

One Year Later: Immigration Detention Reform and a Civil Model of Detention

DHS and ICE have taken some important steps to improve the current detention system, and should continue to work toward compliance with detention standards at all facilities. But the government has yet to make significant progress toward the underlying goal – a true shift from a penal to a civil approach to immigration detention.

Top Three Questions for ICE:

1. When can we expect to see new civil detention standards that reflect the civil purpose of immigration detention, as opposed to standards modeled on the correctional system?
2. Will existing detention facilities make reforms to become less penal in nature? When? Which facilities?
3. Will ICE build new civil detention facilities? When? Will ICE run these facilities, or will they be contracted out? To whom?

DHS Has Already Committed to the Shift to Civil Detention:

In 2009, the U.S. Department of Homeland Security (DHS) announced plans for a wide-reaching overhaul of the long-mismanaged immigration detention system, which holds up to 33,400 detainees – including asylum seekers – every day. These detainees are currently held in a sprawling network of approximately 250 facilities (down from 341) across the country, some operated by Immigration & Customs Enforcement (ICE), the enforcement arm of DHS, and others run by private corrections companies or county jail systems. DHS acknowledged a year ago that its detention beds were located in facilities “largely designed for penal, not civil, detention.” Key among DHS’s 2009 reform plans were commitments to shift to a non-penal, or “civil,” model of immigration detention.

On August 6, 2009, DHS made the following commitments:

- Created a new Office of Detention Policy and Planning, whose role is “to design and plan a civil detention system tailored to addresses ICE's needs.”
- Committed to “move away from our present decentralized, jail-oriented approach to a system wholly designed for and based on ICE’s civil detention authorities. The system will no longer rely primarily on excess capacity in penal institutions.”
- Promised to design new facilities dedicated to immigration detention, “in three to five years.”¹

On October 6, 2009, DHS made the following commitments:

¹ See August 6, 2009, “ICE announces major reforms to immigration detention system,” available at <http://www.ice.gov/pi/nr/0908/090806washington.htm>, and “2009 Immigration Detention Reforms,” available at http://www.ice.gov/pi/news/factsheets/2009_immigration_detention_reforms.htm.

- Affirmed a guiding principle to “detain aliens in settings commensurate with the risk of flight and danger they present.”
- Promised to revise “immigration detention standards to reflect the conditions appropriate for various immigration detainee populations” by the end of fiscal year 2010.
- Promised to “[h]ouse non-criminal, non-violent populations, such as newly arriving asylum seekers, at facilities commensurate with risk.”²

Prison Experts Recommend Civil Model for Immigrant Detainees:

DHS’s commitments followed a comprehensive review of the immigration detention system conducted by ICE’s then Director of the Office of Detention Policy and Planning, a corrections expert who had been appointed by DHS Secretary Janet Napolitano, as well as an earlier governmental study of ICE detention facilities based on research conducted by another prison expert. Specifically:

- In 2009, ICE issued a report prepared by Dr. Dora Schriro, who had served as the Director of ICE’s Office of Detention Policy and Planning. Dr. Schriro had previously served as Director of the Arizona and Missouri state corrections systems, and is currently Commissioner of Correction for New York City. The report found that **“ICE relies primarily on correctional incarceration standards designed for pre-trial felons and on correctional principles of care, custody, and control. These standards impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population.”**³ Dr. Schriro recommended that ICE develop new standards appropriate to the limited purposes of immigration detention – “to hold, process, and prepare individuals for removal” - and that new and existing facilities be operated to reflect those standards. Facilities that are not able to provide appropriate detention conditions should be closed.⁴
- In 2005, the bipartisan U.S. Commission on International Religious Freedom found that most of the facilities used by ICE to detain asylum seekers are jails or jail-like facilities that are inappropriate for asylum seekers. The Commission had retained a prison expert and conducted extensive site visits and a survey of detention facilities. Based on this research, the Commission concluded that the DHS detention standards that apply to a range of matters are “virtually identical to, and indeed are based on, correctional standards.” The Commission also found that these **detention facilities are “structured and operated much like standardized correctional facilities” and “resemble, in every essential respect, conventional jails.”** It recommended that asylum seekers be held in “non-jail-like” facilities, and that DHS create detention standards tailored to the needs of asylum seekers and survivors of torture.⁵

² See October 6, 2009, “Secretary Napolitano and ICE Assistant Secretary Morton announce new immigration detention reform initiatives,” available at <http://www.ice.gov/pi/nr/0910/091006washington.htm>, and “ICE Detention Reforms: Principles and Next Steps,” available at http://www.ice.gov/doclib/10-06-09-fact_sheet_ice_detention_reform.pdf.

³ U.S. Department of Homeland Security, Immigration & Customs Enforcement, *Immigration Detention Overview and Recommendations*, 2009, pp. 2-3. Available at www.ice.gov/doclib/091005_ice_detention_report-final.pdf.

⁴ *Ibid*, pp. 1, 18, 19.

⁵ U.S. Commission on International Religious Freedom, *Asylum Seekers in Expedited Removal*, Vol. I, pp. 68, 69, Vol. II, p. 189.

In its October 6 announcement, DHS stressed that its reforms were meant to address issues raised in the comprehensive review conducted by Dr. Schriro. DHS also noted that the reforms were expected to be budget neutral or result in cost savings through reduced reliance on contractors to perform key federal duties and additional oversight of all contracts.

Various non-governmental organizations had also issued reports documenting serious deficiencies in the immigration detention system. In an April 2009 report, [*U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison*](#), Human Rights First found that the United States was detaining asylum seekers in penal facilities for months and sometimes years, often without basic safeguards like hearings to assess the need for continued detention. In its report, Human Rights First recommended that DHS stop detaining asylum seekers and other immigrants in penal facilities, and create nationwide alternatives to detention. It also recommended that DHS work with the Department of Justice to provide all detained asylum seekers with access to custody hearings so that the need for their continued detention can be assessed by an immigration court.

DHS Must Do More to Meet Its Own Commitment to Civil Detention:

- Today, immigrant detainees – including asylum seekers – are still held in jails and jail-like facilities, including at least 100 criminal jails that also hold individuals detained under criminal laws.
- At most facilities, immigrant detainees are still being housed in “penal” or “jail-like” conditions. They are, with few exceptions, still wearing prison uniforms. In most facilities, they are permitted just one hour of outdoor recreation each day, often in areas that are not actually outdoors. Their visits with friends and family take place in booths divided by Plexiglas walls. They are typically confined to their housing units except for mealtimes and the limited time available for recreation.
- New 2010 detention standards have been drafted, but not yet released. Human Rights First’s analysis of the draft standards, which were leaked in September, indicates that the standards, though improved over past versions, remain largely modeled on correctional standards. New civil detention standards have not yet been developed.
- ICE has taken some steps to explore new civil detention facility design options and potential improvements in a number of existing facilities.
- While not a model for civil detention given its size, design, and other jail-like aspects, as well as its significant distance from legal resources, a newly opened facility in Farmville, Virginia, has adopted some practices that are less punitive than those utilized elsewhere. Detainees wear scannable wristbands containing identifying electronic information so that their movements can be tracked, facilitating 24-hour freedom of movement within the secure facility. They do not wear prison jumpsuits, and are instead permitted to wear facility-issued light-blue t-shirts and blue jeans, or shorts purchased at the commissary. Contact visits are available.

Recommendations:

As DHS and ICE move forward with their plans to develop civil detention standards and facilities that are appropriate for immigration detainees – i.e. individuals who are detained under the civil immigration laws – they should ensure that these standards, and any new facilities, include the key elements below. In the meantime, even in existing jail-like facilities, which are inappropriate for immigration detainees, many improvements can and should be implemented. Of course, consistent with U.S. human rights and refugee protection commitments, detention should only be used when necessary, based on an individualized assessment of the need for detention in the particular case, and after an assessment of whether any alternatives to detention are available.

Key elements of new civil standards and facilities should include:

- Allowing asylum seekers and other immigrant detainees to wear civilian clothing rather than prison jumpsuits;
- Contact visits with family and friends in all facilities;
- True outdoor recreation space, and expanded access throughout the day; and
- Increased freedom of movement within secure facilities.

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