

Human Rights First Public Dialogues Series

Dialogues on Detention: Applying Lessons from Criminal Justice Reform to the Immigration Detention System

Overview/Purpose:

Human Rights First's "Dialogues on Detention: Applying Lessons from Criminal Justice Reform to the Immigration Detention System" took place in four cities across the United States during 2012 and will culminate in a Washington, D.C.-based conference in April 2013. The Dialogues foster discussion on parallel challenges facing the U.S. immigration detention system and U.S. criminal justice system.

Although detention in each context occurs under different legal authorities and with different purposes, immigration detention, jails, and prisons together comprise the broader system of mass incarceration in the United States and as such must contend with related concerns. The immigration detention system should not be modeled after the prison system. However, immigration detention stakeholders can learn from the depth of expertise and rich scholarship among criminal justice and prison reform experts, including corrections professionals with operational experience, who have grappled for many years with efforts to solve problems involving conditions of confinement, mandatory sentencing laws, alternatives to detention, and access to quality legal representation.

By facilitating an exchange of knowledge and best practices among experts, academics, policymakers, practitioners, advocates, and the private bar working in the corrections/criminal justice and immigration detention fields, we aim to help shift the national conversation on immigration detention, build alliances between stakeholders in both fields, and lay the groundwork for future improvements in policy and practice. Our objective is to secure reforms to the immigration detention system so that immigrants and asylum seekers are not detained unnecessarily and in ways that are inconsistent with human rights standards.

Events Schedule:

- **Wed, Sept 12th:** University of Texas – Lyndon B. Johnson School of Public Affairs; Austin, TX
- **Mon, Sept 24th:** University of California – Irvine Law School; Irvine, CA
- **Fri, Oct 12th:** Arizona State University – Sandra Day O'Connor School of Law; Tempe, AZ
- **Fri, Nov 30th:** Loyola University New Orleans College of Law; New Orleans, LA
- **Mon, Apr 8th:** Jones Day; Washington, D.C.

Areas of Focus Include:

- **Conditions of Confinement:** 50 percent of ICE detainees are held in county jails. The other 50 percent are overwhelmingly held in facilities designed and operated as jails. Contrary to claims that improving the conditions of immigration detention undermines facility safety, many of the reforms ICE is contemplating actually exist in the federal prison system and some state prison and local jail systems, and are well understood to improve safety and humane treatment for incarcerated populations. Less restrictive, yet secure, conditions of confinement should reflect an assessment of the actual risk to facility safety posed by a given population. Immigration detention facilities should not be modeled on correctional facilities, but they should not be operated with *more* restrictions than corrections facilities, nor with more restrictions than correctional experts believe are necessary for the safe management of facilities.
- **Mandatory Detention and Mandatory Minimum Sentencing:** Under U.S. immigration law, large categories of immigrants are subject to mandatory detention, and are not provided with individualized court assessments of the need for their continued detention. Similarly, in the criminal justice context, mandatory minimum sentencing and three strikes laws eliminate a judge's discretion to consider individual circumstances in determining appropriate punishment. Through efforts to repeal mandatory detention laws and mandatory minimum sentencing and three strikes laws, in both the immigration detention and the criminal justice systems, reformers seek to restore individualized court assessments that would allow for a case-specific accounting of humanitarian factors such as family and community ties, as well as flight risk and risk to public safety. These changes would lead to more humane outcomes, as well as creating a potential for significant cost savings by ending unnecessary detention and incarceration.
- **Alternatives to Detention:** Alternatives to detention and pre-trial services programs have been repeatedly demonstrated to lead to substantial cost savings and high compliance rates. Despite this success, ICE has requested an annual detention budget of \$2 billion – 28 times its budget for alternatives to detention. In the corrections context, alternatives to detention have similarly proven to serve the government interest while imposing fewer restrictions on liberty, creating less community disruption, and reducing costs. Particularly at a time when local, state, and federal governments are all facing severe fiscal crises, the immigration detention and corrections systems should be decreasing spending on detention, and reallocating funds to increased investment in effective and rights-respecting alternatives.
- **Access to Quality Legal Representation:** The vast majority of detained immigrants – 84 percent – are not represented by legal counsel in immigration removal proceedings. Immigration detainees are in “civil,” not “criminal” proceedings, and when indigent, are not provided with guaranteed government-funded legal representation. The performance of counsel in both the immigration removal and criminal justice context – where government funding exists but often at inadequate levels - can be critical for the outcome of the proceedings and the efficiency/functioning of the courts. There already exist highly effective models of pro bono or other types of legal representation for indigent individuals navigating the immigration detention system or the criminal justice system, including programs that receive government funding. These models should be supported by the private bar, the federal courts, and private donors, and expanded.

Background on Immigration Detention:

Each year, the U.S. government detains close to 400,000 immigrants in more than 250 jails and jail-like facilities nationwide – up to 33,400 per night, and at a cost of more than \$2 billion. These individuals include asylum seekers fleeing persecution, legal immigrants who overstayed their visas, recent border crossers, and lawful permanent residents who were convicted of non-violent crimes. The purpose of this “civil” detention – according to the government itself – is to ensure that immigrants in proceedings or with orders of deportation appear at their removal hearings and comply with removal orders. Immigration detention in the United States has more than tripled over the past 15 years, from 108,454 in 1996 to approximately 363,000 in fiscal year 2011. The expansion proceeded more quickly than thoughtfully, leaving appropriate and safe confinement practices, due process and human rights, and cost-effective alternatives by the wayside.

Human Rights First’s Interest:

Human Rights First has advocated on behalf of refugees and asylum seekers for the past 34 years from our offices in New York and Washington, D.C. We have focused on the U.S. detention of asylum seekers, highlighting concerns about their detention in jails and jail-like facilities, without independent court review of the need to detain, and the insufficient use of alternatives to detention to meet the government’s limited purpose in detaining these individuals. Our reports on these issues include “Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review” (2011), “U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison” (2009), “In Liberty’s Shadow: U.S. Detention of Asylum Seekers in the Era of Homeland Security” (2004), and “Refugees Behind Bars: The Imprisonment of Asylum Seekers in the Wake of the 1996 Immigration Act” (1999).

With 2009 announcements of an ambitious detention reform agenda from DHS and ICE, Human Rights First decided to expand our focus to assess the government’s progress in transforming the conditions in which all immigration detainees were held. We drew on expertise long established in the corrections field to confirm that normalized conditions – like those promised as part of detention reform – are not only more consistent with human rights standards but can also help ensure safety inside a detention facility. In October 2011, we released a report based on this research as well as visits to 17 ICE detention facilities, interviews with government officials, legal service providers, and former detainees, and reviews of existing government data – “Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review.”

Human Rights First also runs a legal representation program for both detained and non-detained asylum seekers, partnering with law firms in New York, New Jersey, and Washington, D.C., to provide pro bono legal assistance to more than 100 new clients each year from countries all over the world, winning asylum or other relief in more than 90 percent of our cases. We conduct “know your rights” presentations and referrals for hundreds of detained immigrants and asylum seekers each year. Our direct work with immigrants and asylum seekers consistently informs our advocacy on immigration detention and other issues.

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