified."

Following complaints by advocates, all the Immigration detainees were removed from the facility but officials didn't issue the results of their investigation until 2000. As late as April 1999, investigators had reportedly attempted to interview only one of the 17 detainees who gave AI Justice sworn statements, and the one individual was deported without even having been interviewed.[10]

On April 18, 2000, AI Justice received a copy of the Department of Justice's Civil Rights Division's findings. They concluded, among other things, that certain conditions at JCCF violated the constitutional rights of Immigration detainees, as well as the constitutional and federal statutory rights of juveniles housed at the facility. They found deficiencies at JCCF in the following areas: medical and mental health care, use of force, security and protection from harm, fire safety and lack of exercise. They also found that the facility was not meeting its constitutional responsibilities regarding access to courts.[11]

An Electric Stun Shield

Specifically, the investigation concluded that "facility staff engage in excessive and unwarranted use of restraints to control inmates, causing serious risk of bodily harm. This facility frequently uses four-point restraints (securing the inmate's wrists and ankles to eye-bolts attached to cement-block beds with mattresses removed), a severe practice high up on the continuum of control techniques, as a first step when inmates become boisterous and do not respond to verbal counseling. In a number of these instances, four-point restraint was an unreasonably excessive control technique." The investigation also found that the Jackson jail had a practice of restraining inmates in a prone position (on their stomachs) which created a risk of asphyxiation. Investigators also noted: [12]

> "At JCCF, four-point restraint is used for extended lengths of time without enough guidance to staff about whether continuation is appropriate. JCCF sometimes uses stun shields to gain inmate compliance when inmates fail to obey orders. Stun shields have been used at JCCF in a variety of ways. When the shield is activated, a startling blue arc of electricity may be seen at various points on its face. The most severe use of the shield is activating it and placing it in contact with the inmate's body, which causes most individuals to lose muscle control and collapse."[13]

---

[9] See e.g., Andres Viglucci, "Immigrants allege abuse at jail in N. Florida," The Miami Herald, July 30, 1998; Teresa Mears, " Detainees held by INS say jails rife with abuse," the Boston Globe, August 2, 1998; "INS Detainees Abused in Jail, Advocates Allege," Reuters, July 31, 1998; "A shock to the System," Miami New Times, August 5, 1998; Andres Viglucci, "Activists Assail probe of jail torture," The Miami Herald, June 24, 1999.

[10] Andres Viglucci, "Activists assail probe of jail torture," The Miami Herald, June 24, 1999.

[11] Letter to Cheryl Little and Joan Friedland, FIAC attorneys, from Dana L. Shoenberg, Special Litigation Section, Civil Rights Division, U. S. Department of Justice, April 18, 2000.

[12] Ibid.

[13] Ibid.

That same year, on September 22, 1998, detainees in Florida's Manatee County jail said they were cuffed, stripped naked and dragged through their own waste back to cells flooded with water from five sprinklers broken by detainees during the protest. Detainees also claimed they were stripped naked and left in freezing cells for hours as punishment and that County Sheriff's deputies provoked the disturbance by staging a raid in retaliation for detainees protesting over poor jail conditions and treatment.

Disturbing Video

The Assistant INS Director said "we understand [the detainees] were mistreated in some way." INS also asked Manatee County officials to investigate.[14] Detainees told AI Justice that the entire incident (more than an hour) was videotaped by jail officials and we filed a Freedom of Information Act request to obtain the video. We received only about 15 minutes of videotape, and it is disturbing.

While AI Justice hasn't received complaints as serious as those described above, there is still cause for concern. During a visit to Wakulla jail last November, a detainee said he witnessed a guard slam another detainee onto the ground because the detainee was verbally arguing with the guards. When another detainee refused to take a sleeping pill because he wanted to take it later at night he was placed in segregation without a disciplinary order, a violation of standards. Eleven detainees also described their medical complaints.

Other Concerns

Detainees have also complained about officer mistreatment based on religious and racial bias. Recently a Wakulla detainee reported that he overheard a staff member tell a Muslim detainee that she would not mail one of his packages because, "there might be a bomb in it." Detainees also have complained that guards disrespectfully call them "boys." One detainee noted that Wakulla officers frequently and unnecessarily yell at detainees. He also stated that the guards, "Treat us like animals."

Another frequent complaint from detainees is the exorbitant cost of phone calls. Detainees report it costs $15 for a 10 minute domestic phone call at Wakulla – a jail so remote that most relatives cannot visit. If they do manage to visit, they can only see their loved ones via video – a sterile, disappointing experience. Baker County detention facility also offers only video visitation. This runs counter to ICE standards that encourage visitation to maintain detainee morale and family relationships. Considering that many relatives may be seeing detainees for the last time before they are deported, a video visitation should be unacceptable.

Immigrants detained at Baker today, many of whom have been held long term, have no exposure to sunlight. The recreation room is covered with a concrete roof; the only window is high up on a side wall, with mesh to allow fresh air in. We are concerned about the water at Glades, a yellow, murky, foul-smelling liquid provided to detainees.

---

[14] See e.g., Andres Viglucci, "INS detainees: Officers were Violent," *The Miami Herald*, December 23, 1998; "Another Ugly Incident," Editorial, *The Miami Herald*, December 24, 1998.

Deplorable Mistreatment
Today, detention abuses and unacceptable conditions still abound nationwide. ICE documents obtained by the Houston Chronicle last year via a Freedom of Information Act request revealed deplorable detainee mistreatment.

Among the most disturbing discovery was the disconnect between the findings of ICE's own inspectors and those of ICE-paid private monitors: While ICE publicly released glowing reports of detention facilities issued by contracted monitors, its own inspectors documented serious violations of detention standards that were not made public. For example:

- A county jail in Iowa failed to provide medication to detainees diagnosed with tuberculosis.
- A Houston center run by Corrections Corporation of America had deficiencies in medical care, use of force and "abusive treatments toward detainees." It fired one employee for an improper relationship with a detainee. Other employees were counseled for cursing and yelling at detainees.
- Women at the Rolling Plains Regional Jail and Detention Center in Texas, run by a corrections company, told ICE inspectors that the hot showers burned their skin and made their hair fall out.
- And at the Mira Loma county jail in California, managed by the Los Angeles Sherriff's Department, ICE inspectors were told by its inspectors to "serve a subpoena" so they could see the medical records of a detainee with healthcare complaints. For years, ICE inspectors have found other deficiencies, including improper Taser use and giving Tylenol to cure or prevent detainee illnesses. Yet ICE continues to contact with this facility.[15]

Though immigrants in ICE custody have a number of rights, including the constitutional protection against cruel and unusual punishment, they often don't know those rights or find it impossible to assert them in such an environment.

'A Great Injustice'
Perhaps the greatest fear detained parents have is losing custody of their U.S. born children forever, a legitimate concern. Parents may not know that custody hearings have been scheduled, and, even if they do know chances are they can't participate because they're in detention. Caseworkers may not even know that a parent is in detention or where the parent is detained. Parent's ability to participate in proceedings may depend on whether they have an attorney or the attitude of detention staff. Even parents who are aware of upcoming hearings often don't know they have the right to appear telephonically while in detention, or are unable to assert that right with detention staff.

Blanca Benitez Banegas knows this firsthand. She and her common-law husband were placed in ICE custody shortly before Christmas 2006, and their two U.S. citizen boys were placed in foster

[15] Susan Carroll, *ICE paints bleak picture of detention system*. The Houston Chronicle. Oct. 10, 2011. http://www.chron.com/news/houston-texas/article/ICE-paints-bleak-picture-of-detention-system-2209428.php

care—even though Blanca, who had never committed a crime, begged ICE to place them with her sister, a legal permanent resident. For two long months, while in ICE detention in a Florida jail and two Texas jails, Blanca had no idea where her sons were, and they had no idea where she and their father were.

When Blanca was finally transferred back to Florida she had no idea that a court hearing was scheduled to determine who would have custody of her boys. Blanca said:

> "To suddenly tear us apart and not tell my children where I am and where their father is, and to not tell me where my children are for two months—I think this is a great injustice. I'm just fighting for my children and my family to be together. But I felt like I was being punished for a terrible crime, I'm not a criminal and my children aren't criminals."[16]

Lost in Detention

Local detention facilities are a secret detention world. In Florida, these facilities are located in isolated areas, ranging from the Monroe County Detention Center in Key West, Florida—at Florida's southern tip—to the Wakulla County Facility—in north Florida. Some, such as the Broward Transitional Center are operated by private corporations such as the GEO Group.

County jails are, by definition, short term facilities. They are not designed for prisoners who are held a year or longer. Asylum seekers, who have committed no crime and are running for their lives, are often mixed with ICE detainees and jail inmates with criminal convictions. Asylum seekers and detainees who finished serving criminal sentences are treated as criminals and transported in handcuffs and shackles, sometimes even within the facility.

Many immigrants are detained for months or even years. However, ICE detention facilities are not designed for long-term prisoners. Neither county jails nor large, ICE owned and managed detention sites have the programs, services or medical care offered in federal prisons and other facilities that keep prisoners for more than six months.

ICE detainees are often classified as maximum security prisoners even if they are asylum seekers or have not been convicted of a crime. Unlike criminal prisoners, detainees are not eligible for work release programs or to be trustees. Indeed, as "maximum security" prisoners, ICE detainees with criminal convictions generally face a harsher security classification than they had if they served a sentence.

Standards Not Binding

ICE has taken no visible action to ensure that Florida's county jails meet any standards regarding treatment of detainees. Contracts we've seen between the federal government and the counties are absurdly incomplete and provide few requirements as to how the counties should treat ICE detainees – even though Florida county jails are not subject to state supervision.

---

[16] Declaration of Blanca Banegas-Benites to AI Justice (then Florida Immigration Advocacy Center), March 23, 2007; Alfonso Chardy, *Sent Away*. The Miami Herald, July 27, 2007.

When detainees are held in a county jail, they fall into a black hole. Their ICE files often do not follow them when they are transferred. Their personal property, including documents needed for their cases, may be left behind at other facilities. Officials running the jails know nothing about immigration law or procedure or the status of detainees' cases. Detainees have great difficulty contacting their deportation officers, who may be far away.

In county jails, detainees' ability to find an attorney is severely circumscribed. There are generally no pro bono groups in the area. The list given to detainees of legal services agencies providing free or low-cost representation is incomplete, inaccurate, and useless. Often, the detainees have limited ability to reach outside because jail telephones only permit collect calls or calls are prohibitively expensive.

Detainees often are transferred from facility to facility and may end up a long distance from their lawyers. Their lawyers have difficulty contacting them by telephone because they cannot call them directly and generally cannot leave messages for detainees to call. Mail sent by lawyers to detainees sometimes does not reach them. Attorney-client privilege is often undermined by jail officers.

Coerced Deportations

Video conferencing of immigration court hearings places detainees at a disadvantage – especially when their attorney is far away and difficult to contact. Adding insult to injury, a South Florida detention facility for minimum security detainees has only one immigration judge, and this judge has approved 10,000 stipulated orders for deportation in the last three years, a national record. How many detainees were coerced into signing those orders by detention officers or Customs and Borders Patrol?

The law library is a critical resource for detainees who cannot find or afford an attorney and are representing themselves in deportation proceedings. Detainees at numerous detention centers report that: libraries lack research materials, long waits to use the library, little time available for using the library, broken computers and printers. At Wakulla County Jail in North Florida only one or two computers are functioning at any given time. The detention standard requires "regular access" to the law library, defined as no less than five hours a week. This standard is routinely violated according to detainees. At Wakulla, recent visits to detention centers raise concerns about the continued disregard of detention standards.

For detainees who have attorneys, private phone calls to their counsel are essential. Yet Wakulla jail violates the detention standard that states detainees "will be able to have confidential contact with attorneys and their authorized representatives in person, on the telephone, and through correspondence." Wakulla also has a staff person remain in the room during the entire attorney-client call. These violations of standards seriously curtail detainees' right to defend themselves against deportation.

CONCLUSION

The current detention policy is overly broad and inhumane. Immigrants who are neither dangerous nor likely to flee should not be detained. Those currently detained—whether severely ill, asylum seekers or others challenging deportation orders—should be fairly considered for parole and other alternatives. The alternatives are cheaper, more humane, and can be structured to ensure participants regularly appear before immigration authorities.

While innocent detainees continue to suffer needlessly, the surge in immigration detention has greatly benefited private prison operating companies, like Corrections Corporation of America (CCA) and the GEO Group, whose stocks sharply increased following President Bush's February 2006 proposal to increase spending on immigration detention. The same cannot be said for ICE detainees, 84 percent of whom are without attorneys. Unlike U.S. criminal suspects, ICE detainees are not entitled to a court-appointed lawyer. Asylum seekers are more than twice as likely to be without attorneys as non-detained asylum seekers. Those represented are four to six times more likely to win their case. [17]

Without independent monitoring and public scrutiny of its detention centers, ICE continues to place detainees in unacceptable facilities that violate ICE standards and place detainees at risk of abuse.

In such an oversight vacuum, ICE tolerates a culture of cruelty and indifference to human suffering. Detainees routinely report being treated as criminals, being abused physically and sexually, and having painful medical symptoms ignored. They also face retaliation for demanding better treatment or complaining that fellow detainees have been abused. We do not know if this happens because the detainees are foreign, imprisoned, have no lawyer to defend them or all of the above. We do know from years of direct experience that cruel and inhumane treatment of detainees is a systemic problem.

We are pleased that the administration is trying to improve conditions in immigration detention. We admire the work of Dr. Dora Schriro, who recommended the shift to civil detention and numerous improvements in detention conditions. We also understand the difficulty of implementing reform when the ICE officers union has called for the resignation of ICE chief John Morton and claims that reform is making detention too soft.

That's not what we see in Florida's detention facilities. We see detainees with no criminal history treated like hardened criminals while their basic human rights routinely abused. The 2011 Performance-Based National Detention Standards are a step in the right direction, but are not enforceable and likely won't benefit detainees held in county jails. Moreover, like the earlier Standards, they're based on models used to incarcerate criminal offenders.

Only independent, external scrutiny and enforceable detention standards will ensure that the DHS and ICE carry out their moral and legal responsibility to provide decent and safe conditions

[17] Scott Lewis and Paromita Shah, *Detaining America's Immigrants: Is this the Best Solution?* Detention Watch Network, National Immigration Project, and Rights Working Group. http://65.36.162.162/files/RealDealDetention.pdf.

for detainees who are in civil detention. Given the dramatic increase of detainees over the years—ICE detainees represent the fastest growing prison population in the country—the need for proper scrutiny is more critical now than ever.

Detention clearly is no joke. Labeling the March 28, 2012 Congressional hearing "Holiday on ICE" is particularly offensive and demonstrates serious disregard for the abuses so many detainees have had to endure.

Lives are at stake. The urgency for enforceable detention standards cannot be overstated. AI Justice makes the following recommendations with a sense of outrage at the mistreatment of immigration detainees over the years and frustration with the lack of improvement. Yet it also does so in the hope that enforceable detention Standards and effective oversight will result in good faith safeguards that better protect the basic rights of those in U.S. Immigration detention.

To the Administration and Congress

- Establish an independent oversight commission composed of immigration experts to oversee detention conditions in U.S. immigration custody. Its mission: to ensure that the conditions and practices for detainees meet established legal and human-rights standards.

- Strengthen and issue regulations that codify ICE detention standards so that all immigration detention facilities provide decent and safe conditions by force of law. Require ICE detention facilities and all contracted facilities to annually report their compliance with the detention standards.

- Require an independent investigation of each immigration detainee death. Require DHS to annually submit a report to the Judiciary Committees of the U.S. House and U.S. Senate with detailed information on all the deaths, including the cause of death and the results of related investigations.

- Promote alternatives to detention by shifting ICE funding from detention beds to proven, community-based alternatives. Prioritize the release of vulnerable detainees, such as detainees with ongoing medical or mental-health issues.