

Jails and Jumpsuits

Transforming the U.S. Immigration Detention System—A Two-Year Review



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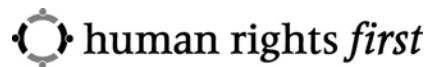
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Executive Summary

“We were real prisoners... They put us in prison even though we didn’t do anything. We didn’t understand anything.”

–Refugee from Democratic Republic of Congo who was detained in 2011 with her younger sister in a county jail in New York alongside criminal inmates

Two years ago, the U.S. Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) committed to transform the U.S. immigration detention system by shifting it away from its longtime reliance on jails and jail-like facilities, to facilities with conditions more appropriate for the detention of civil immigration law detainees. At the time of these commitments, in announcements in August and October of 2009, DHS and ICE recognized that detention beds were in facilities that were “largely designed for penal, not civil, detention.” In fact, many criminal correctional facilities actually offer less restrictive conditions than those typically found in immigration detention facilities, and corrections experts have confirmed that less restrictive conditions can help ensure safety in a secure facility. DHS and ICE have consistently affirmed intentions to carry out the planned reforms in a budget-neutral way.

Yet two years later, the overwhelming majority of detained asylum seekers and other civil immigration law detainees are still held in jails or jail-like facilities—almost 400,000 detainees each year, at a cost of over \$2 billion. At these facilities, asylum seekers and other immigrants wear prison uniforms and are typically locked in one large room for up to 23 hours a day; they have limited or essentially no outdoor access, and visit with family only



South Texas Detention Center in Pearsall holds almost 1,500 ICE detainees.

through Plexiglas barriers, and sometimes only via video, even when visitors are in the same building.

Over the last two years, ICE has begun to use, or has acknowledged plans to use, five new facilities that would contain in total 3,485 detention beds in less penal conditions. These conditions would include increased outdoor access, contact visitation with families, and “non-institutional” (though still uniform) clothing for some detainees. These facilities are designed as templates for a more appropriate approach to immigration detention. If they open as designed and as scheduled, 14 percent of ICE’s detained asylum seeker and immigrant population would be housed in these less-penal conditions—meaning that 86 percent of ICE detainees would still be held in jails and jail-like facilities. Official standards detailing core requirements for the environment and

conditions of a civil detention system—covering matters such as dress, movement within facilities, extended outdoor access, and contact visitation with family—have not been developed or implemented.

ICE has also taken important steps to improve other aspects of the immigration detention system—such as creating a system to allow families and counsel to learn the name of the facility where an immigration detainee is held, issuing new guidance on parole assessments for detained arriving asylum seekers, and training new ICE monitors to report back to headquarters on compliance with standards in the field. However, this report focuses primarily on the agency’s progress on its commitment to “literally overhaul the system”—to transition the immigration detention system away from its jail-oriented approach to a system with conditions more appropriate for civil immigration detainees. While ICE did indicate that the shift would take place “in three to five years,” two years in, there is still a long way to go.

Jails and jail-like facilities have been found to be inappropriate and unnecessarily costly for asylum seekers and other civil immigration detainees by the U.S. government itself, as well as by bipartisan groups and international human rights bodies. In a major 2005 study requested by Congress, the bipartisan U.S. Commission on International Religious Freedom (USCIRF) and its expert on prison systems observed that most of the facilities used by DHS to detain asylum seekers and other immigrants “in most critical respects...are structured and operated much like standardized correctional facilities,” resembling “in every essential respect, conventional jails.” The Council on Foreign Relations bipartisan task force on immigration policy, co-chaired by Jeb Bush and Thomas McLarty, concurred in July 2009 that “[i]n many cases asylum seekers are forced to wear prison uniforms [and] held in jails and jail-like facilities.” The bipartisan Constitution Project’s Liberty and Security Committee similarly concluded in December 2009 that “[d]espite the nominally ‘civil’—as opposed to ‘criminal’—nature of their alleged offenses, non-citizens are often held in state and local jails.” In 2009, DHS’s own Special Advisor—who has run two state prison systems and currently serves as Commissioner of Correction in New York City—concluded in a report prepared for DHS and ICE that:

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. 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.

The use of immigration detention facilities that are penal in nature is inconsistent with U.S. commitments under the 1951 Convention Relating to the Status of Refugees and its Protocol, as well as the International Covenant on Civil and Political Rights. The Inter-American Commission on Human Rights and the U.N. Special Rapporteur on the Human Rights of Migrants have both expressed concern, in reports issued in 2010 and 2008, respectively, about the punitive and jail-like conditions used by the U.S. government in its immigration detention system. Even with more appropriate detention conditions, however, detention can still be—and is—penal in nature when the detention itself runs afoul of other human rights protections—for example, when detention is not necessary, reasonable, or proportionate, or is unnecessarily prolonged.

In an April 2009 report, Human Rights First documented the significant increase in the use of jail-like facilities to detain asylum seekers and other immigration detainees in the United States. In that report, Human Rights First found that the U.S. immigration detention system lacks basic due process safeguards to prevent unnecessary or prolonged detention of asylum seekers, and that DHS’s use of jail and jail-like facilities had actually increased—rather than decreased—since USCIRF’s 2005 recommendation that DHS and ICE phase out their reliance on these facilities.

In this report, Human Rights First focuses its review on the progress of DHS and ICE in transforming the U.S. immigration detention system away from its reliance on jails and jail-like facilities to a system with conditions more appropriate for civil immigration law detainees. In the course of our assessment, we visited 17 ICE-authorized detention facilities that together held more than 10,000 of the 33,400 total ICE beds; interviewed government officials, legal service providers, and former immigration detainees; and reviewed existing government data on the U.S. immigration detention system. We also interviewed a range of former prison wardens, corrections officials, and other experts on correctional systems.

Human Rights First's Primary Findings

- **Asylum Seekers and Other Immigrants Are Still Overwhelmingly Held in Jails and Jail-like Facilities.** In July 2009, approximately 50 percent of ICE's population was held in actual correctional facilities that also housed criminal detainees. Since DHS announced its intention to reform the detention system, there has been no decrease in that proportion. The remaining 50 percent of ICE immigration detainees—those who are not held in actual jails or prisons—are still held in jail-like facilities. These facilities are surrounded by multiple perimeter fences usually topped with razor wire, barbed wire, or concertina coils. Detainees typically wear color-coded prison uniforms and live in conditions that are characteristic of penal facilities—their freedom of movement and outdoor access are highly limited; they often visit with friends and loved ones separated by Plexiglas barriers; and they have little or no privacy in toilets and showers. Since 2009, ICE has added or made plans to add more than 2,700 new jail and jail-like beds to the system. ICE reports that these beds will reduce transfers by realigning the agency's bed "needs" with bed "capacity," and at the same time will keep detainees closer to family members, community resources, and legal counsel.
- **Immigration Detention Costs U.S. Taxpayers Over \$2 Billion Each Year.** The U.S. government will spend more than \$2 billion for immigration detention next year. The costs of immigration detention have risen dramatically over the past 15 years, as detention capacity has more than tripled—from 108,454 detainees in 1996 to approximately 363,000 in 2010. Congress has consistently appropriated the funds to sustain and expand the immigration detention system—from \$864 million seven years ago to \$2.02 billion today, an increase of 134 percent. ICE projects that for fiscal year 2012 it will pay an average of \$122 per day per detainee. ICE has not expanded Alternatives to Detention nationwide – which can save \$110 per day per detainee – and its requested fiscal year 2012 budget for detention is 28 times its requested budget for Alternatives to Detention.
- **ICE Continues to Rely on Detention Standards Modeled on Correctional Standards.** Despite the

commitment by both DHS and ICE to develop new standards to reflect the environment and conditions appropriate for civil immigration detention, immigration detention facilities are still inspected—just as they were in 2009 when ICE announced its reform plans—under standards that are modeled on those used in prisons and jails, and that impose more restrictions and costs than are necessary to effectively manage the majority of the immigration detention population, as detailed by both the 2009 DHS-ICE report and the 2005 USCIRF report. Though ICE has revised these existing corrections-based standards, the revised standards, which have not yet been implemented in any facility, do not call for the types of conditions—including in areas relating to dress, extended outdoor access, contact visitation, and improved privacy—that would reflect the new environment and conditions for civil immigration detention

- **ICE Has Taken Some Steps Toward Less Penal Detention Conditions, But Only a Small Portion of Detainees Will See Change.** Since the reform announcements, ICE has developed plans for several facilities that are anticipated to offer conditions less penal than those in the majority of existing ICE facilities. The conditions at these facilities—in Texas, Florida, Illinois, California, and New Jersey—are anticipated to provide for some increased outdoor access, greater mobility between areas within the closed facility and its grounds, contact visitation with families, and "non-institutional" clothing (though outdoor access will still be limited, and detainees will not be permitted to wear their own clothing). If these facilities open as designed and scheduled, ICE would potentially have 3,485 new beds with less penal conditions. ICE's existing less-penal beds—in Texas, Florida, and Pennsylvania—number 1,137. Altogether, these 4,622 new beds would comprise 14 percent of ICE's detained asylum seeker and immigrant population—meaning that 86 percent of ICE detainees would still be held in jails and jail-like facilities.
- **Less-Restrictive Conditions Can Help Ensure Safety in Both Corrections Facilities and Immigration Detention Facilities.** Though ICE and DHS have called these conditions "non-penal," many of the conditions proposed actually exist in the corrections context as well—or should exist in any

facility that detains or incarcerates—and are touted as best practices to improve facility safety and humane treatment for many prison populations. Human Rights First interviewed former prison wardens, corrections experts, and long-time corrections officials who confirmed that a normalized environment—one that replicates as much as possible life on the outside—helps to ensure the safety and security of any detention facility. Multiple studies examining the impact of prison design and operations on safety draw the same conclusion.

- **ICE Has Not Expanded Cost-Effective Alternatives to Detention Nationwide, and Asylum Seekers and Other Immigration Detainees Continue to Be Detained Unnecessarily—and at Substantial Cost—Due to Lack of Effective Release Procedures.** Alternatives to Detention (ATD) programs generally provide for release from immigration detention with some additional measures to monitor the individual after release. Several different community-based ATD programs have been successfully tested in the United States, leading to substantial cost-savings and high compliance rates. In its October 2009 reform announcements, ICE highlighted the cost-effectiveness of “alternatives to detention.” In April 2010, it submitted a report to Congress describing several scenarios for nationwide expansion of ATDs, which states that ATDs costs ICE on average \$8.88 per day per individual – more than \$110 a day less than detention. Meanwhile, ICE’s requested budget for detention in fiscal year 2012 was \$2.02 billion—28 times its requested budget for Alternatives to Detention. At the same time, U.S. laws and regulations governing the detention and release of asylum seekers and other immigration detainees remain inconsistent with U.S. commitments under the Refugee Convention, its Protocol, and other human rights standards. During 2010, DHS and DOJ declined to take steps to provide access to immigration court custody hearings for asylum seekers who are detained after requesting protection at U.S. airports and borders.
- **Detained Asylum Seekers and Other Immigrants Do Not Have Adequate Access to Legal Assistance and Fair Procedures, Particularly in Isolated Detention Facilities.** The overwhelming majority of

detained asylum seekers and other immigrants—84 percent—are not represented by legal counsel in removal proceedings, the legal process through which ICE seeks their deportation. In fact, most do not even receive basic information about immigration law and process through the highly successful Legal Orientation Program (LOP) managed by the DOJ’s Executive Office for Immigration Review (EOIR). Despite the extraordinary need for legal information in this context, bipartisan support for LOP, the efficiencies enhanced by providing respondents with basic information, and the President’s fiscal year 2012 budget request to expand the program, Congress has funded EOIR to operate the LOP in just 25 detention facilities, reaching approximately 15 percent of detained immigrants and 35 percent of detained immigrants in EOIR proceedings annually. The isolating nature of detention, as well as the rural location of many facilities, makes accessing legal counsel, especially pro bono or low cost legal counsel, extraordinarily difficult. The remote locations also mean that removal hearings for detained asylum seekers and other immigrants are often conducted via video-conference rather than in person. According to Human Rights First calculations, almost 40 percent of ICE’s total bed space is located more than 60 miles from an urban center.

- **ICE Has Taken Steps to Improve Other Aspects of the Existing System, Though Additional Steps Are Necessary.** This report focuses primarily on ICE’s commitments to shift away from reliance on jails and jail-like facilities. At the same time, however, ICE has taken some meaningful steps forward in other areas of detention reform. The agency has centralized management of all contracts in a single office and reduced the number of facilities from 341 to 254. It launched an online detainee locator that allows family and legal counsel to find out where an individual is being held. It developed a risk classification assessment tool for its officers to use in order to systematize detainee release and/or custody classification decisions and improve oversight of these decisions, addressing a major management gap in the detention system. It revised the parole policy so that all detained arriving asylum seekers in expedited removal who pass credible fear

screening interviews are required to be assessed for potential parole eligibility. ICE has developed a detainee transfer policy that, when implemented, is intended to systematize transfer practices, and has trained and placed in the field 42 facility monitors who report back to Washington on standards compliance. In June 2011, the agency issued new guidance on the use of prosecutorial discretion by ICE personnel, which may impact detention and release decisions, and in August 2011, the Administration announced plans to review 300,000 cases in removal proceedings, including detained cases, and administratively close the cases of low-priority individuals, which has the potential to reduce the backlog of cases in immigration courts and improve case processing times. These are all welcome improvements to policy and practice that should exist for any system that detains or incarcerates people, whether correctional or civil in nature.

Moving Forward: Key Conditions in a “Civil” Immigration Detention System

“Civil detention”—in this case, detention that is appropriate to ICE’s civil detention authority—is legally distinct from criminal detention, but few examples exist to demonstrate what civil detention actually looks like in terms of conditions and environment. ICE has developed a Statement of Objectives to describe its vision to potential contractors and local governments that may construct or operate new “civil” facilities (though ICE offers no analogous guide to reform for administrators of existing facilities). These facilities would be secure facilities—that is, they would be surrounded by a secure perimeter to prevent detainees from leaving—and would permit detainees to move somewhat more freely within the facility, including to outdoor recreation. Detainees would have access to contact visits and some privacy in showers and toilets, and they would wear “non-institutional” clothing.

One existing ICE facility, Berks Family Residential Center in Pennsylvania, provides a model that could be replicated. It allows detainees to move freely within certain areas of the facility, it permits contact visits and extended outdoor access, detainees enjoy privacy in toilets and showers, and detainees can wear their own clothing. ICE could create these conditions within a facility surrounded by a secure perimeter for the majority

of its detainee population. Two other existing ICE facilities, Broward Transitional Center in Florida and Hutto Detention Center in Texas, also provide some less penal conditions, including expanded freedom of movement and outdoor access and contact visits; at Hutto, detainees can also wear their own clothing.

Human Rights First urges ICE—over the next two years—to prioritize its commitment to move the U.S. immigration detention system away from its reliance on jails and jail-like facilities. Instead, all facilities holding ICE detainees should include a range of conditions, programming, and other measures more appropriate for immigration law detainees. Some of the conditions that should exist in all immigration detention facilities—and that should be detailed in new standards that govern them—include:

- **Increased freedom of movement within a secure facility.** Using a proven custody classification tool appropriate to the ICE civil detainee population, as well as modern technology, ICE should provide immigration detainees with the ability to move freely within a closed facility and its grounds, among their housing unit, outdoor recreation area, indoor recreation or common space, library, cafeteria, and any other program or support area throughout the day. Rather than multiple daily counts, which disrupt the day by requiring detainees to remain in their housing units for up to an hour at a time, ICE could use a check-in system modeled on the system already in use at Hutto Detention Center.
- **Non-prison clothing for detainees.** Individuals who are detained for administrative purposes under the immigration law should be allowed to wear their own clothing, or, at the very least, clothing that does not resemble uniforms. Two immigration detention facilities—the Hutto Detention Center and the Berks Family Residential Center—operate without prison uniforms already, and ICE’s family residential standards permit detainees to wear their own clothing and require that the facility provide to those who need it clothing that “shall not resemble institutional style clothing.” Both the Inter-American Commission on Human Rights and the UN Special Rapporteur on the Human Rights of Migrants have specifically identified the use of prison uniforms as one of the factors that make U.S. immigration detention punitive.

- **Contact visits.** All ICE-authorized facilities should permit contact visits for all ICE detainees. The prison systems in all 50 states permit contact visits for inmates in their custody. Contact visits are also permitted in all federal Bureau of Prisons facilities, which hold in total more than 200,000 federal inmates. ICE should ensure that the visitation schedule allows visitors, especially those traveling a distance, ample time to spend with their detained family members or friends, during both weekends and weekdays, and that visitors are not forced to wait extended periods of time due to lack of adequate visitation space. Video visitation should not be used as a substitute for in-person visits.
- **Privacy in showers and toilets.** All ICE facilities should provide some degree of privacy in showers and toilets for all ICE detainees. Open-bay or “gang” showers and toilets should not be used for civil immigration law detainees.
- **True outdoor recreation with expanded access.** All ICE facilities should have outdoor recreation areas that are actually outside, accessible to detainees throughout the day, with dedicated space for sports and other physical activities, as well as grassy and shaded areas to allow for outdoor access during very hot or inclement weather. Fresh air and natural light should not be blocked. Corrections experts and ICE facility administrators acknowledge the importance of outdoor recreation to occupy detainees and help ensure facility safety.
- **Programming and activities.** ICE should ensure all detainees have access to daily programming and activities, including access to email, which is a standard form of communication and is now available throughout the federal prison system.

Some ICE officers and managers have questioned whether ICE’s promised shift away from a prison model of detention for civil immigration law detainees would undermine the safety of officers and detainees. While the new facilities designed by ICE are intended to offer fewer unnecessary restrictions than more jail-oriented facilities, the conditions in these new facilities would be similar to those in low- and minimum-security federal prisons, but with the addition of a secure perimeter. As detailed in this report, multiple studies, as well as former corrections officials and other experts, have concluded that a normalized detention environment can help improve

safety and security at facilities holding higher-risk detainees as well as low-risk detainees. One corrections expert who spent his career in the Texas prison system told Human Rights First: “The extent that you can normalize the confinement setting is the extent to which you can have a safe environment.” Individuals who present a particular risk to officers and other facility staff or to other detainees should be identified—and appropriately placed separate from lower-risk detainees—using an effective risk classification assessment tool. ICE should require that less penal and more normalized conditions exist for the vast majority of asylum seekers and other immigration detainees held in secure detention facilities—not just a small percentage.

Recommendations

Thorough reform of the U.S. detention system will require a combination of legislative, regulatory, and administrative actions. At the end of this report, we have detailed a series of recommendations that will improve U.S. detention policies and practices in general and for the victims of persecution who seek this country’s protection. These recommended reforms include:

1. **Stop Using Prisons, Jails, and Jail-like Facilities, and When Detention Is Necessary Use Facilities with Conditions Appropriate for Civil Immigration Law Detainees.** Over the next two years, DHS and ICE should move forward on their commitments to transform the current detention system modeled on jails and prisons to one with conditions appropriate for civil immigration law detainees, including:
 - **End the Use of Jails and Prisons. Immigration and Customs Enforcement** should phase out contracts with county and state jails and prisons, which are inappropriate for civil immigration law detainees. ICE should also end the use of jail-like detention facilities.
 - **Use More Appropriate Facilities.** After an individualized assessment of whether detention is necessary, when asylum seekers and other immigrants are detained under the civil immigration laws, they should not be held in prisons, jails, or jail-like facilities. Instead, **Immigration and Customs Enforcement** should use facilities with more appropriate conditions that provide a more normalized environment, permitting detainees to wear their

own clothing, move freely among various areas within a secure facility and grounds, access true outdoor recreation for extended periods of time, access programming and email, have some privacy in toilets and showers, and have contact visits with family and friends. As detailed in this report, normalized living conditions in detention can actually help improve safety inside a facility.

- **Develop and Implement New Standards Specifying Conditions for Civil Immigration Detention.** Within one year, **Immigration and Customs Enforcement** should develop new residential detention standards that require all facilities to include the key elements outlined in this report—including permitting detainees to wear their own clothing, move freely among various areas within a secure facility and grounds, access true outdoor recreation for extended periods of time, access programming and email, have some privacy in toilets and showers, and have contact visits with family and friends. To promote compliance, these new standards should be incorporated into contracts and promulgated into regulations.
- **Reform Existing Immigration Detention Facilities.** While existing jail-like facilities remain inappropriate for civil immigration law detainees, some reforms can be implemented at these facilities while the transition to facilities with more appropriate conditions moves forward. In these existing facilities, **Immigration and Customs Enforcement** should ensure that non-prison clothing, contact visits, true and expanded outdoor recreation, and privacy for showers and toilets are instituted within six months. The changes made since 2007 at Hutto Detention Center in Texas can serve as a model for reforms to existing facilities.
- **Use Automated and Effective Risk Classification Assessment Tool to Identify and Properly Place Any Detainees Who Present Safety Risks in Custody.** **Immigration and Customs Enforcement** should complete the process of automating a risk classification assessment tool for use in all ICE-authorized

facilities. In addition to identifying individuals who should be released, an effective and standardized assessment tool can identify individuals who may pose a risk to officers or to other detainees, and in such cases, ICE can ensure appropriate placement separate from lower-risk detainees, or other measures proportionate to the risk, to improve safety. In taking such measures, ICE should not automatically hold in a correctional setting all detainees with criminal convictions. Further, a risk assessment tool is a management tool—not a substitute for independent review of the need to detain.

2. **Prevent Unnecessary Costs by Ensuring that Asylum Seekers and Other Immigrants Are Not Detained Unnecessarily.** The creation of facilities with more appropriate conditions should not be used as a reason to detain individuals who present no risks and meet the requirements for release, including through an alternative to detention where additional supervision is necessary to ensure compliance.

- **Expand Alternatives to Detention Nationwide.** **Immigration and Customs Enforcement** should create an effective nationwide system of ATDs for those who cannot be released without additional supervision, utilizing full-service community-based models that provide individualized case management, increasing access to legal and social service providers through meaningful referrals, as well as access to information about court and case information. When used as true alternatives to detention for individuals who would not otherwise be released—and not as alternatives to release for the non-detained population in removal proceedings—ATD programs should create significant cost savings for the government—more than \$110 per person per day. **Congress** should ensure that cost savings are realized in the expansion of this program by reallocating part of the detention and removal budget to an increase in the ATD budget.
- **Provide Immigration Court Custody Hearings for All Detainees.** The **Departments of Justice**

and Homeland Security should revise regulatory language and/or **Congress** should enact legislation to provide arriving asylum seekers and other immigration detainees with the chance to have their custody reviewed in a hearing before an immigration court.

- **Revise Laws to Provide for Detention Only After Individualized Assessment of Need to Detain.** **Congress** should revise laws so that an asylum seeker or other immigrant may be detained only after an assessment of the need for detention in his or her individual case, rather than through automatic or mandatory detention.

3. **Improve Access to Legal Assistance and Fair Procedures.** The **Department of Justice, Department of Homeland Security** and **Immigration and Customs Enforcement** should work with **Congress** to ensure that detained asylum seekers and other immigration detainees have sufficient access to legal representation, legal information, and in-person hearings of their asylum claims and deportation cases, including by ending the use of facilities in remote locations that undermine access to legal representation, medical care, and family; ensuring that Legal Orientation Presentations are funded and in place at all facilities detaining asylum seekers and other immigration detainees; and ensuring that in-person Immigration Judges and Asylum Officers are available for all detained asylum seekers or other immigration detainees.

4. **Take Other Steps to Address Deficiencies in Immigration Detention Conditions.** Though the agency has taken some steps toward improving conditions in the existing system, serious deficiencies persist. **Immigration and Customs Enforcement** should implement a number of improvements in all facilities housing immigration detainees, including by taking additional steps to ensure high-quality medical and mental health treatment, adopting the standards recommended by the bipartisan federal National Prison Rape Elimination Commission, improving training for officers and staff (whether employed by ICE, local government, or a private contractor) with the support of the **DHS Office of Civil rights and Civil Liberties**, and improving communication between headquarters and the field.



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