

Year One Report Card

Human Rights
& the Obama Administration's
Immigration Detention Reforms

October 6, 2010



National Immigrant Justice Center



DETENTION
WATCH NETWORK

Midwest Coalition
for Human Rights

*Advocating for fairness
and human dignity*

“Today, Assistant Secretary John Morton announced substantial steps, effective immediately, to overhaul the immigration detention system. These reforms will address the vast majority of complaints about our immigration detention, while allowing ICE [U.S. Immigration and Customs Enforcement] to maintain a significant, robust detention capacity to carry out serious immigration enforcement. ...

“With these reforms, ICE will move away from our present decentralized, jail-oriented approach to a system wholly designed for and based on ICE’s civil detention authorities. The system will no longer rely primarily on excess capacity in penal institutions. In the next three to five years, ICE will design facilities located and operated for immigration detention purposes. These same reforms will bring improved medical care, custodial conditions, fiscal prudence, and ICE oversight.”

— U.S. Immigration and Customs Enforcement
Detention Reforms Announcement, August 6, 2009¹

“Immigrants detained at Baker County Jail, Florida, 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 ... As of late April 2010, the legal library consisted only of a concrete room with a computer and some chairs. There was not a book in the room. Nor was there any explanation of what materials might be available on the computer.”

— Florida Immigrant Advocacy Center
July 29, 2010²



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Introduction

On August 6, 2009, the Obama administration acknowledged that the immigration detention system, with 32,000 detention beds in as many as 350 different facilities, was sprawling and too punitive in nature for immigrants in civil immigration proceedings.³ On October 6, 2009, the Department of Homeland Security (DHS) released an unprecedented report assessing the status of the immigration detention system, which included recommendations for reform.⁴ Immigrant advocates welcomed DHS's intention to depart from a decentralized, jail-orientated approach and adopt a "truly civil" model for immigration detention.⁵

To date, U.S. Immigration and Customs Enforcement's (ICE) leadership has continued to demonstrate a strong commitment to achieving systemic change within the next three to five years and to engaging nongovernmental organizations (NGOs) and stakeholders in the reform process. In addition, ICE leadership has made several significant policy developments in accordance with its reform objectives and has been responsive to issues raised by NGOs. However, immigrant advocates across the country remain concerned about a lack of progress in the implementation of the reform objectives on the ground as reports of human rights violations continue.

The 2009 reform package comprised five broad initiatives which are critical to correct the human rights violations prevalent in the immigration detention system. Those initiatives included: expanding ICE's alternatives to detention programs; creating a civil detention model; providing sound medical care to immigrants detained in ICE custody; introducing robust oversight mechanisms to promote transparency and accountability within the agency; and adopting fiscally prudent detention practices.

This *Year One Report Card* highlights where ICE must concentrate its efforts as it moves from the design and development phase of the reform process toward implementation, and where ICE must work to bring its proposed changes into compliance with international human rights standards. ICE leadership must ensure that its reform message is implemented at local offices across the country to facilitate a full departure from the current correctional model and to create a "truly civil" immigration detention system. Furthermore, as reflected in this report, oversight, accountability and transparency remain critical to a meaningful reform process.

Methodology

Heartland Alliance's National Immigrant Justice Center (NIJC), Detention Watch Network, and Midwest Coalition for Human Rights contacted immigrant advocates to gather information to evaluate ICE's progress in achieving detention reform and to identify deficiencies requiring greater attention going forward. In addition, NIJC filed a Freedom of Information Act (FOIA) request with ICE⁶ and contacted detained individuals for details relevant to ICE's reform proposal. These fact-finding efforts met certain obstacles, indicative of some of the systemic challenges to reform. For example, several organizations declined to participate in the survey because of fear of retaliatory action by local ICE officials if their accounts of poor detention conditions or hostile interactions with facility officers were identifiable. In addition, at the time of publication, ICE has not yet responded to NIJC's May 2010 FOIA request. Finally, there are potentially thousands of immigrants in ICE custody whose experiences could not be included

in this report because they fear speaking out about human rights abuses they have suffered, or are held in isolated detention facilities and are unable to locate advocates to whom they can report their stories. Various members of the NGO community have contributed to this report. However, the findings and recommendations in this report do not necessarily represent the views of the report's contributors.

Summary of Key Findings

- **Strong Commitment from ICE Leadership** — ICE leadership has demonstrated strong commitment to reforming the immigration detention system, engaging with NGOs and other relevant stakeholders to advance ICE's reform agenda.
- **Progress Made but Implementation of Reform Agenda Urgently Required** — ICE has taken steps in the design and development of the civil detention system including the launch of the online detainee locator system and development of the risk assessment tool, which is due to be rolled out by the end of 2010. However, in order to address continued human rights violations and meet its detention reform timeline, ICE must act immediately to accelerate the implementation phase of its reform process.
- **Human Rights Violations Persist** — Immigrant advocates nationwide continue to report widespread due process and human rights violations, including the overreliance on incarceration, mistreatment by guards, denial of access to legal service providers, inadequate medical care, misuse of solitary confinement, and discrimination against sexual minorities. These violations demonstrate that the commitment to reform made by ICE leadership has yet to have any substantive impact on the ground. Further, the actual or perceived fear of retaliation expressed by detained immigrants and advocates alike during the fact-finding stage of this report reiterate the urgent need for ICE leadership to strongly reinforce its detention reform policies among agents, personnel, and private contractors working in the field.
- **No Meaningful Improvement in Oversight Practices** — Oversight, transparency and accountability are critical to achieving reform, and yet these are the weakest features of the reform process thus far. Over the past year ICE appointed regional detention managers and created a Detention Monitoring Council at ICE headquarters. However, despite these changes, there is little evidence that ICE leadership's intention to improve oversight practices and precipitate a cultural shift within the agency has been meaningfully achieved to protect immigrants from human rights violations and to ensure that issues are identified and resolved expeditiously at the local level.
- **Reform Process Compromised by Size of Detention Population** — While the 2009 reforms did not address ICE's enforcement strategies, immigration detention and enforcement are intrinsically linked. Unfair and arbitrary enforcement practices across the country combined with exorbitant spending on detention beds — in fiscal year 2010 alone, the Obama administration spent \$1.77 billion on custody operations compared to a mere \$69.9 million on alternatives to detention programs⁷ — jeopardizes the detention reform process and the capacity for ICE to achieve systemic change. ICE cannot achieve a "truly civil" system so long as it continues to detain immigrants on a massive scale and does not increase the referral of low-risk and vulnerable individuals into alternatives to detention programs.

Recommendations

ICE leadership's delay in implementing its detention reforms has been complicated by a number of factors. In particular, progress has been hindered by the need for ICE leadership to achieve a culture shift among immigration agents in the field and for ICE to work with relevant stakeholders, such as the union representing ICE officers, before rolling out its reform plan. In addition, Congress's failure to enact comprehensive immigration reform has contributed to the pressures on the detention system. However, given ICE leadership's strong commitment to improving immigration detention, it must act now to implement its reform agenda in a manner that respects the human rights and dignity of every person. Consistent with ICE's key reform objectives and with the October 2009 recommendations of Dr. Dora Schriro, former director of ICE's Office of Detention Policy and Planning⁸, the agency should address deficiencies identified in this report as follows:

- **Alternatives to Detention** — Detain fewer immigrants by releasing individuals that do not pose a security threat and by referring individuals into community-based alternatives to detention programs in cases where the agency has demonstrated that some level of supervision is required. ICE must prioritize vulnerable populations such as asylum seekers, persons suffering from serious medical or mental health problems, primary caretakers of minor children, the elderly, torture and trafficking victims, and sexual minorities, who face heightened risk if detained.
- **Civil Detention Model** — When ICE demonstrates that a deprivation of liberty is necessary to achieve legitimate government objectives, the least restrictive setting must be used. If detention is warranted, ICE must use a civil detention model to facilitate administrative, non punitive detention, and ensure that immigrants in custody have access to lawyers and legal materials, case management services, regular family visitation, recreation, and religious services, all within a setting that is intended for civil detention.
- **Sound Medical Care** — Provide appropriate medical, dental, and mental health care to detained individuals to address countless and continuing reports of medical neglect, mistreatment, and abuse by local personnel.
- **Transparency & Oversight** — Regulate and standardize practices and policies across the various detention facilities to promote a culture of accountability among agency and local officials, ensure that reports of human rights violations are appropriately and effectively addressed, and ensure that grievances and complaints are resolved professionally and expeditiously.
- **Fiscal Prudence** — Reduce detention costs and redirect taxpayer dollars toward community-based alternatives to detention programs that prioritize humane practices and ensure the wellbeing of individuals in ICE custody.

Results

Detailed Findings

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The Grading System

ICE committed to implement the following reforms in accordance with an identified timeline (see Appendix A and B). Each reform is assessed in this report card under the following criteria:

- **Human Rights Impact** – An assessment of the impact of ICE’s reform objectives in light of human rights principles.
- **Status** – An analysis of the steps ICE has taken to date to meet its reform objectives, as well as an assessment of ICE’s performance based on human rights principles.
- **Recommendations** – Next steps that ICE must take in order to meet its reform objectives in compliance with human rights principles.

Each reform has been awarded a grade based on the following grading system:

- A** = Promise met in compliance with human rights principles
- B** = On track to meet promise but not in full compliance with human rights principles
- C** = Action taken but limited commitment to human rights principles
- D** = Minimal action; limited commitment to human rights principles
- F** = No action; promise broken

These grades are based on information available to date. ICE received a copy of this report for comment prior to its release.

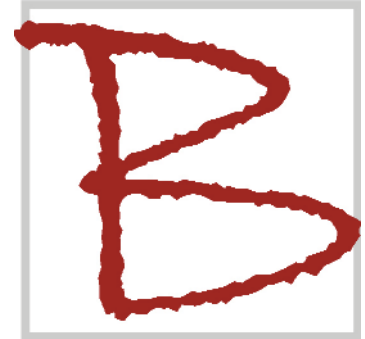
I. Alternatives to Detention

REFORM 1:

"ICE will develop an assessment tool to identify aliens suitable for ATD [alternatives to detention]."

"ICE will devise and develop a risk assessment and custody classification, which will enable detainees to be placed in an appropriate facility."

"ICE will detain aliens in settings commensurate with the risk of flight and danger they represent."



ICE'S target date for implementation: Fall 2009

Human Rights Impact:

Ensure that decisions to detain are made on a case-by-case bases that consider the individual circumstances of men and women in ICE custody, including their health, community and family ties in the United States.

Status:

✓ ICE developed a risk assessment tool for noncitizens who are not subject to mandatory detention. The tool is designed to make custody determinations based on an assessment of flight and security risk and is intended to minimize the routine use of traditional detention. The tool was piloted at two sites in May 2010 and is due to be rolled out in late 2010.⁹

✗ The risk assessment tool continues to presume detention unless an individual can prove eligibility for release, decreasing the likelihood of his/her release or referral into ATD programs. Advocates urged ICE to create a presumption of release for a number of vulnerable populations who are at heightened risk in detention settings, including victims of violence, survivors of torture, and those suffering from mental health issues. However, the tool, as applied in practice, does not adequately assess these vulnerability factors such that many noncitizens facing particular hardship will not be considered eligible for release or referral into ATD programs. In addition, bond is not identified as a factor mitigating flight risk, further undermining the likelihood of referral into ATD programs. These shortcomings do not reflect ICE's objective to detain noncitizens "in settings commensurate with the risk of flight and danger they present."

Recommendations:

- Revise the risk assessment tool to presume release unless ICE demonstrates the need to detain a noncitizen based on a legitimate government objective. Congress must act to ensure that all individuals are entitled to a presumption of release.
- Amend the tool to prioritize vulnerable populations.
- Provide comprehensive training for officers on how to identify vulnerable populations.

REFORM 2:

"ICE will submit a nationwide implementation plan for the Alternatives to Detention Program."

**ICE'S target date for implementation:
Fall 2009**



Human Rights Impact:

End the unnecessary and arbitrary detention of individuals, including members of vulnerable populations such as asylum seekers or those who suffer from medical or mental illness; reduce the cost of detention for taxpayers.

Status:

✓ ICE transitioned the alternatives to detention (ATD) program from two private contract providers to one contract provider and responded to a congressional request for information on the implementation of ATD programs.¹⁰

✗ To the best of our knowledge, no formal "nationwide implementation plan" for ATDs has been developed. Further, ICE's expanding enforcement practices continue to yield extraordinarily high detention numbers: ICE detains approximately 400,000 individuals annually, a staggering figure, particularly when compared to the fact that only approximately 23,000 immigrants participated in ATD programs in fiscal year 2010.¹¹ While these figures represent funding appropriated by Congress, they fall far below what should be expected of a nationwide ATD implementation plan intended to lower detention rates. Moreover, despite ICE's announcement that noncitizens who pose a danger to national security or a serious risk to public safety are its "highest enforcement priority,"¹² ICE continues to use its resources to detain individuals who pose no security risk.¹³

"One client had four children — aged between 3 months and 1 — and no criminal history. Following her arrest by ICE, the kids were placed in foster care (3 of whom are U.S. citizens) because she has no family in America. Despite our repeated attempts to have her released, she was detained for nearly two years, from July 2008 until May 2010."

*— Immigrant service provider
(anonymity requested)*

Recommendations:

- Release noncitizens who pose no danger to national security or risk to public safety and ensure that individuals eligible for release or referral into suitable ATD programs are not subject to overly restrictive reporting and monitoring requirements.
- For the administration of ATD programs, only contract with agencies that have the appropriate training and expertise to meet the needs of low risk and vulnerable populations.
- Collect data and conduct periodic evaluations of ATD programs to monitor the cost efficiency and effectiveness of the programs. The data and evaluation results should be made publicly available.
- Demonstrate to Congress the financial and operational effectiveness of ATDs and request adequate appropriations.

REFORM 3:

"ICE will continue to work with the Department of Justice to expedite the adjudication of ATD [alternatives to detention] cases to reduce costs."

ICE's target date for implementation:
Fall 2009



Human Rights Impact:

Reduce the amount of time detained and non-detained immigrants must wait for their immigration cases to be heard by a judge and improve the efficiency of the immigration courts.

Status:

- ✓ ICE piloted a project with the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) in Miami and Baltimore to expedite the adjudication of immigration court hearings for individuals enrolled in ATD programs.
- ✗ ICE and DOJ must continue to work together to ensure not only that ATD cases are processed more efficiently, but that noncitizens have access to counsel and other case management services designed to better enable them to participate in and understand the court process.

Recommendations:

- The administration must work with Congress to ensure that the immigration courts are adequately funded to provide for efficient adjudication of cases.
- ATD programs must include greater access to counsel and meaningful case management services – provided by agencies with the necessary expertise – in order to promote efficiency in immigration courts and protect the rights of noncitizens.

II. Civil Detention Model

REFORM 1:

"Creating an Office of Detention and Planning [ODPP] which will be led by Dr. Dora Schriro and a team of experts. The singular function of this office is to plan and design a civil detention system tailored to ICE's needs."

"... when assessing where to locate facilities, ODPP will consider access to legal services, emergency rooms and transportation hubs, among other factors."



ICE'S target date for implementation: August 6, 2009

Human Rights Impact:

Build a civil detention infrastructure and develop an internal culture at ICE which ensures humane and fair treatment of detained immigrants, including access to legal and medical services, as well as meaningful alternatives to detention programs.

Status:

✓ The ODPP was created in August 2009 and has shown strong leadership in the design and development of a number of new initiatives. Many of these initiatives reflect the recommendations made in Dr. Schriro's October 6, 2009, report which identified numerous systemic failings in ICE's immigration detention system. Key steps have included ICE leadership conducting extensive visits to facilities across the country to assess conditions of detention and making appropriate recommendations for improvement. Further, on April 28, 2010, ICE met with NGOs, members of the juvenile justice and mental health sectors, and an architectural design consultant to identify options for developing the civil detention model.

✗ A year after the reforms were announced, with only a few exceptions, noncitizens continue to be held in penal detention facilities. Many of the approximately 270 facilities holding immigrants are county jails, located in extremely isolated areas. These facilities are inhumane and inappropriate for noncitizens held pursuant to ICE's civil, non-penal, authority.

Recommendations:

- Build the civil detention model in consultation with NGOs and in accordance with best practices from international models, such as the Australian civil detention model¹⁴, and begin implementation immediately.
- Train ICE agents in accordance with the principles of civil detention to address the current correctional culture at the agency.

"Detention experiences appear to vary widely throughout ICE-contracted jails. In Northern California, there does not appear to be much uniformity mandated by ICE. At [one facility], there is no meaningful outdoor recreation and some detained individuals remain held in jail cells. It feels very antiquated. At [another newer facility] most detainees are held in cells but they appear to have access to outdoor recreation that is surrounded with landscaping. There are also basketball courts at that facility."

*— Immigrant service provider
(anonymity requested)*

REFORM 2:

"Revise immigration detention standards to reflect the conditions appropriate for various immigration detainee populations."

**ICE's target date for implementation:
October 6, 2010**

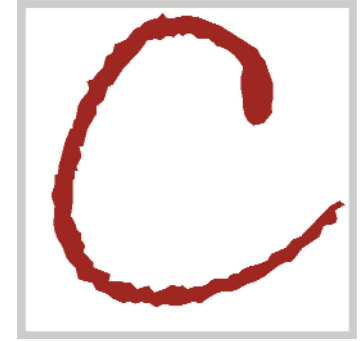
Human Rights Impact:

Address systemic human rights violations in immigration detention facilities.

Status:

✓ ICE leadership visited a number of facilities across the country to review detention conditions and drafted the Performance Based National Detention Standards 2010 (PBNDS). ICE intends to implement the PBNDS at facilities holding 55% of the detained population by the end of 2010 and at facilities holding 85% of detained population by the end of 2011.¹⁵

✗ The PBNDS 2010 are based on penal standards which are not appropriate for civil administrative detention. As Dr. Schriro highlighted in her 2009 report, ICE's detention standards still rely primarily on correctional incarceration standards designed for pre-trial felons and on correctional principles of care, custody and control.¹⁶ Moreover, the standards remain non-enforceable, raising serious compliance issues.



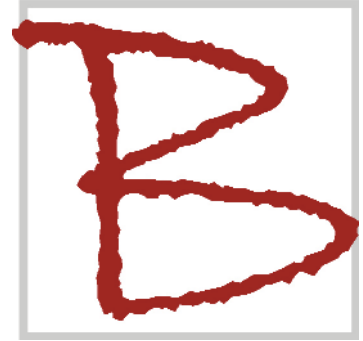
*"No changes in visitation practices have been noted – We had one individual whose brother flew to Los Angeles from England, rented a car, drove 12 hours to the [detention facility] and was only granted two one-hour visits on separate days."
— Immigrant service provider (anonymity requested)*

Recommendations:

- Draft standards suitable for persons held in civil immigration detention. These civil standards must ensure access to counsel and legal materials, visitation, recreational and religious practices, and provisions for specific populations such as women and non-English speakers.
- Create regulations to allow civil standards to be legally enforceable.
- Train ICE and facility officers on the principles of civil standards to promote a culture change.

REFORM 3:

"ICE will create a library of contracts for all facilities with which ICE has active agreements and centralize all contracts under ICE headquarters' supervision. At present, the office of acquisitions at ICE headquarters negotiates and manages only 80 of the more than 300 active contracts for detention facilities. The remaining contracts are overseen by disparate ICE field offices and the office of the federal detention center trustee."



ICE'S target date for implementation: October 6, 2009

Human Rights Impact:

Establish rigorous oversight practices to ensure that all facilities detaining immigrants comply with human rights principles.

Status:

- ✓ ICE centralized detention facility contracts under its headquarters' supervision in October 2009.
- ✗ ICE continues to contract with private entities that are responsible for human rights violations.

Recommendation:

- Identify private entities that do not comply with ICE's detention standards and discontinue their contracts.

REFORM 4:

"ICE will aggressively monitor and enforce contract performance in order to ensure contractors comply with terms and conditions – especially those related to conditions of confinement. When confronted with repeated contractual deficiencies, ICE will pursue all available avenues for remedying poor performance, including termination of contracts."



ICE'S target date for implementation:
October 6, 2009

Human Rights Impact:

Ensure that private contractors comply with human rights standards.

Status:

X There continue to be repeated, consistent and widespread complaints of human rights violations in detention facilities. While ICE has initiated investigations into some reports of abuses, concerns persist regarding whether these investigations are conducted by the appropriate officials. For example, allegations about poor medical treatment should be investigated by medical experts.

"We have documented three cases of sexual harassment and assault against transgender individuals detained at the CCA facility in Eloy, AZ. In two of the cases, the victims did not file complaints for fear of retaliation. In all three of these cases, the harassment and assault were committed by detention center staff."

— ACLU of Arizona

Recommendations:

- Reduce the number of private contractors to promote consistent practices.
- Create partnerships with private contractors who are capable of implementing the civil detention model — including the use of staff trained in social work or related professions — rather than staff with a correctional background.
- Suspend or disbar private contractors failing to comply with ICE's detention standards.¹⁷

REFORM 5:

“Review contracts for all detention facilities to identify opportunities for improvement and move forward with renegotiation and termination of contracts as warranted.”

**ICE’S target date for implementation:
October 6, 2010**

Human Rights Impact:

Audit contractual relationships with private providers to streamline service delivery and ensure compliance measures are institutionalized to protect the human rights of detained noncitizens.

Status:

✓ ICE centralized detention facility contracts under headquarters’ supervision and reduced the number of ICE-authorized facilities from approximately 350 to 270. ICE also discontinued the use of Varick Federal Detention Facility in New York and Aguadilla Service Processing Center in Puerto Rico.¹⁸

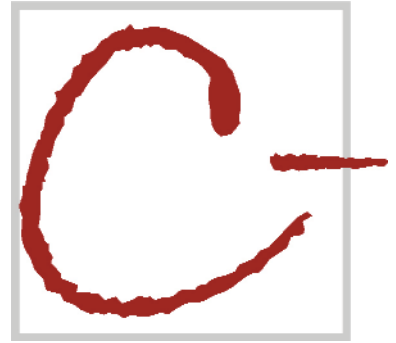
✗ To the best of our knowledge, ICE has not yet moved forward to meaningfully renegotiate contracts as required. Moreover, despite repeated reports of human rights violations, ICE continues to contract with many local jails and private entities that detain immigrants in inhumane conditions.¹⁹

“ICE should not contract with jails or facilities that do not provide outdoor recreation and contact visitation for both families and attorneys. At the Pinal County Jail (PCJ) in Florence, Arizona, immigrants are restricted to recreation time in a closed pen with fencing at the top to allow some natural light. Those detained at PCJ are not allowed contact visits with family members (only video visits) and minimal opportunity for contact attorney visits.”

— ACLU of Arizona

Recommendations:

- Only retain private contractors that operate in accordance with human rights standards fit for the civil detention model.
- ICE must rigorously enforce contract termination provisions when human rights violations occur.



REFORM 6:

"Discontinuing use of family detention at the T. Don Hutto Family Residential Facility in Texas [Hutto]. In place of housing families, we will propose that the Texas facility will be used solely as a female detention center. Presently, Hutto is used to detain families and low custody females. Detained families will now be housed at Berks Family Residential Center in Pennsylvania [Berks]."



"ICE will detain only females at Hutto and will consolidate the female populations from three disparate facilities – Willacy, Pearsall, and Port Isabel – into Hutto, allowing ICE to better monitor the needs of and develop programs specific to this population."

ICE's target date for implementation: October 6, 2009

Human Rights Impact:

Discontinue the detention of families in a setting inappropriate for children and provide services to meet the unique needs of women held in detention, in accordance with civil detention principles and human rights standards.

Status:

✓ In September 2009, ICE discontinued family detention at Hutto, a contract facility owned and operated by Corrections Corporation of America (CCA). The facility is now used to detain women. ICE made several improvements at Hutto and Berks that reflect civil detention principles, including contact visitation, adult educational programs, onsite mental health providers, a plain-clothes dress code, and daily recreation. ICE identified Hutto as a "model" civil detention facility.

✗ In May 2010, ICE began investigating reports that a CCA guard had sexually assaulted females detained at the facility, indicative of a clear failure by ICE to monitor the facility and ensure the safety and wellbeing of the female population. CCA intends to make specific changes to its policies at its nine detention facilities.²⁰ However, the fact that repeated sexual abuse occurred at ICE's "model" detention facility – with a detention manager onsite – exemplifies the lack of meaningful oversight at immigration detention facilities. Further, despite the improvements made to the Berks facility, given the enormous toll that traditional detention has on families and children, advocates remain deeply concerned about continuing to detain vulnerable populations in such restrictive settings.

"The [Hutto] sexual abuse scandal is the latest in a series of such incidents at Texas detention centers. In 2007, a CCA employee was fired for inappropriate sexual contact with a female detainee who was held at the facility with her family. Earlier this year, a former Port Isabel Detention Center officer was sentenced to prison for sexual abuse of female detainees over a period of time in 2008. In 2008, an expose by the WOAI news station in San Antonio reported sexual abuse of female detainees at the GEO Group's South Texas Detention Center in Pearsall. Reports of sexual abuse against detainees have also plagued MTC's Willacy County Detention Center."
— Grassroots Leadership²¹

Recommendations:

- ICE must require that the revised sexual assault policies which have been created for Hutto are adopted at all detention facilities, with vigorous oversight by ICE.
- DHS must promulgate legally binding detention regulations which protect the unique needs of women and families, specifically with respect to sexual violence, assault and harassment, consistent with the standards proposed by the National Prison Rape Elimination Commission.
- ICE must continue to work with NGOs to make alternatives to detention widely available, including for women and families.

REFORM 7:

"ICE began housing non-criminal, non-violent populations, such as newly arriving asylum seekers, at facilities based on assessed risk including the Broward Transitional Center in Florida [Broward], which is located near immigration service providers."

**ICE's target date for implementation:
September 18, 2009**



Human Rights Impact:

Provide less restrictive detention settings for low risk immigrants, in particular vulnerable populations for which traditional forms of detention are inappropriate.

Status:

✓ ICE made an attempt to hold arriving asylum seekers in less restrictive detention settings. For example, Broward has been utilized for "non-criminal, non-violent" populations since October 2009.

✗ The continued detention of noncitizens who do not pose risks to public safety and are not flight risks violates basic human rights standards. Such persons should receive individualized assessments and be released on their own recognizance or under terms of supervision.

Recommendations:

- ICE must take steps to ensure conditions meet the needs of the detention population.
- Pending finalization of the risk assessment tool, ICE officers must exercise discretion and only continue to detain those individuals who pose risks of flight or danger to the community.
- Individuals who are not released should be provided with a written explanation demonstrating the reasons for their continued detention.

"New construction by ICE at the Broward Transitional Center, Florida (BTC) has not remedied certain already-known problems. For example, the level of access to recreation at BTC continues to depend on one's gender ... [T]he men at BTC have regular access to fresh air. Women, on the other hand, can only access the outside for a few hours a day. Despite repeated complaints, attorneys and their clients continue to be forced to meet in a shared room with no privacy. And earlier this year, EOIR withdrew the only immigration judge at BTC, finding that the facility did not provide adequate space and security for a judge."
— Florida Immigrant Advocacy Center

REFORM 8:

"Hiring an expert in healthcare administration and an expert in detention management to staff the ODPD."

ICE's target date for implementation:
August 6, 2009



Human Rights Impact:

Improve ICE's ability to respond to continued and widespread reports of medical neglect in immigration detention and approach health care challenges in accordance with human rights — as opposed to correctional — standards.

Status:

✓ In late 2009, ICE appointed an expert in healthcare administration. In January 2010, ICE appointed a detention management expert.

✗ Ongoing reports of inadequate medical care, medical neglect, and lengthy delays in responding to medical complaints indicate that structural changes within ICE leadership have yet to meaningfully improve health care for individuals in ICE custody.

Recommendations:

- Continue to coordinate efforts with DHS's Office of Civil Rights and Civil Liberties to systemize and expedite the medical complaints review process.
- Train medical staff in implementing robust complaint protocols and procedures at facilities.
- Appoint a permanent director of the Division of Immigration Health Services (DIHS) with medical expertise and significant experience in the particular health needs of detained individuals.

REFORM 9:

"Forming two advisory groups of local and national organizations interested in ICE's detention system. These two groups will provide feedback and input to the assistant secretary. One will focus on general policies and practices, while the other will focus on detainee health care."

**ICE's target date for implementation:
August 6, 2009**



Human Rights Impact:

Obtain critical NGO expertise and input for the creation of a civil detention model and for the agency to stay current on major issues and developments at facilities throughout the country.

Status:

✓ ICE worked with NGOs to create two subgroups within the DHS-NGO Enforcement Working Group – the detention advisory group, and the detention health care advisory group, directed by Homer D. Venters, M.D., of the New York University Program for Survivors of Torture. ICE and the respective working groups meet regularly to discuss and guide the direction of the reform process.

✗ A number of key recommendations made by NGOs, including the inclusion of certain vulnerable populations in the risk assessment tool, were not adopted by the agency. While NGOs acknowledge that not all recommendations can be adopted by ICE, the on-the-ground expertise of NGOs working in the field provides invaluable insight into the reform process.

"Although we have not observed major changes on the ground over the past year, we have noted a significant opening on the national level through community stakeholder meetings organized by the Office of Detention Policy and Planning— On two different occasions, Phyllis Coven and her colleagues came to Colorado to meet with NGO and government stakeholders. ... On both occasions, we were encouraged to see an opening in the communication channel and a willingness to engage in dialogue ..."
— Rocky Mountain Immigrant Advocacy Network

Recommendations:

- Continue to maintain strong professional relationships with immigrant advocacy groups and adopt recommendations made by NGOs with extensive, long-standing experience in immigration detention issues.
- Promote transparency and accountability by collecting and making publicly available data concerning enforcement and detention practices.

REFORM 10:

"Issue two competitive bids for detention facilities that will reflect all five core principles of immigration detention reform."

ICE's target date for implementation:
October 6, 2010



Human Rights Impact:

Identify appropriate facilities to pilot the civil detention model in accordance with human rights principles.

Status:

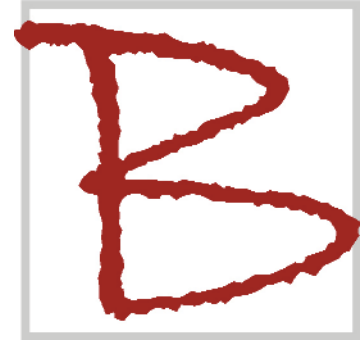
- ✓ ICE expects to issue two competitive bids prior to October 6, 2010, for low custody facilities.
- ✗ These bids will not incorporate "truly civil" detention standards, which have not yet been developed. For example, ICE has proposed a "civil" detention facility that would house 600 to 1,200 individuals, contrary to strong NGO recommendations that warehousing noncitizens leads to dehumanization and abuse.

Recommendations:

- Draft tender material, in consultation with NGOs and experts in alternative models of detention, based on civil, not penal, practices.
- Incorporate best practices from international models, such as the Australian civil detention model¹²², into the proposed U.S. immigration civil detention model.

REFORM 11:

"Following the first meeting of the detention advisory group, Assistant Secretary Morton will host an industry day and begin market research about utilizing converted hotels, nursing homes and other residential facilities as immigration detention facilities for non-criminal, non-violent populations."



ICE's target date for implementation:
October 30, 2009

Human Rights Impact:

Conduct outreach to identify potential stakeholders and facilities that would be appropriate to pilot the civil detention model that complies with human rights principles.

Status:

- ✓ In October 2009, ICE coordinated an industry day with current and prospective detention service providers to discuss detention reform efforts and explore new facility design options.
- ✗ To our knowledge no further plans to use non-penal facilities such as hotels, nursing homes or other residential facilities have been developed.

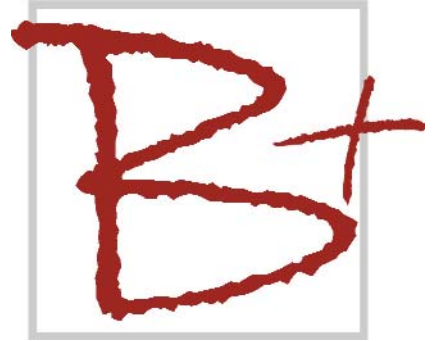
Recommendation:

- In consultation with NGOs and experts in alternative models of detention, develop contract language for detention service providers in accordance with human rights principles.

REFORM 12:

"ICE will also provide staff to support trial attorneys in assessing the credibility of asylum seekers' claims and identifying asylum fraud."

**ICE's target date for implementation:
September 18, 2009**



Human Rights Impact:

Provide enhanced training and guidance to trial attorneys to assist in identifying the particular needs of asylum seekers and ensuring their human rights are protected.

Status:

✓ In January 2010, ICE implemented its revised policy for granting parole to arriving asylum seekers found to have a credible fear of persecution, if they establish their identity and pose neither a flight risk nor a danger to the community. A number of immigrant advocates have reported an increase in the number of asylum seekers released on parole.

✗ In May 2010, NIJC submitted a FOIA in relation to the additional staff ICE intended to provide to support trial attorneys in asylum cases. To date, ICE has not responded to the FOIA.

"We have seen nearly 20 clients in the past four months who have been paroled from detention facilities in Texas, California, and Arizona after passing credible fear interviews. We did not see these types of clients in the past, as they remained detained for the duration of their cases."

*— The Advocates
for Human Rights*

Recommendation:

- Develop asylum training material for ICE and trial attorneys in consultation with NGOs.

III. Sound Medical Care

REFORM 1:

"Hiring a medical expert to provide an independent review of medical complaints and denials of requests for medical services."

ICE's target date for implementation:
August 6, 2009



Human Rights Impact:

Address continued and widespread reports of medical neglect in immigration detention to ensure humane conditions for immigrants held in ICE custody.

Status:

✓ ICE appointed a health care administration expert in late 2009 and appointed regional managed care coordinators located at Division of Immigration Health Services (DIHS) headquarters.

✗ To the best of our knowledge, ICE has not hired individuals with medical expertise and there remains no permanent director of DIHS. Moreover, repeated reports of detained individuals failing to receive adequate medical care and complaints not being properly or efficiently addressed, indicates that structural changes within ICE leadership have yet to meaningfully improve conditions for detained individuals suffering from poor health. Further, ICE has not responded to NIJC's FOIA request so it is not clear how medical complaints were elevated and addressed over the past year.

"We recently encountered a man who was given eardrops to put in his eyes. He cannot read English and did not notice the label. After using the drops, he experienced impaired vision. The medical complaint has not yet been addressed."

*— Immigrant service provider
(anonymity requested)*

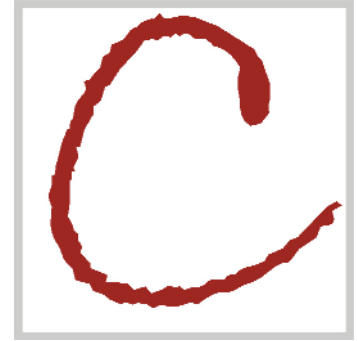
Recommendations:

- Appoint a permanent director of DIHS with medical expertise and significant experience in the particular health needs of detained individuals.
- Continue to coordinate efforts with DHS's Office of Civil Rights and Civil Liberties to systemize and expedite the medical complaints review process.
- Develop robust training programs for medical staff regarding the potentially complex medical and mental health issues of detained immigrants.

REFORM 2:

"ICE will devise and implement a medical classification system to support immigration detainees with unique medical or mental health needs."

**ICE's target date for implementation:
April 6, 2010**



Human Rights Impact:

Ensure the timely provision of medical and mental health assessment services to all persons in immigration detention.

Status:

✓ DIHS is in the process of developing a classification tool that will be used by medical staff at detention centers. DIHS intends to pilot the tool in the near future. ICE improved access to medical authorizations e.g. ensuring that clinical directors have autonomy to approve Treatment Authorization Requests generated at their respective facilities. ICE also consulted with detention medical experts Allen S. Keller, M.D., and Homer D. Venters, M.D., of the New York University Program for Survivors of Torture.

✗ ICE failed to undertake a full-scale, system-wide review of all facilities to identify which facilities can accommodate different levels of medical care. Problems of varying quality of health services and finding qualified staff to serve in remote locations continue to plague the system. Further, DIHS staff is comprised predominantly of contract employees, who face more relaxed professional credentialing procedures than regular employees.²³ The medical classification tool must be developed so that screening occurs when a person is taken into ICE custody in order to effectively manage urgent and chronic health care needs and make appropriate referrals into alternatives to detention programs.

*"Having lawfully lived in the U.S. for almost 35 years, our client, Mr. Dale, was detained in Louisiana for over five years despite suffering from chronic illness, including diabetes and asthma. Mr. Dale experienced egregious medical neglect and mistreatment in immigration detention. During one asthma attack, the physician's assistant pulled the nebulizer off his face, told him to stop 'faking it' and ordered Mr. Dale to return to his cell to do push-ups."
— National Immigrant Justice Center*

Recommendations:

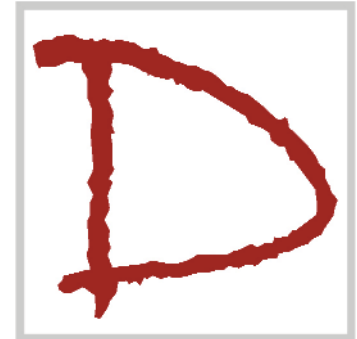
- Finalize the medical classification tool, with comprehensive screening and initial assessment to inform housing assignments and ongoing care.
- Create, implement, and legally enforce standards of medical, mental health, and dental care for individuals in detention.
- Undertake a national audit of all detention facilities to determine their respective capacities to meet the medical needs of persons held in ICE custody.

IV. Transparency & Oversight

REFORM 1:

"Establishing an Office of Detention Oversight (ODO) within the Office of Professional Responsibility (OPR). ... The ODO will be located in regional offices to ensure agents and personnel have more ready access to facilities to conduct routine and random inspections more frequently. The ODO will also investigate detainee grievances in a neutral manner."

"The ODO will be staffed by agents and personnel currently assigned to the detention facility inspection group."



ICE's target date for implementation: August 6, 2009

Human Rights Impact:

Establish a culture of transparency and accountability at ICE and enforce these policies at facilities, through robust detention oversight practices, to protect detained individuals from human rights violations.

Status:

X Since ICE's reform announcement, the development of rigorous reporting and procedural mechanisms and practices, which are critical to detention reform, has not progressed in any material way. It appears that the Office of Detention Oversight (ODO) is simply a new name for a previously existing office, the Detention Facility Inspection Group. Therefore, the ODO is not a "new office" per se, which limits its capacity to change ICE's internal culture to one of accountability. Immigrants detained in ICE custody continue to report threats, retaliation and isolation in solitary confinement for filing grievance complaints.

X Lack of transparency remains a pervasive cultural problem at ICE. In March 2010, a leaked memo from a senior ICE official outlined that deportations were "well under" the agency's "goal" of 400,000, contradicting previous assurances from ICE that it is no longer using arrest quotas.²⁴

"It has become clear that ICE's leadership has failed to control or direct the daily enforcement operations of ICE agents nationwide. This latest disclosure [regarding the agency's 'goal' of 400,000 arrests in fiscal year 2010] raises yet more doubts about who is really in charge at ICE and whether DHS has the capacity to execute its immigration enforcement priorities including detention reform — a top priority identified by Assistant Secretary Morton."

*— ACLU of Washington
Legislative Office²⁵*

Recommendations:

- Immediately develop the roles and responsibilities of the ODO to critically assess detention facility inspection reports, review corrective action plans, monitor the implementation of remedial plans, and determine whether ICE should continue to use a particular facility.
- In the short term, provide ODO agents with more ready access to facilities to increase the number of routine and random inspections as well as reporting obligations.

REFORM 2:

"ICE is accelerating efforts to provide an online locator system for attorneys, family members and others to locate detained aliens."

**ICE's target date for implementation:
October 6, 2009**



Human Rights Impact:

Provide a mechanism for legal counsel and families to contact individuals in detention in a timely and efficient manner.

Status:

✓ ICE launched the online locator system on July 23, 2010, providing a means of identifying the location of a noncitizen in ICE custody. During its development, ICE balanced a number of competing concerns regarding privacy to accelerate delivery of the system.

✗ Many family members do not have access to the internet, precluding them from accessing critical information about detained persons. Despite efforts by immigrant advocates to initiate the development of a telephone locator system, ICE has indicated that it will not adopt this recommendation. Further, a number of advocates are concerned about the potential legal implications relating to ICE's use of "country of birth" as a mandatory field for searching the system. Requiring noncitizens to provide information about their birth country contradicts U.S. law which states that the burden to prove an individual's "alienage" falls to ICE during deportation proceedings.

Recommendations:

- Develop a telephonic locator system to make the tool more widely available to family members who may not have access to computers and the internet.
- Amend the online locator system so that a family member or attorney can search for a detained individual without having to enter his or her "country of birth."

REFORM 3:

"Recruiting and hiring 23 detention managers to work in 23 significant facilities – facilities which collectively house more than 40 percent of our detainees. These 23 federal employees will be responsible for ensuring appropriate conditions of custody. This is a substantial move to increase federal oversight."

"ICE is developing training courses, policies, and procedures to ensure this cadre of personnel is well trained and managed."



ICE's target date for implementation: August 6, 2009

Human Rights Impact:

Expand monitoring, reporting, and complaints practices and procedures at facilities to ensure reports of human rights violations are addressed immediately.

Status:

✓ ICE currently employs 42 detention managers who are responsible for monitoring various facilities across the country. In March 2010, ICE held training sessions for its detention managers. A Detention Monitoring Council was also created by ICE, however, the exact role and function of the council is unclear.

✗ ICE detention managers primarily are law enforcement personnel with no experience in the design and delivery of services to immigrants in civil detention. The fact that repeated sexual abuse occurred at the Hutto facility (see page 14), where a detention manager was onsite, raises serious concerns about the impact of these new positions.

*"Our main concern with the ICE detention managers at Central Arizona Detention Center and Eloy Detention Center is that they were employed at the facility prior to taking these positions – they have preexisting relationships with guards, the warden, and other facility staff. This can compromise objectivity and undermine monitoring."
— Women's Refugee Commission*

Recommendations:

- Recruit personnel with varied backgrounds (such as social work, human rights, and detention) to staff the ODO.
- Develop and implement reporting requirements for detention managers, and make reports available publicly.

V. Fiscal Prudence

ICE indicated that several of its proposed reforms would yield cost-savings for the agency.²⁶ In particular, the agency acknowledged the following:

"ATD costs substantially less per day than detention: the most expensive form of ATD costs only \$14 per day compared to the cost of detention, which varies per facility but can exceed \$100 per day."



Status:

X While the authors are not in a position to comment on the agency's internal spending arrangements, available information suggests that since the announced reforms, ICE's budget has actually expanded in areas that are inconsistent with its purported reform objectives. For example, ICE's spending on custody operations grew from \$1.72 billion in fiscal year 2009 to \$1.77 billion in fiscal year 2010.²⁷

X Moreover, the use of detention for noncitizens who do not genuinely require the constant form of control which detention prescribes, amounts to an improper use of government resources, particularly where space in detention facilities is limited. And yet while ICE spent \$1.77 billion on custody operations in fiscal year 2010, the agency was allocated a mere \$69.9 million for ATD programs.²⁸ Further, to date ICE has been allocated \$550 million for the Secure Communities program, an immigration enforcement initiative aimed at screening all individuals arrested on criminal charges, however minor the charge, and even when that charge may not ultimately be prosecuted.²⁹ The program, which is due to be deployed in every state and local jail and prison across the country by 2013, represents another example of ICE's failure to promote fiscally prudent practices in accordance with its detention reform objectives, as well as its supposed effective use of resources.

X ICE's spending and budget figures are staggering and undermine the agency's public commitment to implement changes to bring the detention system in accordance with humane practices. As long as enforcement and detention practices continue at these inflated levels, a meaningful reform process is seriously jeopardized.

Endnotes

1. See Appendix A.
2. Since Florida Immigrant Advocacy Center's (FIAC) last visit to Baker County Jail in April 2010, facility staff has contacted FIAC in relation to improving the law library. FIAC intends to review any changes at its next visit.
3. See Appendix A and B; see also Restore Fairness, "Head of ICE John Morton Speaks of Promised Changes for Immigration Detention," January 25, 2010 at <http://restorefairness.org/2010/02/head-of-ice-john-morton-speaks-of-promised-changes-for-immigration-detention/>
4. Dr. Dora Schriro, former director of ICE's Office of Detention Policy and Planning, "Immigration Detention Overview and Recommendations," October 6, 2009 at http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf
5. Nina Bernstein, "U.S. to Reform Policy on Detention for Immigrants," *The New York Times*, August 5, 2009 at <http://www.nytimes.com/2009/08/06/us/politics/06detain.html>.
6. See Appendix C.
7. "ICE Fact Sheet: ICE Fiscal Year 2010 Enacted Budget," November 5, 2009, p. 2 at <http://www.scribd.com/doc/24704564/ICE-Fact-Sheet-FY2010-Budget-11-5-09>
8. Schriro.
9. See Appendix D.
10. Id.
11. Figures on ATD participation provided to report authors by ICE; see generally "House Appropriations Subcommittee on Homeland Security Holds Hearing on President Obama's Fiscal 2011 Budget Request for the U.S. Immigration and Customs Enforcement Agency," March 18, 2010.
12. John Morton, Assistant Secretary, ICE, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens," June 2010.
13. "ICE Removals: FY2007-2010," July 2010 at http://www.ice.gov/doclib/dro/removals2007-2010_072710.pdf
14. Heartland Alliance's National Immigrant Justice Center, "Creating 'Truly Civil' Detention in the United States: Lessons from Australia," May 2010 at <http://www.scribd.com/doc/31895051/Creating-Truly-Civil-Immigration-Detention-in-the-United-States-Lessons-from-Australia>.

15. See Appendix D.
16. Schriro, p. 2.
17. ICE is authorized to suspend or disbar private contractors pursuant to 48 C.F.R. 9.402(b).
18. See Appendix D.
19. See list of ICE detention facilities, including annual inspection ratings, in “ICE FOIA Tasking 10-1241 The Average Daily Population for all Centers that Housed ICE Detainees in FY 2009” at http://www.ice.gov/doclib/foia/dfs/avgdailypop_fy09.pdf
20. Susan Carroll, “ICE to Make Detention Centers More Humane,” *Houston Chronicle*, June 8, 2010 at <http://www.freerepublic.com/focus/f-news/2531931/posts>
21. Grassroots Leadership, “Grassroots Leadership Expresses Sadness, Outrage at Reported Sexual Abuse at Hutto Calls for Detention System to be Reformed to Prioritize Dignity and Release, Not Detention For Profit,” June 1, 2010 at <http://www.grassrootsleadership.org/Articles/HuttoJune1-2010.pdf>
22. Heartland Alliance’s National Immigrant Justice Center.
23. Schriro, p. 25.
24. Spencer S. Hsu and Andrew Becker, “ICE Officials Set Quotas to Deport More Illegal Immigrants,” *Washington Post*, March 27, 2010 at <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/26/AR2010032604891.html>
25. ACLU of Washington Legislative Office, “Controversial Memo On Immigration Detention Quotas Raises Doubts About ICE Leadership,” March 30, 2010 at <http://www.aclu.org/immigrants-rights/controversial-memo-immigration-detention-quotas-raises-doubts-about-ice-leadership>
26. See Appendix A and B.
27. “ICE Fact Sheet ICE Fiscal Year 2009,” October 23, 2009 at <http://www.ice.gov/doclib/pi/news/factsheets/2009budgetfactsheet.doc>; see also ICE’s Fiscal Year 2010 Enacted Budget.
28. Id.
29. John Morton, “The Fiscal Year 2011 Budget for U.S. Immigration and Customs Enforcement,” Statement for the Record before the U.S. House of Representatives Committee on Appropriations Subcommittee on Homeland Security, March 18, 2010 at http://www.dhs.gov/ynews/testimony/testimony_1271443011074.shtm; see also Spencer S. Hsu, “U.S. to Expand Immigration Checks to All Local Jails: Obama Administration's Enforcement Push Could Lead to Sharp Increase in Deportation,” *Washington Post*, May 19, 2009 at http://www.ice.gov/doclib/secure_communities/press_release/pdf/090519washington.pdf

About the Authors



Heartland Alliance's National Immigrant Justice Center is a Chicago-based nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers through a unique combination of direct services, policy reform, impact litigation and public education.
www.immigrantjustice.org



Detention Watch Network (DWN) is a coalition of community, faith-based, immigrant and human rights service and advocacy organizations and concerned individuals working to reform the immigration detention and deportation system so that all who come to our shores receive fair and humane treatment.
www.detentionwatchnetwork.org



Midwest Coalition for Human Rights is a network of 50 organizations collaborating to promote and protect human rights in our Midwest region, in the U.S., and internationally. Working together, the coalition provides broader visibility for urgent human rights issues in the Heartland and projects a strong Midwest advocacy voice in the national and international human rights debate.
www.midwesthumanrights.org

This report is available online at www.immigrantjustice.org/icereportcard. For further information, contact Helen Harnett, director of policy, National Immigrant Justice Center, (312) 660-1363, hharnett@heartlandalliance.org, or Mary Meg McCarthy, executive director, National Immigrant Justice Center, (312) 660-1351, mmccarthy@heartlandalliance.org.

Appendices:

- A. U.S. Immigration and Customs Enforcement Press Release, “2009 Immigration Detention Reforms,” August 6, 2009.
- B. U.S. Immigration and Customs Enforcement Fact Sheet, “ICE Detention Reform: Principles and Next Steps,” October 6, 2009.
- C. National Immigrant Justice Center Freedom of Information Act request regarding ICE’s detention reforms, May 27, 2010.
- D. U.S. Immigration and Customs Enforcement online timeline, “Detention Reform Accomplishments,” 2010.

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U.S. Immigration
and Customs
Enforcement

U.S. Immigration and Customs Enforcement

News

August 6, 2009



2009 Immigration Detention Reforms

Today, Assistant Secretary John Morton announced substantial steps, effective immediately, to overhaul the immigration detention system. These reforms will address the vast majority of complaints about our immigration detention, while allowing ICE to maintain a significant, robust detention capacity to carry out serious immigration enforcement.

The Current System

The present immigration detention system is sprawling and needs more direct federal oversight and management. While ICE has over 32,000 detention beds at any given time, the beds are spread out over as many as 350 different facilities largely designed for penal, not civil, detention. ICE employees do not run most of these. The facilities are either jails operated by county authorities or detention centers operated by private contractors.

The Future

With these reforms, ICE will move away from our present decentralized, jail-oriented approach to a system wholly designed for and based on ICE's civil detention authorities. The system will no longer rely primarily on excess capacity in penal institutions. In the next three to five years, ICE will design facilities located and operated for immigration detention purposes. These same reforms will bring improved medical care, custodial conditions, fiscal prudence, and ICE oversight.

Specific Steps

Assistant Secretary Morton is taking the following steps, effective immediately.

- Creating an Office of Detention Policy and Planning (ODPP) which will be led by Dr. Dora Schriro and a team of experts. The singular function of this office is to plan and design a civil detention system tailored to ICE's needs.
- Hiring an expert in healthcare administration and an expert in detention management to staff the

ODPP and support Dr. Schriro.

- Hiring a medical expert to provide an independent review of medical complaints and denials of requests for medical services.
- Recruiting and hiring 23 ICE detention managers to work in 23 significant facilities – facilities which collectively house more than 40 percent of our detainees. These 23 federal employees will be responsible for ensuring appropriate conditions of custody. This is a substantial move to increase direct federal oversight.
- Establishing of an Office of Detention Oversight (ODO) within the Office of Professional Responsibility (OPR). OPR is independent of DRO and the ODPP and reports directly to the assistant secretary. The ODO will be located in regional offices to ensure agents and personnel have more ready access to facilities to conduct routine and random inspections more frequently. The ODO will also investigate detainee grievances in a neutral manner.
- Forming two advisory groups of local and national organizations interested in ICE's detention system. These groups will provide feedback and input to the assistant secretary. One will focus on general policies and practices, while the other will focus on detainee health care.
- Discontinuing use of family detention at the T. Don Hutto Family Residential Facility in Texas. In place of housing families, we will propose that the Texas facility will be used solely as a female detention center. Presently, Hutto is used to detain families and low custody females. Detained families will now be housed at Berks Family Residential Center in Pennsylvania.

The Role of the Office of Detention Policy and Planning (ODPP)

The ODPP is responsible for designing a new civil detention system to meet the needs of ICE. The ODPP will shape the future design, location and standards of civil immigration detention facilities. The ODPP will design facilities for ICE, such that ICE no longer relies primarily on a penal model. When assessing where to locate facilities, ODPP will consider access to legal services, emergency rooms and transportation hubs, among other factors.

The ODPP will evaluate the entire detention system in a methodical way, with seven areas of focus, each with benchmarks for progress. These seven areas are as follows:

- **Population Management:** To ensure the best location, design and operation of facilities reflecting the unique nature of civil detention;
- **Detention Management:** To ensure appropriate custodial conditions and federal oversight of the day-to-day detention functions, including classification, discipline and grievances;
- **Programs Management:** To ensure the provision of religious services, family visitation, recreation and law libraries;
- **Health Care Management:** To ensure the timely provision of medical, dental and mental health assessment and services;
- **Alternatives to Detention Management:** To develop a national strategy for the effective use of alternatives to detention including community supervision;
- **Special Populations Management:** To provide attention to women, families, the elderly and vulnerable populations;
- **Accountability:** To ensure ICE employees perform the core functions of detention oversight, detainee classification and discipline, and grievance review.

The Role of the Office of Detention Oversight (ODO)

The ODO will be part of OPR, an office independent of DRO which reports directly to the assistant secretary. The ODO will have regional offices in addition to a presence in Washington, D.C. ICE is

moving to a regional structure to provide ODO agents and personnel with more ready access to facilities, to increase the number of inspections, both routine and random, and to reduce travel costs. In addition to inspecting facilities more frequently, ODO will review complaints about facilities and address any detainee grievances not resolved by DRO or the Division of Immigration Health Services. The ODO will be staffed by agents and personnel currently assigned to the Detention Facility Inspection Group. The ODO will report to OPR's Acting Director Timothy Moynihan.

The Role of the Office of Detention and Removal Operations (DRO)

Dave Venturella, formerly the director of Secure Communities, is now the acting director of DRO. Under Acting Director Venturella's supervision, DRO will continue to have full operational responsibility for the detention system. DRO will work closely with the ODPP and ODO. However, no employees currently in DRO will be transferred to the new offices and their supervision and duties will not change. As the detention system is reformed and new facilities are designed and opened, DRO will have operational control over those facilities and responsibility for the detainees in those facilities.

ICE is recruiting and hiring 23 detention experts who will work in DRO. These 23 detention experts will monitor and work from within 23 significant ICE facilities. ICE expects this will provide direct federal monitoring of conditions in facilities housing more than forty percent of ICE detainees. This is another significant step in ensuring more direct federal oversight of the detention system.

U.S. Immigration and Customs Enforcement (ICE) is the largest investigative arm of the Department of Homeland Security.

ICE is a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities. For more information, visit www.ICE.gov. To report suspicious activity, call 1-866-347-2423.

Last Modified: Thursday, August 6, 2009

Fact Sheet

October 6, 2009
Contact: DHS Press Office, 202-282-8010

ICE DETENTION REFORM: PRINCIPLES AND NEXT STEPS *Secretary Napolitano Announces New Immigration Detention Reform Initiatives*

Department of Homeland Security (DHS) Secretary Janet Napolitano and U.S. Immigration and Customs Enforcement (ICE) Assistant Secretary John Morton today announced a series of new initiatives as part of the Department's ongoing immigration detention reform efforts to enhance the security and efficiency of ICE's nationwide detention system while prioritizing the health and safety of detainees.

The reform efforts address the seven major components of the detention system outlined in a comprehensive review conducted by Dora Schriro, the former ICE Office of Detention Policy and Planning Director, over the past several months, focusing on greater federal oversight, specific attention to detainee care, and uniformity at detention facilities.

Core Principles to Guide Long-Term Efforts:

- ICE will prioritize efficiency throughout the removal process to reduce detention costs, minimize the length of stays and ensure fair proceedings;
- ICE will detain aliens in settings commensurate with the risk of flight and danger they present;
- ICE will be fiscally prudent when carrying out detention reform;
- ICE will provide sound medical care; and
- ICE will ensure Alternatives to Detention (ATD) are cost effective and promote a high rate of compliance with orders to appear and removal orders.

One-Year Benchmarks:

Secretary Napolitano has also established one-year benchmarks for detention reform that will be completed by the end of fiscal year 2010:

- Review contracts for all detention facilities to identify opportunities for improvement and move forward with renegotiation and termination of contracts as warranted.
- Revise immigration detention standards to reflect the conditions appropriate for various immigration detainee populations; and
- Issue two competitive bids for detention facilities that will reflect all five core principles of immigration detention reform.

Immediate Reforms:

Secretary Napolitano and Assistant Secretary John Morton announced the following reforms on Oct. 6. Implementation will begin immediately.

Each of these reforms are expected to be budget neutral or result in cost savings through reduced reliance on contractors to perform key federal duties and additional oversight of all contracts.

Population Management

- **Effective immediately**, ICE will create a library of contracts for all facilities with which ICE has active agreements and centralize all contracts under ICE headquarters' supervision. At present, the Office of Acquisitions at ICE headquarters negotiates and manages only 80 of the more than 300 active contracts for detention facilities. The remaining contracts are overseen by disparate ICE field offices and the Office of the Federal Detention Trustee.
- **Effective immediately**, ICE will aggressively monitor and enforce contract performance in order to ensure contractors comply with terms and conditions—especially those related to conditions of confinement. When confronted with repeated contractual deficiencies, ICE will pursue all available avenues for remedying poor performance, including termination of contracts.
- **Cost:** In the long term, this effort is expected to yield cost savings and a better managed and more efficient contracting process, though these initiatives may require additional resources at headquarters.

Alternatives to Detention (ATD)

- **This fall**, ICE will submit to Congress a nationwide implementation plan for the Alternatives to Detention Program (ATD).
- ICE will develop an assessment tool to identify aliens suitable for ATD.
- ICE will continue to work with the Department of Justice to expedite the adjudication of ATD cases to reduce costs.
- **Cost:** ATD costs substantially less per day than detention: the most expensive form of ATD costs only \$14 per day compared to the cost of detention, which varies per facility but can exceed \$100 per day.

Detention Management

- **Effective immediately**, ICE will devise and develop a risk assessment and custody classification, which will enable detainees to be placed in an appropriate facility.
- **On Oct. 30**, following the first meeting of the detention advisory group, Assistant Secretary Morton will host an industry day and begin market research about utilizing converted hotels, nursing homes and other residential facilities as immigration detention facilities for non-criminal, non-violent populations.
- **Cost:** Such facilities that are commensurate with risk are anticipated to save money over the long term, pending a comprehensive assessment.

Program Management

- **As of Sept. 18**, ICE began housing non-criminal, non-violent populations, such as newly arriving asylum seekers, at facilities based on assessed risk including the Broward Transitional Center in Florida, which is located near immigration service providers.
- ICE will also provide staff to support trial attorneys in assessing the credibility of asylum seekers' claims and identifying and addressing asylum fraud.
- **Cost:** As the overall population of these facilities will not change, ICE anticipates this initiative will be budget-neutral.

Medical Care

- **Within the next six months**, ICE will devise and implement a medical classification system to support immigration detainees with unique medical or mental health needs.
- **Cost:** Minimizing transfers will decrease costs associated with transportation and delays in proceedings.

Special Populations

- **On Sept. 17**, ICE released the last family from the T. Don Hutto Family Residential Facility (Hutto) in Texas. **Effectively immediately**, ICE will detain only females at Hutto and will consolidate the female populations from three disparate facilities—Willacy, Pearsall, and Port Isabel—into Hutto, allowing ICE to better monitor the needs of and develop programs specific to this population
- **Cost:** ICE was paying \$2.8 million per month at Hutto even when the facility was far from capacity. By more fully utilizing the facility's capacity and consolidating the female populations from multiple facilities, this change will yield substantial savings each month. An interim renegotiation will save ICE nearly \$900,000 per month through the end of the calendar year.

Accountability

- **On Aug. 7**, ICE announced the intent to hire 23 federal employees to provide on-site oversight at ICE's largest detention facilities.
- As a result of the reforms announced today, ICE will more than double the number of on-site personnel from 23 to more than 50 to place federal employees in the facilities where more than 80 percent of ICE detainees are housed, strengthening day-to-day oversight at these facilities.
- ICE is developing training courses, policies and procedures to ensure this cadre of personnel is well trained and managed. The jobs were posted on USAJOBS on Sept. 18.
- **Cost:** At present, ICE pays more than \$200,000 per facility at more than 30 facilities for contractors to monitor conditions. For approximately \$160,000, ICE can pay for a federal employee's salary, benefits, training and equipment to monitor the facility.
- Effective immediately, ICE is accelerating efforts to provide an online locator system for attorneys, family members and others to locate detained aliens.
- **Cost:** Although implementing the locator system will require an initial information technology investment, providing counsel and family members online access to location information will free up ICE personnel normally spent answering location inquiries.

###



National Immigrant Justice Center

May 27, 2010

Catrina M. Pavlik-Keenan
FOIA Director
Immigration and Customs Enforcement
800 North Capitol Street, NW, Room 585
Washington, DC 20536-5009

VIA CERTIFIED MAIL

Re: Freedom of Information Act Request re: Detention Reforms

Dear Ms. Pavlik-Keenan:

This is a request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 on behalf of Heartland Alliance's National Immigrant Justice Center (NIJC). NIJC is a non-profit organization that provides legal services to low-income immigrants, refugees, asylum seekers and victims of trafficking.

We are seeking information regarding the detention reforms announced on August 6, 2009. To this end, NIJC seeks disclosure of any and all records, including all electronic documents and communications in the custody or control of Immigration and Customs Enforcement (ICE) of any kind, which fit the following description:

1. Electronic records regarding ICE detention facilities, including any and all facilities holding ICE detainees (including under 72-hour facilities) after January 1, 2009, including the name of facility, location, number of beds available, and cost per bed.
2. For facilities no longer in use after January 1, 2010, any and all records regarding the termination of the contract and the reasons the contract was terminated.
3. Any and all records regarding the re-negotiation of the ICE's contract at the Hutto facility in Taylor, Texas.
4. Any and all records regarding independent review of medical complaints, including:
 - a. Guidelines for how medical complaints and appeals of denials are processed.
 - b. Any and all records regarding individual reviews of medical complaints.
5. Any and all records regarding the Office of Detention Oversight (ODO) within the Office of Professional Responsibility, including:
 - a. Detainee grievances filed with the ODO; and

- b. Inspection reports prepared by or for the ODO.
6. Any and all records regarding ICE's new Detention Managers, including:
 - a. Resumes or other employment background records regarding current Detention Managers;
 - b. Any and all training materials, policies and procedures developed for or by the detention managers;
 - c. Documents regarding the location of detention managers; and
 - d. Inspection reports or other records regarding detention conditions prepared by or for the detention managers.
7. Any and all records regarding monitoring and enforcing detention contracts, including:
 - a. Any and all detention contracts entered into since August 6, 2009;
 - b. Records relating to ICE's evaluation and/or assessment material for determining whether facilities are in compliance with the contract;
 - c. ICE policies and procedures for enforcing detention contracts, including termination of the contract and financial penalties;
 - d. New and proposed guidance and policies regarding oversight and accountability.
8. Any and all records related to ICE's nationwide implementation plan for alternatives to detention programs, including both adopted or implemented plans.
9. Any and all records related to training materials, manuals, memoranda or guidance issued to ICE staff to support trial attorneys in assessing the credibility of asylum seekers' claims and identifying asylum fraud.

For any electronic records, a report generated from ICE's centralized computer database is preferred. Please prepare the report in such a way that it will be accessible using a standard database program (preferably Excel). Data in a delimited field database is also acceptable. If a delimited field database is used, please indicate the delimiter (tab, comma, etc.). If codes are employed, please also produce any documents in your possession explaining the codes employed, and what they signify.

Compact discs are the preferred media.

Please construe this as an ongoing FOIA request, so that any reports or documents that come within the possession of the agency prior to your response to this FOIA request should also be considered within the scope of the request. Please provide data that is current as of the day of production of the data.

If all or part of any of this request is denied, please specify the exemption(s) claimed for withholding each item of data. If some portion(s) of the requested materials are determined to be exempt, please provide the remaining non-exempt portions. 5 U.S.C.

§552(b). We reserve the right to appeal any decision(s) to withhold information and expect that you will list the address and office to which such an appeal may be directed. 5 U.S.C. §552(a)(6)(A)(i).

We would request that any and all fees be waived, because disclosure of the requested information will contribute significantly to public understanding of the governmental activity of detention. 5 U.S.C. §552(a)(4)(A)(iii). The purpose of this FOIA request is to publicize the changes that ICE has implemented since it introduced its reform initiatives in August 2009. We intend to make your response – or an analysis thereof – publicly available on our website, www.immigrantjustice.org. This is an issue of significant public interest. The DHS Office of the Inspector General has released several reports on conditions in ICE detention and numerous media stories have been published relating to the proposed detention reforms.

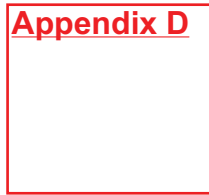
The documents subject to this request are not sought for any commercial use; thus, even if the fee is not waived, no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. §552(a)(4)(A)(iv)(II). If you decline to waive the fees, and if fees will exceed \$100.00, please notify us before filing this request.

Please reply to this request within twenty working days, or as required by statute. 5 U.S.C. §552(a)(6)(A)(i).

If you have any questions regarding this request, please feel free to call me at my direct line, 312-660-1363.

Sincerely,

Helen Harnett
Director of Policy



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U.S. Immigration
and Customs
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Detention & Removal



Detention Reform Accomplishments

Detention Reform Accomplishments	
Date	Accomplishment
08-2009	Created the Office of Detention Policy and Planning—as well as an independent Office of Detention Oversight that reports directly to the ICE Assistant Secretary—to focus on greater federal oversight, provide specific attention to detainee care, and design a civil detention system.
08-2009	Established two advisory boards comprising local and national stakeholders.
09-2009	Discontinued family detention at the T. Don Hutto Family Residential Facility in Texas and converted the facility to be used solely as a female detention center.
09-2009	Issued new protocols to increase transparency related to the Reporting and Notification of Detainee Deaths . See a list of detainees who died in ICE Custody.
10-2009	Centralized detention facility contracts under ICE headquarters’ supervision in order to aggressively enforce contract compliance and initiate new procurements.
10-2009	Created a position for federal personnel to provide on-site oversight at the facilities where the majority of our detainees are housed.
10-2009	Began more actively housing non-criminal, non-violent populations, at facilities based on assessed risk, including the Broward Transitional Center in Florida, which offers a less restrictive, yet secure environment.
10-2009	Held an industry day—a forum with current and prospective detention service providers—to discuss detention reform efforts and explore new facility design options.
11-2009	Secured non-governmental organization collaboration on key reform initiatives, strategies, and time frames, such as: drafts and revisions of the PBNDS 2010, the new risk classification instrument, alternatives to detention, and the online locator system.
12-2009	Transitioned the alternatives to detention (ATD) program to a single provider, allowing for better performance and evaluation.
12-2009 and ongoing	Collaborated with vendors to provide specific no-cost improvements, such as increased recreation, acoustic tiling, and bright paint, to improve conditions of confinement.
12-2009	Modeled new facility designs with an architect to explore options for civil detention.

- 01-2010 Reduced the number of ICE authorized facilities (from 341 to 270)—improving efficiency and oversight and reducing costs.
- 01-2010 Revised the policy for granting parole to arriving aliens found to have a credible fear of persecution if they establish their identities, pose neither a flight risk nor a danger to the community, and have no additional factors weighing against release.
- 01-2010 Discontinued use of Aquadilla (an underutilized facility in Puerto Rico) leading to substantial cost savings.
- 01-2010 Piloted a project with the Department of Justice in Miami and Baltimore to expedite the adjudication of cases of aliens supervised on the Alternatives to Detention (ATD) program.
- 01-2010 Improved the process for authorizations, ensuring that Clinical Directors have autonomy to approve their own Treatment Authorization Requests (TAR) generated at their facilities as well as for other DIHS-staffed facilities that do not have a Clinical Director. Installed Regional Managed Care Coordinators currently located in DIHS headquarters.
- 01-2010 Reviewed conditions in detention centers to determine how to provide additional visitation, legal access, and outdoor recreation in the 69 facilities holding 85% of ICE's detainees.
- 02-2010 Improved conditions of detention, recreation, and visitation, and secured cost savings by discontinuing use of the Varick Street facility for detention in New York.
- 02-2010 Submitted responses to a congressional request for information about implementing an ATD program nationwide.
- 02-2010 Created the Detention Monitoring Council of ICE senior leadership to review detention facility inspection reports, assess corrective action plans, ensure remedial plans are implemented, and determine whether ICE should continue to use a particular facility.
- 03-2010 Trained the first and second classes of detention service managers (42 in total) to ensure uniformity in quality at detention facilities.
- 04-2010 Reviewed the medical system throughout the detention facilities with assistance from DHS's Office of Health Affairs and the Bureau of Prisons.
- 04-2010 Placed the first and second class of 42 detention service managers at facilities to monitor conditions at facilities housing 80% of the detainee population.
- 04-2010 Drafted, in collaboration with stakeholders, the PBNDS 2010, a revised set of detention standards which detail the custody and care of the detainee populations. These standards will be implemented at detention facilities housing 55% of our population by the end of 2010, and at facilities housing 85% of our population by the end of 2011.
- 04-2010 Presented "Looking Back, Leaning Forward" about deaths in detention to the Field Office Directors (FOD). Tasked the FODs with presenting the same detention stand down every six months so staff can reflect on the enormity of our responsibility to provide sound care to every detainee, every day.
- 05-2010 Launched the pilot of the Intake Risk Assessment and Classification Tool in the Washington and Baltimore field offices.

Last Modified: Wednesday, July 7, 2010