AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

MOVING TOWARD MORE EFFECTIVE IMMIGRATION DETENTION MANAGEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON BORDER, MARITIME, AND GLOBAL COUNTERTERRORISM

OF THE

COMMITTEE ON HOMELAND SECURITY HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

DECEMBER 10, 2009

Serial No. 111–47

Printed for the use of the Committee on Homeland Security

Available via the World Wide Web: http://www.gpo.gov/fdsys/

U.S. GOVERNMENT PRINTING OFFICE

57–851 PDF WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON HOMELAND SECURITY

BENNIE G. THOMPSON, Mississippi, *Chairman*

LORETTA SANCHEZ, California
JANE HARMAN, California
PETER A. DEFAZIO, Oregon
ELEANOR HOLMES NORTON, District of Columbia
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
HENRY CUELLAR, Texas
CHRISTOPHER P. CARNEY, Pennsylvania
YVETTE D. CLARKE, New York
LAURA RICHARDSON, California
ANN KIRKPATRICK, Arizona
BEN RAY LUJÁN, New Mexico
WILLIAM L. OWENS, New York
BILL PASCRELL, JR., New Jersey
EMANUEL CLEAVER, Missouri
AL GREEN, Texas
JAMES A. HIMES, Connecticut
MARY JO KILROY, Ohio
ERIC J.J. MASSA, New York
DINA TITUS, Nevada

PETER T. KING, New York
LAMAR SMITH, Texas
MARK E. SOUDER, Indiana
DANIEL E. LUNGREN, California
MIKE ROGERS, Alabama
MICHAEL T. MCCAUL, Texas
CHARLES W. DENT, Pennsylvania
GUS M. BILIRAKIS, Florida
PAUL C. BROUN, Georgia
CANDICE S. MILLER, Michigan
PETE OLSON, Texas
ANH "JOSEPH" CAO, Louisiana
STEVE AUSTRIA, Ohio

I. LANIER AVANT, *Staff Director*
ROSALINE COHEN, *Chief Counsel*
MICHAEL TWINCHEK, *Chief Clerk*
ROBERT O'CONNOR, *Minority Staff Director*

SUBCOMMITTEE ON BORDER, MARITIME, AND GLOBAL COUNTERTERRORISM

LORETTA SANCHEZ, California, *Chairwoman*

JANE HARMAN, California
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
HENRY CUELLAR, Texas
ANN KIRKPATRICK, Arizona
BILL PASCRELL, JR., New Jersey
AL GREEN, Texas
ERIC J.J. MASSA, New York
BENNIE G. THOMPSON, Mississippi *(Ex Officio)*

MARK E. SOUDER, Indiana
MICHAEL T. MCCAUL, Texas
GUS M. BILIRAKIS, Florida
MIKE ROGERS, Alabama
CANDICE S. MILLER, Michigan
PETER T. KING, New York *(Ex Officio)*

ALISON NORTHOP, *Staff Director*
NIKKI HADDER, *Clerk*
MANDY BOWERS, *Minority Subcommittee Lead*

CONTENTS

MOVING TOWARD MORE EFFECTIVE IMMIGRATION DETENTION MANAGEMENT

Thursday, December 10, 2009

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER, MARITIME, AND GLOBAL COUNTERTERRORISM,
Washington, DC.

The subcommittee met, pursuant to call, at 10:09 a.m., in Room 311, Cannon House Office Building, Hon. Loretta Sanchez [Chairwoman of the subcommittee] presiding.

Present: Representatives Sanchez, Harman, Lofgren, Cuellar, Kirkpatrick, Pascrell, Green, and Souder.

Ms. SANCHEZ [presiding]. Good morning, everybody. The subcommittee will come to order, and the Subcommittee on Border, Maritime, and Global Counterterrorism is meeting today to receive testimony on moving toward more effective immigration detention management.

Today we are gathering to hear testimony from key stakeholders and advocates on the current immigration detention system and the challenges to reforming detention standards.

This hearing comes at a crucial time since the Department of Homeland Security is currently considering how to reform and overhaul the current system.

This past August, Immigration and Customs Enforcement, or ICE, Assistant Secretary John Morton and Secretary Napolitano highlighted vast changes that they plan to make to the immigration detention system.

As someone who has advocated for improved medical treatment at detention facilities, for example, I am pleased that these changes are likely to include the hiring of health and medical experts as part of the new Office of Detention Policy and Planning.

As a follow-up to this hearing, early next year we will conduct a second hearing to hear directly from ICE about their proposals and their plans to improve the detention system. But today we want to hear from you.

As an advocate for improved and robust alternative-to-detention programs for vulnerable populations and non-criminal aliens, I am interested to hear what the witnesses today will suggest for a program to move forward.

Since the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act in 1996, immigrant detainees have reached an all-time high of 33,400 people.

That is astonishing, considering that in 1996 the amount was under 9,000, but it is not surprising considering that almost $800 million, the largest expenditure for ICE, is spent annually on detention bed acquisition.

I would like to hear from our panel of witnesses about what ideas they have to move beyond "bed acquisition" as a detention strategy.

Furthermore, ICE currently uses a web of detention facilities, ranging from contract detention facilities to over 350 local and State facilities, along with Federal-Government-run facilities.

Unfortunately it seems like this variety of facilities has made it difficult to ensure that there are some National standards that are being adhered to at all of the facilities.

So I believe it is extremely important that any detention facility acting on behalf of the United States adhere to a clear and standard level of oversight and accountability.

With the opportunity to discuss these issues today, and the wide range of perspectives our panel represents, my hope is that we will hear about specific actions and policy changes that need to be taken in order to improve the system.

As we all know, the concerns and the issues that I have outlined today are just some of the many challenges that we face in overhauling our detention system. But this is part of what our committee oversees.

On a final note, it is important to recognize that of the thousands of detainees being held in our detention facilities, 58 percent of them have no known criminal history. However, they are still held in expensive criminal detention facilities.

So I thank our witnesses today, and I look forward to your testimonies and ideas.

Now I yield to my Ranking Member, the gentleman from Indiana, Mr. Souder, for his time.

Mr. SOUDER. Thank you, Madam Chairwoman, and we worked together on many issues and agree on many, but I have significant concerns about the tone of this hearing.

It is one thing to advocate for facilities to be safer or more humane. However, what we are doing is holding people who—and we have done those hearings in the past, and this is for people who have been arrested.

It is entirely one thing to argue that we are holding too many aliens in detention facilities, and they should be kept in facilities nicer than those available to U.S. citizens who have been arrested.

The very basic fact is that aliens in detention facilities are there because they have been arrested for violating U.S. law. Under existing law, the penalty for illegal presence is up to 6 months in prison, with a maximum sentence of 10 years for multiple reentries. This is outside the penalty for any other criminal act they may have committed.

I think the most effective immigration reform is to truly enforce the laws on the books. Detention is important for homeland security, public safety, and is a deterrent for illegal border crossers and false claims of asylum.

In March 2007 this subcommittee held a two-part hearing on alien detention. Then-ICE director for detention and removal, John

Torres, testified that 90 percent of aliens released from detention with a notice to appear absconded and never showed up for their immigration hearings.

It is not safe or efficient to release thousands of foreign nationals that are in this country illegally. They should be held in detention centers until their cases are heard and resolved.

Aliens in detention facilities are not here on vacation. There is a flexibility to discuss how to improve the quality of facilities, since that seems to be a concern, but they should not be kept in facilities that are better than we give to citizens who are arrested and awaiting trial.

I agree that they should be safe and humane, and we have held hearings because there have been problems with safe and humane standards in some of these facilities.

But violent criminals should not be—and I agree that violent criminals should not be mixed with aliens who have not committed violent crimes like we try not to do in our American prison system.

Controls should be in place to ensure that gang violence does not escalate in detention centers. Often they self-identify, and they do that in the American prison system, too, so don't get two people from the same gang in the same cells. Those are legitimate concerns that we should be looking at.

However, when we start talking about releasing thousands of arrested people who have come here illegally on their own recognizance, despite the high absconding rates, giving them free dental care outside of emergency services, or renting hotels, I think we have crossed into the ridiculous.

Non-citizens arrested, held in detention centers, have broken the law. They should not have better facilities or privilege that U.S. citizens who have broken the law are getting held in prison. That should be the basic standard here.

Are we going to give somebody who has been arrested for illegally entering the United States better health care, better facilities, more comfortable facilities, than somebody who is an American citizen?

It would be impossible for me to explain to Hoosiers that the Department of Homeland Security is going to purchase a number of hotels around the country in order to house illegal and criminal aliens in comfortable, low-security settings, because they don't see that as fair when American citizens don't get the same treatment.

I think it is important for us to discuss the role detention plays in immigration enforcement and border security, especially as immigration reform legislation is likely to be a focus again next year.

This is not the time to scale back, create a whole bunch of other arguments, because if we do, we simply are not going to be able to get true immigration reform, because part of this is we have had our quotas too low.

If our quotas are too low, we start to develop a backlog of American demand. But the Americans want to see the border sealed. They want to see people who have broken the law held accountable. In my opinion, the thrust of this could set us back in trying to have true immigration reform.

I yield back.

Ms. SANCHEZ. I thank my Ranking Member. Well, that is one of the reasons why we have everybody before us and why we will have ICE also, to see what type of facilities and just as a side note, Mr. Souder, I am more concerned about the cost of incarcerating people, and what type of people we are incarcerating, and who we are holding them together, and whether there are emergency services available.

More importantly, if these people have a claim under current law to be in this country, that they get through the process in a timely manner in order to put that forward.

My understanding is sometimes because of the diverse patchwork of detention facilities that we have, people may be moved around so much that they actually don't get their hearing or their judicial process as we would anticipate they could, especially if they have some claim—some rightful claim to be here under the current law.

So that is why I called this hearing, not to suggest that we would purchase Hilton hotels. They are not good investments these days anyway.

The Chairwoman now will recognize the Chairman of the full committee—is not here, nor is the other, so other Members of the subcommittee are reminded that under the committee rules, opening statements may be submitted for the record.

I will welcome our panel of witnesses. Our first witness, Dr. Dora Schriro—is that correct?—was appointed as the commissioner of the New York City Department of Correction on September 21, 2009.

Immediately prior, she had served as special advisor to Secretary of Homeland Security Janet Napolitano on immigration and customs enforcement and detention and removal, and director of the Office of Detention Policy and Planning for the Department.

In that role, she directed work on the Department's plan to overhaul the Nation's immigration detainee system. Dr. Schriro has also served as the director of the Arizona Department of Corrections and the Missouri Department of Corrections.

Welcome.

Our second witness, Mr. Christopher Crane, has been an immigration enforcement agent at the Department of Homeland Security since 2003. In that capacity, he has worked in the Criminal Alien Program, or CAP, as we know it, and has served as a member of an ICE fugitive operations team.

Prior to joining ICE, Mr. Crane served this Nation for 11 years in the U.S. Marine Corps.

Welcome.

Our third witness, Mr. Donald Kerwin, Jr., is vice president for programs at the Migration Policy Institute, or MPI, overseeing all of MPI's national and international programs.

Prior to joining MPI, Mr. Kerwin worked for more than 16 years at the Catholic Legal Immigration Network. Mr. Kerwin is also an advisor to the American Bar Association's commission on immigration and a member of the Council on Foreign Relations' immigration task force.

Welcome.

Our fourth witness, Ms. Brittney Nystrom, is the senior legal advisor at the National Immigration Forum. In that position, she fo-

cuses her advocacy on civil rights and due process issues facing immigrants and asylum seekers.

Previously, Ms. Nystrom represented detained immigrants in removal proceedings and advocated for humane detention conditions as a legal director at the Capital Area Immigrants' Rights Coalition.

Welcome also to you.

Our fifth witness, Mr. Mark Krikorian, has served—is it Armenian?—Krikorian has served as executive director of the Center for Immigration Studies since 1995. He holds a master's degree from the Fletcher School of Law and Diplomacy, a bachelor's degree from Georgetown University.

Before joining CIS Mr. Krikorian held a variety of editorial and writing positions.

So without objection, the testimony—your full statements—will be inserted into the record. I will ask each of the witnesses—it is the only panel we have, and hopefully we won't have votes or anything called so we can actually get a good discussion going.

I now ask the witnesses to please summarize your statements for 5 minutes or less, and we will begin with Dr. Schriro.

Welcome.

STATEMENT OF DORA SCHRIRO, COMMISSIONER, NEW YORK CITY DEPARTMENT OF CORRECTION

Ms. SCHRIRO. Good morning, Ms. Sanchez, Mr. Souder, Members of the subcommittee. I am the author of the report on preliminary assessment with recommendations for improvements, and I am pleased to speak with you today.

As a matter of law, civil detention, unlike criminal incapacitation—and yet civil and criminal detainees tend to be seen by the public as comparable, and typically both confined populations are managed in similar ways by governments.

With only a few exceptions, the facilities that ICE used to detain aliens were built and operate as jails. Additionally, ICE adopted corrections detention standards to guide the operation of its facilities.

Establishing standards and expressing expectations for civil detention are our challenge and our opportunity.

The commissioning and the release of the report speaks to this administration's commitment to systems reform. The directive by the Secretary within a week of her confirmation was plain-spoken and heartfelt, to conduct a study and prepare a report that identified and addressed the root causes concerning the—I am sorry, concerns impacting detention and removal operations.

Likewise, my access to information, detention facilities, and the detainee population was authorized without hesitation or equivocation by Assistant Secretary Morton. It is their resolve that resulted in its publication and will produce the reforms to come.

The information for this report came from my tours of 25 detention facilities; analyses of agency records and reports; conversations with detainees and staff; meetings with over 100 NGOs; discussions with DHS, DOJ, Members of Congress and their staffs; and studies authored by Government and others, including the GAO, DHS, ABA, and the United Nations.

I drew, of course, from my own experience and work history, published research, formal education, and training.

The report begins with a description of ICE detention policy and continues with findings based upon my analysis. Here are several of those core findings. ICE operated the largest detention and supervised release program in the country.

A total well in excess of 375,000 aliens from 221 countries were in custody or under supervision by ICE during fiscal year 2008, with a slightly larger number at the end of 2009.

Primarily responsible for its operation, our law enforcement personnel, who has extensive expertise performing detention functions—however, with little experience in the design or delivery or the acquisition and evaluation of detention facilities and community-based alternatives.

In application, the operation of detention facilities was delegated to county sheriff departments and the private sector. On-site monitoring and annual evaluations were also performed primarily by the private sector.

ICE lacked a number of the basic information and informational systems and critical planning and management tools necessary to operate a system of this size and magnitude. Instead, it employed a number of strategies to provide housing and health care but had difficulty sustaining detention and health care systems.

In terms of the day-to-day operations, 24 field offices were responsible for the acquisition and assignment of detainees to beds. Decentralized acquisition and assignments impacted bed utilization, increased length of stay and numbers of transfers, and aggravated disparities between arrest activity and bed capacity.

Conditions of detention varied by location. Access to services was limited, as was access to ICE officials difficult. Idleness was pronounced. The method and means by which aliens had opportunity to address grievances were lacking.

Disciplinary decisions were largely delegated to facility providers. Still, untoward incidents by detainees were very few in number.

Finally, the policies that ICE adopted and the practices that it employed imposed more restrictions and incurred more costs than were necessary to effectively manage most of the alien population. I earnestly believe that ICE wants to do better, and I see that it is taking steps in that direction.

My report was written with one purpose in mind—not as a criticism of the current practices but an examination and an articulation of a vision for the future, a system about how we could succeed as Government.

To that end, the report includes a number of key recommendations in seven areas—population management, alternatives to detention, detention management, programs management, health care, special populations, and accountability.

Due to the unavailability of time, I won't be able to touch on any of them now but perhaps can do so in the course of your questions.

In closing, I would like to say that the report was intended to be vetted within the Department and ICE, by Congress and the many stakeholders and organizations, all of us committed to improvement. I appreciate your invitation for me to participate in this very important process.

[The statement of Ms. Schriro follows:]

PREPARED STATEMENT OF DORA SCHRIRO

DECEMBER 10, 2009

Good morning, Ms. Sanchez, Mr. Souder, and Members of the subcommittee. My name is Dr. Dora Schriro. I was privileged to serve as Special Advisor on ICE Detention and Removal Operations to DHS Secretary Napolitano and as the first Director of the Office of Detention Policy and Planning at ICE. I authored *A Report on the Preliminary Assessment of ICE Detention Policies and Practices and A Recommended Course of Action for Systems Reform* this past September.

THE CHALLENGE AND THE OPPORTUNITY: A SYSTEM OF CIVIL DETENTION

As a matter of law, civil detention is unlike criminal incapacitation and yet, civil and criminal detainees tend to be seen by the public as comparable and typically, both confined populations are managed in similar ways by Government. Each group is ordinarily detained in secure facilities with hardened perimeters often in remote locations at considerable distances from counsel and their communities. With only a few exceptions, the facilities that U.S. Immigrations and Customs Enforcement (ICE) used to detain aliens were built, and operate, as jails and prisons to confine pretrial and sentenced felons. Their design, construction, staffing plans, and population management strategies were based largely upon the principles of command and control. Additionally, ICE adopted detention standards that were based upon corrections law and promulgated by correctional organizations to guide the operation of jails. Establishing standards and expressing expectations for civil detention are our challenge and our opportunity.

INTRODUCTORY REMARKS

The commissioning and the release of the Report, is representative of this administration's commitment to systems reform. The directive by Secretary Janet Napolitano within a week of her confirmation was plainspoken and heartfelt: To conduct a study and prepare a report that identified and addressed the root causes of concerns impacting detention and removal operations. Likewise, access to information, detention facilities, and the detainee population, was authorized without hesitation or equivocation by Assistant Secretary John Morton. It is their resolve that resulted in its publication and will produce the reforms to come.

The information for this Report came from my tours of 25 detention facilities across the country; analyses of agency records, reports, and other documents; conversations with detainees and facility staff; meetings with over 100 non-governmental organizations; discussions with employees at the Departments of Homeland Security (DHS) and Justice (DOJ), Members of Congress and their staff and State and local elected officials; and studies authored by Government and others including the Government Accountability Office (GAO), Department of Homeland Security (DHS), the United Nations (UN), the American Bar Association, (ABA), and many non-Governmental organizations. I drew as well as upon my professional work history, research, and formal education, and training.

CORE FINDINGS

The Report begins with a description of ICE detention and removal policy, procedures, and practices and continues with findings based upon analyses of its activities and outcomes. Here are several.

- ICE operated the largest detention and supervised release program in the country. A total of 378,582 aliens from 221 countries were in custody or supervised by ICE in fiscal year 2008; activities in fiscal year 2009 remained at a similar level. On September 1, 2009, ICE detained 31,075 aliens. It supervised an additional 19,169 aliens in the community on alternatives to detention (ATD) programs.
- On September 1, about two-thirds (66 percent) of the detained population were subject to mandatory detention. Approximately one-half (51 percent) were felons of which; around one-tenth (11 percent) had committed violent crimes. The majority (60 percent) of aliens in ICE custody were encountered when in criminal custody; about one-half (48 percent) of all admissions to ICE during the first 6 months of fiscal year 2009 originated through the Criminal Alien Program, another 12 percent were identified through 287(g) partnerships. Although both of these programs focused on criminal aliens, many aliens encountered through them did not have criminal convictions.

- On average, an alien was detained 30 days however; time in detention varied appreciably between those pursuing voluntary removals and those seeking relief. As much as 25 percent of the detained population was released within a day of admission, 38 percent within a week, 71 percent in less than a month, and 95 percent within 4 months. Less than 1 percent of all admissions, about 2,100 aliens, were held for a year or more. Due to differences in docket management, the time to disposition was appreciably longer for aliens assigned to alternatives to detention programs.
- ICE lacked basic information and information systems and critical planning and management tools. It operated without benefit of cost models, site selection criteria, population forecasts and bed plans, validated custody classification and risk assessment instruments, a detainee locator system and daily count sheets, uniform medical and mental screenings and scores, electronic detention and medical record systems, capacity reports, etc. Where ICE employed other systems' strategies, impact was often limited by application.
- The acquisition and renewal of detention beds, the assignment of detainees to facilities and ATD programs, and the transportation of detainees between facilities were accomplished in the field by the 24 field offices. Decentralized acquisition, assessments, and assignments impacted bed utilization, increased lengths of stay and numbers of transfers, and aggravated disparities between arrest activity and bed capacity.
- ICE was comprised primarily of law enforcement personnel with extensive expertise performing removal functions, but not in the design and delivery or in the acquisition and evaluation of detention facilities and community-based alternatives. The operation of detention facilities was delegated to county sheriffs departments and the private sector. On-site monitoring and annual evaluations were performed primarily by the private sector. ICE contracted with one vendor for on-site monitoring at 53 locations, representing a majority of beds but about one-sixth of the facilities it used. It contracted with another vendor to conduct an annual assessment of compliance with detention standards at all locations. ICE maintained some presence in most facilities, primarily by means of detention officers who performed case removal functions.
- Fewer than 50 of those 300 facilities averaged 100 or more detainees daily with about one-half of the entire detained population secured in 21 locations. Facilities were designated by length of stay, with 93 percent of all beds approved for use for more than 72 hours. With the exception of families with minor children, special populations were dispersed.
- Conditions of detention varied by location. Where facilities were occupied by both civil and criminal detainees ICE detainees, and particularly female detainees, were disadvantaged by more restricted movement and less access to programs. These conditions were compounded at locations where civil and criminal detainees were assigned to the same housing units. In general, idleness was pronounced. Access to legal services, recreation, religious activities, and visitation varied by facility location and operation. Detainees whose lengths of stay were longer were particularly impacted. The methods and means by which to address grievances were infirm. Disciplinary decisions were largely delegated to facility providers. Still, untoward incidents by detainees were few in number.
- ICE utilized a variety of strategies to provide health care to the detained population but these strategies did not constitute a health care system. Detainees were assigned to detention facilities prior to assessing their health care requirements sometimes resulting in high-need detainees being placed at facilities with limited on-site health care or routine oversight. Health care records were not maintained or stored centrally. Medical summaries were not always provided when detainees were transferred. Approval of off-site health care was cumbersome and subject to delay. The assessment, treatment, and management of pandemic and contagious diseases were inconsistent. Some facilities were unable to manage large-scale outbreaks without impacting other locations' operations.
- The policies that ICE adopted and the practices that it employed, imposed more restrictions and incurred more cost than were necessary to effectively manage most of the alien population.

KEY RECOMMENDATIONS

The Report was written with one purpose in mind: Not as a criticism of the current practices or as fuel for parties on either side of an issue, but as an examination and articulation of a vision for the future—a vision of how a civil system of deten-

tion could be structured, organized, and calibrated to match the ICE mission and to ensure its success.

To that end, the Report also outlined a framework of reforms and recommendations in seven areas necessary to the design and delivery of a system of civil detention. These seven components are Population Management, Alternatives to Detention, Detention Management, Programs Management, Health Care, Special Populations, and Accountability. Among its recommendations are these.

- Population Management is the continuum and the conditions of control exercised by ICE over aliens in its custody and under its supervision from least to most restrictive, and the strategies by which aliens are managed pending their removal or relief. Humanely detain and supervise aliens in the least restrictive settings consistent with assessed risk and provide health care and other program services commensurate with identified needs. Make the size of the system manageable; reduce the total number of facilities, using only those whose design supports the delivery of care, custody and control for civilly detained general and special populations and otherwise meet enumerated expectations. Centralize procurement, regionalize oversight, and localize on-site supervision. Align facility locations and bed capacity with arrest activity, lengths of stay, and special populations. Locate facilities nearby consulates, pro bono counsel, EOIR services, and 24-hour emergency medical care. Develop a National system of transportation. Elevate detention duties within ICE as a distinct discipline to sustain its redesign and delivery.
- Detention Management focuses on the core operating assumptions that affect conditions of civil detention. Use validated instruments to assess propensity for violence and need for health care and other services, and to inform assignment to facilities. Do not comingle custody classifications and civil with criminal detainees. Restrict transfers between judicial circuits and when detainees are represented by counsel, within circuits. Develop specialized caseloads. Reduce idleness; expand access to dayrooms and support space in other parts of the facility consistent with custody classification and comparable to other populations detained at that location. Ensure capacity is proportionate and appropriate to the size of the population. Monitor disciplinary practices; limit utilization of punitive segregation. Maintain contact with detainees regardless of location. Improve formal and informal on-site grievance processes. Provide timely translation services.
- Alternatives to Detention (ATD) are the community-based supervision strategies that make up a significant portion of less restrictive conditions of control. Use validated instruments to assess and periodically reevaluate risk of absconding, and to inform the level and kinds of supervision to assign. Expand program capacity to serve those who are statutorily eligible and otherwise qualified. Enroll eligible aliens at the earliest opportunity; periodically reevaluate the detained population for eligibility. Utilize electronic monitoring only when risk of absconding warrants. Maintain an effective fugitive apprehensive response.
- Health Care, including medical, mental health, and dental care, is a fundamental right of all detainees in ICE custody. Establish an integrated health care system for medical, mental, and dental health, with initial assessments, comprehensive examinations, and centralized medical records to inform facility and housing assignments, and timely and necessary care regardless of the anticipated date of removal or release. Convene a panel of health care professionals to establish standards of care for detainees. Maintain an infection control program and surveillance system. Integrate wellness activities and adopt preventive health care practices. Ensure medication is dispensed timely and medical diets are provided. Ensure compliance with ADA requirements.
- Programs Management encompasses the design and delivery of law library and other activities affording aliens access to the court; indoor and outdoor recreation; family contact including visitation and communication by mail and phone; and religious activities. Allocate sufficient space and afford additional time to access programs. Provide translation services and programs in more than one language. Support family and attorney contact with improved visitation and mail service and lower phone cost. Expand the Legal Orientation Program. Comply with RLUIPA.
- Special Populations include families with minor children; females; unaccompanied minors; the ill and infirm; asylum seekers; and other vulnerable populations. Consolidate special populations to improve delivery of special services and to lower cost. Modify population, detention, ATD, and programs management to meet their unique needs. Assign female staff to supervise female detainees or adopt knock-and-announce practices. Discontinue utilization of seg-

regation cells for medical isolation and suicide observation. Select and assign aliens to appropriate facilities.

- Accountability concerns the operating framework process and tenets for decision-making by which ICE provides oversight, pursues improvement, and achieves transparency in the execution of each part of its plan. Develop and adopt civil detention standards and operating procedures consistent with civil detention. Expand Federal oversight of key detention operations, track performance, and annually evaluate outcomes. Discontinue use of detention facilities that perform poorly. Assign on-site expert Federal employees of rank to oversee detention activities, to intercede whenever warranted, and to ensure the integrity of grievance and disciplinary processes. Optimize the presence of deportation officers with additional training and supervision. Create an office within ICE to receive and to respond to complaints and concerns.

NEXT STEPS

The Report was written to be vetted within the Department and ICE, Congress, and the many stakeholders and organizations also committed to improvement. It is also important that the progress of recent months toward equipping ICE with management tools and a deeper understanding of detention policy, both critical to its mission, should continue. Some recommendations can be actualized quickly. Others may require further debate, additional analysis, and consideration. A number of them are already underway. Whether realized immediately or incrementally, these changes and this improvement are within our reach nonetheless and should be pursued.

Thank you for this opportunity to appear before you. I welcome your comments and questions.

Ms. SANCHEZ. Thank you so much.

Now we will hear from Mr. Crane to summarize your statement for 5 minutes or less. Mr. Crane.

STATEMENT OF CHRISTOPHER L. CRANE, VICE PRESIDENT, DETENTION AND REMOVAL OPERATIONS, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES NATIONAL ICE COUNCIL–118

Mr. CRANE. Madam Chairwoman Sanchez, Ranking Member Souder, Members of the subcommittee, good morning.

Regarding the proposed detention reforms, I will begin by saying that the union and field managers were excluded from participating in their development, which we believe was a real mistake.

The union has no detailed written information regarding the reforms. We can only address statements made by agency representatives during briefings on the reforms held in November of this year.

While we applaud the idea of reform, agency proposals made known to the union appear to put detainees and officers at greater risk than ever before. ICE will build what it is referring to as low-custody open-campus facilities that will house approximately 2,000 detainees who are free to move throughout the respective facility 24 hours a day.

When ICE used the terms low-custody and open-campus, we initially envisioned non-criminal detainees only. However, according to agency representatives, the low-custody open-campus facilities will hold any convicted criminal not convicted of the following five charges—murder, rape, kidnaping, assault with a deadly weapon, and armed robbery.

This list of charges does not exclude many other potentially dangerous groups of criminals from being placed in low-custody facilities such as drug dealers, gang members, sexual predators, and any person convicted of a violent crime that did not involve a weap-

on. This would include aggravated assault and assault of a police officer.

With the agency's announcement that ICE will have a Nationwide detainee population of 85 to 90 percent convicted criminals within the next 12 months, we can only assume that these facilities will be holding similar populations. Surprisingly, our representatives were told that the non-criminal detainees will also be held in these same facilities.

We do not believe that these facilities are truly low-custody detention, nor do we believe that they will provide the appropriate safeguards for non-criminal detainees.

In terms of ICE employees, our concerns are similar. In the midst of criminal populations such as these, our officers should be afforded every safeguard afforded to any State or Federal officer working with criminal detainees. The open-campus environment is clearly unsafe and impractical.

ICE has also—excuse me, proposed that detainees will have full contact visitation. However, unlike other agencies, ICE officers will be barred from performing strip searches to prevent dangerous weapons and drugs from entering ICE facilities.

The council views this proposal as unacceptable based on the safety hazards it presents to ICE detainees, ICE officers, and contract guards.

With regard to contract facilities and contract guards, DRO officers in the field report that inappropriate conduct by contract guards is not uncommon.

The specific allegations made against the contract guards range from sexual misconduct with detainees and rape to the smuggling of illegal contraband into facilities such as illegal drugs. Officers report that ICE managers are aware of the problem but don't seem interested in doing anything about it.

We believe that the open campus environment will only make this type of conduct more prevalent as detainee populations will be free to move about the building unescorted, making them far more accessible to contract guards and this type of misconduct.

In an attempt to provide better oversight in the facilities, the agency has proposed the hiring of 23 detention service managers. Such a small group is unlikely to have any significant impact on increasing oversight.

Prior to ICE, there was a position within the Immigration and Naturalization Service called the Detention Enforcement Officer, or DEO. INS had officers to perform law enforcement functions as well as officers to perform detention, transportation, and court duties.

It is a model that many law enforcement organizations continue to use with great success. We believe that DEOs would provide ICE's National detention program with the increased physical presence and oversight that is currently lacking.

Finally, I do not think it would be an exaggeration to say that the majority of problems within our detention system as identified by the agency involve contract workers and not Federal employees.

For this reason, and because the administration's professed opposition to unnecessary and inappropriate outsourcing, we were sur-

prised to learn that on September 1, 2009 the agency awarded a new contract for $71.5 million to an outside contractor.

These contractors will again be performing DRO work. in light of the problems we are now trying to overcome with regard to contract workers, we simply don't understand the agency's logic.

Thank you for the opportunity to testify here today. I hope you found the information that we provided to you useful as you consider ways to improve the operations of the ICE DRO program. Thank you.

[The statement of Mr. Crane follows:]

PREPARED STATEMENT BY CHRISTOPHER L. CRANE

DECEMBER 10, 2009

Chairman Sanchez and Members of the subcommittee: Good morning. My name is Chris Crane and I am the vice president of Detention and Removal Operations (DRO) of the National Immigration and Customs Enforcement Council 118 of the American Federation of Government Employees (AFGE). Council 118 is the union representing approximately 7,200 ICE employees who work primarily in Detention and Removal Operations. I have been an ICE Immigration and Customs Enforcement Officer for the past 6.5 years. During that time, I have observed many well-intentioned plans developed by this agency to improve operations, only to see them fail due to a lack of resources, commitment, or leadership.

In my capacity as an ICE Immigration Enforcement Agent (IEA), I have worked the Criminal Alien Program (also known as CAP) for approximately 5 years. CAP is a program within ICE which targets criminal aliens who were first arrested by local police or other Federal law enforcement agencies and charged criminally. I have also served as a member of an ICE Fugitive Operations Team whose primary function was to apprehend foreign nationals who had not departed the United States after receiving an Order of Deportation from a Federal immigration judge.

ICE DETENTION REFORM PLAN

Before commenting on the ICE DRO plan, I want to make clear that the Union has had no involvement in developing the detention reforms which are currently being proposed by ICE and the Department of Homeland Security. The Union learned of ICE's plan to reform its detention facilities through a CNN broadcast. Since that time, our requests to participate in the planning or implementation of these reforms or provide any type of input have been unsuccessful. It was not until November 10–13, 2009, that three Union representatives attended briefings regarding the agency's proposed reforms. Since no detailed written plans have been provided to the Council, I can only address verbal statements made by ICE and DHS representatives during these briefings, which were later communicated to me by union representatives who were present.

The Union's overall impression of these proposed reforms is not positive. We do not believe that the combined efforts of ICE and DHS have resulted in proposals that will effectively safeguard non-criminal ICE detainees or ICE employees. In fact, we are quite concerned that these proposed changes could potentially result in heightened risks for some groups of ICE detainees as well as ICE employees and contract guards.

The agency has proposed the construction of multiple new detention facilities throughout the United States. Each facility will house approximately 2,000 ICE detainees. The detainees will be allowed to move freely throughout each of the new ICE detention facilities 24 hours a day.

Phyllis Coven, Acting Director of the ICE Office of Detention Policy and Planning (ODPP) stated that one goal in constructing these new detention facilities would be to reflect living conditions that we might find in our own homes. While these measures clearly reduce security within ICE detention facilities, ICE has concurrently announced its goal of having a Nation-wide detainee population consisting of at least 85 to 90% convicted criminals within the next 12 months.

Even though ICE has identified these new facilities as "low custody detention," new screening procedures for ICE detainees will classify both criminal and non-criminal detainees as "low custody," resulting in high criminal populations in these facilities mixed with individuals who have had little or no contact with police in their lives. With thousands of criminal detainees moving freely about each facility,

ICE's ability to effectively observe, monitor, and control inappropriate behavior and safeguard detainees will be greatly diminished. Previously identified problems such as alleged sexual misconduct by contract guards with female detainees could rise as access to detainee populations will be increased in the open campus environment.

FULL CONTACT VISITATION

ICE has proposed full contact visitation rights for detainees, but maintained its agency-wide ban on conducting strip searches. To our knowledge, ICE will be the only Federal or State agency to have such a policy. Agency representatives acknowledged that contraband smuggled into ICE facilities will increase. With detainee populations of 85% to 90% or greater convicted criminals, and the unstoppable presence of gangs, we believe that this policy on full contact visits without strip searches could dramatically increase the presence of illegal drugs and weapons inside ICE facilities. When questioned about the proposed full contact visits, agency representatives admitted that they were not aware of ICE's agency-wide ban on strip searches and therefore did not consider that fact when creating the proposal of full contact visits. Union representatives and field managers present were unsettled by this disclosure.

These proposed changes (and others like them) demonstrate not only a fundamental misunderstanding of who is housed in these facilities, but also indicate a stronger desire by the agency to create a harmonious environment, rather than a safe and efficient one. The lack of security and oversight within the new facilities will negatively impact both ICE detainees and ICE employees alike. In the midst of criminal populations such as this, AFGE simply does not understand why ICE employees will not be provided with the same security measures as State, local, and Federal law enforcement officers working in the jails and prisons around the Nation where ICE detainees were originally held on criminal charges.

ICE DETAINEE POPULATIONS

The majority of ICE immigration-related arrests are presently generated by the ICE DRO Criminal Alien Program, and in some areas, its non-Federal counterpart, the 287(g) Program. This means the majority of ICE arrests and therefore the majority of individuals in ICE custody, come from county and State jails. These individuals were arrested by another law enforcement agency and charged criminally prior to ICE taking them into custody. This information would appear to be in conflict with public reports stating that only 50% of ICE detainees are convicted criminals. In fact, an ICE representative recently stated that only 53% of all ICE detainees have criminal convictions. However that same individual was unable to elaborate on the status of the remaining 47% of ICE detainees, as is frequently the case with public reports on the matter. Of the 47% of unaccounted for ICE detainees, the ICE Council believes that as many as 30% to 40% were arrested on criminal charges but released to ICE without prosecution because local jails and prosecutors Nation-wide are overwhelmed by the criminal alien problem and lack the resources to house and prosecute the arrestees. This has resulted in ICE becoming a dumping ground for individuals arrested on criminal charges who were never cleared of those charges in a court of law.

CAP officers focus on individuals who have been arrested for serious crimes such as sex offenses, crimes of violence, and drug distribution. It is not uncommon for these prisoners to be released to ICE custody without conviction within 10 minutes to 24 hours following notification to the jail by ICE of the prisoner's immigration status. Virtually none of these prisoners were released to ICE because they were cleared of the charges against them in a court of law, but rather because county and State detention facilities were overcrowded and underfunded. This is an epidemic problem Nation-wide. We believe that many of the ICE detainees who were arrested on criminal charges, but were never cleared of those charges in a court of law, do pose a significant threat to the public, our employees, and most certainly other ICE detainees who have no criminal history whatsoever.

ICE should avoid implementing any policy that allows many of the very worst criminals to be released because jails in our local communities lack the funding to prosecute. Likewise, ICE cannot ignore the criminal arrest records of aliens without convictions when classifying them for detention or as part of any overall threat assessment. Arrest history and prior immigration history are typically the only records available to ICE officers as foreign nationals in the United States illegally generally have no other tangible records. Ignoring the criminal arrest records of detainees who were not cleared of their charges in a court of law is the equivalent of playing Russian roulette with the safety of the public, ICE officers, and most certainly the other detainees in ICE custody whose safety is our responsibility. The Union be-

lieves that ICE leadership has an obligation to the American public and ICE employees to release more accurate statistics regarding detainee populations so that there can be transparent and informed discussion with respect to the threat level of ICE detainees and its impact on proposed detention reforms.

ICE LOW CUSTODY FACILITIES

ICE and DHS defined "low custody" as any person who has not been convicted of one of the following five charges: Murder, rape, armed robbery, kidnapping, or assault with a deadly weapon. By that definition, any person who did not receive a conviction for one of those five offenses would be housed in the proposed low custody facilities. I will begin by saying that the last ICE detainee who assaulted me in a detention setting, and received a 13-month Federal sentence for assaulting a Federal officer, had never been convicted of any of these crimes. Furthermore, since he did not use a weapon in the commission of the assault, according to ICE's proposed screening criteria, he would still be placed in a low custody ICE facility if arrested again. He would be housed with individuals convicted of non-violent crimes such as DUI or fraud. He may also be housed with individuals without a single arrest. He will freely move about the facility 24 hours a day with 2,000 other detainees who are almost all convicted criminals themselves.

DHS stated that it is modeling the proposed ICE low custody facilities after a model currently in use by the Bureau of Prisons (BOP). It is our understanding that BOP prisoners housed in BOP low custody facilities have typically proven themselves over long periods of time (often years) to be trustworthy or rehabilitated before being placed in a BOP low custody prison.

Conversely, the average custody time of an ICE detainee is just 6 weeks. This is often closer to 1 to 2 weeks. ICE DRO officers will not have years, but instead typically less than 1 full day to observe incoming detainees and screen them for low custody detention. DHS has proposed that an intake questionnaire be used to screen the detainees for placement in the low custody facilities. We believe that any questionnaire would have very limited success in ensuring that non-criminal detainees or unarmed Federal law enforcement officers working in these open campus criminal facilities would be safe.

Similar detainee screening questionnaires currently in use by ICE have been ineffective. A recent article in *The Houston Chronicle* entitled "Criminal Deportees Often Fly Unescorted," as well as formal complaints by Senator Mary Landrieu and Congressman Jason Chaffetz illustrate that fact. All discuss Threat Assessments; a screening document used by ICE DRO officers to determine if an ICE detainee who must be transported via commercial aircraft is a threat to the public and requires an officer escort. ICE DRO officers routinely utilize the threat assessment screening questionnaires and advise that certain detainees do pose a threat and recommend full officer escorts as a safety precaution, only to have ICE supervisors override these recommendations because of funding and manpower issues. The end result has been that ICE is now routinely placing dangerous convicted criminals unescorted on commercial aircraft. The screening questionnaire is ineffective because the recommendations of DRO officers are ignored. As cited in the news article, one unescorted ICE detainee recently charged the cockpit of a commercial jetliner and had to be restrained by passengers.

ASSAULTS ON OFFICERS

ICE DRO officers are frequently assaulted by ICE detainees. Because the majority of our detainees come from local jails and State and Federal prisons, our employees are routinely exposed to some of the most dangerous criminals and gang members within the United States. ICE does little if anything to track these assaults or encourage our officers to file reports when they have been assaulted. Most assaults against ICE officers currently go unreported and are almost never prosecuted. AFGE is very concerned that ICE's plans to abandon vital security protocols currently in place in detention facilities, while intensifying efforts to arrest criminal aliens, will undoubtedly place ICE officers and contract guards at greater risk.

RELOCATING ICE EMPLOYEES

ICE has stated that the proposed detention facilities are to be built in new locations solely for the purpose of ensuring that detainees can be closer to their families for family visitations while in custody. ICE has stated that its employees will be forced to move when the new facilities are completed. If ICE's proposals are implemented, ICE employees will be permanently uprooted from their families and communities in order to make visitation easier for ICE detainees who on average are in custody just 6 weeks—often times only 1 to 2 weeks. ICE employees will be forced

to take their children out of schools, give up their homes, leave behind aging parents and sick family members, and experience financial hardships in order to improve visitation for detainees who are in custody for 6 weeks or less.

DETENTION ENFORCEMENT OFFICERS

The Immigration Enforcement Agent (IEA) position was created in 2003 following the establishment of ICE. IEAs have the same immigration arrest authority as ICE Deportation Officers and ICE Special Agents. The primary purpose of the IEA position was to take over the ICE Criminal Alien Program which was previously performed by ICE Special Agents. However, ICE also assigned IEAs to perform detention functions and transportation duties, which resulted in a substantial increase of work for the IEAs. It was the equivalent of rolling two full-time positions into one. As a result, both the Criminal Alien Program and ICE detention functions have suffered. It is a failure that ICE headquarters has been reluctant to acknowledge.

Prior to ICE, a legacy Immigration and Naturalization Service (INS) position called the Detention Enforcement Officer (DEO) existed. This position did not have immigration arrest authority but did perform all of the full-time detention and transportation duties for INS detention facilities and offices throughout the United States. When the DEO position existed, job responsibilities were clearly defined. INS had officers to perform law enforcement functions as well as officers to perform detention duties. It is a model that the U.S. Marshal's Service and many sheriffs' departments have utilized very successfully for many years. The Marshals are able to perform both their law enforcement and detention missions effectively because unlike ICE they have maintained a separate position that manages detention, performs transportation functions, and provides court security.

It is our belief that ICE made a critical mistake when it ended the DEO program. The heavy work volume and complexity of the Criminal Alien Program and failures within the ICE detention system have identified a clear need for ICE to have both IEAs and DEOs. DEOs would greatly improve DRO's ability to perform its law enforcement and detention functions. Removing detention duties from the IEA position would drastically increase DRO's ability to arrest criminal aliens and process cases in an efficient and expeditious manner. With regard to detention, DEOs would provide ICE's National detention program with the increased physical presence and oversight that is currently lacking.

PRIVATE CONTRACT DETENTION FACILITIES

With regard to the conduct of contract employees working with ICE detainees, I must state very clearly that I have not personally witnessed misconduct by contract workers, nor do I have access to information gained from agency investigations into these matters. The only information that I can pass on to this committee is that which I have been given from ICE officers in the field.

With that said, I have been told that some contract workers in certain facilities have allegedly engaged in consensual sexual misconduct with detainees and it has also been alleged that there have been instances in which contract guards have raped female detainees. It is also alleged that contractors are smuggling contraband into the detention facilities. In areas near the southern border of the United States where contract workers also assist with the transportation of detainees, it has been alleged that contract guards have been involved in, and arrested for, smuggling foreign nationals into the United States. If any of these allegations are true, it certainly begs the question, "What is ICE doing to stop these problems?" As one veteran ICE officer stated to me last week, during a conversation regarding contract guards smuggling contraband into detention facilities in his area, "ICE managers are well aware of the problems in the contract facilities, but don't seem interested in doing anything about it."

While this statement may surprise many in the American public, it would not surprise ICE employees who are well aware of problems within ICE management and the unethical manner in which ICE internal investigations are conducted.

ICE INTERNAL INVESTIGATIONS

No checks and balances currently exist within ICE. ICE investigates itself. Because ICE investigates itself there is no transparency and there is no reform or improvement. ICE managers have complete control over the investigative process. The end result has been that both ineffective supervisors and supervisors engaged in misconduct are not disciplined, retain their positions, and are regularly promoted. ICE employees who voice their concerns about general problems, formally report more serious matters for investigation, or participate in the Union are relentlessly retaliated against by agency managers who rely on the ICE internal investigative

process as a tool for retaliation. The result has been a consistent decline in employee morale and widespread fear among employees to report wrongdoing. This contributes to the large-scale inefficiency that presently exists within the agency. It is our opinion that any attempts to reform the detention system will be unsuccessful without reforms that hold ICE managers accountable and protect employees from retaliation.

On March 15, 2009, AFGE Local 3806 sent a letter to DHS Secretary Janet Napolitano informing her that problems existed within all ICE internal investigative processes, to include those conducted by the ICE Office of Professional Responsibility (OPR). Specifically, it was reported that no avenue currently exists for ICE employees to make whistleblower disclosures without fear of retaliation by the agency. On April 29, 2009, the Secretary's office responded and stated that the matter had been turned over to the DHS Office of Inspector General (OIG). Also in April 2009, the Union provided a copy of the letter to ICE Assistant Secretary John Morton. To date, the Union has never been contacted or received any communications from either Secretary Napolitano's office or Assistant Secretary Morton. The DHS Office of Inspector General has also dismissed the concerns raised by the Union as the Union has never heard from anyone in that office to even acknowledge that it had received the complaint and that it would investigate the allegations.

ICE OVERSIGHT

Oversight must be removed from ICE, otherwise ICE managers and senior leadership will continue to have complete control over the investigative process and the outcome. The end result will be no different than it presently exists today as management protects ineffective supervisors, conceals misconduct and mismanagement, and retaliates against employees who adhere to ICE policies on reporting malfeasance.

As part of its proposed detention reforms, ICE has designated oversight of the ICE detention centers to its internal investigative division, the ICE Office of Professional Responsibility (OPR). It has already been well-established that internal policing simply does not work. This was evidenced in 1998 during the Internal Revenue Service hearings before the Senate Finance Committee where horrific testimony disclosed taxpayer and employee abuses that went unchecked because of the failures of the internal Inspection Services. As a result, the IRS Restructuring and Reform Act of 1998 was enacted and an independent investigatory office, the Office of Inspector General for Tax Administration, was created to remove investigative authorities from the agency. What was not considered, however, was that many of the Inspection Services investigators were moved to the newly-created organization and it took many years for the perception of the transplanted Inspection Services to change. It is our opinion that any internal oversight will not be objective as long as the agency is able to manipulate the investigative process. Again, oversight, to include that of ICE detention facilities, must be removed from ICE.

DETENTION SERVICE MANAGERS

Another DHS/ICE proposal on detention reform will create 23 GS–14 positions called Detention Service Managers (DSM). Each of the 23 DSMs hired will monitor and enforce detention standards at ICE-owned facilities and contract facilities. Currently, these duties are supposed to be performed by contract employees called COTRs (Contract Officer Technical representative). ICE has made clear that it plans to eventually replace all of the Contract COTRs with DSMs. The Union and managers in the field appear to be in agreement that the Contractor COTRs are not providing adequate oversight of detention facilities utilized by ICE. However, we do not agree with the DSM remedy as proposed by ICE. Because of problems with Contract COTRs, ICE already sends ICE employees to COTR training out of a necessity for better oversight. "ICE Employee COTRs" are already performing oversight duties in the field. However, since these Contractor COTRs are currently designated by ICE as having the official authority of oversight, "ICE Employee COTRs" are not as effective as they could be. The Union proposes that by giving the current "ICE Employee COTRs" (who consist of both managers and employees) the same authority and training as the proposed DSM position, ICE could eliminate and replace far more than 23 Contractor COTRs—and ICE could literally do it overnight at less expense. In fact, agency representatives acknowledged during the briefing that current "ICE Employee COTRs" would be providing on the job training to the newly hired GS–14 DSMs. We see the Union proposal as having the potential for far greater impact on detention reform in much less time.

ICE OFFICERS NOT PROPERLY UTILIZED

ICE DRO currently has two law enforcement officer positions which are the ICE Immigration Enforcement Agent (IEA) and ICE Deportation Officer (DO) positions. Both positions have full immigration arrest authority and their combined officer numbers account for a substantial percentage of the small number of law enforcement officers Nation-wide who have immigration arrest authority. Both positions are very limited in number and both are in high demand throughout the United States, especially as it pertains to criminal aliens. However, starting under the previous administration, ICE has initiated practices and policies that have greatly reduced the ability of ICE officers to provide much-needed law enforcement functions. Instead of providing adequate numbers of ICE support staff to perform clerical work and data entry, ICE has delegated these duties to ICE officers at the expense of their assigned law enforcement duties.

In some areas such as the Texas Rio Grande Valley, hundreds of ICE officers are not being utilized to work the Criminal Alien Program in local jails and prisons. The majority of ICE DRO agents and officers throughout the United States are prohibited from making street arrests as ICE is more concerned about negative publicity than assisting State and Federal law enforcement agencies who attempt to reduce crime and gang activity in their areas. Likewise, ICE officers complain that when the danger levels of their duties are heightened, ICE does not allow officers to take needed equipment like shotguns because supervisors are more concerned about the possibility of negative publicity than the safety of their own officers.

MANPOWER AND MORALE

With an existing workforce that is drastically understaffed and overworked, senior leadership continues to create massive new programs that will require hundreds if not thousands of new employees to successfully implement. However at ICE, manpower-intensive programs are simply implemented at the local and National level without any planning or consideration for the staffing and resources needed to accomplish them.

ICE managers have already announced that ICE DRO is taking over the Law Enforcement Support Center (LESC), which will require DRO employees to man a 24-hour National call center to assist law enforcement officers from other agencies in the field. This added responsibility is only one of many that ICE plans to implement Nationally through a new program called Secure Communities. Secure Communities will require that 100% of all U.S. Citizens and non-citizens booked into every jail in the United States be screened in ICE databases. We anticipate that this will create an unprecedented and large-scale increase in the number of requests for ICE assistance as well as an equally large workload increase to ICE employees with the rise of ICE arrests, transportation duties, and needs for detention space. We have heard no proposals from the agency regarding the large-scale hiring that will be needed to perform these new duties. ICE does not have the manpower, resources, or funding to support what it is already doing, yet ICE continues to implement many new large-scale programs and initiatives, and ignores the warnings and grave concerns expressed by union officials, employees, and its own managers.

Over the years, agency surveys of employee morale have consistently shown morale among ICE employees to be among the lowest of all Federal employees, something which ICE leadership has failed to address. Morale will continue to decline as ICE implements new programs but fails to consider its employees and the already heavy workload they carry. Many managers have never performed the duties that our employees currently perform, nor do they have experience with the tools and practices now in use to perform those duties. A complete disconnect exists between agency managers, their employees, and what's happening in the field. Directives coming from ICE Field Offices (essentially District Offices) and ICE Headquarters appear to lack any input from the field, are often completely misguided and nonsensical, and create not only unnecessary work for ICE employees but also confusion and outrage.

There is no uniformity or consistency throughout ICE as each Field Office creates its own fiefdom and makes its own rules. As just one example, pay practices are different in every ICE office across the country, and those practices change constantly. When the Union notifies the agency of legal violations regarding employee pay issues, we are ignored and forced to waste taxpayer dollars to litigate entitlements that are already granted by law.

The negotiated agreement between the agency and the Union as well as Federal Statute is ignored and managers are not held accountable for their actions or inactions. The inaction by the agency to take care of its workforce demonstrates that it does not care about its most important resource. The agency's Office of Employee

and Labor Relations lacks concern for consistent policies, productive human resources programs, effective labor-management relations, and fair and equitable treatment of employees. Rather than advise senior leadership and managers that laws, rules, regulations, and the negotiated agreement must be followed, it focuses its efforts toward supporting problematic managers who commit acts of misconduct, abuse their authority, and fabricate allegations and take unnecessary and excessive disciplinary actions against employees.

PAY EQUITY FOR DRO EMPLOYEES

In October of this year, DHS Secretary Janet Napolitano suddenly and without warning, announced that approximately 50,000 Customs and Border Protection (CBP) officers would be noncompetitively promoted from GS–11 to GS–12. The much smaller group of approximately 2,000 ICE IEAs were excluded in this upgrade although efforts have been underway through attempted legislation for no less than 2 years to raise their grades to GS–11. IEAs are assigned duties previously performed by GS–13 Special Agents and attend an academy that is lengthier than that of many of the CBP officers recently promoted to GS–12. IEAs have no career ladder promotions even though they share the same job series with GS–12 ICE Deportation Officers. ICE may be the only State or Federal law enforcement agency in the Nation that does not provide a career ladder to its own officers and instead hires less qualified candidates from other agencies for higher-paying nonsupervisory positions.

Although the ICE Detention and Removal Assistants (DRAs) are only at the GS–7 pay grade there are no existing career ladder positions within the agency to afford them any opportunity to improve their livelihood through advancement and opportunity to move to other positions. For years it has been rumored that ICE will finally acknowledge the work of these employees and promote them because of the continuing assignment of more complex duties, yet the agency never acts.

The agency has actively gathered work statistics from ICE Deportation Officers (DOs) for several years. A recommendation for promotion to the GS–13 grade level from the previous ICE Director of DRO to Assistant Secretary John Morton accidentally became public several months ago, but with years of research and recommendations from senior-level ICE managers, no changes were made and as a consequence this group was also ignored during Secretary Napolitano's massive promotions.

It is our opinion that DHS and ICE have failed for years to acknowledge the work of DRO employees and provide pay parity for its employees. To leave these highly deserving DRO employees out of this massive promotion demonstrates yet another failure by ICE, a failure that has taken morale to an all new low. ICE employees will now begin a mass exodus to higher-paying jobs in other agencies while at the same time qualified individuals who would otherwise apply for ICE entry-level positions will take their applications to the agencies who afford them advancement opportunity.

OUTSOURCING OF EMPLOYEE WORK

Contrary to the mandates established by President Obama to return Federal employee work to the Government, ICE recently awarded a new contract in the amount of $71.5 million to an outside contractor. This contract, which is for services for the period September 1, 2009 through August 31, 2014, includes work that is currently performed by bargaining unit employees. The Union believes that the agency's goal is to eventually eliminate the Detention and Removal Assistant (DRA) positions in ICE and will accomplish this goal through a reduction in hiring and attrition of the existing employees while simultaneously increasing contractor personnel to perform the DRA work.

In a continuing repudiation of the existing negotiated agreement between management and the Union, the Union was first notified of this contract on September 21, 2009 and only after the awarded contract execution date of September 11, 2009. During the briefing that was provided to the Union by ICE on September 21, 2009, officials attempted to convince us that this contract was not considered "contracting out" but rather "contracting in," a newly-coined phrase by ICE management. The Union was also notified that provisions exist within the life of this contract to amend it to increase the scope and monetary value of the contract.

CONCLUSION

I hope that my testimony here today provides the Members of this subcommittee with a clear view of the status of the DRO program at ICE. Clearly, there are problems and great risks associated with the Detention Reform Plan that have not been adequately considered.

Perhaps most troubling to the ICE Council is the fact that the Union, ICE employees, and managers in the field have been excluded from the development of the proposed detention reforms. While we always welcome new input, we are certain that no one possesses more knowledge regarding ICE detention than ICE employees. It is unthinkable that the Union and ICE employees have been excluded from this process. We certainly expected more from this administration. However, we remain optimistic and look forward to opportunities for participation in the future.

We commend this committee's efforts to bring oversight to the activities of this troubled agency, and unconditionally commit our resources to this or any future inquiries made by this honorable body. Thank you for allowing me the opportunity to speak on behalf of our ICE employees.

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

Ms. SANCHEZ. Thank you, Mr. Crane. Thank you for your testimony.

I now recognize Mr. Kerwin to summarize his statement for 5 minutes or less.

STATEMENT OF DONALD M. KERWIN, JR., VICE PRESIDENT FOR PROGRAMS, MIGRATION POLICY INSTITUTE

Mr. KERWIN. Madam Chairwoman and distinguished Members of the subcommittee, I appreciate the opportunity to testify before you today.

I will speak today on some of the challenges related to the design of a detention system that reflects ICE's civil detention authorities.

Detention serves two primary purposes—first, to ensure that persons in removal proceedings attend all of their hearings and can be removed if they are ordered removed, and second, to protect the public if necessary.

Consistent with these goals, the central aim of detention reform should be to ensure that persons in ICE custody are placed in the least restrictive settings, which will typically be the least costly, that are necessary to ensure their appearances at all legal proceedings and to protect others.

Under a civil detention system, ICE should carefully screen, classify, and treat detainees as follows. First, ICE should continue to detain persons who represent a danger to others.

Eleven percent of ICE detainees with criminal records have committed violent crimes. ICE will need secure facilities to detain this population and others that represent a threat. But most ICE detainees do not have criminal records, and many of those with criminal records committed relatively minor crimes.

Second, ICE should ensure that certain immigrants not be placed in removal proceedings and thus not be subject to detention. This would include refugees, persons eligible for lawful permanent residence, and those with credible claims to U.S. citizenship.

Third, ICE should release detainees who are not a danger or a flight risk, particularly those whose cases raise humanitarian concerns such as bona fide asylum seekers, torture survivors, the very elderly, pregnant and nursing women.

Fourth, ICE should continue to expand and improve its alternative-to-detention programs. While not appropriate for everyone, these programs can offer a cost-effective and humane alternative to detention. My written statement details several ways in which existing programs can and should be strengthened.

Fifth, ICE must expand its efforts to identify alternative housing options for civil detainees. It should also aggressively explore and

adopt standards that reflect that—civil detention authorities and the needs of those in its custody.

ICE's National detention standards are broadly modeled on American Correctional Association standards for adult local detention facilities which apply to persons awaiting criminal trial or serving relatively short criminal sentences.

Civil detention standards should ensure the separation of detainees based on a rigorous assessment of the risks that they present to others, prohibit the use of shackling, strip searches, handcuffing, solitary confinement and Tasers on non-violent detainees, preclude transfers that would negatively affect a detainee's legal case or an attorney-client relationship, place detainees in facilities near legal counsel, allow contact visits with family members, and assure that those visits can go beyond the current 30-minute minimum, and provide for detainee access to outdoor recreation throughout the day and not just a minimum of 1 hour per day of exercise outside the cell.

Finally, with respect to civil detention, ICE should be particularly vigilant in reviewing the custody of persons who have been confined for more than 6 months, particularly those ordered removed from the country. This would be consistent with the two U.S. Supreme Court decisions.

In September 2009, my agency released a report that concluded that ICE's information systems and, in particular, its ENFORCE database, did not appear to track the kind of information that would allow the agency to comply with the law or to meet its own detention standards.

The report's overarching recommendation was that ICE ensure that its information systems allow it to make informed decisions related to who it must detain and who it must consider for release, who should be placed in an alternative-to-detention program, and whether it had adhered to its National standards in particular cases.

ICE should also expand its oversight, direct control, and monitoring of its own facilities and programs so that it can successfully implement its detention reforms.

Private prison corporations manage all but one of ICE's service processing centers and its largest contract facilities. Collectively, these facilities hold more than half of all ICE detainees.

ICE also relies on private contractors to conduct most on-site monitoring of its detention facilities, to annually assess compliance with detention standards at its facilities, and to manage two of its three alternative-to-detention programs.

ICE deserves praise for its decision to revamp its detention system, for its candid assessments of the challenges the agency faces, for its reforms to date and its engagement of stakeholders to date.

Counsel needs to be vigilant, however, in helping to ensure that this process continues. Thank you.

[The statement of Mr. Kerwin follows:]

PREPARED STATEMENT OF DONALD M. KERWIN, JR.

DECEMBER 10, 2009

Madam Chairwoman and distinguished Members of the subcommittee, my name is Donald Kerwin and I am vice president for Programs at the Migration Policy In-

stitute (MPI). MPI is an independent, non-partisan, non-profit think tank headquartered in Washington, DC, and dedicated to the analysis of the movement of people world-wide. I appreciate the opportunity to testify before you today on the U.S. immigration detention system.

On August 6, 2009, Homeland Security Secretary Janet Napolitano and the Assistant Secretary of U.S. Immigration and Customs Enforcement (ICE), John Morton, announced plans to restructure the Nation's immigration detention system.[1] On October 6, 2009, ICE released a report by Dr. Dora Schriro, the first director of ICE's Office of Detention Policy and Planning (ODPP), which has been charged with designing a detention system based on the agency's civil detention authorities.[2] The report affirmed that ICE detention facilities:

- have been "built, and operate, as jails and prisons to confine pre-trial and sentenced felons";
- rely on "correctional incarceration standards designed for pre-trial felons and on correctional principles of care, custody and control";
- "impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population."[3]

As part of the new initiative, ICE intends to centralize management of its detention system, reduce its reliance on local jails and private prisons, and revamp the standards governing those in its custody. The Schriro report represented a milestone in agency candor. It also highlighted the challenges that ICE faces in transforming its detention system, including:

- the diversity of ICE detainees by country of origin, gender, age, criminal history, immigration status, detention status, time in custody, and claims to remain;
- the size of the system (nearly 380,000 detained in fiscal year 2008) and its six-fold growth since 1994;
- the hundreds of facilities within ICE's system, the multiple types of facilities, their geographic diversity, and the misalignment between detention capacity and demand;
- ICE's extensive alternative-to-detention programs;
- the multiple enforcement programs that feed into the detention system, many of which ICE does not oversee or control;
- longstanding problems in its information systems; and
- the law enforcement culture of ICE detention staff and the criminal standards that govern its facilities.[4]

Given the early stage of the transformation process, it remains an open question how a civil detention system will differ from the current system. An initial challenge may be the lack of an analogous civil detention population. Suitable standards for immigrant detainees may differ markedly, for example, from standards that are appropriate for persons detained for mental health or public health reasons. As a preliminary task, ODDP should analyze potentially analogous civil detention systems in the United States, study immigrant "reception centers" and alternative housing models from other nations, and work closely with non-governmental organizations (NGOs) in developing suitable detention standards.

This testimony will focus on three issues. First, it will discuss the need for discretion in placing persons in removal proceedings and, thus, subjecting them to detention. It will outline which immigrants should be eligible for alternative-to-detention programs and which should be detained and under what conditions. Second, it will highlight deficiencies in ICE's information systems that must be remedied in order for detention reform to succeed. Third, it will describe the extent to which ICE relies on private corporations to manage its detention system, and the implications of privatization for ICE's detention reform initiative.

---

[1] U.S. Immigration and Customs Enforcement, "ICE 2009 Immigration Detention Reforms" (Fact Sheet, August 6, 2009), *http://www.ice.gov/pi/news/factsheets/2009_immigration_detention_reforms.htm.*

[2] Ibid.

[3] Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations" (Washington, DC: Immigration and Customs Enforcement, October 6, 2009), 2–3, *http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf.*

[4] Donald Kerwin and Serena Yi-Ying Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?* (Washington, DC: Migration Policy Institute, September 2009), 22–23, *http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf;* Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," 5–13.

I. CIVIL DETENTION: WHO SHOULD BE RELEASED, WHO DETAINED, AND UNDER WHAT CONDITIONS?

The Schriro report recognizes the need to create "the requisite management tools and informational systems to detain and supervise aliens in a setting consistent with assessed risk."[5] Building on this proposition, the goal of detention reform should be to ensure that persons in ICE custody are placed in the least restrictive setting necessary to ensure their appearances at all legal proceedings and, if necessary, to protect the public. Under such a system, ICE would carefully screen each detainee, classify them, and treat them as follows:

First, ICE would continue to detain persons who represent a danger to others. ICE's detention system contains persons with violent criminal histories who pose a threat to others. As of September 1, 2009, 11 percent of ICE detainees with criminal records had committed violent crimes.[6] ICE will need secure facilities for this population. However, an MPI report found that 58 percent of persons in ICE custody on January 25, 2009 did not have criminal records and, of those with criminal records, the most serious convictions included traffic-related (13 percent) and immigration-related offenses (6 percent).[7] According to the Schriro report, ICE detainees behave differently from criminally incarcerated populations. The majority are "motivated by the desire for repatriation or relief, and exercise exceptional restraint"; "relatively few detainees file grievances, fights are infrequent, and assaults on staff are even rarer."[8] For these reasons, less restrictive means of detention should be available to most immigrants, even those with criminal records.[9]

Second, ICE should ensure that certain immigrants not be placed in removal proceedings and, thus, not be subject to the detention regime. This list would include persons who are eligible for adjustment of status to lawful permanent residence, persons with credible claims to U.S. citizenship, and refugees.[10] Overall, the Department of Homeland Security (DHS) should exercise discretion in placing persons in removal proceedings based on their immigration status, humanitarian and equitable factors, the severity of their offenses and likelihood of prevailing in immigration court.[11] Like every successful law enforcement agency, ICE should assess "how most effectively to use its resources" and the "meaningful differences in culpability and equities" among those who are potentially subject to its authorities.[12] Given the overwhelming demands on the detention system and immigration courts, persons who enjoy legal status, who will soon obtain status, or who otherwise are not likely to be removed should not be put into removal proceedings.

Third, ICE should release detainees who are not a danger or a flight risk, particularly those whose cases raise humanitarian concerns. In fiscal year 2008, 51,000 detainees were released either through bond (29,000), an order of recognizance (12,000), an order of supervision (10,000) or parole (650).[13] ICE has committed to developing an assessment tool to guide its decisions related to release, eligibility for alternative-to-detention programs and placement within its detention facilities.[14] This tool should allow it to release bona fide asylum seekers, torture survivors, persons with strong family and equitable ties in the United States (particularly lawful permanent residents), pregnant and nursing women, primary caregivers, the elderly, families, survivors of human trafficking, and stateless persons and other detainees who cannot be removed.

Fourth, ICE should continue to expand and improve its alternative-to-detention programs.[15] Alternative-to-detention programs can offer a cost-effective, humane al-

---

[5] Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," 3.

[6] Ibid., 6.

[7] Donald Kerwin and Serena Yi-Ying Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?,* 20.

[8] Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," 21.

[9] It should also be noted that ICE detainees have served whatever criminal sentence they have received prior to coming into ICE custody.

[10] In recent months, ICE has placed lawfully admitted refugees who have committed no crime into removal proceedings because they have not adjusted to permanent resident status after a year in the country.

[11] Doris Meissner and Donald Kerwin, *DHS and Immigration: Taking Stock and Correcting Course* (Washington, DC: Migration Policy Institute, February 2009), 25, *http://www.migrationpolicy.org/pubs/DHS_Feb09.pdf.*

[12] Ibid.

[13] Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," 6.

[14] U.S. Department of Homeland Security, "ICE Detention Reform: Principles and Next Steps" (Fact Sheet, October 6, 2009), *http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf.*

[15] Congress appropriated $70 million for alternative-to-detention programs in fiscal year 2010. Committees on Appropriation, "FY2010 Conference Summary: Homeland Security Appropria-

ternative to detention, but they do not suit every detainee. Persons who represent a danger or a flight risk, even under the conditions of an alternative-to-detention program, should not be eligible for these programs. Likewise, alternative-to-detention programs are not appropriate for persons who would otherwise be released on parole, bond, supervision, or their own recognizance.

As of September 1, 2009, ICE was supervising 19,160 people in its three alternative-to-detention programs.[16] In July 2009, ICE reported to MPI that it does not collect "complete and accurate information" that allows it to assess the effectiveness or cost of these programs, and that "its previously released reports [were] sometimes incorrect."[17] It nonetheless reported that 87 percent of the participants in its Intensive Supervision Appearance Program (ISAP), 96 percent of those in its Enhanced Supervision Reporting (ESR) program and 93 percent of those in its Electronic Monitoring (EM) program appeared for their removal hearings.[18] It estimated direct program costs, not including ICE staff time, to be $14.42 per day for ISAP, $8.52 per day for ESR and between 30 cents and $5 per day for EM.[19] By contrast, hard detention costs can exceed $100 per day.[20] In October 2009, the *Houston Chronicle* reported that earlier ICE reports claiming 99 percent appearance rates for persons participating in the ISAP program did not include program participants whom ICE could not locate (i.e. absconders).[21]

While ICE record-keeping and information systems must improve, alternative-to-detention programs cost far less than hard detention and can ensure high court appearance rates. For this reason, alternative-to-detention programs should be expanded. They should also be strengthened as follows:

- The screening of program participants should be based on a more reliable assessment of risk. Screening has been shown to be crucial to the success of alternative-to-detention and supervised-release programs.[22] As stated, ICE has committed to creating a risk assessment tool to determine who should participate in its alternative-to-detention programs.[23]
- The removal proceedings of persons in alternative-to-detention programs should be expedited. Rates of absconsion and costs will necessarily increase the longer participants remain in alternative-to-detention programs.[24]
- Alternative-to-detention programs should assist participants to secure legal counsel and otherwise to obtain accurate and timely information about the removal process. These factors have proven crucial to ensuring high court appearance rates.[25]
- Alternative-to-detention programs should be treated—particularly if they are strengthened in the ways set forth above—as alternative forms of detention, and thus opened to mandatory detainees. Mandatory detention laws broadly cover significant numbers of persons who, with proper supervision, would not be a flight risk. Given that 66 percent of ICE detainees must be detained,[26] the significant expansion of alternative-to-detention programs—and the resulting cost savings to the Government and benefit to the affected individuals—will depend on whether alternatives to detention are found to be soft detention or constructive custody.

---

tions" (October 7, 2009), *http://appropriations.house.gov/pdf/Homeland__Security__FY10__Conference.pdf.*

[16] Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," 6.

[17] Letter from Dr. Dora Schriro, Special Advisor, Office of the Assistant Secretary, U.S. Immigration and Customs Enforcement, to Donald Kerwin, Vice President for Programs, Migration Policy Institute (received July 2, 2009).

[18] Ibid.

[19] Ibid.

[20] U.S. Department of Homeland Security, "ICE Detention Reform: Principles and Next Steps" (Fact Sheet, October 6, 2009).

[21] Susan Carroll, "Flaws found in options for immigrant detention," *Houston Chronicle,* October 20, 2009.

[22] Megan Golden, Oren Root, and David Mizner, *The Appearance Assistance Program: Attaining Compliance with Immigration Laws Through Community Supervision* (New York: Vera Institute for Justice, 1998), 7–9.

[23] U.S. Department of Homeland Security, "ICE Detention Reform: Principles and Next Steps" (Fact Sheet, October 6, 2009).

[24] Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," 21.

[25] Oren Root, *The Appearance Assistance Program: An Alternative to Detention for Noncitizens in US Immigration Removal Proceedings* (New York: Vera Institute for Justice, 2000), 3–4; Megan Golden, Oren Root and David Mizner, *The Appearance Assistance Program: Attaining Compliance with Immigration Laws Through Community Supervision,* 10–13.

[26] See, e.g., *Yong* v. *INA,* 208 F. 3d 1116, 1118 (9th Cir. 2000) (release to a halfway house held to be a form of civil custody).

Fifth, ICE should expand its efforts to identify alternative housing options for detainees, including the use of "converted hotels, nursing homes, and other residential facilities."[27] It should also aggressively explore and adopt standards that reflect its civil detention authorities and the needs of those in its custody. It should collaborate with a wide range of stakeholders, including NGOs, in identifying alternative housing and developing appropriate standards.

In September 2000, the Immigration and Naturalization Service (INS) issued 36 National detention standards, covering security, the exercise of religion, medical care, visitation, telephone access, legal access, and transfers.[28] In 2008, ICE announced plans to develop the performance outcomes that its National detention standards are intended to achieve.[29] ICE will continue to phase in its performance-based standards—which include new standards on media interviews and tours, searches, sexual abuse, and staff training—throughout 2010.[30]

The National detention standards do not cover ICE detainees who are held in Bureau of Prisons (BOP) facilities. In addition, they do not apply in their entirety to the local jails covered by inter-governmental service agreements (IGSAs).[31] IGSA agreements allow localities to establish "alternative" practices that "meet or exceed the intent" of different sections of most of the standards. Moreover, even when the standards apply, compliance remains spotty. Recent reports by the DHS Office of Inspector General (OIG) and respected NGOs have found:

- non-compliance with standards related to detainee transfers, including with the requirement that detainees receive medical examinations within 14 days of arriving at a facility.[32]
- widespread violations of multiple standards based on a review of previously confidential assessments by ICE, the American Bar Association, and the United Nations High Commissioner for Refugees.[33]
- violations of the standards governing access to legal materials, legal orientation presentations, and attorneys.[34]
- exponential increases in detainee transfers in recent years, and the deleterious impact of transfers on legal representation.[35]

The ICE standards are broadly modeled on American Correctional Association (ACA) standards for adult local detention facilities, which apply to persons who are awaiting criminal trial or serving relatively short criminal sentences. In many particulars, the ACA standards are not suitable to immigrant detainees. For example, the ACA standards allow for only 25 square feet of "unencumbered space" for inmates in multiple occupancy rooms and only 35 square feet of "unencumbered space" for those confined in excess of 10 hours per day.[36] The ACA access to counsel standard stipulates only that counsel is "ensured" and that inmates "will be assisted in making confidential contact with their attorneys," a standard altogether inadequate for civil detainees who are not guaranteed counsel at Government expense.[37]

---

[27] U.S. Department of Homeland Security, "ICE Detention Reform: Principles and Next Steps" (Fact Sheet, October 6, 2009).

[28] DHS subsequently added two more standards, bringing the (then) total to 38.

[29] U.S. Immigration and Customs Enforcement, *Operations Manual: ICE Performance Based National Detention Standards (PBNDS)* (last modified October 7, 2009), *http://www.ice.gov/partners/dro/PBNDS/index.htm.*

[30] U.S. Immigration and Customs Enforcement, "Detention Management Program" (last modified February 20, 2009), *http://www.ice.gov/partners/dro/dmp.htm.*

[31] Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," 10.

[32] U.S. Department of Homeland Security, Office of Inspector General, *Immigration and Customs Enforcement's Tracking and Transfers of Detainees* (Washington, DC: US Department of Homeland Security, Office of Inspector General, 2009), 6–9, 11, *http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_09-41_Mar09.pdf.*

[33] Karen Tumlin, Linton Joaquin and Ranjana Natarajan, *A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers* (Los Angeles: National Immigration Law Center, 2009), *http://www.nilc.org/immlawpolicy/arrestdet/A-Broken-System-2009-07.pdf.*

[34] Amnesty International, "Jailed Without Justice" (Amnesty International, March 2009), 30–36, *http://www.amnestyusa.org/immigrant-rights/immigrant-detention-report/page.do?id=1641033;* Human Rights *First,* "U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison" (New York, NY: Human Rights *First,* April 2009), 55–59, *http://www.humanrightsfirst.org/pdf/090429-RP-hrf-asylum-detention-report.pdf.*

[35] Human Rights Watch, "Locked Up Far Away" (New York: Human Rights Watch, December 2, 2009), *http://www.hrw.org/en/reports/2009/12/02/locked-far-away;* U.S. Department of Homeland Security, Office of Inspector General, "Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers" (Washington, DC: U.S. Department of Homeland Security, Office of Inspector General, November 2009), 2–4, *http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-13_Nov09.pdf.*

[36] *Performance-Based Standards for Adult Local Detention Facilities, Fourth Edition* (Lanham, MD: American Correctional Association, June 2004), 4.

[37] Ibid., 99.

In other ways, ACA standards provide for more generous treatment than many ICE detainees receive, requiring for example that facilities be "geographically accessible to . . . community agencies, and inmates' lawyers, families, and friends."[38]

More to the point, ICE and ACA standards are not generally appropriate to civil detainees. While hardly an exhaustive list, civil detention standards should:

- ensure that ICE detainees can wear their own clothes, rather than prison uniforms;
- provide for detainee access to outdoor recreation throughout the day, and not just a minimum of 1 hour each day of exercise "outside the cell, and outdoors, when practicable";
- allow detainees to keep personal possessions with them, including family photographs;
- guarantee that legal orientation presentations are provided to all detainees;
- ensure the separation of detainees without criminal histories from those with criminal histories;
- prohibit the use of shackling, strip searches, handcuffing, solitary confinement, and tasers on non-violent detainees;
- preclude transfers that would negatively affect a detainee's legal case or an attorney/client relationship;
- place detainees in facilities near legal counsel and, for persons with special medical or other needs, near appropriate care; and
- allow contact visits with family members and ensure that visits are not limited to the current 30-minute minimum.[39]

Sixth, ICE should be particularly vigilant in reviewing the custody of persons who have been confined for more than 6 months, particularly those who have been ordered removed from the country. According to the Schriro report, less than 1 percent of all ICE detainees are detained for 1 year or more.[40] However, it does not follow that ICE does not have a significant number of long-term detainees in its custody. MPI found that 4,154 of those in ICE custody on January 25, 2009 had already been detained for more than 6 months as of that date.[41] Of these, 992 had been detained for more than 6 months following receipt of a removal order.[42] The latter is a particularly significant figure since the Supreme Court has held that detainees must be released within 6 months of a removal order unless the Government can show that there is "significant likelihood of removal in the reasonably foreseeable future."[43]

II. THE NEED TO STRENGTHEN ICE'S INFORMATION SYSTEMS

In September 2009, MPI released a report on the immigration detention system, titled *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?*[44] The report examines whether ICE's information systems allow it to determine which detainees:

- fall within "mandatory" detention categories, meet the narrow exceptions for release under these laws or ultimately will become eligible for release;
- have a viable claim to U.S. citizenship;
- have special medical conditions, mental illness, or disability, or other humanitarian issues that necessitate special care;
- have been treated in compliance with the National detention standards;
- are eligible for the custody review procedures available to persons who have been ordered removed, but who cannot be removed within 90 days;
- constitute a risk to abscond (if released) or a threat to others, whether within the detention setting or outside of it.

Over the years, Government and human-rights organization reports have harshly criticized ICE's detention system for its failure to adhere to legal standards related to custody and release, and its failure to abide by its National detention standards. The MPI report raised the issue of whether ICE could comply with the law and adhere to its standards. Underscoring the need for reform, ICE disclosed on August

---

[38] *Standards for Adult Local Detention Facilities, Third Edition* (Lanham, MD: American Correctional Association, 1991), 33.

[39] U.S. Immigration and Customs Enforcement, *Operations Manual: ICE Performance Based National Detention Standards (PBNDS),* PBNDS 5, 13, 18, 29, 32, 37 and 41.

[40] Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," 6.

[41] Donald Kerwin and Serena Yi-Ying Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?,* 19.

[42] Ibid., 17.

[43] *Zadvydas* v. *Davis,* 533 U.S. 678, 701 (2001).

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

17, 2009 that 10 persons whose deaths had not previously been reported had died in its custody between 2004 and 2007.[45]

MPI's report detailed the legally significant information that ICE does not appear to track. It also stressed the need for timely, accurate, and complete data entry into a consolidated database. As DHS's Office of Inspector General has warned, absent timely data entry, "family members and legal representatives could be misinformed of the whereabouts of detainees" and "there is a potential risk of improperly accounting for dangerous detainees."[46]

The Schriro report recommends that ICE develop and implement standards and procedures "that specifically reflect the legal requirements of the detained population."[47] The report also identifies other severe problems in ICE's information systems. It concludes that:

- the "reliability, timeliness, distribution, and storage" of detention information, including detainee complaints, "are not uniform and can hinder oversight";
- ICE does not produce the kind of reports that "[c]omparable detention systems routinely rely" upon, including "a daily count sheet of all detainees in custody by facility, a roster of the population assigned to alternative-to-detention supervision, a current list of all detention facilities with information about their operating and emergency capacities, the number of beds that are vacant and off-line for repair and per-diem pricing";
- the majority of computer entry screens are located at "centralized sites such as major facilities, field offices, and sub offices, and not at the places of detention, particularly IGSA locations" and, thus, "the recording of the book-ins and book-outs frequently occurs after the actual events";
- ICE's information systems do not allow the agency to make population "forecasts" for the purposes of planning or detention policymaking;
- deportation officers, the primary ICE contact to detainees, do not consistently document their meetings with detainees; and
- detainees are not always assigned new deportation officers when transferred.[48]

The health care provided to immigrant detainees has been a recurrent concern of Congressional oversight committees and human rights groups. The Schriro report recommends that ICE conduct "preliminary medical and mental health screening," develop a system for "the medical and mental health classification for detainees" and routinely assess those "who remain detained or who exhibit signs of distress."[49] It reported that the agency:

- uses segregation cells to detain people with specialized medical needs, mentally ill persons, and persons on suicide watch;
- provides only a brief mental health intake assessment that "does not lend itself to early identification and intervention";
- has not developed a "mental health classification system";
- lacks a policy related to "the maintenance, retention, and centralized storage of medical records" and does not move medical files when detainees are transferred; and
- assigns immigrants to detention facilities prior to medical screening, and places them without reference to the proximity of necessary services or in appropriate facilities.[50]

MPI's report on ICE's detention information systems includes a series of detailed recommendations, which are incorporated by reference in this testimony and can be found at *http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf.* Many of these recommendations concern ICE's principal database, known as ENFORCE. The report's overarching recommendation (repeated here) is that: "ICE initiate a thorough inventory and review of its information systems, including ENFORCE, to ensure that they allow for informed decisions related to the substance and timing of:

- who ICE must detain and who it must consider for release, with a particular focus on when "mandatory" detainees become eligible for release;
- which detainees must be allowed to participate in ICE's . . . post-removal order, custody-review processes;[51]

---

[45] U.S. Immigration and Customs Enforcement, "ICE identification of previously un-tracked detainee deaths highlight importance of detention reform" (August 17, 2009), *http://www.ice.gov/pi/nr/0908/090817washington.htm.*

[46] Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," 10.

[47] Ibid., 18.

[48] Ibid., 14, 16–18, 22.

[49] Ibid., 25–26.

[50] Ibid.

[51] ICE administers a custody review process for persons who have been ordered removed. It formerly administered a parallel process for "Mariel" Cubans who had been ordered removed.

- who should be placed in ICE's alternative-to-detention programs; and
- ICE's adherence to its National detention standards."[52]

III. THE CHALLENGE OF PRIVATIZATION

The Schriro report recommends that ICE "create capacity within the organization to assess and improve detention operations and activities without the assistance of the private sector."[53] MPI found that private corporations played an immense role in the management of the immigrant detention system, operating not just their own prisons under contract with ICE, but also administering the largest county jails with which ICE contracts.[54] According to the Schriro report, ICE holds roughly 50 percent of its detained population in 21 facilities.[55] As Exhibit 1 demonstrates, private corporations manage all but one of ICE's own Service Processing Centers (SPCs) and its largest contract facilities: the one exception is managed by a county, not ICE. The report also indicates that the agency relies on private contractors to:

- conduct most of the "on-site monitoring" of its detention facilities;
- annually assess compliance with detention standards at the facilities ICE uses; and
- manage two of its three alternative-to-detention programs.[56]

In addition, ICE field office directors and staff are not required to "routinely tour" detention facilities within their regions.[57] In August 2009, ICE announced plans to hire 23 Federal employees to provide oversight (on-site) at 23 facilities, which hold roughly 40 percent of its detainees.[58]

A comparative review of the experience of several nations that use private prisons to detain immigrants argues for close Government oversight. On the one hand, private prisons have a "built-in [profit] motive to provide adequate services."[59] If managed properly, private contractors can also provide a degree of flexibility that benefits the Government. However, poor accountability can result from: (1) Overly close ties between private prisons and Government decisionmakers; (2) lack of competition; (3) lack of oversight by civil society; and (4) the inordinate influence of private companies that seek to expand detention systems and weaken their regulation.[60]

The large-scale privatization of the ICE detention system complicates the reform initiative. ICE should adopt the Schriro report's modest recommendation that it be able to assess and improve its detention system without outside assistance. ICE's broader goal should be to expand its oversight, direct control, and monitoring of its own facilities and programs so that it can successfully implement its civil detention reforms. While a good preliminary step, the reforms announced by ICE to date—including the creation of ODPP and hiring 23 ICE employees to oversee certain facilities—will not ensure adequate oversight of ICE contractors.

IV. CONCLUSION

ICE deserves praise for its decision to bring its detention system into line with its civil detention authorities, for its candid assessment of its detention system, for the creation of ODDP and for its other reforms. As the detention transformation process moves ahead, ICE should:

- Analyze potentially analogous civil detention systems in the United States, study immigrant "reception centers" and alternative housing models in other nations and work closely with NGOs in developing suitable civil detention standards.
- Ensure that persons in its custody are placed in the least restrictive settings necessary to ensure their appearances at legal proceedings and to protect the public.
- Detain persons who pose a danger to others.

---

[52] Donald Kerwin and Serena Yi-Ying Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?,* 25.

[53] Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," 19.

[54] Donald Kerwin and Serena Yi-Ying Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?,* 15.

[55] Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," 10.

[56] Ibid., 14, 20.

[57] Ibid., 15.

[58] U.S. Immigration and Customs Enforcement, "ICE 2009 Immigration Detention Reforms" (Fact Sheet, August 6, 2009).

[59] Michael Flynn and Cecelia Cannon, "The Privatization of Immigration Detention: Towards a Global View (Geneva, Switzerland: Global Detention Project, September 2009), 16, *http://www.globaldetentionproject.org/fileadmin/docs/GDP__PrivatizationPaper__Final5.pdf.*

[60] Ibid., 16–17.

- Exercise discretion in placing persons in removal proceedings based on their immigration status, humanitarian and equitable factors, the severity of their offenses, and their likelihood of prevailing in immigration court.
- Release detainees who are not a danger or a flight risk, particularly persons whose cases raise humanitarian concerns.
- Expand and strengthen its alternative-to-detention programs by: Screening program participants based on a more reliable assessment of risk; working to expedite the removal proceedings of persons in alternative-to-detention programs; assisting program participants to secure legal counsel and otherwise to obtain accurate and timely information about the removal process; and treating alternative-to-detention programs as alternative forms of detention, and thus opening them to mandatory detainees.
- Expand its efforts to identify alternative housing options for detainees, including the use of "converted hotels, nursing homes, and other residential facilities."
- Adopt standards that reflect its civil detention authorities and the needs of those in its custody.
- Systematically review the custody of persons who have been confined for more than 6 months, particularly those who have been ordered removed from the country.
- Initiate a thorough inventory and review of its information systems, including ENFORCE, to ensure that they allow for informed decisions related to the substance and timing of: Who ICE must detain and who it must consider for release, with a particular focus on when "mandatory" detainees become eligible for release; which detainees must be allowed to participate in ICE's post-removal order, custody-review process; who should be placed in ICE's alternative-to-detention programs; and ICE's adherence to its National detention standards.
- Expand its oversight, direct control and monitoring of its own facilities and programs so that it can successfully implement its civil detention reforms.

EXHIBIT 1.—SELECTED 22 DETENTION FACILITIES THAT HOLD MORE THAN 50 PERCENT OF THE DETAINED POPULATION, FISCAL YEAR 2009

	State	Private Contractor
Service Processing Centers:		
Batavia SPC	Buffalo, NY	AHTNA Technical Services Inc (ATSI)
El Centro SPC	El Centro, CA	ATSI
Florence SPC	Florence, AZ	ATSI
Krome SPC	Miami, FL	ATSI
Port Isabel SPC	Los Fresnos, TX	ATSI
Varick Street SPC	New York, NY	ATSI
El Paso SPC	El Paso, TX	Doyon Akal Joint Venture Detention Center Services
Aguadilla SPC	Aguadilla, PR	MVM, Inc
Contract Detention Facilities:		
Aurora ICE Processing Center	Aurora, CO	GEO
Broward Transitional Center	Pompano Beach, FL.	GEO
Northwest Detention Center	Tacoma, WA	GEO
Pearsall	Pearsall, TX	GEO
Elizabeth Detention Center	Elizabeth, NJ	CCA
Houston Contract Detention Facility.	Houston, TX	CCA
Otay Detention Facility	San Diego, CA	CCA
County Jail Facilities with IGSAs:		
Eloy Federal Contract Facility	Eloy, AZ	CCA
Laredo Processing Center	Laredo, TX	CCA
Stewart Detention Center	Lumpkin,GA	CCA
Otero County Processing Center	Chaparral, NM	MTC
Willacy County Detention Center	Raymondville, TX	MTC
Jena/LaSalle Detention Facility	Jena, LA	GEO

EXHIBIT 1.—SELECTED 22 DETENTION FACILITIES THAT HOLD MORE THAN 50 PERCENT OF THE DETAINED POPULATION, FISCAL YEAR 2009—Continued

	State	Private Contractor
Mira Loma Detention Center	Lancaster, CA	N/A; Los Angeles County Sheriff's Department

Sources: Dora Schriro, *Immigration and Detention Overview and Recommendations* (Washington, DC: Department of Homeland Security, October 6, 2009); website information of detention facilities and private contractors.

Ms. SANCHEZ. Thank you, Mr. Kerwin.

Now we will hear testimony from Ms. Nystrom. If you would please summarize your testimony in 5 minutes or less.

STATEMENT OF BRITTNEY NYSTROM, SENIOR LEGAL ADVISOR, NATIONAL IMMIGRATION FORUM

Ms. NYSTROM. Good morning, Madam Chairwoman and distinguished Members of the subcommittee. Thank you for the invitation to speak about our Nation's immigration detention system.

I currently serve as the National Immigration Forum's senior legal advisor. Working with leadership from States, labor, business, and immigrant communities, the forum's mission is to advocate for the value of immigrants and immigration to the Nation.

Prior to joining the forum, I was legal director of a nonprofit organization providing legal services to those in immigration detention in county jails across Virginia.

Although there are many concerns within immigration detention, my remarks this morning and my longer written testimony focus on two questions. Is it necessary for ICE to spend our tax dollars to detain so many individuals? For those persons who must be detained for security reasons, are detention conditions appropriate, efficient, and safe?

To the first question, ICE detains many individuals who pose no flight risk or danger to the community and thus should be considered for release or an alternative-to-detention program.

To the second question, the conditions of confinement for the hundreds of thousands of detained individuals each year are inappropriate, inefficient, and unsafe. Despite the civil basis of immigration detention, ICE houses its detainees in jails replete with barbed wire, prison uniforms, armed guards, and shackles.

DHS leadership recently announced much-needed detention reform. Two steps must be taken to achieve these reforms. First, ICE must improve how it determines when detention is necessary and when a detainee merits release or enrollment in an alternative-to-detention program.

Second, ICE must transition to a detention system that is neither unsafe nor degrading for detainees. Improved detention management begins with two critical reforms—an examination of whom ICE is detaining and why, in tandem with expanded and improved alternative-to-detention programs.

Today ICE detains more than 33,000 individuals a night, including elderly persons, torture survivors, parents of U.S. citizen chil-

dren, and those with chronic health conditions. Despite this diversity, ICE has a one-size-fits-all model of detention.

Each decision to detain should be informed by an assessment of individual circumstances that is repeated periodically. Otherwise detention becomes far too automatic and a wasteful use of Government resources. Without routine detention assessment, U.S. citizens continue to be swept into immigration detention.

There are fiscally responsible and reliable alternatives. ICE currently operates three alternative-to-detention programs that rely on heavy supervision through GPS, radio, and telephonic monitoring. The most expensive of these programs costs $14 per day, while a day of detention at some facilities exceeds $100.

Alternatives to detention can be improved. Currently programs operate as alternative forms of custody. Without standardized assessments, enrollment is haphazard. Further, there are no alternative-to-detention programs incorporating community-based services which can help ensure compliance with immigration proceedings.

Congress has repeatedly ordered ICE to develop National alternatives to detention and recently appropriated over $69 million to these programs. Going forward, ICE must improve alternative-to-detention enrollment procedures and expand programs to include access to community services.

More robust alternative-to-detention programs will lead to more manageable detention levels and a better use of limited security resources.

In the second step, ICE must overhaul conditions of confinement to reflect the civil, non-punitive nature of immigration detention, shifting its culture from a correctional mentality to one more appropriate to the often vulnerable populations in its custody.

Conditions in detention facilities used by ICE continue to be fundamentally inappropriate. Many facilities in use today are not physically capable of complying with ICE's own detention standards.

A DHS inspector general report recently noted the use of remote facilities and the overuse of arbitrary transfers denies detainees the basic right to a fair defense and wastes Federal resources.

As noted, medical care remains a critical concern for immigration detainees and announced reforms come too late for many. DHS should prioritize the medically and mentally ill for release or enrollment in an alternative to detention.

Immediate steps can and should be taken. ICE must follow these initial steps by revising their standards of detention to comport with the civil nature of immigration detention. Because standards are not codified in statute or regulations, ICE must be diligent in their enforcement.

To conclude, ICE has failed to effectively manage its massive immigration detention system. The current system is one in crisis. The sweeping reforms recently announced are promising but are not fully developed.

ICE should begin screening all detainees for release or alternative-to-detention programs.

Next, ICE must overhaul standards of confinement so conditions are appropriately—are appropriate and are vigorously enforced.

Finally, as long as our immigration laws are out of step with the modern 21st Century realities, the task of managing immigration detention will be much more complicated and occur on a much greater scale than is necessary.

Until we have comprehensive immigration reform, Congress should ensure that DHS transitions to a detention system that is right-sized, safe, humane, and efficient. Thank you.

[The statement of Ms. Nystrom follows:]

PREPARED STATEMENT OF BRITTNEY NYSTROM

DECEMBER 10, 2009

Thank you for the invitation to speak about the immigration detention system. I have been advocating for improving detention laws, policies, and practices for a number of years. I currently serve as the National Immigration Forum's Senior Legal Advisor. Working with leadership from faith, labor, business, and immigrant communities, the Forum's mission is to advocate for the value of immigrants and immigration to the Nation. In my prior capacity, I was Legal Director for a non-profit organization that provides legal services to individuals in immigration detention across Virginia.

INTRODUCTION

The current immigration detention system has been hindered by poor management and deficiencies in oversight, problems that have been exacerbated by rapid increases in the number of individuals detained. Recently, the Department of Homeland Security has acknowledged that its detention system is disjointed, inappropriately reliant on the criminal incarceration system, and lacking in direct Federal oversight. Non-governmental organizations have described immigration detention as mismanaged, inhumane, and grossly lacking basic standards of due process to determine whether such extreme restrictions on a person's liberty are necessary and justified.

Although there are many issues within immigration detention that should be examined, I will focus my remarks on two concerns. First, Immigration and Customs Enforcement ("ICE") does not consistently know whom it detains or why; many detainees pose no flight risk or danger to the community and are potentially eligible for release or enrollment in an alternative form of supervision. Next, the conditions of confinement for the hundreds of thousands of individuals who are detained by ICE each year are inappropriate, inefficient, and unsafe. Detention facilities are a patchwork of Federal facilities, privately owned facilities, and jails. Oversight is insufficient and ICE's jailors violate the minimum standards of confinement frequently and with impunity. Despite the civil basis of immigration detention, ICE houses its detainees in jails replete with barbed wired, prison uniforms, armed guards, and shackles.

Against this backdrop, the recent announcements of reforms to the immigration detention system by the Department of Homeland Security ("DHS") and ICE are welcome. Concerned non-governmental organizations ("NGOs") appreciate the opportunity to participate in creating and implementing needed reforms, yet challenges persist.

Two sequential steps must be taken to achieve the reforms envisioned by the agency. First, ICE must reform protocols regarding who it is detaining and whether detention is necessary. Individuals should be automatically and consistently screened for release on recognizance, bond, parole, participation in alternatives to detention programs, or risk-appropriate housing assignments. Second, DHS, under the oversight of Congress, must design, manage, and rigorously monitor a truly civil detention system that can satisfy its interests while preserving the dignity and safety of those it detains.

STATE OF AFFAIRS

The current disarray of the immigration detention system has been well-chronicled in numerous media stories, reports, and Congressional hearings. As the system has rapidly expanded—ICE detains more than six times the number of people it detained just a decade ago—DHS has failed to meet its management challenges, with sometimes fatal consequences. Over 100 individuals have died in immigration deten-

tion since 2003.[1] A Washington Post investigative series in 2008 found that substandard medical care may have contributed to at least 30 deaths in immigration custody.[2]

Conditions of detention in ICE custody have been a source of controversy and dismay for years. Consistent complaints describe insufficient medical care, malfunctioning telephones, frequent transfers, disruptions in access to legal services, and severely limited visitation. A groundswell of reports, produced both by the Government Accountability Office, the DHS Office of Inspector General and DHS itself, as well as NGOs, demonstrates in great detail that the immigration detention system is in crisis.

Although ICE's assessments of those in their custody are not well developed or consistently executed, there are some statistical clues about the current composition of the detained population.[3] According to ICE statistics, 91% of those in immigration detention on January 25, 2009 were men. On that same day, 58% of detainees did not have criminal convictions. Approximately 40 families were in family immigration detention centers on October 6, 2009. Roughly 1,400 asylum seekers with no criminal convictions are detained daily.

The Secretary of Homeland Security and the Assistant Secretary of ICE pledged in two recent public announcements to overhaul the current detention system. The initial announcement on August 6, 2009 was followed by a second, 2 months later, on October 6. The latter was coupled with the release of a report by Dr. Dora Schriro, most recently Director of the ICE Office of Detention Policy and Planning, titled "Immigration Detention Overview and Recommendations." Relevant components of the announced reforms include: Formal engagement with local and National stakeholders, development of risk assessment and custody classification mechanisms, implementation plans for National alternatives to detention, revision of detention standards to create consistent and appropriate conditions, and Federal oversight of detention facilities. ICE describes the time line of these reforms as stretching over 3 to 5 years.[4]

COLLABORATION WITH NGOS

While ICE has begun strengthening collaborative relationships with NGOs to effect detention reforms, significant challenges remain. Local and National NGOs have organized themselves into two "advisory groups" or "working groups." These groups are broadly arranged into general detention issues[5] and detention-related health care issues. Initial meetings between these groups and ICE have occurred and future meetings are scheduled. The collaborative potential inherent in these working groups is rich, but has not been fully reached. ICE's meaningful engagement with NGO groups early in the planning process is critical to foster substantive discourse and help shape successful reforms.

Perhaps the most basic challenge in forging deep and meaningful NGO participation in the detention reform process is the delay in implementation of the announced reforms. NGOs that work with detained immigrants across the country report that they have yet to experience any significant shift in detention management on the ground. The single documented change is the transformation of the troubled T. Don Hutto facility in Texas from a family detention facility to a women's detention facility. The lack of tangible changes in detention operations does not reflect the ambitions of the announcements, therefore creating a disincentive for NGOs with limited resources and capacity to engage in a process that has thus far produced minimal results.

---

[1] Cam Simpson, *More Immigration Detainee Deaths Disclosed,* WALL STREET JOURNAL, Aug. 18, 2009, available at *http://online.wsj.com/article/SB125055691948838827.html.*

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

[3] These statistics were compiled from the following sources: Dr. Dora Schriro, *Immigration Detention Overview and Recommendations,* Department of Homeland Security, Immigration and Customs Enforcement, Oct. 6, 2009, available at *http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf* and Donald Kerwin and Serena Yi-Ying Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?,* Sept. 2009, Migration Policy Institute, available at *http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf.*

[4] *Immigration and Customs Enforcement Assistant Secretary John Morton Holds Conference Call to Announce Major Reforms Planned for the Immigration Detention System,* CQ Newsmaker Transcripts, Federal Agency, Aug. 6, 2009, available at *http://homeland.cq.com/hs/display.do?docid=3189020.*

[5] The general detention group is further subdivided into groups focused on specific issues such as religious services and risk assessment tools.

The untimely departure from ICE of key detention reform personnel has presented an additional challenge. Two high-ranking officials departed the Office of Detention Policy and Planning shortly after the office was created. Dr. Dora Schriro conducted scores of meetings with NGOs, toured dozens of facilities, and drafted an evaluation of the immigration detention system before her departure from DHS in September. Her report conveyed many of the concerns and recommendations shared with her by NGOs. To date, we have not seen evidence that ICE intends to implement all of the recommendations Dr. Schriro made in her report. Next, a permanent replacement for Dr. Schriro has not been named. Additionally, a second member of the Office of Detention Policy and Planning had just begun to delve into detainee health care issues when she departed only a few months after her arrival.[6]

The lack of formal collaboration between ICE field offices and local NGOs presents an additional challenge. Under the current working group structure, the ability of organizations with first-hand experience and technical expertise located outside of the District Columbia to fully participate in the reform process is limited.

ASSESSMENT OF THE DETAINED POPULATION

ICE should base its reforms on the basic premise that detention is not the only method to achieve security and compliance objectives. Currently, ICE detains more than 33,000 individuals each night.[7] This number includes men, women, and children. It includes detainees who are elderly, who have chronic health conditions, and who are pregnant or nursing. It includes parents of U.S. citizen children. It includes individuals who crossed the desert a month ago and individuals who have lived lawfully in the United States for decades. It includes a small number of individuals who committed crimes and completed their sentences, and a large majority of individuals who have not committed any crime. Despite this diversity, ICE defaults to a one-size-fits-all model of detention. DHS currently does not have a risk assessment tool to determine who should be detained and who merits release. Each decision by ICE to detain an individual should be an informed and careful determination taking into consideration: (1) Prohibitions from arbitrary detention found both in U.S. law and international law, as well as (2) prudent use of Government resources. Those who pose no threat to public safety or risk of flight should not be detained.

As a first step toward improved management and positive reform, ICE must examine whom they are detaining and why. A front-end risk assessment, repeated at periodic intervals, would aid the agency in determining when detention is necessary, and would help eliminate arbitrary detention. In the absence of a risk assessment or classification instrument, detention becomes far too automatic and those detained are left shouldering the burden of showing why they merit release. The immediate need for initial and on-going detainee assessment tools is urgent. As one example, ICE admittedly lacks both sufficient medical and housing classification systems. Further, detainees and their advocates commonly report delays in the issuance of charging documents after being taken into custody by ICE, a practice that results in individuals being detained with no notice of the alleged violations they face.[8]

Additionally, internal ICE processes for reassessing the circumstances of those in its custody must be improved. ICE's compliance with legal limits on indefinite detention are so inefficient that detainees often must resort to filing habeas corpus petitions in Federal district court to effectuate their release. Further, the DHS Inspector General found in two 2009 reports that ICE inaccurately recorded and tracked the mere location of detainees.[9]

One alarming consequence of ICE's failure to adequately assess its detained population is the on-going, and unlawful, detention of U.S. citizens as recounted in the

---

[6] Andrew Becker, *Second immigration official leaves new Federal office,* Center for Investigative Reporting, Oct. 23, 2009, available at *http://www.centerforinvestigativereporting.org/blogpost/20091023secondimmigrationofficialleavesnewfederaloffice*.

[7] Schriro report at 6; *Immigrations and Custom Enforcement Policies and Procedures Related to Detainee Transfers,* DHS Office of Inspector General, OIG–10–13, Nov. 2009, available at *http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-13_Nov09.pdf*.

[8] *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States,* Human Rights Watch, Dec. 2009, at 16–17, available at *http://www.hrw.org/en/reports/2009/12/02/locked-far-away-0*.

[9] Department of Homeland Security, Office of Inspector General, *Immigration and Customs Enforcement: Detention Bedspace Management,* OIG–09–52, April 2009, available at *http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_09-52_Apr09.pdf;* Department of Homeland Security, Office of Inspector General, *Immigration and Customs Enforcement's Tracking and Transfers of Detainees,* OIG–09–41, March 2009, available at *http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_09-41_Mar09.pdf*.

media, NGO reports, and in Congressional testimony last year.[10] The Florence Immigrant and Refugee Rights Project in Arizona in 2008 alone witnessed more than 40 cases of persons in immigration detention each month with potentially valid claims to U.S. citizenship.[11] The Northwest Immigrant Rights Project in Seattle has documented 21 cases in the past 3 years of U.S. citizens who were detained by ICE.[12] ICE has no authority to deprive liberty to a U.S. citizen, but without a thoughtful, front-end assessment of all individuals taken into custody, this will continue.

A second illustrative example of the need for improved assessments is the many special populations who linger in detention. One such population is arriving asylum seekers, over whom ICE wields sole authority to grant release from detention in the form of parole. Those asylum seekers who are granted parole are released into the care of a family member, friend, or community organization while their immigration hearings are pending. Immigration judges have no review authority of ICE's discretionary parole determinations. Dr. Schriro's report asserted that internal guidance on parole decisions is under review. As the agency undertakes its review process, it should ensure that all individuals are afforded an individualized assessment as to whether detention is necessary before they are deprived of their liberty.

Further evidence of the inappropriate use of detention is a spate of high-profile cases where the severely ill, disabled, or pregnant individuals are kept in custody. Perhaps most alarming are allegations that detainees have died in immigration custody due to preventable medical causes; these allegations have prompted litigation and public outcry.

DHS has acknowledged that developing an effective risk assessment procedure is a needed reform and has announced a pursuit of detention strategies based on "assessed risk." One of four key recommendations in Dr. Schriro's report was that ICE develop a "new set of standards, assessments, and classification tools" in coordination with stakeholders. Her report also finds, "The ideal system should create the capacity to detain and to supervise aliens consistent with assessed risk." However, the requisite tools to determine risk among the detained population are still under development. The NGO community should be tapped as early in the process as is feasible to actively assist in the development process.

The fundamental importance of a detention system keyed to assessed risk of individual detainees must not be overlooked. Assessment of risk is a crucial component of a well-managed detention system as this determination informs decisions regarding release, bond determinations, parole decisions, participation in alternatives to detention, or for those who are found to require continued detention, appropriate housing assignments, and medical care needs. ICE must conduct an automatic and consistent assessment at the outset of detention, and revisit this assessment periodically, of the current or on-going need to deprive any particular individual of his or her freedom.

ALTERNATIVES TO DETENTION (ATDS)

Expanding on the recommendation above, ICE must increase and improve its utilization of Alternatives to Detention ("ATD") programs. These offer economical and reliable means of ensuring compliance with immigration proceedings. One enormously beneficial application of the risk assessment tool already discussed is ICE's gained ability to properly reach release or ATD enrollment decisions.

Detention is not mandatory for everyone in immigration proceedings and ICE should pursue a continuum of discretionary options in making custody determinations, dependent on an individual detainee's circumstances. While current options range from continued detention as the highest form of custody, to electronic moni-

---

[10] Thirty-eight percent of immigration lawyers studied in Minnesota reported that within the past 2 years they had represented at least one U.S. citizen who was in immigration detention. Jacob Chin, Katherine Fennely, Kathleen Moccio, Charles Miles, Jose D. Pacas, *Attorneys' Perspectives on the Rights of Detained Immigrants in Minnesota,* Nov. 2009, available at *http://lawprofessors.typepad.com/files/final-cura-article-11-10-09.pdf.* See also Kristin Collins, *N.C. Native Wrongly Deported to Mexico,* CHARLOTTE OBSERVER, Aug. 30, 2009, available at *http://www.charlotteobserver.com/local/story/917007.html;* Robert Zullo, *Despite Citizenship Claims, Woman Shipped to Honduras,* THE THIBODAUX DAILY COMET, June 14, 2009, available at *http://www.dailycomet.com/article/20090614/ARTICLES/906141011?Title=Despite-citizenship-claims-woman-shipped-to-Honduras;* Daniel Hernandez, *Pedro Guzman's Return,* LA WEEKLY, Aug. 9, 2007, available at *http://www.laweekly.com/2007-08-09/news/pedro-guzman-s-return/.*

[11] Written testimony of Kara Hartzler, U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration, Feb. 13, 2008, available at *http://judiciary.house.gov/hearings/pdf/Hartzler080213.pdf.*

[12] Zullo, *Despite Citizenship Claims, Woman Shipped to Honduras.*

toring programs similar to "house arrest," to setting bond, to release on one's own recognizance, ICE lacks a systemic and effective method for placing individuals into appropriate programs. Where flight risk poses the only concern, ICE should immediately contemplate whether that risk could be effectively mitigated by setting a bond, releasing to family, or supervision.

ICE currently operates three ATD programs: Intensive Supervision Appearance Program (ISAP II), Enhanced Supervision Reporting (ESR), and Electronic Monitoring (EM). In each program, participants are heavily supervised using a combination of global positioning systems, radio frequency, and telephonic monitoring. Beginning in 2008, Congress has repeatedly ordered ICE to provide an implementation plan for a National ATD system.[13] More recently, Congress appropriated over $69 million for ATD programs.[14]

Support from Congress for ATD programs represents an opportunity for ICE. Simple expansion of current programs is not sufficient. Successful ATDs would contemplate and address the assessed risk and needs of each individual. Yet, there are no current ATDs that utilize community-based organizations and services. There is no review process for decisions rejecting a detainee for participation in an ATD. Nor do existing programs include a reassessment of risk as an individual's case proceeds. To maximize success, ICE must expand the available ATD programs to include access to community organizations. Assistance upon release, such as legal and housing services, can help ensure compliance with immigration proceedings.[15] For example, community assistance can help released individuals understand how to meet responsibilities regarding their cases.

ICE should utilize rigorous criteria in determining whether to detain, release, or enroll an individual in an ATD program. None of the Requests for Proposals issued by ICE for the current programs articulate enrollment criteria. ICE should prioritize the release of vulnerable detainees, such as individuals with on-going medical or mental health needs. Contrary to current practice, asylum seekers should always be assessed for potential release through an ATD.[16]

In revisiting program design, ICE also has the chance to address shortcomings in how ATDs as they now exist are implemented. As currently operated, ATDs rely on intense supervision and restrictions on movement and liberty; they serve as alternative forms of custody rather than a true alternative to detention. Critical to the success of any ATD, ICE must develop standards for selecting individuals into an ATD with the appropriate level of supervision and for determining compliance with the program. Conditions or restrictions on release must be reasonable based on an individualized assessment. These standards should be directly implemented and enforced by ICE to ensure that the programs achieve desired outcomes and are uniformly operated.

Importantly, ATDs should be contemplated only after it has been determined that an individual is not eligible for another form of release. Explicit and standard criteria would ensure that individuals receive the appropriate level of supervision. At the very minimum, ATDs, as conceptualized, can be an effective, fiscally responsible, and more humane method for monitoring individuals who may have legitimate immigration claims and for whom detention is unreasonably burdensome, such as asylum seekers, families, and the infirm. ICE has a great opportunity to implement them as such by incorporating these recommendations. More robust and effective ATD programs will also lead to more manageable detention levels and a better use of limited security resources.

EXPECTED GROWTH IN DETENTION DEMAND

DHS initiatives collaborating with local law enforcement agencies increasingly contribute to the vast population of immigration detainees, most of whom do not

---

[13] Schriro report at 20; H. Rpt. 111–298, available at *http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp111&sid=cp111650mg&refer=&r_n=hr298.111&item=&sel=TOC_224515&;* Public Law 111–83, available at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ083.111.*

[14] H. Rpt. 111–298 and Public Law 111–83.

[15] The Vera Institute of Justice conducted a pilot alternative program from 1997–2000 that reported a 93% appearance rate. LIRS coordinated another alternative model that achieved a 96% appearance rate. Both programs included community support. *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison,* Human Rights *First,* April 2009, at 64, available at *http://www.humanrightsfirst.org/pdf/090429-RP-hrf-asylum-detention-report.pdf.*

[16] Human Rights *First* report at 63.

have criminal convictions and should be considered for alternative programs.[17] The need to assess the incoming population and utilize alternatives to detention when appropriate is becoming urgent. DHS detention reform initiatives are at risk of being outpaced by Federal and local programs that seek to identify alleged immigration law violators through the criminal justice system. The impending National activation of the Secure Communities initiative and other similar operations are indisputably one factor driving the need for ICE to assess its current population, explore alternatives to detention when appropriate, and identify capacity to appropriately house the expected influx of detainees.

MEANINGFUL AND APPROPRIATE STANDARDS FOR CONDITIONS OF DETENTION

Conditions of immigration detention should reflect its civil, non-punitive basis and be tailored to the agency's assessments regarding who is being detained, why they are being detained, and whether those in detention have special needs. ICE must also shift its culture from one that is dominated by a law enforcement or correctional mentality to one that appropriately addresses the diverse and often vulnerable populations in their custody.

The sheer number and variety of facilities used by DHS pose a serious challenge to successful, uniform management. DHS houses detainees in both short-term facilities designed for temporary use, such as holding individuals apprehended along the border or deportation staging centers, and in facilities that provide prolonged detention to individuals as their cases as considered. The current constellation of long-term detention facilities consists of seven Service Processing Centers owned by ICE and operated by private industry, seven Contract Detention Facilities owned and operated by private industry, and a behemoth patchwork of approximately 300 facilities contracted through Inter-Governmental Service Agreements ("IGSAs").[18] A handful of these IGSA facilities are dedicated to housing ICE detainees. The remainder contract bedspace to ICE while also holding individuals for the criminal justice system.

Approximately 68 percent of the ICE population, the bulk of current detainees, is housed in IGSA facilities (typically, a county jail).[19] While ICE evaluates these facilities annually to ascertain compliance with the detention standards, many are not physically capable of complying. For example, some IGSA facilities do not have outdoor recreation areas or lack legal visitation areas with even minimal privacy protections.[20] Further, in many facilities, ICE detainees are housed alongside individuals in the general criminal population.[21]

Current detention practices at many of facilities severely limit access to families and attorneys. Visits in some detention facilities are restricted to video conferencing.[22] The flat prohibition on contact visits among family members at one immigration detention facility in Los Angeles was chastised as "unnecessary and cruel" by the Police Assessment Resource Center in October 2009.[23] Telephone access in immigration detention continues to be plagued by broken equipment, confusing and complicated instructions, steep service rates, and limited hours of operation.[24] As an example of systemic obstacles to legal services for detainees, it takes attorneys in Minnesota an average of 6 days to make initial contact with their clients in immigration detention.[25] The use of remote facilities and the overuse of transfers also hinders detainees' access to legal services and family and impedes their ability to challenge their detention and deportation. The harsh and disruptive consequences of frequent and haphazard transfers were documented in reports released just last

---

[17] According to ICE statistics, the majority of individuals booked into immigration detention through the 287(g) program or the Criminal Alien Program, have no criminal convictions. Schriro report at 13.

[18] Schriro report at 10 (counting approximately 240 IGSA facilities); OIG report, *Detention Bedspace Management,* at 2 (counting more than 350 IGSA facilities).

[19] MPI report at Figure 4.

[20] Minnesota report; *Jailed Without Justice: Immigration Detention in the USA,* Amnesty International, March 2009, at 41–42, available at *http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf*.

[21] Amnesty report at 37.

[22] Minnesota report.

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

[24] Minnesota report; Amnesty report at 35–36.

[25] Minnesota report.

week by NGOs and the DHS Inspector General.[26] The Inspector General found significant noncompliance with transfer standards in a March 2009 report,[27] and more recently found that transfer determinations "are not conducted according to a consistent process" and lead to "errors, delays, and confusion."[28] Not only are haphazard transfers inefficient, they impede access to legal services and families, which further upsets the system. When detainees are transferred far away, continuances are required for legal proceedings that have been disrupted and critical documents or evidence may be left behind.

Medical care also remains a critical concern in immigration detention. Recent deaths in immigration detention facilities in Virginia and Rhode Island sparked concern, lawsuits, and investigations.[29] Following each of these deaths, ICE pulled the remaining detainees from the facilities under scrutiny. In just the few weeks since the latest detention reforms were announced, two additional detainees have died in ICE custody, putting the spotlight rightly on medical care for detainees.[30] Detainees and their attorneys continue to struggle to request and receive attention for emergent and chronic conditions, ensure continuity of care despite transfers, access medical records, and stabilize mental health conditions. Better access to health care, not to mention an end to any preventable detainee deaths, is essential. DHS' plans to create a classification system to place those with health needs in appropriate detention facilities are a welcome step. However, the Government must ensure that any medical classification system explicitly contemplates release or enrollment in an ATD for those inflicted with medical or mental conditions. Merely building facilities better suited to care for the infirm without considering more humane, secure alternatives would be shortsighted.

Secretary Napolitano recently set a 1-year benchmark for revising immigration detention standards at long-term facilities. Existing standards are fundamentally inappropriate for the civil, non-punitive immigration framework envisioned by the agency today. The Performance-Based National Detention Standards, revised by ICE in 2008 and not yet fully implemented, are based on a correctional model, were commented on by NGOs who sought to improve the language, yet remain a set of standards derived from and intended for a jail-based detention model. Given the Secretary's goal for revising detention standards, full implementation of the 2008 standards is uncertain.

Revising existing detention standards is a significant opportunity for ICE. In the meantime, immediate steps towards improving conditions and breaking from the mold of punitive detention can and should be taken. Extension of family visitation hours and days, permission of contact visits, and expansion of freedom of movement inside facilities and within recreation areas should be implemented immediately. ICE must follow these initial first steps with the development and implementation of standards that comport with the civil nature of immigration detention.

OVERSIGHT

The non-jail-like detention centers proposed by DHS have the potential to be more efficient, humane, and civil than those currently in use. However, any actual improvement in conditions will depend on the enforcement of adequate standards. These standards must be mandatory at all facilities with sufficient oversight to produce consistent and humane treatment of detainees. Violations must trigger appropriate and enforceable sanctions. Importantly, progress toward improved conditions should not eclipse the underlying need for better assessments and subsequent consideration for release, parole, bond, and ATDs. In the meantime, Congress

---

[26] Human Rights Watch report; *Huge Increase in Transfers of ICE Detainees,* Transactional Records Access Clearinghouse (TRAC), Dec. 2009, available at *http://trac.syr.edu/immigration/reports/220/*.

[27] Department of Homeland Security, Office of Inspector General, *Immigration and Customs Enforcement's Tracking and Transfers of Detainees,* OIG–09–41, March 2009, available at *http://www.dhs.gov/xoig/assets/mgmtrpts/OIG__09-41__Mar09.pdf*.

[28] OIG Nov. 2009 report at forward.

[29] Eric Tucker, *Chinese Detainee's Widow Wants Government Kept in Lawsuit,* THE BOSTON GLOBE, Nov. 12, 2009, available at *http://www.boston.com/news/local/rhode__island/articles/2009/11/12/chinese__detainees__widow__wants__government__kept__in__lawsuit/;* Nick Miroff, *ICE Facility Detainee's Death Stirs Questions,* THE WASHINGTON POST, Jan. 30, 2009, available at *http://www.washingtonpost.com/wp-dyn/content/story/2009/01/31/ST2009013101877.html;* Nina Bernstein, *U.S. Agency Issues Scathing Report on Death of Immigrant in its Custody,* THE NEW YORK TIMES, Jan. 16, 2009, available at *http://www.nytimes.com/2009/01/16/world/americas/16iht-detain.1.19422767.html*.

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

should continue to monitor and ensure ICE's progress towards establishing and implementing consistent, safe, and appropriate immigration detention conditions.

Government monitoring of compliance with detention standards is critically important as standards are not codified in statute or regulations. Lack of meaningful oversight has long been a major weakness of the immigration detention system. Voluminous reports by NGOs, the Government Accountability Office and the DHS Inspector General have documented deficiencies in compliance with detention standards. A shared conclusion of these reports, as well as many other accounts from detainees, is that ICE fails to adequately monitor conditions in detention facilities. Development, implementation, and enforcement of the standards can deliver consistent conditions of confinement and essential protections for detainees.

DHS has publicly committed to improving oversight of detention facilities through on-site monitoring and routine and random inspections by the newly created ICE Office of Detention Oversight. Another announced improvement to oversight is review of medical request denials by a medical expert. Further, the number of on-site, Federal employees contemplated at the largest ICE detention facilities was expanded from 23 as announced in August to 50 as announced in October. These reforms will be a good start towards improving compliance with detention standards. However, monitoring must take place at every facility used by ICE to house detainees. The power of in-person monitoring can be substantial. Detainees at one facility in Texas were visibly losing weight because of insufficient food. After Dr. Schriro visited and heard complaints of hunger from detainees, advocates report that meal portions improved.

Another necessary component of robust oversight is a functioning grievance process. As part of its reforms, ICE has stated that the Office of Detention Oversight will investigate grievances and alleged misconduct. The complaint processes within the immigration detention system have been historically slow and lacking in their ability to remedy individual grievances. Many detainees are not aware of the existing process that directs complaints to the DHS Office for Civil Rights and Civil Liberties and the DHS Office of Inspector General, don't trust it, or feel that the small chance that a complaint will result in an improved system or a personal remedy is not worth the risk of retaliation.

ACCOUNTABILITY

Announcements to ramp up aggressive monitoring and enforcement of terms of contracts with detention facilities to improve conditions of confinement are encouraging. The stated intention to terminate contracts where poor performance cannot be remedied is especially heartening. It is also notable that this monitoring and enforcement activity, as announced, is to be conducted by ICE and not outsourced to private industry, as has been the case with monitoring efforts in the past. ICE must cease the practice of renewing contracts with and housing detainees at facilities with noted deficiencies. In the past, there have been no apparent consequences for failures in facility management and therefore no incentive to improve. Oversight without consequences is meaningless.

CONCLUSION

Over the years, ICE has failed to effectively manage and oversee its massive immigration detention system, even as the number of individuals it detains has grown exponentially. The sweeping reforms that were recently announced are promising but not fully developed, yet alone implemented. Necessary and fundamental reforms must enable ICE to consistently and automatically assess each of the individuals it detains and consider release or enrollment in an alternative form of supervision. This assessment must inform housing and medical considerations for any detainees that are determined to require on-going detention. Next, ICE must overhaul standards of confinement within immigration detention so that conditions become appropriate for the civil nature of immigration detention. These revised standards must be vigorously enforced.

Comprehensive immigration reform that includes a path to legalization would significantly reduce the number of individuals present in the United States in violation of the immigration laws, and consequently reduce the need for a system to ensure compliance from individuals awaiting adjudication of their immigration claims or awaiting deportation. In the mean time, Congress should ensure that DHS transitions to a detention system that is right-sized, safe, humane, and efficient.

Ms. SANCHEZ. Thank you for your testimony.

I now recognize Mr. Krikorian for 5 minutes or less to summarize your testimony.

STATEMENT OF MARK KRIKORIAN, EXECUTIVE DIRECTOR, CENTER FOR IMMIGRATION STUDIES

Mr. KRIKORIAN. Thank you, Madam Chairwoman.

Barbara Jordan, the chairman of the U.S. Commission on Immigration Reform, told Congress in 1995, "Credibility in immigration policy can be summed up in one sentence: those who should get in get in, those who should be kept out are kept out, and those who should not be here will be required to leave."

Our progress in the third of Ms. Jordan's requirements, removing those who should not be here, still leaves much to be desired.

It is not just that we have 11 million illegal aliens living here, even among those aliens who have gone through the whole immigration court process and been issued final orders of removal, more than 500,000 of them have shown their contempt for American immigration law by absconding, something they could not have done had they been detained.

DOJ's inspector general found in 2003 that 87 percent of apprehended aliens who were not detained ran off, including 94 percent of those from countries that sponsor terrorism and 97 percent of non-detained aliens who were denied asylum.

A 2006 report by the DHS IG said in its understated way, "Currently DRO is unable to ensure the departure from the U.S. of all removable aliens."

The disregard for immigration law is so pervasive that the notification that a non-detained alien receives about his final order of removal is colloquially known as a "run letter," because when he gets the letter he runs. He can only do this because he is not being detained.

In short, a majority of the removable aliens who promise to appear for their court dates are simply lying to immigration authorities. This is the reason immigration detention must not only continue but must be expanded significantly.

The only way to ensure that illegal aliens actually appear before an immigration court is to physically compel them to do so through detention. Immigration law is literally meaningless without widespread use of detention to ensure that immigration violators actually leave.

While it can be worth experimenting with various alternatives to detention, in the real world their likelihood of success is limited.

Pilot programs to assess the viability of such alternatives either include people who would not have been detained anyway—cream-skimming or cherry-picking, if you will—or fudged the statistics to make the results appear more favorable, as the *Houston Chronicle* recently revealed.

Furthermore, alternatives to detention are not even really plausible subjects for experiment unless the criminal penalties for failing to appear are employed.

In other words, only when ordinary absconders, no sexual predators or terrorists but just regular illegal aliens who didn't come up for their court dates, are routinely prosecuted and given stiff prison sentences can alternatives to detention even be plausibly considered, because then there is a sanction or a stick for not complying.

The pervasive unwillingness of illegal aliens to comply with immigration law in the absence of detention is not surprising, after all.

Unlike in the criminal justice setting where failing to appear often results in additional penalties, a final order of removal is all that an illegal alien realistically faces whether he shows up for immigration court or not.

Furthermore, those failing to appear for immigration proceedings are likely to avoid detection for many years, given authorities' still frivolous approach to tracking down immigration absconders.

In short, alternatives to detention usually is just a synonym for catch and release. Rather than focus on a futile search for more alternatives to detention, we would be better advised to increase ICE's bed space.

As you noted, Madam Chairwoman, detention capacity grew to more than 33,000 as of fiscal year 2009, but in the current fiscal year there was no request for an increase. It is a flat number. This reluctance to increase detention capacity is curious, to say the least.

Secure Communities in 287(g) guarantee that the number of aliens ICE is going to have to detain is going to increase significantly. The mismatch that is coming between supply and demand for detention beds is going to have two results.

First, illegal aliens not involved in other crimes are even less likely to be detained than now, which means the absconder population is going to resume its rapid growth.

Second, when all of them are no longer in detention, then criminal aliens who are being handed over to ICE will end up having to be released for lack of space. Those people are going to commit further crimes.

The political blowback that both Congress and the administration will face when that happens, when aliens—criminal aliens that ICE knew about and then ordered their release—that outrage is going to be deserved, I would have to say.

In conclusion, all Americans support efforts to make detention as professional and as humane as reasonably possible. But our focus must be on the vital role of detention as a necessary tool to maintain the integrity of our immigration system. Thank you.

[The statement of Mr. Krikorian follows:]

PREPARED STATEMENT OF MARK KRIKORIAN

DECEMBER 10, 2009

Barbara Jordan, chairwoman of the U.S. Commission on Immigration Reform, told Congress in 1995: "Credibility in immigration policy can be summed up in one sentence: those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave." Our immigration policy has never lagged in letting people in. And we have gotten a little better at keeping out those who should be kept out. But our progress in the third of Ms. Jordan's requirements—removing those who should not be here—still leaves much to be desired.

It's not just that we have 11 million illegal aliens living here. Even among those whom we have formally designated as "should not be here"—aliens who've gone through the immigration court process and been issued final orders of removal—more than half a million have expressed their contempt for American immigration law by absconding.

This is not a new problem. A 2006 report from the DHS Office of Inspector General found that:

"Currently, DRO is unable to ensure the departure from the U.S. of all removable aliens. Of the 774,112 illegal aliens apprehended during the past three years, 280,987 (36%) were released largely due to a lack of personnel, bed space, and funding needed to detain illegal aliens while their immigration status is being adjudicated . . . Further, historical trends indicate that 62 percent of the aliens released will eventually be issued final orders of removal by the U.S. Department of Justice Executive Office of Immigration Review (EOIR) and later fail to surrender for removal or abscond." ("Detention and Removal of Illegal Aliens," OIG–06–33 April 2006)

A few years earlier, in 2003, the Department of Justice's Office of Inspector General (before the reorganization of immigration functions in the Department of Homeland Security) found essentially the same thing:

"Although the INS remains effective at removing detained aliens, it continues to be largely unsuccessful at removing nondetained aliens, removing only 13 percent of those we sampled. Moreover, the INS was deficient at removing important subgroups, removing only 6 percent of the nondetained aliens from countries that sponsor terrorism, 35 percent of nondetained criminal aliens, and only 3 percent of nondetained aliens denied asylum." ("The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders," Report Number I–2003–004, February 2003)

The disregard for immigration law is so pervasive that the notification that a nondetained alien receives about his final order of removal is colloquially known as a "run letter"—because when he gets the letter, he runs. In a similar phenomenon, during the surge of non-Mexican illegal immigration on the southern border a few years back, a lack of money for detention forced the Border Patrol to release the apprehended illegal aliens with a summons requiring them to come back for an immigration hearing in 30 days—and that summons came to be known as the "diploma," since it permitted the holder to "graduate" into the United States and get lost in the large urban immigrant communities. Needless to say, very few of these people returned for their hearings.

And the lack of detention space can have serious consequences. For instance, Ghazi Ibrahim Abu Maizar was a Palestinian illegal alien who had been caught three times trying to sneak into Washington State from Canada. But on his third try, in 1996, Canadian authorities refused to take him back. Instead of detaining him, the Border Patrol had no choice but to release him into the United States with a summons to appear before an immigration court. Because he was not detained, he was able to proceed with a plot to bomb the New York subways, which was averted at the last minute only when a roommate informed police.

In short, a majority of removable aliens who promise to appear for their court dates are simply lying to the immigration authorities. This is the reason immigration detention must not only continue, but must be expanded significantly. The only way to ensure that illegal aliens actually appear before an immigration court is to physically compel them to do so through detention. While it can be worth experimenting with various alternatives to detention, in the real world their likelihood of success is limited. Pilot programs to assess the viability of alternatives to detention often either include people who would not have been detained anyway (i.e., cream-skimming or cherry-picking those most likely to yield the "right" result) or fudge the statistics to make the results appear more favorable, or both. For instance, the *Houston Chronicle* had to make a Freedom of Information Act request to discover that:

"Nearly one in five suspected illegal immigrants who went through an Immigration and Customs Enforcement intensive monitoring program absconded while under supervision during the past 5 years, newly disclosed records show . . .

"On its website, ICE boasts a 99 percent appearance rate in immigration court for participants in its restrictive Intensive Supervision Appearance Program (ISAP). Yet records maintained by private contractors that administer ISAP show they were 'unable to locate' 18 percent of 6,373 illegal immigrants who passed through the program between 2004 and the end of January. Five percent were re-arrested by ICE, records show." ("Flaws found in options for immigrant detention," *Houston Chronicle,* October 20, 2009)

Furthermore, alternatives to detention are not even plausible subjects for experiment unless the criminal penalties for failing to appear are employed. In other words, only when ordinary absconders—who aren't sexual predators or terrorists but

just regular illegal aliens who ignored their court dates—are routinely given stiff prison sentences can alternatives to detention even be plausibly considered.

The pervasive unwillingness of illegal aliens to comply with immigration law in the absence of detention is not surprising. Unlike in the criminal justice setting, where failing to appear often results in additional penalties, a final order of removal is all an illegal alien realistically faces, whether he shows up to immigration court or not. Though the law provides for imprisonment of up to 10 years for aliens who fail to appear at their hearings, the chances that an immigration absconder not involved in additional crimes will be prosecuted are vanishingly small. Furthermore, those failing to appear for immigration proceedings are likely to avoid detection for many years, perhaps for the rest of their lives, given authorities' still-frivolous approach to tracking down immigration absconders. For example, under pressure from local advocacy groups, many police departments refuse to serve ICE administrative warrants issued to absconders, thus shielding the scofflaws from facing the consequences of failing to depart. Thus, alternatives to detention are simply irrelevant for those likely to be rejected for asylum or cancellation of removal—i.e. the majority of those in removal proceedings.

In other words, "alternatives to detention" is simply a synonym for "catch and release."

Rather than focus on a futile search for alternatives to detention, we would be better advised to increase ICE's bed space. There was, in fact, an increase through fiscal year 2009, albeit from a low starting point. ICE had funding for 18,500 detention beds in fiscal year 2003, 32,000 beds by 2008, and 33,400 beds in fiscal year 2009. But the growth has stopped, with the fiscal year 2010 DHS budget allowing for no increase in detention beds. This despite the fact that the actual physical capacity to detain more illegal aliens exists in most parts of the country, much of it in unused county jail space. What's more, a number of States have offered to help ICE by covering the up-front cost of new jail construction in exchange for an understanding that ICE will use it.

The reluctance to increase detention capacity is curious, to say the least, in light of the Secure Communities initiative and the spread of jail-based 287(g) programs. These efforts ensure that the number of aliens ICE will have to detain is going to increase significantly. The mismatch between supply and demand for detention beds will likely have two results: First, illegal aliens not involved in other crimes will be even less likely to be detained than now, meaning the number of absconders will resume its growth. Second, there will be an increase in the number of criminal aliens whom local jurisdictions have alerted ICE to, but who have to be released because of a lack of funding for detention space. The result of both of these developments will not only be bad policy, but also bad politics—the public's confidence in the Government's promises to enforce the law will be further eroded and, when a number of the released criminals inevitably commit new crimes after having been ordered released by ICE, the administration and Congress will rightly be subjected to public outrage. An example of how detention of certain illegal aliens can literally save lives: Davidson County, TN, has reported that 75 percent of the vehicular homicides committed by illegal aliens would have been prevented if the illegal alien had been deported, presumably after detention, on the basis of prior offenses.

A final point on the supposedly inhumane nature of detention. Most aliens are detained for a short time, an average of 1 month. With a few exceptions, the small number who remain in detention for long periods are there because they continue to challenge their deportation. And they often do so because they are given false hope by open-borders advocacy groups intent on using such people as pawns in a political effort to hamper enforcement of American immigration laws. The humane thing to do would be to make clear to these illegal aliens that immigration to the United States is a false dream for them and help them return home and get on with their lives. Instead, they languish in detention—a needed detention, given the virtual certainty that they would ignore a negative decision on their cases—but languish nonetheless.

All Americans support efforts to make detention as humane as possible. But it is essential to emphasize that detention is a necessary tool and consequence for those who have violated our immigration laws.

Ms. SANCHEZ. Thank you, Mr. Krikorian, for your testimony.

I thank all of the witnesses for their testimony. I will remind each Member that each of us will get 5 minutes to question the witnesses, and I will now recognize myself for some questions.

I am trying to wrap my arms around this whole issue of detention. There are a lot of differences, obviously, on this panel, which

is a good thing. I think most of you are working in a particular area of this whole detention issue, and so I have a couple of questions.

First of all, what is the average length of stay for somebody in a detention facility, whether they are moved or not? What is the average length before we decide yes, you have a real case, and you have gone before a judge, and you are moving in a different direction to stay here, or no, you have nothing, we have got to get you out of the country now?

Does anybody have some idea of what that would be?

Doctor.

Ms. SCHRIRO. Thank you. The average length of stay was 30 days at the time of the preparation of the report. But like all averages, it is something of a misleading statistic. There are a large number that are gone within 1 day, a large number gone within a week, a larger number gone within a month.

There are relatively few that are there longer than 6 months and, for fiscal 2008, fewer than 2,100 who stayed a year or more. But of course, within that time, then there is, as you suggest, movement to more than one facility.

Ms. SANCHEZ. So are you saying to me that it is sort of like the 80/20 rule, 80 percent are easy to decide within a day or a week or what have you, but it is that other 20 percent that take up a lot of the resources and time to deal with?

Ms. SCHRIRO. Well, you could have people there for a short period of time but by virtue of high need or their high risk that they present, you know, will incur more costs as well.

But those who agree to removal are typically gone fairly quickly, and those who are seeking some form of relief will tend to stay longer.

Ms. SANCHEZ. Anybody have a different answer than what we just heard from the doctor?

Mr. KERWIN. I don't have a different answer, but I did want to say that, you know, the average is 30 days, but there is—25 percent are out within a day or two. But there are a significant number of long-term detainees.

When we looked at a database of everybody in detention on a particular night in January 2009, we found that more than 4,000 of the people in detention on that night had been in custody for more than 6 months as of that date.

Of those, almost 1,000 had been detained for more than 6 months after having received an order of removal. That is a significant date, because the Supreme Court has held that detainees must be released within 6 months of a removal order, unless the Government can show that there is a significant likelihood of removal in the future.

So there are a high number of people in ICE custody—a low percentage but a high number—on any given night who are presumptively eligible for release. That doesn't mean they have to be released, but under the Supreme Court decision the burden is on the Government to show that they can be released soon.

Ms. SANCHEZ. Yes.

Ms. NYSTROM. In my experience, the average length of stay varies tremendously across facilities. As you have noted, there is a patchwork of facilities that vary in condition standards.

I would submit that the length of stay also varies widely across facilities. This is one area that is a tremendous inefficient use of Government resources.

For facilities that are located near the border, the repatriation rate is much quicker than facilities that are located, for example, here in Virginia. In my experience, detainees with a final order of removal in detention often wait 2, sometimes 3, months simply to be returned to their country of origin.

Ms. SANCHEZ. Okay.

Mr. CRANE. May I add to that, ma'am?

Ms. SANCHEZ. Yes.

Mr. CRANE. On the length of stay, the agency actually announced last week that the average length of stay for an ICE detainee is 6 weeks.

I would add to that, as far as our officers in the field, we try to have an individual removed if we can within 1 to 2 weeks. Usually every week we are shooting for 1 week, as fast as we can, to move this individual, because we, frankly, don't have the bed space to keep them.

Now, as far as the length of stay, I think it is important to say that there is a lot of things making that happen, but the key thing being—is that that individual, generally speaking, is trying to pursue their case. They are trying to stay here.

One of the big frustrations that we have on the DRO side of the house is that when they show up for court, a lot of times they are not prepared for court or their attorney, more specifically, is not prepared for court.

They are asking for continuances, which depending on our court calendars may be 6 months at a—or, I am sorry, 6 weeks at a time. So these detention stays really are dependent on the individual.

The individual is creating—they are trying to fight their case, so it is not—most of the time it is not something that we are trying to do. We are trying very hard to get them out of custody.

Ms. SANCHEZ. So, Mr. Crane, would you say that this person who is trying to fight their case—you think they are just dragging their feet so they can just stay, stay, stay?

Or do you think it is because we are not doing a good job about making sure they can see their lawyer, we have transferred them so now they have got to start with a new lawyer, or maybe phone calls aren't allowed out?

Or do you think it is because the detention facility doesn't really allow them the opportunity to put together a good case in a short amount of time, or because they simply are going to push the judge or the system as long as they can?

Mr. CRANE. I don't think anyone wants to stay in jail. I think every one of these individuals wants to see their case come to a close as quickly as possible. That is my personal opinion.

But there are a lot of things going on that—you know, for example, like I said, the attorneys constantly showing up to court and the attorney is not prepared. It has nothing to do with the de-

tainee. They are asking for these continuances. This is happening all over the country, so——

Ms. SANCHEZ. Would anybody opine as to why these attorneys aren't prepared?

Mr. CRANE. Because the system allows them not to be prepared. When they can show up to court and they can ask for a continuance, and they know they are going to get it, then they are going to continue to do it, until the judges start, you know, holding these attorneys accountable.

Ms. SANCHEZ. Anybody else have a different opinion on that?

Mr. KERWIN. Yes. I mean, I have a strongly different opinion. The fact is that most people in removal proceedings don't have counsel, so most of the continuances are to seek counsel, to try to get some kind of representation.

You know, they are not fighting their removal. They are pursuing relief from removal. That is what they are doing. They are pursuing relief for things that they may be entitled to under U.S. laws.

Ms. NYSTROM. I would also like to add that some of the attorneys seeking continuances are, in fact, ICE's trial attorneys, and that happens on occasion when, for example, criminal conviction records are not in the file, or, as you alluded to, when someone has been transferred to a new facility and the alien file does no go with the detainee to the new location.

That results in a significant delay, and that was pointed out in the inspector general's recently released report.

Ms. SANCHEZ. So would it be better for us to try to figure out that particular process? We don't really do it in this subcommittee.

I think we are very gifted to have Zoe Lofgren on our subcommittee because she is over on the Judiciary Committee and she deals a lot with some of these issues. But do you think it is maybe that the resources aren't in place for someone to be able to get their day in court faster with a strong lawyer to make sure that they have some redress in the system?

Anybody want to——

Mr. CRANE. What I can tell you specifically is that we have 48 hours to serve this individual with documents, charging documents, and everything seems to come to a screeching halt after that. So yes, the problems really lie after that point.

We bring them into custody. We serve them with their paperwork. And then everything just kind of stops at that point.

Ms. SANCHEZ. But if things could go faster in the court system, then from a standpoint of the detention and the work that you do, you are saying that the person who is being held wants it to go faster, you all want it to go faster.

If we can get that process done in a fair resourced way, we might not need to look for more beds if we can remove those individuals or say maybe you have a real right to be in this country, rather than continuing, continuing, continuing because there are no lawyers available, or there is not a courtroom available, or a person got transferred so records aren't following up with these people.

Mr. CRANE. I think that we will always be searching for beds, because we are always going to be out there making more arrests.

But I think that we would serve these individuals much better if we could clean up some of those issues, yes, ma'am.

Ms. SANCHEZ. Okay.

I have gone over my time, but I am hoping we might have some time for some more questions, because I have a lot more of them.

I will recognize my Ranking Member now, Mr. Souder, for 5 minutes.

Mr. SOUDER. I would request that we seek from ICE, DHS, on behalf of the subcommittee, a detailing of how many of the appeals actually win—in other words, how many are found that they were, indeed, entitled to enter the United States.

I would guess that it is a small percentage. Do you any of you know? Then why were you making assertions if you didn't know? I mean, the fundamental question here is that—the question is why are these people—and the implication was—is that somehow ICE was awful for holding these people here.

Then we—which I agree with, the reason most of them are there are one of two things, they are the only person from, say, Brazil, and we have to get a special plane to fly them back or buy a ticket, divert agents to do that, some get held longer because we can't send them back to the country that they came in, we have to—American taxpayers pay to detain them, pay for their lawyers, pay for all the information, pay to ship them back to Brazil, or wherever—I use Brazil because I have seen a number of cases relating to Brazil.

In fact, then the assertion was made that the reason that maybe these trials are taking longer is because of attorneys weren't there, they didn't have access and so on.

The question is that how many of them win, and that would seem to me to be the first thing you would want to know, because if you could show that most of these people who were held and didn't get proper information, or it took a long time, in fact were legitimately mistreated, that would be very compelling.

Mr. KERWIN. May I respond?

Mr. SOUDER. Yes.

Mr. KERWIN. Yes.

Mr. SOUDER. That is why I asked earlier.

Mr. KERWIN. Well, we do know. I mean, we don't know—I mean, I don't know exactly right here, but, you know, tens of thousands of people get relief from removal every year—asylum, they are found to be eligible for adjustment of status based——

Mr. SOUDER. That is what I was——

Mr. KERWIN [continuing]. On a family tie. You know, some of them get, you know, other relief from removal—cancellation of——

Mr. SOUDER. Thousands——

Mr. KERWIN. So it is a significant number. We also know that the people with legal representation get relief at rates that are, you know, sometimes three or up to six times higher than those without representation.

Mr. SOUDER. Well, I would like to see the formal statistic. I believe that you should be able to access reasonable, you know, representation. Thousands in the course of millions is not particularly an impressive number.

Then, if that is the case, we should make sure that they are there but not try to imply that there is some kind of a policy to keep people in prison for a long time. We are dealing with a small group that we ought to analyze.

To the degree they are mistreated, we ought to look and test that. Now——

Mr. KERWIN. If I might, it is not thousands related to millions. It is about 330,000 come into removal proceedings each year. I am not sure exactly how many of those are detained. That is total removal cases. There is many thousands of those that do get relief from removal.

It is not correct to say that there is Government-paid attorneys. There is not. So, you know, what you have is you have a system where in some facilities there is some legal orientation presentations provided to people, but that doesn't necessarily lead to legal representation.

Mr. SOUDER. The legal organizations that provide the—do not receive any Federal money.

Mr. KERWIN. They do. They do, but there is no Federal money for legal representation.

Mr. SOUDER. There is no Federal—the organizations that are providing—well, I don't want to get bogged down in this. I don't believe you are—correctly representing that.

Mr. KERWIN. No, I am. I am absolutely correct on that.

Mr. SOUDER. Many of these organizations receive Federal funds and then provide the funding. We provide the law libraries. Depending on how a person represents themselves—it is not correct to say that there is no Federal funding involved in the defenses. It is just not correct. Now——

Mr. KERWIN. There is no Federal funding for legal representation. That is absolutely 100 percent correct.

Mr. SOUDER. Indirect. You are saying there is no indirect Federal funding——

Mr. KERWIN. No legal representation. There is funding for legal orientation presentations which are, you know, to——

Mr. SOUDER. Doctor——

Mr. KERWIN [continuing]. Hundreds of people in detention centers.

Mr. SOUDER. Dr. Schriro, could you—I just have a technical question. Why are the ICE personnel being required to wear uniforms before entering a New York jail? That was a policy decision that doesn't apply to any other Federal agencies.

Ms. SCHRIRO. That is a policy that I instituted upon becoming commissioner of New York City, and it was to ensure that the population knew the parties with whom they were speaking.

Mr. SOUDER. You know that ICE agents—I mean, you are familiar with this—do not have a standard uniform that they wear all the time. Why wouldn't you have the same of FBI, DEA, any other Federal agency? What is the point of singling out ICE?

Ms. SCHRIRO. The point is that in the civil system there is no equivalent to Miranda, and so when you are spoken to and you answer a question, it is without warning or an awareness of what the ramifications are.

So we adopted a practice in New York City, first requiring ICE to ask of us to speak with the pretrial individual prior to addressing them, and we in turn, when the individual says, "Yes, I will speak with ICE, with or without representation"—that the people that they meet are properly identified.

Mr. SOUDER. In civil trials for citizens, are law enforcement people required to wear uniforms?

Ms. SCHRIRO. They are required to—I am sorry? Ask that again, please.

Mr. SOUDER. In other words, one of my problems here is that we are continuing to have this separation in—as if people who have entered the United States, A, get exactly the same rights as citizens and, in fact, they seem to be getting more rights than citizens.

That while I understand your—and it is not really a citizen has a different right, and therefore that may be the answer to my question.

But that one of the whole fundamental problems I have with this is that there is this implication that somehow people who have entered the country illegally and even if they were—had other rights, they still wouldn't have been picked up if they hadn't been trying to enter without proper documentation between ports of entry—variations like that.

My frustration is that they are acting like they are not criminals. They are arrested just like American citizens are arrested for criminal behavior. It is criminal to break the law. That is what a crime is.

Now, there are different types of crimes in severity, and most of these people, I agree, are more mild-mannered. They are, generally speaking, not resistant. They are very kind. Individuals—you know, most are.

But how you separate out which one is going to necessarily be which, what—are we going to have a different standard for countries of interest, so to speak, people of interest?

They haven't committed a crime. They are, say, from a high-risk country that their—they may be an individual who we have on a list. But on what grounds would we hold them as opposed to somebody from another country if they haven't committed a crime?

That we are going to set all kinds of double standards here. That if somebody is in Virginia and captured, quite frankly, it means they have been in the United States for a greater period than if they are captured right at the border.

That they have probably utilized services that they haven't paid for, which is a huge debate. That this whole discussion is though these people haven't committed criminal acts.

The No. 1 complaint from law enforcement in my district, which ICE has been trying to address, is why local taxpayers are having to pay for detention of people for violating Federal crimes but who have other problems in our local communities. We can't even get them deported.

That it is a frustration in the United States. If you ask the majority of the American people, they think the problem is we aren't deporting fast enough. We need more courts as well as more detention facilities.

Most people would agree we should accelerate the deportation process. I don't think most people disagree with that. If that is where we need more money, let's get them out. If they have to have fair—you know, some kind of legal representation they aren't getting, then let's see that that gets done and get them deported.

But the whole point of this—I believe it is somehow turned on its head, and I just can't get my handle around what we are doing.

Ms. SANCHEZ. Thank you, Mr. Souder.

Maybe at some point Zoe Lofgren, who is much more versed in this stuff, might give us a implication of what it means when you enter the United States, and what types of rights you might have versus citizens. I am certainly not as well versed as she on that.

But at this moment, I would like to recognize the gentlewoman from California, Ms. Harman, for her 5 minutes.

Ms. HARMAN. Thank you, Madam Chairwoman. Thank you for holding this hearing on a subject that is of enormous concern to residents of Los Angeles, which holds about 6 percent of the detainee population Nation-wide, according to the Department of Homeland Security review of detention policy.

So I appreciate the opportunity to learn more and also to think about immigration and illegal immigration again as we struggle with this issue.

I am the daughter of immigrants. My father was an immigrant. My mother was the daughter of immigrants. I would assume many of our committee Members are, too.

Immigration makes America strong, as everyone has pointed out. Immigration done legally makes America strong. Immigration that is illegal is a challenge for America.

I strongly believe—agree with Mr. Souder and Ms. Sanchez that we should enforce our immigration laws. But we should do that enforcement in a way that reflects our values.

As we consider this problem, detention of immigrants who do not pose a threat in terms of violent behavior has to respect basic human rights and civil liberties. It is a necessity of our—of living our values.

I want to ask you about context. Our committee doesn't have jurisdiction over this, but I was and still am a huge proponent of comprehensive immigration reform. Several of you mentioned that as you testified.

I want to know whether you think this problem would be greatly helped if we could enact a proposal for comprehensive immigration reform. I am thinking essentially of the proposal that former President George Bush, supported by a large number of Members on a bipartisan basis here, was proposing in the last term of Congress.

How much difference would immigration—comprehensive immigration reform make to this problem?

Ms. NYSTROM. You are absolutely right. It would make a tremendous difference. The most obvious reason for that would be if comprehensive immigration reform contains a path to citizenship for many of the millions of people who are currently here with no valid immigration status, the numbers that would need to be in removal proceedings, and therefore arguably considered for detention, would be dramatically reduced.

Ms. HARMAN. Thank you.

Other comments.

Mr. KRIKORIAN. Yes. If I could disagree, Congresswoman, Michael Chertoff, who was the previous DHS Secretary, estimated that 15 to 20 percent of the total illegal population would be barred from legalization under the proposals then being considered because of various criminal background or other matters.

The fact is that virtually all illegal aliens have committed multiple Federal crimes, not just civil violations but criminal violations. Crossing the border, obviously, is a Federal crime. Signing an I–9 form is perjury. It is a felony if it is false information.

Buying false documents is a Federal crime. Using false documents is a Federal crime. Absconding from a court date is a Federal crime punishable by up to 10 years in prison.

So the assertion seems to be that if we redefine the illegal immigrants here as legal, then the detention issue, the detention problem, will disappear or at least be dramatically reduced.

The fact is a very large portion of the illegal population, even under the proposals that President Bush suggested, which are essentially the same as whatever it is that Congressman Gutierrez or Senator Schumer will come up with—a very large portion will not be redefined as legal.

There is always going to be the further issue of on-going, continuing illegal immigration, not just from border crossers but from the very large share of the illegal population that is people who enter legally on visas and then never leave.

So the answer, I think, is that to look at a broad legalization program as a solution to detention is—I think is a mistake. It is actually the other way around.

Only a very robust detention—and credible detention system would be one of the ways to contribute to public—you know, to create the credibility that the Government will enforce the law.

Now, honestly, I am against comprehensive immigration reform. But the way to do it is through more robust detention, among other things.

Ms. HARMAN. Well, let me just say that I—as I said earlier, I am for enforcement of our immigration laws. I do agree with you that there are crimes connected with forging documents in—related to one's illegal status.

However, I think most of these folks are coming here seeking a better quality of life for themselves or their families. With the economic collapse that we are experiencing, there has been a huge decrease in illegal immigration. I don't think that is due to detention. I think that is due to different economic circumstances.

I continue to hope that we come up with humane comprehensive immigration reform, and I do think it will make a difference in terms of the population that we have to detain in connection with illegal immigration.

I would just ask—my time has expired, Madam Chairwoman. But if anyone else wanted to comment, I hope you will permit that.

Yes, Mr. Crane.

Mr. CRANE. Yes, ma'am. I would just like to say there is a lot of numbers floating around out there about who we actually have in custody at ICE, and the—in November the agency released the number of 53 percent convicted criminals.

Now, I can tell you, having worked the CAP program for 5 years, the majority of individuals that we are incarcerating are coming out of county and State jails. They have been arrested for extremely serious crimes.

You know, the booking sheets are coming into us every morning. We are picking out the worst ones we can find and we are going to the jails and we are looking for the worst of the worst. That is our priority.

We would estimate that potentially 30 to 40 percent of the individuals that we are saying are non-criminal actually were arrested in criminal charges. The reason most of the time—and this is an epidemic problem in the United States right now—that they are being released to us without convictions is because the counties don't have the money to prosecute them and hold them.

So ICE has become a dumping ground for people—their problems that they have arrested. So I don't really know if reform is really going to be the answer to that problem.

Secondly, I would say that any time you give someone a legal right to be here, along with that comes rights—a lawful permanent resident, you know—they can possess marijuana. They can get DUIs that—you know, they can do all of these different things. It takes away from our ability to enforce the law.

I am not saying that that is not a solution, that reform isn't there, but I just think that we need to consider—I am sorry.

Ms. HARMAN. Yes. Thank you. My time has just expired, and I don't want to abuse my privilege in the committee. I would just observe that I am not for anyone breaking laws, but I don't think that one of the deterrents to becoming lawful should be the fact that if you are lawful you then have some added rights to commit crimes in this country. I don't think you do.

I yield back the balance of my time. Sorry——

Ms. SANCHEZ. Thank you, Ms. Harman.

I am really concerned about something that you said, Mr. Crane, that people aren't being prosecuted for alleged crimes. But the fact they are not being prosecuted could mean, at least under our system, that they actually don't have that crime on their record.

Therefore, you know, it shouldn't—at least the last time I checked, it shouldn't count against people. So you know, this might be something that we have to look at from a much more local level about, you know, how people—how our cities are—and our counties are actually doing in going after some of this.

Mr. Souder.

Mr. SOUDER. If I can, as a supplement, ICE came into my district after much pressure and held a meeting with prosecutors, judges, and sheriffs to talk about the frustrations about how they make decisions on whether they are going to come and pick up people in our local jails, of which over half were not legal.

One of the prosecutors made this point, that almost all cases anymore are plea bargained, and that she was trying to focus her legal cases on domestic violence, and she will—she was plea bargaining the other. Plea bargains aren't treated the same as convictions. ICE was only going to pick up the people with convictions.

They asked, "If we get a conviction will you—and spend our limited amount of court time on the convictions, will you guarantee

you will get them, because that means we are going to have to plea bargain with the other people in our court cases," and they said no, they don't have enough resources.

So even if they had a conviction, they couldn't, and that—so we have got to get into the—behind the challenge here.

Ms. SANCHEZ. I think that is what I was trying to say. We have to really take a look at what is going on at the local level also.

I will now recognize, very patiently here, Mr. Cuellar for his 5 minutes.

Mr. CUELLAR. Thank you, Madam Chairwoman.

Thank you for the witnesses for being here. Let me ask you about another facet. What about the country of origin that have to issue the travel documents to send those individuals?

There are delays, and I assume some of the—certain particular countries are—you know, do a better job of delaying having to return those individuals.

Can any of you all want to talk about those country of origins and the delays? Anybody in particular—any particular country that stands out?

Mr. KERWIN. I would be happy to, because we looked at that recently. It used to be that, you know, two or three countries were responsible for all—you know, the great majority of people that didn't get travel documents. It would be Cuba, Vietnam, Cambodia and the like, places that we didn't have repatriation agreements with.

Actually, those numbers are way down, and there is not a—there is not one country that is—you know, has significantly more cases than any other. It seems to be more of a dispersed issue at this point.

I mean, that is a big, big issue, and explains, I think, to a certain extent, you know, the number of long-term detainees after being ordered removed, because they just can't get travel documents for them.

Mr. CUELLAR. After a particular time, what happens if a country doesn't want to take an individual back? Is that person released in the United States?

Mr. KERWIN. That is what the Supreme Court case is about, that after 6 months they have become presumptively eligible for release.

But if the Government is still pursuing and it looks, you know, foreseeable that the person can be removed, then they would—then they would stay detained under that Supreme Court case.

Mr. CUELLAR. Have we had anybody with a criminal record be released after those 6 months if a country doesn't take them?

Mr. KERWIN. I am sure, but I am—I don't know, like, specific cases.

Mr. CUELLAR. Mr. Crane, you nodded your head.

Mr. CRANE. Yes, sir. I would say that is happening every day, actually, and I can give you a specific case of an individual that was convicted of assaulting a police officer in our area. He came into custody. He assaulted me, received 13 months for assaulting a Federal officer.

He was from Sudan. We were unable to remove him. We had to—we were forced to release him, at which time he was arrested

for rape after that, at which time our supervisors told us not to take him into custody again.

Mr. CUELLAR. All right.

Mr. CRANE. So yes, it happens very frequently.

Mr. CUELLAR. Yes, and that is what I understand also, so I think that is an issue that we probably have to look at.

Let me direct my question to the costs and the efficiencies. Where are the—most of the detention centers held? I mean, I would assume that if they are closer to a border, I assume most of them will be going to Mexico, South America, Central America.

Wouldn't you assume that most of those locations should be on the border?

Anybody. Mr. Crane.

Mr. CRANE. I am sorry, sir, are you talking about where they are actually going to be held——

Mr. CUELLAR. Yes.

Mr. CRANE [continuing]. Or see an immigration judge?

Mr. CUELLAR. Right, exactly, or the—detained.

Mr. CRANE. You know, sir, that is hard to say, because especially when you start mixing the fugitive operations teams in, and we are dealing with individuals that we are going to release, we have got to have judges in those areas, and we really need to have—if we have got some kind of facility there locally, that makes it—it facilitates it for those individuals.

Mr. CUELLAR. Okay.

Mr. KERWIN. Dr. Schriro's report actually speaks to that. I mean, there is a little bit of a disconnect. Most of them are in kind of the southern States, in the border States in particular, and there is a little bit of a mismatch between detention capacity and demand, but——

Mr. CUELLAR. Dr. Schriro.

Ms. SCHRIRO. Just more specifically, we overlaid where arrests occurred and where capacity was available, and there were disparities in some parts of the country, and that largely contributes to the transfers.

So for example, in the northeast, in the mid-Atlantic States in particular, there is an acute shortage of bed space proportionate to the level of arrests.

So it is far more likely that if you are apprehended in those areas that you are going to—the course had been for some period of time that you would go to kind of Pennsylvania Dutch Pennsylvania, then down through Mexico, Texas, Louisiana, sometimes Florida.

Speaking to some of the other testimony given previously, if you were fortunate to have counsel then, you lose that relationship. Where you had community ties or other resources, they are not as likely to be available.

Mr. CUELLAR. Okay.

Last question. Secure Communities initiative—is that something that works?

Mr. Crane.

Mr. CRANE. Sir, I will tell you, we weren't real impressed with it. In my area—I was out of the State of Utah—they were pulling

officers out of our offices to send them down to the southern border. We were short-staffed already.

We had criminals walking out of jails because we couldn't work our CAP program. They got down to the southwest border and managers said, "We don't have anything for you to do, just—we weren't prepared for this. We didn't know what to do with you. Just kind of hang out."

Quite honestly, when they went down there, I think they were arresting primarily CIS referrals, and they used all of those up in about 30 days. After that, we are really not quite sure what they were doing. They weren't really making arrests.

But they certainly could have been making arrests if they were back in their respective areas.

Mr. CUELLAR. All right. Thank you.

Thank you, Madam Chairwoman.

Ms. SANCHEZ. Thank you. I thank the gentleman from Texas.

Now we will hear from the gentleman from—Mr. Pascrell, I believe, is next, from New Jersey——

Mr. PASCRELL. Thank you.

Ms. SANCHEZ [continuing]. For 5 minutes, recognized.

Mr. PASCRELL. Thank you, Madam Chairwoman.

First of all, I think that the—as I have said many times, the Government has the right to know who is in this country at any given time in order to protect the country.

We have heard from everybody how we need to protect our borders. But I think we are spinning our wheels, no question in my mind about that.

When I look at the—if you turn to page 4 in the materials that—received, the number of ICE detainees per day, you notice there was a 33 percent increase between 2006 and 2007, and then a little bit more the next year.

One must conclude from that that our great, courageous Congress and our great, courageous administrations—that is when there was discussion about comprehensive health—comprehensive immigration reform, so this was our response. We will show everybody that we are tough.

Now, we are talking about 33,000 on any given date. Do you know what the percentage is of the undocumented folks that are in this country? What percentage would that be? A very, very, very small percentage.

I mean, we know the percentages of how many criminals. The percentage of criminals that we detain of these 33,000—we are hearing that maybe up to 50 percent of them have committed multiple criminal acts. Is that what I am hearing from the panel?

Well, what percentage of criminal acts are perpetrated, committed, by the 11,960,000 other illegal immigrants that are in this country? Are they high-risk as far as crime is concerned? This is not the solution to the problem, the direction that we are going in, by any stretch of the imagination.

Removing those who don't belong here—do you know how long that would take, Mr. Krikorian? How long would that take?

Mr. KRIKORIAN. Well, we have actually modeled that, and it is not just a question of—because the——

Mr. PASCRELL. How long would that take?

Mr. KRIKORIAN. Our estimate is that in 5 years you could cut the illegal population in half.

Mr. PASCRELL. So you——

Mr. KRIKORIAN. Not by arresting everybody individually, but by a combination——

Mr. PASCRELL. But you talked about removing them. You didn't just talk about arresting them. You talked about removing them.

Mr. KRIKORIAN. That is a combination——

Mr. PASCRELL. Mr. Krikorian, let me ask you the question again. Maybe I didn't make myself clear. How long would it take to remove them?

Mr. KRIKORIAN. We wouldn't have to remove them. The question itself is based on a——

Mr. PASCRELL. We wouldn't have to remove them.

Mr. KRIKORIAN. Because the way immigration enforcement works is a combination of forced removal and voluntary—essentially voluntary self-deportation, because you squeeze people out of the country.

Mr. PASCRELL. Well, what you are——

Mr. KRIKORIAN. It is a combination of both.

Mr. PASCRELL. Excuse me. What you are implying here, Mr. Krikorian, is that either we are approaching this in a cavalier sense, or we are simply inept.

Mr. KRIKORIAN. Well, there is probably a lot of that, but what specific——

Mr. PASCRELL. Okay. Or is the Government unwilling to confront the issue? Is this politically incorrect? What do you think?

Mr. KRIKORIAN. Is what politically incorrect specifically?

Mr. PASCRELL. Part of your documentation you gave a—made a presentation here. Removing undocumented aliens.

Mr. KRIKORIAN. Well, it is something the public wants, and it is clearly contentious among both business groups and other advocacy groups. So yes, it is politically——

Mr. PASCRELL. Well, maybe the public——

Mr. KRIKORIAN [continuing]. It is politically incorrect.

Mr. PASCRELL. Maybe the public wants us to deal with the subject so that we get beyond the symptoms and find out what the problem is so that we can, in some manner, shape, or form, not only humanely respond to those that are in the caboose but respond to those that are not committing those crimes and not being detained.

Do you think that employers who hire undocumented aliens, those who have broken the law multiple times, Mr. Krikorian—do you think that employers should be incarcerated and detained as well?

Mr. KRIKORIAN. Absolutely. They should——

Mr. PASCRELL. How would you do that?

Mr. KRIKORIAN. First, by requiring all new hires to be cleared through the E-Verify system, so that then prosecutors actually will have a paper trail, which is very difficult now, to make a case against them.

Mr. PASCRELL. Do you know how many employers are in jail that have hired undocumented aliens?

Mr. KRIKORIAN. I don't know, but it is very small.

Mr. PASCRELL. How come you don't know that but you know how many undocumented aliens are in jail and how many times they have committed multiple criminal acts?

Mr. KRIKORIAN. Because the hearing is about detention of illegal——

Mr. PASCRELL. Well, look, you are an expert on it. I am not. You know that you—you know the numbers. You were clicking off numbers before of how many criminals are out there on the loose, inside the caboose, inside the—look. I know the game. I know what you are up to.

Now, most undocumented aliens are not detained. You would agree with me?

Mr. KRIKORIAN. Of course, yes. Absolutely.

Mr. PASCRELL. And most undocumented aliens shouldn't be detained.

Mr. KRIKORIAN. Probably. Well, it depends. I mean, if they are in immigration proceedings, yes, they should be, generally speaking.

Mr. PASCRELL. Well, according to you, they all broke the law since they shouldn't be here in the first place.

Mr. KRIKORIAN. Well, yes, okay.

Mr. PASCRELL. Let's put 12 million in jail. Let's detain 12 million. If you don't want to remove them, let's detain them. How many jails do we have to build?

Mr. KRIKORIAN. Congressman, the question is based on a false choice. The choice is not between arresting and driving out all 12 million illegals tomorrow, like something out of——

Mr. PASCRELL. You tell me what the choice is.

Mr. KRIKORIAN [continuing]. "Ten Commandments."

Mr. PASCRELL. Tell me what the choice is.

Mr. KRIKORIAN. The other choice being legalization. Those are the two—the way it is presented, that it is a sort of digital, on/off thing. Everybody is arrested and driven out tomorrow, or everybody gets legalized.

The middle way is what is actually practical, which is you detain and deport some portion, significantly more than now, but also make it increasingly difficult to live a normal life as an illegal alien, both by getting employment, et cetera, so that self-deportation, which has already actually happened to a significant extent over the past 2 years, picks up and reduces the illegal population significantly.

Mr. PASCRELL. Well, my time is up, and I thank you for responding to questions.

May I have a question to Mr. Souder, because he used the—a statement before, and I want to know what he means by that, the question of——

Ms. SANCHEZ. Can a question from Mr. Pascrell——

Mr. PASCRELL [continuing]. And he doesn't have to answer—you don't have to answer the question.

What do you mean by high-risk countries? Would you tell me? Because I want to write the list down of high-risk countries.

Mr. SOUDER. We have a list through the State Department—Saudi Arabia, Pakistan, Yemen.

Mr. PASCRELL. But there is a number of them, not—they are not all in the Middle East. They are not all Muslim countries either, are they?

Mr. SOUDER. Most of them.

Mr. PASCRELL. Well, is that a good idea or bad idea?

Mr. SOUDER. That they are——

Mr. PASCRELL. In other words, we are profiling countries now.

Mr. SOUDER. Yes.

Mr. PASCRELL. You think we should do that?

Mr. SOUDER. We always have. We always have.

Mr. PASCRELL. You don't believe that is a stigma on the people who come here legitimately from those countries?

Mr. SOUDER. I believe that law enforcement should be based on real risk.

Mr. PASCRELL. I am sorry?

Mr. SOUDER. I believe law enforcement should be based on real risk.

Mr. PASCRELL. Well, what is risk in your mind?

Mr. SOUDER [continuing]. Where the terrorists are coming from.

Mr. PASCRELL. Where the terrorists are——

Mr. SOUDER. Where the people on the watch lists are coming from, where the highest risk—I mean, they have to have some sort of a sorting system that—in detaining, and that is why every border crossing can tell you how many people came from high-risk countries that are on the State Department list.

That is why Congress always votes for this list.

Mr. PASCRELL. Well, I think if you have a reason——

Mr. SOUDER [continuing]. Whether we give foreign aid to those countries, whether we provide military weapons to those countries. That is judgmental.

Mr. PASCRELL. Risk——

Mr. SOUDER. Why would we not give—why would we not give certain weapons to countries that are—that apply for them? It is because they are higher risk. That is a judgment.

Mr. PASCRELL. Well, maybe we shouldn't give weapons to anybody.

Mr. SOUDER. I tend to believe people who are on our side should get weapon systems.

Mr. PASCRELL. Oh, you do.

Mr. SOUDER. I believe Israel should get assistance, yes.

Ms. SANCHEZ. I think that might be a debate on the House floor in International Relations Committee. I might just add that it is a difficult thing to see happen.

For example, I have a sister-in-law who is French—great French family. When France was in Algeria, she was born there to that family. Her passport carries "born in Algeria."

She has no real connection to the population there, in a sense, and yet, you know, she is of a country of particular interest and gets stopped, and has questions asked, and gets detained quite a bit, even though there is really not that connection there, but——

Mr. PASCRELL. But she is a suspect before the fact.

Ms. SANCHEZ. That is what I am saying.

Mr. PASCRELL. Right.

Ms. SANCHEZ. That is what I am saying.

Mr. PASCRELL. We shouldn't be doing these kinds of——

Ms. SANCHEZ. Well, but——

Mr. PASCRELL [continuing]. Stupid things.

Ms. SANCHEZ [continuing]. That is not really an issue of this committee, unfortunately, Mr. Pascrell.

Mr. PASCRELL. Well, it has something to do with who we detain. I believe it does. Unless we see this gestalt here, we are never going to get to the—we never get beyond the symptoms, is the point I am trying to make. I——

Ms. SANCHEZ. Well, we deal with the symptoms here. Unfortunately, the policy of that is made in International Relations and it is made in, most likely, the Judiciary Committee, as you know. We have not as broad of a place to attack those types of issues on this committee, although we try sometimes. Okay.

Very patiently, Mr. Green for his 5 minutes. Thank you to the gentleman from Texas for being here.

Mr. GREEN. Thank you, Madam Chairwoman.

Madam Chairwoman, the first time I read *Dred Scott,* I had tears to well in my eyes, because when I read the case I realized that it was the intelligentsia that perpetuated the circumstance.

It is really not the ignorant, the—those with a lack of understanding, that can perpetuate inhumanity. The intelligentsia gets the job done. The others follow.

I marvel at how we live by the notion that we should be our brother's keeper until we have to keep our brother. You know, it is easy to be your brother's keeper when you don't have to keep your brother, when your brother doesn't really need you, when your brother has all of the good things that life can offer.

But when your brother is suffering, needs health care, when your brother is without employment, that is when you really find out who is a keeper of the brother.

I, like some of my colleagues, find it very difficult to understand how we can believe that we can deport the millions who are here, many of whom, by the way, are not from Mexico.

Does everyone agree that we have somewhere between 12 and 20 million here? If you differ, raise your hand, please.

All right, so what is your number?

Mr. KRIKORIAN. We have slightly under 11 million illegal immigrants, based on our research.

Mr. GREEN. All right. Let's take 11 million. Eleven million people, by some standards all of whom committed crimes because they are here—by the way, I think that criminals ought to be prosecuted. All criminals ought to be prosecuted. You commit a crime, you ought to be prosecuted.

Do you have, aside from the one person who has a model—is there other empirical evidence connoting that what we are doing is acting as a deterrent, what we are doing currently? If you have empirical evidence, kindly raise your hand.

I have considered your empirical evidence. You said you had a model.

Ms. NYSTROM. Congressman, I would like to submit that we cannot enforce our way out of the current situation, that we need to have comprehensive immigration reform to really get at the problem, and that there is no feasible model to detain and deport the

11 to 20 million undocumented immigrants currently in our country.

Mr. KRIKORIAN. But, Congressman, could I point out that there is another metric of success——

Mr. GREEN. Well, let me hear about that at a later time. Let me continue, if I may, please. I appreciate your commentary, sir, and I don't mean to be rude, crude, and unrefined, but I have to get to a point.

My point is at a much more lofty level than we find ourselves having to negotiate today. I sincerely believe that at some point on the infinite continuum that we call time, we are all going to have to account for our time.

I think that at that moment we are going to have to explain how we treated people who meant us no harm, who were here by an informal invitation, who were the servants. They fed us. They took care of us. There is no harm, and we found every—well, not every, but a good many means by which we could demean them and dehumanize them.

Our complicity is somehow completely disregarded in the entire process. When I say "our," I am talking about every business person that hires someone, those of us who have had persons come into our homes, those of us who have had persons to manicure our yards. We are all complicitous.

When you don't have clean hands, and you reach that point on the infinite continuum, I think the day of reckoning is in store for all of us. I regret that the intelligentsia finds—continually finds a means by which we can justify the ill treatment of people who mean us no harm.

I yield back the balance of my time, and I just hope that this time has been well spent.

Thank you, Madam Chairwoman.

Ms. SANCHEZ. Thank you, Mr. Green.

As we wrap up, because we are going to have votes called any moment also, I am going to have some more questions for the record that I would really like to get the opinions across the board from all of you on.

But I sort of am—you know, the numbers—and of course, Doctor, I am very interested in your report, because it is—lays out a way forward that the Department of Homeland is looking at. That is why we will have another hearing in the new year, to look at what they have to say in particular.

But I want to go back to Mr. Crane.

Mr. Crane, do you believe in the doctrine of presumed innocent until proven guilty? It is a very American doctrine.

Mr. CRANE. Yes, ma'am, I do.

Ms. SANCHEZ. Because we have just seen, for example, a young American woman in the Italian system where the system is really you have to prove yourself out of a situation you are accused of.

I am a little bit worried about this whole issue of locals and counties arresting people for alleged crimes and not having the resources, and so allowing them out, if you will, and then—and this sort of disconnect that is going on between some of you on the panel about what we really have in detention centers.

Because I think Mr. Kerwin said dangerous to others, about 11 percent.

Then you said some are refugees, some are in some sort of residency, some may be even citizens.

Ms. Nystrom, you said why shackles and—or one of the two of you—why shackles and—you know, this type of thing.

More open types of holding places, Doctor.

Mr. Crane coming back to this is so dangerous to our—to us working in that environment, because there is, you know, so many criminals there—you know, so I go back to this whole thing—well, I would be—I would like to be presumed innocent until proven before a court, whether it is jury or some other choice, that I am—that I am guilty.

So how do we—Mr. Crane, how do you, as somebody who is working in the system, who from your testimony seemed to say, "We are fearful of everybody, really, because we think most of them are criminals," versus this whole "people are presumed innocent," versus what Mr. Kerwin and Ms. Nystrom are saying, which is there is a lot of innocent people in this system, maybe the only thing they did was break a law because they wanted to feed their families—how do you react to that?

Mr. CRANE. I think, for our part, we are just—we are in a hard spot, because we absolutely do see that a person is proven—you know, is innocent until proven guilty.

But at the same time, we see that the system is broken, that the system isn't working, that these individuals are not going in front of a court of law, and they are not really being cleared of those charges at the same time and, you know, so now they are in our facilities. So I mean, that is the hard part for us.

Now, if I I said earlier that we were kind of fearful of everyone, I didn't really mean to say that. The biggest thing on the facilities that we were saying is that ICE is proposing to go to 85 to 90 percent convicted criminals in custody within the next 12 months.

At the same time, they are going to turn these facilities into an open-campus environment. Yes, that does concern us very much.

Ms. SANCHEZ. Doctor, is that the plan, or is the plan about open facilities about these people who you think are—have broken the rules because they were looking to get jobs, versus this idea of ICE is barreling down on people, we are getting the really, really bad people, we are ramming them up?

Do you really see those type of people going into a more open sort of situation? Because that seems to be Mr. Crane's concern here.

Ms. SCHRIRO. Madam Chairwoman, I can—I could speak to my report but have left ICE, and so I will defer to them to explain some of the things that Mr. Crane has referenced.

But in general, as Mr. Kerwin and others have referenced data from my report, right now the primary contributors, the sources of referral for individuals into ICE detention, have been first the CAP program—48 percent in this fiscal year of 2009 through the time of the writing of the report—and then an additional 12 percent through the 287(g) program. So that was 60 percent.

Yet some number of them did not have criminal convictions or pleas. I don't think there is much of a distinction between whether

you are pled or proven. Once you are found or admit guilt and receive a sentence, it is all the same.

So you have got a number of people who are identified through the criminal justice system by virtue of an arrest but charges are dropped for a variety of reasons. I think Mr. Crane offers but one explanation for why charges are dropped and then individuals are referred to ICE.

Part of that goes back to my concern about all in enforcement who contact individuals should be able to—should identify themselves prior to the exchange, thus the requirement for the uniforms.

As to the management of the population, what I have said consistently—and it comports with a variety of disciplines, including the corrections arena from which I come—and that is that there are valid assessment instruments and that one applies them correctly.

Then having identified an individual risk, either risk of absconding if they are placed on community supervision, or risk in terms of propensity for violence if they are held in a detention facility, that that, in concert with their assessed needs, particularly health care but others as well—that those would inform the placement.

So the physical plant is one of the ways in which you carry out the plan for the period of detention pending the decision for either relief or for removal.

So in correctional systems, there are a variety of housing strategies and supervision strategies that are established, and in well-run systems they are consistent with that assessed need and risk.

Ms. SANCHEZ. Thank you, Doctor.

Mr. SOUDER. Can I make one brief comment?

Ms. SANCHEZ. Yes.

Mr. SOUDER. One brief comment I would like to add is some of this isn't as contradictory as it seems because of what I referred to earlier as is ICE is indeed trying to, in my opinion, cherry-pick, which is distorting and will increasingly distort the mix that they have.

Mr. Krikorian was referring to a broader pool, and one of the challenges that Mr. Pascrell was addressing was if we actually get E-Verify, we start to remove, do penalties on business men, we are going to get a different mix of the ICE mix, but then you would need—you know, we are still arguing whether we detain those, or whatever.

The last point I would—I would make with that is that visa overstays are becoming a bigger, bigger problem.

People say they are in legally and, in fact, if you have visa overstayed, as Mr. Krikorian pointed out, you probably have driver license, bank accounts, all sorts of other illegal activities with that, too.

This does not mean you are violent, but that you might have multiple crimes.

Ms. SANCHEZ. Of course, that is one of the reasons why we are looking at that new assessment program, and Visa Waiver Program, et cetera, et cetera, also under the jurisdiction of this committee.

I am sure we will have more in writing to ask you.

Mr. SOUDER. Before my friend leaves, this is the only hearing where I have asked two rounds of questions and been a witness——

Ms. SANCHEZ. Well, you know, we aim to please here. We are trying very hard to get our hands around what is going on.

So I want to thank the witnesses for your valuable testimony and, of course, the Members for their interaction, very spirited at times.

The Members of the subcommittee may have additional questions for the witnesses, and we will ask you to respond in writing to those questions quickly if you can.

Hearing no further business, this subcommittee is adjourned.

[Whereupon, at 11:48 a.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS FROM CHAIRWOMAN LORETTA SANCHEZ FOR DORA SCHRIRO

Question 1a. The detention report ICE released this October is the result of extensive research you conducted on the current state of immigration detention in this country during your time as director of the ICE Office of Detention Policy and Planning.

Are there additional challenges, not mentioned in the report, that also need to be addressed and what are your recommendations for dealing with those issues?

Answer. Response was not received at the time of publication.

Question 1b. What areas will pose the greatest challenges for detention reform?

Answer. Response was not received at the time of publication.

Question 2. One of the key detention reforms announced is the move from a criminal detention model to a civil detention model.

Please expand on the differences between criminal and civil detention models and why immigration detention facilities should be run differently than the current penal system?

Answer. Response was not received at the time of publication.

Question 3. There is concern that a civil detention model might be too "soft" and not sufficiently secure or may fail to act as a deterrent for would-be detainees.

What is your response to these criticisms?

Answer. Response was not received at the time of publication.

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR DORA SCHRIRO

Question 1a. The current immigration detention system is a sprawling network, with contract and intergovernmental service agreements composing the majority.

Are the contract detention facilities currently capable of meeting the proposed standards of treatment for non-criminal detainees?

Answer. Response was not received at the time of publication.

Question 1b. What do the announced changes to detention policy mean for current contractors?

Answer. Response was not received at the time of publication.

QUESTIONS FROM CHAIRWOMAN LORETTA SANCHEZ FOR CHRISTOPHER L. CRANE

Question 1a. Your testimony and published reports mention that written guidance to field offices is limited.

How does Detention and Removal (DRO) staff stay abreast of changes in policy and procedures made by ICE headquarters?

Answer. In most cases, DRO staff is not aware of the majority of agency policies and procedures and/or the associated changes. In fact, policies and procedures are generally different from office to office, and often change from day to day. Generally speaking, this begins with poorly thought-out policies at the ICE Headquarters and Field Office levels, which lack much-needed input from the field. Poorly planned policies not only fail quickly in the field once implemented, but also create new problems that did not previously exist. ICE Headquarters and Field Office supervisors are then reluctant to admit failure and are insistent on staying the course with newly implemented policies and procedures. It is then left to DRO staff and managers in the field to overcome the obstacles created by the failed policies. In some cases, problems become so prevalent that policy makers are forced to make changes. Unfortunately, these changes also lack input from the field, and typically fail as well. At this point, in a frantic attempt to resolve problems, a reactionary cycle of day-to-day changes occurs. DRO Staff in the field is literally directed to perform the same duties differently on a day-to-day basis, often returning to the same failed procedures they started with. Throughout this process there is a complete lack of communications with and/or training for staff on these new policies and pro-

cedural changes. The end result is the very chaotic, stressful, and often unproductive environment that DRO employees work in every day—just one of many reasons why employee surveys conducted by ICE confirm that the morale of DRO employees ranks as one of the lowest of all Federal agencies.

However, most policies and changes involve no interaction between DRO staff and DRO managers and supervisors. ICE Headquarters, as well as ICE Field Office supervisors and ICE Employee Labor Relations staff, rely almost solely on email and website postings for all communications with employees. Sadly, both managers and supervisors are fully aware that DRO staff lack the time while at work to read the large number of daily emails, lengthy policies, or browse through the ICE website in search of ICE policies. ICE has a "check the box" management style in which the only concern is to be able to say that "yes" the employees were sent the policy or changes and can now be held accountable for not following them. ICE managers and supervisors, for the most part, do not conduct training, allow for questions, or make sure time is available for DRO staff to read new policies, and overall do not ensure that policies are read or understood by employees. With all due respect to ICE managers and supervisors, it is a truly lazy and negligent way to conduct operations, which results in not only ineffective communication but also a significant lack of knowledge regarding ICE policies by DRO employees in the field.

Question 1b. What would you suggest to improve communication of changes to policy with staff in the field?

Answer. ICE needs to begin by returning to the basics of good management. ICE needs to ensure that ICE managers and staff in the field receive proper training on new policies and procedural changes, have an opportunity to ask questions, and truly understand new policies and procedural changes. Time must be allotted to properly train and educate employees. It is an investment in our most important asset, Human Resources, as well as the agency itself. If conducted properly, these types of briefings or classes at local offices and facilities could greatly increase understanding and awareness by DRO staff and managers in AFGE National Council 118—ICE, Inquiry by the U.S. House of Representatives, Committee on Homeland Security the field. We need our managers and supervisors to come out of their offices, communicate with and listen to employees, and manage from a more informed position. Of course, briefings and classes held at local offices would create little if any additional expense to the agency.

The Union also has a very important part to play in communications between DRO managers and DRO staff regarding policy and procedural changes. That communication should begin at the policy development stage and continue through employee education. This would improve not only education and understanding, but dramatically improve the quality of policies and morale in the field. Unfortunately, DRO managers and Employee Labor Relations staff are strongly anti-union, anti-employee rights, and harass anyone involved in the Union, sending a chilling effect throughout the workforce. A letter outlining these problems was sent to DHS Secretary Janet Napolitano and given to ICE Assistant Secretary John Morton almost 1 year ago. Those reports have been ignored. The Office of Inspector General or other outside investigative group such as the General Accountability Office (GAO) must be brought in to investigate and report on this situation. As long as the oversight is retained internally, both at ICE and at the Departmental level, no progress will be realized and ICE will continue on its present course.

Question 2a. It is apparent that ICE has come to rely heavily on contractors for bedspace and to administer its detention program.

Are Contract Detention Facilities and Intergovernmental Service Agreement facilities held to the same standards as ICE-run facilities?

Answer. Policy-wise yes, but in practice no. DRO officers in the field report that while the same detention standards apply to Contract Detention Facilities and ICE-run facilities, they are often applied differently in the case of Contract Detention Facilities. DRO officers report that contract staff and managers in Contact Detention Facilities are less likely to report standards violations than are ICE employees in ICE-run facilities, stating that contractors are often more concerned that exposing the violations could potentially mean the loss of the ICE contract. Similarly, DRO officers report that ICE managers are more inclined to "make violations go away" in contract facilities because they are dependent on the facility for bedspace and don't want to lose the contracted facility. DRO managers seem more willing to address problems in ICE facilities because they have more authority with ICE employees and are less concerned that an ICE facility might be shut down due to standards violations.

Intergovernmental Service Agreement facilities (IGSAs) are a much more complex issue, in part because there are so many and the facilities themselves vary greatly. My personal background has been working in and with the IGSA facilities. Gen-

erally speaking, problems sometimes do exist in the IGSAs in terms of detention standards. The most prevalent are standards involving access to legal libraries and other issues such as phone calls. As with the contract facilities, I believe ICE managers are often reluctant to report standards violations because they are afraid to lose the bedspace. However, I have observed a larger problem with ICE managers who simply ignore standards violations in the IGSAs because there is no real oversight or accountability. Basically, they can get away with and they know it. Another major issue preventing progress in the IGSAs with improving standards are the DRO supervisors and contract inspectors who actually visit the IGSAs. Deputies working in an IGSA in my area reported that their supervisors were furious when ICE managers came into a meeting with jail staff "barking orders," instead of diplomatically and respectfully seeking a resolution to problems. That IGSA subsequently refused to work with ICE. Contact inspection teams had a similar disrespectful and authoritative approach in which AFGE National Council 118—ICE, Inquiry by the U.S. House of Representatives, Committee on Homeland Security IGSAs have responded by telling ICE to take its business elsewhere instead of improving standards for ICE detainees.

I would like to close this answer by saying that the majority of IGSAs, in my experience, are quality facilities with quality staffs and effective oversight. IGSA staff members are generally deputies who have been through rigorous background checks and are very well trained—much like DRO officers and agents. While there are certainly some bad IGSAs, there are a lot more that are highly efficient facilities. ICE has largely been at fault for not nurturing relationships with the IGSAs and attempting to resolve and remove standards violations, as well as discontinuing the use of IGSAs that are problematic. For most ICE offices across the United States, prohibiting or greatly restricting the use of IGSAs will have a very negative impact on ICE and its ability to perform its mission.

Question 2b. What services or advantages do contractors provide that ICE does not?

Answer. I am not aware of any services provided by contractors that ICE is unable to provide. The only advantage offered by contractors is the ability to hire large numbers of employees to work in these facilities in a very short period of time. However, this advantage has proven to be more of a disadvantage as this quick and easy workforce has proven to be both dangerous and untrustworthy. As just one example, contractors at the Northwest Detention Center in Tacoma, Washington hired 97 contract guards without conducting background checks because of pressure to quickly hire guards for the facility. ICE did not catch the process for 2 years.

As I stated in my earlier testimony, ICE does not have a "Detention Officer" position. However, the Legacy INS did have a position called a Detention Enforcement Officer which ended shortly after ICE was created. This position did not have immigration arrest authority and was specifically designed to perform the detention and transportation functions currently needed by ICE. This position could easily be brought back into use by ICE.

Question 2c. What services currently provided by a contractor could be better provided by ICE?

Answer. I believe that just about any service could be better provided by ICE employees. The only exceptions to this might be services such as food services. Detention functions such as overseeing detainees, transportation functions, and maintaining detainee property would all most certainly be handled far more efficiently by ICE employees. Also, all administrative and support functions such as training assistants, research, data entry and records checks, travel clerks, and information technology personnel, etc. As just one example, contract clerks do not have the detailed professional knowledge that ICE Detention and Removal Assistants possess. Contract clerks do not know how to use ICE database systems, nor do they have the ability to review and differentiate between cases, or identify problems that may require immediate attention by ICE officers and mangers.

Before being hired, ICE employees must meet high qualification standards regarding educational background and work experience and are thoroughly screened through examination as well as extensive background investigations. Typically, out of hundreds or even thousands of applicants Nation-wide, only a few will be selected for hiring. While this process may be somewhat time-intensive, it produces a far more qualified employee and diversified workforce than does the far less extensive hiring process used by contractors. Criminal and financial background investigations conducted prior to the hiring of ICE employees make it far less likely that ICE employees would be involved in issues currently prevalent AFGE National Council 118)—ICE, Inquiry by the U.S. House of Representatives, Committee on Homeland Security among contractors conducting ICE work such as smuggling contraband,

drug distribution, fraud, theft, and sexual misconduct. I addressed this problem in greater detail in my original written testimony on December 10, 2009.

As long as hiring standards for ICE employees are maintained, ICE DRO employees will always provide far superior services than contract employees.

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR CHRISTOPHER L. CRANE

Question 1a. In your testimony, you stated Detention and Removal Operations (DRO) is "drastically understaffed and overworked," and that these conditions contribute to attrition.

Please elaborate on the reasons for attrition at DRO.

Answer. Surveys consistently show that the morale of ICE employees ranks among the lowest of all the Federal agencies. ICE offices and facilities are generally drastically understaffed. In spite of this fact, ICE DRO managers continue to increase the workload, duties, and responsibilities of DRO employees. At the same time, ICE employees are among the lowest paid within DHS. As reported during my testimony on December 10, 2009, Detention Removal Assistants (DRAs) and Immigration Enforcement Agents (IEAs) hold only GS–7 and GS–9 pay grades respectively, and have no promotion ladder to higher level positions. While higher paying positions do exist within ICE, most DRO employees view ICE DRO hiring and promotional practices as lacking credibility and untrustworthy. For this reason, two of the largest employee groups within ICE (DRAs and IEAs), do not consider their jobs to be "careers" because advancement to higher-paying positions does not exist in the form of career ladders or through an open and fair internal application process where selections are based upon merit. The majority of ICE employees are always open to or looking for opportunities in other agencies which allow better working conditions and quality of life, as well as higher pay and career advancement.

Employee workload is a big problem within ICE which I believe can best be illustrated through example. The Illegal Immigration Reform and Immigration Responsibility Act of 1996 mandated that the Criminal Alien Program (CAP) be transferred internally from the INS (now ICE) Office of Investigations to DRO. When this transfer had not occurred by 2003, a 10-year implementation plan was established. Former ICE Assistant Secretary Julie Myers reduced that time to just 2 years. In Salt Lake City, Utah, the DRO Field Office director mandated that his office would take over CAP 6 months prior to the 2-year mandate set by A.S. Meyers.

When Utah DRO took over the CAP program, it was drastically understaffed with approximately 7–8 IEAs State-wide. These same employees were already performing other full-time duties. As part of the 2-year "transition plan," DRO Utah received no training, no increase in personnel (IEAs) to perform the new CAP duties, and did no transition with the ICE Office of Investigations. In effect, there was no planning and no transition. The existing IEAs were immediately unable to handle the increased workload. Complaints from local jails came pouring in that ICE was not doing its job and that dangerous criminals were being released into Utah communities. As a result, DRO managers immediately put pressure on IEAs and their managers to increase CAP arrests. Some IEAs resorted to performing their regular duties during the day, and spending nights and weekends working local jails for CAP to increase arrest statistics. To make matters worse, the Field Office Director announced plans to implement a 24-hour command center in Salt Lake City which would also be manned by the 3 to 4 IEAs in Salt Lake City who were already working around the clock. The mandates set by both ICE Headquarters and the Field Office Director lacked proper planning and resources which resulted in obvious failures in the field and unbearable working conditions for DRO employees. Yet in ICE's internal newsletter, ICE victoriously proclaimed, "CAP TRANSFER COMPLETED IN RECORD TIME." The statement is accurate; it was completed in record time, but what ICE failed to admit was that it was a complete failure in many areas because of lack of planning and allocation of proper human resources. Utah DRO offices still suffer from the negative effects of this poorly planned implementation.

Unfortunately, this is the manner in which ICE conducts business Nation-wide. New programs and policies are implemented without proper planning and without obtaining needed resources first. Managers do not hold themselves accountable, but instead place the burden on their employees. Initiatives like the Secure Communities program, for example, already promise similar problems for our already overworked and understaffed workforce. ICE's management practices are in need of serious review. Obviously, no person wants to work around the clock in these types of conditions and that will affect attrition, but in a big picture sense, if DRO does not have the staff to effectively perform its assigned mission, American communities are placed at risk.

Question 1b. How does ICE recruit and retain staff? What can be done to improve these efforts?

Answer. I am not aware of any efforts by ICE to recruit or retain staff in ICE DRO. If it is happening, I have never personally seen it used in the field, and the AFGE ICE Council is not aware of it. The management culture within ICE does not appear to appreciate or understand the significant amount of taxpayer dollars spent to screen and train Federal employees. As just one example, I have personally heard ICE supervisors in my own office (DRO Salt Lake City) tell employees, "if you don't like it, leave." These remarks are made by DRO managers to good employees who the agency desperately needs in its understaffed offices. At the time these statements were made, I believe our office was at approximately a 40 percent staffing level. As a National Union officer, it is my opinion that this appears to be the overall attitude toward employee retention throughout ICE DRO and ICE Employee Labor Relations. The DRO management culture, in large part, views employees as expendable and replaceable. As a Union, and as employees, we know that simply is not the case.

In terms of recruiting and retention, ICE DRO must achieve pay parity for its employees and create career ladders that offer career advancement. ICE currently cannot compete with other agencies at either recruiting new employees or retaining current ones. ICE must also invest in local recruiting programs so that ICE has a presence at local job fairs and similar functions aimed at attracting and recruiting highly qualified candidates. With actions like the recent upgrading of 50,000 officers in Customs and Border Protection to GS–12, the worst of ICE's recruitment and retention problems are yet to come.

In terms of retention alone, staffing numbers must be increased, promotional practices must be reformed to ensure promotions are based on merit, and working conditions must be improved. The American public would be highly disappointed if they knew of the activities taking place within ICE. As employees, Union representatives, and taxpaying U.S. Citizens, DRO employees are always shocked to see that funding and outside groups are provided to research, investigate, and address issues like detention reform, but a similar investment is not made in researching problems like discrimination, harassment, retaliation, lack of oversight, and abuse of authority, which negatively impact every function performed by ICE. As long as DHS and ICE ignore these problems, morale will suffer and DRO employees will be seeking a better place to work.

Stories of harassment, retaliation, and overall inappropriate behavior by managers and supervisors with the Federal Air Marshal Service surfaced in the media this week. Reporters, members of the public, and members of the United States Congress are expressing concern as they recognize the negative effects that these activities have on the agency's ability to accomplish its mission. It should not be forgotten that the Federal Air Marshal Service was a part of ICE, and therefore its supervisors came from the ICE management culture. ICE DRO and its employees are struggling with the same problems now being experienced by the Federal Air Marshal Service. For DRO employees, harassment, retaliation, false investigations of employees, and practices by managers that place the public at risk are commonplace.

Question 2a. Given the rate of staff turnover at ICE Detention and Removal, please describe the present DRO workforce.

How many years of experience on average does a Detention Officer or Immigration Enforcement Agent possess?

Answer. Mr. Chairman, I apologize but I do not have access to this information. However, it should be available from the Human Capital Officer of ICE.

Question 2b. What are the implications for detention management?

Answer. Even the best policies and/or legislation regarding detention management will not succeed if reforms are not made within ICE. While effective policies are certainly an important part of efficient detention management, it is the personnel conducting the work who truly determine its success or failure. Policy and standards violations by contract workers have substantiated this fact. If issues regarding pay parity, understaffing, poor management, and hostile working conditions persist within ICE, more employees will be leaving ICE and the ability to recruit quality personnel will continue to decline. ICE will then in all probability be forced to maintain and possibly increase its dependence on contract workers who have proven themselves detrimental to a safe, efficient, and ethical detention setting within ICE.

The detention environment, by its very nature, will always provide opportunities for those that would take advantage of others. Likewise, it is an environment in which inadequate staffing translates to inadequate attention to those entrusted to our care. Effective detention management within ICE will rely more on the quality and quantity of staffing than any other factors. Therefore, it is imperative and in

the best interest of the American public, that contractor personnel are reduced or eliminated and ICE retain its own workforce to manage this most important responsibility.

As previously stated, however, in order to recruit and retain a quality workforce, ICE must first determine the level of human resources needed to manage these initiatives and then must compensate its employees so that the pay scales are comparable to other DHS bureaus. Until ICE acknowledges this disparity and corrects it, it will be impossible to efficiently manage these responsibilities and will be forced to continue to rely on contractor personnel.

QUESTIONS FROM CHAIRWOMAN LORETTA SANCHEZ FOR DONALD M. KERWIN, JR.

Question 1a. Given the high cost of maintaining and running detention facilities, there is great interest in the development of a robust Alternatives-to-Detention (ATD) program.

Do you have any estimates on the difference in costs between the cost of enrolling an individual in one of the three current ATD programs and the cost of housing an individual in a detention facility?

Answer. In July 2009, Dora Schriro, the former Director of the Office of Detention Policy and Planning (ODDP) at Immigration and Customs Enforcement (ICE), reported to the Migration Policy Institute (MPI) that ICE does not collect "complete and accurate information" that would allow the agency to assess the cost of its three alternative-to-detention (ATD) programs.[1] Nonetheless, in the same letter, ICE estimated the contract costs for the three ATD programs to be:

- Intensive Supervision Appearance Program (ISAP) $14.42 per day;
- Enhanced Supervision Reporting Program (ESR) $8.52 per day; and
- Electronic Monitoring Program (EM) 30 cents to $5 per day, depending on the technology used.

These costs do not include expenses such as Detention and Removal Operations staff time and Fugitive Operation Team activities.

By way of contrast, housing an individual in a "hard" detention facility can cost in excess of $100 per day.[2]

In a January 25, 2010 speech at an MPI leadership forum, ICE Assistant Secretary John Morton stressed that ATD costs can be further limited by processing the removal cases of program participants on an expedited basis. Morton stated that ideally, these cases would be fast-tracked in immigration court dockets and heard within 40 to 60 days.[3]

Dr. Schriro made the same point in her October 2009 report titled "Immigration Detention Overview and Recommendations."[4] Schriro recommended that "the average length of time an alien spends in an ATD program should be monitored to ensure it is comparable to aliens who are detained, in order to maximize the number of successful completions and reduce overall spending."[5]

Question 1b. Beyond the three ATD programs, are there other programs that you can recommend that would be more cost-effective?

Answer. A number of cost-effective ATD programs were developed and tested by non-governmental organizations in the 1990s. Successful ATD programs:

- Enjoy high levels of program compliance;
- Offer a cost-effective alternative to hard detention;
- Utilize careful screening procedures to determine risk; and
- Minimize restrictions on participants based on assessed risk.

Programs run by the Vera Institute of Justice, Catholic Charities of New Orleans, and Migration and Refugee Services (MRS) of the United States Catholic Conference all employed various strategies to try to achieve the goals described above.

---

[1] Letter from Dora Schriro, Special Advisor, Office of the Assistant Secretary, U.S. Immigration and Customs Enforcement, to Donald Kerwin, Vice President for Programs, Migration Policy Institute (received July 2, 2009).

[2] U.S. Department of Homeland Security (DHS), "ICE Detention Reform: Principles and Next Steps" (Fact Sheet, October 6, 2009), *http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf.*

[3] C–SPAN Video Library, "Obama Administration Immigration and Customs Policy," (speech delivered by ICE Assistant Secretary John Morton at the Migration Policy Institute, Washington, DC, January 25, 2010), min. 54–59, *http://www.c-spanvideo.org/program/291598-1.*

[4] Dr. Dora Schriro, *Immigration and Detention Overview and Recommendations* (Washington, DC: Immigration and Customs Enforcement, October 6, 2009), *http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf.*

[5] Schriro, *Immigration and Detention Overview and Recommendations,* 20–21.

In 1996, the former Immigration and Naturalization Service (INS) contracted with the Vera Institute of Justice to run a 3-year pilot ATD program.[6] The program sought to "maximize release and community supervision at the beginning of a person's case and maximize detention at the moment that person loses his or her claim."[7] The program:

- Helped participants secure legal representation;
- Provided information about the immigration court process; and
- Stressed the consequences to participants of not appearing at immigration hearings ("absconding").[8]

Individuals enrolled in Vera's pilot program demonstrated a "high rate of compliance with hearing requirements" when compared with similarly situated persons who had been initially detained and then released to await their hearings.[9] The study concluded that such programs were "not only smart public policy, but fiscally prudent and humane."[10]

In 1998, Catholic Charities of New Orleans administered a program for indefinite detainees that provided participants with housing, job counseling, and assistance in accessing social services. Participants were carefully screened: Only persons determined not to pose a flight risk or a danger to the community were eligible to participate. Participants who did not comply with program requirements were reported to INS and placed in detention. However, only one of the program's 21 participants was redetained. Catholic Charities ultimately judged the ATD program to be a safe, practical, and less costly alternative to indefinite detention.[11]

From 1987 to 1999, Migration and Refugee Services administered a program for so-called "Mariel" Cubans that offered housing, employment counseling, and advice on how to access social services. MRS carefully screened potential participants, and reported individuals who did not adhere to program requirements to INS. Ultimately, the program cost dramatically less than the continued detention of these individuals.[12] The program served approximately 50 to 60 persons per year and enjoyed a compliance rate with the program's conditions of roughly 75 percent.[13]

Question 2a. The ICE report released in October and your research indicate a high number of detainees in custody do not have criminal records. This finding is particularly striking in light of efforts to prioritize criminal aliens.

Please elaborate on the impact of detaining non-criminal aliens.

Answer. According to the October 2009 Schriro report, "with only a few exceptions, the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pre-trial and sentenced felons."[14] This criminal detention model is more costly and restrictive than necessary as a means to ensure court appearances by non-criminal detainees.[15] In addition, detaining noncriminal immigrants is not an effective way to prioritize use of ICE's limited detention space.[16]

Persons without criminal records make up a substantial portion of ICE detainees.[17] According to an MPI analysis, 58 percent of persons in ICE custody on the night of January 25, 2009 did not have criminal records.[18] In addition, Schriro's report noted that only 66 percent of ICE detainees on September 1, 2009 were mandatory detainees and that "the majority of the [detainee] population is characterized as low custody, or having a low propensity for violence."[19]

Beyond the financial cost, detention can have a considerable impact on the welfare and heath of immigrants, both those who have and those who do not have criminal records. As has been well documented, detention can prevent detainees from meaningfully pursuing legitimate immigration claims, securing legal represen-

---

[6] Oren Root, *The Appearance Assistance Program: An Alternative to Detention for Noncitizens in U.S. Immigration Proceedings* (New York: Vera Institute for Justice, 2000), 1, *http://www.vera.org/download?file=209/aap__speech.pdf.*

[7] Ibid, 2.

[8] Ibid, 3–4.

[9] Ibid, 5–7.

[10] Ibid, 8.

[11] Catholic Legal Immigration Network, Inc (CLINIC), *The Needless Detention of Immigrants in the United States* (Washington, DC: CLINIC, 2000), 26–27.

[12] Ibid, 27–28.

[13] Ibid, 28.

[14] Schriro, *Immigration and Detention Overview and Recommendations,* 2–3.

[15] Ibid.

[16] Root, *The Appearance Assistance Program: An Alternative to Detention for Noncitizens in U.S. Immigration Proceedings,* 2.

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

[18] Ibid, 1.

[19] Schriro, *Immigration and Detention Overview and Recommendations,* 2.

tation, and maintaining contact with family members. Detention conditions can be especially traumatic for asylum seekers and torture survivors.

Question 2b. Has a lack of ATD options played a role in the detention of non-criminal aliens?

Answer. According to its most recent estimates, ICE has the ability to accommodate roughly 18,000 individuals in ATD programs on a daily basis.[20] The individual ATD programs can respectively accommodate:

- 6,000 persons—Intensive Supervision Appearance Program (ISAP);
- 7,000 persons—Enhanced Supervision/Reporting (ESR); and
- 5,000 persons—Electronic Monitoring (EM).[21]

ATD programs are not available throughout the country.[22] In addition, ICE needs to improve its ability to assess the flight and safety risks presented by potential program participants.[23] ICE plans to develop "a Nation-wide implementation plan" for its ATD program and a more comprehensive risk assessment tool to guide its placement decisions.[24]

Finally, if properly structured, ATD programs could be considered alternate forms of detention, and thus made available to mandatory detainees. As I stated in my testimony:

"[m]andatory detention laws broadly cover significant numbers of persons who, with proper supervision, would not be a flight risk. Given that 66 percent of ICE detainees must be detained,[25] the significant expansion of alternative-to-detention programs—and the resulting cost savings to the government and benefits to the affected individuals—will depend on whether alternatives to detention are found to be soft detention or constructive custody."[26]

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR DONALD M. KERWIN, JR.

Question 1. Your organization released a report in September that raised the issue of whether ICE has the capacity to comply with its own National detention standards. Specifically, the report cited serious lapses in ICE's information systems. Illustrating this point, ICE disclosed this past August that 10 persons whose deaths had not previously been reported had apparently died in custody between 2004 and 2007.

If ICE lacks the capacity to track the number of detainee deaths that occur in its custody, how can the agency comply with the law and detention standards? How do you recommend ICE rectify these capacity problems?

Answer. In September 2009, MPI released a report exploring whether or not the information tracked by ICE's central database—known as ENFORCE—allowed the agency to abide by its National detention standards.[1] The report uncovered a number of anomalies in the information tracked by ICE. One of the report's most striking findings was that ENFORCE did not appear to track detainee deaths; a separate database and protocol exists for this purpose.

On January 25, 2010, ICE Assistant Secretary John Morton stated that ICE had modified its protocol for reporting and investigating detainee deaths.[2] However, it is still not certain whether ICE tracks deaths and other legally and operationally significant detainee information in the ENFORCE database. To our knowledge, ICE has not shared with Congress or other stakeholders a complete list of the detainee information tracked in ENFORCE or its manual, which describes ENFORCE's database fields and how ICE collects and records detainee information.

---

[20] U.S. Immigration and Customs Enforcement. "Alternatives to Detention for ICE Detainees," (Fact Sheet, October 23, 2009), *http://www.ice.gov/pi/news/factsheets/2009_immigration_detention_reforms.htm.*

[21] Ibid.

[22] Schriro, *Immigration and Detention Overview and Recommendations,* 20.

[23] Testimony of Donald Kerwin, "Moving Toward More Effective Immigration Detention Management," before the House Subcommittee on Border, Maritime, and Global Counterterrorism, December 10, 2009, 5, *http://www.migrationpolicy.org/pubs/Testimony-12-10-2009.pdf.*

[24] DHS, "ICE Detention Reform: Principles and Next Steps."

[25] See, e.g., *Young* v. *INA,* 208 F. 3d 1116, 1118 (9th Cir. 2000) (release to halfway house held to be a form of civil custody).

[26] Testimony of Donald Kerwin, "Moving Toward More Effective Immigration Detention Management," 6.

[1] Kerwin and Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?.*

[2] C–SPAN Video Library, "Obama Administration Immigration and Customs Policy," min. 37–40.

As the MPI report proposed:

> "ICE [should] initiate a thorough inventory and review of its information systems, including ENFORCE, to ensure that they allow for informed decisions related to the substance and timing of:
> - "who ICE must detain and who it must consider for release, with a particular focus on when 'mandatory' detainees become eligible for release;
> - "which detainees must be allowed to participate in ICE's two post-removal order, custody review processes;
> - "who should be placed in ICE's alternatives to detention programs; and
> - "ICE's adherence to its National detention standards."[3]

ICE should also "examine how ENFORCE relates to other databases within the Department of Homeland Security and other Federal agencies."[4] Finally, ICE should make public its information systems manual and its protocols for collecting information from detainees.

Since developing civil detention standards is at the core of immigrant detention reform, improvements in ICE's information systems should allow the agency to comply with current detention standards and position it to comply with the new standards once they are developed.

Question 2. This past October, the *Houston Chronicle* obtained data that raised questions about the effectiveness of two of the three existing ATD programs. In one program, nearly one in five participants absconded while under supervision during the past 5 years.

What contributed to the program mismanagement? How can these programs be improved?

Answer. The *Houston Chronicle* questioned ICE's reporting on the success of its ATD program.[5] In its evaluation of its ATD program, ICE had reportedly failed to count as program participants those persons who had absconded from the program. As a result, court appearance rates, while still high under the ISAP program (roughly 82 percent), were not as high as the 99 percent rate previously reported by ICE based on its faulty methodology.[6]

Compliance with ATD program requirements—namely, the requirement that program participants appear at their scheduled hearings—could be improved through the implementation of a more reliable risk assessment tool, coupled with efforts to expedite the removal cases of ATD program participants. The longer participants remain in ATD programs, the more likely they are to abscond.[7]

Providing ATD program participants with assistance in securing legal counsel and with information about the removal process—especially the consequences of not appearing—should also be core components of any ATD program. These factors have proven vital to ensuring high court appearance rates in ATD programs.[8]

Ultimately, ATD programs will be more successful if they are made available to individuals while their removal cases are pending, rather than relied upon to ensure people's appearance for their actual deportations. The possibility of prevailing in their removal cases, coupled with the knowledge that this represents their only chance to remain lawfully in the United States, will compel program participants to appear for their court hearings.[9]

Question 3. According to the Dora Schriro report, approximately 50 percent of the immigrant detainee population is housed in shared-use county jails. ICE only owns and operates seven facilities Nation-wide.

Does immigrant detainee care suffer because ICE does not own or operate a larger share of facilities? What type of facility provides the best care and why?

On January 25, 2010, Assistant Secretary Morton described the immigrant detention system as a "sprawling network of contract facilities that are uneven in their

---

[3] Kerwin and Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities*, 25.

[4] Ibid, 37.

[5] Susan Carroll, "Flaws found in options for immigrant detention," *Houston Chronicle,* October 20, 2009, *http://www.chron.com/disp/story.mpl/metropolitan/6675443.html.*

[6] Ibid.

[7] Testimony of Donald Kerwin, "Moving Toward More Effective Immigration Detention Management," 5.

[8] Root, *The Appearance Assistance Program: An Alternative to Detention for Noncitizens in U.S. Immigration Proceedings,* 3–4; Megan Golden, Oren Root, and David Mizner, *The Appearance Assistance Program: Attaining Compliance with Immigration Laws Through Community Supervision* (New York: Vera Institute for Justice, 1998), 10–13, *http://www.vera.org/download?file=211/aap.pdf.*

[9] Root, *The Appearance Assistance Program: An Alternative to Detention for Noncitizens in U.S. Immigration Proceedings,* 3–4.

design, uneven in the kinds of conditions that they offer, [and] uneven in the kinds of medical services that they provide."[10] The degree to which private contractors manage, oversee, and operate the ICE detention system—and the disparate conditions in these facilities—continues to surprise even close observers of the immigration detention system.

ICE is addressing the need for increased detention oversight through plans to hire Federal employees to provide on-site oversight at the facilities that house more than 80 percent of its detainees.[11]

The ICE facilities providing the best care tend to be those few that do not operate based on a penal model. However, there have been problems associated with each type of ICE detention facility. ICE should continue to identify alternative housing options that reflect its civil detention authorities. Formulating and implementing civil detention standards must be at the core of immigration detention reforms, and this effort must be combined with the establishment of effective detention oversight. In its efforts to develop civil detention standards, ICE should study a range of potentially analogous systems, both in the United States and abroad.

QUESTIONS FROM CHAIRWOMAN LORETTA SANCHEZ FOR BRITTNEY NYSTROM

Question 1a. In your testimony, you mention that one of the biggest frustrations for non-governmental organizations (NGOs) is the lack of collaboration with ICE field offices.

Please elaborate on this frustration.

Question 1b. If NGOs had the opportunity to work with field offices, what would that collaboration look like?

Answer. *ICE field offices vary widely in outreach to local NGOs and willingness to respond to concerns.* Unlike the more formalized liaison or working group structures of communication that exist between ICE headquarters and NGOs in Washington, DC, collaboration with ICE field offices is varied and often dependent on the attitude or personality of the field office leadership. For example, ICE field offices do not uniformly engage in liaison meetings or establish channels of communication with local NGOs, and far too frequently do not respond to the communications made by local community-based groups. Some field offices foster robust relationships with NGOs, while others are less willing to engage in outreach. Despite National detention reforms undertaken by ICE leadership, NGOs that provide direct legal services and know your rights presentations to detainees have varying levels of access and collaboration with ICE field offices. Some of these service providers feel constrained to report poor detention conditions or detainee reports of ICE misconduct for fear of retaliation and the need to maintain cordial relations with ICE field offices in order to maintain access to detainees.

A lack of transparency in ICE detention and deportation practices and procedures frustrates NGOs and undermines efforts to establish uniformity. Without public and standardized practices and policies, NGOs are unable to detect or report noncompliance. ICE field offices have historically resisted transparency and have been referred to as "fiefdoms" that operate outside the oversight of ICE headquarters staff. In addition to the vast variation in conditions across the network of facilities that ICE uses, there is a significant variation of release practices across field offices, including use of alternatives to detention programs, parole grant rates for arriving asylum seekers, timelines for conducting post-order custody reviews and subsequent release for indefinite detainees, and bond determinations.

ICE headquarters should encourage field offices to work alongside local NGOs and should standardize best practices in community outreach and partnership. Collaboration with NGOs can include: Establishment of standing liaison meetings between leaders at each field office and the NGO community, regularized agreements that encourage and solidify access for NGOs to provide legal services to detainees, establishment of minimum response times to NGO concerns regarding detainees, and sharing of expected practices and policies with NGO partners. Perhaps most simply, ICE should issue guidance to field offices supporting collaboration with NGOs. This approach has proved beneficial to both USCIS, which issued guidance encouraging asylum offices to work with NGOs representing detainees at credible fear or reasonable fear interviews,[1] and to EOIR, which underscored the benefit NGOs and pro

[10] C–SPAN Video Library, "Obama Administration Immigration and Customs Policy," min. 30–32.

[11] DHS, "ICE Detention Reform: Principles and Next Steps."

[1] Memorandum from Joseph E. Langlois to Asylum Office Directors and Deputy Directors, Nov. 8, 2007, 120/9.15, available at *http://www.uscis.gov/files/pressrelease/CredibleFear110807.pdf*.

bono attorneys provide to immigration courts and standardized facilitation of their legal services.[2] Finally, collaboration between NGOs and field offices can include protocols for outreach to NGOs for situations concerning vulnerable detainees in need of release, legal, or medical assistance.

Question 2a. A lot of attention has been given to who ICE detains and the risk they may pose to the community. At present, ICE uses criminal history to determine whether a detainee should be placed in low, moderate, or high custody. However, under this classification system, non-violent criminal aliens are frequently housed with violent criminals.

How would you recommend ICE improve the current ICE classification system for detainees?

Question 2b. How should vulnerable populations be classified? What would a facility for detainees in this group look like?

Answer. *During both the initial custody determination and any subsequent classification or risk assessment, the presence of a criminal record should not automatically trigger restrictions on liberty.*[3] It must not be overlooked that the purpose of ICE detention is to ensure compliance with future immigration proceedings. An individual who comes into ICE custody from the criminal justice system has already completed any imposed criminal sentence. ICE's assessment tools should take into consideration a host of factors beyond whether an individual has a record of criminal convictions, such as the presence of medical or mental health factors, whether an individual is a primary caregiver, and the individual's ties to the community. Where detention is found to be necessary, ICE should make housing classifications to ensure that individuals are placed in the least restrictive setting and are able to access medical and mental health care. This necessitates a medical classification contemporaneous with the housing classification.

Where criminal records are associated with an individual apprehended by ICE, the records must be certified. Criminal records should also be further assessed for length of time elapsed since the conviction, evidence of rehabilitation since the conviction, the degree and severity of the conviction, and whether the conviction is solely a consequence of lack of immigration status. Arrests that did not result in convictions should not weigh into a custody determination or housing classification decision. Standardized and thorough evaluations of criminal records would help ensure that individuals are classified accordingly and would prevent excessive restrictions on liberty.

Vulnerable populations are especially at risk and cannot safely or humanely be detained in facilities meant for use by the criminal justice system. Current detention facilities used by ICE are overly restrictive given ICE's narrow, civil detention authority, and are traumatizing for all immigration detainees. All reasonable efforts should be undertaken by ICE to ensure that vulnerable populations are not detained or are released from detention. Congress should appropriate sufficient funds to establish National alternatives to detention, including community-based programs. If risk of flight is a concern, individuals who belong to a vulnerable population should be automatically considered for enrollment in a secure alternative to detention program with appropriate services to ensure appearance. If detention must be imposed, vulnerable populations should be housed in the least restrictive setting possible. If ICE persists on the detention of these populations, they require specialized, on-site medical and mental health care, generous telephone and e-mail communication opportunities, absence of jail-issued clothing, shackles, and other jail setting accoutrements, and enhanced freedom of movement both within and outside detention facilities.

---

[2] Memorandum from David L. Neal to Immigration Judges, Court Administrators, Attorney Advisors and Judicial Law Clerks, and Immigration Court Staff, March 10, 2008, available at *http://www.justice.gov/eoir/efoia/ocij/oppm08/08-01.pdf*.

[3] ICE statistics show that only 11 percent of individuals in detention had been alleged to have committed violent crimes, and that the majority of the population is characterized as low custody, or having a low propensity of violence, i.e., the majority of individuals designated as "criminal aliens"—which includes individuals who have been charged with traffic violations, would not pose any threat to public safety. Of the individuals designated as "criminal aliens," the most common criminal charges were for offenses involving traffic violations, drugs, simple assault, and larceny. "Immigration Detention Overview and Recommendations," ICE, Dr. Dora Schriro, Oct. 6, 2009, available at *http://www.ice.gov/doclib/091005__ice__detention__report-final.pdf*.

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR BRITTNEY NYSTROM

Question 1a. There has been a six-fold increase in the number of immigration detention beds in the United States since 1994. This is a rapid increase in detention bed capacity in a relatively short period of time.

To what extent has the rapid growth in detention space contributed to problems with the detention system?

Question 1b. What can ICE do to address these problems, in both the short and long term?

Answer. *The explosion of ICE's immigration detention system resulted in a sprawling, decentralized detention system that is overly reliant on both private contractors and existing jails and prisons.* ICE's rapidly expanded network of approximately 300 detention facilities has created a challenge to properly oversee and manage conditions at each facility. Thus, day-to-day operations and conditions of detention at the majority of these facilities have been ceded to contractors, both from private industry and local government. Detention condition standards are not now mandatory for facilities that are operated through intergovernmental service agreements, which represent the bulk of facilities in the detention network, and none of the standards are legally enforceable because they are neither codified in statute nor promulgated into regulations. As a result, conditions vary widely across the patchwork of facilities pushed into service over the past few years by ICE to house the escalating number of detainees. These facilities are typically county jails that detain individuals for ICE in an identical fashion to the individuals they detain for the criminal justice system, sometimes mixing ICE detainees and the general criminal population in the same cells. Finally, ICE's network of detention beds is strongly weighted towards the South, with Texas outpacing all other areas in numbers of ICE detainees. The unequal distribution of detention beds Nation-wide created skyrocketing numbers of transfers as detainees are shuffled to cheaper and more available detention beds. Correspondingly, detainees have become clustered in rural areas far from legal services, family support, and medical providers.

ICE must make both short-term and long-term efforts to regain operational control of the facilities it employs and to enforce detention standards appropriate for civil immigration detention. In the short term, ICE must install on-site employees at each detention facility to regulate conditions of detention and create meaningful oversight. ICE Assistant Secretary John Morton has publicly committed to reclaiming oversight capability of facilities used to house immigration detainees. However, announcements that more than 50 Federal employees will be deployed to the more than 300 detention facilities ICE currently uses have not yet been fulfilled. Other short-term corrections would include implementation of simple improvements in conditions of detention that would emphasize the civil, non-punitive nature of immigration detention. Some improvements could be effectuated quickly, such as extended visitation hours, access to personal clothing rather than required jail uniforms, and greater freedom of movement within facilities. ICE has also taken steps to update and improve the Performance Based National Detention Standards that were slated for National implementation in January 2010. Implementation and enforcement of these standards offer a critical opportunity for ICE to set a new course for immigration detention.

Contracts with detention facilities must be renegotiated in a manner that emphasizes ICE's expectations for meeting the improved standards and establishes consequences for non-compliance. Additionally, unannounced and more frequent inspections against standards, enhanced grievance review procedures and the deployment of Federal employees to every facility ICE uses are required to ensure compliance with ICE's enhanced detention standards.

Longer-term corrections include a shift in the concept of immigration detention and an overhaul of detention facility design to reflect ICE's civil detention authority. A truly civil detention system would be separate and distinct from the correctional facilities relied upon by ICE today. Detention standards appropriate to a civil detention system must be developed, implemented, monitored, and made enforceable through statute or regulation. Thus, ICE may need to locate or build detention facilities that match its detention authority and requirements.

Question 2a. In your testimony, you cite a *Washington Post* investigative series from last year that found substandard medical care may have contributed to the deaths of at least 30 individuals in immigration custody.

What are the biggest challenges facing the detainee medical care system?

Question 2b. What can ICE do to address problems with this system, both over the long term and more immediately?

Answer. *An initial challenge to the provision of medical care to immigration detainees is that adequate screening is not conducted by a medical professional at the*

point of apprehension or booking to identify medical or mental health concerns. As a result, individuals who are medically vulnerable are nonetheless placed into immigration detention. For example, Sandra Kenley was placed into immigration detention despite alerting DHS officials that she was scheduled for a hysterectomy and was hemorrhaging daily. She died only a few weeks after being placed by ICE in county jails in Virginia.[4] Furthermore, many asylum seekers or survivors of torture linger behind bars pending adjudication of their immigration claims. For these individuals, detention is a re-traumatizing event documented as causing distress.[5] Individuals who present at intake with medical or mental health concerns should be automatically considered for release, parole, or alternatives to detention. Additionally, there must be on-going medical evaluations of detainees to identify individuals who may have developed medical or mental health conditions while in custody.

Additionally, there are a host of challenges ICE must overcome to provide sufficient medical care after individuals are detained. One chronic obstacle to effective delivery of medical care to detainees has been vacant or non-existent medical staff positions within detention facilities. In recent years, some of the largest detention facilities holding thousands of detainees have had no staff psychiatrists on site.[6] The physical design of detention facilities used by ICE has also led to inappropriate care for sick detainees. Generally, many facilities used by ICE were built for short-term custody and are not equipped to meet the needs of detainees who may be kept there for months if not years. To illustrate, detainees with mental health needs have been inappropriately and dangerously confined to isolation units, or "the hole", due to a lack of designated medical facilities within the facility. A delegation of the Inter-American Commission on Human Rights expressed distress after observing "the use of solitary confinement to ostensibly provide personal protection for vulnerable immigrant detainees, including homosexuals, transgender detainees, detainees with mental illnesses, and other minority populations." The delegation also noted that "the use of solitary confinement as a solution to safeguard threatened populations effectively punishes the victims" and urged the U.S. Government "to establish alternatives to protect vulnerable populations in detention and to provide the mentally-ill with appropriate treatment in a proper environment." Another problematic component of health care in immigration detention is the troubled Treatment Authorization Request or "TAR" process for obtaining medical care beyond what care is available within a detention facility. The DHS Office of Inspector General made several recommendations on ways to improve this process in a report issued in December 2009.[7]

In addition to implementing the OIG's recommendations on the TAR process, ICE is moving forward on immediate improvements to the existing Performance Based National Detention Standards. These enhancements can help address medical intakes, comprehensive medical evaluations, responses to detainee requests for medical care, and proper care and housing for detainees with medical and mental health issues. More long-term improvements to medical care for immigration detainees should include a transition to electronic medical records for all detainees and the development of a new construct of civil detention standards that are separate from correctional standards that have been used in the past. However, the best designed standards will not result in improved medical care if they are not implemented, supervised, and made enforceable. ICE must actively supervise conditions at each detention facility and there must be consequences for non-compliance. Facility staff and ICE staff at detention facilities require better training on recognizing and responding to medical and mental health conditions.

[4] "New Scrutiny as Immigrants Die in Custody", The New York Times, Nina Bernstein, June 26, 2007, *http://www.nytimes.com/2007/06/26/us/26detain.html?pagewanted=all*.

[5] "From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers", Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, June 2003, available at *http://physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf*.

[6] "Detaining Care, Part One: Mental Hell", The Texas Tribune, Emily Ramshaw, Nov. 16, 2009, available at *http://www.texastribune.org/stories/2009/nov/16/psychiatrists-mental-health-care-absent-immigration-detention-centers/*.

[7] *http://www.dhs.gov/xoig/assets/mgmtrpts/OIG__10-23__Dec09.pdf*.