

Written Testimony  
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U.S. House of Representatives  
House Homeland Security Committee  
Border, Maritime and Global Counterterrorism Subcommittee

“Moving Toward More Effective Immigration Detention Management”

December 10, 2009

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**National Immigration Forum**

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 detention since 2003.<sup>1</sup> A Washington Post investigative series in 2008 found that substandard medical care may have contributed to at least 30 deaths in immigration custody.<sup>2</sup>

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.<sup>3</sup> 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, two months later, on

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

<sup>2</sup> 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](http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html)

<sup>3</sup> 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](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>

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 timeline of these reforms as stretching over three to five years.<sup>4</sup>

### **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<sup>5</sup> 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.

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

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<sup>4</sup> *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>

<sup>5</sup> The general detention group is further subdivided into groups focused on specific issues such as religious services and risk assessment tools.

Policy and Planning had just begun to delve into detainee health care issues when she departed only a few months after her arrival.<sup>6</sup>

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 firsthand experience and technical expertise located outside of D.C. 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.<sup>7</sup> 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 ongoing 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.<sup>8</sup>

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

<sup>7</sup> 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/mgmt/rpts/OIG\\_10-13\\_Nov09.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_10-13_Nov09.pdf)

<sup>8</sup> *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>

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.<sup>9</sup>

One alarming consequence of ICE's failure to adequately assess its detained population is the ongoing, and unlawful, detention of U.S. citizens as recounted in the media, NGO reports, and in Congressional testimony last year.<sup>10</sup> The Florence Immigrant and Refugee Rights Project in Arizona in 2008 alone witnessed more than forty cases of persons in immigration detention each month with potentially valid claims to U.S. citizenship.<sup>11</sup> The Northwest Immigrant Rights Project in Seattle has documented 21 cases in the past three years of U.S. citizens who were detained by ICE.<sup>12</sup> 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.

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<sup>9</sup> 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/mgmttrpts/OIG\\_09-52\\_Apr09.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/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/mgmttrpts/OIG\\_09-41\\_Mar09.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_09-41_Mar09.pdf)

<sup>10</sup> 38% of immigration lawyers studied in Minnesota reported that within the past two 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/>.

<sup>11</sup> 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>

<sup>12</sup> Zullo, *Despite Citizenship Claims, Woman Shipped to Honduras*.

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 ongoing 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 monitoring 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.<sup>13</sup> More recently, Congress appropriated over \$69 million for ATD programs.<sup>14</sup>

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.<sup>15</sup> 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 ongoing medical or mental health needs. Contrary to current practice, asylum seekers should always be assessed for potential release through an ATD.<sup>16</sup>

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

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<sup>13</sup> Schiro report at 20; H.Rept. 111-298, available at [http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp111&sid=cp111650mg&refer=&r\\_n=hr298.111&item=&sel=TOC\\_224515&](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](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ083.111)

<sup>14</sup> H.Rept. 111-298 and Public Law 111-83.

<sup>15</sup> 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>

<sup>16</sup> Human Rights First report at 63.

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 have criminal convictions and should be considered for alternative programs.<sup>17</sup> 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 are 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").<sup>18</sup> 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.

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<sup>17</sup> 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.

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

Approximately 68 percent of the ICE population, the bulk of current detainees, is housed in IGSA facilities (typically, a county jail).<sup>19</sup> 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.<sup>20</sup> Further, in many facilities, ICE detainees are housed alongside individuals in the general criminal population.<sup>21</sup>

Current detention practices at many of facilities severely limit access to families and attorneys. Visits in some detention facilities are restricted to video conferencing.<sup>22</sup> 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.<sup>23</sup> Telephone access in immigration detention continues to be plagued by broken equipment, confusing and complicated instructions, steep service rates, and limited hours of operation.<sup>24</sup> As an example of systemic obstacles to legal services for detainees, it takes attorneys in Minnesota an average of six days to make initial contact with their clients in immigration detention.<sup>25</sup> 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 week by NGOs and the DHS Inspector General.<sup>26</sup> The Inspector General found significant noncompliance with transfer standards in a March 2009 report,<sup>27</sup> and more recently found that transfer determinations “are not conducted according to a consistent process” and lead to “errors, delays and confusion.”<sup>28</sup> 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

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<sup>19</sup> MPI report at Figure 4.

<sup>20</sup> 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>

<sup>21</sup> Amnesty report at 37.

<sup>22</sup> Minnesota report.

<sup>23</sup> 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](http://www.parc.info/client_files/LASD/28th%20Semiannual%20Report.pdf)

<sup>24</sup> Minnesota report; Amnesty report at 35-36.

<sup>25</sup> Minnesota report.

<sup>26</sup> 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/>

<sup>27</sup> 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/mgmt/rpts/OIG\\_09-41\\_Mar09.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_09-41_Mar09.pdf)

<sup>28</sup> OIG Nov. 2009 report at forward.

and investigations.<sup>29</sup> 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.<sup>30</sup> 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 one-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

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<sup>29</sup> 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\\_gov\\_ernment\\_kept\\_in\\_lawsuit/](http://www.boston.com/news/local/rhode_island/articles/2009/11/12/chinese_detainees_widow_wants_gov_ernment_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>

<sup>30</sup> See ICE Press Releases at <http://www.ice.gov/pi/nr/0910/091020boston.htm> and <http://www.ice.gov/pi/nr/0911/091123philadelphia2.htm>

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 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 onsite 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 onsite, 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 ongoing 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 meantime, Congress should ensure that DHS transitions to a detention system that is right-sized, safe, humane, and efficient.

## Supplemental Follow-Up Information

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### Summary of Testimony and Recommendations

Immigration detention has been hindered by poor management and deficiencies in oversight combined with rapid increases in the number of individuals detained.

- 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 or monitoring.
- 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. Despite the civil nature of immigration detention, ICE houses its detainees in jails or jail-like facilities replete with barbed wired, prison uniforms, armed guards, and shackles.

Recent announcements of reforms to the immigration detention system by the Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”) are welcome. Non-governmental organizations (“NGOs”) engaged in immigration detention issues appreciate the opportunity to engage in reform, yet challenges persist. Two sequential steps must be taken to substantially achieve the reforms described by ICE.

- First, ICE must reform protocols regarding whom it is detaining and whether detention is necessary or appropriate. Individuals should be automatically and consistently screened for release, bond, parole, participation in alternatives to detention programs, or risk-appropriate housing assignments.
- Second, ICE must design, manage, and monitor a civil detention system that meets its needs and the needs of those it detains safely, effectively and efficiently. To accomplish this end, DHS must design, implement and rigorously enforce standards of confinement and care appropriate to its civil detention authority in each facility where immigrants are detained.