

CONDITIONS OF CONFINEMENT IN IMMIGRATION DETENTION FACILITIES¹

I. Introduction

The United States government, through the Department of Homeland Security and Immigration and Customs Enforcement (“ICE”), has increased its use of civil detention for non-citizens at an alarming rate since the 1996 immigration reforms.² The growth in detention has resulted in often horrible conditions of confinement, such as grossly inadequate health care, physical and sexual abuse, overcrowding, discrimination,³ and racism. NGOs frequently receive widespread complaints from detainees and their loved ones regarding problems such as lack of access to necessary medications for persons with chronic illnesses; shackling; use of segregation or tasers for disciplinary purposes; inability to visit with family members and problems with access to telephones.

This briefing paper explains the domestic standards for detention conditions and demonstrates the pervasive problems with conditions of confinement immigration detainees face in jails and detention facilities across the country. The paper aims to illustrate the widespread human rights violations that migrants face while in the custody of the United States and offers recommendations for improved conditions and effective oversight of detention conditions.⁴

II. Applicable Domestic Standards

A. The United States Legal Standard

The constitutional standards that apply to convicted prisoners in the United States are well developed. Convicted prisoners are protected by the Eighth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, which prohibits the infliction of “cruel and unusual punishments” on convicted prisoners. To establish a violation of the Eighth Amendment, a prisoner must show *both* (1) a deprivation of a basic human need, *Helling v. McKinney*, 509 U.S. 25, 31-32 (1993), and (2) deliberate indifference, *Wilson v. Seiter*, 501 U.S. 294, 303 (1991). In the context of medical or mental health care, a prisoner must demonstrate “deliberate indifference to serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). The Eighth Amendment is also violated when prison officials “maliciously and sadistically use force to cause harm,” even where no serious injury results. *Hudson v. McMillian*, 503 U.S. 1, 9 (1992).

¹ This briefing was prepared by Sunita Patel, Soros Justice Fellow, supatel@legal-aid.org and Tom Jawetz, Staff Attorney, ACLU National Prison Project, tjawetz@npp-aclu.org.

² See Tab I “Overview of U.S. Immigration Detention and International Human Rights Law on the use of Detention in the US,” Lutheran Refugee Immigration Services, in partnership with Detention Watch Network, Briefing Materials for the U.N. Special Rapporteur on the Rights of Migrants.

³ *Summary of Detainee Correspondence with the American Bar Association*, Oklahoma County City Jail, Oklahoma City, Oklahoma, dated July 20, 2006, Port Isabel Detention Center, Los Fresnos, Texas (on file with author).

⁴ The information provided here is not comprehensive nor does it reflect every problem with detention conditions. However, the examples and issues raised are indicative of routine complaints raised by NGOs and detainees around the country for years. Moreover, the authors cannot attest to the validity and accuracy of each account; the sources are primarily human rights reports, emails from legal service providers, letters from detainees, and newspaper articles.

Immigration detainees, however, are not convicted prisoners. Rather, they are civil detainees held pursuant to civil immigration laws. Their protections are thus derived from the Fifth Amendment, which protects any person in the custody of the United States from conditions that amount to punishment without due process of law. See *Wong Wing v. United States*, 163 U.S. 228, 237 (1896). Few courts have explored the precise contours of this protection. However, the U.S. Court of Appeals for the Ninth Circuit has held that conditions of confinement for civil detainees must be superior not only to convicted prisoners, but also to pre-trial criminal detainees. *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004), cert. denied, 126 S.Ct. 351 (2005). 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 presumptively punitive and unconstitutional. *Id.* at 934. By definition, immigration detainees are thus entitled to, at minimum, the higher standard of protection articulated in *Jones*.

B. Non-Binding Department of Homeland Security Detention Standards

In November 2000, the former Immigration and Naturalization Service (“INS”) and the U.S. Attorney General released the Detention Operations Manual (“DOM”), which contained thirty-six Detention Standards.⁵ There are currently 38 detention standards in the DOM. The Detention Standards apply to Service Processing Centers (“SPCs”), Contract Detention Facilities (“CDFs”), and Intergovernmental Service Agreement (“IGSA”) facilities holding detainees for more than 72 hours. Whereas the standards are theoretically mandatory for all SPCs and CDFs, the standards are merely guidelines for the hundreds of county jails and prisons operating around the U.S. pursuant to IGSA’s;⁶ IGSA facilities hold 80 percent of non-citizens in ICE custody.⁷ The detention standards are not binding under United States law or regulations, however, and are thus practically unenforceable.⁸

III. Applicable Human Rights Principles

International human rights law requires humane treatment of all persons in custody, regardless of alienage⁹ or the reason for their detention. The prohibition against torture, including cruel and inhuman degrading treatment, is a fundamental human rights principle codified in the Universal Declaration of Human Rights (“UDHR”).¹⁰ The United States government has ratified the International Covenant on Civil and Political Rights (“ICCPR”),

⁵ *INS News Release-INS to Adopt New Detention Standards*, (November 13, 2000), available at <http://www.uscis.gov/text/publicaffairs/newsrels/detainee.htm>.

⁶ “IGSA facilities may find such procedures useful as guidelines. IGSA’s may adopt, adapt or establish alternatives to, the procedures specified for SPCs/CDFs, provided they meet or exceed the objective represented by each standard.” Detention Operations Manual, “INS Detention Standard: Hold Rooms in Detention Facilities,” (2000).

⁷ Spenser S. Hsu & Sylvia Moreno, *Border Policy’s Success Strains Resources: Tent City in Texas Among Immigrant Holding Sites Drawing Criticism*, The Washington Post, February 2, 2007.

⁸ See Petition for Rule-Making to Promulgate Regulations Governing Detention Standards for Immigration Detainees, (January 25, 2007), available at http://www.nationalimmigrationproject.org/detention_petition_final.pdf.

⁹ *Wilson v. The Philippines*, UN Human Rights Committee, Case No. 1069/2002 (2003), (finding pre-trial detention of non-citizen with convicted prisoners and maltreatment while in detention was found to violate the ICCPR provisions governing freedom from torture and prisoners’ right to adequate treatment (Arts. 7 & 10, respectively)).

¹⁰ Universal Declaration of Human Rights art. 5, December 10, 1948, U.N.G.A. res. 217 A(III).

Convention on the Elimination of All Forms of Racial Discrimination (“CERD”)¹¹ and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”),¹² which contain provisions applicable to the treatment of immigration detainees. Article 10 of the ICCPR acknowledges that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹³ Moreover, the American Declaration not only sets forth human rights obligations but it creates a State obligation to protect such rights.

The United Nations has provided further guidelines for implementing the general prohibitions discussed above in the U.N. Standard Minimum Rules for the Treatment of Prisoners (“Standard Minimum Rules”)¹⁴ and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment¹⁵ (“Body of Principles”). The Standard Minimum Rules and Body of Principles reflect agreed-upon norms of treatment for detainees, regardless of their legal status or alienage. The principles within include non-discrimination while in custody, protection against ill-treatment or intimidation as a consequence of complaining, no more restriction than required for safe custody, prompt medical care and attention, access to hygiene and sanitary conditions, and health care which meets national and community standards. The accounts provided here are in violation of the United Nations CAT, CERD, ICCPR and contradict many Rules found within the Standard Minimum Rules.

IV. Medical Care

Among the most common complaint from detainees across the country is inadequate access to medical care. Detainees and NGOs have documented severe and widespread problems with access to chronic and emergency medical care, including long delays prior to medically necessary surgical procedures; unresponsiveness to requests for medical care (often termed “sick calls”); and dental extraction-only policies. Specific case studies are provided below.

- A detainee held at the Oakdale Federal Detention Center in Oakdale, Louisiana reported that he broke his nose following an altercation in May 2006. A facility doctor examined his nose from outside the cell and declared it was not broken. After several weeks of complaining and requesting further medical care, he was finally taken to a local hospital where a doctor promptly stated the detainee’s nose was badly broken and required surgery. He received surgery two months from the date his nose was broken.¹⁶
- While detained at the CCA Central Arizona Detention Center from November 2005 to April 2006, a Liberian woman complained of nausea, severe abdominal pain, trouble sleeping, and pain during urination. The facility’s own records indicate medical staff

¹¹ Convention on the Elimination of All Forms of Racial Discrimination, December 21, 1965 G.A. Res. 2106 (XX) of

¹² Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment arts. 2 and 16, December 10, 1984, 1465 U.N.T.S. 85.

¹³ International Covenant on Civil and Political Rights art. 10, December 19, 1966, 99 U.N.T.S. 171.

¹⁴ United Nations Standard Minimum Rules for the Treatment of Prisoners, May 13, 1977, Economic and Social Council res. 2076 (LXII).

¹⁵ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

¹⁶ *Summary of Detainee Correspondence with the American Bar Association*, Oakdale FDC, Oakdale, Louisiana, dated September 21, 2006 (on file with the author).

believed she may have developed uterine fibroids, enlarged fibroids, and may have needed a hysterectomy. She was frequently given 800 mg of Ibuprofen and told to exercise. Once she fainted and consequently missed a court appearance. A few weeks before her release, she was taken to a public hospital where an ultrasound found a cyst which she reports doctors described as the size of a 5-month-old fetus. When the hospital determined she required immediate surgery, ICE released her from detention on medical parole in order to avoid having to pay for the procedure.¹⁷

- An HIV positive Jamaican detainee spent five years in detention during which he was bounced around from Passaic County Jail, in New Jersey, Oakdale Detention Center in southwest Louisiana, Concordia Parish Correctional Facility, near the Mississippi border. He described delays in transfer of medical records, frequent lapses in his medication regimen, and what one HIV/AIDS specialist called substandard medical attention. Due to the improper medical attention, he contracted several conditions while in detention, including conjunctivitis, a throat infection, infection of the lymph nodes, two upper respiratory infections, five skin infections, three ear infections, and a tonsil infection.¹⁸
- One detainee housed at San Diego Correctional Facility and San Pedro Service Processing Center spent eleven months in immigration custody suffering from extremely painful lesions on his penis that were increasing in size and were frequently infected. During his detention he regularly complained to correctional staff and medical staff about his problems and occasionally showed correctional officers blood and discharge in his underpants in order to get medical attention. During his eleven months in custody he received authorization to meet with one oncologist and several urologists; all of these specialists concluded that he required a circumcision to alleviate his pain and a biopsy to determine whether he was suffering from penile cancer. He was repeatedly denied the necessary circumcision and biopsy by U.S. Public Health Service and the Division of Immigration Health Services on the grounds that these procedures were simply "elective" in nature. Due to significant advocacy efforts by the ACLU, this detainee was ultimately released from immigration custody and was able to go to the emergency room for diagnosis and treatment. Within approximately one week of his release from ICE custody he was diagnosed with penile cancer and was admitted to the hospital to have nearly his entire penis surgically removed. By the time he was able to get treatment the cancer had already metastasized to his lymph nodes. He is currently undergoing chemotherapy, but doctors believe the cancer may have spread to other parts of his body and that he may have less than one year to live.¹⁹
- Another detainee who was housed at San Diego Correctional Facility injured his foot while in custody. After the wound became infected he sought medical attention, at which point he was diagnosed with uncontrolled diabetes. He received a course of antibiotics in the Short Stay Unit of the facility, but was returned to general population before his wound was completely healed. Over the next month the wound became even more infected and his diabetes remained out of control. He complained for weeks about increasing pain and a foul odor coming from the wound, which was increasing in size,

¹⁷ Emails from Raha Jorjani, Staff Attorney, Florence Project to Sunita Patel, Staff Attorney, The Legal Aid Society, March 30, 2007 & April 11, 2007 (on file with author).

¹⁸ Aslyn Loder, *Ex-detainees Rip Treatment: AIDS-Infected men got Sicker in Jail*, Herald News, August 24, 2005, at A1.

¹⁹ Email from Tom Jawetz, Staff Attorney, ACLU National Prison Project, to Sunita Patel, Staff Attorney, The Legal Aid Society, April 15, 2007 (on file with author).

turning black, and oozing. He was finally taken to the hospital where he was admitted through the emergency room and was found to have developed a gangrenous ulcer in his foot and ankle and a severe, potentially fatal bone infection (that is, chronic osteomyelitis). Although doctors initially believed that he would have to have his foot partially amputated, he ultimately spent over one month receiving antibiotics and underwent a complicated skin graft operation to help heal the wound.²⁰

- Benedictus Yarzue arrived in York County Prison in July 2004. He complained of severe pain in his penis, testicles and anus. Various treatments by the doctor were unsuccessful and Mr. Yarzue was referred to an outside urologist. The treatment prescribed by the urologist was similarly unsuccessful, and the urologist recommended that Mr. Yarzue receive a cystoscopy. York County Prison submitted a Treatment Authorization Request to the Division of Immigration Health Services, which denied authorization for the treatment. The decision by DIHS to deny authorization, and for York County Prison to thereby withhold a referral to a urologist to perform a cystoscopy, was ultimately reviewed by the county's Solicitor (who found that Mr. Yarzue had raised a valid constitutional claim to treatment) and the county's Complaint Review Board. The Board concluded at the end of its hearing in May 2005 that Mr. Yarzue would receive the necessary treatment, and "INS shall be billed for reimbursement." Within a few days of the decision, Mr. Yarzue was transferred to Berks County jail (that is, outside of the jurisdiction of York County's Complaint Review Board), and his renewed requests for treatment were denied anew. In response to a lawsuit by Mr. Yarzue against York County Prison, York County Prison filed a Third Party Complaint against the United States and ICE. See *Yarzue v. Division of Immigration Health Services*, No. 05-cv-1415 (M.D. Pa.). Perhaps the most important document produced during that case was a letter from Thomas Hogan, Deputy Warden of York County Prison, to Joe Sallemi of Immigration and Customs Enforcement, explaining the prison's very serious problems dealing with the Division of Immigration Health Service. According to Deputy Warden Hogan, the Division of Immigration Health Services is a "massive Washington D.C. Bureaucracy" that is "primarily interested in delaying and/or denying medical care to detainees."²¹
- A Haitian detainee at Wakulla County Jail, in Florida, had a swollen abscess on his neck. He reported that when medical staff at the jail observed his condition, the staff failed to explain his condition. At the jail's clinic, without explanation, he was instructed to lie down. A physician, nurse and jail sergeant (with a Taser gun on his belt) held him down. Then the doctor, without his consent "came at [him] with a knife" and sliced open the abscess. No anesthesia was administered. The detainee reported an excess of blood and pus following the "procedure." He was escorted back to his pod and given pain relievers. After multiple requests the following week due to continued pus elimination he gave up seeking further care. He told attorneys from FIAC, "I think this was abuse. They treated me like an animal."²²
- A Swiss woman was still recovering from a triple ankle fracture when detained in January 2007. She was handcuffed and shackled by jail officers in Bay County, Florida although she protested such movement may re-injure her ankle. She was instructed to

²⁰ *Id.*

²¹ *Id.*

²² Email from Charu al-Sahli, Staff Attorney, FIAC, to Sunita Patel, Staff Attorney, The Legal Aid Society, April 16, 2007 (on file with author).

board an ICE bus with a missing step while shackled. She tripped and fell. The ICE officer looked at her bleeding ankle and said, "I think I'm looking at a broken ankle." At Wakulla County Jail, where she was first detained, she only received ACE bandages and ibuprofen for the first month of detention, despite her apparent pain and requests for further treatment. She could hardly walk and experienced sharp, shooting pain in her ankle. An X-Ray was administered a month after detention, but she was transferred before learning of the results. Her ankle remains noticeably swollen and she has lost much mobility. As of the end of March, 2007, she still was not told X-Ray results nor received any further treatment.²³

The inadequate chronic and emergency health care is compounded by poor record keeping practices or irregular intake medical screenings. The DHS Office of Inspector General's January report on detention conditions found that only Krome complied with the detention standards for documenting initial health screenings, and only three of the five audited facilities complied with the physical examination requirement. Without proper initial medical screening, individuals with chronic medical conditions may have their health compromised and increase the risk of transmission of communicable or infectious diseases and ongoing nutritional deficiencies.

Even when such screenings are conducted, detainees report delays in receiving necessary medications, changes in medications, and failures to dispense all required medications. For individuals with diabetes or HIV, medical staff at many facilities neglect to check blood-sugar levels, T Cell counts and viral loads at the required intervals. When detainees file requests for medical attention as a result of some inadequacy, a nurse or doctor may respond days or weeks later,²⁴ if the medical staff responds at all. Waiting a week for an appointment can cause serious health consequences in some instances. One jail determined that a detainee's request to continue physical therapy following a hand injury did not constitute a "serious" medical need.²⁵

Additionally, detainees often complain of sick call procedures. Common problems include the unavailability of sick call forms, failure to respond to requests for medical attention and the resulting delay in detection or treatment of medical conditions. The OIG's January report recognized the audited facilities' lack of compliance with the detention standard which requires jails to maintain sick calls at a minimum based on the number of detainees housed at the facility. Further, the report demonstrated the facilities' failures to comply with their own sick call procedures.²⁶

On March 25, 2007, federal detainees at the 1400-bed **Stewart Detention Center**, located in Lumpkin, Georgia, refused to eat for two days in protest of mistreatment and inadequate diet. One detainee who suffers from Parkinson's disease, diabetes, and HIV/AIDS reported to the Spanish-language Atlanta Latino that it generally takes two to four days to receive medical attention. The Salvadoran consulate in Georgia interviewed 40 detainees and confirmed that detention center officials assaulted one man for refusing to eat and locked him in an isolation cell for 45 minutes.²⁷

²³ Email from Charu al-Sahli, Staff Attorney, FIAC, to Sunita Patel, Staff Attorney, The Legal Aid Society, April 16, 2007 (on file with author).

²⁴ *Summary of Detainee Correspondence with the American Bar Association*, San Pedro Service Processing Center, San Pedro, California, dated March 22, 2006 (on file with author).

²⁵ *Summary of Detainee Correspondence with the American Bar Association*, Perry County Correctional Center, Uniontown, Alabama, dated June 8, 2006 (on file with author).

²⁶ OIG Report, at 4-5.

²⁷ Mario Guevara, "Presos de Inmigracion Organizan Huilga," Atlanta Latino, March 22, 2007, available at <http://www.atlantaino.com/printpage.php?id=7284>.

V. Mental Health

Mental health care is sorely lacking in jails and detention facilities where ICE holds immigration detainees. Similar to the issues raised in the medical care discussion, failure to transfer records,²⁸ inadequate record keeping, intake health screening and medication verification; and medication dispensation effect conditions for mentally ill detainees. Due to cost or availability, detention facilities sometimes change prescription psychotropic medications, either to a generic form or a different medication altogether. In such instances, detainees sometimes complain that adverse consequences to changed medications are not monitored or appropriately adjusted. In other cases, facilities completely deny detainees mental health care, which can lead to acute mental instability, compromise the detainees' safety, and prevent effective legal representation.²⁹

In addition, detainees who are survivors of torture or trauma may be re-traumatized due to detention or the inability to obtain necessary mental health treatment. A consistent problem is the overuse or misuse of suicide prevention segregation. Detainees have stated that the seemingly arbitrary use of segregation led them to hide suicidal thoughts from facility staff for fear that confiding such thoughts or seeking mental health treatment would result in segregation. One detainee stated she needed mental health medications and "just wanted to talk to someone about her fears," but was unwilling to seek medical care for fear of being placed in segregation.³⁰ Some segregation rooms are dirty, subject to extreme temperatures, or malodorous.³¹ One county jail in Virginia has a practice of placing mentally ill detainees facing anxiety attacks or nervous breakdowns in solitary confinement to "cool down."³² Another facility, located in Florence, Arizona, told a detainee who attempted suicide to consider detention "an extended Bible retreat."³³ The OIG Report identified that four of the five audited facilities failed to comply with aspects of the Detention Standard governing suicide watch.

- A detainee originally held at Piedmont Regional Jail was transferred to Hampton Roads Regional Jail after a failed suicide attempt. He was transferred to Hampton Roads so he could stay in the "medical wing" of the jail. Far from being a real medical facility, the medical wing merely holds both the mentally ill criminal population and the mentally ill immigrant population together in one pod. This young 24-year-old man suffered from schizophrenia, diagnosed in his childhood. While detained in Hampton Roads he was given a daily medication regiment, but his condition remained unstable. The detainee continued to have suicidal tendencies. At one point he exclaimed "I need to be in a hospital, not a jail!" This

²⁸ Email from Sarah Sherman-Stokes, CAIR Coalition, to Tom Jawetz, April 10, 2007 (on file with author) (summarizing a Virginia detainee's experience of being transferred without his medical records to three different jails, which resulted in the detainee never receiving medications for schizophrenia).

²⁹ Memo to Sunita Patel and Tom Jawetz, Benjamin Yerger, Staff Attorney, Pennsylvania Immigration Resource Center (on file with author).

³⁰ Summary of Interview with Detainee at the Bergen County Jail, Hackensack, New Jersey, November 28, 2006 (on file with author). See Memo to Sunita Patel and Tom Jawetz, Benjamin Yerger, Staff Attorney, Pennsylvania Immigration Resource Center (on file with author).

³¹ See Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, From Persecution to Prison: The Health Consequences of Detention of Asylum Seekers [hereinafter The PHR Bellevue Report], at 75, 77, 115.

³² Email from Sarah Sherman-Stokes, CAIR Coalition, to Tom Jawetz, April 10, 2007 (on file with author).

³³ Emails from Raha Jorjani, Staff Attorney, Florence Project to Sunita Patel, Staff Attorney, The Legal Aid Society, March 30, 2007 & April 11, 2007 (on file with author).

young man desperately needed ongoing treatment with a mental health care professional, but all he received was a three times daily dose of anti-psychotic medication administered by a prison guard.³⁴

- The mental health of a young Liberian detainee with a diagnosis of paranoid schizophrenia deteriorated during his three months detainton in a rural Pennsylvania prison in July 2005. He eventually began to refuse medication and became psychotic, flipping himself off his bed on to his head over and over in an attempt to “train his body” to endure the hardships and persecution he would face upon return to Liberia. The detainee assaulted guards, also based on his perceived need to hone his fighting skills in the event of his deportation. He was placed in 24 hour lock down and strapped into a restraint chair when escorted to other parts of the facility. He was ordered involuntarily committed in a state court action and the government’s removal proceedings were administratively closed. He was transferred to a facility in South Carolina in March 2006 for inpatient treatment, and later transferred to Krome in Miami, Florida, where he remains detained today.³⁵

VI. Overcrowding

The U.S. Constitution and international human rights principles prohibit housing detainees in severely overcrowded conditions that deny basic human needs. In some overcrowded facilities, detainees report that three people are housed in cells designed for two,³⁶ while at other facilities detainees are housed in the gymnasium or other large rooms with mats on the floor.³⁷ Overcrowding can heighten tension between detainees and guards and among detainees, increasing the risk of altercations and abuse.³⁸ An overcrowded facility’s capacity to service detainee medical, sanitation, and hygiene needs is also severely compromised.

Etowah County Detention Center, Gadsden, Alabama: The ACLU of Alabama and several other NGOs have received numerous reports from detainees of overcrowding, improper medical care, and punitive and excessive force at the Etowah County Jail in Gadsden, Alabama. Until a very recent visit by ICE to the facility, female detainees reported that 175 women were housed in a unit designed for 75 people, with many detainees crowded into cells designed for far fewer people. Pregnant women report only receiving pre-natal attention every three months and diabetics complain that extra meals and medications are not provided to regulate blood-sugar levels. Detainees additionally complain that the amount of food they receive is insufficient, and that detainees routinely lose weight at the facility. Perhaps most severe, for many months

³⁴ Samantha Dillon and Leslie Thompson, International Human Rights Law Clinic, Washington College of Law, *Remote Detention = Rights Denied: the Impact of Remote Detention on Immigrant Detainees* (fMay, 2007) (unpublished summary on file with author).

³⁵ Memo to Sunita Patel, Staff Attorney, The Legal Aid Society, and Tom Jawetz, Staff Attorney, ACLU National Prison Project, from Benjamin Yerger, Staff Attorney, Pennsylvania Immigration Resource Center (on file with author).

³⁶ *Summaries of Detainee Correspondences with the American Bar Association*, Middlesex County Adult Correctional Center, New Brunswick, New Jersey, dated January 31, 2007, Oklahoma City County Jail, Oklahoma City, Oklahoma, dated January 25, 2007 (on file with author).

³⁷ *Summaries of Detainee Correspondences with the American Bar Association*, York County Prison, York, Pennsylvania, dated June 29, 2006. Perry County Correctional Facility, Uniontown, Alabama, dated August 18, 2006 (on file with author).

³⁸ See e.g., *Summaries of Detainee Correspondences with the American Bar Association*, Tri-County Detention Center, Ullin, Illinois, dated September 12, 2006; San Diego Correctional Facility, San Diego, California, dated October 17, 2006 (on file with author).

preceding ICE's recent visit to the facility, women and men reported being locked down in their cells for more than 20 hours each day. The facility provides no outdoor recreation at all. Retaliation for filing complaints is common, in the form of tasers, tear gas, mace, or degrading verbal abuse.

In January 2007, the American Civil Liberties Union filed a lawsuit on behalf of all of the detainees housed at the CCA-run San Diego Correctional Facility. For several years prior to the filing of the lawsuit, hundreds of detainees were routinely triple-celled, which meant that one person would be forced to sleep in a plastic boat-shaped container on the floor. Additional detainees were housed in the common dayroom areas of some pods, pushing such pods well over 50 percent beyond their design capacity. Over the years, detainees participated in hunger strikes to protest triple-celling, and in September 2006 a disturbance erupted in one of the housing units when CCA staff attempted to increase the use of triple-celling.

The Pennsylvania Institutional Law Project (PILP) has heard numerous recent reports that individuals have been held in the gym at York County Prison on a temporary basis, with more limited access to toilet and shower facilities and increase in medical issues. The ACLU has also received complaints that the privately-operated Regional Correctional Center in Albuquerque, New Mexico has been housing detainees in a dayroom and placing additional detainees in full cells.

Seneca County Jail, Ohio:

Advocates for Basic Legal Equality (ABLE), offers legal orientation programs and direct legal representation to immigrants detained at Seneca County Jail, located near Toledo, Ohio. ABLE has witnessed a number of human rights abuses at the Seneca County Jail, many of which have persisted over time, despite advocacy from ABLE and other advocates to both jail and federal officials. First and foremost, the Seneca County Jail is severely overcrowded, generally holding approximately 50 more detainees than it has beds. For example, at the time of this writing, Seneca is holding 187 detainees while authorized to hold only 125. As a result of the overcrowding, detainees are routinely forced to sleep on mats on the floor of the gymnasium. Lights are left on throughout the night. Warehousing detainees in this manner, and the resulting pressure on the jail's systems and infrastructure, leads to additional violations, chief among them the denial of access to telephones to contact legal aid providers, health and hygiene problems, lack of recreation opportunities, and the jail providing detainees with aspirin to treat all medical problems.³⁹

VII. Punitive Disciplinary Procedures

Detention centers and county jails and prisons use punitive disciplinary procedures, some of which are considered torture under CAT and the ICCPR. The use of disciplinary "segregation" is widely abused.⁴⁰ Segregation is often used disproportionately in response to minor offenses. For example, one detainee reported being placed in segregation for two days as punishment for arguing with another detainee.⁴¹ Detainees at Etowah County Jail in Alabama

³⁹ Summary of Emails from Mark Heller, Staff Attorney, Advocates for Basic Legal Equality, to Sunita Patel, Staff Attorney, The Legal Aid Society, April 5, 2007 (on file with author).

⁴⁰ See Department of Homeland Security, Office of Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities* (released Jan. 16, 2007) [hereinafter DHS OIG Report], available at

⁴¹ Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention of Asylum Seekers* [hereinafter The PHR Bellevue Report], at 75, 77, 115.

report they are locked in their cells and charged with “making terroristic threats” for complaining about jail policies.⁴² A detainee at York County Prison complained that an officer offered to put money on his commissary if he beat up another detainee.⁴³ Multiple detainees at the San Diego Correctional Facility report that they received disciplinary segregation when they complained about overcrowding or refused to have a third detainee sleep on the floor of their two-person cell.⁴⁴

The OIG Report also identified problems with overall disciplinary processes at the audited facilities. Misuse of disciplinary policies included detainees being placed in disciplinary segregation and never written up or untimely disciplinary hearings which resulted in detainees being held in segregation for extended periods of time, only to be ultimately found not guilty of the alleged violation.⁴⁵

VIII. Treatment by Guards and Correction Officers

Among the most serious complaints from detainees are instances of physical, sexual, and verbal abuse, which is often discriminatory in nature. In a June 2005 letter to The Legal Aid Society from 20 detainees at the New Jersey Hudson County Jail, detainees reported physical and racist verbal abuse, including being called “faggots,” “motherf---ers,” “spicks,” “cockroaches,” and Black detainees were called “monkeys.”⁴⁶ Verbal abuse and harassment has been reported at the Middlesex County Jail in New Jersey⁴⁷ and detainees at Otero County Prison in New Mexico reported guards’ use of obscenities when addressing detainees.⁴⁸ Guards who abuse, harass and intimidate detainees often go undisciplined.⁴⁹ Last year, the ABA Commission on Immigration received a letter signed by 54 detainees at the Monmouth County Correctional Institute that stated officers responded to complaints by stating, “this is a white man’s country and white man’s law, you ain’t got no f---ing rights immigrants.” Other detainees, such as Sharon Nyantekyi, a student at Rutgers University detained at Middlesex County Correctional Institute, were reportedly subjected to verbal abuse by officers and sexual and physical threats by other prisoners.⁵⁰ Moreover, the recent OIG Report provides four specific examples of physical and sexual abuse in the audited facilities, though it references numerous instances of alleged physical abuse.⁵¹

⁴² *Summary of Detainee Correspondence with the American Bar Association*, Etowah County Detention Center, Gadsden, Alabama, dated July 19, 2006 (on file with author).

⁴³ *Summary of Detainee Correspondence with the American Bar Association*, York County Prison, York, Pennsylvania, October 23, 2006 (on file with author).

⁴⁴ Email from Tom Jawetz, Staff Attorney, ACLU National Prison Project, to Sunita Patel, The Legal Aid Society, April 16, 2007 (on file with author).

⁴⁵ OIG Report, at 14-15.

⁴⁶ Letter to Bryan Lonagan, Staff Attorney, The Legal Aid Society, June 15, 2005 (on file with author).

⁴⁷ Samantha Henry, *Shattered Dreams: Rutgers Senior Facing Deportation to Africa After being Jailed for 21 Days*, Herald News, April 20, 2006 at A1.

⁴⁸ *Summary of Detainee Correspondence*, Otero County Prison, Chaparral, New Mexico, dated January 22, 2007 (on file with author).

⁴⁹ See *Summaries of Detainee Correspondences with the American Bar Association*, Tri-County Detention Center, Ullin, Illinois, dated November 28, 2006, Otero County Prison, Chaparral New Mexico, dated January 22, 2007 (on file with author).

⁵⁰ Samantha Henry, *Shattered Dreams: Rutgers senior facing deportation to Africa after being Jailed for 21 Days*, Herald News, April 20, 2006, at A1 (Middlesex County Correctional Institute houses women detainees with pre-trial prisoners in criminal custody).

⁵¹ OIG Report, at 28.

Passaic County Jail: Dogs were used for three years to intimidate and attack immigrant detainees. In at least two cases, dogs purportedly bit detainees. Ibrahim Turkman and other detainees reported that two or three times a week, sometimes at 3:00 a.m., the doors would open and ten to twenty officers rushed in with four to six unmuzzled barking dogs. The leashed dogs, mostly German Shepherds, would come within inches of the detainees' faces. In July 2006, Bill Maer, the Sheriff Department's spokesman, said guards pepper-sprayed detainees during an incident involving 20 detainees.⁵² In December 2005, fifteen detainees signed a statement stating that Passaic County Jail officers beat an immigration detainee. The statement stated that Osama Metwaly was subdued but then beaten while handcuffed.⁵³

Of particular concern to NGOs are reports of sexual abuse. The extent of the problem is unknown because of fear and threats by the abuser; emotional and physical isolation; and the lack of access to phones, independent complaint mechanisms, or attorneys. In December 2006, Mayra Soto, a transgendered detainee testified before the National Prison Rape Elimination Commission, a bipartisan federal commission established to study Federal, State, and local government policies and practices respecting the prevention, detection and punishment of prison sexual assaults. She testified that in December 2003, while waiting for her attorney, a guard entered the holding cell with his pants unzipped and ordered her to perform oral sex on him twice.⁵⁴ Soto was able to tell her attorney and pressed charges against the officer. NGOs pointed out to the Commission that many other men and women are unable to come forward with similar complaints due to fear of retaliation, resulting trauma, or lack of access to attorneys or family.⁵⁵ At least two lawsuits alleging sexual assault filed by detainees at the San Diego Correctional Facility have resulted in settlements.⁵⁶

Last June, Keston Phillip, a Trinidadian detainee was sexually molested by a detainee. A fight ensued. Upon an officer's command, he turned away from the detainee and was immediately tasered near his collarbone and in his abdomen by the officer (he was not wearing a shirt, having just woken up.) FIAC was in the facility the same day to conduct its regular "Know Your Rights" presentations and representatives were able to confirm Mr. Phillip's account from witnesses and sustained injuries. The officer's incident report indicates Mr. Phillip was engaged in a fight when tasered, failing to mention the allegation of sexual abuse or his compliance with the officer's commands. In response to FIAC's written questions, the county's sheriff defended the officer's actions as "following protocol." FIAC has documented numerous other accounts of use of excessive use, including tasing and inappropriate threats of tasing. The

⁵² See David Zwerdling, *Immigrant Detainees tell of Attack Dogs and Abuse*, November 18, 2004, available at <http://www.npr.org/templates/story/story.php?storyId=4170152>; David Zwerdling, *Government Halts use of Dogs Around Detainees*, November 25, 2004, available at <http://www.npr.org/templates/story/story.php?storyId=4193030>; Samantha Henry, *Protesters Want Detainees Freed: Inside Jail, Guards put Down a 30-minute Incident*, Herald News, January 9, 2006, at B1.

⁵³ Please note that detainees are no longer held at the Passaic County Jail. However, the contract was not terminated, merely suspended and the problems at Passaic are indicative of an unruly and chaotic detention system.

⁵⁴ Testimony of Mayra Soto, *Hearing: The Elimination of Prison Rape: Immigration Facilities and Personnel/Staffing/Labor Relations*, December 13, 2006, available at http://www.nprec.us/docs/sxvimmigrdet_d13_persaccts_MayraSoto.pdf.

⁵⁵ Testimony of Christina DeConcini, *Hearing: The Elimination of Prison Rape: Immigration Facilities and Personnel/Staffing/Labor Relations*, December 13, 2006, available at http://www.nprec.us/docs/sxvimmigrdet_d13_strategies_ChristinaDeConcini.pdf, at page 152.

⁵⁶ See Leslie Berestein, *Woman in Detention Alleges Rape Contract Operator's Employee is Named*, *The San Diego Union-Tribune*, January 18, 2005, available at: <http://www.signonsandiego.com/news/metro/20050118-9999-1m18assault.html>

Sheriff of the Wakulla County Jail openly acknowledges the use of M-26 Taser guns constitutes extreme force, even though he defends the policy as appropriate jail policy.⁵⁷

Willacy County Detention Center, Raymondville, Texas (“Ritmo”/ “tent city”)

The Willacy County Detention Facility is the largest immigration detention facility in the country. The facility is made up of ten large tents, each of which is designed to house 200 individuals. The tents are completely windowless and the lights are on around-the-clock, making it difficult for detainees to sleep. No partitions exist to separate the showers, toilets, sinks and eating areas, and detainees report that they are occasionally forced to eat with their hands because no utensils are provided. When detainees are permitted to go outside of the tents for recreation, they do not appear to be provided with warm weather clothing. Detainees who are sent to this remote facility near the southern border may have been transferred from places as far away as Boston, New York and Florida. As a result of the transfer, detainees are not only separated from their loved ones, but may also find it impossible to obtain legal representation.

IX. Grievance Procedures

Detainees repeatedly report inadequate access to meaningful grievance procedures and lack of review of detainee complaints. The recent investigation into detention conditions at ICE facilities conducted by the OIG found a lack of proper record keeping for detainee complaints. For example, there was no log of complaints or accessible complaint box for detainees to file anonymous grievances.⁵⁸ From a review of detainee complaints regarding grievance procedures made to the American Bar Association Immigration Commission since January 2006, detainees complain that written and oral grievances go unanswered,⁵⁹ grievance forms are sometimes unavailable,⁶⁰ jail officials are generally dismissive of complaints,⁶¹ Additionally, detainees are deterred from filing grievances due to fear of retaliation⁶² or the general belief that the jail will not respond or make changes.⁶³ One detainee at the Buffalo Federal Detention

⁵⁷ See Email from Charu al-Sahli, Staff Attorney, FIAC, to Sunita Patel, Staff Attorney, The Legal Aid Society, April 16, 2007 (on file with author).

⁵⁸ OIG Report, at 20.

⁵⁹ *Summaries of Detainee Correspondences with the American Bar Association*, Florence Service Processing Center, Florence, Arizona, dated February 26, 2007; San Pedro Service Processing Center, San Pedro California, dated June 29, 2006; York Correctional Institution, Niantic, Connecticut, dated October 13, 2006; McHenry County Jail, Woodstock, Illinois, dated February 24, 2006; Tensas Parish Detention Center, Newellton, Louisiana, dated August 7, 2006; Oklahoma City County Jail, Oklahoma City, Oklahoma, dated December 20, 2006; York County Prison, York, Pennsylvania, dated October 23, 2006; Port Isabel Detention Center, Los Fresnos, Texas, dated March 8, 2007; Willacy County Detention Center, Raymondville, Texas, dated September 21, 2006; Piedmont Regional Jail, Farmville, Virginia, dated October 5, 2006 (on file with author).

⁶⁰ *Summaries of Detainee Correspondences with the American Bar Association*, Park County Jail, Fairplay, Colorado, dated June 2, 2007; Clinton County Correctional Facility, McElhattan, Pennsylvania, dated February 2, 2007 (on file with author).

⁶¹ *Summaries of Detainee Correspondences with the American Bar Association*, Park County Jail, Fairplay, Colorado, dated January 2, 2007, Port Isabel Detention Center, Los Fresnos, Texas, dated March 8, 2007, Northwest Detention Center, Tacoma, Washington, dated February 6, 2007.

⁶² *Summaries of Detainee Correspondences with the American Bar Association*, Monmouth County Correctional Institute, Freehold, New Jersey, dated June 27, 2006 and July 31, 2006 (on file with the author).

⁶³ *Summaries of Detainee Correspondences with the American Bar Association*, Park County Jail, Fairplay, Colorado, dated January 2, 2007 (on file with author).

Center in Batavia, New York, reported he was beaten and threatened with solitary confinement in the Special Housing Unit (“SHU”) when he asked for a grievance form. Language and cultural barriers, as well as literacy levels also create barriers to complaining to jail officials and ICE.⁶⁴ Inadequate access to telephones and the expense of phone calls prevent detainees from complaining to their consulates about human rights abuses faced while in custody.

X. Deaths in Detention⁶⁵

There is little information available about deaths that occur in immigration custody. ICE has no legal obligation to publicly report such deaths and it is not always clear whether a proper investigation is taking place following such deaths.⁶⁶ The DHS Office of Inspector General, which is responsible for conducting investigations relating to the Department, does not appear to receive automatic notification of each death that occurs in DHS custody, and the OIG’s semiannual reports to Congress contain sporadic and vague references to investigations into in-custody deaths.

Because few of these deaths ever receive media scrutiny, it is difficult to know how many people have died in ICE custody.⁶⁷ Since 2004, it appears that *at least* 20 individuals have died in ICE custody, seven as a result of suicide.⁶⁸ As ICE detains greater numbers of individuals, this issue will only grow in importance. Since June 2006, at least five immigration detainees have died in custody: one in San Diego, CA, another in Albuquerque, NM, a third in Tacoma, WA, a fourth in Farmville, VA, and a fifth in Hackensack, NJ. Three of these deaths occurred in facilities operated by private prison companies. The following accounts detail the circumstances surrounding just a few of the 20 deaths:

1. Nery Romero, Bergen County Jail: Hackensack, NJ (February 12, 2007)

Within five days of entering Bergen County Jail, Nery Romero committed suicide. Prior to entering detention, Mr. Romero was taking strong prescription pain medications for a serious injury that he had experienced in a recent motorcycle accident. According to witnesses at the jail and a letter mailed by Mr. Romero to his family prior to his death, but delivered only afterwards, Mr. Romero was not receiving any pain medications at the jail and was crying out for painkillers every day.

⁶⁴ *Summary of Detainee Correspondence*, Guadalupe County Adult Detention Center, Seguin, Texas, dated March 31, 2006 (on file with author).

⁶⁵ This section was contributed by Tom Jawetz, Staff Attorney, ACLU National Prison Project.

⁶⁶ According to the ICE Detention Standards, when an immigration detainee dies in custody, the Assistant District Director for Detention and Removal Operations is supposed to notify the District Director, the Assistant Regional Director for DRO, and the Director of Field Operations at ICE Headquarters. A local representative of the U.S. Public Health Service is to receive medical reports within 48 hours of the death, and both family of the deceased and consulate officials are to be notified about the death.

⁶⁷ The problems with medical care provided to ICE detainees is covered elsewhere in the briefing materials. However, it is worth mentioning here that detainees with serious, life-threatening medical conditions may be denied proper care throughout their detention, only to be deported or released suddenly on account of their serious medical condition. It is also not possible to determine how many of these individuals may die each year as a result of the failure to treat their medical conditions during their detention.

⁶⁸ See Chart of Known Deaths in Detention from 2004-Present (on file with author). The names on this chart were identified reviewing public media reports and the OIG’s semiannual reports to Congress, talking to immigration advocates around the country, and consulting with the OIG.

2. Abdoullai Sall, Piedmont Regional Jail: Farmville, VA (December 2, 2006)

Abdoullai Sall suffered from kidney problems. When he was initially detained in late September, his immigration attorney wrote a letter to the Department of Homeland Security office where Mr. Sall had been taken into custody, explaining that he had a health problem related to his kidneys and required medication. Mr. Sall was soon transferred to Piedmont Regional Jail, where he notified jail staff that he needed to take specific medications at specific times. His immigration attorney spoke with an officer at Piedmont Regional Jail in mid-October about the fact that Mr. Sall was apparently not receiving the appropriate amount of medication and that his feet were beginning to swell. His attorney was informed that the Major who works in the Medical Unit was on a one-week trip, and that nothing could be done until the Major returned. One week later, Mr. Sall again complained to his immigration attorney about the lack of medical care, and the immigration attorney again advised the officer at the jail about Mr. Sall's problems. On the morning of December 2, Mr. Sall collapsed on the way to the bathroom. Detainees who were present report that it took a long time for officers on duty to respond to the emergency, and it was another detainee who used the phone to dial 911. By the time an officer began to attempt CPR, it was too late to save Mr. Sall's life.

3. Young Sook Kim, Regional Correctional Center (Cornell Corrections): Albuquerque, NM (September 2006)

On or about August 22, 2006, Young Sook Kim was transported to Regional Correctional Center from Virginia. During the van ride in Virginia to the airport, Ms. Kim vomited. Throughout her detention, which lasted approximately two weeks, she suffered serious stomach problems. Her condition deteriorated steadily, eventually getting to the point where she could not eat. Other women detainees pled with guards and nurses to examine Ms. Kim and also completed numerous sick call requests, at least one of which was marked "urgent." Ms. Kim never received proper care from a doctor. Only when her eyes finally turned yellow and she could no longer eat did the nurse agree to send her to the hospital. She was transported to the hospital on or about September 10, 2006 and died shortly thereafter.

4. Maria Filomena Inamagua Merchan, Ramsey County Jail: St. Paul, MN (April 13, 2006)

Maria Filomena Inamagua Merchan was detained on February 24, 2006. She was held at the Ramsey County Jail, where she regularly complained about headaches and dizziness. She reported to family members that she only received Tylenol and similar painkillers, and the Ramsey County Sheriff corroborated her account that she did not see any specialist until she collapsed. The collapse occurred on April 3, when she struck her head while getting down from her top bunk assignment. After the guards found her unconscious, medical staff monitored her at the jail for four hours before finally transporting her to the nearby hospital. She was admitted in critical condition and was quickly diagnosed as having oxygen-depriving parasites attacking her brain. She died ten days after arriving at the hospital and falling into a coma. The Ecuadorian Civic Community in Minnesota has filed a formal complaint and request for

investigation with the Department of Homeland Security, Office of Inspector General.

5. Ignacio Sarabia-Villasenor, San Diego Correctional Facility (Corrections Corporation of America): San Diego, CA (January 4, 2005)

Ignacio Sarabia-Villasenor collapsed in the shower. Other detainees dragged him out of the shower and yelled for the guards to come. Several officers were in the control booth at the time, but it took them a while to notice the commotion. When they finally arrived at the Pod, they first imposed a lockdown of all detainees. When all of the detainees were locked in their cells, one officer stood beside Mr. Sarabia waiting for medical personnel to arrive. It was approximately 15 minutes before nurses arrived with a wheelchair, not a stretcher. Mr. Sarabia's chest was still heaving and it was clear he could not breathe, but the nurses put a thermometer in his mouth and tried to take his temperature. No one performed CPR. When some detainees screamed that the guards and nurses should do something, one guard responded that the detainees would have to shut up or be placed in the hole. After 25 minutes, someone finally started CPR, but by then Mr. Sarabia was already dead.

XI. Religious Freedom

Detainees are also subject to religious discrimination or restricted in practicing their religion. Harpal Singh Cheema was detained at the Yuba County Jail since 2002, during which time he was denied permission to wear his religious head gear, the Sikh turban. In May 2005, the ACLU filed suit, alleging that "defendants have been unjustifiably and unlawfully subjecting Mr. Cheema to extraordinary restrictions on his use of a religious head-covering, prohibiting him from leaving his bed with his head covered."⁶⁹ Muslim detainees at Northwest Detention Center in Washington report they are denied religious food and the ability to practice their religion.⁷⁰

XII. Lack of Effective Oversight

The current scheme of detention oversight does not prevent or cure human rights abuses within detention facilities or jails. The U.S. Immigration and Customs Enforcement ("ICE"), an agency within the Department of Homeland Security ("DHS"), is charged with the custody and care of immigration detainees. The government's internal systems of oversight are (1) annual inspections for all ICE detention facilities, contract and intergovernmental service agreement jails and prisons and (2) the Office of Inspector General's occasional site or issue specific investigations. The American Bar Association's Commission on Immigration and the United Nations High Commissioner for Refugees ("UNHCR") conducts investigations into the treatment of detainees, including refugees and asylum seekers. Moreover, various NGOs, legal service providers, and immigrant and human rights groups use media and direct inquiry with the government to create an additional method of oversight.

The failure of this uncoordinated and piecemeal approach to prevent human rights abuses is acknowledged by the United States government, as well as NGOs and immigration detainees. In January 2007, the Inspector General of DHS published a report entitled

⁶⁹ Ann M. Simmons, *Suit Targets Curbs on Turban Wearing in Jail: ACLU Sees a Violation of a Sikh's Rights*, Official says the Headgear Could Hide a Weapon, L.A. Times, May 22, 2005, at B3.

⁷⁰ *Summary of Detainee Correspondence to the American Bar Association*, Northwest Detention Center, Tacoma, Washington, dated September 21, 2006.

“Treatment of Detainees Housed at Immigration and Customs Enforcement Facilities” following an investigation of five detention facilities. It questioned the ICE annual inspections process. Striking among the OIG’s findings were numerous instances of non-compliance with the detention standards that were not reported in the most recent ICE annual inspections of the 5 detention facilities.⁷¹ NGOs have recently learned ICE fails to inspect each detention facility annually. Perhaps most troubling is that detainees often have no effective mechanism to raise grievances within a facility or directly to ICE. The January OIG report recognized untimely responses to detainee grievances, failure to respond, and problems with effective means to file grievances.⁷²

Further, in former DHS Undersecretary Asa Hutchinson’s testimony before the National Prison Rape Elimination Commission, he identified gaping holes in detention oversight and accountability. He observed that “continued oversight is essential to eliminating abuse and violence in the care of immigrant aliens.”⁷³ To achieve oversight, Undersecretary Hutchinson found the agency needed greater transparency in complaints of abuse, investigation, and the outcomes of such investigations. He criticized the current tracking of complaints and their disposition, noting that he was unable to acquire statistics on the instances of sexual abuse in preparation for the hearing. In addition, he believes complaints should be reviewed by the Inspector General, the DHS Office of Civil Rights, and outside groups.⁷⁴

The external oversight process is under-trained and incomplete. Although the ABA’s visits are independent and much needed, they are limited in scope (primarily focusing on access to counsel), conducted by pro bono attorneys with little experience in conditions of confinement or human rights monitoring, and the results are not publicly available. Several regional or state-based immigrant organizations receive complaints regarding detention conditions and raise concerns to the facility, ICE, and the Department of Homeland Security using an administrative complaint process. However, the results are inconsistent, difficult to monitor, and difficult to maintain.

Non-governmental organizations have been actively seeking greater oversight and stronger enforcement mechanisms. Recently, several national immigration organizations and detainees filed a Petition for Rule-Making to the Department of Homeland Security, requesting the government begin a formal regulation promulgation process to create stronger enforceable standards for the custody of immigration detainees.⁷⁵ The recently introduced Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (the STRIVE Act)⁷⁶ would create an Office of Detention Oversight within DHS, charged with investigating systemic complaints, conducting unannounced inspections of all detention centers, and reporting to DHS all findings of non-compliance.⁷⁷

The United States continues to violate the human rights of immigration detainees in jails and detention centers across the country and greater oversight is essential to protect the rights

⁷¹ Office of Inspector General, *Treatment of Detainees Housed at Immigration Customs Enforcement Facilities*, January 2007, p. 36-37, available at http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-01_Dec06.pdf

⁷² OIG Report, 20-21.

⁷³ Testimony of Asa Hutchinson, National Prison Rape Elimination Commission, *Hearing: The Elimination of Prison Rape: Immigration Facilities and Personnel/Staffing/Labor Relations*, December 13, 2006, available at http://www.nprec.us/docs/sxvimigrdet_d13_persaccts_MayraSoto.pdf, at page 38.

⁷⁴ *Id.* at 38-39.

⁷⁵ See *Petition for Rule-Making to Promulgate Regulations Governing Detention Standards for Immigration Detainees*, (January 25, 2007), available at http://www.nationalimmigrationproject.org/detention_petition_final.pdf.

⁷⁶ Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (“Strive Act of 2007”), House Resolution 1645, Introduced March 22, 2007.

⁷⁷ *Id.* at Sec. 175.

of migrants facing removal. The United States should create strong on-going oversight of detention centers and jails where detainees are held. One expert encourages a “layered approach” where internal and external mechanisms of oversight support the goal of safety and maintaining the human rights of persons in custody. Without multiple systems of transparent oversight, jails and detention centers are literally walled off from public scrutiny, exposing detainees to greater risk of abusive treatment.

The components of effective oversight:

- The monitoring body should have authority to conduct unannounced visits of any part of the facilities at anytime;
- The monitoring body should have a duty to conduct routine and regular inspections;
- The reports of monitors should be public and ICE should respond publicly to the report, either agreeing or disagreeing, and develop an action plan;
- The aim of monitoring should be preventative and forward-looking, rather than reactive and investigative;
- The monitoring should be conducted by a team of people with expertise relevant to the needs and concerns of the facilities;
- There must be adequate safeguards against retaliation for providing information to the monitoring body or monitors;
- Monitors must have the ability to review all records;
- The monitoring entity should have adequate funding, resources, and staff;
- The monitoring body should create procedures that enable staff, community members, detainees and their family or representatives to provide information confidentially;
- Any monitoring entity that currently monitors prisons and jails should not exclude the monitoring of detainee housing units or dormitories;
- Regulatory bodies that inspect buildings should not exclude jails or detention centers.

XIII. Recommendations

(1) Create Detention Standards in Compliance with Human Rights Principles: At the Human Rights Committee meeting in June 2006, the United States government cited the issuance of the Detention Standards in 2000 as evidence of compliance with international principles on the treatment of immigration detainees. In its concluding remarks, the Human Rights Committee encouraged the United States “to adopt all measures necessary for their effective enforcement.” Unfortunately, the Detention Standards issued in 2000 are not legally binding and the U.S. government has largely failed to comply with their provisions.

The U.S. government should create legally binding human rights standards governing the treatment of immigration detainees in all facilities, regardless of whether they are operated by the federal government, private companies, or county agencies. Affirmative rights to humane treatment should be created through Congressional authority as well as agency binding regulations. Experts, NGOs and directly affected community members should participate in the process of creating minimum standards and regulations through the creation of a Congressional commission.

(2) Greater transparency: The United States government should require greater transparency in contracting, oversight, and access to information regarding detention operations. The current process for ICE to contract with a county jail or prison is unknown. Unlike in the Federal Bureau of Prisons method of contracting for jail beds, there is no “Request for Proposals” or publication in the Federal Register. As a result, community groups, legal service providers, and migrants

have no involvement in the government's decision to expand the detention system. This hidden process keeps the financial gain derived from ICE contracts a secret. Further, the government should require greater access to federal monitors, investigators, and auditors to permit NGO and detainee involvement in the oversight process. Finally, the U.S. government should create less restrictive policies for access to jail records and detainee medical records to assist with legal representation.

(3) Effective national oversight: The United States government should create a “layered approach” to the monitoring and oversight of conditions for migrants in custody of ICE (refer to list provided above). First, Congress should create an overarching monitoring body, independent from DHS, which monitors every detention center and county jail with which ICE contracts. Monitors with expertise in environmental, health and hygiene, mental health, and security should routinely conduct thorough investigations at each facility. In addition, states or counties should institute facility based inspection teams, independent from jail or county governance, to receive and investigate individual and system-wide allegations of human rights abuses and constitutional violations. Alternatively, Ombudspersons or legislative committees should be created to monitor conditions on an on-going basis. Finally, such oversight institutions should be required to report to the U.S. Congress as well as the public; and all reports and investigations should be publicly available and open to outside scrutiny.