



## **U.S. Immigration Detention System: Sub-standard Conditions of Confinement and Ineffective Oversight**

### Summary

The U.S. government has failed to promulgate binding minimum standards for the conditions of confinement for detained immigrants. In addition, it has failed to ensure that detention facilities comply with the non-binding standards that exist. As a result, over 200,000 immigrants who are detained each year may be unable to win meritorious cases for relief from removal, such as asylum, because of the tremendous obstacles posed by detention, including lack of crucial protections such as access to counsel and basic legal materials. The government's management of immigration detention is further marred by ineffective oversight, lack of accountability, and lack of transparency.

In 2000, the federal government adopted minimum requirements regarding the conditions of confinement of immigration detainees, now known as the ICE National Detention Standards ("Detention Standards"). The Detention Standards are non-binding and not judicially enforceable. The Standards include 38 standards concerning detainee legal rights, detainee services, and facility security.

### Inadequate Efforts To Ensure Humane Conditions Of Confinement

The U.S. Immigration and Customs Enforcement ("ICE"), an agency under the Department of Homeland Security ("DHS"), detains immigrants in removal proceedings or awaiting removal. ICE detains immigrants in four types of jails, including Service Processing Centers ("SPC's"), which are directly owned and operated by ICE, often using private company personnel as guards; Contract Detention Facilities ("CDF's"), which are operated by private companies under contract with the DHS; Intergovernmental Service Agreement facilities ("IGSA's"), which are actually state and local jails with contracts with DHS; and federal Bureau of Prisons ("BOP") prison facilities. CDF's, IGSA's, and BOP facilities routinely hold convicted criminals along with immigrants.

Immigrants may be detained for months or years while their cases progress. In 2005, the DHS operated 8 SPC's, and contracted with 7 CDF's and over 400 IGSA's. In recent years, according to government estimates, one-half to three-fourths of all immigrant detainees were held at state and local county jails, or IGSA's. ICE personnel are not stationed at IGSA's, and ICE does not adequately train IGSA staff on the Detention Standards.

Reports by the United Nations High Commissioner for Refugees ("UNHCR"), the American Bar Association ("ABA"), and even reviews of facilities by DHS itself, show that the government has not achieved even minimal compliance with the Detention Standards. Several years after the Detention Standards were adopted, detained immigrants continue to be deprived of phone access, visitation, and legal materials, and subjected to irrational and abusive practices. DHS does not publicly release its annual reviews, or reviews by the ABA and UNHCR. In fact, it allows ABA and UNHCR to inspect and review facilities on the condition that the reports are held confidential. In recent litigation, however, the National Immigration Law Center, the ACLU of Southern California, and the ACLU Immigrants' Rights Project obtained copies of approximately two hundred such reviews

from 2002 to 2005.<sup>1</sup> The information below is the first detailed glimpse that advocates have had into the ICE detention review process as the agency has steadfastly refused to release information from these reviews to the public. In fact, at a recent Congressional hearing the General Accounting Office—the independent research agency for Congress—complained that it too had great difficulty obtaining copies of DHS reviews despite a Congressional request that it investigate facilities’ compliance with the Detention Standards.<sup>2</sup>

### Independent Agency Reviews of Detention Conditions

Both the ABA and the UNHCR annually review detention conditions at facilities used by DHS. ABA and UNHCR personnel visit DHS detention facilities, observe conditions of confinement, interview detainees and facility personnel, and produce detailed reports including areas where facilities need to improve their compliance with the Detention Standards and international norms governing the detention of refugees and asylum-seekers. The ABA focuses on legal access issues, while the UNHCR examines compliance with international law.

### Ineffective Oversight Of Detention Facilities

Since 2002, DHS has stated that it reviews annually the hundreds of detention facilities it uses. Based on these reviews, DHS personnel rate facilities on overall compliance with the Detention Standards as well as on compliance with each Detention Standard. Overall, DHS’ reviews demonstrate that facilities around the country routinely fail to comply with significant Detention Standards.

Several factors call into question the reliability of DHS annual reviews and demonstrate that these reviews may severely under-report non-compliance with the Detention Standards. Most importantly, DHS has no written guidelines for how to rate a particular facility, with respect to a particular Detention Standard or with respect to overall compliance with the Standards. As a result, many facilities receive positive ratings even though they fail to comply with several Standards. In addition, these facilities continue to be used despite numerous problems with detainee’s access to telephones, legal materials, visitation, law libraries, and mail.

In addition, DHS annual reviews are always made upon 30-day notice to the facility, giving facilities ample time to temporarily “improve” conditions for the review. Second, annual reviews do not require interviews with detainees, only observation of facility areas and file reviews. Without detainee interviews, reviewers cannot verify or contradict the representations of facility staff or written policies. Third, interviews with detainees are made difficult because the DHS does not provide reviewers with Spanish or other interpreters, and DHS personnel conducting the reviews need not be proficient in Spanish or any other non-English language. Fourth, the DHS does not analyze the results of the annual reviews or use them to generate policy changes aimed at increasing compliance with the Detention Standards. Finally, even if a facility does not comply with several Detention Standards, ICE does not require temporary cessation of use of the facility or termination of the facility’s contract.

### Sample Violations of Detention Standards: Access to Legal Materials

The ICE Detention Standards contain a Standard entitled “Access to Legal Material.” This Standard requires all facilities housing ICE detainees to maintain law libraries with specific immigration and legal materials, provide supplies, computers, and/or typewriters to facilitate legal research and

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<sup>1</sup> See *Orantes-Hernandez v. Gonzales*, No. CV 82-1107 (C.D. Cal. 2006) (Plaintiffs Opp’n to Motion to Dissolve).

<sup>2</sup> Testimony of Norman Rabkin available at <http://hsc.house.gov/hearings/index.asp?ID=39&subcommittee=13>.

drafting, and made accessible to detainees in a reasonable manner. When facilities fail to provide access to legal materials, the vast majority of detained immigrants who are unrepresented by counsel are unable to research their cases, file briefs, and navigate the complexities of immigration law. Thousands of detained immigrants, including those with valid claims to asylum or protection under the Convention Against Torture, may lose their removal cases and be deported each year because the government failed to provide them access to legal materials demonstrating that their deportation is unlawful.

Facility reviews reveal that an overwhelming number of facilities failed to comply with key aspects of this Standard. In several cases, facilities failed to maintain any law libraries or legal materials. The ABA noted that detainees sometimes were unaware that a law library existed or of how to access legal materials -- a problem exacerbated by the failure of many facilities to outline library hours, policies and procedures in their detainee handbooks. Many facilities that maintained law libraries nevertheless failed to provide basic legal materials, and/or failed to supplement these materials with electronic databases, such as Lexis Nexis. Many facilities failed to post a list of their library materials. Where such materials were provided, detainees lacked staff assistance to help them understand the library's collection or to make use of English-only materials.

Facilities also imposed unduly restrictive library access policies. Several facilities, in clear violation of the Standard, required detainees to forego recreation in order to use the law library. Other facilities gave detainees fewer than the required five hours of weekly library access. Some facilities denied detainees the opportunity to obtain research and writing assistance from their peers, or hindered such efforts by limiting library use to one detainee at a time. Library access also was limited by the lack of physical space, forcing detainees to use the library one at a time or to postpone research. Some facilities failed to provide detainees with essential tools, such as computers, typewriters, pens and paper, to prepare legal submissions. Others had typewriters or computers that were either nonfunctional or available only for research. Still other facilities charged for pens, paper or photocopies, some regardless of a detainee's indigency, making the preparation of a legal case impossible.

#### Sample Violations of Detention Standards: Access to Telephones

The "Telephone Access" Standard requires facilities to provide "reasonable and equitable" telephone access to detainees. Telephone access is crucial, to allow detained immigrants to locate and retain counsel, to obtain the assistance of family members, and to contact others such as consulates who may have helpful information. In many cases, without adequate telephone access, detained immigrants will be unable to prepare for their hearings and will lose meritorious cases.

To comply with the Standard, facilities must provide telephone access rules in writing to each detainee, post those rules, provide at least one telephone per 25 detainees held, and maintain telephones in proper working order. Detainees must be allowed to make direct, cost-free calls to the immigration court and the BIA, to federal and state courts, to consular officials, to legal service providers, to certain government offices, in a personal or family emergency, or when the detainee can otherwise demonstrate a compelling need.

According to the facility reviews, several facilities failed to post their telephone policies, thereby depriving detainees of critical information about phone usage times and limits. In some facilities, telephone access policies were not provided in all languages spoken by a significant portion of the facility's population. At numerous facilities, telephones were not in good working order because of infrequent inspections or unmade repairs. At some facilities, telephones were provided in a ratio as high as 1 per 40 detainees, well beyond the 1:25 ratio required by the Standard.

Many facilities offered inadequate privacy for legal phone calls, interfering with detainees' attorney-client relationships and confidentiality. Several facilities lacked a procedure to assist detainees having trouble placing a confidential call. Other facilities did not allow detainees to call family members in other facilities. At some facilities, detainees held in administrative segregation were not afforded same phone privileges as those in general custody. Other facilities placed unduly strict time limits on calls or did not allow the requisite free telephone calls.

### Policy Recommendations

The ACLU of Southern California and National Immigration Law Center are preparing a report that will be released in the summer of 2007. The report, based on hundreds of DHS, ABA, and UNHCR reviews of detention facilities that were previously unavailable to the public, will detail scores of violations of over a dozen Detention Standards, including key standards relating to detainees' ability to prepare and win their removal cases. In most cases, these Detention Standard violations also represent violations of international standards concerning detention of pre-conviction populations and asylum seekers.

Based on our study of these reviews, and information from government officials regarding detention oversight, we agree that certain changes in policy are vital to ensure humane conditions of confinement for detained immigrants, in accordance with the U.S. Constitution as well as principles of international law.

First, DHS must adopt binding regulations governing the minimum requirements of detention. The ICE National Standards must be made binding and judicially enforceable. Second, DHS must ensure that all facilities comply with the Detention Standards, by training facility staff on the Standards and by maintaining a regular presence of DHS personnel at each state and local county jail where immigrants are detained. Third, DHS must expand and impose penalties on facilities that fail to comply with the Detention Standards and establish incentives for compliance.

In addition, DHS must improve its oversight of detention facilities. It should ensure that each facility is in fact reviewed on an annual basis, that those reviews require interviews with detainees, and that the reviews are conducted by staff who are specialists in the Detention Standards. Significantly more staffing and training resources must be devoted to oversight of detention facilities. DHS must promote and support reviews of facilities by independent agencies, including the ABA and UNHCR. All facility reviews must be publicly released, and DHS should analyze these reviews to determine which areas and which facilities require focused improvement. DHS should report the results of this analysis each year to Congress and the public. Finally, DHS should review select facilities on an unannounced basis.